Introduction: Advancing Social Rights in Canada*

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A. The Human Rights Crisis in Canada

A book which purports to discuss advancing social rights in Canada in 2014 may be viewed by some as an exercise in denial. Thirty years into Canada’s post-Charter democracy, growing economic inequality and violations of social rights, disproportionately experienced by Aboriginal people, sole support mothers and their children, people with disabilities, racialized groups and newcomers, represent egregious human rights failures that call into question our collective commitment to what have long been understood as definitional values. As former NDP leader Jack Layton observed:

Canadians, overwhelmingly, believe in justice and equality. These are values we trust, and we want to bring them to life in our communities. Our vision of the just society forms the core of our sense of identity as Canadians. But rejecting poverty in our national heart hasn’t stopped poverty from festering. Our society enters this new millennium with open wounds and a poverty rate that stands among the worst in the developed world.1

In recent years, civil society and Aboriginal organizations in Canada have consistently identified poverty, food insecurity, inadequate housing and lack of access to health care, education and decent work as fundamental

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violations of human rights.\textsuperscript{2} UN human rights bodies have also expressed “grave concern” about the extent and systemic impact of homelessness, hunger and poverty in Canada, and have called for immediate and concerted federal and provincial/territorial government action to address these issues.\textsuperscript{3} It is not, as the Canadian government likes to suggest, that the UN mistakenly believes that hunger and homelessness are more extreme in Canada than in struggling economies in Africa or Asia.\textsuperscript{4} Rather these harms are seen as a human rights crisis in Canada because they are completely unnecessary in a country experiencing unprecedented affluence and economic prosperity; the result of governmental choice and symptomatic of a serious retrogression from the respect for social rights norms that the UN had come to expect of post-war Canada.\textsuperscript{5}

At one time ranked by the international community as a leading voice for human rights and a model for emerging constitutional democracies, Canada is now more often viewed as shamelessly pursuing environmentally unsustainable development within and beyond its own borders in ways that


\textsuperscript{3} Bruce Porter & Martha Jackman, “International Human Rights and Strategies to Address Homelessness and Poverty in Canada: Making the Connection,” Ottawa Faculty of Law Working Paper No. 2013-09 47-54, online: CURA http://socialrightscura.ca; See also Bruce Porter’s discussion in Chapter 1.

\textsuperscript{4} House of Commons Debates, 41st Parl, 1st Sess, No 127 (18 May 2012) at 1155 (Deepak Obhrai).

primarily benefit the most affluent, exploit vulnerable groups, damage ecologies, disinherit Indigenous communities and exacerbate global and domestic inequality. In response to increasing criticism of Canada’s human rights and environmental record at home and abroad, the Canadian government has staged a dramatic retreat from Canada’s earlier engagement with international human rights norms and accountability mechanisms. Instead of being an active proponent of advances in international human rights at the UN, as it has in earlier years, Canada has resisted recent progressive reforms in the field of social rights. In particular, Canada has failed to support the development of, and then refused to ratify, new complaints procedures which would empower those whose social rights have been violated in Canada to seek international adjudication. As the current Canadian government would have it, serious human rights violations only occur in other countries, and Canada needs no lessons from the UN in this sphere.

When UN human rights bodies have pointed to the estimated 150,000 – 300,000 people who are homeless across Canada and the close to a million

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adults and children relying on food banks to provide necessary supplements to inadequate diets—phenomena which would have been unimaginable when Canada ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) along with the International Covenant on Civil and Political Rights (ICCPR) in 1976—the federal government has insisted that such concerns are both misplaced and politically biased. When the UN Special Rapporteur on the Right to Food conducted a mission to Canada in 2013, voicing distress about the extent of hunger in so affluent a country, and questioning the absence of a national food security strategy or legal protection for the right to food, Canada’s response was to launch a personal and very undiplomatic attack. Leading members of the government characterized the Special Rapporteur as a meddling academic who was wasting UN funds by investigating Canada when he could have been somewhere with real hunger and food issues. When the UN Committee on the Rights of the Child commented negatively on Canada’s human rights performance with respect to growing poverty among Aboriginal, immigrant and disabled children, the Canadian government dismissed these concerns as politically motivated. The justification in that case: one of the Committee experts was of Syrian origin, a


11 Report to the Special Rapporteur on the right to food, above note 5 at para 7.
country with its own record of serious human rights violations. This approach, accurately described by the Special Rapporteur as a new Canadian self-righteousness, is deeply disturbing, not least because it undermines Canada’s adherence to human rights and sustainable development as important and viable objects of international co-operation and respect.

B. Looking Back: The Historic Social Rights Paradigm in Canada

Those seeking to advance social rights in Canada today must not only remind people of what has been lost, but also sustain a human rights paradigm that is larger than one particular government or decade of Canadian political history. The problems associated with growing economic inequality in an era of neoliberalism are not unique to Canada. However the unwillingness of Canadian governments and courts to address the resulting violations of social rights is surprising, at least to international observers, in light of Canada’s post-war image and self-identity. Unlike its neighbor to the south, by ratifying the ICESCR in 1976, Canada formally acknowledged that adequate food, housing, health care, education, social security, and just and favourable conditions of work were not simply laudable goals of social policy. These were recognized as fundamental human rights, requiring progressive implementation to the maximum of available resources by all appropriate means, and demanding access to justice and effective remedies for rights claimants when governments fail to meet their obligations.

While social rights in the 1970s were not always implemented in legislation or programs, what is striking in retrospect is the degree to which they were referred to as core “Canadian values.” In a period when Canada defined itself largely in relation to the U.S., Canada’s ratification of the ICESCR and its recognition of the positive role governments must play in protecting rights was seen as part of Canada’s national identity. Former Prime Minister Pierre Trudeau had, for instance, written of the importance of economic and social rights as a young academic, and his campaign for the “just society” capitalized on widespread public acceptance of social justice as a central component of Canadians’ self-identity. As Trudeau reaffirmed as Prime Minister in June of 1968 “[M]ost people take it for granted that every Canadian is assured a reasonable standard of living. Unfortunately, that is not
the case ... The Just Society will be one in which all of our people will have the means and the motivation to participate.”

