

**Including "social condition" as a prohibited grounds of discrimination under the Canadian Human Rights Act**

**Submission to the Canadian Human Rights Act Review Panel of the federated anti-poverty groups of british columbia  
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***Prepared by federated anti-poverty groups of british columbia and the British Columbia Public Interest Advocacy Centre***

**1. FEDERATED ANTI-POVERTY GROUPS OF BRITISH COLUMBIA**

The federated anti-poverty groups of BC ("fapg") is an umbrella organization of over 130 groups as well as approximately 65 individual members concerned with poverty and social justice issues, and was incorporated in 1971. The purposes of fapg are:

- (a) to educate the general public on the nature of poverty, its causes and effects;
- (b) to provide low-income people with information about and assistance in obtaining available services and benefits;
- (c) to promote the improvement of services and benefits for low-income people; and
- (d) to work for the elimination of poverty in British Columbia and Canada.

The activities of fapg include an annual conference that deals with poverty and social justice issues. fapg also collects and distributes information on poverty and related issues and has acted as a resource for the Legal Services Society of BC, the Public Legal Education Society, and the Community Legal Assistance Society. fapg has appeared before various federal and provincial committees on issues of concern to low income persons. fapg responds to the media on issues of concern to its membership, and provides speakers for interested organizations. fapg maintains contact with anti-poverty, low income, and other social justice groups across Canada. For several years, fapg has held welfare rights and advocacy training workshops in BC.

Board members of fapg, through groups that each member is involved with, are responsible for monitoring specific issues such as housing, family violence, child apprehension, Pharmacare, unemployment, women's issues, and issues of concern to persons with disabilities. Board members are also responsible for representing fapg to government and to the public.

Finally, fapg has been involved in a number of actions before various courts on issues concerning poverty, including *Federated Anti-Poverty Groups of BC et al.*

*v. Attorney-General of BC* <sup>1</sup>, *Schaff v. The Queen* <sup>2</sup>, and *Federated Anti-Poverty Groups of BC v. BC (Minister of Social Services)*<sup>3</sup>. The organization has also presented submissions on behalf of low-income ratepayers before the Canadian Radio-Television and Telecommunications Commission and the B.C. Utilities Commission.

## **2. DISCRIMINATION AGAINST POOR PEOPLE IN CANADA**

The current *Canadian Human Rights Act* <sup>4</sup> does not prohibit discrimination on the basis of poverty. This omission must be corrected. Persons who are poor are discriminated against in all aspects of their lives. Not only do the poor face the disadvantages of poverty, but also the stigma and stereotypes associated with it.

Statistics relating to poverty in Canada are disgraceful. The gap between rich and poor, instead of decreasing, only continues to expand. For example:

During March of 1999, over 790,000 Canadians (roughly the population of New Brunswick) made use of a food bank. <sup>5</sup> A full-time job in 1997 at the average Canadian minimum wage provided a single person an annual income equal to approximately 70% of the poverty line. <sup>6</sup> The average income in 1996 for a single person on welfare in Canada provided an income equal to approximately 36% of the poverty line. <sup>7</sup> Over 60% of single mothers and almost 20% of all Canadian children lived below the poverty line in 1997. (FONT SIZE=-2>8

As described by Professor Martha Jackman <sup>9</sup>, people who are poor face discrimination in employment, in the provision of goods and services, and in accommodation. In the area of banking services, Professor Jackman quotes a welfare advocacy group, as follows:

Most people on welfare are refused access to banks to cash welfare cheques because they don't have means to open a bank account or identification such as a driver's licence or major credit card, required by the bank ... as a result, welfare recipients are forced to deal with third parties, such as cheque cashing businesses, landlords, stores, unscrupulous individuals, which usually means the poorest people in society have to pay six to thirty per cent of the cheque for a service free to everyone else.

