COURT FILE NO.: 02-CV-229203CM3
DATE: 20020605

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
DALE BROOMER, on his own behalf and as litigation guardian for KYLA BROOMER, EMILY BROOMER and TRAVIS BROOMER, PAULETTE DUKE, on her own behalf and as litigation guardian for KEENAN HUGHES, MADISON HUGHES and ETHAN DUKE and ROBERT BEAUPARLANT	)	*Sean Dewart and Charlene Wiseman,* for the applicants
Applicants	)	
- and -	)	
ATTORNEY GENERAL OF ONTARIO, THE DIRECTOR OF THE ONTARIO DISABILITY SUPPORT PROGRAM, THE ADMINISTRATOR OF THE NIPISSING SOCIAL SERVICES ADMINISTRATION BOARD and THE ADMINISTRATOR OF THE KAWARTHA LAKES/HALIBURTON SOCIAL SERVICES ALLIANCE	)	*Richard J. K. Stewart and Daniel Guttman,* for the respondents, Attorney General of Ontario and The Director of the Ontario Disability Support Program
Respondents	)	
	)	**HEARD:** May 31, 2002

REASONS FOR DECISION

NORDHEIMER J.:

[1] The applicants move, on an urgent basis, for interim relief pending their challenge to the constitutional validity of certain provincial legislation. In particular, they seek an interlocutory declaration that certain regulations are of no force and effect with respect to the applicants, an

interlocutory declaration that the applicants are constitutionally exempt from the application of those regulations and a mandatory order directing the respondents administrators to reinstate the applicants' social assistance payments retroactive to the date on which a lifetime ban was imposed together, as well as certain other related relief.

[2] I should note that the respondents, The Administrator of the Kawartha Lakes/Haliburton Social Services Alliance and The Administrator of the Nipissing Social Services Administration Board, did not appear on this motion and did not take any position with respect to it.

Background

[3] In this procceding, the applicants challenge a lifetime ban imposed on any person convicted of an offence in relation to the receipt of social assistance. The ban is imposed pursuant to the *Ontario Works Act, 1997*, S.O. 1997, c. 25, Schedule A and section 36 of Ontario Regulation 134/98 made thereunder and the *Ontario Disability Support Program Act, 1997*, S.O. 1997, c. 25, Schedule B and section 25 of Ontario Regulation 222/98 made thereunder. The applicants contend that a lifetime ban violates the rights guaranteed by sections 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms* and that the lifetime ban is, therefore, *ultra vires* the Legislature and Lieutenant Governor in Council of Ontario.

[4] I will now provide a brief description of each of the applicants.

The Broomers

[5] The Broomer family lives near Janetville, Ontario. Dale Broomer, who is 37, lives with his wife and the couple's three children, Kayla (age 7), Emily (age 3), and Travis (age 18 months). Mr. Broomer was born with a visual impairment. Although he has some sight, he is what is known as "legally" blind. Mr. Broomer has had two workplace accidents, the first of which resulted in a back injury and the second of which resulted in a head injury and an exacerbation of the back injury. Due to the pain associated with the back injury, he continues to be unable to stand up or sit down for extended periods of time. As a result of the head injury, he continues to experience periodic episodes of sharp, debilitating head pain. These episodes occur about four times per week, tend to last half an hour, and leave him weakened for about two hours

afterwards. In addition to these episodes, he suffer from chronic headaches, diminished memory, and poor concentration.

[6] In the past, Mr. Broomer was receiving a worker's compensation benefit of $63.93 per month for his back injury, and an additional WSIB payment of $82.72 per month for his head injury. When he ceased to qualify for total WCB benefits, he applied for benefits under the General Welfare Assistance Plan (now known as Ontario Works). He collected welfare benefits for himself and, commencing in 1995, his family, until early 2001.

[7] In early 2001, Mr. Broomer was recognized as disabled by the Ontario Disability Support Program. This entitled the family to a higher level of support and he began collecting ODSP benefits instead of OW benefits.

[8] Social assistance (first General Welfare, then Ontario Works and finally Ontario Disability Support Program) was the primary source of support for the Broomer Family. Mrs. Broomer is unable to work outside of the home because it is necessary for her to look after the children on a full-time basis. While Mr. Broomer is able to assist with childcare, his visual impairment and the continuing disability from his back and head injuries make it impossible and unsafe for him to care for three small children on his own.