Parallel to, and nurtured by, Canada’s engagement with international human rights, the 1970s saw the emergence of vibrant domestic human rights movements. Though influenced by the American civil rights campaign, they were grounded in a different rights paradigm than the one that predominated in the U.S. Both in Quebec and the rest of Canada, domestic human rights protections were linked to a commitment to internationalism and to a more comprehensive conception of human rights. Cold war dichotomies, including the rigid distinction drawn between social and economic versus civil and political rights, were less firmly entrenched in 1970s Canada than in the U.S. Social rights were particularly important in Quebec. With the adoption of its new Charter of Human Rights and Freedoms in 1976, Quebec provided explicit legal recognition for social rights, including to free public education, an “acceptable standard of living” and a healthful environment in which biodiversity is preserved. The Quebec Charter was, as Pierre Bosset and Lucie Lamarche point out, strongly influenced by the international human rights context: “Le Québec, qui connaît sa révolution tranquille et développe l'État social, tient alors à s’inscrire dans la mouvance d’un droit international qui, officiellement, reconnaît ces droits…”

New social movements across Canada increasingly articulated struggles for justice and equality as human rights struggles. In 1981, people with disabilities mobilized around the International Year of Persons with Disabilities and the celebrated “Obstacles” Report, issued by an All Party House of Commons Committee – an early expression of the “social model of

24 Charter of Human Rights and Freedoms, RSQ, c C12.
26 House of Commons, Special Parliamentary Committee on the Disabled and the Handicapped, Obstacles, 32nd Parliament, 1st Session (February 1981).
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disability” that was adopted more than two decades later in the UN Convention on the Rights of Persons with Disabilities. Emerging rights-based approaches to social justice fed directly into debates about the wording and content of rights in the proposed new Canadian Charter of Rights and Freedoms. Disability rights organizations demanded that mental and physical disabilities be added to the list of prohibited grounds of discrimination in section 15 of the new Charter. Aboriginal organizations demanded that the constitutional debates not ignore the desperate conditions on reserves and demanded positive recognition of treaty rights, the right to self-determination and control over resources and development. For their part, women’s organizations orchestrated an historic cross-country campaign for changes to the heading and wording of section 15, in order to put an end to the formal, negative rights equality paradigm that had been adopted by the courts under the Canadian Bill of Rights. Demanding the inclusion of a right to the “equal protection and equal benefit of the law” in section 15, they sought to ensure that the Charter would directly engage with government obligations to institute programs and benefits to address historic patterns of exclusion and disadvantage.

32 Canadian Bill of Rights, SC 1960, c 44.
Social movements adopting new rights-based approaches were ultimately successful in transforming the architecture of equality under the new Charter. Then Justice Minister Jean Chrétien succumbed to the pressure from women’s groups and endorsed the proposed changes to section 15, as he put it, “to stress the positive nature of this important part of the Charter.”\(^{34}\) Moreover, Canada became the first democracy to include disability as a constitutionally prohibited ground of discrimination. This advance was critical from a social rights perspective because a negative rights framework is so clearly inadequate in relation to disability discrimination, which frequently results from failures of law and policy to address unique circumstances, needs and capabilities, and which often requires positive measures to ensure real, instead of merely formal, equality.\(^{35}\) Yvonne Peters, one of the contributors to this book and a key advocate for disability rights at the time, has observed that the constitutional recognition of disability was:

> [A] watershed event that occurred at a time when people with disabilities were just beginning to construct a new vision and analysis of the disability experience… The disability rights movement rejected the medical model of disability, and argued that it was social barriers and prejudices that created disabilities. … This shift to a rights-based analysis therefore represents a profound and decisive turning point in the history of people with disabilities.\(^{36}\)

Substantive equality, as articulated by women’s organizations, the disability rights movement and other equality seeking groups in Canada, was and remains a social rights paradigm. It emphasizes positive rights, social inclusion, a hybrid of group/individual rights, and the necessity of structural change and historical transformation to achieve the realization of rights over time. The equality/social rights paradigm is remedial in its focus – defined by

\(^{34}\) Statement by the Honourable Jean Chrétien, Minister of Justice, to the Special Joint Committee on the Constitution, January 12, 1981 (Government of Manitoba Archives).


the broad purposes of human rights, rather than by restorative or compensatory justice in relation to a single individual. From the outset, it was nurtured by jurisprudence developed under provincial and federal human rights legislation and by the work of newly created national and provincial human rights institutions across the country. In landmark cases, such as Action Travail des femmes v CNR, equality advocates insisted upon, and Canadian courts and tribunals recognized, the necessity of placing obligations on both governments and private actors to address systemic inequality through positive action, including social programs, measures to address the needs of people with disabilities, and “employment equity” to combat systemic inequality in the workplace. Building on this social rights paradigm, the Charter was expected to ensure that access to housing, health care, nutrition, jobs, child care and social assistance for those in need would be accorded as much importance as negative guarantees of freedom from unreasonable government interference.

Equality seeking groups mobilized and won support for an approach to constitutional rights centered on a commitment to substantive equality as a framework for proactively addressing what were seen as the critical sources of inequality and exclusion in Canadian society: poverty, lack of access to appropriate housing, employment, education and social programs. Barbara Cameron, another contributor to this book, accurately predicted in 1984 that the neoliberal version of equality of opportunity would only mean that “equalization is downwards.” She emphasized that ensuring the “just and favourable conditions of work”, to which Canada was committed under the ICESCR, required active government engagement in labour markets, through employment equity, affirmative action and other positive measures.

Appearing before the Subcommittee on Equality Rights of the Standing Committee on Justice and Legal Affairs in 1985, two other contributors to this book, Gwen Brodsky and Shelagh Day, argued that the new constitutional right to equality demanded positive measures to protect social rights. Gwen


38 The Evolution of Human Rights in Canada, above note 30.


42 Ibid.
Addressing Care

Brodsy stated on behalf of the National Association of Women and the Law that: “Unless the Government implements positive programs to remove barriers to equality it will be signaling tolerance of discrimination and indifference to the expectations of Canadian women.” Speaking for the Women’s Legal Education and Action Fund (LEAF), Shelagh Day affirmed that the right to equality embodies “a fresh beginning” and a rejection of “[n]arrow interpretations or technical pathways that lead us away from what is really happening to the lives of Canadians and to the lives of Canadian women …”

Social rights were not seen as relying solely on Charter rights, however. They were supported by legislative and programmatic commitments in the areas of health care, education, housing, social security, and financial assistance for those in need, particularly through the mechanism of joint federal-provincial/territorial cost sharing agreements such as the Canada Health Act (CHA) and the Canada Assistance Plan Act (CAP). The CAP, for example, created an entitlement to an adequate level of financial assistance for anyone in need, regardless of cause, in exchange for shared federal funding of provincial social assistance costs. The CAP requirement to provide an adequate level of social assistance was subject to judicial review for reasonable compliance, and to systemic (though not individual) remedy by courts. Similarly, the CHA implemented five legally binding principles: public administration, comprehensiveness, universality, portability and accessibility. These CHA conditions were understood and embraced as social rights principles, designed to guarantee access to health care based on need, rather than ability to pay, as a fundamental human right.

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44 Ibid.