Professor Jackman also points out that discrimination against the poor in the area of accommodation is even more pervasive. As the *Dartmouth/Halifax County Regional Housing v. Sparks* <sup>10</sup> case illustrates, where they are tenants in government-owned or subsidized housing, the poor are often denied the ordinary protections which private sector tenants enjoy under residential tenancies legislation. <sup>11</sup>

The very failure to include poverty or the most common attributes of poverty under federal and provincial human rights legislation is, in some regards, the

clearest evidence of the socially and politically marginalized status of the poor. Such an omission demonstrates that, notwithstanding overwhelming statistical evidence, poverty as a source of systemic social, economic and political disadvantage is not even formally recognized or acknowledged under legislation designed specifically to ameliorate the condition of groups facing historic and continuing discrimination. For persons who are poor, this omission reflects, reinforces, and facilitates continued systemic bias against them in Canadian society. It is evident, therefore, that failure to include poverty under federal and provincial human rights codes violates the equality rights of the poor under section 15 [of the *Charter of Rights and Freedoms*].<sup>12</sup>

### **3. LEGAL TREATMENT OF SOCIO-ECONOMIC RIGHTS AS A HUMAN RIGHT**

#### *a. Protection against discrimination on the basis of social condition in international law*

Two international covenants on socio-economic and human rights recognizes the rights of everyone to an adequate standard of living.

The *International Covenant on Economic, Social and Cultural Rights*<sup>13</sup> states, in its preamble, that in accordance with the *Universal Declaration of Human Rights*, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy economic, social and cultural rights, as well as civil and political rights. This document, through Article 2.II, specifically addresses the needs of those who exist in poverty:

Article II, Paragraph 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Article 25 of the *Universal Declaration of Human Rights*<sup>14</sup> also recognizes the right to an adequate standard of living:

Everyone has the right to a standard of living adequate for the health and the well-being of himself and his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

#### *b. The status of “social condition” in the Charter of Rights and Freedoms and human rights legislation across Canada*

Persons living in poverty and persons living on social assistance have been found to be historically disadvantaged groups in Canadian society, with courts holding these groups to be protected under section 15(1) of the Canadian Charter of Rights and Freedoms.

In *Dartmouth/Halifax County Regional Housing v. Sparks*<sup>15</sup> a mother with two children had been a public housing tenant for over 10 years. In accordance with the terms of her lease, she was given one month's notice by the Respondent Public Housing Authority to quit her residential premises. The Nova Scotia *Residential Tenancy Act*<sup>16</sup> gave residential tenants with five years' possession of security of tenure such that, subject to certain exceptions, they could only be given notice to quit if a judge was satisfied that the tenant was in default of any obligations under the Act or the lease. However, the Act also provided that public housing tenants were not provided with this security of tenure and the terms of release with the Public Housing Authority were allowed to over-ride the provisions of the Act.

Hallett J.A., for the Court, concluded that the impugned provisions amounted to discrimination on the basis of race, sex, and income, and were declared unconstitutional:

Section 15(1) of the *Charter* requires all individuals to have equal benefits of the law without discrimination. Public housing tenants have been excluded from certain benefits private sector tenants have had provided for them in the Act. The effect of sections 25(2) and 10(8)(d) of the Act has been to discriminate against public housing tenants who are a disadvantaged group analogous to the historically recognized groups enumerated in section 15(1). ... The content of the law and its impact on public housing tenants is not only that they are treated differently but the difference relates to the personal characteristics of the public housing tenant group. To come to any other conclusion is to close one's eyes to the make-up of the public housing tenancy group and the effect on them of the exempting sections.<sup>17</sup>

Similarly, in *R. v. Rehberg*<sup>18</sup> the defendant was a single mother of six children and was the recipient of family benefits pursuant to the *Family Benefits Act*.<sup>19</sup> For several months she cohabited with a man who did not contribute to her expenses, and she continued to collect family benefits during that period. The regulations enacted pursuant to the *Family Benefits Act* disentitled mothers from benefits if they cohabited with a male person, and the defendant was charged with one count of fraud contrary to the Criminal Code on the basis that she had falsely obtained social assistance by failing to report that she was cohabiting with a man and thus ineligible for benefits. Kelly J. concurred with the Court in *Sparks* that single mothers are a "group" in society most likely to experience poverty in the extreme, and that poverty is likely to be a personal characteristic of a single mother. Poverty was determined to be analogous to the listed grounds of discrimination in section 15.

