

NATIONAL ANTI-POVERTY ORGANIZATION  
ORGANISATION NATIONALE ANTI-PAUVRETE

THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

IN A LAND OF PLENTY:

SUBMISSIONS OF THE NATIONAL ANTI-POVERTY ORGANIZATION  
AND THE CHARTER COMMITTEE ON POVERTY ISSUES  
TO THE COMMITTEE ON ECONOMIC, SOCIAL AND  
CULTURAL RIGHTS

On the Occasion of the Consideration of  
Canada's Second Report on the Implementation  
of the International Covenant of Economic  
Social and Cultural Rights  
Articles 10 - 15

May 17, 1993  
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## INTRODUCTION

### The National Anti-Poverty Organization

1. The National Anti-Poverty Organization (NAPO) is a national organization of poor people and anti-poverty groups from across Canada. NAPO has approximately 452 members, including 101 groups across Canada. Under NAPO's general by-law, at least three-quarters of the members of the Board of Directors must be low income. As well, NAPO's policy is to maintain a regional distribution of Board seats. There is at present at least one member from each province and territory of Canada sitting on NAPO's Board. Most of NAPO's Board members are also members of local low income groups or coalitions in their community.

2. NAPO is regularly consulted on poverty and social assistance issues by the Federal Ministers of Health and Welfare, Finance, and Employment and Immigration and by senior officials within these departments, as well as by provincial governments. NAPO is recognized in the public sphere by media, government and non-governmental organizations as representing social assistance recipients and poor people across Canada.

3. NAPO has also been active in the area of human rights and poverty, advocating consistently for the recognition of social and economic rights in Canadian law. NAPO was granted intervenor status in the Federal Court of Appeal and again, last August, in the Supreme Court of Canada, in the case of The Minister of Finance of Canada, the Minister of National Health and Welfare of

Canada and the Attorney General of Canada v. Robert James Finlay. NAPO was also granted intervenor status by the County Court of District Number 1 in Nova Scotia in the case of Fay Conrad v. The Municipality of the County of Halifax. Both of these cases are of seminal importance in determining the extent to which the right to an adequate standard of living is protected in Canadian law, as will be discussed below.

#### The Charter Committee on Poverty Issues (CCPI)

4. The Charter Committee on Poverty Issues (CCPI) is a coalition of low income activists, anti-poverty groups and advocates which serves as the litigation voice of poor people. It was founded at a meeting held in Ottawa on June 29-30, 1989 at the initiative of the Court Challenges Program, a federal program to assist disadvantaged groups utilizing the Charter of Rights and Freedoms. CCPI was formed for the purpose of bringing together low-income activists and poverty law advocates to ensure that poor people are able to make more effective use of their rights under the Charter of Rights, human rights legislation and other law.

5. CCPI is governed by a Steering Committee of nine members. Six of the nine members of the Steering Committee are elected by the membership at the General Meeting. Three of these members must have experience living in poverty. The remaining three members of the nine member Steering Committee are appointed by the Board of Directors of NAPO.

6. CCPI has no staff or operational funding. It relies on administrative support from member organizations across Canada. CCPI has also relied on the

Federal Court Challenges Program for funding for case development and research on a number of issues. Unfortunately, as will be discussed later in this report, the Court Challenges Program was eliminated by the Federal Government in 1992.

7. Since its formation, CCPI's membership has included all major low-income coalitions in Canada. All research and litigation sponsored by the Charter Committee is directed by a project team of Charter Committee members with particular expertise in the area. In every case, the majority of project team members are low-income activists, and the team includes legal advocates.

8. CCPI has been a major advocate for recognition within Canada of the rights enshrined in the International Covenant on Economic, Social and Cultural Rights. CCPI has been involved either directly or in an advisory capacity in most of the significant cases in which poor people have attempted to utilize Canadian law to challenge violations of their social and economic rights. CCPI was recently granted formal intervenor status by the Supreme Court of Canada in the case of Symes v. Canada, in which the court was called upon to review, for the first time, the provisions of the Income Tax Act related to child care deductions in light of the equality guarantees for women in the Canadian Charter of Rights and Freedoms.

Purpose of CCPI/NAPO's Submissions Before the Committee  
on Economic, Social and Cultural Rights

9. CCPI/NAPO believe that we can be of assistance to the Committee in reviewing Canada's Report on Articles 10-15 of the Covenant, particularly in relation to Article 11. We are able to provide an important non-governmental perspective on the extent of the realization of these rights within Canada. We can furnish additional statistical data, convey more of the lived experience of poverty in Canada and convey the experience of our members in attempting to claim social and economic rights within the Canadian legal system.

10. The Committee's consideration of Canada's Report on these articles is timely. As the Committee is aware, the Canadian Charter of Rights and Freedoms is barely a decade old. Because of the relative inaccessibility of the court system to poor people and the inevitable delays in the hearing of cases, the courts are only now beginning to consider important human rights issues related to poverty and social and economic rights. These first experiences of poor people seeking to remedy violations of social and economic rights in Canada, as will be outlined below, have not been favourable.

11. The fact that Canada, unlike our neighbour to the south, has ratified the International Covenant on Economic, Social and Cultural Rights, has been largely ignored by the courts. Our Charter of Rights, human rights codes and other legislation have been interpreted, by and large, as if social and economic rights are not rights at all. The poor have mostly been left out of what is described in Canada as a "rights revolution."

12. On the other hand, the courts have demonstrated a willingness to consider Canada's international human rights commitments when interpreting the Charter and other legislation. It is our view that if the courts and governments in Canada were to receive some clear direction from this Committee on the nature of Canada's obligations under the Covenant, it would be immensely helpful to Canadians in developing a more inclusive framework of rights in these formative years of the Charter.

13. The Committee's review of Canada's report also comes at an unprecedented political turning point for Canada. Wrestling with a deficit which, although moderate by international standards, is of growing concern to Canadians, and faced with a competitive "global economy", Canadians have been tempted to abandon an historic commitment to social programs and to protecting the social and economic rights of vulnerable groups. Many are advocating the more ruthless economic model of the United States. The data which we will be presenting paints the picture of a nation at a turning point, with growing income disparity, increasing poverty and increasing social and economic marginalization of the most vulnerable groups.

14. Canada's commitment to the rights our government undertook to promote, protect and fulfill in 1976 has weakened. Some say that it has been strained to the breaking point. Yet we are, more than ever, a nation whose self-identity and international reputation, are those of a nation respectful of human rights and the needs of vulnerable citizens. Canadian governments, courts and citizens will benefit from comments and clarification from this Committee regarding our obligations under the Covenant.



15. It is thus our hope that this Committee will play a constructive role in identifying, from an international vantage point, those areas in which rights contained in articles 10-15 of the Covenant have been or are in danger of being infringed in Canada. We urge the Committee to provide constructive input into the prevalent discussions in Canada on the nature of human rights and the role of governments in ensuring that no one is denied an adequate standard of living. By the time of Canada's next report on these articles, our political commitment to these rights may have been irrevocably lost, and an interpretation of constitutional rights in Canada may have been established by the courts which would exclude any recognition of social and economic rights. We believe that some clear and unequivocal Comments from this Committee are needed at this point to ensure a continuing "constructive dialogue" in the future.

## SOCIAL AND ECONOMIC RIGHTS IN A LAND OF PLENTY

### Available Resources

16. In reviewing the compliance of State Parties with the International Covenant on Economic, Social and Cultural Rights, the Committee has appropriately emphasized the realization of these rights relative to resources available to different countries. While there are important minimal aspects of compliance with the Covenant, the obligations undertaken by State Parties are undertaken by all countries equally, and are considered no less onerous for relatively wealthy countries than for those without the resources to realize these rights. The standard to be applied has been described as "the full use of the maximum available resources."

**Committee on Economic, Social and Cultural Rights: Report on the 5th Session of the Committee: General Comment No. 3, p.85.**

17. Canada, perhaps more than any country to come before you, is a prosperous country. We produce more food than we can eat. We have more than one-fifth of the world's fresh water, enough to provide for more than the earth's population. We have enough housing to accommodate every living person in Canada and everyone who will be born in the next ten years. Over half a million households own a second home or "cottage" in the country. The United Nations recently ranked Canada first in the world in human development, ranking ahead of all nations of the world in national income, health and education.

**Canadian Housing Vol. 6 No. 1 The Human Right to Housing, p.36.**  
**United Nations Development Programme, Human Development Report 1992 (New York: Oxford University Press, 1992)**

18. We are, according to most accepted measures, the richest of the major industrialized countries to have ratified the International Covenant. The following table shows the per capita Gross Domestic Product for 1991 of major industrialized countries.

TABLE 1

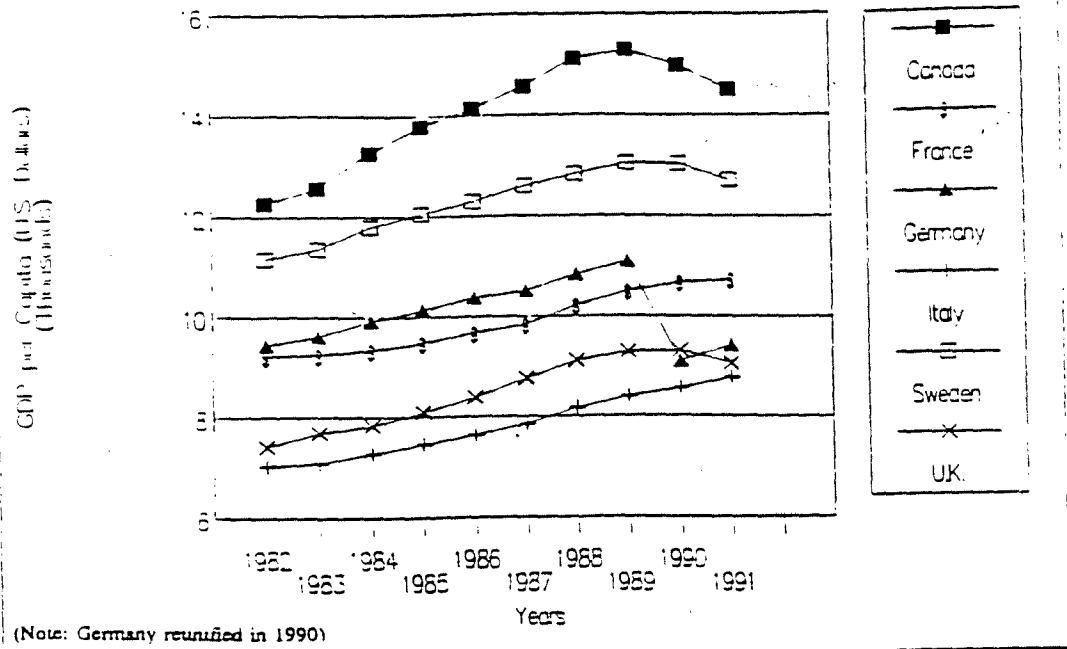
**OECD States GDP per Capita, 1991  
15 Million Plus Population  
(Based on 1985 Constant US Dollars)**

USA	17 793
Canada	14 502
Japan	14 402
Australia	10 886
France	10 732
Netherlands	10 189
Germany	9 403
UK	9 056
Italy	8 764
Spain	5 414
Turkey	1 245

Figures calculated based on:  
National Accounts of OECD  
Countries, 1993 at 172 & 178

19. While Canada has been affected by the recent recession, our position atop other industrialized countries, with the exception of the United States, has been maintained.

## Gross Domestic Product Per Capita at 1985 prices and 1985 exchange rates



Source: National Accounts of OECD Countries, 1993 Vol 1 at 172-8 and OECD Historical Statistics 1960-1989 (1991) at 48.

20. Contrary to a commonly held view in Canada, Canadians are not highly taxed in comparison to other industrialized countries. The wealthy enjoy numerous tax breaks in Canada which are unavailable elsewhere. Canada and Australia are the only major industrialized countries which do not tax inheritance, allowing wealth to pass freely from one generation to the next. Tax economist, Neil Brooks of Osgoode Hall Law School, has identified a number of tax breaks, primarily for the rich, which cost the treasury \$8 Billion per year. Many of these were introduced in the late 1970's. Brooks has calculated that if Canada had maintained the tax levels of the early 1970's throughout the 1980's, our national debt would have been one half of what it was by the early 1980's. A tax level similar to the European countries would create a surplus of \$88 billion.

Canada's Social Programs: Under Attack: Special Report by Linda McQuaig  
 (Toronto Star, 1992), pp.17, 20.

21. The following graphs show tax income in a number of countries relative to Gross Domestic Product and social spending as a percentage of GDP.

GRAPH 2

**The tax picture:**

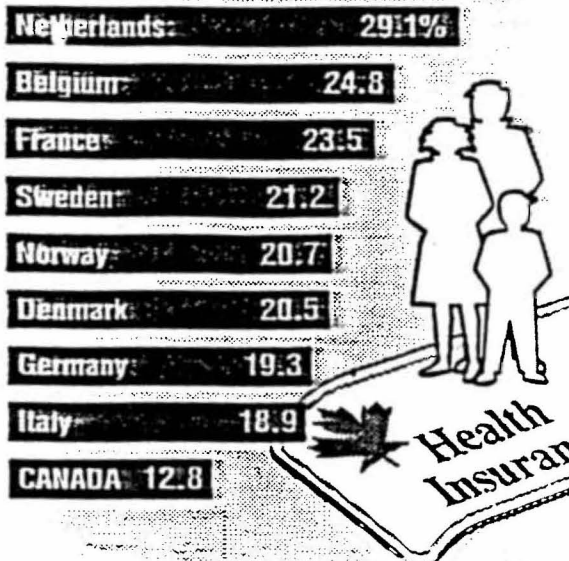
Government taxes as a percentage of Gross Domestic Product in selected countries, 1989



SOURCE: OECD Revenue Statistics, 1965-1990

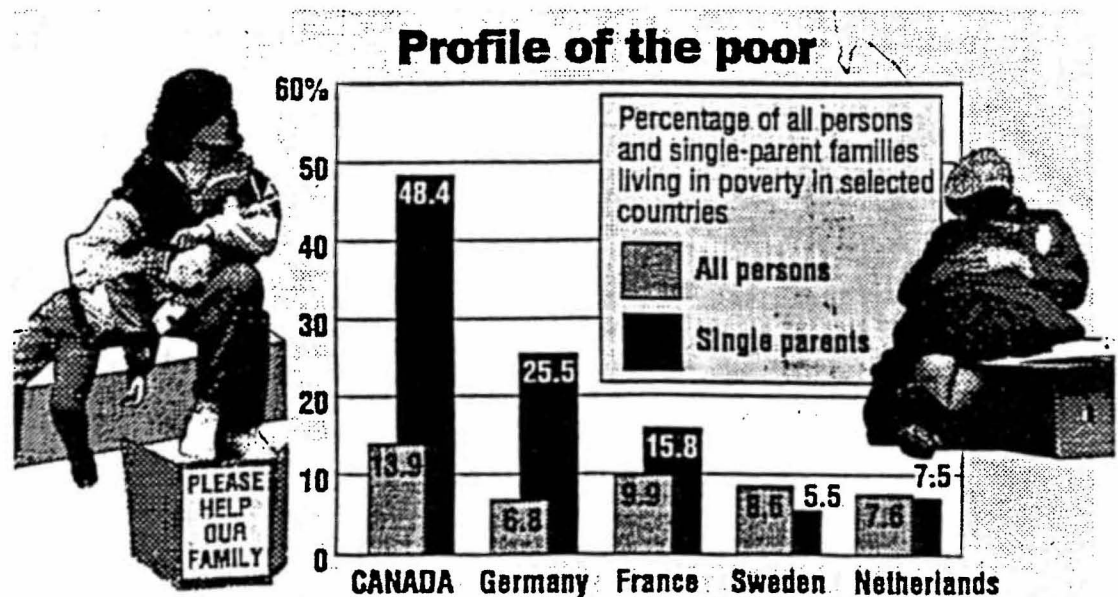
**Social spending**

Government spending on social payments as a percentage of Gross Domestic Product



22. In light of Canada's relative affluence, it is disturbing to find that poverty rates in Canada are much higher than those of most other industrialized countries. The Luxembourg Income Study of 1991 discovered that in overall poverty rates, Canada is among the worst of industrialized countries. Our poverty rates are somewhat lower than those of the United States, which unfortunately is too often used as a reassuring comparison for Canadians. However, when we compare Canada to industrialized countries which have ratified the International Covenant it is clear that Canada is not making "the full use of the maximum available resources." In the 1980s our overall poverty rate was higher than most European countries, with the exception of the United Kingdom. When the Luxembourg Income Study looked more closely at the poverty rate among vulnerable groups such as single parents, it found that Canada's poverty rate was shockingly high, as evidenced by the following graph. This graph shows overall poverty rates and poverty rates among single mothers in a number of industrialized countries.