45 Canada Health Act, RSC 1985, c C-6.

46 Canada Assistance Plan, SC 1966-67, c 45.

47 In Finlay v Canada (Minister of Finance), [1986] 2 SCR 607, the Supreme Court determined that an affected individual had public interest standing to challenge provincial non-compliance with the adequacy requirements of CAP. Subsequently, in Finlay v Canada (Minister of Finance), [1993] 1 SCR 1080, the Court that found that CAP “requires assistance to be provided in an amount that is compatible, or consistent, with an individual’s basic requirements” but provides for some flexibility and for the recovery of overpayments.

to implementing social rights through programmatic entitlements such as these was given concrete expression in section 36 of the Constitution Act, 1982, which entrenches an explicit undertaking by governments in Canada to "promote the well-being of Canadians and to provide essential public services of reasonable quality to all Canadians." In its submissions to U.N. treaty
monitoring bodies, the Canadian government has described the constitutional
commitment in section 36 as a core element in the implementation of
Canada’s social rights obligations under international human rights law.

Canada of the 1970s and 1980s was not a Camelot for social rights.
While food banks and homelessness did not exist to the extent and in the same
way as they do now, there were nevertheless serious violations of social rights
during this period, particularly among Aboriginal communities, racialized
groups, women and LGBT communities. Still, what is striking, looking back,
is the extent to which social rights values were accepted as definitional during
that period. Commitments to social rights, under both international and
domestic law, created the foundation for a distinctive social rights paradigm
to take root and flourish in post-Charter Canada. Today, commitments to a
distinctive idea of substantive equality, linked to social rights and
international human rights law, is still strong, or stronger at the community
level, where disability rights, anti-poverty, food security, women’s and other
groups in in all parts of the country continue to embrace both social rights and
the international nature of the human rights project. Beyond that, however,
there is far less evidence of any meaningful commitment to the distinctive
Canadian social rights paradigm that was widely affirmed in the period
leading up to, and immediately following the adoption of the Charter. As

Caulfield, eds., Public Health Law and Policy in Canada, 3rd ed. (Markham:
LexisNexis Canada, 2013) 91.

49 Constitution Act, 1982, s 36, being Schedule B to the Canada Act 1982
(UK), 1982, c 11: See generally Martha Jackman and Bruce Porter, “Rights-based
Strategies to Address Homelessness and Poverty in Canada: The Constitutional

50 Canadian Heritage, Core Document forming part of the Reports of States
Parties: Canada (October 1997), online: Canadian Heritage www.pch.gc.ca. The
document was submitted by Canada pursuant to HRI/CORE/1 sent to States parties
by note verbale of the Secretary General, G/SO 221 (1) of 26 April 1991.

51 Empty Words And Double Standards: Canada’s Failure To Respect And
Rights Council in relation to the May 2013 Universal Periodic Review of Canada
(Ottawa, October, 2012) online: Social Rights in Canada CURA
http://socialrightscura.ca; Bruce Porter, "Claiming Adjudicative Space: Social Rights,
Equality and Citizenship" in Margot Young et al, eds, Poverty: Rights, Social
Citizenship, and Legal Activism (Vancouver: UBC Press, 2007) 77.
C. The Charter Critics and the Justiciability of Social Rights

There was some indication in early Charter jurisprudence that a distinctive Canadian human rights paradigm inclusive of social rights might take root in the courts. In his 1986 decision in *R v Oakes*, Chief Justice Dickson spoke eloquently of the values and principles which must guide Charter interpretation, including “respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society.”53 In 1989, in *Irwin Toy Ltd. v Quebec (Attorney General)*54 the Supreme Court rejected a corporate challenge to a ban on children’s advertising, emphasizing that the protection of vulnerable groups is a core value which must guide the interpretation of Charter rights, as well as the assessment of reasonable limits under section 1. The Court concluded in *Irwin Toy* that corporate-commercial economic rights were not included in section 7.55 However Chief Justice Dickson was careful to distinguish these private property-related rights from the social and economic rights “included in various international covenants, as rights to social security, equal pay for equal work, adequate food, clothing and shelter …”56 This latter category of rights, the court cautioned, should not be excluded from the scope of section 7 at such an early stage of the Charter’s development.57

In retrospect we can also see the serious challenges facing the emergent social rights paradigm in Canada. While attracting a very high level of public support in all parts of the country, the enactment of the Charter was met with significant ambivalence and scepticism within some political, academic and judicial circles. Many remained loyal to the Westminster tradition of parliamentary supremacy and were concerned about expanding the role of the courts.58 When it came time to reconcile the two traditions of parliamentary sovereignty and constitutional supremacy, the traditional distinctions between civil and political rights on the one hand, and social rights on the other, provided a convenient, though misguided, way of limiting

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52 Above note 1.
54 [1989] 1 SCR 927 [*Irwin Toy*].
55 *Ibid* at 1003.
56 *Ibid*.
57 *Ibid*.
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costitutional supremacy. Traditional civil and political rights, conceived as negative rights, were ascribed to the courts while social rights, conceived as positive rights, were deemed to fall within the exclusive purview of legislatures, engaging matters beyond the institutional legitimacy and competence of the courts.59 Quoting from Oliver Wendell Holmes, for example, constitutional scholar Peter Hogg characterized social rights as “issues upon which elections are won and lost”60 – an oft-repeated statement in Canadian social rights jurisprudence.

The problematic and now widely discredited distinction between justiciable civil and political rights and non-justiciable social rights has a number of adverse consequences for Charter interpretation, however. When they are conceived solely as negative rights, broadly framed guarantees, such as rights to life and security of the person, are whittled down to freedom from government interference and stripped of their social rights content. The effect is to disenfranchise disadvantaged groups from the protection of section 7 since, as the Supreme Court noted in Irwin Toy: “Vulnerable groups will claim the need for protection by the government whereas other groups and individuals will assert that the government should not intrude.”62 Moreover, a negative rights framework reduces section 15 – the very Charter section that was drafted to ensure substantive rather than formal equality for disadvantaged groups – to a guarantee of freedom simply from direct discrimination.62 Finally, the remedial promise of section 24 is rendered


60 As Hogg expressed it: “It has been suggested that “security of the person” incudes the economic capacity to satisfy basic human needs … The trouble with this argument is that it … involves a massive expansion of judicial review, since it would bring under judicial scrutiny all of the elements of the modern welfare state, including … of course, the level of public expenditures on social programmes. As Oliver Wendell Holmes would have pointed out, these are the issues upon which elections are won and lost; the judges need a clear mandate to enter that arena and s. 7 does not provide that clear mandate.” Peter Hogg, Constitutional Law of Canada, 4th ed. (Scarborough, ON: Carswell, 1997) at 1073.