[9] At some point during the process of applying for Ontario Works benefits, Mr. Broomer declared that he was receiving a monthly WCB payment of $63.93, however he did not declare the second monthly WCB benefit of $82.72. This was discovered by the Ontario Works administrator in April, 2000, and it began deducting the $82.72 benefit from his welfare benefits, in addition to the $63.93 for the WSIB benefit that was already being deducted.

[10] In August 2001, Mr. Broomer was charged under the *Criminal Code* with fraud over $5,000. The charge arose from his failure to report the second monthly WSIB benefit to Ontario Works as income from May 4, 1993 to April 30, 2000. Mr. Broomer was convicted on October 5, 2001 and sentenced to serve a three month conditional sentence, during which time he was prohibited from leaving his property (except for appointments with his doctor or his probation officer). This was followed by six months of probation, which he is currently serving. He was

also ordered to make restitution to Ontario Works of the sum of $6,476.92, to be deducted from future social assistance payments.

[11] Following his conviction, Mr. Broomer was banned for life from receiving social assistance benefits, including both ODSP and Ontario Works, pursuant to the legislation and regulations to which I earlier made reference.

[12] After the lifetime ban was imposed on Mr. Broomer, Mrs. Broomer applied for and received Ontario Works benefits on behalf of herself, Kayla, Emily, and Travis. She receives a total amount of $607.44, broken down as follows:

Basic needs for Kimberly, Kayla, Emily, and Travis:	$481.00
Shelter allowance for Kimberly, Kayla, Emily, and Travis	$602.00
Less - National Child Benefit Supplement	($274.16)
Less - Mr. Broomer's WSIB benefits	($147.25)
Less - Set-off re: Mr. Broomer's overpayment	($ 54.15)
TOTAL	$607.44

[13] In addition to the Ontario Works payment of $607.44, the Broomer family's other source of income is Mr. Broomer's WSIB benefits totaling $147.25 per month, and a Child Tax Benefit of $596.72 per month. Thus, the Broomer family's total monthly income is $1,351.41. Without the lifetime ban from ODSP, the Broomer family's total monthly income would be around $2,279.56 (after all deductions and including the Child Tax Benefit). The Broomer family's fixed basic household expenses total approximately $1,320.

[14] In addition to Mr. Boomer's medical problems, two of the children also suffer from medical problems. As a result of these medical problems, the Broomer family spends about $40 per month on prescriptions. Because Mr. Boomer is no longer entitled to OW benefits, he also no longer qualifies for a drug card to cover the costs of prescription drugs.

[15] The Broomer family makes efforts to obtain clothes for the children from the Salvation Army but it does not always have clothes that fit them. Consequently, some clothes must be purchased. On average, the Broomer family spends about $60.00 per month to clothe the children and spends about $15.00 per month on school supplies for the two school age children. The Broomers are currently in arrears of their rent.

[16] Without taking into account debt or unforeseen expenses, the Broomers' basic living expenses total approximately $1,515, which is about $165.00 short of their monthly income of $1,351.41.

[17] Mr. Broomer deposes in his affidavit to the fact that the family cannot afford to adequately feed themselves. They go to a soup kitchen and they also obtain some food staples from two local food banks. Mr. Broomer also deposes to the fact that their children no longer receive any gifts, toys, books, or entertainment, that he and his wife no longer take their children to movies, restaurants, fairs, or museums and that when there are school field trips, the children have to stay home, all because there are no funds available to pay for any of these items.

The Dukes

[18] Paulette Duke is 22 years old. She lives in Lindsay, Ontario, with her three children Keenan (age 3), Madison (age 2), and Ethan (age 2 months).

[19] In July 2000, Ms. Duke was convicted on a charge of fraud under $5,000 and of two related offences under the *Criminal Code*, as a result of having submitted a false rent receipt to Ontario Works. Ms. Duke's sentence for this crime was two years probation, 100 hours of community service, and a restitution order requiring her to pay $1,022 to the Ontario Works office. As a result of the conviction, Ms. Duke was banned for life from receiving any form of social assistance.

