

BRIEFING NOTE: Legal framework & what would it take? A vision of food security for ALL Canadians

Building Food Security in Nova Scotia Partners & Supporters

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Legal framework for the right to food in Canada

[Section 7 of the Charter](#)

Within the Constitution of Canada, s. 7 of the *Canadian Charter of Rights and Freedoms* guarantees the right to “life, liberty and security of the person” and the right not to be deprived thereof except in accordance with fundamental justice. The Supreme Court of Canada has stated that this right *may* protect “such rights included in various international covenants as rights to social security, equal pay for equal work, adequate food, clothing and shelter”.¹ In this judgment, the Supreme Court acknowledged that s. 7 of the *Charter* can be interpreted, as the UN Committee on Economic, Social and Cultural Rights (CESCR) recommended in General Comment 9, so as to provide effective remedies to violations of social and economic rights. Indeed, at the periodic review of Canada’s implementation of the *ICESCR* which took place in 1998, the government of Canada and at least three provinces made submissions which purported to endorse an interpretation of s.7 of the *Charter* which includes positive social and economic rights.²

Despite the position which Canadian governments have adopted before the UN CESCR and other treaty bodies, on **every** occasion when the scope of the *Charter*’s right to ‘life’ or ‘security of the person’ has been litigated in Canada, both Federal and Provincial governments have argued strenuously before Canadian courts that s. 7 should be interpreted by Courts in a way that *excludes* any obligation on governments to protect substantive social and economic rights, including the right to food. Similarly, despite the fact, as noted above, that the Supreme Court in Canada has indicated some openness³ to the principle that s. 7 of the *Charter* might include the right to food, lower Courts have accepted the position, advanced by Federal and Provincial governments, that positive obligations are **not** covered by s. 7. In this respect, they have failed to acknowledge the obligations in the CESCR’s General Comment 9 to interpret the Constitution in a way that is consistent with Canada’s international human rights obligation, here, the *ICESCR*’s right to food.

1 [Irwin Toy Ltd. v. Quebec \(A.G.\)](#) (1989), 58 D.L.R. (4th) 577 (S.C.C.) at 633 and [Gosselin](#) at para. 82

2 See [Responses by Canada](#), Alberta, New Brunswick and Nova Scotia to question #53 in the “*List of issues to be taken up in connection with the consideration of the third periodic report of Canada: Canada*.” 10/06/98. E/C.12/Q/CAN/1”. The specific Response of the Government of Canada reads: “The Supreme Court of Canada has stated that section 7 of the *Charter* may be interpreted to include the rights protected under the Covenant....The Supreme Court has also held section 7 as guaranteeing that people are not to be deprived of basic necessities...The Government of Canada is bound by these interpretations of section 7 of the *Charter*.”

3 The most recent statement from the Supreme Court of Canada, regarding positive obligations on governments regarding social and economic rights arising from s. 7, was one in which the Court stated: “One day s. 7 may be interpreted to include positive obligations....the question is whether the present circumstances warrant a novel application of s. 7 as the basis for a positive state obligation to guarantee adequate living standards...I conclude that they do not. With due respect for the views of my colleague Arbour J., I do not believe that there is sufficient evidence in this case to support the proposed interpretation of s. 7. I leave open the possibility that a positive obligation to sustain life, liberty, or security of the person may be made out in special circumstances.” ([Gosselin](#), paras. 82-3, 2002) However, even more recently, the Supreme Court of Canada stated in *obiter dicta* in a case involving health rights, “The *Charter* does not confer a freestanding constitutional right to health care. However, where the government puts in place a scheme to provide health care, that scheme must comply with the *Charter*.” ([Chaoulli](#) at para. 104).

It is noteworthy that the judiciary of other States which have broad constitutional protections for, *inter alia*, the ‘right to life’ have easily found this to be an adequate foundation on which to find a right to food and other social and economic rights.⁴

[Section 36 of the Constitution Act, 1982](#)

Section 36 of the *Constitution Act, 1982* contains a joint Federal-Provincial commitment to the “provision of essential public services of reasonable quality for all Canadians.” This constitutional commitment is clearly broad enough to include the right to adequate social assistance necessary to realize the right to food. Indeed, in Canada’s Core Document the commitments to ‘provide essential services of reasonable quality’ in s.36 were represented to the UN as being “particularly relevant in regard to Canada's international obligations for the protection of economic, social and cultural rights”.⁵ Despite the position which Canada has adopted before the UN, governments in Canada have, in the comparatively few instances where s. 36 has been litigated, shown determination to resist judicial interpretations that would give real life to this constitutional provision.

Thus, in one case the Federal government submitted to the Court that s. 36 was not a justiciable provision of the Constitution; that it was a broad statement that was not legally enforceable by courts. Similarly, in another instance the province of Nova Scotia argued that the wording of s. 36 did not create a legally enforceable claim for “essential public services of reasonable quality”.⁶

The point underlying our submissions regarding both [s. 7](#) of the *Charter* and [s. 36 of the Constitution Act, 1982](#) is that, despite the manifestly open-ended wording of both provisions, governments and lower courts have, so far, deliberately refused to adopt interpretations in which the right to food (or any other substantive social or economic right) would be subsumed. This is not only contrary to the requirements of the *ICESCR* but to the positions which Canada has advanced before the *CESCR*.

4 See, for example, the Supreme Court of India in the right to food cases (e.g., *PUCL v. Union of India, 2001*)

5 [Core Document Forming Part of the Reports of States Parties](#) (Canada, October 1997), HRI/CORE/1/Add.91, at para.127

6 [CBRM v. Nova Scotia](#), 2009 NSCA 44 (CanLII) at paras. 12, 21 and 63.