62 Margot Young, “Blissed Out: Section 15 at Twenty” in Sheila McIntyre and Sandra Rodgers, eds., Diminishing Returns: Inequality and the Canadian Charter of Rights and Freedoms (Markham, Ontario: LexisNexis, 2006) 45; Fay Faraday,
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illusory in relation to social rights, if claims requiring positive action are
deemed to be non-justiciable. The bifurcation of positive and negative rights
as a simplistic solution to the separation of powers has thus seriously
undermined the inclusive paradigm of social rights for which women, people
with disabilities and other stakeholders fought. This approach has also been
profoundly out of step with the growing international recognition of the
interconnectedness and interdependence of all human rights. When
categorized as non-justiciable, and as matters to be relegated to legislatures
and “resolved” by elections, social rights lose their legitimacy as rights claims
and become no more than competing policy positions advocated by “interest
groups” lacking in political power. The result, intentional or not, has too
often been to banish those living in poverty and homelessness from access to
justice and the equal protection and benefit of the Charter.

Unfortunately, the argument that courts should not engage with issues
of social policy in response to Charter claims was made not only by the
conservative right. It also found support in a parallel critique of rights-
discourse put forward by prominent voices within the social democratic left. Among the leftist Charter critics, the concern was about vesting privileged
and unelected judges with the power to review social policy and programs
adopted by democratically elected and accountable legislatures. Like their
conservative counterparts, these critics accepted that the dominant legal
paradigm under the Charter would be individualistic and negative-rights
oriented. On that basis they insisted that the pursuit of social justice through
the courts would prove illusory and would distract social justice movements
from more fruitful political avenues for seeking progressive change. Rather
than insisting that the judicial system be reformed or transformed to realize

Margaret Denike & M. Kate Stephenson, eds., Making Equality Rights Real: Securing
Substantive Equality Under the Charter (Toronto: Irwin Law Inc., 2006); Sharon
Donna McIvor, “Aboriginal Women Unmasked: Using Equality Litigation to
Advance Women’s Rights” (2004) 16 CJWL 106 at 111; Gwen Brodsky & Shelagh

63 On interdependence of social rights and women’s equality rights, see for
example Leilani Farha, “Committee on the Elimination of Discrimination Against
Women: Women Claiming Economic, Social and Cultural Rights – the CEDAW
in International and Comparative Law (New York: Cambridge University Press,
2008); Leilani Farha, Shelagh Day & Marianne Mollman, "The Montreal Principles:
Needed Clarity on Women's Right to Equal Enjoyment of Economic, Social and

64 See for example Harry J Glasbeek & Michael Mandel, “The Legalization of
Politics in Advanced Capitalism: The Canadian Charter of Rights and Freedoms”
Sup Ct L Rev 473; Allan C Hutchinson & Andrew Petter, “Private Rights/Public
the expectations inherent in the social rights paradigm put forward by women’s and other equality seeking groups, Charter critics tended to accepted the status quo, pointing to negative legal outcomes in social rights cases as proof that rights-based approaches were misguided.

While the Canadian courts have been accused by some of undue Charter activism, nothing could be further from the truth insofar as the socio-economic rights claims of the poor and other disadvantaged groups are concerned. In response to the challenge of reconciling constitutional supremacy with parliamentary democracy, judicial culture in Canada has made a virtue out of deference to legislatures and Parliament on matters of social policy. There has been a widespread failure to acknowledge that, in many cases, such deference can amount to an abdication of judicial responsibility to ensure that the Charter provides adequate safeguards for the rights and interests of the most marginalized groups in Canadian society. Those attempting to litigate social rights claims have been subject to criticism for risking negative jurisprudence, or for misleading rights claimants into thinking that rights could actually be realized through the courts. Thus Louise Arbour has noted that “the first two decades of Charter litigation testify to a certain timidity – both on the part of litigants and the courts – to tackle head on the claims emerging from the right to be free from want.”65 But, the less Canadian courts have been asked, or have been willing, to determine social rights claims, the more the negative rights paradigm appears to have settled-in, almost by default.66

What is remarkable about the first thirty years of Charter jurisprudence in relation to social rights claims is not any observable trend of having been successful or unsuccessful – there are examples of both.67 Rather, it is the relative absence of cases addressing what were seen at the outset of the Charter as the critical human rights issues of poverty and systemic inequality. Social rights have, with limited exceptions, remained largely unclaimed. Those few cases with significant social rights potential

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that have been brought before the courts have, as often as not, been unheard: victims of motions to strike or of lower court losses, with leave to appeal usually denied by appellate and the Supreme Court. As a consequence, more than three decades after the enactment of the Charter, the critical question of the extent to which Charter rights to life, security of the person and equality include social rights guaranteed under international human rights law, remains unanswered by the Canadian courts.

In *Gosselin v Quebec (Attorney General)* the only Supreme Court case to directly address the issue of whether social rights guaranteed under international human rights law ought to be included in the interpretation of section 7, since the question was left open in Irwin Toy, the scope of the Charter’s protection for social rights was again left unresolved. However, Canadian lower courts appear to be taking the Supreme Court’s silence and continued denials of leave to appeal in poverty-related cases as a license to treat the matter as closed, preventing poor people from even getting a hearing into denials of civil legal aid, access to housing, or other critical social rights challenges. Perhaps the over-riding lesson of the last decade, then, is less about the track record of social rights claims under the Charter, and more about the failure of political solutions that social rights claimants were advised by the Charter critics to rely upon. There has been little diversion of attention or resources to legal cases addressing social rights claims in Canada. The failure of Canadian democracy to address poverty and homelessness and the denial of meaningful access to democratic procedures for those affected by social rights violations is a much bigger story than that.

**D. Social Rights beyond the Courts**

The federalist dimensions of the social rights paradigm of 1980s Canada also proved to be fragile. The worldwide pressure for structural adjustment in the early 1990s resulted in the

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68 Sanda Rodgers, “Getting Heard: Leave to Appeal, Interveners and Procedural Barriers to Social Justice in the Supreme Court of Canada” (2010) 50 SCLR (2d) 1 at 40; see also Martha Jackman & Bruce’s review in Chapter 2.

69 2002 SCC 84.