[20] Around October 2001, Ms. Duke reapplied for Ontario Works benefits. She was granted an allowance for her children, but was denied assistance for herself because of the lifetime ban. Ms. Duke and her three children currently live on $1,213.58 per month ($415.00 per month from the Child Tax Credit and $798.58 in Ontario Works benefits for Keenan, Madison, and Ethan). If Ms. Duke had not been subject to the lifetime ban, it is likely that her family's monthly income would be $1,456.50. The Duke family's expenses for basic necessities total at least $1,490 each month. This amount does not take into account any unexpected needs or emergencies, or any of Ms. Duke's personal needs such as clothing, dental work or prescription drugs.

[21] Ms. Duke deposes in her affidavit that it is impossible for her to provide adequate nutrition for Keenan and Madison with the $200 per month which is the amount allocated to

groceries in the above number regarding the family's basic necessities. Therefore, Ms. Duke visits the local food bank as much as she can. The food bank supplies Ms. Duke with canned goods and bread, but not with milk, meat, or fresh food. Since Christmas, 2001, Ms. Duke has been able to obtain food vouchers from a local church in the amount of $40 per month without which, Ms. Duke deposes, the family would have had to go without food.

[22] Ms. Duke also deposes to the fact that she usually runs out of diapers during the month with the result that she has to obtain diapers and wipes from a local charity. Ms. Duke says that she is able to obtain some clothes for Keenan, Madison, and Ethan at a used clothing depot but they do not always have what the children need. Ms. Duke also says that she is unable to cover the costs of various medications and other medical expenses related to illnesses or injuries from which she and one of her children suffer.

Robert Beauparlant

[23] Mr. Beauparlant is forty-six years old. He lives by himself in the City of North Bay. Mr. Beauparlant suffers from manic depression and obsessive compulsive disorder. His psychiatrist has prescribed several psychotropic drugs to manage his symptoms. According to the evidence, prior to taking these drugs, Mr. Beauparlant experienced depression, agitation, and anger which occasionally lead to violence. Since taking the drugs, his symptoms have improved dramatically.

[24] Mr. Beauparlant also suffers from Crohn's Disease, a disorder of the small intestine. His symptoms include wrenching pain every time he eats and chronic diarrhea. While no medication has been successful at managing Mr. Beauparlant's symptoms, Mr. Beauparlant deposes in his affidavit that he has noticed that nutrition plays a role in determining the severity of his symptoms and consequently he tries to eat a well-balanced diet. About one month ago, Mr. Beauparlant was diagnosed with angina (blockage in his arteries). He is scheduled to undergo further testing over the next few weeks.

[25] In early 2000, Mr. Beauparlant got laid off from his job and was unable to find new work. Consequently, he applied for and received Ontario Works benefits. At the time Mr. Beauparlant applied for Ontario Works, he was collecting WSIB benefits in the amount of $242.56 per month. However Mr. Beauparlant did not declare this amount to Ontario Works as income.

[26] In the summer of 2001, Mr. Beauparlant enrolled in an employment skills course sponsored by the WSIB. The course lasted from July until December, 2001. Throughout this period, the WSIB upgraded Mr. Beauparlant's benefits from $242.56 per month to $1,000 per month to cover the costs associated with the course. Throughout this period, Mr. Beauparlant continued to collect Ontario Works benefits.

[27] In around December 2001, Mr. Beauparlant was charged with fraud over $5,000 under the *Criminal Code* with respect to the failure to report all of his income.

[28] Mr. Beauparlant deposes to the fact that throughout the next few months, while waiting for his criminal charges to be dealt with, his anxiety and distress grew until February 2002, when he became suicidal and was hospitalized for two weeks as a result. The evidence is that Mr. Beauparlant's doctors increased his dosage of Lithium which appears to have alleviated some of his distress and prevented further suicidal behaviour.

[29] On February 12, 2002, Mr. Beauparlant was convicted of social assistance-related fraud. He was ordered to serve a six month conditional sentence, during which he was prohibited from leaving his home (except for appointments with his doctor or his probation officer) and from purchasing or consuming any drugs or alcohol. He was also ordered to make restitution to Ontario Works in the sum of $12,138.87, to be deducted from future Ontario Works benefit payments. On March 1, 2002, Mr. Beauparlant was cut off from receiving any form of social assistance for the rest of his life. Mr. Beauparlant's current income is his WSIB pension of $242.56 per month.