GRAPH 4



SOURCE: T.M. Smeeding, Over-all Project Director of the Luxembourg Income Study, 1991

23. Poverty rates such as these are a measure of severe inequality in Canadian society, a society in which certain groups are increasingly denied meaningful and dignified participation in Canadian social and economic life. Canada is a country of affluence, but it is an affluence that is not enjoyed equitably. The top 20% of Canadian families make almost 40% of the income while the bottom 20% make only 6% of income. Canada is increasingly becoming a society of inequality. Poverty is the inevitable consequence.

**Statistics Canada, Income Distribution by Size in Canada, 1990.**

24. Canada's situation is entirely different from that of most countries which come before the Committee. Many countries do not have the resources to ensure an adequate standard of living for all residents. These countries must be content to work toward realizing these rights in a progressive fashion. This is not the case in Canada where poverty is quite simply a matter of deliberate choice.

25. The "poverty gap," the amount of additional income that would be required to bring all Canadians above the poverty line in any given year, has become severe in Canada. In 1991, the poverty gap was nearly \$13.4 billion. This would pose an insurmountable problem for many countries that have ratified the Covenant.

26. In Canada, however, poverty is solvable. \$13.4 billion is less than 4.7% of total government expenditure. It could easily be generated by a moderate restructuring of the taxation system. The Federal Government would have an

additional \$5.4 billion if it had held the wealthiest 10% of the population at its 1973 tax rate of 23% on all earnings and returns on investment.

27. Eliminating poverty means creating productive workers out of those who have been denied the chance to participate in the economy. Eliminating poverty requires reducing our unemployment rate from its unacceptable levels of 11%.

28. Canadians who have come to accept systemic poverty as a permanent feature of our affluent society need to be reminded of the commitment made in 1976 to ensure the right of everyone to an adequate standard of living.

## POVERTY RATES IN CANADA

### The Definition of Poverty in Canada

29. Estimates of poverty in Canada are generally calculated based on Statistics Canada's "Low Income Cut-Offs". These cut-offs represent the gross level of income at which an individual or family is considered to be spending a disproportionate amount on food, shelter and clothing. Analyzing family income and expenditure data, Statistics Canada has found that, on average, Canadian families spend 36.2% of their gross income on food, clothing and shelter. A family that must spend an additional 20 per cent on these items, or 56.2 % is considered economically disadvantaged, having inadequate income for other expenditures such as education, health care, furniture, transportation and so on.



Low Income Cut-Offs vary by size of family unit and community of residence and are updated annually.

30. This approach to measuring poverty, which has been widely accepted for a number of years, is based on a "relative" approach. It determines what is necessary for a family to live in dignity by looking at average expenditures on basic necessities. In response to mounting concern and criticism of the Government for increases in poverty among children, families and other vulnerable groups, some right-wing economists and a few Members of Parliament in Canada have suggested that this "relative" definition of poverty should be replaced by an "absolute" definition - one which would establish the cost of the minimal necessities for life as the poverty line. Some in the present government would like to reduce poverty in Canada by changing its definition.

**"Poverty as a Relative Concept," in Perception Volume 17, No.1.**

31. While the Canadian poverty line classes as "poor" some households with items such as telephones, cars or cable television which would be absolute luxuries in other countries, in our submission, a relative approach to poverty is consistent with the purpose and intent of the Covenant. The ultimate aim of social and economic rights is to ensure the "inherent dignity of the human person" through full social and economic participation in society. Dignity and the requirements for social and economic participation change in different countries and communities. As the Canadian economist John Kenneth Galbraith wrote:

People are poverty-stricken when their income, even if adequate for survival, falls markedly behind that of the community. Then they cannot have what the larger community regards as the minimum necessary for decency; and they cannot wholly escape therefore, the judgement of the larger community that they are indecent. They are

degraded, for, in a literal sense, they live outside the grades or categories which the community regards as acceptable.

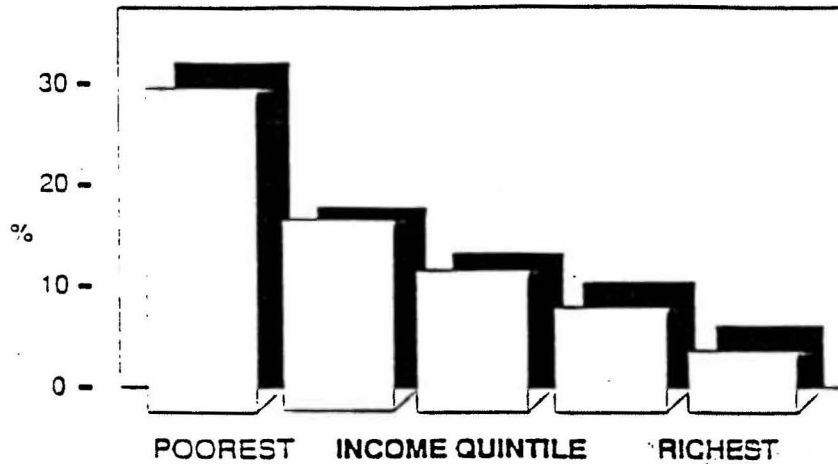
J.K. Galbraith, The Affluent Society (Boston: Houghton Mifflin, 1958) at pp. 323-4.

32. The statistics provided in the present report use Statistics Canada's Low Income Cut-Offs for estimates of the number of persons living in poverty in Canada. These are the accepted measures among most analysts in Canada, and international comparisons such as the Luxembourg Income Study seem to suggest that these measures are comparable to those in other countries.

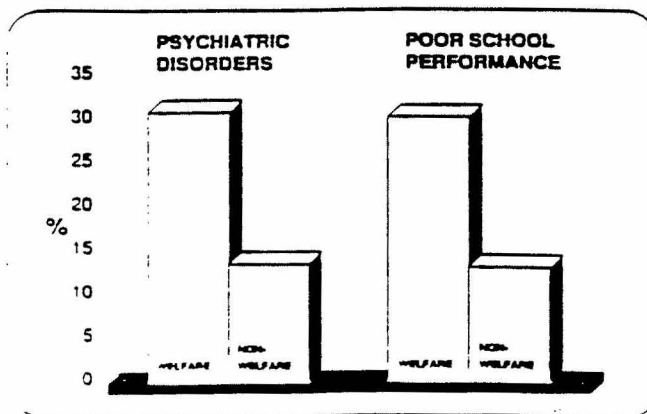
33. It is also clear from data linking poverty in Canada with other indices, that the Low Income Cut-Offs define an extreme of social and economic deprivation in Canada that is very real in its results: lower life expectancy, chronic health problems, infant mortality, psychiatric disorders and inability to perform at school. Poverty in Canada may not be as stark and catastrophic as poverty in less affluent countries, but it still causes illness and death. The following graphs show the very real and tragic consequences of poverty in Canada.

GRAPHS 5 & 6

**SELF-RATED HEALTH AS FAIR OR POOR  
BY LEVEL OF INCOME  
AGES 25-64 YEARS  
CANADA 1985**



**PREVALENCE OF POOR SCHOOL PERFORMANCE  
AND PSYCHIATRIC DISORDERS  
BY LEVEL OF INCOME  
AGES 6-16  
CANADA 1985**



Source: Canadian Institute of Child Health, The Health of Canada's Children: A CIH Profile (Ottawa: Canadian Institute of Child Health, 1989) at 98.

## TRENDS IN POVERTY IN CANADA

34. The following chart shows the fluctuations in the poverty rate in Canada since 1980. The number of persons living in poverty crested in 1983 at over 4,400,000, or 18% of the population. It is now back up to over 4,200,000, or 16% of the population. Despite the economic prosperity of the 1980s, Canada made very little progress in eliminating poverty.

TABLE 2

<u>POVERTY TRENDS. ALL PERSONS</u>		
	Number of Persons Living in Poverty	Poverty Rate
1980	3,624,000	15.3%
1981	3,643,000	15.3%
1982	3,951,000	16.4%
1983	4,406,000	18.2%
1984	4,397,000	18.1%
1985	4,170,000	17.0%
1986	3,976,000	16.0%
1987	3,912,000	15.6%
1988	3,744,000	14.8%
1989	3,487,000	13.6%
1990	3,821,000	14.6%
1991	4,227,000	16.0%

Source: National Council on Welfare, Poverty in Canada in 1991 (an update of Poverty Profile, 1980-1990) at 3.

35. . Beneath the relatively unchanged overall poverty rate lie some drastic and disturbing changes in Canadian society. What the overall poverty trends do not show is the significant growth in income disparity in Canada in the last ten years, and the severe impoverishment of vulnerable groups, particularly with children. There has been progress made among some groups, but this has been overshadowed by the more drastic impoverishment of others.

### Income Disparity

36. There has been a general trend to greater disparity in incomes in Canada over the past twenty years. This trend has become more marked over the past five years. The chart below shows the changes in the percent share of total income received by Canadian families between 1973 and 1991, broken down into ten groups or "deciles". The poorest 10% of families are identified as Decile 1. Since 1973, the lowest four deciles, or 40% of economic families, have sustained dramatic losses in their percent share of income.

Decile	PER CENT SHARE OF TOTAL INCOME				CHANGE IN SHARE (in per cent)		
	1973	1979	1987	1991	1973 - 1979	1973 - 1987	1973 - 1991
	1	2.33 (3,013)	2.04 (5,012)	2.19 (9,753)	2.10 (11,351)	-12.45	-5.00
2	4.74 (6,124)	4.50 (11,082)	4.25 (18,987)	4.00 (21,591)	-5.26	-10.30	-15.15
3	6.30 (8,143)	6.24 (15,373)	5.93 (26,458)	5.70 (30,492)	-0.95	-5.90	-9.88
4	7.52 (9,727)	7.60 (18,701)	7.32 (32,679)	7.10 (37,875)	1.06	-2.66	-6.29
5	8.64 (11,166)	8.76 (21,554)	8.54 (38,126)	8.30 (44,789)	1.39	-1.16	-3.46
6	9.78 (12,640)	9.93 (24,437)	9.74 (43,451)	9.60 (51,761)	1.53	-0.41	-1.44
7	11.06 (14,304)	11.22 (27,620)	11.08 (49,457)	11.10 (59,771)	1.45	0.18	0.57
8	12.63 (16,326)	12.77 (31,433)	12.67 (56,556)	12.80 (68,671)	1.11	0.32	1.23
9	14.88 (19,244)	15.06 (37,074)	15.02 (67,031)	15.20 (81,711)	1.21	0.94	2.19
10	22.12 (28,601)	21.89 (53,890)	23.26 (103,793)	24.00 (129,176)	-1.74	5.15	8.70

Notes: The numbers in brackets refer to the average family pre-tax income in each decile are in current dollars.

Total income refers to market income plus transfer payments (UI, social assistance, CPP, etc.) and retirement income.

Source: Statistics Canada, Household Surveys Division, Survey of Consumer Finance, unpublished data.

Reprinted in: Social Planning Council of Metropolitan Toronto, "Market Madness: The Distribution of Money and Time over the last 20 years" Social Impact (February, 1993) at 5.

37. The increased disparity between rich and poor families is even more pronounced when the distribution of "market" income, rather than "total income" is examined. "Market" income is earnings from wages, salaries and self-employment, excluding any transfer payments from the government such as Unemployment Insurance, Canada Pension Plan, or social assistance. It provides an indication of how a "deregulated" economic market in Canada has jettisoned a growing number of poor families from the productive economy. The poorest 10% of Canada's families have lost almost half of their market income since 1973. The poorest 20% have lost over 40% of their market income. The richest 10% have increased their percentage share by 14%. The following chart shows the dramatic changes in share of market income of the richest and poorest families in Canada in the years since the Covenant was ratified.

TABLE 4

**DISTRIBUTION OF MARKET INCOME AMONG ECONOMIC FAMILIES  
WITH CHILDREN UNDER 18, BY DECILES, 1973 - 1991**

Decile	PER CENT SHARE OF MARKET INCOME				CHANGE IN SHARE (in per cent)		
	1973	1979	1987	1991	1973 - 1979	1973 - 1987	1973 - 1991
	1	1.35 (1,639)	0.97 (2,239)	0.77 (3,165)	0.72 (3,422)	-28.15	43.00
2	4.18 (5,092)	3.90 (8,992)	3.27 (13,386)	2.56 (12,158)	-6.70	-21.50	-38.87
3	6.06 (7,380)	5.99 (13,825)	5.40 (22,100)	4.65 (22,095)	-1.15	-10.90	-23.34
4	7.46 (9,082)	7.51 (17,326)	7.12 (29,125)	6.52 (31,022)	0.67	-4.60	-12.54
5	8.65 (10,530)	8.77 (20,251)	8.59 (35,138)	8.27 (39,319)	1.39	0.60	-4.39
6	9.91 (12,071)	10.08 (23,277)	9.92 (40,559)	9.79 (46,578)	1.72	0.00	-1.20
7	11.28 (13,737)	11.43 (26,381)	11.41 (46,658)	11.57 (55,040)	1.33	1.10	2.59
8	12.87 (15,678)	13.09 (30,221)	13.12 (53,644)	13.54 (64,417)	1.71	1.09	5.20
9	15.29 (18,624)	15.54 (35,869)	15.74 (64,385)	16.25 (77,296)	1.64	3.00	6.27
10	22.95 (27,944)	22.73 (52,482)	24.65 (100,831)	26.13 (124,269)	-1.00	7.40	13.86

Notes: The numbers in brackets refer to the average family pre-tax income in each decile are in current dollars.

Market income refers to earnings from wages, salaries and self-employment plus returns on investment.

Source: Statistics Canada, Household Surveys Division, Survey of Consumer Finances, unpublished data.

Reprinted in: Social Planning Council of Metropolitan Toronto, "Market Madness: The Distribution of Money and Time over the last 20 years" Social Impact (February, 1993) at 4.

38. The destabilization of the middle class has turned Canadian society into a shifting pyramid of few winners and many losers. Thus, it is not just inadequate income maintenance programs which have perpetuated unacceptable poverty rates in Canada. It is a government which has placed too much faith in the unregulated market. Increasingly, the governments in Canada are cutting back on social programs and income security programs, proclaiming that the way to eliminate poverty is to give free rein to the market. Yet the data reveals the opposite. The market has produced a tragic escalation of poverty. Inadequate government programs have simply mitigated the effects of an increasingly inequitable distribution of resources.

**Social Planning Council of Metropolitan Toronto, "Market Madness: The Distribution of Money and Time Over the Last 20 Years," Social Impact (Vol 12, No 1, February 1993) at 6.**

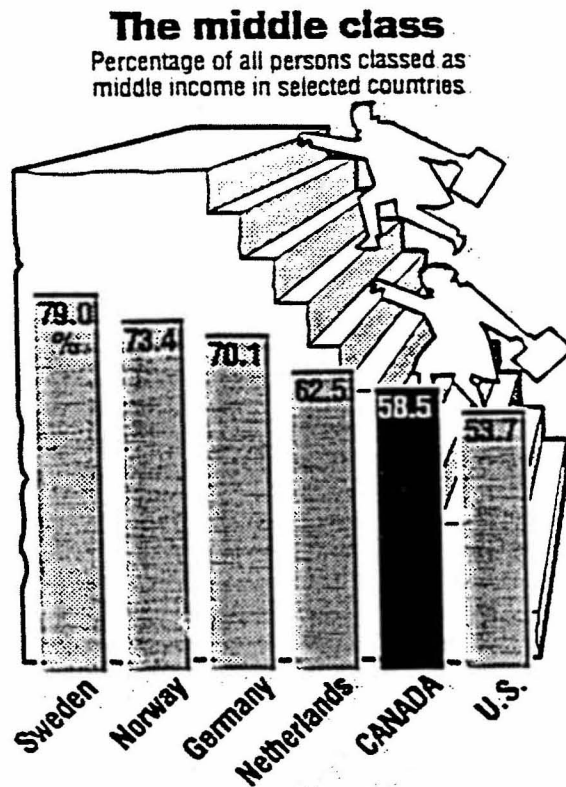
39. There is a growing underclass in Canadian society which is denied any meaningful participation in economic life. The growing inequity in income distribution and earning power in Canada has meant that from 1973 to 1991 the ratio of income of the poorest to the richest has gone from 1:9.5 to 1:11.4. Even those families in the middle (the 5th and 6th deciles) which were traditionally felt to be secure have begun to suffer a decline in both market and total income shares.