Canadian government relinquishing social rights standards embedded in cost-sharing agreements with the provinces.\textsuperscript{71} In particular, the Canada Assistance Plan\textsuperscript{72} was abandoned in 1995, and with it any political commitment to implementing and protecting the right to adequate social assistance through such conditional shared-cost programs.\textsuperscript{73} Non-binding principles, sometimes not even put in writing, have come to replace social entitlements embedded in legislation. Provinces have further downloaded key programs in housing, social assistance and health care to municipalities and local service providers. The “reinventing government” movement has brought about widespread privatization of publicly delivered services and the replacement of social rights-based standards with market criteria to assess public services.\textsuperscript{74}

Over the past decade, the capacity of civil society organizations to pursue social rights claims, either in court or through social mobilization, has also been seriously eroded. Since the 1970s, the human rights movement in Canada has depended heavily on government recognition of, and financial support for, the independent role of civil society organizations as a means of giving voice to concerns of groups that would otherwise lack the resources or ability to participate in democratic processes. Unlike their counterparts in other countries, where charitable or development funding is more available, human rights groups in Canada have relied primarily on public rather than private funding. This was seen as the hallmark of a social democracy, mitigating the need to cater to charity and charitable models of addressing social rights violations linked to poverty and inequality.\textsuperscript{75} With the election in 2004 of a federal party whose leader had been steadfastly hostile to human rights “interest groups”, the fragility of this commitment became clear.

\textsuperscript{71} International Monetary Fund, Canada: Article IV Consultation Discussions Statement by the Fund Mission to the Minister of Finance (Ottawa, December 7, 1995) online: The Halifax Initiative www.halifaxinitiative.org.
\textsuperscript{72} Canada Assistance Plan, above note 46.
The systematic exclusion of human rights and equality seeking groups from the federal programs that remain in existence and the outright cancellation of funding for the Court Challenges Program of Canada, Status of Women Canada’s Policy Research Program, the Law Commission of Canada, the National Council on Welfare, Aboriginal health programs and many other organizations and institutions promoting human rights accountability, have had profound effects on the capacity of civil society organizations to advocate for social rights in Canada. Moreover, in response to the increased reliance of human rights and environmental organizations on charitable donations, the federal Minister of Finance has allocated 8 million dollars of special funding to the Canada Revenue Agency to conduct audits of organizations suspected of expending more than ten per cent of their resources on any form of advocacy, including public education, research, meetings or other activities that might promote change to or retention of existing programs, policies or laws. This has had a significant chilling effect across the country, creating a fear that charitable status could be lost by speaking out about violations of human rights where remedies require changes to policy or legislation.

E. Ongoing Engagement with Social Rights

A major strength of the social rights paradigm in Canada is its grounding in evolving international human rights procedures, frameworks and norms. Notwithstanding a hostile domestic climate, Canadian NGOs have continued to engage with all aspects of UN human rights review, adjudication and norm-setting procedures. These have included periodic reviews of Canada undertaken by various UN treaty monitoring bodies; the Universal Periodic Review before the UN Human Rights Council; missions by Special Rapporteurs to Canada; petitions under optional complaints procedures; and investigations into rights violations in Canada conducted by international and regional bodies. Beyond engaging in these existing mechanisms related to Canada’s compliance with international and regional human rights instruments, social rights advocates in Canada have also participated in new


77 Voices-voix, *Canada’s Human Rights Obligations*, above note 75.

78 Civil society and Indigenous initiatives in Canada in relation to these procedures are outlined at CURA, “International and Regional Accountability Initiatives” (2013) online: Social Rights in Canada CURA http://socialrightscura.ca.
international developments in the field of social rights. The dynamic evolution of social rights practices, in other countries and at the international level, has provided a framework for advancing social rights at home, despite the comparative inertia of Canadian courts and legislators.

For example, disability rights groups in Canada were actively involved in the negotiation of the text of the new Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol.79 The CRPD provides for self-standing rights to housing, education, health care, work, social security, an adequate standard of living, social protection and the right to live independently in the community and acts as a key reference point for domestic advocacy groups, such as the Council of Canadians with Disabilities, working to advance the rights of people with disabilities in Canada.80 Aboriginal representatives from Canada also participated actively in the drafting of the UN Declaration of the Rights of Indigenous People, which addresses many social rights issues in the context of Indigenous and treaty rights, colonization and dispossession of Indigenous lands and resources.81 While Canada was one of the few states refusing to support the UNDRIP when it was adopted by the UN Human Rights Council and the UN General Assembly, the Declaration has been central to social rights advocacy undertaken by Indigenous organizations in Canada. The federal government eventually reversed its position and agreed to endorse the UNDRIP.82 Advocates from Canada were also actively engaged in the ongoing debate over the justiciability of economic, social and cultural rights, including at the Open Ended Working Group mandated by the UN Human Rights Council to consider an Optional Protocol to the ICESCR83 to establish a complaints procedure for victims of violations of economic and social rights. The adoption on December 10, 2008, and entry into force on May 5, 2013 of

80 Council of Canadians with Disabilities, online: Council of Canadians with Disabilities www.ccdonline.ca.
the OP-ICESCR marked the international community’s formal acceptance of the fact that access to adjudication and remedy for rights violations is as fundamental for social rights as it is for civil and political rights claimants. The government of Canada has continued to oppose recognition of the justiciability of social rights and, as noted above, has refused to support, sign or ratify the OP-ICESCR\textsuperscript{84}. Whatever position governments may take regarding the justiciability of social rights, either internationally or before Canadian courts, however, social rights advocates now operate within this new internationally recognized social rights paradigm. That paradigm now informs not only legal but also political social rights advocacy in Canada.\textsuperscript{85}

While it is undeniable that resources and capacity have been seriously reduced by the Harper government’s attacks on human rights and programs that support them, at the same time many new spaces are opening up, and many new actors are becoming involved in social rights advocacy at the domestic level. Current developments in the field of law and in social policy suggest that social rights practice will be more diversified in the future than may have been imagined in the past. On the social policy side, the new federalism and the contracted-out state make it difficult to envisage any comprehensive protection of social rights that does not include multiple actors and a number of different policy areas. In the future, social rights strategies may need to encompass a variety of formal and informal instruments and processes. As the Special Rapporteur on the Right to Food made clear in his recommendations to Canada following his 2013 mission, a food security strategy, for example, will need to engage with a range of policies, programs and instruments, including income security, minimum wage, indigenous rights to land and resources, social security, affordable housing programs, support for alternative food production, land-holding regulation, and new supply management and distribution systems.\textsuperscript{86}

As for the legal context for advancing social rights in Canada, the Supreme Court has increasingly moved to diversify the space for rights claims to be heard and enforced. The Court has recognized that a broad array of administrative decision-makers and tribunals must actively engage with

\textsuperscript{84} Above note 8.

\textsuperscript{85} The claim in Tanudjaja v Attorney General (Canada) (Application), above note 70, is an example of legal advocacy informed by the international human rights paradigm. An example of a political initiative informed by recent developments internationally is Bill C-400, An Act to ensure secure, adequate, accessible and affordable housing for Canadians, 1st Sess, 42nd Parl, 2012 (first Reading 16 February 2012). See generally Bruce Porter’s discussion in Chapter 1 in this book.