[30] Following the lifetime ban, Mr. Beauparlant was accepted into the "Phase II Program" at the Canadian Mental Health Association. This program provides him with various support services, including subsidized housing. Thus, his rent is $85 per month.

[31] As part of the lifetime ban, Mr. Beauparlant's drug card was taken away from him. The various medications which he needs to take in order to manage his mental and physical illnesses cost a total of $190 per month. He has applied for a Trillium grant to cover the costs of his medications but, as yet, no decision has been made with respect to his application.

[32] This past month, Mr. Beauparlant paid his rent ($80), bought a bus pass ($60), and put $20 toward the cost of his medications. He is therefore left with about $77 to feed and support himself for the month. Mr. Beauparlant says that while he has started obtaining as much food as possible from local community services, it still costs him $100 per month for food. Mr. Beauparlant also says that when he does not eat properly, the symptoms of his Crohn's disease worsen.

[33] Finally, while Mr. Beauparlant is scheduled to have knee surgery this summer in Toronto, he says that he cannot afford the bus fare to get there and back. Mr. Beauparlant also says that he will not be able to afford the costs of any drugs or knee braces that he may be required to wear as a result of the surgery, or any other incidental costs associated with the procedure.

Analysis

[34] At the outset of my analysis of the issues raised, I wish to make it clear that I am not called upon on this motion to decide the merits of the underlying constitutional challenge to the legislation and regulations. I make that point because, perhaps inevitably, the submissions of counsel tended to stray into the merits of the challenge as opposed to being confined to the narrower issue of whether the interim relief sought by the applicants ought to be granted.

[35] There is no dispute between the parties as to the test to be applied in determining the outcome of this motion. The test is set out in various decisions of the Supreme Court of Canada including *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 and *Harper v. Canada (A.G.)*, [2000] 2 S.C.R. 764. The test involves three stages as follows: (i) there must be a serious issue to be tried; (ii) there must be irreparable harm occasioned to the applicants, and (iii) the balance of convenience (or inconvenience as it may more aptly be described) must favour the applicants.

[36] Given the low threshold for establishing that there is a serious issue to be tried, the Attorney General of Ontario fairly concedes that there is a serious issue (that is, that the challenge is neither frivolous nor vexatious) and therefore the first stage of the test is met. Consequently, I need say no more with respect to that matter.

[37] The second stage involves a consideration as to whether the applicants will suffer irreparable harm between now and the time when the application challenging the legislation can be heard and determined. In *RJR-Macdonald Inc. v. Canada (Attorney General), supra*, the Supreme Court defined irreparable harm in the following terms, at p. 341 (per Sopinka and Cory JJ.):

> " 'Irreparable' refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other."

[38] I also refer to the following observation from Sharpe, *Injunctions and Specific Performance*, (loose-leaf edition) at ¶2.600:

> "The terms 'irreparable harm', '*status quo*' and 'balance of convenience' do not have a precise meaning. They are more properly seen as guides which take colour and definition in the circumstances of each case."

[39] The facts of this case, and the circumstances of these applicants, in my view are sufficient to satisfy the requirement that irreparable harm is being occasioned to the applicants through the impact of their lifetime bans. The harm that is being caused to these individuals, a number of whom are children, is harm that cannot be quantified in monetary terms nor is it harm which can be cured by a subsequent award of damages or by the payment of benefits retroactively. I do not believe that one can properly quantify in monetary terms, for example, the potential health consequences of meals that are not eaten or that are nutritionally inadequate, the pain or discomfort suffered because needed medications cannot be purchased, the impact on the development of children arising from the loss of school trips or family social events that cannot afford to be taken and so on. Further, the emotional and psychological impact on the individuals and on the family unit from living in such circumstances is equally incapable of being monetarily quantified in any meaningful way.

[40] I am satisfied therefore that the applicants have met the requirement of demonstrating that irreparable harm is being occasioned to them.