**Social Planning Council of Metropolitan Toronto, "Market Madness: The Distribution of Money and Time Over the Last 20 Years," Social Impact (Vol 12, No 1, February 1993) at pp 3 - 6.**



40. Relative to other industrialized countries, Canada has become a nation of rich and poor, with fewer in the middle class. The following graph compares Canada's middle class with that of other industrialized countries. These countries have maintained a more inclusive and equitable system of income distribution rather than allowing the class polarization which now characterizes the North American societies.

GRAPH 7



SOURCE: T.M. S.needing, Cross-national Inequality and Poverty, 1991

## TRENDS IN POVERTY AMONG VULNERABLE GROUPS

### IN CANADA

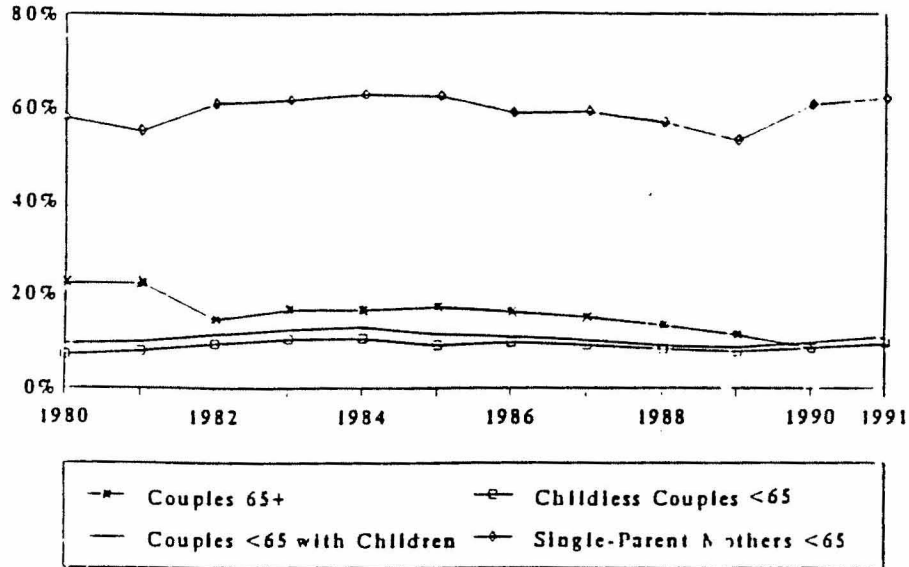
41. While overall poverty rates have not changed dramatically in the last ten years in Canada, dramatic changes have occurred for various groups vulnerable to poverty. To start on the bright side, the Government has made significant progress in reducing poverty among elderly families in Canada. In 1981, the poverty rate among families with an elderly head was 21.9%. By 1991, this rate had dropped by more than half to 9.0%. This change can be traced in large part to the effects of two income security programs - the Old Age Security program and the Guaranteed Income Supplement. Of continuing concern, however, is the high poverty rate among unattached elderly women which remained as high as 47.4% in 1991.

National Council of Welfare, Poverty in Canada in 1991, p.11.

42. Any progress made among elderly families has been more than offset, however, by increased poverty among other groups. The most dramatic of these are single-parent families and young families. The following graph shows a tragically high poverty rate among single mothers (62% in 1991) as well as poverty rates for other groups. The three highest poverty rates continue to be among women, with the highest among women with children.

GRAPH 8

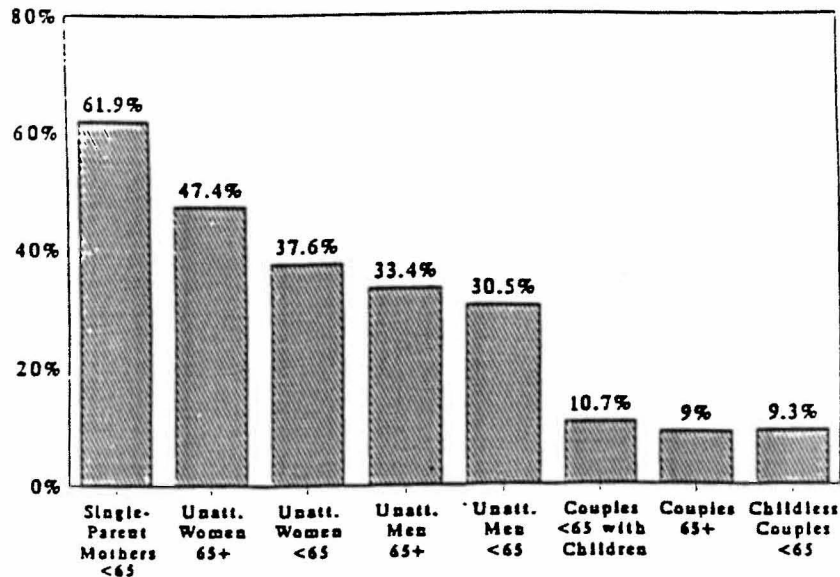
## Poverty Rates for Families



Source: National Council on Welfare, Poverty in Canada in 1991 (an update of Poverty Profile, 1980-1990) at 8.

GRAPH 9

## Poverty Rates by Family Type, 1991



Source: National Council of Welfare, Poverty in Canada in 1991 (an update of Poverty Profile, 1980-1990) at 11.

48. A Department of Justice survey of 1988 court files revealed that 66% of divorced women with children had total incomes below the poverty line. When support was excluded, 74% fell below the poverty line. Only 10% of men were below the poverty line after paying support. This is significant as Canada, along with Sweden and the United States, has one of the highest divorce rates in the world. One-third of marriages end in divorce. 40% of divorces involve one or more children. Custody goes to the wife in 83% of cases.

**"The Poverty Statistics and Studies" The Lawyers Weekly**

49. In 1991, there were almost one million lone-parent families in Canada, an increase of 34% from 1981.

**"The Poverty Statistics and Studies" The Lawyers Weekly**

50. The risk of poverty increases when the number of children increases from 1 to 2 to 3 or more (54.5% to 63.4% to 78.2%). The same pattern can be seen in two-parent families and all families. For women in Canada, having children or having additional children is a one-way ticket to poverty.

**National Council of Welfare, Poverty Profile, 1980-1990 (Ottawa: Minister of Supply and Services Canada, 1990) at 34-35.**

51. In 1980, 33% of all poor children lived in families headed by single-parent mothers. By 1990, the percentage of poor children in single-parent mother homes in Canada had increased to 40%. In 1991, the number of poor children who lived with one parent exceeded the number of poor children living with two parents in British Columbia and Ontario.

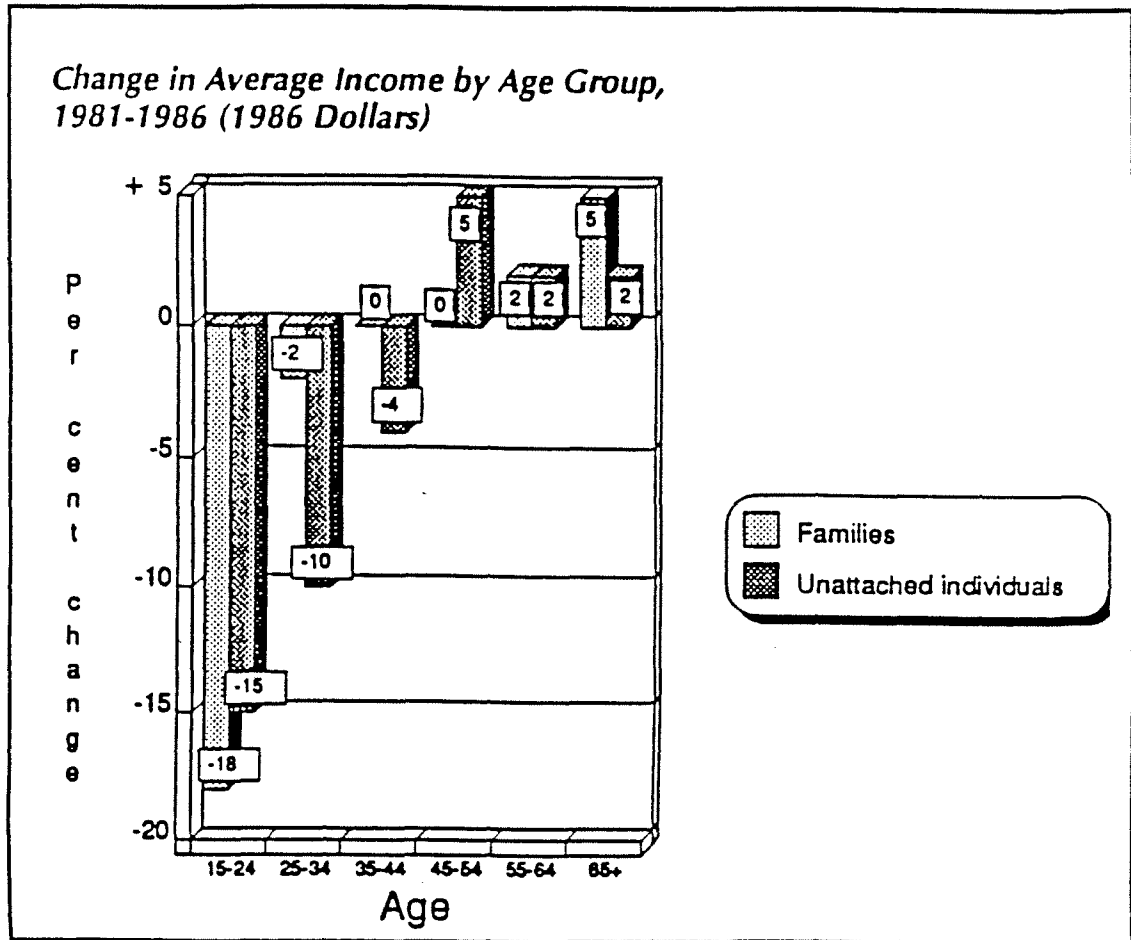
**National Council of Welfare, Poverty Profile, 1980-1990 (Ottawa: Minister of Supply and Services Canada, 1990) at 60, and**

National Council of Welfare, "Poverty in Canada in 1991" (update of Poverty Profile, 1980-1990 at 20.

The Impoverishment of Young Families in Canada

52. Age has emerged as another key indicator of poverty in Canada. During the period between 1981 and 1986, unattached individuals in the 15-24 age group saw a 15% average reduction in income. The growing number of young families in this age group experienced an even more drastic decline in income of 18%.

GRAPH 10



Source: Statistics Canada, *Income Distributions by Size in Canada, 1981 and 1986*.

53. Poverty is now extremely prevalent among young families in Canada. In 1990, families with a head of household under 25 years of age had a poverty rate of 38.4%. Conversely, the poverty rate was lowest (7.1%) for families of which the head of the household was between 45 and 55 years of age.

National Council of Welfare, Poverty Profile, 1980-1990 (Ottawa: Minister of Supply and Services Canada, 1990) at 31.

## The Impoverishment of People with Disabilities

54. In 1992, 13% of Canadians, or 3.3 million people, were counted as disabled. But only 40% of disabled adults were in the labour force, as compared to 70% of the rest of Canadian adults.

Department of the Secretary of State, Step by Step (Minister of Supply and Services, Ottawa, 1992) at 36.

55. A 1984 study found that 16% of disabled women and 5% of disabled men had no income at all, while 76% of disabled women and 50% of disabled men had incomes below \$10 000. In the general population, 55% of women and 30% of men had incomes below \$10 000.

National Council of Welfare, Women and Poverty Revisited (1990) at 115.

56. Disabled people tend to be poor because:

- i) work-related barriers prevent them from obtaining employment;
- ii) social assistance systems do not adequately respond to the additional costs of living related to disabilities; and
- iii) Income supports are inadequate both in terms of benefits and equity across the country.

S. Torjman, from Proceedings of the National Disability and Poverty Strategy Session, May 1989.

57. Of all those with work limitations (who were under 65), only 22% of women and 38% of men had paid jobs. Those disabled people who did manage to work tended to earn less than their counterparts in the rest of the population.

Disabled women earned \$11 700 versus an average of \$13 400. For men the national average at the time of the study was \$24 400, but the wages of disabled men averaged only \$18 300.

National Council of Welfare, Women and Poverty Revisited (1990) at 115-116.

58. The low rate of work and the lower pay for disabled workers take on added significance as many of the disability benefits depend on labour force participation. Among the 20% of disabled persons receiving benefits in 1984, 66% received less than \$10 000, and over 50% collected less than \$5000.

National Council of Welfare, Women and Poverty Revisited (1990) at 116.

59. Even after the 1987 increase in Canada Pension Plan disability benefits, the maximum disability pension in 1989 was \$8175, \$3862 below the poverty line for a single person living in a major urban centre.

National Council of Welfare, Women and Poverty Revisited (1990) at 117.

60. The other main form of income for the disabled in Canada is social assistance.

National Council of Welfare, Women and Poverty Revisited (1990) at 117.

61. In 1986, 15.5% of the Canadian population earned less than \$10,000 compared to 50% among people with disabilities.

A Consensus for Action: The Economic Integration of Disabled Persons  
Second Report of the Standing Committee on Human Rights and the  
Status of the Disabled Persons (June 1990) at 24.



62. A condition for the receipt of disability benefits in most provinces is that an applicant have no more than a certain amount of assets. This threshold varies according to the province of residence. Generally, these levels are so low that applicants have to be extremely poor to qualify. This requirement is particularly problematic for disabled persons who often need extra funds for expenditures occasioned by their disability."

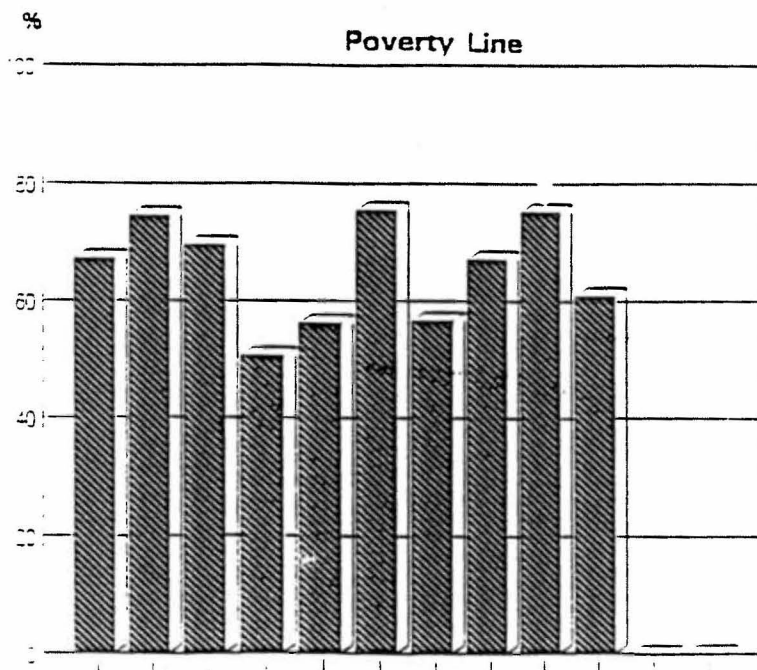
S. Torjman, "Income Insecurity: The Disability Income System in Canada," *Perception*, vol. 13 No. 4, at 36.

63. No province in Canada has set social assistance payments for people with disabilities anywhere close to the poverty line. New Brunswick, Quebec and Manitoba make the lowest payments at 50.6%, 56.2% and 56.6% of the poverty line respectively.

