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Erosion of social support for disabled people in Ontario: An appraisal of the Ontario Disability Support Program (ODSP) using a human rights framework

Tracy Smith-Carrier, PhD, RSW
Associate Professor, School of Social Work
King's University College, Western University
tsmithca@uwo.ca

Phyllis Montgomery, RN, PhD*
Professor, School of Nursing,
Laurentian University
(705)675-1151, 3818
pmontgomery@laurentian.ca

Sharolyn Mossey, RN, MScN
Assistant Professor, School of Nursing,
Laurentian University
smossey@laurentian.ca

Tanya Shute, PhD, RSW
Assistant Professor, School of Social Work
Laurentian University
tshute@laurentian.ca

Cheryl Forchuk, RN, PhD
Professor, Arthur Labatt Family School of Nursing, Faculty of Health Sciences
Western University
cforchuk@laurentian.ca

Abraham Rudnick, BMedSc, MD, MPsych, PhD, CPRP, FRCPC, CCPE, FCPA
Professor, Department of Psychiatry and School of Occupational Therapy
Dalhousie University
Abraham.rudnick@nshealth.ca

Abstract

The Ontario Disability Support Program (ODSP) is a social assistance program offering income and employment supports for disabled people in Ontario, Canada's most populous province. Since its inception, the ODSP has been critiqued by policy analysts, service providers, and its recipients as flawed, principally in terms of the amount and the range of supports provided. The purpose of this paper is to assess whether the ODSP meets its stated objectives from the perspective of its recipients - an important issue for engendering substantive equality for disabled individuals. The design was a supplementary secondary analysis of data collected from seven focus groups (n=46) related to poverty and social inclusion. The overall theme, the ODSP falls short, was communicated through two types of assessments of inadequacies. The first, labelled "yes, but," acknowledged the program's positive intent despite its insufficiencies in services and supports. The second, labelled "no, and," decisively assessed the ODSP as inadequate with supporting rationale. In exploring extant human rights jurisprudence, we conclude that substantive protection against systemic discrimination for disabled people will not be guaranteed unless human rights legislation truly has paramountcy over all other laws. Human rights tribunals have a mandate, reinforced in international human rights law, to provide remedial remedies to systemic discrimination. Our findings speak directly to the need for human rights tribunals and commissions to mitigate the erosion of rights and opportunities for disabled people.

Keywords

Critical disability studies, Ontario Disability Support Program, human rights, mental illness, qualitative secondary analysis

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The social assistance system in Ontario, Canada's most populous province, was transformed in the late 1990s. Changes coincided with welfare reform policy and programming initiated in the United States at that time. Ontario's welfare reform included the division of social assistance into two programs: Ontario Works (OW) and the Ontario Disability Support Program (ODSP). OW is designated as a workfare program for those deemed 'employable,' whereas the ODSP uses strict criteria to identify disabled persons, who are offered greater financial benefits compared to OW. The ODSP benefits include limited health coverage and supplemental programs, such as Special Diet Allowance.

Ontario did not have a distinct income assistance program for disabled people prior to 1998. Social assistance to all eligible recipients was offered through General Welfare Assistance and the Family Benefits program. The purpose of establishing a distinct program of benefits for the disabled was, ostensibly, to better address the needs of people considered 'unemployable.' However, rather than fortifying benefits across the board under welfare reform, then-Premier Mike Harris slashed benefits by 21.6 percent, consigning all recipients to periods, or a life sentence, of deep poverty (Smith-Carrier, Kerr, Wang, Tam, & Kwok, 2017). The ODSP is not subject to indexation and successive rate increases have been minimally incremental. According

to Tiessen (2016), benefit levels have continued to erode since 1990s, leaving people worse off now than under the Harris government.

There have been few substantive changes made to the ODSP since its inception. Some minor revisions relate to the policy governing assets. Recipients are now authorized to hold limited assets. At present, they are not required to liquidate all of their reserves and pension savings prior to program entry (Ontario, 2018a). Another recent change involves defining earnings exemptions. As of 2018, recipients can retain the first \$200 of any income earned before the regular 50 percent claw-back would apply. Prior to 2013, half of all earnings were subject to the claw-back.¹ A series of minor increases of one to two percent have also raised the benefit levels of the ODSP. These increases, however, are not in line with inflation. In a 10-year period for disabled recipients to have the same purchasing power they had in 1993, ODSP would require a dramatic 22 percent increase (Stapleton, 2013). In the first decade of the new millennium, researchers reported that the ODSP recipients struggled not only with low benefit levels, but also with regulatory and administrative complexity (Chouinard & Crooks, 2005; Herd, Mitchell, & Lightman, 2005), persistent stigma, and negative social attitudes toward disability (Lightman, Vick, Herd, & Mitchell, 2009), despite the intent of the program.

