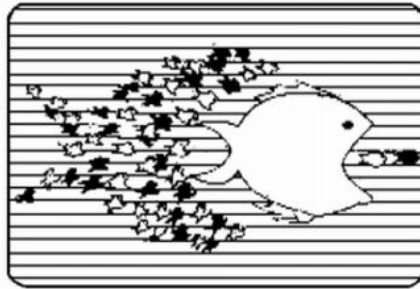


The British Columbia Public Interest Advocacy Centre

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Our file: 5238

June 11, 2010

Via fax: 250-356-7292

The Honourable Rich Coleman
Minister of Housing and Social Development
PO Box 9058
STN PROV GOVT
Victoria, B.C. V8W 9E1

Re: Small Claims filed by the Ministry of Housing and Social Development

We are writing with regard to the barrage of small claims recently filed by the Ministry of Housing and Social Development (“MHSD”).

Our organization, the BC Public Interest Advocacy Centre (“BCPIAC”), has been representing income assistance recipients in proceedings against MHSD for many years. This has included numerous instances of alleged overpayments by MHSD. BCPIAC is well known to MHSD management and legal counsel.

Nonetheless, MHSD has proceeded to file an astounding volume of claims without any attempt to coordinate or give notice to BCPIAC and the advocacy community. Consequently, we have not had the opportunity to develop a coordinated response to the government’s attack against people living in poverty. Specifically, we have not had the opportunity to coordinate with MHSD and legal, advocacy, and funding organizations to attempt to organize information, legal representation, or advocacy assistance for the individuals MHSD has initiated litigation against.

This has occurred in the context of grossly insufficient funding for legal aid, resulting in the discontinuation of legal aid representation services for poverty law in 2002, and the closure of the LawLine, a free public legal advice service, at the end of March 2010. Many of the lawsuits filed by MHSD were filed just after the closure of the LawLine. To the best of our knowledge, there is consequently no legal aid available for the individuals targeted by MHSD’s claims.

To date, we have had the opportunity to view six of the claims, filed in various registries, for alleged overpayments. These claims are cookie-cutter in style. Apart from the named defendant, dates and registry locations, each of the claims is identical. The claims give

zero information about the underlying facts upon which the overpayment allegation is based, whether due to ministry error, MHSD assuming a dependency relationship, or other reasons. MHSD doesn't even identify which legislation the overpayment allegation arose under, but instead cites both the legislation relevant to general income assistance and also the Persons With Disabilities ("PWD") legislation.

What is most disturbing about these six overpayment claims is that they are based solely on the allegation that the defendant signed a repayment agreement, agreeing to "repay" the money.

MHSD's taking of repayment agreements for overpayments was an unfair, oppressive, and coercive practice. Clients were often threatened that they would be cut off assistance if they did not sign, and usually did not receive legal advice prior to signing. In this regard, we would like to draw your attention to the Ombudsperson's Code of Administrative Justice (online here: http://www.ombudsman.bc.ca/images/resources/reports/Public_Reports/Public%20Report%20No%20-%2042.pdf) under the headings "Oppressive" and "Abuse of Power".

MHSD appears to have recognized that the taking of repayment agreements for overpayments was improper and has ceased this practice. Your online resource (at http://www.gov.bc.ca/meia/online_resource/verification_and_eligibility/rec/policy.html#6) now states that **"Repayment agreements should not be taken for overpayments"**.

In view of the above, we object to MHSD's practice of pursuing legal action on the basis of past repayment agreements. In our view, MHSD cannot properly rely on these repayment agreements to recover alleged overpayments.

BCPIAC has succeeded in having the alleged debt cancelled entirely or significantly reduced in the overwhelming majority of overpayment files we have handled. This suggests that many of MHSD's overpayment claims are either inflated or entirely unfounded, and that individuals require legal representation in order to establish this.

Many current and former recipients of assistance from MHSD have barriers to comprehending and effectively responding to legal proceedings, including poverty, disabilities, literacy, and language barriers. Many defendants may, for instance, not know or be able to articulate the legal implications of an agreement signed under duress.

In our view, MHSD's pursuit of legal action against individuals who do not have representation capitalizes on the imbalance of power to force individuals to pay money to the government that they may well not owe.

BCPIAC would like to develop a strategy to provide information and organize legal assistance, to the extent possible, for individuals living in poverty who are being sued by MHSD, and we are asking for your cooperation in this regard.

In particular, we make the following requests.

1. We understand that MHSD has filed hundreds of claims so far this year in the Provincial Court. However, the six claims we have seen are identical. Please provide us with samples of the content of each type of claim being pursued.
2. Please tell us whether any of these claims have been served, and if not, please provide us with information regarding the anticipated timing of service.
3. In order to organize assistance, we need to know where the claims have been filed. Please provide us with a list showing how many claims have been filed in each registry, and please continue to provide us with this information on a go forward basis.
4. Please tell us how many of the individuals are still in receipt of assistance from MHSD. This will give us a sense of how big of an issue service of the court documents is likely to be.
5. Has there been an increase in the volume of civil claims filed by MHSD in the B.C. Supreme Court against current and former income assistance recipients? If so, please outline the nature of those claims.
6. Once we receive this information from you, we intend to develop information packages for the defendants, including legal information and contact information for advocacy or legal support. We ask that MHSD mail this material to all of the defendants.
7. We ask that MHSD agree not to seek default judgment until after receiving notice from BCPIAC that we have had a chance to implement a strategy.

We thank you in advance for your cooperation. Please let us hear back from you by June 25, 2010.

Sincerely,

BC Public Interest Advocacy Centre

Original signed in file

Sarah Khan, Ros Salvador, and Eugene Kung
Barristers & Solicitors

c. Ombudsperson of British Columbia