GRAPH 11

### Persons with Disabilities Relying on Social Assistance:

Total Income as Per Cent of Poverty Line



64. Nor have the provinces seemed willing to work collaboratively with the Federal Government toward eliminating poverty among persons with disabilities. As the federal Standing Committee on Human Rights and the Status of Disabled People noted in a report:

poverty levels are exacerbated by the nature of the federal-provincial relationship. We received evidence from ... [the Coalition of Provincial Organizations of the Handicapped] ... that when the federal government raised disability benefits under the Canada Pension Plan two years ago, the provinces treated the extra \$150/month as income and deducted it dollar-for-dollar from income security cheques"

A Consensus for Action: The Economic Integration of Disabled Persons  
Second Report of the Standing Committee on Human Rights and the  
Status of the Disabled Persons (June 1990) at 25.

#### The Continued Impoverishment of Aboriginal Peoples

65. Chief Ron George of the Native Council of Canada points out that the indigenous peoples of Canada continue to live under a form of apartheid. He points out that crucial aspects of apartheid, such as state control over racial identity, different laws applying to one racial group and the confining of rights to specific areas of land, characterize the treatment of native people under Canada's Indian Act.

Ron George, "How Canada Still Practices Apartheid," Native Council of Canada.

66. Also similar to a system of apartheid is the long and tragic history of gross violations of both civil and political rights, on the one hand, and social

and economic rights, on the other. In Canada, as elsewhere, it is often the social and economic rights violations which are the most resistant to remedy.

67. Although the poverty rate of Aboriginal people is unknown, it is clear that they are much poorer than the general population. In 1985, 25% of Aboriginal women and 13% of Aboriginal men had no income at all. By comparison, 19% of all Canadian women and 7% of men had no income that year. In 1986, Aboriginal people also had lower labour force participation and higher unemployment than non-Aboriginal persons:

	<u>Unemployed</u>	<u>Not in Labour Force</u>
Status Indians	16%	57% (on reserves)
Inuit	14%	— (no reserves)
All Canadians	7%	34%

Standing Committee on Aboriginal Affairs, A Time for Action: Aboriginal and Northern Housing (December 1992) at 56.

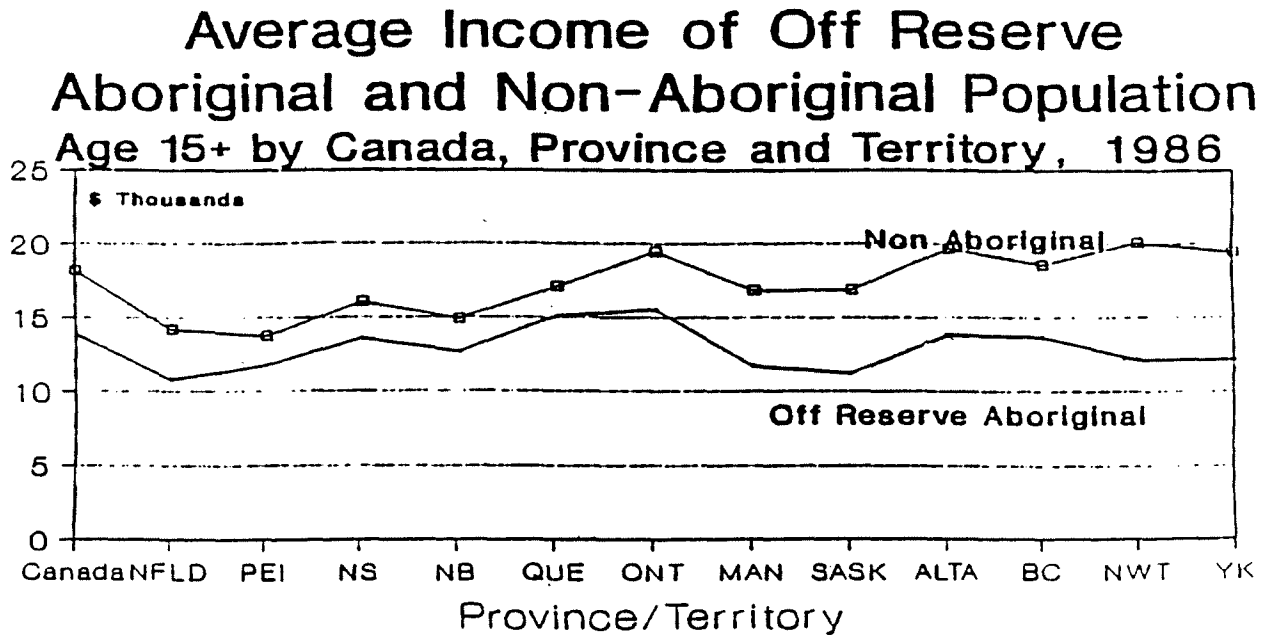
68. Aboriginal people on reserves continue to have significantly lower incomes than non-Aboriginal.

	<u>Individuals</u>	<u>Families</u>
Status Indians	9 300 (on reserves)	21 800
Inuit	11 600	27 800
All Canadians	18 200	38 700

Standing Committee on Aboriginal Affairs, A Time for Action: Aboriginal and Northern Housing (December 1992) at 56.

69. Similarly, the off-reserve Aboriginal population has a 24% lower average income than the Non-Aboriginal population, as shown by the following graph:

GRAPH 12



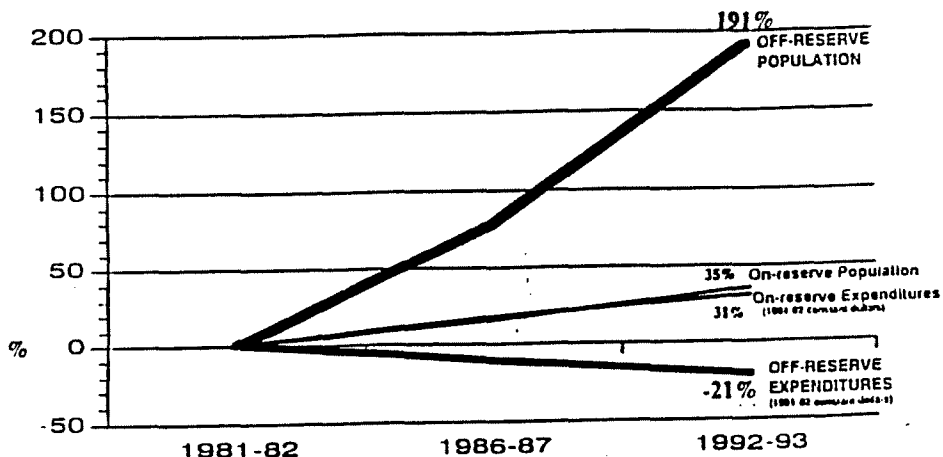
70. Unfortunately, governments have tended to ignore the needs of off-reserve Aboriginal peoples, as shown by the following graph prepared by the Native Council of Canada.



# Native Council of Canada

Serving the interests of non-reserve Indians and Métis across Canada

Comparison of Population and Federal Expenditure (On-Reserve and Off-Reserve Aboriginal Peoples, 1981-82 to 1991-92)



Source: Indian & Northern Affairs: Growth in Federal Expenditure on Aboriginal Peoples, 1993. Analyzed for the NCC by James Legault  
 Note: Population figures cited above do not reflect 1991 Census figures, which are approximately 10% higher than IMA's figures.  
 Also, Expenditure figures do not include cuts announced in the April 1993 Budget

MAY 1991

71. Poverty among Aboriginal women is exacerbated by the fact that many are single mothers. In 1986, 16% of Aboriginal families were headed by a single mother compared to 10% for all Canadian families.

72. Long term poverty among Canada's Aboriginal population has tragic consequences. Aboriginal children are six times more likely to be placed in the care of a Children's Aid Society than non-Aboriginal children. In 1984, suicide rates for Aboriginal children between the ages of 10 and 14 was 7.4 per 100,000. This is five times the overall average in Canada. For 15-19 year old Aboriginal youth, it was almost seven times the overall national average, at 81.6 per 100,000. The suicide rate were also much higher per 100 000 population among the general native population.

Status Indians	1981	43
	1986	34
Inuit	1981	38
	1986	48
All Canadians	1981	13
	1986	15

Standing Committee on Aboriginal Affairs, A Time for Action: Aboriginal and Northern Housing (December 1992) at 55.

Canadian Institute for Child Health, The Health of Canada's Children: A CIH Profile (Ottawa: Canadian Institute of Child Health, 1989) at 112.

73. In 1981 the life expectancy at birth for status Indians was 10 years less than the national average. The mortality rates at every level are considerably higher among the aboriginal population than among the general Canadian population.

74. In 1986, infant mortality among the general Canadian population was 8 deaths per 1000. However, among status Indians there were 17 deaths per 1000. Among the Inuit, this level reached 28 deaths per 1000, 3.5 times the national average.

Standing Committee on Aboriginal Affairs, A Time for Action: Aboriginal and Northern Housing (December 1992) at 55.

75. Aboriginal people suffered a much higher rate of violent death per 100 000 population than non-Aboriginals.

Status Indian	1981	267
	1986	157
Inuit	1981	247
	1986	54

Standing Committee on Aboriginal Affairs, A Time for Action: Aboriginal and Northern Housing (December 1992) at 55.

BROKEN COMMITMENTS TO IMPLEMENT THE RIGHT  
TO AN ADEQUATE STANDARD OF LIVING

76. The increasing impoverishment of vulnerable groups in Canada is directly linked to government policies at both the federal and provincial levels. The most notable of these have occurred through governments simply abandoning obligations or commitments which were written into Canadian law. Most disturbingly, the domestic legal commitments which Canada has previously told this Committee were undertaken in order to implement the rights contained in article 11 of the Covenant, have, in the last several years, been systematically violated.

The Canada Assistance Plan Act

77. The most important legislative implementation of Canada's obligations under article 11 of the Covenant is the Canada Assistance Plan Act (CAP). The preamble to CAP refers explicitly to the provision of "adequate assistance" to persons in need and the "prevention and removal of the causes of poverty and dependence on public assistance".

78. CAP is a cost-sharing agreement between the federal and provincial governments which places obligations on both parties. As has been reported to this Committee in previous reports, the federal government accepts an obligation under section 5 of the Act to pay 50% of the cost of assistance paid to persons in need by the province or by municipalities in that province. The provincial

government, on the other hand, accepts an obligation under section 6(2) of the Act to provide financial aid or other assistance to any person in need, "in an amount or manner that takes into account the basic requirements of that person."

79. Both parties to CAP have failed to honour its terms. Provincial governments have failed to set welfare rates which cover basic requirements. And the federal government has refused to contribute 50% of the costs of assistance paid by three of Canada's provinces.

80. The following table shows total income of welfare recipients by class of recipient and province in 1991. A number of classifications show a total income of less than 60% of the poverty line. This degree of inadequacy of benefits cannot help but result in recipients being denied adequate food, clothing or housing.

TABLE 6

<u>ADEQUACY OF BENEFITS, 1991</u>				
Province	Total Income	Poverty Line	Poverty Gap	Total Welfare Income as % of Poverty Line
<u>NEWFOUNDLAND</u>				
Single Employable	4,319	13,132	-8,813	33%
Disabled Person	8,278	13,132	-4,854	63%
Single Parent, One Child	12,347	17,802	-5,455	69%
Couple, Two Children	14,561	26,049	-11,488	56%
<u>PRINCE EDWARD ISLAND</u>				
Single Employable	7,942	12,829	-4,887	62%
Disabled Person	9,039	12,829	-3,790	70%
Single Parent, One Child	12,343	17,390	-5,047	71%
Couple, Two Children	18,698	25,449	-6,751	73%



Province	Total Income	Poverty Line	Poverty Gap	Total Welfare Income as % of Poverty Line
<b><u>ONTARIO</u></b>				
Single Employable	8,083	14,951	-6,868	54%
Disabled Person	11,283	14,951	-3,668	75%
Single Parent. One Child	16,098	20,266	-4,168	79%
Couple. Two Children	21,472	29,661	-8,189	72%
<b><u>MANITOBA</u></b>				
Single Employable	6,949	14,951	-8,002	46%
Disabled Person	7,313	14,951	-7,638	49%
Single Parent. One Child	11,167	20,266	-9,099	55%
Couple. Two Children	19,812	29,661	-9,849	67%
<b><u>SASKATCHEWAN</u></b>				
Single Employable	5,383	13,132	-7,749	41%
Disabled Person	8,471	13,132	-4,661	65%
Single Parent. One Child	12,028	17,802	-5,774	68%
Couple. Two Children	17,059	26,049	-8,990	65%
<b><u>ALBERTA</u></b>				
Single Employable	5,797	14,951	-9,154	39%
Disabled Person	8,986	14,951	-5,965	60%
Single Parent. One Child	11,630	20,266	-8,636	57%
Couple. Two Children	18,365	29,661	-11,296	62%
<b><u>BRITISH COLUMBIA</u></b>				
Single Employable	6,030	14,951	-8,921	40%
Disabled Person	8,667	14,951	-6,284	58%
Single Parent. One Child	12,478	20,266	-7,788	62%
Couple. Two Children	16,134	29,661	-13,527	54%
<b><u>NOVA SCOTIA</u></b>				
Single Employable	6,187	13,132	-6,945	47%
Disabled Person	8,698	13,132	-4,434	66%
Single Parent. One Child	11,961	17,802	-5,841	67%
Couple. Two Children	15,065	26,049	-10,984	58%
<b><u>NEW BRUNSWICK</u></b>				
Single Employable	3,283	13,132	-9,849	25%
Disabled Person	8,096	13,132	-5,036	62%
Single Parent. One Child	9,841	17,802	-7,961	55%
Couple. Two Children	11,721	26,049	-14,328	45%
<b><u>QUEBEC</u></b>				
Single Employable	6,159	14,951	-8,792	41%
Disabled Person	7,895	14,951	-7,056	53%
Single Parent. One Child	10,975	20,266	-9,291	54%
Couple. Two Children	15,426	29,661	-14,235	52%

81. In addition, provinces have established welfare rates pursuant to CAP, and then proceeded to pay some recipients less than this amount. Two such cases resulted in legal challenges by poor people which will be discussed below. Manitoba was challenged in court for deducting previous overpayments made in error from welfare payments. Quebec was challenged for dramatically reducing the amount of welfare for single employable persons under the age of 30.

82. On the other side of the agreement, the federal budget speech of February 20, 1990 proposed a two year limit in federal spending under the Canada Assistance Plan Act in the three wealthiest provinces, Ontario, Alberta and British Columbia. More than half of the country's welfare recipients reside in these provinces. These cuts have already resulted in a reduction of the federal contribution from 50% to 28% in Ontario and to 32% in British Columbia. The province of Ontario, which was most severely affected by these cuts, had completed a thorough review of social assistance programs and had planned to implement major reforms to ensure adequacy of benefits and respect for the dignity of recipients. Because of inadequate funds, these important reforms have been put on hold or abandoned.

#### Established Program Financing

83. The companion federal-provincial agreement in the area of health and post-secondary education is contained in the Federal-Provincial Fiscal Arrangements and Established Programs Financing Act of 1977, commonly known as Established Program Financing or EPF. The Government of Canada makes extensive reference to this Act in its report on the implementation of articles 12 and 13 of the

Covenant. Like the Canada Assistance Plan Act, EPF has a built-in funding formula which places an obligation on the federal government and built-in standards for education and health care which place obligations on provinces.

84. Under the funding formulae, the federal government is obliged to increase funding at the rate of increase of Gross National Product, assessed on a three-year averaged basis. This formula is entirely consistent with Canada's obligations under the Covenant to utilize available resources in realizing the rights under the Covenant. Expenditure is tied directly to the strength of the economy and thus to resources available.

85. Unfortunately, the federal government decided unilaterally not to adhere to the terms of its agreement with the provinces. In 1986, Ottawa announced that EPF entitlements would no longer grow with the economy but would be held to economic growth minus two percentage points.

