

**the POVERTY and
HUMAN RIGHTS
PROJECT**

The Right to Social Assistance

British Columbia's Two Year Time Limit

14 Questions and Answers

October 2003

Introduction

British Columbia is the only province in Canada to place a time limit on welfare eligibility. From diverse perspectives, many people are concerned about the harmful results of this harsh and unprecedented new rule. This report is a response to numerous requests that the Poverty and Human Rights Project has received from concerned groups and individuals for an analysis of the human rights implications of the 24 month cut off rule.

No court in Canada has ever been asked to determine the constitutionality of a welfare rule that permits a government to completely deny social assistance to a person in need, based solely on the duration of their reliance on welfare. This means that there is no single legal decision that provides a definitive basis for predicting how the courts will respond if faced with a legal challenge to the British Columbia rule.

However, there are central touchstones in constitutional and international human rights law that support the view that the 24 month cut off rule is not consistent with people's rights to security and equality as guaranteed by the *Charter of Rights and Freedoms*, or with the values that underlie the *Charter*. The goal of this report - which is written in a question and answer format - is to describe these touchstones. Through this report the Poverty and Human Rights Project hopes to raise public awareness about the importance of strong social and economic rights for all Canadians, and the threat to human rights commitments that is posed by British Columbia's two year time limit.

1. Are welfare rules tougher than ever in British Columbia?

Yes. In recent years, there have been cuts to social assistance rates by successive governments in British Columbia. These have had harsh effects, driving the incomes of social assistance recipients far below the poverty line. But in addition to more cuts to welfare rates, the current Government of British Columbia has introduced rules regarding eligibility for welfare that are tougher than ever before.

Here are a few of the new rules:

- Before being permitted to apply for social assistance, prospective applicants are required to do a three-week work search. During this period they receive no financial support.¹
- Applicants must not only exhaust all other income alternatives (disability pension, unemployment insurance, workers' compensation, etc.), they must deplete almost all assets.
- To be eligible for social assistance, applicants must satisfy the government that they have been in the workforce for the previous two years, earning at least \$7000 per year or working at least 840 hours for each of these two years.²
- Recipients must comply with government-imposed "employment plans." If they do not, their income assistance can be reduced. This rule applies to dependent youth once they turn 16 years old as well as to adults.³
- Single parents are now considered to be employable when their youngest child turns 3 years old.⁴

There are more. **But the toughest new rule is the 24 month cut off.** This rule says that people are only allowed to claim social assistance for a total of 24 months out of every 60 months.⁵ As a result, those who cannot find or maintain steady work will have their benefits cut once their 24 months are up. **The 24 month cut off will start affecting welfare recipients on April 1, 2004.**

2. Why is the 24 month cut off particularly disturbing?

Denying social assistance to any person in need, without regard for their individual circumstances, is wrong.

Under this rule, some people will be denied social assistance - even if it means that they cannot meet their basic needs - just because their period of need lasted longer than the government would like.

Because of the 24 month cut off, more people in British Columbia will be homeless, hungry, and without adequate clothing. Their health will be

compromised, and their capacity to pursue employment and education opportunities diminished. Some people will be placed under acute pressure to choose demeaning and criminalized strategies for survival. Women will have greater difficulty leaving violent relationships and will experience greater pressure to exchange sex for food and shelter.

Living under such conditions is detrimental to people's physical and psychological integrity, to their safety, and to their sense of equal worth. It also greatly diminishes their ability to participate in civic affairs, and their faith in social and political institutions.⁶

3. Will some single parents be affected by the 24 month rule?

Yes. While single parents will not be cut off social assistance after 24 months, those with children aged 3 and older will have their welfare cheques cut by \$100 per month.⁷

There are about 19,000 single parent families receiving welfare in British Columbia now, and almost 90% of these families are headed by single mothers. The Ministry of Children and Families has classified 10,270 of these single parents as "expected to work." If they cannot find work and adequate childcare before April 1, 2004, these parents face a further reduction to their already inadequate incomes that will force them to choose between paying the rent and feeding their children. Some mothers and children will end up homeless.

