

# ***Gosselin v. Québec (Attorney General)***

Women's Court of Canada  
[2006] 1 W. C. R. 193

*The Women's Court of Canada reconsiders the 2002 decision in Gosselin v. Québec (Attorney General), in which the Supreme Court of Canada ruled that section 29(a) of Québec's Regulation Respecting Social Aid, which reduced the welfare rate of recipients under the age of thirty to below subsistence level, did not violate sections 7 or 15 of the Canadian Charter of Rights and Freedoms or section 45 of the Québec Charter of Rights and Freedoms. According to the Women's Court, the Regulation creates an impermissible distinction based on age; in addition, age combined with reliance on social assistance is an analogous ground for the purposes of section 15 of the Canadian Charter. Withholding from the under-thirty age group the amount of social assistance deemed necessary by the government itself to meet basic needs reveals that the scheme rests on stereotypical assumptions that these recipients are lax, unmotivated, and unwilling to seek work unless coerced into it. Section 15 is also violated by withholding essential dignity and equality - constituting benefits from a portion of the population. The reduced rate jeopardizes the right to adequate food, shelter, clothing, and security of the person, coerces some women into prostitution and survival sex, and makes them more vulnerable to violence and harassment. These are further assaults on human dignity, contrary to section 15.*

*The Women's Court further finds that the Regulation violates section 7 of the Canadian Charter. Economic interests that seriously affect physical and psychological integrity should not be excluded from Charter protection; rather, section 7 should be interpreted so as to protect against the deprivations of life and security of the person that are caused by extreme poverty, and so as to create a positive obligation to create an adequate welfare scheme. The Regulation violates the rights to life and security of the person, and does not accord with the principles of fundamental justice. It is a basic tenet of Canadian justice that our laws must not permit or create circumstances that deprive persons of the basic necessities of life. Through arbitrariness and over-breadth, fundamental justice is also violated. When section 7 of the Charter is violated, there is arguably no need to consider section 1, but the Regulation cannot be justified in any event.*

*The Regulation also violates section 45 of the Québec Charter. Reflecting international norms, section 45 creates an obligation to ensure subsistence needs are provided for in legislation. The government had already set the level of financial assistance needed to ensure an acceptable standard of living within the meaning of section 45. After setting this level, choosing to cut the rate of under-thirty recipients to well below this line constitutes a clear violation of the provision.*

*The Women's Court finds that, pursuant to section 52 of the Constitution Act, 1982, section 29(a) of the Regulation was invalid during the years 1985 to 1989. The Court awards damages under section 24(1) of the Charter.*

*Under section 49 of the Québec Charter, the Court orders both cessation of the law and compensation.*

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Reconsideration of *Gosselin v. Québec (Attorney General)*, [2002] 4 S.C.R. 429 (judgment of the Supreme Court of Canada reversed).

The decision of the Women's Court of Canada was delivered by:

GWEN BRODSKY, RACHEL COX, SHELAGH DAY, AND  
KATE STEPHENSON

### ***I. Introduction***

1. Louise Gosselin was born in 1959. Her life has often been a hard one. Sometimes she has been a low-paid worker in Canada's service and care industries and sometimes she has been a recipient of social assistance. As a woman with a low income, she has struggled to survive socially, emotionally, and economically. The Women's Court of Canada recognizes that she has faced and overcome many difficulties and shown courage in bringing her own case forward to test an important point of law and principle.

2. In 1984, the Québec government altered its social assistance scheme to reduce the benefit rate to which single recipients who were under thirty and able to work were entitled if they did not participate in workfare-type programs ("employability programs").

3. Louise Gosselin was eligible for, and received, social assistance intermittently between 1985 and 1989. As a result of her age, she was subject to the reduced rate. Louise Gosselin asked the Supreme Court of Canada to find that the reduced rate payable to her and to others under thirty violated the right to equality and the right to life, liberty, and security of the person under sections 15 and 7 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act 1982*, being Schedule B to the *Canada Act, 1982* (U.K.), 1982, c. 11, as well as the right under section 45 of the *Québec Charter of Human Rights and Freedoms*, R.S.Q. c. C-12, to measures of financial assistance and social measures susceptible of ensuring an acceptable standard of living. As a remedy, Ms. Gosselin asked the Supreme Court of Canada to order the Québec government to pay the difference between the reduced rate and the regular rate to all the individuals under thirty who received the lower base rate between 27 February 1987, when the claim was filed, and 31 July 1989, when the challenged provision was repealed. Ms. Gosselin claimed this remedy on behalf of over 75,000 under-thirty welfare recipients. The Supreme Court of Canada dismissed her claim.

4. The Women's Court of Canada decided to reconsider Ms. Gosselin's case because, in our view, the Supreme Court of Canada's decision in

*Gosselin v. Québec (Attorney General)*, [2002] 4 S.C.R. 429 [*Gosselin SCC*] was not reflective of the broad and purposive approach to the Canadian *Charter* and the Québec *Charter* that the Court has espoused. We find that Ms. Gosselin succeeds in her claim on all of the asserted grounds, and we grant the remedy requested.

## II. Factual Context

5. The scheme challenged in this case is contained in the 1984 amendments to the regulations under the *Social Aid Act*, R.S.Q., c. A-16 (*SAA*), as amended by *An Act to Amend the Social Aid Act*, S.Q. 1984, c.5 and the *Regulation Respecting Social Aid*, R.R.Q., c. A-16, r. 1 (*RRSA*).<sup>1</sup> Under these new regulations, in 1987, single recipients thirty years of age and over were entitled to receive \$466 dollars a month. Section 23 of the *RRSA* stipulated that these were the amounts necessary for an adult to meet basic needs. However, section 29(a) of the *RRSA* provided that recipients under age thirty and able to work were entitled to receive not more than \$170.

6. The under-thirty year olds could increase their benefit rate by participating in any of three different “employability programs”: the Remedial Education Program, the Community Work Program, and the On-the-Job Training Program (*SAA*; and *RSAA*, s. 35.0.1-35.0.2). Participation could result in increasing one’s welfare rate for the period of involvement. Under-thirty year old participants in the Remedial Education Program had their rate topped up to \$100 dollars less than the regular rate. Under-thirty year olds in the other two programs could receive the regular rate while participating.

7. However, these programs did not provide all of the under thirty-year olds with access to the regular rate of social assistance or even to the lower Remedial Education Program rate. As noted by Justice Michel Bastarache, there were 85,000 under-thirty recipients, but only 30,000 spaces in the programs offered, and these spaces were also available to thirty-and-over welfare recipients (*Gosselin SCC*, at para. 241).

8. In addition, as catalogued by Bastarache J., the programs had eligibility criteria and restrictions that made them not open to all the under-thirty welfare recipients. Originally, the Remedial Education Program was not available to illiterate people at all nor was it ever available to those who had only completed elementary school, left their studies for less than nine months, or been financially independent of their parents for less than six months (*Gosselin SCC*, at para. 160 and 277). Those who had been on social assistance for twelve months had priority over others for the Community Work Program

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1. The text of the revised regulations as reproduced in the judgment of Bastarache J. in *Gosselin SCC* is provided in Appendix 1.

(*Gosselin SCC*, at para. 279). The On-the-job Training Program was not open to people with a college diploma nor to recipients who had been away from regular studies for less than twelve months (*Gosselin SCC*, at para. 279). Each placement was for a fixed period of time, after which applicants were expected to find work or apply for another program.

9. Furthermore, the increased rate was not paid while awaiting placement in an available program or between placements. As noted by Bastarache J., there were waiting periods (*Gosselin SCC*, at para. 180). If an under-thirty recipient was eligible, he or she had to wait for the beginning of classes or for a training assignment and, in the meantime, received only the reduced rate. After participation in a given program, under-thirty year olds were again reduced to the lower base rate in between participation in programs. This was the experience of Louise Gosselin. She did her best to participate in the employability programs that were available to her, but her social assistance was repeatedly reduced to the lower rate when she was not working or involved in programs.

10. Of all of the participants in the three employability programs, only 48.8 per cent were recipients who were subject to the reduced rate (*Gosselin v. Québec*, [1999] R.J.Q. 1033, para. 286 [*Gosselin Q.C.A.*] (per Justice Michel Robert)). The rest were other recipients, either unable to work, thirty years of age and over, or single parents—all receiving the regular rate plus an additional amount while they participated in the employability programs (*SAA* at sections 6 and 11.2; and *RRSA* at sections 35.0.1–35.0.2). Approximately one-third of recipients on the reduced rate participated in the programs (*Gosselin SCC*, at para. 8). And approximately 11.2 per cent of participants in the under-thirty group were thereby returned to the regular rate (*Gosselin SCC*, at para. 180 and 239). The rest of the under-thirty individuals who received any top-up were in the Remedial Education Program and therefore confined to its lower rate during participation.

11. For all of these reasons, the government's employability programs were structurally incapable of allowing all of the under-thirty recipients to reach the regular rate of welfare, which is defined as being necessary to meet basic needs by section 23 of the *RRSA*: (1) not all of the programs provided participants with a full top-up to the basic level; (2) there were temporal gaps in the availability of the various programs to willing participants; (3) welfare recipients who were illiterate or severely under-educated, or "over-educated" could not participate in certain programs; and (4) only 30,000 program places were available although there were over 75,000 under-thirty welfare recipients.

12. The reduced rate did not provide enough income to allow the men and women in the under-thirty group to meet basic needs for food, clothing, and shelter. The evidence shows that members of the under-thirty group resorted to degrading and criminalized survival strategies, such as begging and petty theft. Living on the reduced rate had severe physical

and psychological effects. These young women and men were often homeless and malnourished. They experienced psychological stress, anxiety, and despair. Louise Gosselin herself attempted suicide (*Gosselin* SCC, at paras. 163–70 and 270 (testimony of psychologist D. Gratton, vol. 2, at 320–1; P-7, vol. 6, at 1039; P-9, vol. 8, at 1409; P-9.2, vol. 8, at 1440 and 1443; P-10, vol. 9, at 1559; and testimony of L. Gosselin, vol. 1, at 103; P-6, vol. 5, at 879).

13. Louise Gosselin testified that when she reached her thirtieth birthday and became eligible for the regular rate of social assistance, she felt as though she had won a victory, simply by managing to stay alive (*Gosselin* SCC, testimony of L. Gosselin, vol. 1, at 143).

### ***III. Judicial History***

14. In the Québec Superior Court, the trial judge, Justice Paul Reeves held that the claim was not supported by the evidence and that the distinction made by Québec's social assistance regime was not discriminatory under section 15 of the Canadian *Charter* because it was based on genuine considerations that corresponded to relevant characteristics of the under-thirty age group, including the importance of providing under-thirty year olds with incentives to get training and work experience in the face of widespread youth unemployment (*Gosselin v. Québec*, [1992] R.J.Q. 1647 [*Gosselin* Sup. Ct]). He dismissed Ms. Gosselin's section 7 claim, holding that section 7's protection of security of the person does not extend to economic security and does not create a constitutional right to be free from poverty. He also rejected the claim under section 45 of the Québec *Charter* on the ground that it does not create an entitlement to a particular level of state assistance.

15. In the Québec Court of Appeal, Justice Louise Mailhot found this case indistinguishable from *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, and dismissed the section 15 claim accordingly (*Gosselin* Q.C.A.). Justice Jean-Louis Baudouin found that Québec's social assistance scheme breached section 15, but he found the breach was justified under section 1 of the Canadian *Charter*. Justice Michel Robert found the social assistance scheme breached section 15 of the Canadian *Charter* and was not saved by section 1, but he dismissed the claim for damages as inappropriate. All three judges agreed that section 7 of the Canadian *Charter* was not engaged in this case. Regarding section 45 of the Québec *Charter*, only Robert J.A. found a breach, for which he held damages were unavailable.

16. The Supreme Court of Canada was starkly divided. Five of the judges found no violation of section 15. The majority decision was written by Chief Justice Beverley McLachlin, with Justices Charles Gonthier, Frank Iacobucci, John Major, and Ian Binnie concurring. In dissent, were four judges: Justices Michel Bastarache, Louise Arbour, Louis LeBel and Claire L'Heureux-Dubé.

The main dissenting opinion on section 15 was authored by Bastarache J. LeBel and L'Heureux-Dubé JJ. wrote separate section 15 opinions.