Recognizing that the ODSP is now in its third decade of existence, the purpose of this paper is to assess whether the program is meeting its delineated objectives, as expressly stated in its policy directives, from the perspective of persons living with mental illness and receiving ODSP benefits and services. The primary research question asks whether the ODSP meets its stated objectives as assessed by its recipients. This question is important as we consider how recipients' views of the ODSP fit within a human rights framework. The response has the potential to engender substantive equality for disabled individuals.

Definitions of Disability and Mental Illness

There is no universal definition of disability employed across sectors in Ontario. The *Ontario Human Rights Code*'s (the "*Code*"; Ontario Human Rights Commission [OHRC], 1990), definition of disability encompasses a broad range and variable degrees of conditions inclusive of physical disability, condition of mental impairment and mental disorder, developmental and learning disability, or injury. Under the *Code*, individuals are extended protection against discrimination and harassment on the ground of recognized and diagnosed disabilities, as well as perceived disabilities (OHRC, 1990). A much narrower definition is applied in the ODSP Act:

A person is a person with a disability...if, (a) the person has a substantial physical or mental impairment that is continuous or recurrent and expected to last one year or more; (b) the direct and cumulative effect of the impairment on the person's ability to attend to his or her personal care, function in the community and function in a workplace, results in a substantial restriction in one or more of these activities of daily living; and (c) the impairment and its likely duration and the restriction in the person's activities of daily living have been verified by a person with the prescribed qualifications. (Ontario, 1997, c. 25, Sched. B, s. 4(1))

The specificity of the ODSP definition renders disabled people, and particularly those with mental illness who require income support, both within and outside of the bounds of these eligibility criteria. As such, they are particularly vulnerable to poverty and its symptoms such as food and housing insecurities.

Theoretical Framework

Critical disability studies (CDS) is a relatively new area of study to emerge within the burgeoning canopy of critical theories (Smith-Carrier et al., 2017). Similar to critical feminist, critical race, critical intersectionality, mad studies, and queer theories, CDS is both transdisciplinary and transformative. It offers a space through which theorists come to understand the politics of systemic oppression, using disability as the primary category of analysis. Jettisoning traditional notions that distinguish disabled people as different or 'othered,' CDS theorists recognize the significant variation in the human condition, and the implications of practical and political issues for all (Goodley, 2013).

Critical theory had its genesis in the Frankfurt School in the 1930s. Theorists became increasingly interested in how the confluence of capitalism, bureaucracy, and science appeared to negatively affect the development of societal critical consciousness. In response, critical theory aims to elucidate issues of power in order to advance justice and the “transformation and the abolishment of marginalisation and oppression” (Gabel, 2002, p. 185). Central to this school of thought is the critical analysis of social institutions to reveal how they (re)produce structures and processes of domination and oppression, and to transform systems in order to emancipate disadvantaged groups (Breitkreuz, 2005). For CDS scholars, critical theory offers the analytic frame that enables them to reveal the socially and historically constituted power dynamics and hierarchical social relations that adversely affect disabled people, and the praxis for their redress (Meekosha & Shuttleworth, 2009).

Mad Studies have presented “troubles psy-authority-knowledge” and offer “a counter-narrative and powerful discursive set of beliefs, thoughts, and actions aimed at challenging sanism” (Castrodale, 2017, p. 53). Yet this lens, with its attendant focus on questioning notions of madness, is likely too narrow for our research. We thus adopt a CDS approach that allows us to “start(s) with disability but never end(s) with it: disability is the space from which to think through a host of political, theoretical and practical issues that are relevant to all” (Goodley, 2012, p. 2). Disability here is broadly defined, beyond that of mental illness alone. CDS supports researchers to consider other sites of oppression and discrimination across a multiplicity of intersections (Meekosha & Shuttleworth, 2009).

METHODS

Design

This study was a secondary qualitative analysis of data from a five-year, funded participatory action research initiative. The primary study explored multiple stakeholder perspectives about social inclusion and poverty for persons living with mental illness (Doherty, Wright, Smith-Carrier, & Edwards, 2014). The qualitative component of the initiative involved yearly focus groups with adults living with mental illness to ascertain their experiences and perceptions of social inclusion. In review of the transcribed data collected in the early years of the study, a post-hoc topic of interest emerged from a sub-set of participants about their experience as recipients of the ODSP. Several authors recommend secondary analysis as a means to broaden an original body of research to address a sensitive topic with difficult-to-reach populations (Heaton, 2004). For this study, the supplementary approach, as described by Heaton, allowed for an in-depth examination of topical data not fully explored in the primary study. The informed consent garnered from the larger study included information about the reuse of de-

identifying data for secondary analysis. Ethics approval was obtained from the Western University Research Ethics Board.