\textsuperscript{86} Report of the Special Rapporteur on the right to food, above note 5.
human rights norms. This means that rights must be protected at the level where decisions affecting rights are made: both where they are put at risk and where decision-making can play a constructive role in realizing rights. In two of its most important Charter cases in the social rights area: Eldridge v British Columbia (Attorney General)\(^8\) and Canada (Attorney General) v PHS Community Services Society (Insight)\(^9\), the Supreme Court has drawn attention to the fact that substantive rights, such as access to health care for vulnerable groups, may often depend more on the quality of delegated decision-making than on the precise wording or explicit provisions of any applicable legislation. By articulating a standard of reasonable decision-making, consistent with the Charter and international human rights, the Court has opened up an expanded field of government decision-making to review for compliance with domestic and international social rights norms.\(^9\) The scope of protection for social rights in Canadian law is unlikely to be resolved by a single administrative or Charter decision answering for all time the question, left open in the Irwin Toy case, of the status of social and economic rights under the Charter. Rather, the answer will evolve as a number of administrative and judicial bodies confront the questions that have been put before them as a result of the Supreme Court’s opening-up of new spaces in which social rights-related claims can be advanced.

**F. Moving Forward: New Avenues for Social Rights Practice**

What is required, then, to advance social rights in Canada? On the one hand, it will be important to maintain a commitment to international human rights and to equality-seeking social movements – the twin foundations of social rights in Canada. As described above, the human rights paradigm that has emerged internationally has strong resonance with the ideal of substantive equality as it has been articulated and pursued by women’s, disability and other equality seeking groups in Canada over the past four decades. The critical links between domestic and international human rights has been under assault from recent governments in Canada, but they continue to be solid at the civil society level. On the other hand, it will be necessary to diversify social rights practice: to take advantage of the variety of fora that are now available for advancing social rights claims in Canada; to address the

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87 See Lorne Sossin and Andrea Hill’s discussion of the dissemination of rights adjudication to a wide range of administrative tribunals in Chapter 11 of this book.


90 See the analysis by Lorne Sossin and Andrea Hill in Chapter 11 of this book.
challenges of the contracted-out state and downloading of social service delivery; and to engage more constructively with new models of federalism. It will also be important to ensure that the new social rights paradigm is inclusive of experiences of Aboriginal communities, people with disabilities, racialized groups, migrants and others who have been marginalized, not only from mainstream politics but, all too often, from the human rights movement itself.

This book emerged from a Social Sciences and Humanities Research Council of Canada (SSHRC) Community-University Research Alliance (CURA) project entitled: “Reconceiving Human Rights for the New Social Rights Paradigm.” The SSHRC’s CURA program and the CURA research project we co-directed provided unique opportunities to link innovative academic research in domestic and international social rights law and policy to community-based social rights initiatives in a wide range of fields of human rights practice. The CURA grant enabled us to bring a number of Quebec and Canadian academics and activists together for a symposium on emerging approaches to social rights practice, leading to the publication of this edited collection, which includes contributions by many of the CURA researchers and collaborators. The book provides examples of just some of the wide range of new spaces, approaches, and opportunities for advancing social rights in Canada. It is hoped, however, that the underlying methodology and commitment evidenced by the authors in the book, including both academics and community-based social rights advocates, will act as a catalyst for ongoing work and networking in this critical area of research.

In the first chapter Bruce Porter explores how proposals for rights-based housing and anti-poverty strategies in Canada have opened an important new space for advancing social rights. He considers how the new paradigm of social rights, as claimable rights under international law, can provide a framework for such domestic strategies. Porter proposes a more robust integration of rights and social policy, to engage directly with Canada’s international human rights law obligation to progressively realize social rights to the maximum of available resources. He suggests how the standard of “reasonableness” that has been adopted under the new OP-ICESCR91 offers a normative framework for housing and anti-poverty strategies in Canada. And he explains how such strategies must entail coherent and coordinated initiatives engaging multiple levels of government, Aboriginal peoples, and other stakeholders; incorporating goals and timelines; and providing effective claiming, adjudication and monitoring procedures.

In the second chapter Martha Jackman and Bruce Porter consider the implications of evolving domestic constitutional and human rights jurisprudence for the protection of social rights to housing, food and an adequate standard of living, in order to assess whether a rights-based

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91 OP-ICESCR, above note 8.
framework for housing and anti-poverty strategies can also be found in the Canadian Charter. Examining recent Supreme Court case law on the right to life and security of the person under section 7 and the Court’s professed return to a substantive approach to equality under section 15, the authors contend that there is ample room for the courts to address Canadian governments’ failure to combat widespread homelessness, hunger and poverty, as violations of the Charter. They further argue that the reasonableness of government action and inaction in relation to poverty and homelessness can be effectively assessed under section 1 of the Charter. Beyond judicial recognition of social rights claims, however, the authors suggest that rights-based federal, provincial/territorial and municipal anti-poverty and housing strategies are urgently required.

In the third chapter, Vincent Greason provides a critical assessment of existing anti-poverty strategies both in Quebec and in other Canadian provinces. Greason finds that anti-poverty strategies have been shaped by the context in which they were created: one of neoliberal consolidation, reduced taxation, and offloading of state responsibilities to non-state entities. He identifies five common themes in provincial anti-poverty initiatives: i) the repackaging of poverty as a social rather than material deprivation; ii) a focus on poverty measurement rather than poverty elimination; iii) emphasis on individual responsibility; iv) integrating philanthropic organizations as key actors, and; v) reframing social services to address a range of social needs rather than addressing economic deprivation. Greason notes that two themes have been markedly absent from anti-poverty strategies: attention to growing income disparities and the incorporation of a human rights framework for fighting poverty. Greason calls for a reorientation of anti-poverty strategies in Quebec and Canada, around a framework of social rights and redistributive justice.

In the fourth chapter, Barbara Cameron provides an updated analysis of the federal spending power as an instrument for advancing social rights in Canada. She argues that there are three distinct accountability relationships implicated in federal transfers to fund provincial social programs: the social rights relationship (legislature to citizen); the federal relationship (federal to provincial executive); and the responsible government relationship (executive to legislature). By distinguishing these three sets of accountability relationships, Cameron is able to identify three corresponding accountability regimes that have governed federal social transfers in Canada: the administrative accountability regime, seen in the Canada Assistance Plan;\(^{92}\) the political accountability regime, evident in the Canada Health Act;\(^{93}\) and the public reporting accountability regime, associated with the Social Union Framework agreements. Cameron finds that none of these is entirely satisfactory and she proposes an alternative accountability regime that would

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92 Canada Assistance Plan, above note 46.
93 Canada Health Act, above note 45.
affirm the expansion of the social citizenship rights of members of Canadian society as the primary purpose of federal social transfers.

