

## MEDIA ADVISORY

February 27, 2018

Three important advocacy organizations in Ontario are intervening in a court case that has implications for determining whether people affected by discriminatory government policies can be compensated. The intervention is being made to defend the right of persons with disabilities to a full remedy when government policies discriminate against them.

The Council of Canadians with Disabilities (CCD), the ODSP Action Coalition and the Income Security Advocacy Centre (ISAC) will be at the Divisional Court - Superior Court of Justice to intervene in an appeal hearing on a case called *Abbey v. Ontario* on February 28, 2018. ARCH Disability Law Centre (ARCH) and ISAC are representing the interveners.

The Human Rights Tribunal of Ontario has held that they do not have the power to order damages to an individual who was discriminated against by a government policy, because of cases decided under the *Charter of Rights and Freedoms*. This appeal to the Divisional Court challenges that decision.

We are intervening to assert that the Tribunal does have this power, and to highlight the impact of the Tribunal's decision on those living in poverty, who often have their entire income dictated by government policies of this kind. This includes many people with disabilities in Ontario.

If the decision of the Tribunal is upheld by the Court, claimants may not get monetary compensation when the government discriminates against them through a policy or regulation.

**Date:** Wednesday, February 28, 2018

**Time:** 10:00am

**Location:** Courtroom: 3-2  
Ontario Superior Court of Justice  
361 University Avenue  
Toronto, Ontario

Note that there is on-going construction in the area. To access the courtroom, go to the 2nd floor and follow the signs to the elevator located by the Toronto Lawyers Association area. An elevator there goes to the 3rd floor - follow the signs on the 3rd floor to courtroom 3-2.

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## Backgrounder: *Abbey v. Ontario*

Ms. Sheryl Abbey is terminally ill and living with the on-going disabling effects of cancer, cancer treatment, diabetes and other health issues. She is eligible to receive income support, health benefits and employment supports under the Ontario Disability Support Program (ODSP). In 2013, Ms. Abbey began a business to connect cancer patients to community supports and services.

Ms. Abbey was told by ODSP that, according to their policy, any wages she pays to sub-contractors she hired to support her business would be counted as income to her. This meant that her already meagre ODSP benefits would be reduced by those amounts.

Ms. Abbey challenged the ODSP policy at the Human Rights Tribunal of Ontario. The Tribunal decided that the policy directive was discriminatory and ordered ODSP to stop following it. However, the Tribunal did not award compensation for injury to dignity to Ms. Abbey even though evidence about the impact of discrimination was provided.

The Tribunal held that it could not order compensation because a decision of the Supreme Court of Canada called *Mackin v. New Brunswick*. That case dealt with whether damages could be ordered for a breach of rights under the *Canadian Charter of Rights and Freedoms*. The issue before the Superior Court will be whether the Tribunal was right to refuse to award damages for injury to dignity.

### Our argument

On behalf of the CCD, the ODSP Action Coalition and ISAC, ARCH and ISAC will provide a disability and poverty rights perspective to the Divisional Court. We will argue that individuals who go to the Human Rights Tribunal of Ontario because of discrimination they've faced under a government policy should be granted damages for the harms they suffer, regardless of whether damages would have been granted under the *Charter*.

Not only does the Human Rights Code explicitly grant the Tribunal the power to make these orders, but this interpretation is also the only one in keeping with Canada's international obligations under the *Convention on the Rights of Persons with Disabilities*.

### Quotes

“Social programs need to be created with the needs of persons with disabilities in mind. When government programs discriminate, persons with disabilities must be compensated for all the harms that flow from that discrimination. Government shouldn't get a free pass.”

- John Rae, 1<sup>st</sup> Vice Chair, Council of Canadians with Disabilities

“People living on disability benefits barely have enough income to survive. When their efforts to be self-sufficient are undermined by a discriminatory policy, government should be required to compensate them for the harm caused. That is particularly true for a program that is supposed to be designed to meet the needs of persons with disabilities.”

- Jackie Esmonde, Staff Lawyer, Income Security Advocacy Centre