Setting and Sample

The study was set in London, Ontario, a mid-sized Canadian city with a population of approximately half a million people (Statistics Canada, 2016). According to Statistics Canada (2016), the average individual one-person household income in London was \$31,146 (relative to Ontario at \$33,219). The average income after taxes for a household of two or more persons was \$73,220 in 2015 compared to Ontario at \$79,528. Further, roughly 17 percent of Londoners lived in low-income (after tax), whereas the proportion of people living with low incomes in the province was about 14 percent in 2015 (Statistics Canada, 2016).

To be eligible to participate in the primary study, inclusion criteria were English-speaking adults, 18 years of age or older, who had lived with a mental illness for at least one year prior to data collection. Using purposive and snowball sampling approaches, representatives from health and social community agencies (e.g., food banks, drop-in services, shelters) were asked to identify individuals who met the inclusion criteria and refer them to the research team. Interested community members also contacted the research team for additional information in response to study posters that were placed in community locations such as grocery stores and libraries. Once in contact with a researcher, the purpose and information related to the study was explained. Informed consent to participate was obtained prior to scheduling an interview. Over 240 individuals were recruited and completed structured interviews to collect quantitative data related to poverty and social inclusion. The sample achieved almost a parity of representation from males and females. Following the structured quantitative interviews, 46 individuals

consented to participate in a qualitative focus group. This supplementary analysis study drew from this corpus of data, involving 26 women and 20 men.

Data Collection

Seven focus groups during one year of the larger study, facilitated by seasoned interviewers, were conducted to explore participants' experiences and perceptions about social inclusion and poverty. Focus groups have the potential to tap into the interactions between participants, whose comments may "spark" others to share ideas and experiences they might otherwise not have expressed (Webb & Doman, 2008). Each of the seven focus groups used a series of open-ended questions designed to engage participants' thinking about social inclusion and poverty, and the various policies that affect their day-to-day lives. Peppered throughout the data were participants' exchanges about their mental illnesses, financial challenges, and experiences with income security programs, such as the ODSP. All quotes specific to the ODSP were identified, extracted, and collated in a distinct file for use in this study.

Data Analysis

Within this supplementary study, a well-defined systematic process of applied framework analysis (Ritchie & Spencer, 1994) was used to further an understanding of the ODSP effectiveness as ascertained by its recipients. This approach to qualitative data analysis involved five iterative stages. First, the data file was independently read by three of the researchers to develop familiarity with the data. Second, a conceptual framework was developed to render an understanding of the effectiveness of the ODSP. The researchers developed this framework based on available documents specific to the ODSP housed on the Ministry of Children,

Community and Social Services' website (Ontario, 2018a; 2018b; 2018c; 2018d). The six dimensions of the conceptual framework include program intent, eligibility, administration, provision of income supports, provision of employment supports, and implementation guidelines. This framework was used to organize and make sense of the data in all subsequent analytic phases. The third analytic stage, known as indexing, involved researchers assigning initial codes to represent participants' experiences and sorting them relative to the five dimensions of the conceptual framework. Each code was supported by compelling extracts and textual quotes. In the fourth stage, labelled charting, the researchers compared their coding notes. Where there was consistency, the code label was confirmed. Where there were inconsistencies, the researchers examined why this occurred and recoded the text as necessary. The final stage involved mapping and interpretation. All final codes were sifted, charted, and entered into one of the five key elements of the conceptual framework. Thematic patterns were identified through extensive team discussions to answer the research question. These themes were then used as evidentiary support to assess the effectiveness of the ODSP in meeting its stated policy directives. To ensure greater rigour in the analysis, regular debriefing sessions involving the interdisciplinary research team members were held; these sessions also allowed for peer scrutiny of the findings.

FINDINGS

Appraisal of the ODSP Objectives by Program Recipients

Participants described variable aspects of their experiences as participants of the ODSP services and supports including poverty, social exclusion, powerlessness, food insecurity, precarious housing, working conditions, and differing relationships with their case workers. The

account of each experience was accompanied by implicit or explicit perceptions regarding the inadequacies of the ODSP. Inadequacy was assessed according to the participant's own individual criteria, rather than a normative standard introduced by the interviewer. The overall theme across the data was, that in all regards, the ODSP falls short. This theme was communicated in two ways. The first negative assessment of the ODSP adequacy was labelled "yes, but." This judgement acknowledged the social assistance system's positive intent. Yet, the inclusion of the qualifier 'but' nullified their affirmative account. The second assessment of the ODSP short falls was labelled "no, and." This label depicted the definitive inadequacies of the ODSP. The inclusion of the word 'and' allowed individuals to elaborate upon their assessments, providing detailed personal implications of program inadequacies. Although some acknowledged the positive intentions of the ODSP, the majority of participants were not willing to defend an ineffectual system.