17. The majority, applying the framework enunciated in *Law*, found that the appellant Louise Gosselin had “not demonstrated that the government treated her as less worthy than older welfare recipients simply because it conditioned increased welfare payments on her participation in programs designed specifically to integrate her into the workforce and to promote her long-term self-sufficiency” (*Gosselin SCC*, at para. 19).

18. In the majority's view, the evidence established that the government's purpose was to help young adults achieve long-term autonomy (*Gosselin SCC*, at paras. 27, 43–4, and 65), by creating an incentive to compel young adults to participate in training programs that would increase their employability (at paras. 41–2). According to the majority, this purpose was not based on stereotype because it “corresponded to the actual needs and circumstances of individuals under 30” (at para. 38) and was “an affirmation of their potential” (at para. 19). In the view of the majority, young adults do not suffer from pre-existing social disadvantage or susceptibility to negative preconceptions such that legislative distinctions affecting them should be carefully scrutinized (at paras. 30–2, 35, and 68). In addition, the majority found no evidence of harmful effects, other than the fact that some under-thirty individuals may have fallen “through the cracks of the system and suffered poverty” (at para. 54). This fact was not, in the majority's view, sufficient to establish adverse effects (at paras. 55–6).

19. The majority also found no evidence that any welfare recipient under the age of thirty who wanted to participate in the employability programs was refused enrolment (*Gosselin SCC*, at paras. 46–7).

20. In summary, the majority ruled that there was no section 15 violation because (1) there was no pre-existing disadvantage because young people are not a disadvantaged group; (2) there was no lack of correspondence between the program and the actual circumstances of the under-thirty year olds, in purpose or effect; (3) the evidence was insufficient to establish adverse effects on the under-thirty group from being on the reduced rate; and (4) there was no overall impact that undermined dignity (*Gosselin SCC*, at para. 68). The majority relied heavily when justifying its decision on the espoused intent of the government of Québec to help young unemployed men and women.

21. Regarding section 7, seven judges of the Supreme Court of Canada found no violation. The main section 7 opinion, with which Iacobucci, Gonthier, Major, and Binnie JJ. agreed, was written by McLachlin C.J. Bastarache and LeBel JJ. each wrote separate concurring opinions with respect to the scope of section 7. Arbour and L'Heureux-Dubé JJ. found the regulation to be in violation of section 7. Arbour J. wrote the main dissenting opinion on section 7, and L'Heureux-Dubé J. wrote supplementary reasons.

22. With respect to section 45 of the Québec *Charter*, there were three different opinions. Six judges found no violation. McLachlin C.J. wrote for herself, Gonthier, Major, Iacobucci, and Binnie JJ. LeBel J. wrote a concurring opinion. Bastarache and Arbour JJ. were of the view that section 45 is not judicially enforceable. In dissent, L'Heureux-Dubé J. found that the challenged regulation violated section 45. She expressly endorsed the opinion of Robert J.A. in the Court of Appeal, who relied extensively on international human rights law as an aid to the interpretation of the Québec *Charter*.

#### *IV. Analysis*

##### *A. Section 15*

23. Section 15 of the Canadian *Charter* reads,

15(1) Every person has the right to equality before and under the law and the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

##### (1) Overview

24. The section 15 issue in this case is whether reducing welfare to a below-subsistence level for a sub-group of welfare recipients, legislatively defined by their age, constitutes discrimination. Given the explicit distinction based on age, there is obviously differential treatment based on an enumerated ground.

25. The differential treatment can also be understood to be based on the compound ground of age and reliance on social assistance or, more simply, being a destitute young adult. This combination, we hold, is an analogous ground.

26. The scheme discriminates by withholding social assistance from a group of destitute people, legislatively identified by their age, based on prejudice and stereotypical assumptions about their needs, capacities, and circumstances. The prejudice and stereotyping embedded in the scheme reflect and promote the view that members of this group are less worthy of recognition as human beings and as members of Canadian society. The scheme thereby violates essential human dignity, and, on the basis of this stereotyping alone, it is discriminatory.

27. Our conclusion is reinforced by the significance of the interests engaged by the resulting material deprivations. The withdrawal of the regular

rate of social assistance jeopardized the capacity of the under-thirty individuals to eat, have shelter, and be safe. These are among the most serious harms to be visited on a group. Young women subjected to the reduced rate suffered particular and disproportionate harms.

28. Section 15 is not confined to the evil of combating stereotypes. We find that beyond the imposition of a stereotype, the withholding of essential benefits from destitute men and women by itself amounts to discrimination. There are threshold conditions that are essential to equal recognition and membership in Canadian society. Income support in circumstances of need is a necessary prerequisite to participation in Canadian society as an equal and withholding it is a blatant signal of societal disregard and lack of respect for the person who is denied. Further, withholding income assistance has particularly egregious effects on groups that are already disadvantaged by discrimination, contrary to the section 15 goal of promoting substantive equality.

### (2) Differential Treatment

29. It is undisputed that section 29(a) draws a facially explicit distinction, based on age. The Québec legislature acted to create the welfare scheme and provide subsistence incomes for those in need. It then withdrew the subsistence level of income from a sub-group, the under-thirty year olds. The denial of social assistance benefits to the under-thirty group constitutes a denial of equal benefit of the law.

### (3) Enumerated or Analogous Grounds

30. Although showing that there is differential treatment based on the protected ground of age is easily done in this case, a richer, more contextualized analysis of grounds better reveals the disadvantaged character of the affected group and the gravity of the harm inflicted. Contextualizing the grounds makes for a more meaningful assessment of discrimination in a substantive sense.

31. The majority of the Supreme Court of Canada erred by taking an overly abstract and decontextualized approach to the category of young adults, disregarding the fact that the young people in question were also eligible welfare recipients under the Québec scheme or, to make it simpler, young women and men who were destitute.

32. Age was the only ground of discrimination identified by the plaintiff in this proceeding. Age is an enumerated ground of discrimination under section 15. Taking a properly contextualized view of the ground of age, as it functioned inside the Québec welfare scheme, this ground alone is sufficient to ground this claim. That is, if one considers that the group of young people who



stand at the centre of the *Gosselin* case are young people seeking social assistance to meet basic needs, it is not strictly necessary to invoke additional grounds of discrimination.

33. However, this claim can also be based on the intersecting grounds of age and reliance on social assistance or destitution. Considering the factors at play in this way is similar to the approach taken by the Supreme Court of Canada in *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, when it held that the *Indian Act* R.S., 1985, c.I-5, discriminated based on the analogous ground of “Aboriginality-residence” and by the Ontario Court of Appeal in *Falkiner v. Ontario (Ministry of Community and Social Services, Income Maintenance Branch)*, (2002), 59 O.R. (3d.) 481, when it held Ontario’s social assistance regime discriminated based on the combined grounds of sex, marital status, and receipt of social assistance.

34. Similarly, in *Dartmouth Halifax (County) Regional Housing Authority v. Sparks*, (1993), 119 N.S.R. (2d.) 91; [1993] N.S.J. No. 97, the Nova Scotia Court of Appeal struck down provisions excluding tenants of public housing from security of tenure protections. The court reasoned that the provisions denied benefits to a group—in this case, black single mothers with low incomes—and discriminated on the basis of race, sex, and income. The court reached its conclusion that the legislation was discriminatory based on an analysis of the “combined effect” of the characteristics of the disadvantaged group affected.

35. In *Corbiere*, at para. 60, the Supreme Court of Canada discussed the factors relevant to identifying an analogous ground:

Various contextual factors have been recognized in the case law that may demonstrate that the trait or combination of traits by which the claimants are defined has discriminatory potential. An analogous ground may be shown by the fundamental nature of the characteristic: whether from the perspective of a reasonable person in the position of the claimant, it is important to their identity, personhood, or belonging. The fact that a characteristic is immutable, difficult to change, or changeable only at unacceptable personal cost may also lead to its recognition as an analogous ground: *Miron v. Trudel*, [1995] 2 S.C.R. 418, at para. 148; *Vriend v. Alberta*, [1998] 1 S.C.R. 493, at para. 90. It is also central to the analysis if those defined by the characteristic are lacking in political power, disadvantaged, or vulnerable to becoming disadvantaged or having their interests overlooked: *Andrews, supra*, at p. 152; *Law, supra*, at para. 29. Another indicator is whether the ground is included in federal and provincial human rights codes: *Miron, supra*, at para. 148. Other criteria, of

course, may also be considered in subsequent cases, and none of the above indicators are *necessary* for the recognition of an analogous ground or combination of grounds: *Miron, supra*, at para. 149.

36. Several factors lead to the conclusion that the combination of reliance on social assistance, or destitution, and being under thirty years of age should be recognized as an analogous ground.

37. At first blush, this combination of conditions might not be seen as going to identity, personhood, or belonging. However, as discussed later in this decision, social assistance is the established means of ensuring that even destitute people are not banished from society. Canada has promoted the ideals of social sharing and collective provision, recognizing that benefits such as social assistance and health care need to be provided to everyone, not as a matter of charity, but as incidents of social citizenship. Canadian philosopher Charles Taylor has said, “collective provision” helps to explain “why we are and want to remain a distinct political unit” (Charles Taylor, “Shared and Divergent Values,” in Ronald L. Watts, ed., *Options for a New Canada* (Toronto: University of Toronto Press, 1991) at 56). As a result of the place that social assistance occupies in the cultural understanding of “Canadianness,” the denial of the equal benefit of a social assistance scheme, without regard to need, does raise an issue of belonging and membership.

38. Despite these espoused Canadian values, people reliant on social assistance face widespread prejudice, stereotyping, social exclusion, and discrimination. Negative myths abound about social assistance recipients, including notions that they are morally inferior, lazy, dishonest, not willing to work, and likely to cheat the system (Conseil permanent de la jeunesse, *Dites à tout le monde qu'on existe* (Québec: Conseil permanent de la jeunesse, 1993) at 12 and 14; Jean Swanson, *Poorbashing: The Politics of Exclusion* (Toronto: Between the Lines, 2001) at 1–8 and 90–105; Martha Jackman, “Constitutional Contact with the Disparities in the World” (1994) 2(1) *Review of Constitutional Studies* 76 at 77–101; Janet. E. Mosher, “Managing the Disentitlement of Women: Glorified Markets, the Idealized Family, and the Undeserving Other,” in Sheila M. Neysmith, ed., *Restructuring Caring Labour: Discourse, State Practice and Everyday Life* (Toronto: Oxford University Press, 2000) 30 at 32 and 35; and Sheila Baxter, *No Way to Live: Poor Women Speak Out* (Vancouver: New Star Books, 1988) at 11–15).

39. Courts and tribunals in Canada and Québec applying law to the circumstances of poor people have repeatedly recognized their vulnerability to stereotyping, stigmatization, and exclusion. Courts have commented particularly upon the fact that social assistance recipients are a politically marginalized group “to whose needs and wishes elected officials have no apparent interest in attending,” making the group vulnerable to legislative or

administrative acts that worsen their disadvantage (*Federated Anti-Poverty Groups of B.C. v. British Columbia (A.G.)* (1991), 70 B.C.L.R. (2d) 325 at 344; *Québec (Comm. des droits de la personne) v. Gauthier* (1993), 19 C.H.R.R. D/312 (QCTDP); *Québec (Comm. des droits de la personne) v. Whittom* (1993), 20 C.H.R.R. D/349 (QCTDP), affirmed in (1997), 29 C.H.R.R. D/1 (Q.C.A.); *Lambert v. Québec (Ministère du tourisme) (No. 3)* (1997), 29 C.H.R.R. D/246 (QCTDP); *Falkiner v. Ontario (Ministry of Community and Social Services)* (1996), 140 D.L.R. (4<sup>th</sup>) 115 (Ont. Ct. Gen. Div.) (per Marc Rosenberg J.) at 138–9 and 153; *Falkiner v. Ontario (Ministry of Community and Social Services, Income Maintenance Branch)* (2000), 188 D.L.R. (4<sup>th</sup>) 52 (Ont. Sup. Ct. Gen. Div.) at 86 and 98; and *Sparks, supra*, at 230–5).