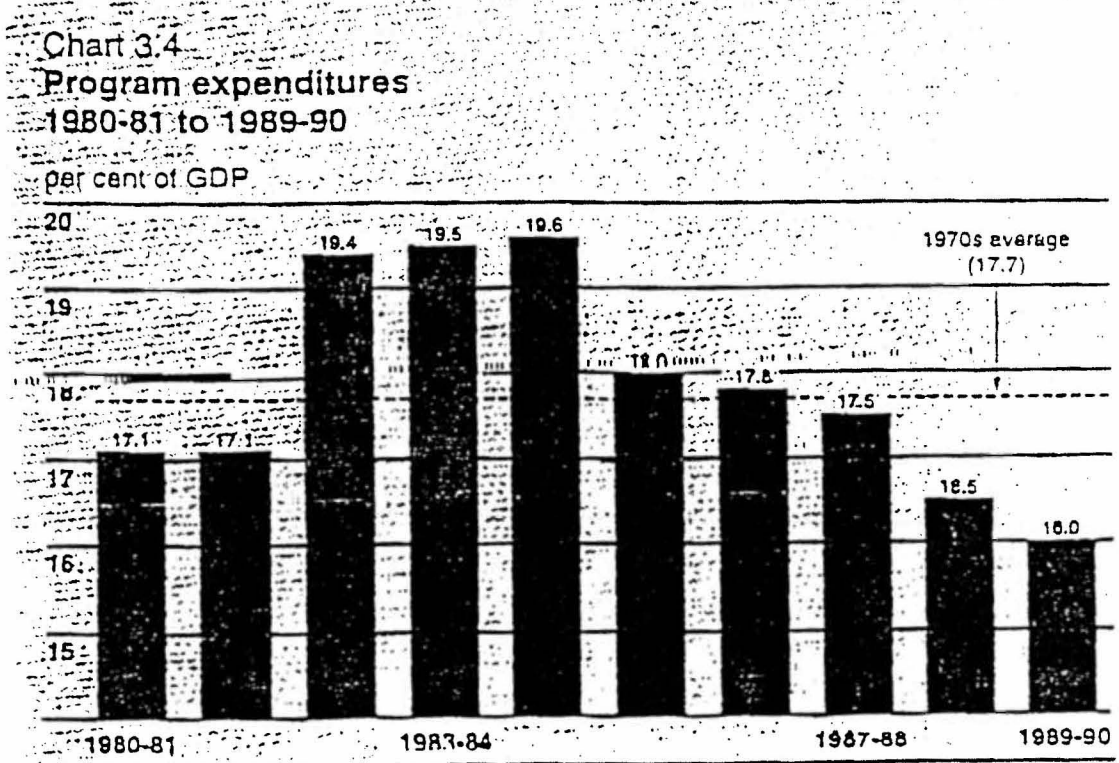
86. In its 1989 budget speech, the government announced a further reduction to increases in the GNP minus three percentage points.

87. In 1990 a two year freeze in entitlements was announced. In 1991, the freeze was extended through to the end of the 1994-95 fiscal year, with increases or decreases thereafter based on growth in the GNP minus 3 percentage points.

88. These annual budget announcements add up to a major shift in the government's priorities and a major decline in the financing of programs in health and education. The following graph was provided by the Government of

Canada with its budget announcements of April 1993. It shows a clear intention to drastically reduce spending in the area of health and education.

GRAPH 14



89. The repercussions of these changes are already being felt by disadvantaged Canadians. Post-secondary education has become dramatically less accessible, with higher tuition fees in most provinces and reductions in student assistance. There is now open discussion among Cabinet Ministers of the Government of Canada about introducing user fees for health care. Canada has no national child care program. An announced commitment to such a program was abandoned by the Federal Government in its 1989 budget. Universal Family Allowance was de-indexed in 1985 and terminated in 1992. The 1990 budget reduced grants under the Health Services and Promotion Program and the Social Services Program. We are witnessing a dangerous erosion of Canada's commitment to articles 11-13 of the Covenant.

## HOUSING RIGHTS IN CANADA

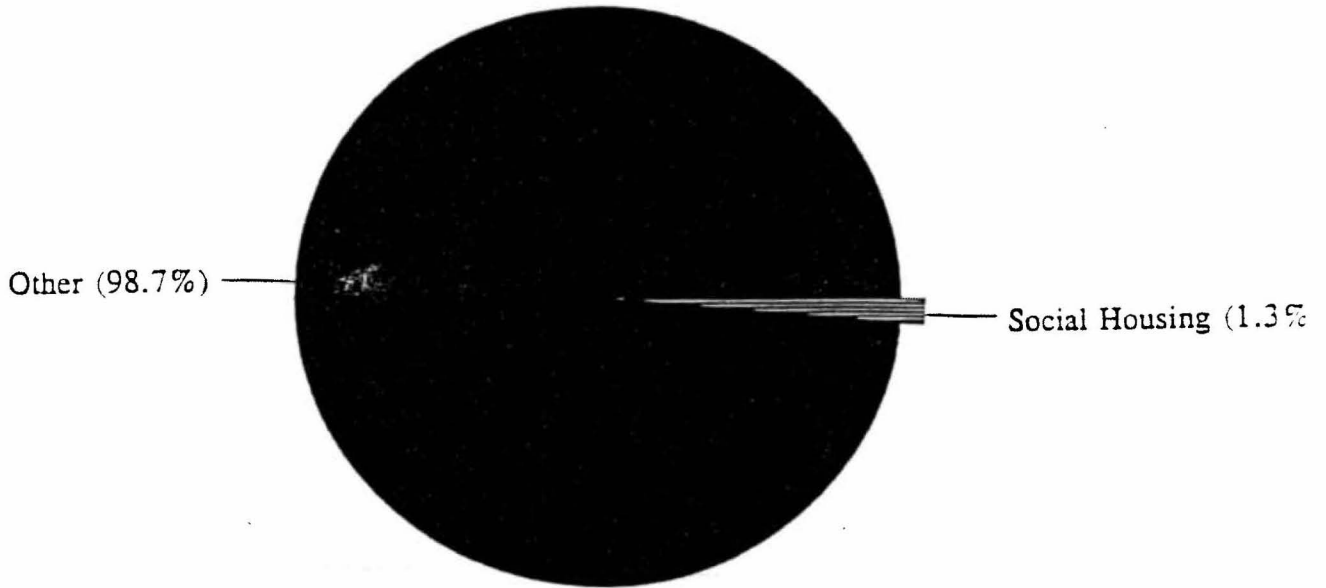
90. In terms of housing supply, Canada is a world leader in the provision of adequate housing. There are over 10 million housing units in Canada. 56% of Canadian households live in detached houses which are, by international standards, large houses. It has been estimated that there is enough housing in Canada to house everyone living and everyone who will be born in the next 10 years.

**Peter Smith, quoted in "The Human Right to Housing" in Canadian Housing Vol.6 No.1 p.36.**

91. However, as with other aspects of the Canadian economy, the Canadian government has by and large deferred to an unregulated free market for the provision of housing. In 1992, the federal government put only 1.3% of its budget into housing in transfer payments to the provinces, a remarkably small amount, considering that provincial governments have relied on federal transfer payments to cover 70% of the cost of social housing. It was recently announced in the 1993 budget that housing expenditures will be frozen at their current level of about \$2 billion a year. This follows a reduction of 20% in the number of units funded last year.

**Canadian Housing Update (May 3, 1993)  
Impact of 1992 Federal Budget reduction on Co-operative and Social Housing Programs (Co-operative Housing Federation of Canada)**

# 1993 Federal Budget



92. Only 5.5% of housing in Canada is non-profit, social housing. The graph below compares Canada's breakdown with that of a number of European countries.

TABLE 7

## Non Profit and Co-operative Housing % of Total Housing Stock

Netherlands	44%
Sweden	36%
UK	24%
Denmark	21%
France	17%
FRG	16%
Belgium	7%
Canada	5.5%

\*based on late 1980's data

Source: Peter Boelhouwer and Harry van der Heijden,  
Housing Systems in Europe: A Comparative Study Of Housing Policy  
(Delft University Press, 1992)

93. Only 5% of Canadian Households reported receiving rental subsidies.

M. Blakeney, "Canadians in Subsidized Housing" Canadian Social Trends (Statistics Canada, 1992) at 20.

94. 28% of renters in Canada pay 30% or more of their incomes on rent. For 10% of renters, housing takes 50% or more of their budget. The most vulnerable groups are seniors, especially women, very young adults, one person households, and single-female headed households, all of whom rely predominantly on the rental market for housing.

M. Blakeney, "Canadians in Subsidized Housing" Canadian Social Trends (Statistics Canada, 1992) at 20.

95. The net effect of the federal government's housing policy is that there is an average annual addition of 2% to 3% of housing units, outweighed by a continuous shrinking of units at the bottom of the market.

Canadian Council on Social Development, Homelessness in Canada: A Snapshot Survey (1987) at 3.

96. While Canadian governments have relied on the market to house the most disadvantaged households, there is widespread evidence that private landlords are very unlikely to rent affordable housing to low income households. A survey in Toronto found that 56% of affordable apartment units managed by large landlords were barred to welfare recipients. This, despite the fact that such discrimination is illegal in Ontario. Over 70% of landlords interviewed applied income restrictions which disqualified low income applicants. In a similar survey of apartments for rent advertised in Toronto, Professor Hulchanski found that fewer than 10% of landlords would rent to welfare recipients.

David Hulchanski, "Survey of Corporations with Large Numbers of Rental Apartments in Metro Toronto" and "Survey of Landlords Advertising Affordable Apartments in Metro Toronto" (June, 1992)

97. Discrimination against welfare recipients is permitted in 5 of Canada's ten provinces. Manitoba's and Nova Scotia's human rights legislation prohibits discrimination based on source of income. Ontario's Human Rights Code prohibits discrimination based on receipt of public assistance in housing. Quebec's Charter of Rights prohibits discrimination based on "social condition", which has not been consistently applied by the courts to include social assistance recipients. Newfoundland's Human Rights Code prohibits discrimination based on "social origin."

98. Low income families are doubly disadvantaged because Canada is one of the few countries in the world where much of the housing stock has been barred to children. In hearings at the Ontario Legislature in 1986, a number of reports were received estimating the number of "adult only" apartment complexes to be upward of 3/4 of all housing stock. Legislators heard on a number of occasions of families having to relinquish their children because of an inability to find housing. In 1989 the Children's Aid Society of Metropolitan Toronto conducted a survey and found that housing problems were a factor in a significant number (approximately 70) of families relinquishing their children to foster care each year. Three provinces - Alberta, Newfoundland and Saskatchewan continue to permit the exclusion of children from housing.

Hansard: Proceedings Before the Standing Committee on the Administration of Justice Consideration of Equality Statute Law Amendment Act, February, 1986.



99. Both private landlords and social housing providers now routinely run credit checks on applicants for apartments. Many families in Canada who are indebted find themselves excluded from all reasonable housing options, even if they have always paid their rent on time and never once been in arrears. It is a system-wide exclusion of the poor from affordable housing, even from government subsidized housing.

100. Banks and Trust Companies in Canada adhere to rigid income requirements for the provision of mortgages for homes. These criteria disqualify the majority of women, single mothers, young families and other low income households. Canada Mortgage and Housing Corporation, a federal agency, apply strict income qualifications to those mortgages which it is required by law to insure. The result is that most women and low income applicants are disqualified, even when they have paid much higher mortgage payments for years without ever being late for a payments. Lower income households are often forced to pay extravagant interest rates to private lenders in order to secure credit for housing.

#### Security of Tenure

101. While all provinces in Canada provide some form of protection to tenants, landlords are generally able to evict without reason as long as required notice is provided. In the 1980's there were innumerable evictions of low income tenants from affordable housing in Canada's major urban centres to make way for luxury developments. Vancouver tenants organized to oppose large-scale evictions from affordable communities, but were largely unsuccessful in opposing displacement for luxury redevelopment.

Dany Ho, "An Investigation of the Impact and Rationale for rental Apartment Demolitions in Vancouver's Kerrisdale Neighbourhood, 1989" (Master's Thesis for UBC School of Community and Regional Planning).

102. Most poor people in Canada live in the private market. They are not all in one area, as in developing countries, so "mass evictions" do not occur in so obvious a way in Canada as in other countries. Poor people are more dispersed in Canada. The most disadvantaged tenants in Canada often live in illegal apartments in areas zoned for home owners. There are an estimated 100,000 such tenants in Ontario alone, who have no security of tenure. Others live in hotels or rooming houses and have no security of tenure. People with disabilities requiring accommodation with care, and elderly tenants residing in nursing homes are denied security of tenure in all provinces. Public housing tenants are excluded from security of tenure protections in three provinces - Newfoundland, New Brunswick and Nova Scotia, although this exemption has recently been overturned by the Court of Appeal in Nova Scotia. In general, the most vulnerable tenants in Canada are without security of tenure protections and face regular evictions.

103. One time when evictions were more concentrated geographically was the mass evictions prior to Expo '86 in Vancouver. The Expo was at a site located next to Vancouver's Downtown East side. Approximately 16 600 people lived in that neighbourhood; 55% in private dwellings, the remainder in residential hotels, rooming houses, non-profit hostels and multiple conversion dwellings.

K. Olds, "Mass Evictions in Vancouver: The Human Toll of Expo '86" Canadian Housing, 1989 49-52 at 50.

104. Under British Columbian law, residential hotel dwellers, regardless of time spent making the hotel into a home, had no tenancy rights and could be evicted without notice. They also faced the possibility of enormous rent increases at any time, their goods could be seized in lieu of rent. Room use could be regulated by the landlord.

K. Olds, "Mass Evictions in Vancouver: The Human Toll of Expo '86" Canadian Housing, 1989 49-52 at 50.

105. In an attempt to profit from the tourists, many residential hotel owners evicted their long time residents. Between 700 and 1000 people were uprooted from their homes. Within weeks, 11 had died.

J. Green, "The Social Impact of Expo '86" Canadian Housing, 1989 53.

### Aboriginal Housing

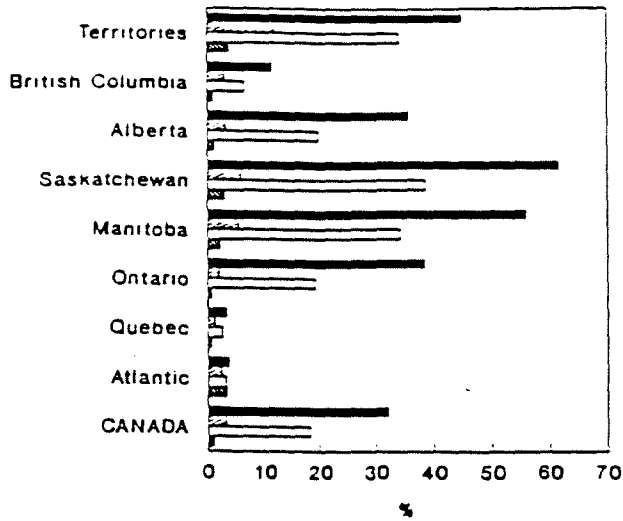
106. The problems faced by Aboriginal people in obtaining acceptable housing both on and off reserve are much graver than those faced by others in Canada. 93% of on-reserve dwellings are single detached structures. 80% of these houses were built under federal programs between 1961 and 1981. Recent construction does not mean better quality, however.

T. Young, et. al., The Health Effects of Housing and Community Infrastructure on Canadian Indian Reserves, (Northern Health Research Unit, University of Manitoba, 1991) at 5.

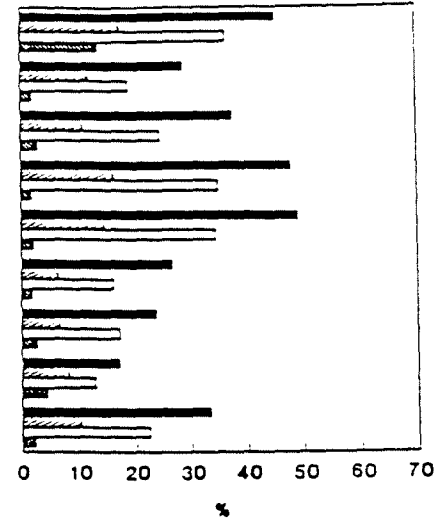
107. The following table based on the 1981 census shows the appalling conditions that are prevalent on reserves. Aboriginals on reserves consistently fared worse than those living off reserve, who in turn tended to be worse off than other Canadian residents.