Participants' descriptions about program shortcomings are organized according to six elements of the ODSP presented on the provincial website. These include eligibility for the ODSP, intent of the ODSP, program, administration of the ODSP, provision of income supports, provision of employment supports, and finally, ODSP implementation guidelines. These elements constitute the sections used below to structure the study findings. Each section heading is followed by a brief introduction to the relevant ODSP policy directive. The extent to which the ODSP program fall shorts of attaining its expressed objectives are illustrated through participants' descriptions of their experiences with the program.

Eligibility for the ODSP

The Ontario government notes that to be eligible for the ODSP you must have “a substantial mental or physical impairment that is continuous or recurrent, and is expected to last one year or more... (Ontario, 2018c, para. 3). As previously acknowledged, the definition of disability applied here is narrowly drawn and does not include disabilities of an episodic, fluctuating, or temporary nature. Participants in our study described having to “fight, fight, fight to get [the] piece of paper” that would recognize their need for assistance. A participant shared, “It’s just like, ‘well, you’re not disabled enough, so we’re not gonna help you at all.’ It is really humiliating. You shouldn’t have to prove you are having a tough time.” The system was perceived as being set up to deny applicants. When an applicant does meet the eligibility criteria, the administrative practices and protocols associated with benefit receipt can be onerous, lacking an appreciation for the needs of disabled people. This participant explained that

(W)ithout an advocate on your behalf, it is hard to know what they want. They want people to have mental illnesses bad enough but then they can’t write, can’t remember to send their paperwork on time. They then deny you. They do it three or four times, and if you don’t have somebody there to help you, you are screwed.

Intent of the ODSP

The ODSP provides supports “necessary to enable individuals and families to live as independently as possible in the community and lead more productive, dignified lives” (Ontario, 2018b, para.1). Participants conceded that income support was available through the ODSP. There is some income support, but it is not sufficient to enable participants to lead the “dignified” life described in the policy. Despite receiving benefits through the ODSP and being aware of additional community services, the benefit allocation was simply not adequate to meet

individuals' basic needs. For example, participants expressed an appreciation for the shelter allowance allotted to some participants, although these funds were lacking and restricted people from "moving ahead." Consequently, many participants felt "trapped" living in unsafe neighbourhoods with precarious housing and constant food insecurity.

For many, independence, a sense of productivity, and dignity within one's community remained elusive. Some participants described being "powerless," "objectified," and as having "no control" over their lives. Others felt "defeated" and "humiliated." One participant voiced,

I don't have enough money. I have to go out and try to find places where I can get stuff like toiletries and a can of soup for free. You kind of need that on a fixed income. I either end up having to go to the food bank or figure out somewhere in my area within walking distance that I can go to for a free meal. It is hard.

Administration of the ODSP

An ODSP director:

(M)ay require that a member of a benefit unit provide monthly reports respecting, (a) the income and assets of members of the benefit unit; and (b) any other conditions relevant to determining the person's eligibility (Ontario, 2018d, Reg. 222/98, s. 12(2)).

Participants described the ODSP by its many rules with little available supports to effectively navigate the system. A participant stated, "It is like there are certain rules and hidden hoops you have to jump through." Leaving early from a training program that she did not wish to attend brought severe consequences. She was called into her case worker's office, and had to explain,

[W]hy I pulled out [of the employment program]. [Name of ODSP worker] knew I didn't have backup. He nailed me on so many ODSP infractions since I moved out on my own. I haven't talked to ODSP in the last 25 years more than I have in the last two months.

Provision of Income Support

The ODSP provides “income support including health and other benefits for people with disabilities in financial need” (Ontario, 2018b, para.1). Based on the prescribed eligibility criteria, established through, inter alia, income, and asset tests, the ODSP recipients may receive additional income provisions through the capped shelter allowance, personal needs allowances, and Mandatory Special Necessities. The latter refers to funds allocated for medical supplies and/or transportation required for certain medical treatment. These provisions, according to participants, offered them a “lifeline,” where finances were altogether too limited to adequately meet their health and basic needs. The ODSP thus offered participants the possibility of achieving a meagre standard of living — a life of surviving, not thriving.