40. The growing recognition of legislators and human rights experts that people reliant on social assistance need legal protection from discrimination is reflected in the human rights codes of many provinces, which prohibit discrimination based on “receipt of social assistance” or “source of income.” The New Brunswick, Northwest Territories, and Québec human rights acts include “social condition” as a prohibited ground of discrimination (*Human Rights Act*, R.S.N.B. 1973, c. H-11, ss. 3-7 and 12; *Human Rights Act*, S.N.W.T. 2002, c.18, s. 5; Québec *Charter*, s. 10). As well, government-commissioned reports have recommended that protections against discrimination based on social condition be included in human rights acts in other jurisdictions (Canadian Human Rights Act Review Panel, *Promoting Equality: A New Vision* (Ottawa: Department of Justice, 2000) at 106–13; BC Human Rights Commission, *Human Rights for the New Millenium: Recommended B.C. Human Rights Code Amendments for British Columbians by British Columbians* (Victoria: BC Human Rights Commission, 1998) at 12–13; B. Black, *BC Human Rights Act Review: Report on Human Rights in British Columbia* (Vancouver: Government of British Columbia, 1994) at 169–71).

41. It is also essential to notice who is most likely to be poor in Canada. The group of people who live in poverty, and are likely to require social assistance to meet their basic needs, is disproportionately composed of Aboriginal people, women, people with disabilities, recent immigrants, people of colour, and single mothers—groups whose disadvantage is a central concern of the section 15 guarantee.

42. The underlying condition giving rise to reliance on social assistance is poverty. People must be destitute to qualify for social assistance. They are only somewhat less poor when they are on social assistance. Poverty is not necessarily an immutable condition. Some individuals can and do move in and out of poverty during their lifetimes, perhaps more than once. Yet it can be extremely difficult to overcome, particularly if income support is lacking or, as in this case, is inadequate to meet basic needs.

43. There is also a growing recognition that young people are vulnerable to discrimination and social exclusion. Human rights protections against age

discrimination were originally non-existent and then were made available to people ages forty-five to sixty-five. Significantly, in a number of jurisdictions, human rights protections against age discrimination have now been extended to younger people, including adults between the ages of eighteen and thirty, in acknowledgment of the fact that they also experience discrimination in the labour force, in tenancy, and in services (Walter S. Tarnopolsky and William F. Pentney, *Discrimination and the Law: Including Equality Rights under the Charter*, looseleaf edition (Toronto: Carswell, 1985) at 7-1-7-11; and *McKinney v. University of Guelph*, [1980] 3 S.C.R. 229 at 291-2).

44. Young people who are considered capable of working, but who are reliant on social assistance are particularly vulnerable to negative stereotyping as lazy and irresponsible (Nadine Rehnby and Stephen McBride, *Help Wanted: Economic Security for Youth* (Vancouver: Canadian Centre for Policy Alternatives, 1997) at 7 and 15; Martha Jackman, “Women and the Canada Health and Social Transfer: Ensuring Gender Equality in Federal Welfare Reform” (1995) 8 *Canadian Journal of Women and the Law* 371 at 378-9). In all jurisdictions, welfare rates for young people (“single employables”) are the lowest (National Council of Welfare, *Women and Poverty Revisited* (Ottawa: National Council of Welfare, 1990) at 93-4; Katherine Scott, *Women and the CHST: The Profile of Women Receiving Social Assistance in 1994* (Ottawa: Status of Women Canada, 1998) at 47).

45. For all of these reasons, reliance on social assistance, or destitution, combined with age should be recognized as an analogous ground. Considering fully the grounds at play, and their interaction, helps to illuminate the character of the discrimination.

46. We reiterate, however, that it was not necessary for any ground other than age to be plead in order for Louise Gosselin’s claim to be successful. The ground of age can be given a fully contextualized reading.

#### (4) Discrimination

##### (a) Section 29(a) Is Grounded in Prejudice and Stereotype

47. Not every facial distinction that is based on one or more section 15 grounds is discriminatory. For example, pay equity schemes are designed to address the long-standing underpayment of women who work in traditionally female jobs. Section 15 is not meant to preclude schemes such as these that are intended to recognize and address group-based disadvantage merely because they make facial distinctions based on sex.

48. However, in this case, we have concluded that the differential treatment based on age in the government of Québec’s welfare scheme was discriminatory because it relied on and perpetuated a stereotype of the destitute young person as undeserving. It did so when it denied under-thirty year olds the regular rate unless they participated in employability programs.

49. The Supreme Court of Canada has held that when assessing whether differential treatment imposed by legislation is truly discriminatory, the most telling indicator is pre-existing disadvantage, vulnerability, stereotyping, or prejudice experienced by the individual or group (*Law, supra*, at para. 63). Recognizing the importance of what has happened before resonates with the section 15 purpose of promoting a more equal society and ensuring that legislative distinctions do not have an adverse impact on already disadvantaged groups (*Rodriguez v. British Columbia*, [1993] 3 S.C.R. 519 at 549; *Vriend v. Alberta*, [1998] 1 S.C.R. 493; and *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 at 676–82).

50. In this case, the majority of the Supreme Court of Canada concluded that there was no disadvantaged group because, in general, young people are not disadvantaged because of their age. This led the Court to adopt a relaxed standard of scrutiny (*Gosselin SCC*, at para. 30–6). As we have noted in our discussion of grounds, however, the majority took an overly abstract decontextualized approach to the category of young adults. Even if young people were not, in general, a disadvantaged group this would not be determinative. A properly contextualized approach would take account of the interaction between the facial distinction based on age and the vulnerabilities of the affected group as women and men reliant on social assistance to meet their basic needs.

51. The majority touched on, but dismissed as unhelpful, the thought that the group might be redefined as welfare recipients aged eighteen to thirty to take into account the stereotyping and vulnerability suffered by all welfare recipients. In the view of the majority, this move would not assist Ms. Gosselin because the thirty-and-over group also consists of welfare recipients (*Gosselin SCC*, at para. 35). In our view, the Court was too quick to reject this redefinition of the group, and, in doing so, it departed from the approach adopted in *Corbiere, supra*. In *Corbiere* the Court recognized that Aboriginal people living off reserve and Aboriginal people living on reserve have all suffered discrimination. Moreover, they were all band members. This fact did not lead the Court to conclude that denying voting rights to band members living off reserve was non-discriminatory. Nor did it lead the Court to apply a lower standard of scrutiny to the legislative distinction drawn between Aboriginal people based on their place of residence. Further, in reaching the conclusion that the denial of voting rights and the opportunity to participate in band governance to off-reserve band members is discriminatory, the Court expressly took into account the fact that “the impugned distinction perpetuates historic disadvantage experienced by off-reserve band members, a sub-group of Aboriginal people” (*Corbiere*, at paras. 17–19).

52. As we have noted, applying the *Corbiere* approach in this case illuminates both the prejudices experienced by people reliant on social assistance generally and the particular prejudices experienced by *young*

people reliant on social assistance. There is no reason that unequal treatment of young adults in need should be subject to a relaxed standard of *Charter* scrutiny.

53. However, to understand fully the vulnerabilities of young adults in need, it is essential to consider the historical context of the Québec welfare scheme, the historical treatment of people reliant on public assistance, and common prejudices towards, and stereotypes about, poor people.

54. The majority of the Supreme Court of Canada believed that being on welfare is a harm in itself. The implication seems to be that it is better not to be on welfare even if that means having inadequate resources to meet one's most basic needs. Being on welfare is damaging to self-esteem and wrong for a self-directing individual. Getting off welfare is good. Underlying this view is a layer of unacknowledged ideas, prejudices, and stereotypes. Reliance on social assistance and poverty more generally are commonly understood as signs that a person lacks moral fibre. There is an underlying conviction that poverty is self-inflicted. Those with moral gumption and determination will not be poor.

55. Implicit in the Québec welfare scheme and in the judgment of the majority of the Supreme Court of Canada is the belief that all individuals are sufficiently free to define their life circumstances, and that being poor must be a freely chosen condition. If people are free to choose their own circumstances, there is no reason for governments to assist those who are without resources. In fact, it is an insult to interfere with choice. To young people, it is disrespectful because it conveys the message that they do not have the capacity to be self-actualizing human beings.

56. Canadian legislators have recognized that there are structural causes of reliance on social assistance and that destitution is not always in the control of individuals but, instead, is connected to availability of employment and market vagaries. However, governments have created welfare programs in a patchwork fashion and with a divided mind. Canadian scholar Dennis Guest recounts that Canadian governments have created programs to assist those who are without income but have clung to the belief that individuals always have the capacity to be self-supporting (Dennis Guest, *The Emergence of Social Security in Canada*, 3rd edition (Vancouver: UBC Press, 1997) at 3–5). Young people—single, non-disabled—are the group who are most suspect in the eyes of legislators because of the belief in individual fault and responsibility.

57. Under the Québec scheme, people who were medically certified as disabled were eligible for the full benefit. There were some periods when Louise Gosselin had a medical certificate. In the main, she was considered “able bodied” (*Gosselin SCC*, at 168–9). However, the fact that someone is deemed to be able-bodied does not necessarily mean that she has the capacity to be self-supporting at a particular point in time. Judicial notice may be taken of a growing trend in social assistance schemes towards narrowing eligibility

for people who are not considered disabled and simultaneously making it procedurally and substantively more onerous to qualify as disabled. The social welfare scheme in British Columbia is a case in point (Seth Klein and Andrea Long, *Bad Time to Be Poor: An Analysis of British Columbia's New Welfare Policies* (Vancouver: Canadian Centre for Policy Alternatives, 2003) at 19–36). The phenomenon, in itself, raises questions about whether everyone who is deemed capable of working is actually able to compete in the job market and hold down a job.

58. Canada's social security schemes have roots that extend back in time. Our attitudes towards poor people, and the programs designed to relieve their poverty, have antecedents that cannot be ignored (Guest, at 11). These antecedents include the church-based system of New France, where relief of poverty was considered a matter of Christian charity. They also include the English Poor Law of 1601, which placed every English parish under an obligation to relieve the aged and ill and to provide work for the able-bodied poor (*An Act for the Relief of the Poor*, 1601, 43 Eliz., ch. 2 (Eng.), reprinted in 7 Stat. at Large (Eng. 37-37) (Danby Pickering, ed., 1762)). Despite some difference in schemes, attitudes towards poverty in New France were similar to those embedded in the Elizabethan poor laws (Sylvie Morel, *The Insertion Model or the Workfare Model? The Transformation of Social Assistance within Quebec and Canada* (Ottawa: Status of Women Canada, 2002, Cat no. SW21-95/2002 E-IN) at 30; Serge Mongeau, *Evolution de l'assistance au Québec*. (Montreal: Editions du jour, 1967) at 13–19, 34), and these attitudes underlie modern state social security programs. As Dennis Guest writes of the Elizabethan poor laws,

[t]he parish authorities were required to provide for those members of their parish who were too old, sick or disabled to support themselves—the “impotent poor.” They were also asked to provide work for the able-bodied unemployed and to punish those deemed able to work but unwilling to do so (Guest, at 12).

59. As scholars Dennis Guest and Sylvie Morel note, along with responsibility for the poor came an attitude of suspicion towards those who were the beneficiaries. (Guest, at 9–17; Morel, at 31–2). A 1697 amendment to the English poor laws aimed to distinguish the “genuinely deserving” recipients from “the idle, sturdy, and disorderly beggars” (An Act for Supplying Some Defects in the Law for the Relief of the Poor of This Kingdom, 1696–97, 8 & 9 Will. 3, ch.30, § 2 (Eng.), reprinted in 10 Stat. At Large (Eng.) 106 Danby Pickering ed., 1762), amending Poor Relief Act 1662, 14 Car. 2, ch. 12 (Eng.), reprinted in 8 Stat. At Large (Eng.) 94-95 (Danby Pickering ed., 1762)). A provision of the Act required all people who received

poor relief to wear the letter “P” in red or blue cloth on the right shoulder of their clothing on pain of a reduction or elimination of relief or imprisonment with hard labour for up to twenty days. This amendment introduced the notion, which still has currency today, that it is legitimate to subject beneficiaries of public relief to stigmatizing and humiliating treatment, both as a means of deterring the poor from relying on public relief and in order to ensure that the non-deserving poor do not receive it.