4. What is the Government's rationale?

The government says that the 24 month cut off is an incentive to find work. However, social assistance recipients are already obliged to seek work. Moreover, they are subject to extensive requirements to report regularly on their job searches, and the government can terminate their benefits if they fail to meet reporting requirements or turn down employment opportunities.⁸ This makes the imposition of the 24 month cut off redundant. The rule is punitive for welfare recipients, not helpful.

The government's rationale is based on the assumption that people *want* to be on social assistance and do not want to work. The implication is that social assistance recipients will not seek work unless forced to - by deprivation. This negative stereotyping of poor people ignores the facts that this is a time of high

unemployment in British Columbia, and that, historically, there is a close correlation between rates of unemployment and numbers of people on social assistance.⁹ It is also well known that people reliant on social assistance experience discrimination in the job market, and may be refused jobs because of prejudice.

Although there are some exemptions¹⁰ to the 24 month cut off, these are limited and insufficient to make the 24 month rule fair. The government's own documents suggest that the imposition of time limits will disproportionately affect people who have barriers to employment but who are deemed "employable."¹¹ People with no other source of income will have their benefits eliminated starting in April 2004, including people with hidden disabilities, older people, and people living in rural communities where work is hard to find.

5. Does the 24 month cut off represent a shift in Canadian social policy?

Yes. Since the introduction of a nation-wide social assistance program in Canada in the 1960's, there has never been an arbitrary time limit on eligibility that has the effect of cutting a person off social assistance regardless of need.

Over the last fifty years, Canadian governments have worked collaboratively to create a social safety net that will ensure that all Canadians have adequate supports when they are old, disabled, unemployed, having health problems, or otherwise in need. Social assistance has been an essential element of this safety net, designed to assist persons in need and to prevent and remove the causes of poverty.

The prospect of a flat denial of social assistance based on a time limit represents a significant shift away from the established commitment to protect the basic well being of all residents. Canadians have a strong investment in Canada's social programs, both as a practical foundation for shared community life, and as a part of Canadian identity.

6. Does denying social assistance to people in need also violate human rights?

Yes. The 24 month cut off violates basic human rights that are guaranteed by the *Canadian Charter of Rights and Freedoms*¹² and by international human rights treaties that Canada has ratified.

A complete denial of social assistance to a person in need, based solely on the duration of their reliance on social assistance, violates any reasonable interpretation of the rights to security of the person and equality protected by sections 7 and 15 of the *Charter of Rights and Freedoms*.

Section 7 of the *Charter* states:

Everyone has the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 15(1) of the *Charter* states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Section 7 and section 15 *Charter* rights are linked and must be interpreted by reference to each other, and to the Constitution as a whole.

Section 36(1)(c) of the Constitution commits the government of Canada and the provincial governments to:

...providing essential public services of reasonable quality to all Canadians.

The central value underlying all human rights, including *Charter* rights, is respect for the inherent worth and dignity of the person.

7. How do the section 7 rights to life, liberty and security of the person apply here?

The section 7 right to security of the person imposes a positive obligation on governments to protect people from serious threats to their physical and psychological integrity.¹³ Without doubt, the denial of social assistance to meet basic needs constitutes such a threat.

In *Gosselin v. Quebec (Attorney General)*,¹⁴ Justice Louise Arbour of the Supreme Court of Canada held that cutting the social assistance rate for young adults to \$170 a month, which was well below subsistence level, constituted a violation of their section 7 right to security of the person, and perhaps their right to life as well.¹⁵

Justice Arbour explained:

“[A] minimum level of welfare is so closely connected to issues relating to one's basic health (or security of the person), and potentially even to one's survival (or life interest), that it appears inevitable that a positive right to life, liberty and security of the person must provide for it.”¹⁶

The majority of the Court chose not to decide in *Gosselin* whether the section 7 right to security of the person could obligate a government to provide social assistance. Rather, the majority expressly left the question open.¹⁷

8. How does the section 15 right to the equal benefit and protection of the law apply?

For any individual to be denied access to the means of subsistence is a profound affront to the inherent worth and dignity of the person, which is the core value of section 15.

In a country as wealthy as Canada, for a government to refuse social assistance to a person in need is a blatant signal that that person is not regarded as equal in worth. For persons in need, social assistance is a crucial dignity-constituting benefit.

The Supreme Court of Canada has held that section 15 requires more from governments than mere same treatment of individuals. Rather, it is a guarantee