TABLE 8

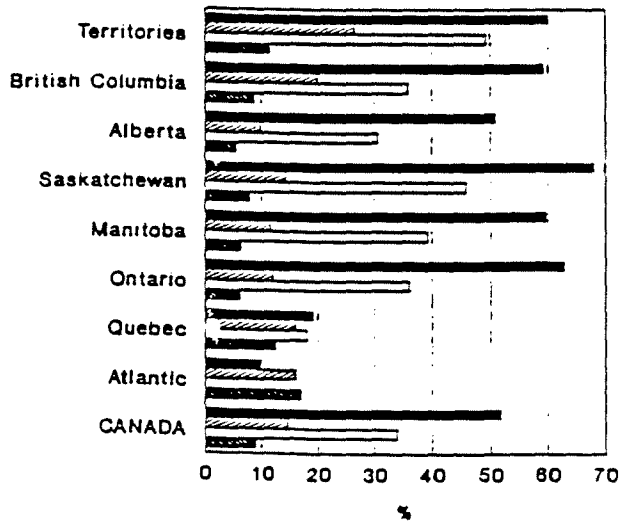
PERCENT HOUSEHOLDS LACKING BATHROOMS



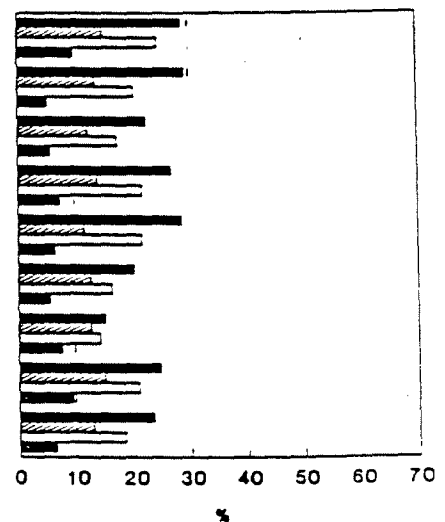
PERCENT HOUSEHOLDS WITH MORE THAN 1.0 PERSONS/ROOM



PERCENT HOUSEHOLDS LACKING CENTRAL HEATING



PERCENT HOUSEHOLDS NEEDING MAJOR REPAIRS



Source: Clatworthy and Stevens, 1987.



Reprinted in: T. Young, et. al., The Health Effects of Housing and Community Infrastructure on Canadian Indian Reserves (Northern Health Research Unit, University of Manitoba, 1991) at 6.

103. Of the 70 000 units on-reserve estimated to exist by the Department of Indian and Northern Development in 1992, only half were considered adequate or suitable for habitation. 31% had neither piped nor well water and 31% had neither piped sewage service nor septic fields.

Standing Committee on Aboriginal Affairs, A Time For Action: Aboriginal and Northern Housing (December 1992) at 5.

109. An earlier study in 1984 involving 94 bands and 1870 houses conducted by a private consulting firm found that 47% of houses failed to meet some physical standards, 36% were seriously overcrowded and 38% lacked some or all of the basic amenities.

T. Young, et. al., The Health Effects of Housing and Community Infrastructure on Canadian Indian Reserves, (Northern Health Research Unit, University of Manitoba, 1991) at 13.

110. The Standing Committee on Aboriginal Affairs heard evidence in its hearings of the consequences of inadequate housing:

"Overcrowded housing is not by itself the reason why so few young Inuit are graduating from high school, but the pressures of overcrowding, the lack of quiet places to study, etc. surely don't help. Overcrowded housing did not by itself cause the TB outbreaks in Repulse Bay and the Rae-Edzo, or the E. Coli 0157 outbreaks of Aviat that claimed several lives last year, but the overcrowded and run down housing definitely contributed to their spread. The cost in financial terms of providing adequate housing in the north is high. The cost in human terms of not doing so is much higher."

(Minutes of Proceedings and Evidence, Ms. Kaynene Nookiguak, Inuit Tapirisat of Canada, Issue No. 13:12)  
Standing Committee on Aboriginal Affairs, A Time For Action: Aboriginal and Northern Housing (December 1992) at 5.

## Homelessness in Canada

111. Homelessness should not exist in Canada. But it does. One cannot walk the downtown of a major urban centre in Canada without encountering the human toll of homelessness. As with so many other rights violations, however, it is difficult to document or to measure it accurately.

112. There are enormous difficulties inherent in any attempt to count the homeless. To date there have only been two attempts. The first in 1987 by the Canadian Council on Social Development and the second in 1991, an experimental count by Statistics Canada during the recent census.

113. The Canadian Council on Social Development (CCSD) performed its count one night in January, 1987. The study counted the number of people staying in shelters that night. This was the first attempt to document the emergency shelter system which includes orphanages and foster homes, maternity homes, half-way houses, group homes, transition houses, overnight shelters and missions, refugee shelters, and temporary shelters for victims of natural disasters.

CCSD, Homelessness in Canada: A Snapshot Survey (1987) p. 3.

114. The survey estimated that the nightly capacity of shelters was 13,797. However the authors caution that this is an approximate figure as some shelters had refused to divulge capacity and others indicated that they were routinely over capacity, sometimes sheltering twice as many people.

CCSD, Homelessness in Canada: A Snapshot Survey (1987) at 3-4.

115. CCSD calculated that there were 259 384 homeless (1% of the population) in Canada during the course of the year. This figure is based on records of the number of people served during the year and the nightly capacity of the shelters. This gave a multiplier of 18.8. ( $18.8 \times 13\ 797 = 259\ 384$ ). Even if the shelter users each used two different shelters there would still be 129 692 homeless (0.5% of the population).

CCSD, Homelessness in Canada: A Snapshot Survey (1987) at 5.

116. According to the survey, more than 25% of Canada's homeless are children.

117. In 1991, Statistics Canada attempted as an experiment to count the homeless in 16 cities. The method was to develop "soup Kitchen Statistics". It was not designed to develop comprehensive statistics. No figures are available from this study.

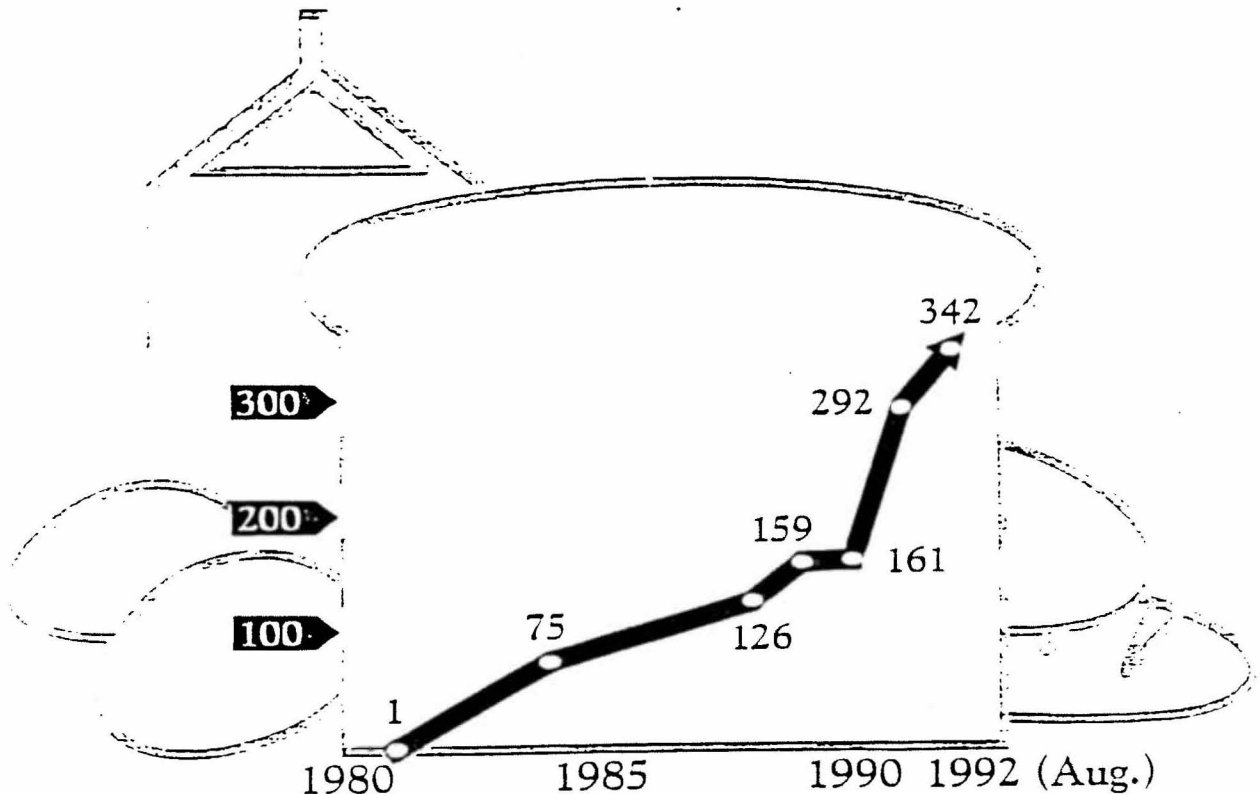
## HUNGER IN CANADA

118. One of the most dramatic changes in Canadian society in the last decade is the increasing reliance of poor people on charity in order to feed themselves and their families. The first food bank in Canada opened in 1981. By August, 1992, 342 food banks were registered with the Canadian Association of Food Banks. These food banks act as a central point of collection and in turn distribute food through a network of over 2,000 local depots. As a comparison, Macdonald's, which seems to be everywhere in Canada, operates 643 franchises throughout Canada. The following graph shows the shocking increase in reliance on food banks in Canada over the last decade.

GRAPH 16

### **GROWTH OF FOOD BANKS IN CANADA**

(Source: Odeirkirk, *Canadian Social Trends*, 1991; Canadian Association of Food Banks)





119. Hunger is surprisingly widespread in Canada. In a survey of the general population, the Edmonton Food Policy Council found that 23% of low income families were accustomed to not eating for a day or more at a time. Lone parent and two parent families with children were the hungriest. Parents gave what little food they had to their children. 22% of people the Council classified as very hungry did not ask anyone for help; they went without.

"Food for Thought," Canadian Social Trends (Statistics Canada, 1991)

120. Food banks have emerged in response to continued inaction by Canadian governments. These are charitable organizations run almost entirely by volunteers. They pool food discarded by the food industry and depend on voluntary donations from private individuals. They supplement other food programs administrated through local churches and charitable agencies. Most food banks also assist groups helping battered women, street children, transients, alcohol rehabilitation centres, teen parents and others, who no longer receive adequate government funding to provide the food that is desperately needed by their clients.

121. Food banks appeal for public donations several times a year, usually at Christmas, Easter and Thanksgiving, a major Canadian food holiday. The recurrent drives for "target" amounts of food and the media's attempt to remind the public of the existence of widespread hunger and poverty in Canada have become dominant fixtures of Canadian society.

122. Food banks depend on fluctuating charitable impulses. A dramatic decline in donations during the most recent Easter food drive has raised fears of "donor

burnout". Thus, adequate food is now seen less as a right in Canada and more as a charitable gift. The unpredictability of volunteer support and of food donations means that food banks are unable to ensure basic nutritional requirements. The food is often inferior, nutritionally unbalanced and insufficient. Many travel long distances to reach food banks only to be turned away empty-handed because the need for food exceeds the available supply. 30 per cent of food bank applicants have no food in the house and 70 percent do not have enough to last until the next day.

Graham Riches, Food Banks and the Welfare Crisis, 1986, pp. 42, 51-54.

123. Food bank outlets generally need to find free space from which to distribute food, often locating in the most inferior facilities. Access to food banks is limited by transportation needs and by limited, restrictive hours of operation. Access for disabled users is invariably limited by physical barriers.

124. In his comprehensive study of food banks published in 1986, Graham Riches found that food bank users include those living social assistance, on unemployment insurance, on fixed incomes, on no incomes and on income from low wage employment. Up to half of users of Canadian food banks are children.

Food Banks and the Welfare Crisis, pp. 43-46.

125. Riches attributes food bank use largely to inadequate levels of government assistance for the poor:

It is also evident ... that emergency food is becoming a substitute for public cash benefits. This view is borne out by the increase in demand for food following the imposition of cutbacks, the heavy

demand for food towards the end of each month when social assistance cheques run out, and by the fact that government assistance workers in all provinces are referring their clients to food banks.

Food Banks and the Welfare Crisis, p.120.

126. The dramatic rise of food banks in Canada represents a disturbing shift in government policy and public attitudes. The rights outlined in article 11 of the Covenant to adequate food, clothing and housing are no longer treated as rights in Canada. Rather, Canada is increasingly turning to the American model, of relying on private charity to address social and economic deprivation. Universal social and economic entitlements are being replaced by unpredictable charitable responses which ultimately rob Canada's poor of dignity and equality. Food banking is a secondary welfare system, lacking any entitlements, legal safeguards, privacy rights or right of appeal. It provides second-rate food to people who have been obliged to become second-class citizens.

127. Food banks formed a national organization in 1986 and have developed a number of strategies to try to resist their growing institutionalization. The Metropolitan Food Bank Association of Halifax has committed itself to closing foodbanks in Halifax by 1995.

128. The food bank crisis in Canada is both a hunger crisis and a crisis in social and political will. It is another sign of Canada's weakened commitment to the notion of universal social and economic entitlements and a growing trend for governments to abdicate responsibility for ensuring an adequate standard of living, particularly for families with children.

## JUDICIAL REMEDIES FOR VIOLATIONS OF SOCIAL AND ECONOMIC RIGHTS IN CANADA

### An Integrated Approach to Rights in Canada: The "Consistency" Principle

129. This Committee has established, in its General Comment Number 3, that while State Parties do not have an obligation to immediately render the rights contained in the Covenant justiciable in domestic law, there is an obligation to provide, within domestic law, appropriate remedies to the violation of these rights in so far as these rights may be justiciable. There is, in our submission, an obligation on governments within Canada to provide legislative protections of rights in the Covenant, and to provide for access to the courts by those whose rights may have been infringed. There is an equally important obligation on the courts to provide remedies to violations of social and economic rights in as much as this is possible within the domestic legal framework.

**Committee on Economic, Social and Cultural Rights: Report on the 5th Session of the Committee: General Comment No. 3, p.85. par. 5.**

130. As is pointed out in Canada's Report, international human rights conventions that Canada has ratified do not automatically become part of the domestic law of Canada so as to enable individuals to go to court when they are breached. Rather, we rely on our legislators to include in domestic legal protections the rights guaranteed under international human rights law. Further, we rely on the courts to interpret and apply domestic laws in a manner which is consistent with the terms and the purpose of the Covenant.

131. This does not mean, however, that social and economic rights, such as the right to an adequate standard of living, are not justiciable in Canada. Canadian

law, if interpreted in a manner that is consistent with Canada's ratification of the Covenant, could go a long way toward providing appropriate legal remedy to violations of social and economic rights.

132. The Canadian Charter of Rights and Freedoms guarantees, in section 7, the right to security of the person. Section 15 of the Charter guarantees the right to the equal protection and benefit of the law. The Quebec Charter of Rights recognizes certain social and economic rights, including the right to an adequate standard of living. Some other Human Rights Codes provide protections to social assistance recipients. The Canada Assistance Plan Act obliges provinces to provide for the basic requirements of persons in need.

133. Poor people in Canada have begun to go to the courts asking that these provisions be applied in a manner which would ensure the progressive implementation and integration within Canadian law of the social and economic rights recognized by Canada internationally. Our primary concern is that existing law be interpreted consistently with Canada's ratification of the Covenant. This "consistency principle" imports certain international norms into Canadian jurisprudence and allows us to benefit from the work of this Committee as it further defines the nature of Canada's obligations under the Covenant. It does not make the Covenant itself justiciable, but rather infuses Canadian law with its purpose and intent in order to integrate the terms of the Covenant with domestic legal principles.

134. It is a longstanding principle of Canadian law that the courts should make every effort to interpret domestic law so as to avoid putting Canada in breach

of international treaty obligations. In the area of human rights, this tradition is bolstered by the recognition that human rights protections in Canada are inextricably linked with human rights recognized internationally.

135. Unfortunately, on the few occasions in which Canadians living in poverty have tried to benefit from domestic legal protections in the area of a right to an adequate standard of living, the courts have either refused to consider Canada's international human rights obligations or interpreted these obligations as mere intentions of government policy which do not affect the application of Canadian law. Two aspects of these cases are most disturbing.

136. First, the governments of Canada and provinces have opposed the rights claims of low income Canadians, not simply by disputing the claims themselves on their merits, but rather by opposing the recognition of social and economic rights within Canadian law.

