

BUDGET BRIEFING MEMO

From: [The Disability Rights Coalition](#)

To: Treasury and Policy Board; Members of the Nova Scotia Legislature

Date: March 4, 2022

Re: The 2022/23 Nova Scotia Budget: Time to end the unjustified 'budgetary cap' on social assistance for persons with disabilities

The Province of Nova Scotia imposes a budgetary cap on social assistance for persons with disabilities that it does not impose on social assistance for the non-disabled.

With the budgetary cap in place, the government cannot meet what the Nova Scotia Court of Appeal has identified as **its legal obligation to provide social assistance to persons with disabilities under the Social Assistance Act**.

This government has the chance to put this right and respect its legal obligations by removing the budgetary cap.¹

What can the Legislature ask the Treasury and Policy Board Committee to do?

End the budgetary cap on social assistance, including accommodative programs, for persons with disabilities to address this inequity and ensure that the government meets its statutory obligations to people with disabilities who are poor.

Ensure that the 2022-23 budget allows for the full provision of service to eligible disability supports applicants in accordance with the law.

Provide for full funding for social assistance, including accommodative programs for persons with disabilities, that meets the legislative requirements on government under the *Social Assistance Act*.

¹ In October 2021, the [Nova Scotia Court of Appeal released a landmark decision](#) in a human rights case finding that the province was systematically discriminating against hundreds of people with disabilities in making institutions a condition of receiving social assistance *and* subjecting people in need to indefinite and years long delays and relocation in order to access services.

The provincial government does not dispute that these facts or that all people can be supported to live in the community but is trying to overturn the Court of Appeal decision based on an argument that the undisputed disadvantage imposed on the disabled doesn't meet the legal test for discrimination. They have not appealed the Court's ruling that the government has a legal obligation to provide social assistance to persons with disabilities.

When members of this committee seek advice concerning this budget briefing memo, consider that there are people within the government who have staked their careers and their reputations on maintaining what the Court of Appeal has said is an unjust and unlawful system. There have been numerous previous warnings to government that have been ignored, including concerns raised of a potential class action against the government by an [outside expert](#) hired by the Department of Health in 2006² and the unlawful implications of the budgetary cap by [a former Deputy Minister of the Department of Community Services](#) in 2012.

Here's why:

1. The Court of Appeal confirmed that persons with disabilities who are eligible as 'persons in need' under the *Social Assistance Act* have a legal right to assistance **as of the date** they are found to be eligible.
2. What this means is that persons who are found legally entitled for assistance but who are then refused meaningful access to supports and services and/or put on a waitlist and not provided assistance under the *Act* are having their legal right to social assistance ignored.
3. Providing social assistance to all those in need—when they are found to be in need—is a legal obligation which the Province can no longer ignore. To continue to do so is to act with impunity in a manner *that ignores the rule of law in this Province*.
4. The statutory obligation to provide social assistance to persons with disabilities in need stands independently of any other human rights obligations the province may have to provide that assistance in a non-discriminatory manner.

Who is affected?

People with disabilities who need social assistance that accommodates their different needs to live in the community. Those individuals are legally entitled (under the *Social Assistance Act*) to access accommodative supports and services and the necessary funds to meet their requirements for social assistance.

How long has this been going on?

The Province has been denying eligible persons with disabilities meaningful access to social assistance through disability supports programs since the mid-1990s.

Since then, even though the Department of Community Services has repeatedly promised reforms, services for persons with disabilities have become more out of reach for those in need, especially over the last 10 years. The same people who promise reform are responsible for a huge growth in the Department of Community Services

² A class action against the Province was filed this past [February 2022](#).

maintained waitlist since 2010. The budgetary cap and its appalling effects represent a stain on the Province's history of its treatment of persons with disabilities.

How many people who are eligible for assistance are having their legal right to social assistance ignored?

The number of people currently on the waitlist maintained by the Department of Community Services who receive **no access to disability support services under the Social Assistance Act** has grown **from 273 in 2012 to 536 in 2021**, almost doubling, according to DCS' own statistics. Those people with disabilities getting no access to social assistance are in homeless shelters, hospitals and nursing homes where they don't need to be or living by themselves and in other places that the Department of Community Services have deemed inappropriate.

This is the opposite of DCS' treatment of all non-disabled people who are eligible to receive social assistance when they need it - they don't have to wait.

Why is the Province *not* providing assistance to everyone who it has deemed to be eligible for assistance?

The short answer is that, decades ago, the Province singled out social assistance programs for persons with disabilities for cuts – first by freezing new small options and then imposing a **budgetary cap** on social assistance for persons with disabilities in disregard of its legal obligations to provide assistance once the person has been found to be eligible. The practice of imposing budgetary caps on programs for persons with disabilities has continued unchecked by successive governments.

As a result, disabled persons in need – with a legal entitlement to assistance—experience ongoing exclusion. Their legal right to assistance and the Province's legal obligation to assist are consistently ignored; creating exploding waitlists, forced relocation or needlessly forcing persons with disabilities to remain in hospitals or other institutions where everyone agrees they don't need to be—and where it is harmful for them to be.

What is the connection between the Province's legal obligation to provide assistance to persons in need and the budgetary cap on social assistance?

The arbitrary and unauthorized budgetary cap means that the Disability Support Program does not have adequate funding to discharge its legal obligation to provide assistance. In short, by maintaining the budgetary cap, the Province is fully aware that it is preventing itself from complying with its legal obligations to provide assistance to eligible persons with disabilities.

How can the system of social assistance for persons with disabilities be fixed?

In order to give people with disabilities access to the supports and services to which they are entitled under the *Social Assistance Act*, the budget approach needs to change.

A critical first step for persons with disabilities will be for this government to end the **legally unauthorized** budgetary cap or restrictions on expenditure allocations under the *Social Assistance Act* including disability supports programs so that disability supports are provided to everyone upon them being found eligible.

NOTE:

The Court of Appeal in its October 2021 decision specifically addressed the statutory obligation on the Minister of Community Services to provide assistance to persons found to be ‘in need’ (see in particular [para 175](#), [222](#)).

This budgetary cap was itself flagged by the Court of Appeal in its decision regarding the inferior treatment people with disabilities receive in Nova Scotia:

“Despite the integrated and interrelated nature of the assistance regimes, support under the [[Social Assistance Act](#)] SAA is not provided in the same manner as under the [[Employment Support and Income Assistance Act](#)] ESIA. For the latter, anyone who is eligible receives the assistance without delay. According to the Deputy Minister, there is no budgetary cap and support is provided to everyone who is eligible whether they are persons with disabilities or not. With the assistance under the [[Social Assistance Act, Disability Supports Program](#)] SAA, the situation is very different and limits on funding and resources restrict the availability of support.” ([para 220](#))

The Nova Scotia Court of Appeal also found that:

“There is ample evidence in the record and the findings of the Board to support the conclusion that the manner in which the Province provides social assistance to persons with disabilities under the [[Disability Supports Program and the Social Assistance Act](#)] SAA creates a disadvantage that is unique to them and not applicable to assistance given to non-disabled persons under the [[Employment Support and Income Assistance Act](#)] ESIA.” ([para. 222](#))

And finally:

“The results of this differential treatment may also include years-long waits to receive services that persons with disabilities are statutorily entitled to receive, or having to relocate in order to receive these services.” ([para 222](#))