In the fifth chapter, Marie-Ève Sylvestre and Céline Bellot develop a critical understanding of homelessness as a human rights issue by documenting and assessing discriminatory and punitive responses to homelessness in Canada. The authors argue that an analysis of the discriminatory discourses that prevail in relation to homeless people strongly supports the recognition of homelessness as an analogous ground of discrimination, as well as supporting housing rights claims under sections 7 and 15 of the Charter. The authors contend that the courts must consider the complexity of embedded social structures and interactions at play in this area, understanding homelessness as a social construct and characteristic that is difficult for affected individuals to change. Recognizing the discriminatory underpinnings of, and responses to, homelessness should also lead, in Sylvestre’s and Bellot’s view, to a reorientation of social programs to address the structural causes of homelessness and the reversal of cuts to income support, housing and employment programs that have been part of the punitive responses to homelessness in Canada in recent years.

In the sixth chapter Kerri Froc explores the interdependence of equality and social rights, analyzing how Canadian courts have dealt with discrimination linked to socioeconomic status and women’s right to just conditions of work in section 15 Charter cases. She finds that in cases involving women at work, the test for analogous grounds, initially sensitive to social and historical context and power relations, has been increasingly applied as a hard status/conduct binary. The formerly contextualized concept of “discrete and insular minorities” has, in Froc’s view, been fused with a static notion of immutability, undermining women’s legitimate claims to equality and denying discrimination in cases of mutable, gendered conduct that is fundamentally linked to women’s socio-economic inequality. Froc argues that recognizing the gendered nature of women’s work would shift the focus of discrimination analysis from considerations of immutability to how systems of economic and gender subordination operate in fact to construct women’s work.

In Chapter Seven, Shelagh Day, Gwen Brodsky and Yvonne Peters, analyze the current legal landscape for litigating the substantive equality rights of people with disabilities. While the Supreme Court’s decisions in British Columbia (Public Service Employee Relations Comm.) v BCGEU (Meiorin)\textsuperscript{94} and British Columbia (Superintendent of Motor Vehicles) v British Columbia (Council of Human Rights) (Grisman)\textsuperscript{95} were cause for optimism that the courts would take adverse effects discrimination seriously, and apply the duty to accommodate so as to engage with systemic obstacles to

\textsuperscript{94} [1993] 3 SCR 3.

\textsuperscript{95} [1999] 3 SCR 868.
equality, the authors describe how subsequent human rights case law has regressed toward a minimalist version of accommodation. The authors note, however, that in the recent Moore v British Columbia (Education)96 decision, the Supreme Court rejected the formalistic use of a comparator group and rejected a narrow conception of services available to the public. They explain that this positive development comes at a time when Canada’s ratification of the UN Convention of Rights of People with Disabilities97 should also provide domestic tribunals and courts with motivation for fusing social rights with substantive equality analysis and recommitting to the promise of social transformation and inclusion of persons with disabilities that is at the core of the section 15 equality guarantee.

In chapter eight, Vince Calderhead and Claire McNeil reflect on their experience representing low income consumers of electricity in Nova Scotia, in the Boulter v Nova Scotia Power Incorporated (Boulter)98 case, challenging a legislative provision prohibiting utilities monopolies from adjusting rates based on ability to pay. The authors point explain that, while most social rights equality litigation has addressed unequal access to government services or benefits, the Boulter case raised the important issue of inequalities in accessing essential services provided by private actors; the regulatory responsibilities of governments to ensure access by all who are in need; and the expense rather than the income side of household finances. The authors point out that what the courts found particularly challenging in Boulter was the idea of applying constitutional equality rights to market pricing. While the litigation was ultimately unsuccessful, the issues raised in the case were critical for those living in poverty and the authors suggest that the basis for the Boulter decision may ultimately be revisited in light of more recent Supreme Court jurisprudence rejecting formal comparator group analysis.

In Chapter nine, Constance MacIntosh assesses the viability of new approaches to litigating Aboriginal claims to the right to water in Canada, focusing on whether fiduciary law creates an actionable right to safe drinking water for Aboriginal peoples living on reserves. Reviewing the shocking state of water safety on reserves, the author points out that the Crown has not only offloaded to First Nations governments the responsibility to meet water quality standards which the Crown had previously failed to meet, it has also failed to provide First Nations with the facilities or resources that would enable them to meet these basic standards. Such policies do not, MacIntosh argues, comply with standards of reasonableness and due diligence under fiduciary law. While the author notes that Canada has resisted recognizing the right to water under international human rights law, that right is now firmly established internationally as a component of treaties ratified by

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96 2012 SCC 61.
98 2009 NSCA 17.
Canada, and provides reinforcement for a rigorous standard of review of whether the Crown has met its fiduciary duties towards First Nations.

In Chapter Ten, Alana Klein considers new avenues for advancing the right to health in Canada, focusing on the challenging issue of human rights scrutiny of health resources distribution. Reviewing the current state of Charter jurisprudence on the issue of health care equity, Klein observes a judicial reticence to engage with critical issues of resource distribution and considers what benefits judicial review of health care decisions may offer. Since Canadian provinces have come to rely on participation and accountability to drive more responsive resource allocation, Klein suggests that promoting participatory and accountable governance at the provincial and local levels may be an avenue for activism in support of the right to health in Canada. The existence of accountability and participation requirements at the local level might then serve to enhance judicial confidence in addressing human rights claims, and enable health policy decision-making to be more responsive to rights-based claims and adjudication. Klein suggests that international actors may also play an important role in monitoring the outcome of participatory governance in Canadian health care.

In Chapter Eleven, Lorne Sossin and Andrea Hill consider the possibilities for advancing social rights in the crucial area of administrative decision-making. As the focus of social rights compliance has turned toward government plans and policies, the authors contend that the role of agencies, boards, and commissions charged with implementing those plans and policies must be better recognized as a critical area of social rights compliance and implementation. In particular, they argue that such bodies should create a meaningful and accessible system of establishing and protecting social rights, by firmly rooting adjudication in constitutional and international human rights commitments; in the practical realities of the administrative justice system; and in the lived experiences of the parties who come before them. While the Supreme Court’s recent decision to adopt a new robust standard of administrative law reasonableness, in Doré v Barreau du Québec,99 offers significant potential for protection of social rights in day to day administrative decision-making, the authors raise the concern that, without adequate resources, administrative tribunals will not be able to fulfill the critical role that has now been assigned to them.