137. Second, in refusing to consider Canada's commitments under the International Covenant, the courts have abandoned long standing principles of interpretation. They have generally interpreted the Charter of Rights, the Canada Assistance Plan Act, Social Assistance legislation, human rights legislation and other law applying to social and economic entitlements without any consideration of Canada's and the provinces international obligations to respect and promote social and economic rights. In an era in which Canadian citizens and politicians turn increasingly to the courts for a determination of fundamental social issues regarding human rights, the courts are ignoring the

social and economic rights which have always been a central component of Canada's human rights commitments.

138. The courts in Canada have, in our submission, failed entirely to provide "judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable."

**Committee on Economic, Social and Cultural Rights: Report on the 5th Session of the Committee: General Comment No. 3, p.85. par. 5**

### Social and Economic Rights Under the Charter of Rights

139. The primary focus of Charter litigation by poor people has been on sections 7 and 15 of the Charter, the rights to security of the person and to the equal benefit and protection of the law. Section 7 of the Charter reads as follows:

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 of the Charter reads as follows:

15(1) 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.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

140. Canada's Charter was introduced within a milieu in which social and economic rights had been accepted. Canada had already ratified the International

court ruled that being treated the same as others who are similarly situated should not be taken as a proxy for meaningful equality.

Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143 at p. 154 and pp. 168-69, 194.

145. More recently, the Supreme Court reaffirmed the positive component of equality rights when it extended parental benefits to fathers. In its recent decision in Schachter, it stated that an equality right is:

a hybrid of sorts, since it is neither purely positive nor purely negative. In some contexts it will be proper to characterize s.15 as providing positive rights.

The court noted that extension of benefits under the law:

may sometimes be required in order to respect the purposes of the Charter. ... While s. 15 may not absolutely require that benefits be available to single mothers, surely it at least encourages such action to relieve the disadvantaged position of persons in those circumstances."

Schachter v. Canada, [1992] 2 S.C.R. 679 at p. 702.

146. On the issue of interpreting the Charter in a manner consistent with international commitments, the Supreme Court, in its earlier decisions under Chief Justice Brian Dickson, advanced a very progressive approach. Writing for the majority, the Chief Justice turned to Canada's obligations under the International Covenant on Economic, Social and Cultural Rights to interpret the meaning of the Charter, citing his earlier words in Reference Re Public Service Relations Act (Alta)):

The content of Canada's international human rights obligations is, in my view, an important indicia of the meaning of the 'full benefit of the Charter's protection.' I believe that the Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada ratified.

Slaight Communications Inc. v. Davidson, [1989] 1 SCR 1038 p. 1056.



147. The Supreme Court of Canada has not yet heard a case involving a Canadian denied an adequate standard of living seeking redress under either section 7 or section 15. Lower courts, however, have failed to apply the above principles of interpretation when confronted with Canadians whose rights to adequate food, clothing and housing has been infringed in such a way as to deny them meaningful equality under the law or infringed their security of the person. Lower court decisions which, in our submission, are inconsistent with Canada's compliance with the Covenant, have been denied Leave to Appeal by the Supreme Court and thus allowed to stand.

Fernandes v. Director of Social Services (Winnipeg Central)

148. Eric Fernandes is a welfare recipient in Manitoba. He is permanently disabled, suffering from muscular atrophy, with progressive respiratory failure. Although he needs a ventilator to control his breathing, he is mobile in an electric wheelchair and can live in the community with appropriate attendant care.

149. Mr. Fernandes relied on his partner to provide necessary attendant care, but when he became separated from his partner, he required community-based care. If such care was not provided, he would have to be confined to hospital on a full time basis. His doctors urged that he be provided community-based care.

150. Mr. Fernandes requested coverage of the costs of such care through special assistance under the Manitoba Social Allowances Act, which required authorization by the Director of Social Services. The Director refused to authorize coverage

considered its responsibilities to go only as far as ensuring needs that are fundamental to survival. A home was not considered to be one of these.

Eric Fernandes and Director (Winnipeg Central) (Manitoba Court of Appeal) Factum of the Respondent and the Attorney General of Manitoba pp.16, 19.

153. The Manitoba Court of Appeal agreed with the position of the Government. It ruled that social and economic rights do not come within the ambit of section 7 of the Charter. On the issue of equal benefit of the law for persons with disabilities, the court ruled out any responsibility on governments to take measures to ensure an adequate standard of living for persons with disabilities:

Fernandes is not being disadvantaged because of any personal characteristic or because of his disability. He is unable to remain community-based because he has no care giver, because he must rely upon public assistance and because the facilities available to meet his needs are limited.

Fernandes v. Director of Social Services (Winnipeg Central), (10 June 1992) Winnipeg AI 91-30-00477 (Man. C.A.) at p. 23.

154. Leave was sought from the Supreme Court of Canada to appeal this decision. Among other things, it was argued that the decision was contrary to Canada's international human rights obligations and that clarification was needed from the highest court regarding the application of the Charter to social welfare. Leave to Appeal was denied.

Gosselin v. Le Procureur General du Quebec

155. Louise Gosselin relied on social assistance in Quebec in 1987. As a single employable person between the ages of 18 and 30, she was entitled to only \$170 per month. This barely represented 20 % of the poverty line for that year.

156. This meagre level of social assistance was so inadequate as to barely cover Ms. Gosselin's rent, let alone other necessities. To survive, she was forced to resort to extreme measures such as staying with someone for whom she felt no affection, providing him with sexual services and domestic services in exchange for basic necessities.

157. Ms. Gosselin brought a class action against the Government of Quebec, challenging the constitutionality of the sub-subsistence levels of benefit payments for 18 to 30 year olds under the Quebec Social Assistance Act. It was alleged that her rights under section 45 of the Quebec Charter and sections 7 and 15 of the Canadian Charter of Rights had been infringed.

158. s. 45 of the Quebec Charter reads as follows:

[translation]

Every person in need has the right, for himself [or herself] and his [or her] family, to financial and social assistance, prescribed by law, sufficient to assure him [or her] an adequate standard of living.

s. 49 of the Quebec Charter reads as follows:

[translation]

An illicit violation of a right or liberty recognized by the present Charter confers upon the victim the right to an end to the violation and the right of redress for the resulting moral or material prejudice.

159. The court ruled that the guarantee of adequate financial and social assistance in section 45 of the Quebec Charter of Rights is merely a "policy statement". It is entirely up to the discretion of the government whether the right to an adequate standard of living is to be respected through the provision of adequate levels of assistance.

The obligation to provide 'an adequate standard of living' which the state assumed is an obligation of which the limits are 'prescribed by law'. Hence it is open to the legislator to limit the obligations which it assumes. Theoretically, the obligation could remain symbolic and purely optional. In reality, such is not the case.

... Consequently, s. 45 confers no right to claim a sum of money. S. 45 must be read as a policy statement of which the implementation is anchored in the relevant legislation. S. 45 does not authorize the courts to review the sufficiency or adequacy of social assistance measures which the legislator, in the exercise of his political discretion, chose to adopt.

Gosselin v. Procureur Général du Québec, (27 May 1992), (C.S.)

160. The court also rejected the notion that social and economic rights could be included in the Charter's guarantee of security of the person. Completely ignoring the distinction put forward by the Supreme Court between property rights and social and economic rights, the court reasoned that:

The notions of life, liberty, and security are independent although connected. Together, they assume a meaning which excludes strictly economic interests, the reason being the absence of any mention of a right to property in the provision [s. 7]. In fact, we know that historically, there was a demand to have the right to property included in s. 7, but this right was ultimately rejected. This fact is relevant in the analysis of s. 7 and its relationship to economic and social rights since the right to property has often been invoked as the basis of economic rights.

Ibid p.64 [translation].

161. The court also reasoned that social and economic rights could not be included in "security of the person" because it was not listed in the Charter under the heading "Social and Economic Rights" but rather under the title "Legal rights."

S. 7 as well as ss. 8 to 14 [of the Charter of Rights] appear under the rubric, "Legal Rights". Although not conclusive in and of itself, this fact is significant. In Chapter 4 of the Quebec Charter, economic and social rights are expressly mentioned. Other documents, for example, the Canadian Bill of Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights as well as the Universal Declaration of Human Rights, use specific terms whenever they refer to economic and social rights.

The concept of life, liberty, and security of the person is mentioned in both the Canadian Charter, the Universal Declaration, and the International Covenant on Civil and Political Rights. It is not specifically mentioned in the International Covenant on Economic, Social, and Cultural Rights.

Ibid p.65 [translation].

162. In reference to article 11 of the International Covenant, the court relies on the preamble to the Covenant and on the notion of progressive realization to argue that Canada's ratification of the Covenant signals "a mere intention at most."

This article [article 11 of the International Covenant on Economic, Social, and Cultural Rights] is not for immediate implementation. The words, "will take appropriate measures", signals a mere intention at most. (p. 66)

163. Citing article 2 of the Preamble, the court concludes:

In light of these provisions of the International Covenant on Economic, Social, and Cultural Rights, we may conclude that the right to life, liberty, and security of the person contained in s. 7 of the Charter does not include the right to social security or social assistance benefits. The wording of the Charter as well as its nature and objectives run contrary to such an interpretation. (p. 66)

There exists a qualitative difference between, on the one hand, economic and social rights of which the implementation requires active state intervention and the investment of many resources and civil and political rights, on the other, which, generally speaking, only require some rearranging of political and legal institutions and hence can be implemented immediately by states regardless of their level of development.

If the legislator had wanted to include the right to social assistance within s. 7, it would have done so expressly. Even a large and liberal interpretation would not include the protection of economic rights such as the right to social assistance benefits.

164. The court insists that the right to security of the person in the Canadian Charter is a merely "negative" right, whereas the right to material or economic subsistence would be a positive right.

[Positive rights] signify an obligation to do something as opposed to the absence of an obligation to do something. According to the World Health Organization's definition of security of the person, it means a state of average physical and psychological well-being. According to Mr. Garant, p. 386: 'S. 7 envisages a negative right, that is, the absence of any unjustified coercion of the person.' The corollary is that any coercion, in order to be justified, must be applied in accordance with the principles of fundamental justice, notably the legal rights contained in the Charter.

Ibid, pp. 67-68

165. Thus, in a rare occasion when the court has considered Canada's ratification of the Covenant in a case brought forward by a person deprived of an adequate standard of living, the terms of the Covenant have actually been used against such a claim to show that the rights under the Covenant cannot be claimed in court and that the governmental obligations under the Covenant are mere intentions. The fact that the right to an adequate standard of living places obligations on federal and provincial governments in Canada is taken as a reason for the courts not to enforce these rights, because to do so would be to enforce "positive" rights.

166. Bernard v. Dartmouth Housing Authority

167. As was mentioned above, public housing tenants in three provinces in Canada have been excluded from protections of security of tenure in three of Canada's provinces, including Nova Scotia. Two challenges have been brought against this exclusion, the first, that of Ms. Bernard, under sections 7 and 15 of the Charter of Rights was unsuccessful. The second, brought by Ms. Irma Sparks, was successful in reversing the earlier decision under section 15 but did not rely on section 7. Thus, the courts have still not recognized security of tenure as a component of the right to security of the person.

168. In Bernard, the Attorney General for Nova Scotia took the position that section 7 does not protect any social or economic rights.

It is submitted that a right to public housing is, like the right to social assistance, a claim for an economic protection. As economic interests are not protected by s. 7 of the Charter, it is submitted that the applicant may not invoke the application of that provision in the circumstances of this case.

Pre-hearing Memorandum on Behalf of the Attorney General in the Supreme Court of Nova Scotia (Trial Division) p. 4.

169. The Attorney General characterizes the right to security of tenure as an "economic interest arising from her lease." Security of tenure "is properly characterized as a right in contract or property, an economic right." On this basis the Attorney General argues that economic rights are not protected by the Charter of Rights.

Factum of the Intervenor Attorney General of Nova Scotia in the Supreme Court of Nova Scotia (Appeal Division) p. 5.

170. The Nova Scotia Court of Appeal accepted the position of the Government of Nova Scotia and denied Ms. Bernard's appeal.

Turning now to the present appeal, I deem it essential to consider the exact nature of the right the appellant sought to assert. The trial judge found the right to be "more economically oriented than otherwise" and concluded there was no breach of s. 7 of the Charter. In my opinion, the right asserted was a proprietary right which bestowed a direct economical benefit on the appellant and as such has no constitutional protection afforded under s. 7 of the Charter.

Bernard v. Dartmouth Housing Authority, (1988) 53 D.L.R. (4th) 81 (Nova Scotia Court of Appeal) at p. 87

171. Bernard also argued that her right to equality was infringed because as a public housing tenant, she was denied the benefit of security of tenure protections available to other tenants in Nova Scotia. The Court of Appeal found

that because public housing is "designed for the relief of poverty", it cannot be found to discriminate against poor people when, for the purposes of "administrative flexibility", it denies them security of tenure.

Ibid, p. 89.

Sparks v. Dartmouth/Halifax Regional Housing Authority

172. One of the rare victories for poor people in Canada claiming social and economic rights under the Charter was won by Irma Sparks, a black single mother living in public housing in Nova Scotia. Given 30 days notice to leave her subsidized apartment, she challenged, as had Bernard, the denial of security of tenure to public housing tenants. She argued that because women, single mothers and people of colour make up a large number of public housing tenants, their exclusion discriminates on the basis of race, sex and family status. Although the trial judge felt constrained by the higher court's ruling in Bernard, the Court of Appeal reversed its earlier finding on the basis of the Supreme Court's subsequent clarification of the proper approach to section 15 of the Charter. Unfortunately, the earlier decision regarding the application of section 7 to security of tenure cases has not been reversed or overturned.

Irma Sparks and Dartmouth/Halifax County Regional Housing Authority and the Attorney General of Nova Scotia, (S.C... No. 02681).

Conrad v. County of Halifax

173. In January 1989, Lorraine Conrad left an abusive husband. She had no income to support herself, so she applied for and received social assistance from



the municipality. Later that year, however, the municipality alleged that she had resumed cohabitation with her husband, and terminated her welfare payments. Ms. Conrad adamantly denied that this was the case. She appealed the decision and applied for "interim assistance". She was denied assistance. Before the appeals could be heard, however, the municipality reinstated assistance after it was advised that it could not win the appeal. During the times that payments were suspended, however, Ms. Conrad and her children were forced to beg and to depend on the charity of neighbours and friends. Naturally, there was severe psychological stress as well.

174. This was not an isolated case. Across Canada, social assistance recipients frequently have their benefits abruptly terminated on the basis of some unverified information from a neighbour or landlord. Interim assistance is rarely available during the time it takes to appeal the decision. Thus, recipients are forced to live for significant periods of time without any income, and to live all of the time with the threat that the assistance they require for basic necessities might at any time be withdrawn by a welfare worker.

175. Ms. Conrad's case is extremely important in that she argued that section 7 of the Charter places a positive obligation on the government to ensure that a person or her family are not deprived of food, clothing, housing and other necessities of life. She also argued that because of the special nature of social assistance, section 7 of the Charter requires procedural safeguards to ensure that no one is deprived of the necessities of life without opportunity for a fair hearing and appeal.

176. The Attorney General for Nova Scotia argued that section 7 of the Charter provides no right to be "free from poverty and the physical, emotional and social consequences of that condition."

The rights protected are the rights and liberties of a classical liberal democracy. The Charter does not establish a right to receive the services of the welfare state, as established through public policy. The "security of the person" does not extend to the right to expect that each individual will be protected from the vicissitudes of nature, or the political and economic system. The individual is protected from the state and is not granted the positive right to be afforded protection by the state.

#### **Factum of the County of Halifax**

177. A decision has not yet been released by the trial judge, but both sides have announced their intention to appeal a decision against them.

#### Claiming The Right to an Adequate Standard of Living

#### Under the Canada Assistance Plan Act

178. As has been mentioned above, the Canada Assistance Plan Act states as its purpose the provision of "adequate assistance" to persons in need and the "prevention and removal of the causes of poverty and dependence on public assistance". The federal government accepts an obligation under section 5 of the Act to pay 50% of the cost of assistance paid to persons in need by the province or by municipalities in that province. The provincial government, on the other hand, accepts an obligation under section 6(2) of the Act to provide financial aid or other assistance to any person in need, "in an amount or manner that takes into account the basic requirements of that person." Both parties to the agreement have reneged on its terms and both have been challenged in court by disadvantaged Canadians in cases which went to the Supreme Court of Canada.