60. These attitudes were imported into colonial Canada and are a part of our inheritance. Guest notes that the values of individualism and free enterprise flourished naturally in the frontier society of early Canada. It was widely held that the chance to build a better life was open to all. While poverty was common, to be dependent upon public or private charity was widely regarded as a disgrace, a sign of personal failure, or divine retribution for a sinful life (Guest, at 17–18).

61. Canada’s state social security schemes began with aid programs for specific groups of poor people—widows, the elderly, blind persons. These groups were considered to be the “deserving poor,” who were in need of help through no fault of their own, and to be distinguished from the “undeserving poor.” Although the Depression made it difficult to sustain the notion that poverty was caused by the moral failings of individuals (Guest, at 93), as Joel Handler writes, the image of “the sturdy beggar” has continued to haunt public discourse about poverty, and it is embedded in the structure of many North American welfare schemes (Joel Handler, “Social Citizenship and Workfare in the United States and Western Europe: From Status to Contract” (USBIG Discussion paper no. 37, July 2002, prepared for the Joint Meeting of the Canadian Law and Society Association and the Law and Society Association, 30 May–1 June, Vancouver, Canada, <[www.usbig.net/papers/037-joelhandler.htm](http://www.usbig.net/papers/037-joelhandler.htm)> accessed 20 June, 2007). In other words, the idea has stuck in the public mind, and in the minds of some legislators, that able-bodied poor people are lazy, unwilling to work, grasping, immoral, responsible for their own unfortunate condition, and undeserving of help.

62. Thus, a threshold question in this case must be: are stereotypes and prejudices about the able-bodied poor embedded in the design of the Québec welfare scheme? Is bias against the so-called “undeserving poor” implicit in it? Or, to put it another way: is “social assistance recipient under 30” a proxy for “sturdy beggar” or “undeserving”?

63. The answer to this question is yes. Reading this legislation against the backdrop of the history of welfare policy reveals the prejudice and stereotype embedded in it. The Québec regulation made a distinction between under-thirty welfare recipients and thirty-and-over welfare recipients that was not tailored to correspond to differing needs or circumstances of the two groups. All of the members of both groups had been individually assessed and determined to be in need of aid of last resort in order to meet their basic needs



for food, clothing, and shelter. The cost of food, clothing, and shelter was no different for the under-thirty year olds than for those thirty and over. Those thirty and over were offered opportunities to participate in training and remedial education programs and so, presumably, were understood to need them, just as the under-thirty year olds did. However, those thirty and over were offered extra subsidies if they participated in these programs, while the under-thirty year olds had their rate cut to \$170, with participation in the programs offered as the (unreliable) means of struggling back to the regular rate. The treatment of the two groups, with the same needs, shows that the under-thirty year olds were considered to be different—lax, unmotivated, dilatory. They were considered unlikely to seek training or education unless coerced by deprivation.

64. The position of the Supreme Court of Canada majority that, in light of the compensatory employability programs, there was insufficient evidence that section 29(a) actually caused harm is unsustainable. These programs were not structurally even capable of compensating for the facially negative treatment of poor young people. There was no evidence to support the notion that young people stayed on the reduced rate as a matter of choice. Further, there was clear evidence that Louise Gosselin herself was unable to maintain continuous enrolment in the employability programs because of circumstances that were beyond her control. In disregarding this evidence, the Court revealed an unrealistic attachment to the myth of the always freely choosing individual. This is inconsistent with the idea of substantive equality, which entails an acknowledgment that the life opportunities and choices of members of some groups are constrained by assumptions about their roles and by the social conditions that attach to subordination and lesser status.

65. Underlying the idea that being on social assistance is a choice is the notion that life-sustaining employment is available to anyone in Canada who wants it. This is incorrect. Canada does not have an economy that provides jobs with better than poverty level incomes for everyone. This is a fact documented regularly by Statistics Canada, among others. In fact, Canada has many jobs that are part-time, temporary, casual, seasonal, and low-waged. Levels of reliance on social assistance rise and fall with fluctuations in the job market, but there are never enough stable jobs for everyone, and, particularly, not enough jobs capable of sustaining an adequate standard of living (Statistics Canada, *Low Income and Low Wages*, (Ottawa: Ministry of Industry, 2006); Kevin K. Lee, *Urban Poverty in Canada: A Statistical Profile* (Ottawa: Canadian Council on Social Development, 2000), in particular, Chapter 3: Economic and Labour Force Characteristics; and Richard P. Chaykowski, *Non-Standard Work and Economic Vulnerability* (Ottawa: Canadian Policy Research Network, 2005), <[http://www.cprn.org/documents/35584\\_en.pdf](http://www.cprn.org/documents/35584_en.pdf)> accessed 20 June, 2007). The rhetoric of self-sufficiency cannot simply be accepted at face value when the legislative

initiatives carried out in its name cause suffering and social marginalization. Increasing individual employability through job training can be laudable, although its success depends on the training being appropriate to the person, well delivered, and tailored to the availability of actual jobs. Increasing equality of opportunity to compete for available jobs is a worthy goal. However, improving the employment credentials of individuals is not a sufficient goal as long as there are not enough life-sustaining jobs to go around. There must also be a social safety net to protect those for whom the market does not provide a decent, stable job.

66. The game of musical chairs provides a good analogy. Through training, less skilled players could improve their likelihood of getting into a chair and thereby of being a winner in the game. However, at the end, some players will always be without chairs—that is, unless we stop treating this as a game. The implication of the majority decision in the Supreme Court of Canada is that those who end up without a chair have chosen to be without one and should be forced to learn to run faster or to more effectively push others out of the way. McLachlin C.J. notes that

North America experienced a deep recession in the early 1980s, which hit Québec hard and drove unemployment from a traditional rate hovering around 8 percent to a peak of 14.4 percent of the active population in 1982 and among the young from 6 percent (1966) to 23 percent. At the same time, the federal government tightened eligibility requirements for federal unemployment insurance benefits, and the number of young people entering the job market for the first time surged. These three events caused an unprecedented increase in the number of people capable of working who nevertheless ended up on the welfare rolls” (*Gosselin* SCC, at para. 38).

Despite acknowledging that young people were unemployed because of forces beyond their control, McLachlin C.J. finds it permissible for the government to design a scheme based on “informed general assumptions” that “people under 30 had a better chance of employment and lower needs” as long as the general assumption is not based on a stereotype. She concludes: “The idea that younger people may have an easier time finding employment than older people do is not such a stereotype” (at para. 56).

67. McLachlin C.J. implies, in decrying the lack of evidence about the actual income of those young people who did not participate in any of the employability programs (*Gosselin* SCC, at para. 51), that these young poor people had other sources of income or support—their families, perhaps—though there was no evidence to support this. Implicit in McLachlin C.J.’s

reasoning is the assumption that the under-thirty year olds could get by on the lower rate because they had other income, could get employment if they wanted to, or could enrol in the employability programs and get back to the regular rate. In other words, she assumed that they were not living on the lower rate or did not have to.

68. Despite McLachlin C.J.'s express denial that a stereotype animated the scheme, her reasoning implicitly embraces the notion that the under-thirty individuals on welfare were unwilling to work and had to be coerced into productive lives. Although she characterizes the scheme positively, as "reflect[ing] faith in the usefulness of education and the importance of encouraging young people to develop skills and employability, rather than being consigned to dependence and unemployment" (*Gosselin SCC*, at para. 65), this disavowal of stereotype is unpersuasive. Faith in education does not make up for the assumption that young people need to be coerced into pursuing it. To avoid giving life to the stereotype, the Québec government would have had to show some faith in the willingness of young people to do whatever they could to gain skills and find employment—faith, for example, that even if they received the regular rate defined as necessary to meet basic needs, like those thirty and over, they *would* participate in employability programs and seek jobs. To establish a base rate for them that meant extreme poverty unless they participated in training and employability programs was, in effect, to endorse the stereotype of the "sturdy beggar."

69. In allowing extreme poverty to be used as an incentive, the majority sanctioned a particularly high-risk form of "tough love," permitting the government of Québec to knowingly endanger the physical and psychological health of young people on the theory that this would help them in the longer term. The facts were that the under-thirty year olds suffered hunger, malnutrition, cold, and homelessness. They lived in inadequate shelter; they moved frequently; and their lives were uncertain. They experienced fear, stress, humiliation, and sometimes desperation. They were forced, because of their poverty, to beg and steal.

70. There is also evidence that the reduced rate put women at risk in specific ways. As a survival strategy, some young women on the reduced rate bore children in order to become eligible for benefits at the regular rate of social assistance (*Gosselin SCC*, testimony of community worker A. Sandborn, vol. 2, at 227; P-9, vol. 8, at 1412; P-9.2, vol. 8, at 1442). A number of young women on the reduced rate engaged in prostitution or accepted unwanted sexual advances to try and keep their apartments, to pay monthly expenses, such as heat and electricity, or to buy food (*Gosselin SCC* testimony of community worker A. Sandborn, vol. 2, at 202, 210, 221–3; P-6, vol. 5, at 875, 876, and 879; P-9, vol. 8, at 1406 and 1409; P-9.2, vol. 8, at 1440; P-9.2, vol. 8, at 1443).

71. The trial judge found that at a time when her rooming house was \$170 per month and her monthly welfare benefit was also \$170, Louise Gosselin had to resort to degrading means to survive, such as accepting the companionship of an individual for whom she had no affection with whom she could exchange her sexual availability for shelter and food (*Gosselin* Sup. Ct., at 1655).

72. The risks to women when they are homeless or live in communal shelters are well known. These precarious circumstances increase women's vulnerability to sexual assault and sexual harassment (Édith Bouchard, Brenda White, and Susanne Fontaine, *Les femmes itinérantes: une réalité méconnue* (Québec: Conseil du statut de la femme, 1988) at 12; Suzanne Lenon, "Living on the Edge: Women, Poverty and Homelessness in Canada" (2000) 20(3) *Canadian Woman Studies* 123 at 125; Sylvia Novac, Joice Brown, and Carmen Bourbonnais, *No Room of Her Own: A Literature Review on Women and Homelessness* (Ottawa: Canada Mortgage and Housing Corporation, 1996) at 20–3). Louise Gosselin, who experienced homelessness and the male dominated milieu of boarding houses, was a victim of sexual harassment by male boarders. She also survived an attempted rape (*Gosselin* SCC, testimony of L. Gosselin, vol. 1, at 126–8; P-6, vol. 5, at 876; testimony of psychologist D.D. Gratton, vol. 2 at 332; P-7, vol. 6, at 1047).

73. None of these harms can be assumed to be temporary. As the National Association of Women and the Law pointed out in its factum in the Supreme Court of Canada, the harms that younger women experience when they have to live below a subsistence level affect their economic and other opportunities at later stages of their lives. Denying women access to adequate social assistance when they are between eighteen and thirty reinforces their pre-existing social and economic inequality and increases their likelihood of being poor at later stages of their lives. Being drawn into prostitution and other coerced sexual relationships and giving birth to children in order to escape the severe deprivation associated with the reduced rates of social assistance for young single people will have an effect on their lives after age thirty, affecting psychological well being, physical health, access to job opportunities, and, eventually, their financial security as older women.

74. Also unconvincing is the view of the Supreme Court of Canada that the government's intention of integrating young people into the workforce militates against a finding of discrimination. McLachlin C.J. explained her conclusion by claiming that the intention of the legislator was a positive one. She wrote: "As a matter of common sense, if a law is designed to promote the claimant's long-term autonomy and self-sufficiency, a reasonable person in the claimant's position would be less likely to view it as an assault on her inherent human dignity" (*Gosselin* SCC, at para 27). Given the objective reality of the impoverished circumstances of people trying to survive on the reduced rate, this is deeply troubling.

75. The Supreme Court of Canada majority treated the government's claimed positive intention for the scheme as though it were determinative. Yet it is well established in human rights and *Charter* equality rights law that good intentions do not justify discriminatory effects. As early as 1985, in the landmark case of *Ontario (Human Rights Commission) v. Simpson-Sears Ltd. (O'Malley)*, [1985] 2 S.C.R. 536, the Supreme Court of Canada held that a well-intended policy could have discriminatory effects and that proof of adverse effects is sufficient to ground a claim of discrimination. In this case, however, the majority of the Supreme Court of Canada treated the government's positive intention as though it were the equivalent of positive outcomes and used it to negate the very harm that was the grounding of Louise Gosselin's section 15 claim. The majority decision provides a demonstration of how insidious stereotypes can be—a stereotype can be so accepted in society that it is invisible even to conscientious judges.