[41] I now turn to the third stage, which is clearly the most difficult to resolve in these circumstances, namely, the balance of inconvenience. It has been said that the balance of

inconvenience involves a determination of "which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits" – see *Metropolitan Stores (MTS) Ltd. v. Manitoba Food & Commercial Workers, Local 832* (1987), 38 D.L.R. (4th) 321 (S.C.C.) at p. 334.

[42] A principal consideration when dealing with injunctive relief in the context of a constitutional challenge, and central to the issue of the balance of inconvenience, is the issue of the public interest. It is open to either side to invoke the public interest in support of its position. As Sopinka and Cory JJ. said in *RJR-Macdonald Inc. v. Canada (Attorney General), supra*, at p. 344:

> "In addition, either the applicant or the respondent may tip the scales of convenience in its favour by demonstrating to the court a compelling public interest in the granting or refusal of the relief sought. 'Public interest' includes both the concerns of society generally and the particular interests of identifiable groups."

[43] It appears, however, that while both sides may rely on the issue of public interest, the ability of the parties to "tip the scales" through that consideration is very much different. I again quote Sopinka and Cory JJ. in *RJR-Macdonald Inc. v. Canada (Attorney General), supra*, at p. 346:

> "In our view, the concept of inconvenience should be widely construed in *Charter* cases. In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. This is partly a function of the nature of the public authority and partly a function of the action sought to be enjoined. The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action."

[44] The Government of Ontario is clearly an authority charged with the duty of promoting or protecting the public interest. The Attorney General says that the regulations which are challenged in this application were clearly undertaken pursuant to that duty. Therefore, the Attorney General submits that the court must assume that, if the interlocutory relief sought by the

applicants is granted, irreparable harm will result to the public interest. The applicants, however, contend that the application of the regulation is itself resulting in harm to the public interest not only because of the deleterious effects which have clearly been, and will continue to be, occasioned to the applicants but also because of the real potential for further and greater harmful effects. The applicants say that the public interest is negatively effected when any of its citizens are forced to endure the harsh realities which these applicants have suffered, as more fully described above.

[45] In response to that assertion, the Attorney General says that focusing on the applicants ignores the benefits of the regulation including the effective management of public funds and the restoration of public confidence in the welfare system. While the applicants contend that the evidence that the regulation in fact accomplishes those goals is suspect, the Attorney General points to the fact that the impugned regulation must, at this stage of the proceeding, be assumed to be producing a public good. In *Harper v. Canada (A.G.),* [2000] 2 S.C.R. 764, McLachlin, C.J.C. and L'Heureux-Dubé, Gonthier, Iacobucci, Bastarache, Binnie, Arbour and LeBel JJ. said, at p. 770:

> "Another principle set out in the cases is that in considering the grant of an interlocutory injunction suspending the operation of a validly enacted but challenged law, it is wrong to insist on proof that the law will produce a public good. Rather, at this stage of the proceeding, this is presumed."

and further, at p. 771:

> "The assumption of the public interest in enforcing the law weighs heavily in the balance. Courts will not lightly order that laws that Parliament or a legislature has duly enacted for the public good are inoperable in advance of complete constitutional review, which is always a complex and difficult matter. It follows that only in clear cases will interlocutory injunctions against the enforcement of a law on grounds of alleged unconstitutionality succeed."

[46] Is this such a clear case? The applicants rely heavily on the decision in *Rogers v. Sudbury (Administrator of Ontario Works)* (2001), 57 O.R. (3d) 460 (S.C.J.) where Madam Justice Epstein granted an interlocutory declaration that Ms. Rogers was constitutionally exempted from the application of certain regulations which would have terminated the payment of social assistance benefits to her. The facts of that case are, however, different from the ones before me. In *Rogers*, the applicant was going to be denied payments with the result that she

would have no income to support herself at a time when she was pregnant. Madam Justice Epstein very carefully limited her conclusion and made it clear that it was the specific facts of the case before her that lead her to grant the relief that she did. Madam Justice Epstein said, at p. 466:

> "More importantly, the order is being granted in light of the particular facts in this case that centre on Ms. Rogers' medical condition."