Also, in *Federated Anti-Poverty Groups of BC v. Attorney General of BC*,<sup>20</sup> Parrett J. held that section 15(1) of the Charter protects persons in receipt of income assistance:

Applying the test under section 15 of the Charter, it is clear that persons receiving income assistance constitute a discrete and insular minority within the meaning of section 15. It may be reasonably inferred that because recipients of public assistance generally lack substantial political influence, they comprise “those groups in society to whose needs and wishes elected officials have no apparent interest in attending”.

Several jurisdictions across Canada have introduced changes to human rights and residential tenancy legislation in an attempt to address social and economic rights.


The B.C. Legislature, in 1994, amended the *Residential Tenancy Act* to prohibit discrimination based on source of income and the rental of properties, with enforcement carried out under the *BC Human Rights Code*.

The Québec Human Rights Tribunal has held that the prohibition of discrimination based on “social conditions” in the Québec *Charter of Human Rights and Freedoms*<sup>22</sup> disallows discrimination on the basis of level of income.<sup>23</sup> The Tribunal considered a complaint of discrimination brought by the complainant against a landlord for refusing, based on level of income, to rent an apartment to her. The Tribunal commented on the stigma attaching to persons living to poverty:

The courts have also several times affirmed that level of income was definitely one of the elements of social conditions, although it is not the income itself that is an element of social condition but the consequences resulting from that income, that is, the place the person holds in society because of his income.

#### **4. INCLUDING “SOCIAL CONDITION” AS A PROHIBITED GROUND OF DISCRIMINATION UNDER THE CANADIAN HUMAN RIGHTS ACT**

In its 1997 Annual Report, the Canadian Human Rights Commission itself supported the view that social and economic rights are a human rights issue:

The international community has recognized for some time that human rights are indivisible, and that social and economic rights cannot be separated from political, legal or equality rights. *It is now time to recognize poverty as a human rights issue here at home as well.*   
[emphasis added]

The addition of “social condition” as a prohibited ground of discrimination under the *Canadian Human Rights Act* has substantial support from fapg members. This ground would apply to all people living in poverty or experiencing other social disadvantages.

Professor Martha Jackman has written that poverty has always operated as one of the most significant and systemic barriers to full participation in Canadian society:

As the Economic Council of Canada wrote more than 25 years ago: “[t]o feel poverty is, among other things, to feel oneself an unwilling outsider – a virtual non-participant – in the society in which one lives.” For the numerous Canadians who experience it, poverty generally means sub-standard housing, inadequate diet, reduced health, poor education and employment prospects, social stigma, and political marginalization. <sup>24</sup>

Professor Jackman argues that in addition to the actual restrictions that it imposes on the lives of people who are poor, poverty has historically been, and continues to operate, as a socially debilitating source of stigma. Not only are the poor disadvantaged in their lack of access to food, housing, education, and other “goods, services and conditions of life which ... have come to be accepted as basic to a decent, minimum standard of living”, they are held responsible for their own poverty and for their failure to extricate themselves from it. Stigmatization was also addressed by McLachlin J., when she held that the imposition of prejudicial treatment on the basis of a person’s poverty “may violate the dignity of the individual and his or her personal worth to a degree affecting the individual’s personal, social or economic development.” <sup>25</sup>

Inclusion of a prohibition against discrimination on the basis of social condition could help to alleviate the burden carried by the poor in Canada by providing greater access to employment, services and facilities, and accommodation; decreasing stigmatization, and assisting rather than hindering personal, social and economic development of individuals struggling to cope with poverty.

The United Nations Committee on Economic, Social and Cultural Rights, in its second periodic review of Canada’s compliance with the International Covenant on Economic, Social and Cultural Rights, recommended that Canada incorporate into Canadian human rights legislation more specific references to social, economic and cultural rights. Recognition of poverty under domestic human right legislation is, as the U.N. Committee argued, a necessary step for Canada to meet its obligations under international human rights law, as well as under the Canadian *Charter of Rights and Freedoms*.