76. We find that the denial of social assistance benefits to young adults violated essential human dignity by reflecting and promoting the stereotypical view that young adults in need are less worthy of recognition or value as human beings and members of Canadian society. This conclusion is further confirmed by the fundamentality of the interests affected, which we discuss later in this decision.

*(b) Deprivation of Dignity-Constituting and Equality-Constituting Benefits*

77. The impugned legislative distinction was grounded in a stereotype. In our view, the stereotype was manifest. However, even absent a finding that the distinction was based on a stereotype, it must be concluded that there was discrimination, having regard to the importance of the interests affected by the material deprivation, and the severity of those effects on the under-thirty group.

78. This group was not denied a free monthly movie ticket. They were denied the amount of welfare that the government itself had defined as the minimum necessary to eat, have shelter, and clothe oneself. As a result, interests that have long been recognized as possessing a high degree of constitutional and societal importance were adversely affected, and severely so. On this basis alone, it must be concluded that the Québec legislature discriminated when it withheld social assistance from the under-thirty group.

79. Though stereotyping is a recurrent theme in human rights and *Charter* equality jurisprudence, it is clear that the understanding of discrimination is not confined to stereotyping. The Court has explicitly acknowledged that discrimination may arise not only through stereotyping but also as a result of treatment that “*otherwise* has the effect of perpetuating or promoting the view that the individual is less capable, or less worthy of recognition or value as a human being or as a member of Canadian society” (*Law*, at para. 51 [emphasis added]).

Beyond combating stereotypes, the Court has held that section 15's purpose includes "to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration" (*Law, supra*, at para. 88 [emphasis added]). It has also noted section 15's concern with "physical and psychological integrity" (*Law*, at para. 53).

80. Sexual harassment is an example of a practice that has been found to be discriminatory, not because it is premised on a stereotype of women workers but, rather, because it is an exercise of power and a form of abuse that reinforces women's inequality in their workplaces. Similarly, in *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3, which is also known as "the women firefighters' case," the Court held that a fitness standard that excluded many women from firefighting work and which had not been shown by the employer to be necessary to job performance was discriminatory. If one digs deeply enough and examines the assumptions underlying the fitness standard that had been adopted, a sexist stereotype of who is a competent firefighter can be found, but this was not necessary to the Court's analysis. In addition, in *Eldridge, supra*, the Court was not concerned about stereotyping as such but, rather, with the failure of the government to respond to the particular needs of deaf people in need of medical care.

81. There are various reasons why stereotyping cannot be the *sine qua non* of discrimination. One important reason is that insistence on proof of stereotyping can too easily slide into requiring proof of malicious intent, contrary to the well-established principle that proving discrimination does not necessitate proving bad motive. Further, stereotyping consists of an unfounded or mistaken generalization about a group that is applied to individual members of the group, denying their individual capacity or needs. However, there are some differences between groups, such as those relating to pregnancy, certain disabilities, and historic disadvantages experienced by some groups, which are real and not mistaken. Those differences, which are real rather than the product of mistaken generalizations, are also not a legitimate basis for practices that have the effect of infringing individual human dignity or perpetuating disadvantage.

82. Taking the effects of the material deprivations as a beginning point of the analysis leads to the conclusion that the Québec legislature discriminated when it ignored the needs of the under-thirty group for a subsistence income.

83. International human rights law provides insight into the importance of the interests at issue in this decision. In the *Universal Declaration of Human Rights*, General Assembly (GA) Resolution 217(III), UN GAOR, 3rd Sess., Supp. No. 13, UN Doc. A/810 (1948) at 71, Article 25, rights to social security and to an adequate standard of living were first articulated. The rights in the declaration were subsequently elaborated in numerous international human rights treaties that Canada has ratified.

84. From the outset, the interdependence and indivisibility of all human rights has been a foundational principle of international human rights. The *International Covenant on Economic, Social and Cultural Rights*, GA Resolution 2200A (XXI), UN Doc. A/6316 (1966) (*ICESCR*) and the *International Covenant on Civil and Political Rights*, GA Resolution 2200A (XXI), 21 UN GAOR (Supp. No. 16) at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171 (*ICCPR*), both explicitly draw on the *Universal Declaration of Human Rights* and recognize that freedom from fear and freedom from want can only be enjoyed if conditions are created whereby everyone can enjoy economic and social rights as well as civil and political rights.

85. Particularly important to an understanding of Louise Gosselin's claim is Article 11 of the *ICESCR*, which obligates Canada to progressively realize the right of everyone to an adequate standard of living including adequate food, clothing, and shelter. Canada ratified this treaty in 1976. Also important is Article 3 of the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* (G.A. Resolution 34/180, 34 GAOR Supp. (No. 46) at 193, UN Doc. A/34/46 (1979)), which obligates Canada to take all appropriate measures in the political, social, and economic fields to ensure the full development and advancement of women.

86. Constitutional and quasi-constitutional norms such as section 36 of the Constitution, sections 7 and 15 of the Canadian *Charter*, and section 45 of the Québec *Charter*, are all expressions of Canada's and Québec's intention to give life to these international human rights obligations.

87. As the Supreme Court of Canada has recognized, the various sources of international human rights law—declarations, covenants, conventions, judicial and quasi-judicial decisions of international tribunals, customary norms—are relevant and persuasive sources for interpretation of the *Charter*'s provisions (*United States v. Burns*, [2001] 1 S.C.R. 283 at para. 80). In *Baker v. Canada*, [1999] 2 S.C.R. 81 at para. 70, the Court called international human rights law a “critical influence on the interpretation of the scope of the rights included in the *Charter*,” and in *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 at para. 23, it stated that “the *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents that Canada has ratified.”

88. Before the United Nations Committee on Economic, Social and Cultural Rights (CESCR) to which Canada reports periodically, Canada has stated that the *Charter* guarantees that Canadians will not be deprived of the basic necessities of life (CESCR, *Summary Record of the Fifth Meeting: Canada*, UN Doc. E/C.12/1993/SR.5 (25 May 1993) at para. 21).

89. The CESCR has made it clear that adherence to the *ICESCR* obliges Canada to ensure that Canadian courts and tribunals adopt purposive interpretations of the *Charter* that will remedy violations of the right to an adequate standard of living, and other *ICESCR* rights.

90. The CESCR has also made pointed criticisms of Canada's human rights performance (*Committee on Economic, Social and Cultural Rights Concluding Observations on Report of Canada Concerning the Rights covered by Articles 10-15 of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/C 12/1993/5 (3 June 1993)). In 1993, the CESCR expressed concerns about Canada's failure to make any measurable progress in alleviating poverty over the previous decade or in alleviating the severity of poverty among particularly vulnerable groups. The CESCR also expressed concern about evidence of families being forced to relinquish children because of an inability to secure housing and other necessities; hunger and extensive reliance on food banks; widespread discrimination in housing against people on social assistance and people with low incomes; inadequate attention to homelessness and low expenditures on social housing; and the failure of lower courts to adequately enforce the right to an adequate standard of living, including adequate housing, as a component of sections 7 and 15 of the *Charter*.

91. In 1998, Canada was criticized by the CESCR not just for a lack of progress but also for dramatic cuts to social programs, including cuts to social assistance rates and for increasing homelessness and lack of affordable housing (*Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights (Canada)*, UN Doc. E/C.12/1/Add.31 (10 December 1998)).

92. In the most recent review of Canada's compliance with its treaty obligations, the CESCR again expressed concerns about the lack of adequate social assistance for Canadians in need (*Concluding Observations on Canada*, UN Doc. E/C. 12/CAN/CO/5 (22 May 2006)).

93. In 1999, the United Nations Human Rights Committee joined the CESCR in condemning discrimination against people on social assistance. The committee also linked homelessness to the guarantee of the right to life under Article 6 of the *ICCPR*:

The Committee is concerned that homelessness has led to serious health problems and even to death. The Committee recommends that the State party take positive measures required by article 6 to address this serious problem (*Concluding Observations of the Human Rights Committee: Canada*, UN Doc. CCPR/C/79/Add.105 (7 April 1999) para. 20).

94. In its 2003 Concluding Comments, the CEDAW Committee expressed serious concerns about "the high percentage of women living in poverty, in particular, elderly women living alone, female lone parents, Aboriginal women . . . women of colour, immigrant women and women with disabilities" and about the disproportionately negative impact on women of



recent cuts and changes to social assistance, including the cuts to social assistance rates and the narrowing of eligibility rules for welfare (Committee on the Elimination of Discrimination against Women, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention, Concluding Observations of the Committee: Canada*, 28th Sess. UN Doc. A/58/38 (13-31 January 2003) at para. 357; see also paras. 351, 358, and 359). Although Canada's treaty obligations are not binding on Canadian courts unless they have been incorporated in legislation, they are a relevant and persuasive source for the interpretation of the *Charter*. International human rights law, and the comments of the treaty bodies that review Canada's compliance, underscore the importance of access to food, clothing, and housing, and highlight the particular and disproportionate harms to women of inadequate social assistance. They support the view that withholding equal social assistance benefits represents an extremely serious denial of equal benefit and protection of the law.

95. The Ontario Court of Appeal has said that “[s]ocial assistance may well constitute a fundamental social institution” (*Falkiner* 2002, at para. 100). We hold that social assistance *is* a fundamental institution. Without access to social assistance a person who is destitute is vulnerable to exclusion from all forms of community life—social, political, cultural, and economic. Lack of access to the means of subsistence also impairs the enjoyment of other constitutional rights, including liberty and security of the person.

96. In classical United States constitutionalism, equality guarantees may have been understood to perform the limited function of restraining governments from drawing distinctions that are based on prejudice and stereotype. However, the section 15 purpose of promoting a society in which all persons enjoy equal recognition as human beings and members of Canadian society has a positive and, necessarily, material dimension. Fulfilling this obligation means that governments must intervene to address material conditions of disadvantage, especially those that impair the enjoyment of constitutional rights, signify that an individual or group is not equally worthy of membership in society, or exacerbate pre-existing disadvantage. In this case, all of those factors are present.

97. In a country as wealthy as Canada, the denial of the means of subsistence is an overt signal that the person is not regarded as equally worthy of recognition as a human being, not accepted as a fully equal member of society, and not perceived as equal in dignity.

98. Denise Réaume has written about the concept of dignity as follows:

To ascribe dignity to human beings . . . is to treat human beings as creatures of intrinsic, incomparable and indelible worth, simply as human beings. No further qualifications are necessary. Dignity is thus ascribed to human beings independently of their particular

accomplishments or merits or praiseworthiness. The kind of worth connoted is not contingent on being useful, or attractive, or pleasant, or otherwise serving the ends of others... As something inherently “possessed” by human beings, there is a sense in which dignity cannot be taken away. It can, however, be dishonoured through a failure to show respect, through treating others as less than creatures of inherent worth (Denise Réaume, “Dignity, Equality, and Second Generation Rights,” in Margot Young, Susan Boyd, Gwen Brodsky, and Shelagh Day, eds., *Poverty: Rights, Social Citizenship, and Legal Activism* (Vancouver: UBC Press, 2007) at 292).

99. Dignity can be dishonoured in different ways. Yet, importantly, the dignity of a person is dependent on material conditions that permit her to participate in social, political, and economic life in her society as an equal member and to make choices about her life, including sexual and reproductive choices, as an autonomous creature. Otherwise, explains Réaume, she is excluded, marginalized, and is an outsider (Réaume, at 288).

100. Some material conditions, therefore, have to be seen as essential to dignity, as, in the words of Réaume, minimum conditions for a dignified life. Adequate food, shelter, and clothing are among these foundational conditions. And the benefits that governments provide that address every person’s basic requirement to have these foundational conditions Réaume calls “dignity-constituting benefits” (Réaume, at 287). Adequate social assistance is one of these.

101. About social assistance, Réaume writes:

Social assistance recognizes that those unable to find adequate employment nevertheless need a roof over their heads and food on the table. The alternative is life on the streets, having to beg or pilfer, exclusion from most social activities, subjection to the constant risk of violence and disease, the waste of one’s talents, and the likelihood of premature death. Someone confined to a hand-to-mouth existence can form no meaningful life plan; she is driven by necessity. The impairment of autonomy is comprehensive and extreme. The additional psychological toll of living such a life, including constantly dealing with the misunderstanding and prejudice of others, is staggering. The need created by poverty is... urgent; its alleviation is... integral to human dignity (Réaume, at 292).