The rules surrounding the ODSP contribute to the experience of poverty of participants. For example, the accumulation of personal monetary or tangible assets may result in an abrupt, distressing “clawing back” of the ODSP benefits. One participant conceded, “There’s just nothing that we can do about it, the system is set up that way.” The implication was long standing financial hardship:

[W]e can’t get ahead. No matter how you try. You are not supposed to. If you want to purchase something in a lump sum, you can’t do it. They take it from you. You aren’t given an option. There are restrictions you need to know about.

Living in dismal poverty, participants described how setting aside even a few dollars a week offered them a measure of security knowing that they were not “completely broke.” Some endeavoured to create an emergency fund to cover unanticipated and essentials costs, when food and essential items were not available. Although required, disclosing even small amounts of saved money to the ODSP case workers was generally perceived as risky. One participant feared

that her case worker “would take away what was saved because she would think I have too much money now.”

Provision of Employment Support

The ODSP “provides employment supports to help people with disabilities prepare for, obtain, or maintain a job” (Ontario, 2018b, para. 1). The ODSP workers, usually through third-party community providers, are able to offer employment supports, such as resume and pre-employment preparation courses, at no cost to participants in order to advance their employment goals in the labour market. Many participants viewed employment as a means to achieve a sense of purposefulness and inclusion in their families and communities. Yet, these employment supports did not necessarily translate into paid work opportunities, nor did they provide participants with the requisite knowledge and skills to compete in a knowledge-based economy. This participant outlines the grueling process of accessing employment supports available through the ODSP:

I went to them for help for work. It took four months to get into it. I had to get signatures from a lot of places and a lot of people had to go from one to the other. Well, the paper work had stalled at one place and I had to unjam it. Make calls. I called ODSP and asked, ‘Did you do this?’ It turned out that my worker had gone off on leave and the paper work had just sat [stated with emphasis].

The employment supports attached to the ODSP appear to do little to assist participants once they establish paid employment. Although participants are permitted to retain the first \$200 of monthly earnings, they were aware that any additional income is deducted from their income support at a rate of 50 percent. This rule makes it difficult for people to improve their financial prospects, even when paid employment has been secured.

The employment supports attached to the ODSP are directed solely to participants, not to employers or a labour market rife with systemic discrimination. Participants described how the workplace was not appreciative of difference, and frequently fails to accommodate disabled people. Navigating a labour market ill-equipped to meet the accommodation and job modification needs of some disabled people make high “performance” challenging in a rapidly-changing environment. One participant made the decision to “just quit.” He explained that he “gave up my last job because I was too proud to say I was having a setback.” With frequent bouts of unemployment, between periods of illness and wellness, participants were concerned about their employability. Many worried about the episodic sequencing of their employment trajectory and the repercussions a disjointed employment record might have on their future work prospects. This participant described the situation this way,

[I]t is not coincidental that the people that I’m closest with are also on disability. We’ve opened-up gradually over time. They understand the obstacles in terms of moving ahead...It is hard to say, ‘This is why I’ve been out of work or why there exists a gap in my employment history.’ Then you start massaging your resume to try and fill in those things with volunteering... When you are being interviewed for any position there will be questions directed at a particular time of your life. You’re self-conscious...it is anxiety-provoking. It takes a lot of psyching up to get through that because you just don’t want to come across as incapable...We’ve overcome far too much in terms of other stigmas to be socially left out...ODSP only magnifies the problem for [disabled people] and it only becomes that much more isolating for them.

Other participants did disclose the functional limitations of their disability with their prospective employers. They perceived that potential employers were “not happy” about hiring a person with a mental illness, despite the current legislative framework barring discrimination on the grounds of disability. One participant remarked that “once in the workplace, employers who know about our mental illness think we show up with baggage and then they look for subtle ways to get rid of us.” Accommodations that were perceived to optimize functioning in the

workplace included frequent or extended breaks, peer mentoring, and flexible scheduling. For many, these accommodations were not implemented as individualized, needs-based employment supports. With participation in the workplace came not only the prestige of earnings potential, but also the promise of social inclusion and personal fulfillment.

ODSP Implementation Guidelines

The ODSP administrators are to work “to enable consistent decision-making...to ensure accountability for those decisions....ODSP legislation and policies allow for discretion in many areas” (Ontario, 2018b, para. 4). The notion of consistency described here is meant to restrain the ODSP workers’ subjectivity in allocating discretionary benefits. However, many participants decried the apparent inequities in the perceived arbitrary allocation of services and enforcement of the rules. One participant claimed,

I think different agencies have different, totally different rules. It makes your head spin. Why don’t these agencies get together and say, ‘Okay we’re going to deal with this, this way...’ Let’s try to have some consistency around the rules. Unfortunately, everybody at ODSP, I believe, is not on the same wavelength. Some workers will cover hearing aid batteries. Then another person goes in and asks their worker for this and the worker says, ‘Oh no, we don’t cover that.’