In Chapter twelve, Sylvie Paquerot examines the practical application of the principle of the interdependence of environmental and human rights in the work of the Ligue des droits et libertés du Québec (Ligue). She explains that the Ligue first focused on the connection between procedural rights and environmental protection: advocating against Strategic Lawsuits Against Public Participation (SLAPPs), used by corporations in an attempt to silence environmental challenges. Later the Ligue advocated more substantively for rights to water, health and self-determination, in its opposition to fracking for

\[99\] 2012 SCC 2012.
shale gas in Quebec. The author suggests that situating environmental issues within a human rights framework allowed the Ligue to reinforce principles of environmental responsibility, both politically and judicially. She advocates further alliances between human rights and environmental groups, proposing a transformation of sector-specific advocacy into a more comprehensive and inclusive affirmation of the right to public participation in social and environmental decisions, mobilizing around the right to ‘say no’ to development that would undermine social and environmental rights.

In Chapter Thirteen, Graham Mayeda engages with another critical question for social rights advocacy: the relationship between courts and social protest movements. Mayeda analyses how courts in Canada have traditionally considered the right to protest in terms of competing rights or claims to public space, pitting protesters’ right to freedom of expression against the rights of residents to walk their dogs or use parks for recreational purposes, and linking the rights of dog-walkers, rather than the rights of protestors, to the public interest. In opposition to the competing rights paradigm, Mayeda outlines a social rights approach that would promote legal rules that facilitate rather than silence protest. Drawing on the transformative dimension of social rights emphasized in South African commentary and jurisprudence, Mayeda proposes that a social rights approach recognize and support the transformative role of public protest and social conflict in a democratic state. He further urges the courts to recognize deliberative democracy as a core public interest and acknowledge and facilitate claims made by the public against the ‘justice’ of the existing social order.

In the final chapter, Margot Young reflects on judicial responses to neoliberalism and widening socio-economic inequality in Canada in the adjudication of recent claims under sections 7 and 15 of the Charter. Focusing on the Victoria (City) v Adams100 and Insite101 cases, she argues that rights claims must be contextualized in the spatial aspect of struggles for equality and justice. The author suggests that in both of these cases, consideration of the social context of poverty and homelessness is critical, but that context also has a geographical and spatial dimension. She points out that rights claims advanced in these cases demanded a re-shaping of city space around the realization of a social right. Young finds that the legal victories in Adams and Insite are localized, however, leaving the systemic barriers to realizing social rights largely intact. Effective challenges to neoliberal inequality within urban landscapes will, according to Young, require a broader re-ordering and re-allocation, and thus a re-production, of spaces and civic geography.

G. Conclusion

100 2009 BCCA 563.
101 Insite, above note 89.
The contributors to this book hope to advance social rights in Canada by outlining opportunities and challenges in a wide range of fields. Provincial and national housing and anti-poverty strategies may be transformed by a revitalized social rights paradigm. So too may new and existing accountability regimes within Canadian federalism. Substantive equality can be reconceived and updated by addressing discriminatory and punitive responses to homelessness; by relinquishing the judicial obsession with immutability as a marker of disadvantage; by reconceptualizing reasonable accommodation of disability; and by engaging with governments’ obligations to regulate private actors. Relationships between Aboriginal communities and the Crown may be recontoured through recognition and enforcement of Aboriginal and treaty related social rights claims. Health care adjudication and administrative decision-making can become new spaces for the pursuit of social rights claims. Incorporating environmental rights, social protest, and the struggles of marginalized communities in Canadian inner-cities may give rise to a more inclusive, comprehensive and creative human rights practice. All of these advances would engage social rights claimants in a revitalized, more inclusive human rights movement in Canada.

The central role of social rights as a response and corrective to inequality and exclusion within Canada’s constitutional democracy may be profoundly threatened – but not lost. The social rights paradigm that emerged in Canada in the pre-Charter period continues to be embraced by an increasingly wide range of constituencies. The reasons are clear. Social rights are interdependent with, and indivisible from, civil and political rights. They speak in a more direct way to aspects of material well-being that are necessary conditions for full and effective participation in social, economic and political life. Social rights are founded upon a more holistic understanding of both government and citizenship. They do not simply restrain governments. They reflect and reinforce the indispensable role of governments in ensuring the wellbeing of individuals, households and communities. They engage with the need for ongoing social transformation and structural change that flows from providing fair hearings to previously silenced voices and unheard claims. Social rights remain fundamental to recognizing the unique circumstances and needs of equality seeking and marginalized groups and to giving real effect to equality.

As Justice Cory observed in his concurring judgment for the majority of the Supreme Court in Vriend v Alberta, the notion of equality and the “just society” as core values require more than rhetorical affirmation if they are to continue to define our collective identity:

The rights enshrined in s. 15(1) of the Charter are fundamental to Canada. They reflect the fondest dreams, the highest hopes and finest aspirations of Canadian society…. It is easy to praise these concepts as providing the foundation for a just society which permits every individual to live in dignity and in harmony
with all. The difficulty lies in giving real effect to equality. Difficult as the goal of equality may be it is worth the arduous struggle to attain.\textsuperscript{102}

The gap between our national self-image and the reality of rights violations perpetrated by Canadian governments at home and abroad can no longer be filled with reassuring affirmations of shared values of equality and the just society. If we are to engage in the “arduous struggle” that is at the heart of the social rights/equality paradigm, poverty, homelessness, hunger and Aboriginal dispossession in the midst of affluence and unsustainable development must be understood first and foremost as human rights violations demanding urgent and concerted attention. Canada is at a crossroads. Social justice, equality and inclusiveness require a broad re-engagement with the international human rights project and a recommitment to the transformational goals that were embraced by equality seeking groups and others in the early years of Canada’s constitutional democracy.

Social rights practice in Canada need not start from scratch. It is not a matter of renegotiating the content of constitutional rights in Canada but rather of retrieving and building on the existing domestic and international human rights foundation. Key questions about the scope and meaning of relevant \textit{Charter} provisions remain open. Evolving international human rights norms continue to be accepted by courts, at least in theory, as relevant and persuasive in interpreting and applying domestic law. Canada remains a state party to UN treaties guaranteeing social rights. There is a lot to work with. However, the time has come for us to choose the kind of country we want to live in. The contributors to this book have sketched the beginnings of a blueprint for reconceiving and retrieving social rights in a range of spheres of human rights practice, both political and legal. Meaningful advances in social rights in Canada will, however, depend on a broader commitment to renew and update the struggle to realize social rights and equality, among legislators and policy makers, administrative decision-makers and tribunals, Canadian courts at all levels, and within civil society itself. This book can only offer direction: the choice to commit to social rights is one we must all make.

\textsuperscript{102} \textit{Vriend v Alberta}, [1998] 1 SCR 4 at para 68.