102. To the extent that the deprivation of social assistance jeopardizes the enjoyment of section 7 rights to life, liberty, and security of the person, it can

also be dealt with under section 7. The value of individual human dignity underlies both section 7 and 15. However, the deprivation of social assistance is not only a section 7 issue. Nor is it only an issue of *individual* dignity. The deprivation of adequate social assistance has group-based consequences. Only a section 15 lens renders visible the group dimensions of a state denial of the means of subsistence and the layers of rights infringements it both causes and reflects. A section 15 lens reveals not only the connection between social assistance and individual dignity but also the particularly egregious effects of the denial of the means of subsistence to women and other disadvantaged groups for whom poverty is a manifestation of discrimination. For these groups, social assistance, in addition to being a dignity-constituting benefit, is an equality-constituting benefit, the denial of which magnifies the inferior status of those groups whose disadvantage is entrenched.

103. A word about the distinction drawn here between dignity and equality is in order. The terms “dignity” and “substantive equality” have at times been used interchangeably (*Nova Scotia (Workers’ Compensation Board) v. Martin; Nova Scotia (Workers’ Compensation Board) v. Laseur*, [2003] 2 S.C.R. 504 at para. 85). However, the concepts do not seem to us to be completely synonymous. The concept of substantive equality, more than the concept of “human dignity,” is associated with group disadvantage, marginalization, and subordination. Inherent in the idea of “substantive equality” is the recognition that certain groups in the society suffer from entrenched inequality and that members of those groups are systematically denied basic rights, freedoms, and influence in the political process that others take for granted. It is because of the relationship between poverty and group-based disadvantage that social assistance must be recognized not only as a dignity-constituting benefit for the individual, but as an equality-constituting benefit for the groups most affected by poverty.

104. As we have noted, “poor people” is a group disproportionately composed of Aboriginal peoples, women, people with disabilities, recent immigrants, people of colour, and single mothers. These groups have higher rates of poverty than average, some shockingly high, and they are disproportionately reliant on social assistance to meet their basic needs. The economic inequality, as well as the social and political inequality, of members of these groups is part of the “fall-out” from complex, old, and deeply rooted forms of discrimination. For this reason, it is necessary to deal with poverty as a manifestation of sex, race, and disability discrimination. Entrenched patterns of systemic discrimination are a central cause of poverty.

105. Of course, the Québec regulation affected poor young women as well as poor young men. We understand that single mothers were exempted from section 29(a), at least temporarily, though mothers were not exempted during pregnancy. It is reasonable to assume that it also affected Aboriginal people, recent immigrants, people of colour, and at least some people with disabilities.

106. Poverty exaggerates and intensifies the inequality of members of already disadvantaged groups. As this case shows, poor women experience a magnified form of sex inequality. When women are poor, they accept sexual commodification and subordination to men in order to survive. They engage in prostitution or “survival sex” to get by. They are more vulnerable to rape, assault, and sexual harassment because they live in unsafe places, and they are not free to leave abusive relationships or walk away from workplaces that are poisoned. When women are denied adequate social assistance, as they are under these regulations, and they are coerced by want into prostitution and unwanted sex in order to feed and shelter themselves, their constitutional rights to sex equality, liberty, and security of the person are jeopardized. Poverty is also a barrier to women’s participation in decision-making and perpetuates their lack of political influence.

107. A similar analysis can be provided with respect to race equality or equality for persons with disabilities. Attention to the specific ways in which different groups are disadvantaged and marginalized reveals, in a way that only a section 15 analysis can, the specific ways in which denial of social assistance threatens to exacerbate these forces.

108. The decision of the South African Constitutional Court in *Government of the Republic of South Africa v. Grootboom*, [2000] 11 B. Const. L.R. 1169 (S. Afr. Const. Ct.) supports our view that social assistance is an equality-constituting benefit. The Court held that it was a violation of the Constitution for the government to approve a development plan that displaced homeless people, without making reasonable provision for those who had no access to land, no roof over their heads, and were living in crisis situations. The Court explained that the realization of rights to housing is “a key to the advancement of race and gender equality and the evolution of a society in which men and women are able to achieve their full potential” (at para. 23). The logic of this analysis of the interdependency of sex and race equality with the satisfaction of basic material needs, such as access to decent shelter, is also applicable in the Canadian context.

109. The right to equality obliges governments in Canada to ensure that everyone can access the means of subsistence. The obligation to do so is necessarily incidental to the right to equality of disadvantaged groups, including women, Aboriginal people, African-Canadians, and people with disabilities. A corollary is that an equality analysis is always relevant to poverty, even though there may be other rights that also apply. Seeing the group dimensions of poverty, and the layers of rights infringements it both causes and reflects, underlines the societal obligation to address it. Looking at poverty through a group-based equality lens reveals that poverty is more than an individual problem. The patterns of who is poor are static and reflect long-standing discrimination in the society.

110. The danger of ignoring the particular effects on disadvantaged groups is that the nature and extent of the harm of poverty-producing measures and their potential to reinforce pre-existing disadvantage and compromise fundamental interests may not be fully appreciated. Purely individualistic and gender-, race-, and disability-neutral explanations of poverty are too simplistic. Taking into account group-based effects tells more of the truth of what is happening. It can show that there are qualitatively different impacts on certain groups; it may implicate a range of different constitutional rights and treaty provisions; and it calls into question the validity of the assumption that poverty is about individual irresponsibility.

111. Section 15 must enable a consideration of the equality-denying effects of the deprivation of adequate social assistance on the very groups whose need for social assistance is part of the impact of long-standing discrimination against them.

112. We began our section 15 analysis with a consideration of the effect of a stereotype of the undeserving poor that is embedded in the Québec social assistance scheme. We have concluded with an approach that emphasizes the dignity-compromising and equality-compromising effects of lack of access to adequate food, clothing, and housing. An implication of focusing on the effects of the material deprivation is that equalizing the entitlements of all welfare recipients downwards would not remedy the equality rights violation identified in this case. Although equalizing downward would achieve a measure of formal equality, it would not address the substantive inequality that poverty represents and causes. It would amount to an unconscionably extreme form of “equality with a vengeance” (Kathleen Lahey, “Until Women Themselves Have Told All They Have to Tell” (1985) 23(3) *Osgoode Hall Law Journal* 519). There are some material conditions without which individuals are neither viewed nor treated as equals, nor can they function as equal members of the society. In Canada, access to the means to meet basic needs is such a condition.

### *B. Section 1*

113. Louise Gosselin’s equality rights were infringed by Section 29(a) of the *RRSA*. The burden falls on the government of Québec to prove that such a limit on her rights was justified. This is a burden that the government of Québec has not discharged.

114. The ultimate standard against which a limit on a *Charter* right must be shown to be reasonable and demonstrably justified are the values and principles essential to a free and democratic society. Those values include respect for the inherent dignity of the person, a commitment to social justice and equality, and faith in social and political institutions that enhance the participation of individuals and groups in society.

115. Using the Supreme Court of Canada's section 1 test, *R. v. Oakes*, [1986] 1 S.C.R. 103, in order to demonstrably justify such a limit, the government of Québec must show that the provision pursues an objective that is sufficiently important to justify limiting a *Charter* right and that it does so in a manner that: (1) is rationally connected to that objective; (2) impairs the right no more than is reasonably necessary to accomplish that objective; and (3) does not have a disproportionately severe effect on the persons to whom it applies.

#### (1) Pressing and Substantial Objective

116. The primary objective of section 29(a) was to provide a negative financial incentive to persons eligible for social assistance who were under thirty in order to induce them to join the work force and thereby reduce the welfare rolls.

117. This objective is impermissible because a discriminatory stereotype is built into it, namely that young able-bodied welfare recipients will not seek employment unless forced to do so. As we have indicated earlier, the proof that this stereotype was operative lies in the fact that people thirty and over were not subjected to the same negative financial incentive, and yet there was no evidence that the under-thirty group was any less likely to avail itself of employment opportunities than those thirty and over. Nor was there evidence that there were available employment opportunities which under-thirty welfare recipients simply refused to pursue. On the contrary, the evidence was that the 1980s were years of high unemployment in Québec, particularly for youth. In other words, there was no objective, non-discriminatory reason for the negative financial incentive applied to the under-thirty group.

#### (2) Rational Connection

118. Even if we accepted that ensuring the entry or re-entry of young persons into the labour force was a pressing and substantial objective, cutting the social assistance of the under-thirty year olds was not rationally related to this goal. To the contrary, there is evidence that living on the reduced rate actually diminished the ability of members of this group to seek and keep employment because they did not have money for transportation, a telephone, a stable address, decent clothes, and other amenities necessary to function as a work-seeker or a worker.

#### (3) Minimal Impairment

119. Nor did section 29(a) minimally impair the section 15 equality rights of young poor women and men. If section 29(a) is viewed as part of an endeavour to encourage them to participate in employability programs, the

government of Québec failed to show that cutting the social assistance rate for this group was necessary to the achievement of the objective. The government of Québec also failed to show that there was a reasonable basis for believing that its employability programs would offset the harm of section 29(a), considering the deficiencies of these programs.

120. There is no reason to be deferential to the legislature's choice in this particular case. The group affected was a vulnerable one and included extremely vulnerable women, of whom Louise Gosselin was one. The group suffers from old, negative stereotyping; the nature of the interest affected by the exclusion is fundamental; and there is no evidence of competing interests requiring arbitration.

121. Even according the government of Québec a high degree of deference, it failed to demonstrate that the provision in question constituted a means of achieving its legislative objective that was minimally impairing of the equality rights of the claimants. For example, the government did not demonstrate that it could not have created a positive incentive for the under-thirty year olds to participate in employability programs by providing a top-up to the base rate as it did for those thirty and over.

122. The government of Québec argued that there was no evidence to show that the under-thirty recipients did not participate in the programs for anything other than personal reasons, but, at the section 1 stage of analysis, it is the government's responsibility to show that the legislation limited the right as little as possible. Since the employability scheme was structurally incapable of ensuring that all of the under-thirty year olds could participate in the programs and could receive the regular rate, the government did not meet its burden to show minimal impairment of equality rights.

#### (4) Proportionality

123. Because the scheme at issue fails at the rational connection and minimal impairment stages of the *Oakes* test, it is pointless to ask whether its positive effects might outweigh its deleterious consequences. We are not satisfied that the violation of equality rights was necessary, and it therefore cannot be justified in a free and democratic society.

#### C. Section 7

124. Given our finding that the treatment of Louise Gosselin violates section 15 of the *Charter*, and cannot be saved by section 1, it is not necessary to consider section 7. We wish to provide our comments, however, because we disagree with the analysis of the majority of the Supreme Court of Canada, as well as with some aspects of the minority decision. This is the first case in

which the Supreme Court of Canada had the opportunity to comment directly on the role of section 7 in ensuring that all Canadians have access to the basic necessities of life, and we wish to state clearly that, in our view, section 7, in addition to section 15, should have protected Louise Gosselin from the degrading poverty that she suffered in this case.

(1) One Right or Two?

125. Section 7 of the *Charter* provides:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice [Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale].

126. Arbour J. provides an analysis of the grammatical structure of section 7, focusing on the fact that its two clauses are conjunctive in English, and separated by a semi-colon in French. She concludes that section 7 contains two separate rights: first, a right to life, liberty and security of the person and, second, a right not to be deprived of life, liberty and security of the person except in accordance with fundamental justice. She finds that the first right is violated and that it is unnecessary, therefore, to consider the principles of fundamental justice.

127. This approach diverges considerably from the earlier jurisprudence concerning section 7. The possibility of a two-rights approach was raised as a possible interpretation in the early days of the *Charter*, but was never adopted (*Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486; *Operation Dismantle Inc. v. The Queen*, [1985] 1 S.C.R. 441). The one-right approach, which treats section 7 as a single right, and requires a breach of fundamental justice in order for it to be violated came to be applied invariably.

128. The need to choose between the two approaches only arises if a breach of fundamental justice cannot be found, since this makes it necessary to determine whether a section 7 violation could be established through a different theory. We believe that there is a breach of fundamental justice in this case, so the choice need not be made. That being the case, we proceed using the conventional approach.