Some claimed that these inequities were not the “fault” of the individual case worker. Rather, they perceived that workers had been instructed by the government to administer an extensive, and in some cases, “punitive” rule book. One participant alleged, “The system is broken. It is not fair. I’m not blaming the workers. It is whoever wrote the rules.” Consequently, some participants lived in constant fear of becoming ineligible for vital supports, always aware of their need to demonstrate their ‘deservingness’ and their compliance with the rules.

Some participants had positive perceptions of their case workers. Participants described them as advocates that would assist them in securing essential supports and in navigating the complex rules of the program. Describing herself as “lucky” a participant felt that

[P]eople (case workers) do try to fight for us...to help us get the paperwork stated. Especially when we don't know where to begin. But there are a lot of people who are on ODSP that just don't know where to go. They don't have people that help them and don't know how to do it.

In the latter situation, the case worker was perceived as inaccessible at a time of crisis. Case workers, such as these, were described as lacking compassion, care, and genuine regard for their clients as persons of worth. Some participants admitted that they reluctantly connect with their ODSP case worker out of necessity, to ensure their understanding of the rules and maintain necessary supports. They lived with the threat that “they would be clamped back down really fast if [they] stepped outside the rules.” This knowledge compelled some participants to endure negative encounters with their case workers, even as far as, one participant put it, “being treated like a dog.”

Cumulatively, the threat of losing vital services and the variable levels of rapport between case workers and participants generated fear, anger, and frustration for participants. The “panic” and “chaos” of program participation heightened participants’ sense of insecurity and powerlessness. A measure of autonomy was described as possible only where there was shared understanding of the ODSP’s extensive policies and procedures, and rapport developed with a helpful and accessible case worker. Clearly, there is a mismatch between those who make the policy and those who actually live under the weight of its directives.

I think the problem is the people that control and make the rules. They do not know because they work fulltime. They do not live below the poverty line. They can't understand because they've never been here.

DISCUSSION AND CONCLUSION

The themes that emerged in this analysis confirm existing literature that the ODSP falls short with regards to the adequacy of the income and employment supports it purports to provide, and the inconsistent and mutable nature of its administration. The insufficiency of benefits has been well established in the extant scholarship on social assistance programs, for the ‘employable’ population through OW (Herd et al., 2005) and disabled populations alike (Lahey, Tompa, MacDermid, Kirsh, & Gewurtz, 2017; Lightman et al., 2009; Smith-Carrier et al., 2017). The literature also decries the limited effectiveness of OW (Lightman, Mitchell, & Herd, 2005) and the ODSP’s employment services (Gewurtz, Cott, Rush, & Kirsh, 2012).

The complexity of following social assistance programs’ formidable 'rule book' as identified in current research is supported by the work of others, particularly related to the immense inconsistencies enabled by bureaucratic discretion (Baker Collins, 2016). Yet, at this critical juncture when the OHRC (2017) has identified poverty as one of its strategic focus areas, including attention to its interactions across multiple axes of identity such as gender, disability, and family status, this study findings that the ODSP falls short of meeting its mandate are particularly salient.

Assessment of Human Rights and Substantive Equality for ODSP Recipients

The ODSP recipients, like those in this study, do not have comparable assurances to privacy, dignity, or self-determination as do disabled persons in other policy domains, such as education, employment, and accessibility legislation (Smith-Carrier et al., 2017). As communicated through "no, and" accounts, study participants assessed the ODSP as falling short relative to their economic needs. As recipients, many of them perceived being exposed to

inequitable, and sometimes degrading treatment. Several grieved the hardship associated with exhausting all other resources before seeking income assistance through the ODSP. Disabled people must first set aside their right to self-determination by allowing a health professional, an “expert” with little familiarity of their everyday lives and struggles, mark them with a diagnostic label (Lightman et al., 2009; Smith-Carrier et al., 2017). Such a label, for some individuals, creates a stigmatized identity to which they may or may not personally identify or embrace. As described in this study, participants described how they must lay bare their health, financial, familial, and relational matters to bureaucrats tasked with interrogating their personal lives, and the veracity of their claims. The complicated and overly intrusive application, assessment, and verification processes, emblematic of residual social assistance programs, further exacerbate any physical and mental impairments applicants may have. Such practices strip recipients of dignity, and deny their inclusion and full participation in the accommodation and resource allocation process (Chouinard & Crooks, 2005; Smith-Carrier et al., 2017).