[47] There is a difference between the complete cessation of benefits and the reduction of benefits. In that regard, I do not accept the applicants' submission that it is a distinction without a difference. The fact is that most of these applicants continue to receive social assistance notwithstanding that a lifetime ban has been imposed on a few within their midst. It is also true that, as a consequence of that fact, they are able to met their most basic of needs, albeit barely. Having said that, I am not unsympathetic to the applicants' point that there are on a knife-edge between meeting those needs and not. The problem posed by that reality, however, is that I assume that most, if not all, recipients of social assistance would be similarly situated in any case where someone within the family unit became subject to a lifetime ban. I draw this assumption from the reality that the level at which social assistance is paid provides only a minimal level of subsistence and, consequently, places all recipients in a position where any negative impact on the payments being received can have very serious effects. If I am correct in that assumption, then the resolution of this motion has the potential for significant repercussions throughout the programme. As a consequence of that analysis, I tend to the view that the challenge which the applicants make to the regulations, and the interlocutory relief which they seek in this motion, is very much more akin to that of a suspension of the regulations than it is to a mere exemption for a particularly hard hit group of individuals.

[48] It is recognized that public interest considerations weigh more heavily in a case where a suspension of legislation is sought as opposed to an exemption. In *RJR-Macdonald Inc. v. Canada (Attorney General), supra,* Cory and Sopinka JJ. said, at p. 346:

> "Consideration of the public interest may also be influenced by other factors. In *Metropolitan Stores*, it was observed that public interest considerations will weigh more heavily in a 'suspension' case than in an 'exemption' case. The reason for this is that the public interest is much less likely to be detrimentally affected when a discrete and limited number of applicants are exempted from the application of

certain provisions of a law than when the application of the law is suspended entirely."

[49] I have a very real concern that we are not, in actual terms, dealing here with a discrete and limited number of applicants. I am concerned that we are, in fact, dealing with all social assistance recipients who are subject to lifetime bans and their family members, for the reasons I have expressed. I do not believe that it takes too great a degree of prognostication to foresee that a favourable result to the applicants on this motion will be followed by numerous further applications and motions by others who are similarly effected. Consequently, I am of the view that the public interest in this case must be given its proper consideration as if it were a suspension case, as opposed to the exemption case it is portrayed to be.

[50] As all but one of the justices of the Supreme Court of Canada said in *Harper v. Canada (A.G.),supra*, courts will not lightly order that laws that Parliament or a legislature has duly enacted for the public good are inoperable in advance of complete constitutional review. It is with this principle in mind, and not without some considerable reluctance, that I have concluded that, with two exceptions to which I will now turn, the motion for interlocutory relief sought by the applicants must be dismissed. I cannot conclude on the facts before me that the circumstances of the applicants, viewed against the backdrop of the principles established by the Supreme Court of Canada, amount to such a clear case that the extraordinary relief sought by them ought to be granted. In other words, based on the principles I have mentioned, the balance of inconvenience favours the Government.

[51] The two exceptions which I make are as follows. It appears that it is a common practice for individuals who are convicted of defrauding the system to be ordered to repay the amounts which they improperly received. However, by imposing a lifetime ban, the Government of Ontario eliminates the only source of income from which these individuals could make good these repayment obligations. The solution which the Government has then adopted is to deduct the repayments obligations from the amount of social assistance or child benefits which are paid to the defaulting individual's spouse and children. I am unable to see any logical basis or legitimate rationale upon which this action is taken. I must assume that the amounts which are paid to individuals, especially children, are based on what the Government concludes these individuals need to survive. To then reduce the amounts which those individuals receive as a

consequence of actions for which they are not responsible is to inflict a punishment or penalty against innocent parties. Once again I turn to *RJR-Macdonald Inc. v. Canada (Attorney General), supra,* in order to quote Justices Cory and Sopinka who said, at p. 346:

> "The Charter does not give the courts a licence to evaluate the effectiveness of government action, but only to restrain it where it encroaches upon fundamental rights."