129. Furthermore, we disagree with Arbour J.'s suggestion that the two-rights approach is necessary in order to interpret section 7 as providing a positive right to state support of life, liberty, and security of the person. As part of a "contextual analysis" in support of the two-rights approach, she concludes that because some rights may be used to justify the violation of other



rights under section 1, every *Charter* right must contain a positive dimension. She says (at paras. 353–4):

*Charter* rights and freedoms find protection in section 1, not only because they are guaranteed in that section, but because limitations on some rights are required by the positive protection of others. . . . In other words, the justificatory mechanism in place in section 1 of the *Charter* reflects the existence of a positive right to *Charter* protection asserted in support of alleged interference by the state with the rights of others. If such positive rights exist in that form in section 1, they must, *a fortiori*, exist in the various *Charter* provisions articulating the existence of the rights. For instance, if one's right to life, liberty and security of the person can be limited under section 1 by the need to protect the life, liberty or security of others, it can only be because the right is not merely a negative right but a positive one, calling for the state not only to abstain from interfering with life, liberty and security of the person but also to actively secure that right in the face of competing demands.

130. In using this analysis to support her conclusion that section 7 contains two rights, *Arbour J.* appears to suggest that the one-right theory does not leave any positive dimension to section 7. If this is her intended meaning, we do not agree. The fact that fundamental justice must be breached before section 7 can be violated does not mean that the state has no obligation to protect life, liberty, and security of the person in the first place. A deprivation of life, liberty, and security of the person may occur not just through action but also through inaction, making any failure to protect these interests, including by failure to take positive steps to ensure protection, the potential subject of the fundamental justice analysis.

131. Having expressed this concern, and in proceeding by way of the conventional analysis, we do not wish to be taken as expressly rejecting the two-rights approach. There is much to be said for the argument that any violation of life, liberty, or security of the person should require justification under section 1. There may be a case, in the future, in which a claimant needs to take up this cause in order to establish a section 7 violation. We simply leave that analysis for another day.

## (2) Interests Protected by Section 7

132. Having elected to proceed in accordance with the conventional approach to section 7, we are compelled to conduct a two-stage analysis: (1) is there a deprivation of one of the interests protected by section 7, and (2) if so,

is this deprivation in accordance with the principles of fundamental justice (*R. v. Heywood*, [1994] 3 S.C.R. 761)?

133. The first question requires us to consider whether the interests at stake are ones that fall within the meaning of the words “life,” “liberty,” or “security of the person.” We agree with the Supreme Court of Canada that these are three separate interests, each of which must be given separate meaning and none of which has primacy over the others (*Heywood, supra*).

134. The starting point for ascertaining the scope of the three interests is the “plain meaning” of the words. They are ordinary words and they are not ambiguous. The plain meaning approach is the “golden rule” of statutory interpretation (*R. v. Macintosh*, [1995] 1 S.C.R. 686). In our view, it applies to constitutional as well as other statutory instruments. Added to this, in the *Charter* context, is a heightened requirement that the plain words be given a “generous,” “broad,” and “purposive” interpretation (*Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145).

135. The appellant in this case is particularly concerned with the plain meaning of the words “life” and “security of the person” in section 7. “Life,” according to ordinary sensibilities, refers to the quality that separates living organisms from inanimate ones and includes the physical, mental, and spiritual experiences that constitute existence. “Security” refers to an assurance of safety, including freedom from danger and anxiety. In our view, section 7 is therefore clearly concerned, on its face, with physical and psychological well-being.

136. These are precisely the interests that the Supreme Court of Canada has acknowledged to be protected by section 7, though never in a case concerning social assistance. Security of the person involves interference with “physical and psychological integrity,” including “serious state-imposed stress” (*Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307). Circumstances sufficient to invoke security of the person have included threatened torture (*Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177); the inability to commit suicide (*Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519); the inability to access safe abortion (*R. v. Morgentaler*, [1988] 1 S.C.R. 30); and the inability to get a timely hearing of serious harassment allegations (*Blencoe*). The extension of security of the person to circumstances involving the inability to access basic necessities is both crucial and obvious. We do not need evidence to know that food, housing, and clothing are *sine qua non* requirements of physical and mental integrity.

137. In addition, we find that “life” is implicated when the threat to mental and physical security is so severe that death is threatened. The chief justice and two other justices of the Supreme Court of Canada expressly accepted this proposition in *Chaoulli v. Québec (Attorney General)*, [2005] 1 S.C.R. 791, where they found that the inability to access private health care

involved the “life” interest because “lack of timely health care can result in death” (at para. 123). This conclusion flows from the accepted principle that *threats* to life, liberty, or security of the person are sufficient to engage these rights (*Morgentaler, supra* at 32–33). (It is worth noting that this analysis contradicts Arbour J.’s argument that the right to life except in accordance with fundamental justice had no meaning apart from prohibiting capital punishment, which partly grounded her argument in favour of the two-rights approach).

138. The respondent and intervenor attorneys general in this case argued that the plain meaning of section 7 should be read down so as to exclude “economic interests.” They said that the history of section 7 supports this interpretation, since the framers of the *Charter* expressly decided to exclude “property” rights from section 7.

139. Like Arbour J., we cannot accept this argument. As Chief Justice Brian Dickson stated in *Irwin Toy*, “property interests” and “economic interests” are not synonymous. There are many economic interests that are not property rights although they may have an economic component (*Irwin Toy Ltd. v. A.G. Québec*, [1989] 1 S.C.R. 927). Moreover, as pointed out by the intervenor Charter Committee on Poverty Issues in its factum, the historical exclusion of property rights did not stem from a desire to exclude “economic” interests from *Charter* protection but rather from a narrow concern of the provinces that specific protection of property could erode the ability of provinces to regulate property pursuant to their power to do so under section 91 of the *Constitution Act, 1867* (A. Alvaro, “Why Property Rights Were Excluded from the Canadian Charter of Rights and Freedoms” (1991) 24 *Canadian Journal of Political Science* 309). In short, there is no historical foundation for an argument that all interests with an economic component should be read out of section 7.

140. This is not to say that section 7 protects “economic interests” *per se*. Rather, the interests involved must affect physical and psychological integrity to a serious degree, measured by the impact on human dignity and independence (*Siemens v. Manitoba (Attorney General)*, [2003] 1 S.C.R. 6). As discussed in relation to section 15 above, dignity is clearly at issue when access to basic necessities, such as food and shelter, is seriously threatened. Social assistance schemes are created to provide these requirements, with rates generally set at a level purported to provide minimal subsistence. Receipt of anything less than these rates must necessarily meet the required threshold of a serious impact on physical and psychological integrity.

141. We agree with L’Heureux-Dubé J. that the government’s chosen level of benefits is not the only benchmark for a section 7 violation (*Gosselin* SCC, at para. 142). The appropriate level of social benefits could, in another case, be established by way of evidence. It is possible that a government scheme would fall short. Once again, the appropriate question

would be whether the basic entitlement impairs life and security of the person to the point that physical and psychological integrity are impaired in a manner serious enough to engage the values of individual dignity and independence. Unlike *Arbour J.*, we are confident that courts have the institutional competence to assess this, given the proper evidentiary foundation. Basic needs such as shelter costs and nutritious food requirements, and the impact of deficiencies, are sufficiently measurable to permit a court to identify a floor beneath which no individual should be allowed to fall.

142. In summary, when the words “life” and “security of the person” are given their plain and ordinary meaning it is abundantly obvious that they encompass the kind of interests that were at stake for Louise Gosselin in this case. With respect, we cannot comprehend how MacLachlin C.J. was able to conclude that the evidence in this case did not rise to the level of affecting an interest protected by section 7. As described earlier in relation to section 15, the evidence clearly demonstrated that Louise Gosselin was unable to feed, clothe, or house herself adequately during times when she was subject to the reduced rate. As noted earlier, she was “relieved” when she made it to age thirty—thankful that she had survived. There is no doubt that her life was at stake, and her security of the person was in serious jeopardy. There is also no doubt that the government could have done something about this, but that it actively chose not to do so.

143. In addition to life and security of the person, in our view the facts of this case also engage the “liberty” interest protected by section 7 of the *Charter*. As the Supreme Court of Canada has recognized in the past, liberty includes not only the notion of freedom from physical constraint, but also the autonomy to make fundamental personal choices without state interference (*Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844 at para. 66). Where state actions take away the ability to make fundamental personal choices, they have engaged the liberty interest.

144. We note that the concept of dignity, discussed above in relation to equality, is equally applicable to our notion of liberty. The personal choices, of which a person cannot be deprived under section 7, except in accordance with fundamental justice, are those personal choices that are necessary to preserve dignity. Where dignity-constituting choices are not available, because of government actions, there will be a deprivation of liberty under section 7.

145. In this case, Louise Gosselin’s inability to live in a dignified manner, because the choice to do so was not available to her, was a deprivation of her liberty. Perhaps the most extreme example of this kind of deprivation is represented by the resort to ‘survival sex’ we noted earlier. But there are endless examples of choices that she could and would have made for her own health and welfare, were it not for the state’s decision to drive her into an existence below subsistence level.

146. It is notable that while we rely on the concepts of liberty and autonomy to impugn the government action in this case, the government relied on the same concepts—successfully in the courts below—to justify its actions. Its argument was that the purpose of the law is “to promote the claimant’s long-term autonomy and self-sufficiency” and thus there could be no harm to Louise Gosselin’s dignity. Under the government’s theory, liberty is achieved by escaping poverty. The mechanism for improving long-term autonomy is the improvement of welfare recipients’ material conditions—the “escape from unemployment” described by the Supreme Court at para. 43—that is presumed to be brought about by the law in question.

147. The theory recognizes, therefore, that material conditions have a direct impact on liberty. This connection is not expressly stated, however, with the result that the immediate material impact of the law, and its relationship to liberty in the short term, is ignored in the analysis. We cannot accept that result, particularly where life and security of the person are also at stake.

148. The Supreme Court’s failure to acknowledge the connection between autonomy and severe poverty has another impact as well—that is, to suggest that a person cannot enjoy (or does not possess) freedom or autonomy unless he or she is free from the state altogether and no longer in need of state support. A person on welfare therefore cannot be capable of enjoying liberty and autonomy, and thus cannot be seen as having all of the attributes of a full citizen. Such a message reinforces the stereotypes and justifies the negative attitudes toward welfare and welfare recipients discussed earlier in this decision.

### (3) Government Responsibility for the Section 7 Deprivation

149. The respondent and intervenor attorneys general also argued that section 7 cannot be violated unless the state is directly responsible for the threat to the claimant’s life or security of the person—that is, responsible for the conditions that created their poverty. Otherwise, they say, section 7 would be creating a positive obligation on the government that is inconsistent with the scheme of the *Charter*, which involves “negative” rights (freedom from state intrusion) rather than “positive rights” (obligations on the state to intervene).

150. This argument does not stand up to scrutiny. As Arbour J. stated in her reasons, many *Charter* rights require positive government action, including expenditures of government funds. The right to vote (section 3), the right to procedural safeguards in criminal proceedings (section 11), and the right to minority language education (section 23) are clear examples. There is no sense in which these can be considered “negative” rights and not “positive,” since they can only be enjoyed through the implementation, by the government itself, of specific mechanisms that give them effect. These are mechanisms that

require action. The government does not have a “policy choice” to make about whether they design the institutions necessary to ensure that these rights are upheld.

151. Other *Charter* rights also have both negative and positive components. They may be negative in the sense that the government cannot interfere with their enjoyment, but, at the same time, they may be positive in the sense that in some cases the government must take steps to ensure that everyone can enjoy them. In *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016, the Supreme Court of Canada found that the right to association requires not only freedom from interference but also the enactment of a legal regime that ensures effective means of association for everyone. In *Native Women’s Assn. of Canada v. Canada*, [1994] 3 S.C.R. 627, the Court acknowledged that freedom of speech may also require positive steps. In *Schachter v. Canada*, [1992] 2 S.C.R. 679, the right to equality was described as a “hybrid,” which in some cases requires the government to refrain from acting in certain ways and in other cases may require that the government take steps to ensure that equality is obtained.