Embedded in the "yes, but" assertions of our study participants is validation that the Ontario government has indeed taken action to consider the deficiencies inherent within the ODSP during the past two decades. These actions, however, have led to little substantive change. In 2008, the erstwhile Liberal government initiated the first Ontario Poverty Reduction Strategy with an aim to review provincial social assistance programs (Ontario, 2008). In 2012, the intentions of the Commission for the Review of Social Assistance in Ontario yielded minor 'transformations' such as slight benefit increases and enlarged asset levels (Lankin & Sheikh, 2012). In 2018, the provincial government, led by Doug Ford, initiated a 100-day review of the social assistance system. This review, like its predecessors, is not anticipated to yield positive transformations; indeed, the system is likely to regress. The extant government is contemplating

adopting the definition of disability utilized for eligibility for the Canada Pension Plan-Disability (Monsebraaten, 2018). The definition of disability is further narrowed in this federal program. Eligible disabilities must be both severe and prolonged, and interfere with an applicant's ability to work at any job on a regular basis (Canada, 2018). The adoption of this definition at the provincial level would result in greater numbers of disabled people being restricted from the ODSP; a maneuver that could vastly increase the prevalence of absolute poverty within this population.

Implications for Human Rights

To date, Canadian jurisprudence has not held that protections under the *Charter of Rights and Freedoms* impose positive rights obligations on governments. The intractable legacy of *Gosselin v Quebec*² persists such that no subsequent poverty-related case has affirmed that socio-economic rights are justiciable (subject to judicial authority). Jackman (2019) decries the “two steps back” Canada took in the *Gosselin* decision by failing to discredit prejudicial stereotypes about poverty and by placing a disproportionate evidentiary burden on *Charter* claimants to successfully challenge well-financed government defendants. Although eight of the nine Supreme Court justices appeared open to the argument that section 7 of the *Charter* could be interpreted to impose positive obligations on the state in the future, they rejected this interpretation in *Gosselin* (Jackman, 2019). This presented dire consequences for people living with persistent, systemically-derived, adverse effect discrimination (Brodsky, Day, & Kelly, 2017), inclusive to study participants who recounted "no, and" experiences of the ODSP.

The interpretive context of the *Charter* was built on the *Universal Declaration of Human Rights* and the *International Covenant on Economic and Social Rights*. Jackman (2019)

highlights that in the backdrop of these commitments, it is astonishing that 35 years later section 7 offers little in the way of life, liberty, and security for individuals in poverty. Most notable are those living with multiple intersectionalities, including disability. As Justice Arbour stressed in *Gosselin*:

Freedom from state interference with bodily or psychological integrity is of little consolation to those who, like the claimants in this case, are faced with a daily struggle to meet their most basic bodily and psychological needs. To them, such a purely negative right to security of the person is essentially meaningless: theirs is a world in which the primary threats to security of the person come not from others, but from their own dire circumstances. In such cases . . . positive state action is what is required in order to breathe purpose and meaning into their s. 7 guaranteed rights (supra note 5, para. 377). The penchant of judiciaries for negative rights interpretations only has had severe consequences for individuals experiencing significant disadvantage. Porter (2017) argues that

(B)y retreating from understandings that may require positive measures or transformative change, courts stultify interpretation around existing patterns of discrimination, marginalization and exclusion. They exclude from their interpretation of rights the circumstances of disadvantaged and marginalized groups—those whose rights are most frequently denied by existing patterns of exclusion and by governments’ failures to take positive measures to address these systemic violations (p. 2).

Several obstacles continue to beleaguer the juridical enforcement of disability-related supports. These include: the courts’ reluctance to impose positive obligations on governments; deference to arguments underscoring governments’ scarce resources; a formal approach to equality, challenges with ameliorative programs; and, limits to the remedies prescribed (Gary, Wilkie, & Baker, 2010). In addition, Gary et al. (2010) identify other ‘pathways’ that could be more effective in achieving substantive equality for disabled people, like those individuals who participated in this study. Their recommendations for reform include, but are not limited to, the

following: recognition of substantive equality (not formal equality) in all provincial statutes; explicit recognition of the rights of disabled people in all legislation that confers benefits; use of inclusive language in disability-related legislation; and the adoption of universal design by government in the development and/or review of all programs and policies (Gary et al., 2010). These recommendations are directed exclusively at the legislative and executive branches, and therefore neglect the fundamental role of human rights tribunals in offering systemic remedies. Indeed, while governments have increasingly been predisposed to cut health and social services in this era of ‘permanent austerity’ (Pierson, 2002), the courts have been reluctant to impose positive rights obligations on states, assuming that matters pertaining to resource allocation lie squarely in the policy domain of elected officials (Arbour, 2005; Jackman, 2019). Human rights commissions and tribunals may offer a way through this apparent jurisdictional quagmire.