[52] In my view, the imposition of a penalty on entirely innocent individuals, especially children, in these circumstances with the consequent irreparable harm to these individuals, encroaches on their fundamental rights and must be restrained. I would note in this regard that the Court of Appeal for Ontario has recently concluded that receipt of social assistance is an analogous ground of discrimination under s. 15(1) of the *Charter* – see *Falkiner v. Ontario (Ministry of Community and Social Services, Income Maintenance Branch),* [2002] O.J. No. 1771 (C.A.). The Government of Ontario would have no ability to transfer the liability for the benefits ordered by a court to be repaid by the individual who improperly received them onto the backs of other individuals who are innocent of any offence but for the terms of the regulation. It seems to me that such a course of action is *prima facie* discriminatory because it imposes a burden on recipients of social assistance which could not be imposed on any other citizen. Such a result would appear to constitute a violation of the non-offending applicants' fundamental rights to be treated equally under section 15(1) of the *Charter* and thereby invokes the exception referred to by Justices Cory and Sopinka above. I therefore grant an interlocutory injunction restraining the Government of Ontario and the respondent administrators from making any such deductions regarding the repayments that were ordered and further order that all amounts so deducted to date be repaid to those from whom the monies were taken.

[53] The other exception involves Mr. Beauparlant. I earlier set out that Mr. Beauparlant suffers from manic depression and obsessive compulsive disorder which causes Mr. Beauparlant to experience depression, agitation, and anger which occasionally lead to violence. The uncontradicted evidence is that the medication prescribed by his doctors results in a dramatic improvement in Mr. Beauparlant's symptoms. Nevertheless, as part of the lifetime ban, Mr. Beauparlant's drug card was taken away from him. While I was not advised how much the medications for his mental illness alone would cost, the various medications for all of his

illnesses cost a total of $190 per month. Mr. Beauparlant simply cannot afford to purchase the necessary medications and the loss of his drug card, as a direct result of the lifetime ban, will mean that he will not receive these medications notwithstanding their obvious benefits to him.

[54] While the earlier quotations I set out from the Supreme Court of Canada's decisions say that the public good from impugned legislation is, at this stage, to be presumed, I do not believe that that presumption can displace a contrary conclusion that is self-evident. There can be no public interest in creating a situation where a person who suffers from a mental illness will be left untreated with the very real prospect that the individual may become violent and consequently pose a risk not only to himself but to other members of the public. There are too many known instances of tragic consequences that have arisen in other contexts where people suffering from such illnesses have gone untreated to purposely allow such a situation to occur.

[55] I therefore grant an interim declaration that Mr. Beauparlant is exempt from the regulation insofar as that regulation operates to deny him his entitlement to a drug card. To put it more plainly, the Government of Ontario is to reinstate Mr. Beauparlant's drug card immediately and retroactively to the date it was withdrawn.

[56] Before concluding, I should say that I was concerned as to the court's jurisdiction to craft these two exceptions from the relief that the applicants sought in light of the principles set down by the Supreme Court of Canada to which I have referred. I conclude that the jurisdiction exists, however, as is made evident by the following statement of Justices Cory and Sopinka in *RJR-Macdonald Inc. v. Canada (Attorney General), supra*, at p. 347:

> "Similarly, even in suspension cases, a court may be able to provide some relief if it can sufficiently limit the scope of the applicant's request for relief so that the general public interest in the continued application of the law is not affected."

[57] In my view, the exceptions which I have granted are limited in scope and do not negatively impact the presumed general public interest in the continued application of the regulation in question. Indeed, for the reasons I have given, I believe the public interest is furthered by the small exceptions made.

Summary

[58] An interlocutory injunction is granted restraining the Government of Ontario and the respondent administrators from making any deductions regarding the repayments that were ordered. I further order that all amounts so deducted to date be repaid to those from whom the monies were taken. An interim declaration is also granted that Mr. Beauparlant is exempt from the regulation insofar as that regulation operates to deny him his entitlement to a drug card and his drug card is to be immediately reinstated retroactive the date it was withdrawn. The applicants' motion is otherwise dismissed.

[59] I am inclined to leave the costs of this motion to the judge ultimately disposing of the underlying application. However, since the parties did not have the opportunity to address that issue, if there are matters which they wish to bring to my attention which they believe might alter my view in that regard, they may do so by written submissions. The respondent's submissions are to be delivered within ten days of the date of these reasons and the applicants' submissions are to be delivered within ten days thereafter. No reply submissions are to be filed without leave.

Released: June 5, 2002