Government can't be sued for axing Ontario Basic Income program

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Justice Bale of the Ontario Superior Court of Justice recently dismissed a motion to certify an action as a class proceeding for plaintiffs who claimed to have suffered damages as a result of the early termination of Ontario's basic income pilot project.

In *Bowman v Ontario*, Bale, J found that the statement of claim did not disclose a reasonable cause of action, despite multiple causes pled by the plaintiff group.

Background

In 2017, the Government of Ontario announced a three-year basic income program. Eligible participants would receive a minimum income each year, provided they complied with the conditions of the social benefit program.

After the June 2018 provincial election, in July the new Progressive Conservative government announced the basic income pilot would end early, and subsequently announced that the final payment date would be in March 2019.

The issue for determination was whether the amended statement of claim disclosed a reasonable cause of action as required under section 5(1)(a) of the *Class Proceedings Act, 1992* (CPA).

Cause of Action decision

A court only denies certification under section 5(1)(a) of the CPA if it is plain and obvious that is does not disclose a reasonable cause of action. Courts err on the side of permitting claims and read the pleadings generously. The plaintiffs advanced five causes of action to argue that the statement of claim met section 5(1)(a) of the CPA:

1. Breach of contract

The plaintiffs pleaded that the government entered into a contract with the plaintiffs to provide basic income payments for three years. In exchange, the participants undertook to comply with a set of obligations described in the information and application package.

The plaintiffs argued that the contractual criteria of offer, acceptance and consideration were met and that the government breached the contract by terminating payments.

Justice Bale found that the obligations outlined in the information package were merely conditions of ongoing participation and did not amount to consideration. The facts did not support a contractual relationship.

2. Breach of undertaking

The plaintiffs pleaded that the government undertook to provide basic income payments for three years. Cancelling the basic income pilot amounted to a breach of undertaking, which caused them to suffer damages. The Court ruled that informing the public of a social benefit program did not constitute an undertaking that could prevent the government from cancelling the program.

3. Negligence

The plaintiffs argued that the government owed a duty of care to the participants and it was reasonably foreseeable that loss or harm to the participants would result from terminating the program. They pleaded that the duty of care was breached by the negligent administration of the basic income pilot project.

The government relied on the *Crown Liability and Proceedings Act* (CLPA). The CLPA provides that no cause of action lies against the Crown in respect to negligence in making good faith policy decisions. Policy decisions as defined in the CLPA include providing or ceasing to provide funding for a program or initiative. Although the plaintiffs attempted to differentiate between the decision to cease funding and ceasing payments to the participants, the Court ultimately decided that the plaintiffs' claim in negligence failed because core policy decisions attract immunity.

4. Breach of public law duty

The plaintiffs argued that terminating the program was unreasonable, unfair and breached a public law duty. The Court found that the participants were not entitled to a public law remedy, because the decision to cancel the program was a core policy decision that did not attract public law remedies.

5. Breach of s.7 of the Charter

The plaintiffs argued that ending the program violated their rights to life, liberty and security of the person, contrary to s.7 of the *Canadian Charter of Rights and Freedoms*. In order to establish a breach, the claimants must first have a constitutional right requiring the government to act. Because there was no requirement for the government to act, there was no constitutional right to the continuation of the basic pilot program.

Although the plaintiffs advanced five causes of action, Bale J found that the statement of claim did not disclose a reasonable cause of action.

Takeaway

This decision is significant because it demonstrates the difficulty in establishing a cause of action against government policy decisions. While policy decisions may seem inequitable or unjust to the plaintiffs, good faith decisions with regard to government programs, even to the detriment of its participants remain difficult to challenge. As this matter is on appeal, it will be interesting to see what the Court of Appeal decides.

By

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