While the Canadian *Charter of Rights and Freedoms* applies only to government decisions, actions, and laws, human rights law (outlined in the Canadian and OHRC is applicable to public laws and decisions, as well as the private actions of individuals, organizations, and businesses (Centre for Diversity and Inclusion, 2018). Human rights tribunals, as Brodsky et al. (2017) compellingly argue, have a unique quasi-judicial character. They have a mandate, reinforced in international human rights law, to not only adjudicate human rights complaints, but in effectively doing so, to provide remedies to systemic discrimination. As such, their mandate extends beyond merely addressing the harms of direct or overt discrimination experienced by individuals. They must also consider the adverse effect discrimination and patterns of disadvantage experienced by groups, and actively seek their redress. This requires that tribunals use their remedial powers to “impose detailed positive obligations on governments and public institutions to alter institutional structures” (Brodsky et al., 2017, p. 4). Simply put, the

antiquated private law model of corrective justice is not fit for the systemic goals of human rights legislation (as evidenced in *Moore v British Columbia (Education)*, 2012), the authority of tribunals in granting systemic remedies must be recognized (Brodsky et al., 2017).

Prior to 2017, the *Code* explicitly prohibited discrimination on the ground of 'receipt of public assistance' in the single service domain of housing (OHRC, 2009). Yet moving forward, the OHRC is now directing its attention, under its new strategic plan, to how poverty can be tackled through the recognition of social rights under the *Code*. To do so, the OHRC aims to make clear, using evidence-informed approaches, how “systemic discrimination causes and sustains poverty and social conditions such as homelessness and hunger” (OHRC, 2017, p. 18), as described by some participants in this study. Accordingly, the OHRC has committed to work towards securing explicit protection from discrimination for people experiencing poverty under the *Code* and to ensure that government and community strategies addressing poverty ground their approaches in a human rights framework (OHRC, 2017).

Inclusion through a Basic Income

As the ODSP fails to recognize the fluidity and mutability of various impairments, many are rendered outside the program's remit. ODSP's narrow definition of disability, focused on continuous or recurrent impairment, rules out those with difficult to diagnose conditions and episodic impairments. In addition, many people with mental illness do not seek treatment (Smith-Carrier et al., 2017), and will therefore not have a documented medical history (Sunderji et al., 2017). This circumstance limits access to the ODSP, and the improved benefits and services that accompany it (Income Security Advocacy Centre, 2018). The provision of a basic income guarantee is an approach that has the potential to effectively provide systemic remedies,

and circumvent the perpetuation of income assistance programs predicated on demarcating disability using biomedical markers of difference. By adopting a universal design approach (Brickenbach & Cleza, 2011), a basic income program could be formulated such that individual income, rather than disability status, is positioned as the key eligibility criterion. All people requiring income support could thus access it, with the amount of assistance provided subject to variations based on individual need (Smith-Carrier et al., 2017). In this way, individuals with mental health issues in particular could have their basic needs met and avoid the stigmatizing, punitive, and intrusive nature of the ODSP, and the insufficiency of its income benefits. A basic income could be adopted as part of poverty reduction efforts, fitted within a rights-based framework to ensure the realization of the rights to food, housing, and an adequate standard of living.

Conclusion

As is demonstrated in our findings, the ODSP in many ways causes and sustains patterns of disadvantage for the persons with mental illness who meet eligibility criteria, and those individuals who are viewed as not disabled enough. This study, supported by previously published work, identifies that the ODSP fails to meet its stated purpose and policy objectives. Such shortcomings warrant substantive positive revisions. It is disconcerting that this program will be susceptible to future cuts and constrictions in eligibility, subject to the caprice of the government of the day. The findings indicate the need for the OHRC, and other human rights tribunals and commissions, to actively disrupt the erosion of rights and opportunities for disabled people in Ontario. There is an urgent need to identify effective remedies, grounded in human rights jurisprudence. As asserted by other authors, such as Brodsky and colleagues (2017), there

will be no substantive protection against systemic discrimination for disabled people unless human rights legislation truly gains paramouncy over other laws.

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Footnotes

¹ New changes introduced by Premier Doug Ford in 2018 allow recipients to retain \$300 of their net income before a 75 percent claw-back is imposed on any subsequent income (Boisvert, & Xing, 2018).

² In the 2002 critical case, *Gosselin v Québec*, the Supreme Court of Canada ruled against Louise Gosselin's Charter challenge alleging that Quebec's welfare regulation that reduced benefits for welfare recipients under age 30 was unconstitutional, violating *Charter* guarantees of security of the person (Jackman, 2019).