## **5. RECOMMENDATIONS**

Human rights legislation across Canada can provide a meaningful source of

recourse for people facing discrimination on the basis of poverty.

With the ever-increasing numbers of people across Canada facing poverty, the necessity of ensuring that discrimination on the basis of social or economic disadvantage has become critical. Further, inclusion of this ground will assist in meeting Canada's obligations under international law.

- **We recommend that “social condition” be added to the Canadian Human Rights Act as an additional prohibited ground of discrimination.**

fapg submits that there must not be any loopholes in protection for persons who are poor. Although “source of income” is a more specific term, it may not cover the employed poor.

- **We recommend that social condition be defined within the *Canadian Human Rights Act* to include source of income, employment and education.**

Finally, the right to an adequate standard of living is fundamental to all Canadians, and is recognized in both the International Covenant on Economic, Social and Cultural Rights and the Universal Declaration of Human Rights.

- **We recommend that the Canadian Human Rights Act be amended to guarantee rights to food, shelter and clothing.**

All of which is respectfully submitted.

Gisele Guay, President

federated anti-poverty groups of British Columbia

### **Endnotes**

1 (1991), 70 B.C.L.R. (2d) 335 (S.C.)

2 (1993), 18 C.H.R.R. (2d) 143 (F.C.T.D.)

3 (1996), 41 Admin L.R. (2d) 158 (B.C.S.C.)

4 R.S.C. 1985 c. H-6

5 Canadian Association of Food Banks, *HungerCount99: A Growing Hunger for Change*, 1999

6 Based on the Low Income Cut-off for a single person living in a city with a population of 500,000 and over.

7 Calculation based on data from the National Council of Welfare, *Welfare Incomes 1996*, Winter 1997-98

8 Statistics Canada, *Low Income Persons, 1980 to 1997*, 13-569-X1B

9 Coalition for the Cashing of Cheques, “Access to Banks Denied to Persons on Welfare”, (October 1986) 2:2 Can. H.R. Advoc. 10, as quoted in M. Jackman, “Constitutional Contact

with the Disparities in the World: Poverty as a Prohibited Ground of Discrimination under the Canadian Charter and Human Rights Law”, 2 *Review of Constitutional Studies* 76, at pp. 112-113

10 (1993), 101 D.L.R. (4th) 224 (N.S.C.A.)

11 M. Jackman, “Constitutional Contact with the Disparities in the World: Poverty as a Prohibited Ground of Discrimination under the Canadian Charter and Human Rights Law”, 2 *Review of Constitutional Studies* 76, at p. 114

12 M. Jackman, “Constitutional Contact with the Disparities in the World: Poverty as a Prohibited Ground of Discrimination under the Canadian Charter and Human Rights Law”, 2 *Review of Constitutional Studies* 76, at p. 117

13 (1976) 993 U.N.T.S. 3, [1976] C.T.S. 46

14 Adopted and proclaimed by General Assembly resolution 217 A(III) of 10 December 1948.

15 (1993), 101 D.L.R. (4th) 224 (N.S.C.A.)

16 R.S.N.S. 1989 c. 401

17 *Dartmouth/Halifax County Regional Housing v. Sparks*, *supra*, at pp. 232-4

18 (1994), 111 D.L.R. (4th) 336 (N.S.S.C.) at p. 361

19 R.S.N.S. 1989 c. 168

20 (1991), 70 B.C.L.R. (2d) 335 (S.C.) at p. 344

21 R.S.B.C. 1996 c. 406, s. 81

22 R.S.Q. 1977 c. C-12

23 *Québec (Comm. des droits de la personne) c. Whittom*, 20 C.H.R.R. D/349 at D/354

24 Martha Jackman, “Constitutional Contact with the Disparities in the World: Poverty as a Prohibited Ground of Discrimination under the Canadian Charter and Human Rights Law”, 2 *Review of Constitutional Studies*, 76.

25 *Thibaudeau v. Canada*, [1995] 2 S.C.R. 627 at 722