Reference re: Canada Assistance Plan Act

179. When the Federal Government reduced its contributions to the Canada Assistance Plan to below the 50% stipulated in the Act, it was challenged by the Province of British Columbia. Along with a number of other provinces, the Native Council of Canada and the United Native Nations of British Columbia intervened. Their primary concern was with the implications of the case in determining whether agreements reached between the Federal Government and other jurisdictions can be unilaterally altered without the consent of the other party. What is of concern in the outcome of the case is that the Federal Government cannot, apparently, be held to any of its promises, obligations or agreements, even where these have been built into legislation passed by parliament.

180. The Native Council of Canada argued that even a sovereign body may restrict itself as to the manner and form of subsequent legislation, citing A.G. New South Wales v. Trethowan, [1932] A.C. 526 and a decision of the Supreme Court of Canada that Saskatchewan was bound to enact statutes in both English and French. The court, however, rejected this argument, relying on the notion of parliamentary sovereignty.

Reference re Canada Assistance Plan (B.C.) 83 D.L.R. (4th) at pp. 322-3.

181. The implications of this decision are serious for the enforcement of social and economic rights in Canada. Unless such rights are deemed to have constitutional or quasi-constitutional status by the courts, the doctrine of parliamentary sovereignty will undermine any attempt by low income Canadians to hold governments to their legal commitments in this area. Instead of interpreting the Canada Assistance Plan Act as legislation which implements the

fundamental human right to an adequate standard of living, a right which cannot, under any circumstances be breached, the court interpreted this act as a transitory piece of legislation which can be repealed at any time by parliament.

Finlay v. Canada (Minister of Finance)

182. Jim Finlay, a disabled welfare recipient in Manitoba, waged a ten year court battle for the rights of poor people under the Canada Assistance Plan Act. He first had to go all the way up to the Supreme Court of Canada to be granted standing to bring an action alleging that the terms of the Act were breached. Then he worked his way back to the Supreme Court on the issue of whether the Act had in fact been breached. The case was heard and then re-heard by the Supreme Court of Canada. On March 25, 1993, the Court ruled 5-4 against Jim Finlay.

183. Manitoba has notoriously low welfare rates. They are now only 56.6% of the poverty line. From inadequate payments, the province decided to deduct 5% a year for 10 years from Mr. Finlay's payments in order to recover past "overpayments" (such as moving expenses which had been approved when he was ordered to move and then demanded back after having been paid!). Finlay's argument was quite straightforward. If the province has a duty under the Act to establish an amount of assistance which takes into account the individual's basic requirements, and if that amount has been established, then how can 95% of it be deemed to be adequate?

184. Mr. Finlay presented evidence that as a result of the deductions from his social assistance, he was not able to eat three days of each month and lost 60 pounds.

185. The majority of the court, in ruling against Mr. Finlay, held that:

given the nature of CAP the conditions attached to the federal government's contribution are not designed to dictate the precise terms of the provincial legislation. Rather, the conditions are designed to promote legislation which achieves substantial compliance with the objectives of CAP

Finlay v. Canada (Minister of Finance), S.C.C. File No. 22162. Date of Decision, March 25, 1993, at p.4.

186. The National Anti-Poverty Organization intervened in the case and argued that the Canada Assistance Plan should be interpreted and applied in a manner that is consistent with Canada's obligations under the International Covenant. The court made no reference to these obligations in its decision.

187. NAPO also argued for an "adequacy principle" which should guide the interpretation of all social welfare legislation. The one bright spot in an otherwise dismal ruling for poor people was that this principle was affirmed in the dissenting judgement written by Madam Justice McLachlin and was not explicitly rejected by the majority decision:

An interpretation which ensures that at least the basic requirements of the person in need are satisfied complies with the principle that a court, faced with general language or contending interpretations arising from ambiguity in statutory language, should adopt an interpretation which best assures adequacy of assistance.

This principle is compatible with a "consistency" approach to interpretation of Canadian law in light of Article 11 of the Covenant.

## Social and Economic Rights Under Provincial Human Rights Legislation

188. One of the problems for poor people in claiming rights related to poverty is that most of the rights under article 11 of the Covenant fall within provincial jurisdiction. Most housing, social assistance and social service programs are administered provincially. In many instances, provincial human rights codes could provide more accessible and effective remedies to rights violations than expensive Charter litigation. There is no reason why provincial human rights legislation should not provide remedies to violations of social and economic rights.

189. It is well established that human rights legislation imposes a positive duty to take measures to remove barriers to equality rather than a merely negative duty to refrain from unequal treatment. Legislatures have intentionally broadened the purview of human rights protections to focus on systemic barriers to equality. The Ontario Human Rights Code, for example, requires positive measures to correct the effect of "any requirement, qualification or factor ... that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination." The focus on remedial action required to overcome any exclusion of enumerated groups is fundamental to the approach taken by Canadian Courts to equality in the context of human rights legislation.

Ontario Human Rights Code, R.S.O. 1990, C.H-19, s.11.

Ontario Human Rights Commission and O'Malley v. Simpson-Sears Ltd.,  
[1985] 2 S.C.R. 536.

Central Alberta Dairy Pool v. Alberta Human Rights Commission,  
[1990] 2 S.C.R. 489.

190. The Supreme Court of Canada has established that positive measures to alleviate disadvantage may be required under human rights legislation.

... there simply cannot be a radical disassociation of remedy and prevention. Indeed there is no prevention without some sort of remedy.

Canadian National Railway v. Canada (Canadian Human Rights Commission), [1987] 1 S.C.R. 1114 at p. 1142.

... the Act is directed to redressing socially undesirable conditions quite apart from the reason for their existence ...

- and -

... the central purpose of a human rights Act is remedial -- to eradicate anti-social conditions without regard to the motives or intention of those who cause them...

Robichaud v. The Queen, [1987] 2 S.C.R. 84, at pp. 90 and 91.

191. The requirement of positive measures to promote equality under human rights legislation has been found by the Supreme Court to be subject to a standard of reasonableness or adequacy. In deriving an appropriate standard, the Court rejected the American threshold "de minimus" test. Canadian jurisprudence "has approached the issue of accommodation in a more purposive manner", establishing that "more than mere negligible effort is required to satisfy the duty to accommodate".

Central Okanagan School District No. 23 v. Renaud, [1992] 2 S.C.R. 970 at p. 983.

192. In applying human rights legislation the Court has accepted that its role is to evaluate whether positive obligations have been met in different factual circumstances. "What constitutes reasonable measures is a question of fact and will vary with the circumstances of the case". In many instances, this analysis involves assessment of complex budgetary, fiscal and administrative concerns of Respondents.

Central Alberta Dairy Pool, supra at p. 521.

193. Human Rights Codes both encourage and require measures to ameliorate the disadvantage of particular groups. The Ontario Code, for example, permits special programs designed to alleviate "economic disadvantage" and also requires positive measures to accommodate the needs of disadvantaged groups. Remedying economic disadvantage is well within the purview of human rights remedies.

Ontario Human Rights Code, R.S.O. 1990, c.H19, ss.11, 14.

Canadian National Railway Co. v. Canada, supra.

Robichaud v. The Queen, supra.

Ontario Human Rights Commission and O'Malley v. Simpson-Sears Ltd., supra.

Central Alberta Dairy Pool, supra.

194. While issues of economic deprivation could easily be addressed by Human Rights Commissions and Boards of Inquiry, almost nothing has been done in this area. The social and economic rights in Quebec's Charter do not provide for the filing of a complaint through the Commission and rather rely on the courts, which have not availed themselves of these rights in interpreting provincial legislation. In Ontario, protections for social assistance recipients and families have rarely been utilized by poor people to enforce positive obligations of governments to ensure substantive equality for these groups. One exception is the case of Elizabeth Wiebe.

Elizabeth Wiebe v. Her Majesty the Queen in Right of Ontario et al.

195. In 1989 Elizabeth Wiebe and her husband Abraham lived in a small town in Ontario with five children between the ages of 7 and 12.. They were temporary farm labourers. They do not read or write.



196. The Wiebes relied on Welfare to supplement their income to the level of basic requirements. In 1988-89 their family income was \$17,478, less than half of the poverty line for a family of seven. The Wiebes were unable to find housing that they could afford on their inadequate income other than one and two bedroom apartments. They were eligible for a maximum shelter subsidy of \$292 per month when the average rent for three bedroom apartments in their town was \$714 per month. No landlords would rent a small apartment to a family of seven.

197. The Wiebes tried to live in a garage but people who lived near by complained about a family living in a garage. The Salvation Army put them up in a motel room for a night but could do no more. The Wiebes applied for emergency assistance from the welfare department but they were refused. After using up all of their money for a second night, they eventually decided they had to give up their children on a temporary basis to the Children's Aid Society. Their four youngest children were placed in a foster home 50 kilometres away - taken away from their family and friends and removed from their school. The oldest son insisted on remaining with his parents. The three slept in their van on the side of roads for the duration of the fruit picking season.

198. Two more months went by and the Wiebes were still unable to find housing. Desperate to get their children back, they convinced the Children's Aid Society to lend them a tent trailer in which to live.

199. When they filed a human rights complaint against the Government of Ontario, the family of seven were living in this small tent trailer in the middle of a muddy field.

200. The Wiebes' human rights claim cites Canada's and the provinces' obligations under the International Covenant to ensure that everyone has an adequate standard of living, adequate housing and in particular, families caring for dependent children. It argues that human rights legislation in Canada must be interpreted in a manner that is consistent with the rights contained in the Covenant. It is argued that families and social assistance recipients, who are guaranteed equality in housing under Ontario's Human Rights Code, should not be rendered homeless by grossly inadequate welfare and housing allowance for large families.

201. The complaint was filed in 1989. The Government of Ontario responded to it by arguing that the complaint does not fall within the jurisdiction of the Human Rights Commission and should be dismissed. The Human Rights Commission has not decided yet whether a Board of Inquiry will be appointed to hear the case. In the meantime, hundreds of families continue to lose their children in Canada because of homelessness and poverty.

#### Further Incorporating Social and Economic Rights in Canadian Law

202. In order to make more progress in the area of legal protections, and to overcome court resistance to recognizing social and economic rights in Canada, the federal and provincial governments need to more explicitly recognize social and economic rights in Canada's human rights legislation and, if possible, in the Canadian Constitution. All provincial human rights codes should recognize social

and economic rights. In Quebec, the wording and enforcement mechanisms for social and economic rights need to be improved.

203. During recent constitutional discussions, NAPO, CCPI and most other major national organizations speaking for disadvantaged groups, sought to have included in the Canadian Constitution a Social Charter entrenching within the Constitution most of the rights contained in the International Covenant on Economic, Social and Cultural Rights. The "Alternative Social Charter" proposed by these groups would give domestic effect to social and economic rights in two ways. First, it would instruct the courts to interpret and apply the existing Canadian Charter of Rights and Freedoms and all other Canadian law in a manner which is consistent with the right to an adequate standard of living, the right to adequate housing and other social and economic rights. And second, it would provide for an additional petition procedure to an alternative Tribunal on Economic and Social Rights.

204. Ensuring that the courts interpret the existing Charter of Rights and other law in a manner consistent with the recognition of social and economic rights is fundamental to an integrated approach to rights. Poor people do not want social and economic rights to be segregated from other rights or seen as separate or weaker than civil and political rights. The Alternative Social Charter sought to ensure that we did not lose existing protections in the Charter. A social Charter might otherwise be interpreted to remove from the jurisdiction of the courts the social and economic rights which are implicit in domestic law, particularly the Charter of Rights, the Canada Assistance Plan Act and provincial human rights legislation.

205. In last year's round of constitutional negotiations in Canada, the federal and provincial governments proposed a lesser version of a social charter, entitled a "Social and Economic Union". This proposal downgraded the rights expressed as rights in the Covenant into mere "policy objectives" of governments with no possible enforcement in the courts. It is our view that Canada's ratification of the Covenant ought to be of considerable legal weight in the courts in Canada, and that any weaker statement within the Canadian Constitution would be a regressive step. Statements of "mere policy objectives", as the court expressed it in the Gosselin case described above, are not of assistance to poor people in enforcing their rights. Rather, this language is used as a justification for the courts to dismiss the rights claims of those whose social and economic rights have been infringed.

206. In future constitutional discussions, NAPO and CCPI will continue to press for more explicit constitutional recognition of social and economic rights as rights which can be claimed in Canada.

#### The Need for Poor People to Have Access to the Courts:

##### The Court Challenges Program

207. It is clear from the scant number of cases in which poor people sought judicial remedy for violations of social and economic rights that it is very difficult for poor people to claim their rights in Canada. The primary barrier, of course, is cost.

208. The only program available to assist disadvantaged groups with Charter claims was the Federal Court Challenges Program. This program was established in 1978 for minority language groups. In 1985, when the equality rights section of the Charter of Rights came into effect, the program was expanded to support equality litigation from individuals and groups challenging federal legislation.

209. The program was extremely moderate in cost. In its last year, it spent a total of \$4.75 million, \$750,000 of which was for program administration.

210. The Court Challenges Program had certain limitations for poor people. It did not fund litigation under section 7 of the Charter. Further, it did not fund challenges to provincial legislation, where so many violations of the rights of poor people occur. Nevertheless, it was the only source of funding available to disadvantaged groups using the Charter. The Court Challenges Program initiated a conference on the Charter and Poverty Issues which led to the creation of the Charter Committee on Poverty Issues. It funded research into social and economic rights and sections 7 and 15 of the Charter, the implications of a Social Charter, the rights of single mothers to social assistance when support payments are not received, discrimination against poor people in the Income Tax Act, the right of poor people and homeless people to vote and many other important poverty issues.

211. The Parliamentary Committee responsible for the Court Challenges Program was the Standing Committee on Human Rights and the Status of Disabled Persons. From June 8, 1989 until November 22, 1989 the Committee held an extensive review

of the program. The Committee tabled a report on December 11, 1989 which unanimously recommended renewal of its funding.

212. On February 27, 1992 the shocking announcement came down that the Government was cancelling the Court Challenges Program. Disadvantaged groups across Canada reeled from this news, as did many others. This was a relatively affordable program which had received nothing but praise from every quarter. The Standing Committee on Human Rights, on which Government members form a majority, convened to consider the emergency. The Committee's Report, entitled "Paying Too Dearly" urged the Government in the strongest terms to reinstate the Court Challenges Program.

When all is said and done, perhaps we really still must decide if justice is such a fine thing, can we pay too dearly for it. Certainly, most of the witnesses that we heard and the representations that we received answered us with a resounding "No".

The representations that this Committee has received since the cancellation of the Program have shown us how greatly the people of Canada value the principle of access to the courts. During the whole of this 34th Parliament, our Committee has never received as many unsolicited submissions on any single issues.

... We are left with repeating the conclusion from our 1989 report: In the Committee's unanimous view, the Court Challenges Program ranks as a distinctive Canadian achievement in the area of human rights (p.26).

"Paying Too Dearly," Report of the Standing Committee on Human Rights and the Status of Disabled Persons (June, 1992)

213. The government refused to heed the Committee's advice. The offices of the Court Challenges Program were closed last August. Equality seeking groups now no longer meet. Many are collapsing. A unique Canadian movement, brought into being by the enthusiasm for human rights that flowed from the introduction of a

new Charter of Rights in Canada, has been largely destroyed by an unprecedented attack on its meagre resources.

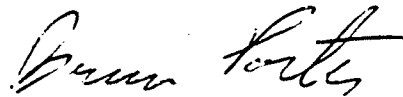
214. The Charter Committee on Poverty Issues has no more money even for its Steering Committee to meet. We have no money for research or test case litigation. We are only able to appear before the Committee on Economic Social and Cultural Rights through a generous grant from the Metropolitan Toronto Children's Aid Society Foundation. That Foundation has seen the effects of increasing homelessness, hunger and poverty among children and families, and wished to facilitate our appearance to attempt to reinvigorate Canadians' commitments to the rights in the Covenant.

215. We hope that our submissions have been of assistance to the Committee.

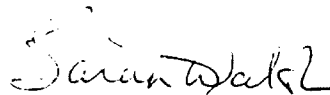
216. All of which is respectfully submitted.

The Charter Committee on Poverty Issues  
and the National Anti-Poverty Organization

per:



Bruce Porter



Sarah Walsh