152. It is argued that even if other rights have a positive aspect, the “deprivation” aspect of section 7 confines this particular right to a negative-rights paradigm only. McLachlin C.J. seems to accept this (at para. 81), and it is suggested by Arbour J.’s rejection of the one-right approach, discussed earlier in this decision. As noted, we do not agree with this narrow understanding of the word “deprivation.” The choice not to do something is no less a cause of deprivation than the choice to take something away. In *Eldridge, supra*, the Supreme Court of Canada concluded that deaf persons were deprived of equal health care because the government did not provide interpreter services. Similarly in *Vriend, supra*, the failure to protect against discrimination was a deprivation of protection. A purposive, large, and liberal interpretation of the word deprivation, which is required under the *Charter*, includes not just the notion of actively taking away, but also the notion of withholding or of unavailability or absence.

153. The positive aspect of section 15, described thoroughly earlier, requires governments to take steps to alleviate disadvantage in order to promote equality. This supports our view that section 7 should be interpreted as providing protection against deprivations of life and security of the person that are caused by poverty. The right to equal benefit and protection of the law is illusory if poverty prevents one from participating and enjoying the rights of equal citizenship.

#### (4) Is Under-Inclusion a Pre-Condition to Finding a Section 7 Violation?

154. Arbour J.’s reasoning relies heavily on *Dunmore, supra*, and its focus on “under-inclusion” to ground the finding of a section 7 violation.

Although she begins by clearly describing the case as one involving “whether there is a right to a minimum level of subsistence,” in dealing with the case at bar she found that the right to life and security of the person requires inclusion in the state’s welfare scheme. She did not expressly find that the state has an obligation to create the scheme in the first place but, rather, chose to use the under-inclusion paradigm because the scheme already exists (*Gosselin* SCC, at paras. 356 and 359).

155. We wish to state clearly that section 7 creates an obligation to create a welfare scheme that provides adequately for persons in need and that the failure to do so would be a deprivation of life, liberty, and security of the person. Section 7 protects life and security of the person *per se*. The failure to provide anyone with the means to access basic needs is a threat to that person’s life and security of the person, whether or not other people have access, through a welfare scheme or otherwise. The need creates the threat, and the government must protect against it.

(5) Is the Deprivation in Accordance with the Principles of Fundamental Justice?

156. Since we have adopted the more traditional approach to section 7—one right that is subject to abrogation only when the principles of fundamental justice are complied with—we must address the question of whether the welfare scheme in this case accords with the principles of fundamental justice. We find that it does not.

157. As the Supreme Court of Canada has repeatedly stated, the principles of fundamental justice are to be found in the basic tenets of the Canadian justice system. They encompass our basic notions of both procedural and substantive fairness. They may be found in the underlying principles of domestic and international law. They must be legal and not mere matters of “morality” (*Rodriguez, supra*).

158. In our view one of the basic tenets of Canadian justice is a principle that our laws must not permit or create circumstances that deprive persons of the basic necessities of life. This principle runs throughout our domestic and international laws. This is one of the shared assumptions upon which our system of justice is grounded, and it is a basic norm for how the state deals with individuals (*Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76).

159. Canadian penal laws, for example, expressly forbid the state from depriving prisoners of basic necessities (*Corrections and Conditional Release Act*, R.S.C. 1992, c. 20, s. 70; *Corrections and Conditional Release Act Regulations*, SOR/92-620, s. 83). It would be unthinkable to punish criminals by depriving them of food or shelter or forcing them into prostitution or other obviously dangerous circumstances. Yet this is precisely the effect of the law

at issue in this case. The punishment for being a young person who needs social assistance, but cannot access a job program, is to be more cold, hungry, and endangered than the worst offender in the highest security prison in Canada.

160. Other examples of this principle in our laws include the bankruptcy laws, which permit a bankrupt to retain a specified amount as an allowance (an amount that, notably, is more generous than any social assistance scheme) (*Re Pearson* (1997), 46 C.B.R. (3d) (Alta. Q.B.) at para. 24; see generally the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, ss. 67-68), and our family law rules, which permit a parent or former spouse to take care of their own personal basic needs before requiring payment of support (*Family Law Act*, R.S.O. 1990, c. F.3, s. 33(9); *Family Relations Act*, R.S.B.C. 1996, c. 128, s. 89(1); *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), s. 15.2(4); Federal Child Support Guidelines, SOR/97-175). Debtor-creditor laws make various types of assets (such as pensions or social assistance benefits) exempt from seizure by creditors because it is understood that such benefits are intended to provide for basic needs and that the seizure of them would result in poverty (C.R.B. Dick Dunlop, *Creditor-Debtor Law in Canada*, 2nd edition., (Toronto: Carswell, 1995) at 449 ff). The *Criminal Code* (R.S.C. 1985, c. C-46, s. 215 c. (-46, s. 215)) creates an offence for people who are charged with supporting another human being to fail to provide the necessities of life, which includes the provision of food, shelter, and medical care.

161. These domestic regimes all evidence a general principle that no one should be disabled, by law, from being able to attain the basic necessities of life. International laws are to the same effect and also help in discerning the principles of fundamental justice (*Re B.C. Motor Vehicle Act*, *supra*; *United States v. Burns*, [2001] 1 S.C.R. 283). Canada is a signatory to many international treaties that demonstrate a commitment to the same underlying fundamental principle—that no one should be deprived of the basic necessities of life. As noted earlier, various international instruments include obligations to provide an adequate standard of living, including access to food, housing, and health care, and UN monitoring bodies have held these rights to be violated by inadequate provisions of welfare. Canada is a wealthy country in which it is possible to fulfil these obligations. There is simply no excuse for not doing so. The position so often taken by governments in Canada in litigation, denying the role of section 7 in fulfilling these international commitments, is a shameful stain on Canada's reputation as a protector of human rights.

162. It is no answer to these fundamental norms to point to the historical inadequacy and under-inclusion of welfare schemes in Canada, and elsewhere, and to conclude, thereby, that the "consensus" about these fundamental norms does not extend to social programs. To do so would be to justify a violation of section 7 by reference to the violation itself. The proper question is whether the underlying principle is generally present within our legal system,



and, if so, whether the failure to adhere to this principle in the context at issue can be explained by reference to some other principle of fundamental justice. There is no such principle in this case. On the contrary, the failure to abide by fundamental justice in the case of welfare recipients stems from discriminatory and punitive attitudes towards people who rely on government assistance rather than employment. There is nothing fundamentally just about these attitudes.

163. We also believe that the violation of equality in this case constitutes, in addition to a violation of section 15, a violation of fundamental justice. Equality is undoubtedly a cornerstone of our democracy and a tenet of our legal system. As the Supreme Court of Canada has stated, it is the “broadest” of *Charter* guarantees, and it has been a feature of the justice system throughout our legal history. The meaning of equality has developed over time, but the fundamental legal principle—that all persons should be equal under the law—has remained constant. The legal commitment to equality is evidenced throughout our domestic laws and in countless international instruments that Canada has ratified.

164. Other well-accepted principles of fundamental justice are also violated in this case: the principle against arbitrariness and the related principle against over-breadth. The Supreme Court of Canada has stated that a provision will breach fundamental justice due to arbitrariness when its scope is disproportionate to the problem that the law seeks to address (*R. v. Marmo-Levine*; *R. v. Caine*, [2003] 3 S.C.R. 571). Over-breadth, similarly, involves a law that includes persons for whom the effect is disproportionate to the government’s stated objective (*Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031). Both of these principles are violated in this case by the fact that the law was applied even to persons who were ineligible for, or unable to access, the required training and work programs.

#### (6) Relationship between Section 7 and Section 1 of the *Charter*

165. It is arguable that in finding that section 7 of the *Charter* is violated, there is no need to consider section 1. The view was expressed by Justice Bertha Wilson in *Re B.C. Motor Vehicle Act*, *supra*, at para. 119, that a violation of fundamental justice cannot be either reasonable or justifiable, as the two concepts are “mutually exclusive.” Where fundamental justice is violated, she said, “the enquiry, in my view, ends there and the limit cannot be sustained under section 1” (at para. 105).

166. Wilson J. was speaking for herself in this case and her definitive view has not been adopted in subsequent cases. Rather, it has been said that it will be extremely rare for a section 7 violation to be saved by section 1, and the *Oakes* test has been applied in the normal course (*Kindler v. Canada (Minister of Justice)*, [1991] 2 S.C.R. 779).

167. We prefer Wilson J.'s view. Its wisdom is well illustrated by the present case, which demonstrates the strong overlap between the considerations relevant to section 1 and to fundamental justice.

168. The principles of arbitrariness and over-breadth, for example, both of which applied in this case, correspond conceptually to the rationality and minimal impairment aspects of the *Oakes* test—namely, the prohibition against interference with *Charter*-protected interests by laws that over-reach the scope of their proposed objectives. There is no reason that a consideration of this requirement under section 7 should yield different results under section 1, so there should be no need to conduct the analysis twice. The Supreme Court of Canada acknowledged this in *Heywood, supra*, at 802, when it stated that “[o]verbroad legislation which infringes section 7 of the *Charter* would appear to be incapable of passing the minimal impairment branch of the section 1 analysis.”

169. There is a balancing aspect to fundamental justice that is also clearly similar to the considerations required under section 1. The Supreme Court of Canada has stated this repeatedly, holding that in order for a law to be fundamentally just it must strike an appropriate balance between the individual rights at stake and the purported state objectives.

170. This balancing exercise has been the primary section 7 inquiry in cases such as *Rodriguez, supra*, (where it was found that the state interest in protecting life outweighed the individual interest in controlling one's death); *Cunningham v. Canada*, [1993] 2 S.C.R. 143 (where it was found that the interest of protecting society from potential crime outweighed a prisoner's interest in early release); and *Godbout, supra* (where it was found that the interest of a municipality in having its employees live within city limits were not sufficient to outweigh the individual interests in choosing where to live). In *Godbout*, notably, the Court acknowledged that having conducted this balancing analysis under section 7 it was unnecessary to conduct a section 1 analysis (at para. 91).

171. With respect to the concept of equality as a principle of fundamental justice, this is a violation, we believe, of the proportionality arm of the *Oakes* test. The section 7 violation already involves harm to the interests of life, liberty, or security of the person, and the addition of an equality violation, on top of that, is a violation of a second fundamental *Charter* interest. We cannot conceive of a government interest of such great importance that it would enable harm to one set of *Charter* interests *by way of* a violation of another *Charter* right.

172. This is particularly apparent when we consider that section 1 is not just about measuring the purpose of a law against its effect but rather about doing so by reference to what is acceptable in a free and democratic society. The reference to democracy is not about deference to the decisions of a duly elected majority government but to the values that underlie our democracy.

Majoritarian decision-making is only one such principle. Equally important principles, particularly in the context of the *Charter*, are equality, participation, social justice, and inclusion (*R. v. Oakes*, at 136). Adherence to democratic values means, therefore, that the law in question must as much as possible ensure the inclusion of those who are normally excluded. Where the law actually fosters exclusion, it cannot be consistent with a substantive understanding of Canadian democratic society, and cannot pass muster under section 1.

#### D. Section 45 of the Québec Charter of Human Rights and Freedoms

173. This case raises the further issue of whether section 29(a) of the *RRSA* violates section 45 of the Québec *Charter* and if so, whether a remedy is available under the Québec *Charter*.

174. The Québec *Charter* is a fundamental, quasi-constitutional statute of public order. It is more than an anti-discrimination code. The Québec *Charter* articulates the social contract that is the foundation of modern Québec society. It sets out fundamental rights and freedoms as well as the political, judicial, social, and economic rights of all human beings. The Québec *Charter* thus implicitly recognizes the indivisible and interdependent nature of these rights as well as their shared role in laying down the foundation of justice and peace that Québécois collectively aspire to.

175. It is well established that the Québec *Charter* calls for a broad and generous interpretation that will allow it to achieve its purpose (*Québec (Commission des droits de la personne et des droits de la jeunesse v. Montréal (City); Québec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, [2000] 1 S.C.R. 665). These principles of interpretation apply to the fundamental rights and freedoms set out in Chapter 1 as well as to the economic and social rights set out in Chapter IV and to the remedial provisions. It is the Québec *Charter* as a whole that is binding on the Crown (s. 54), not just the fundamental rights and freedoms set out in Chapter 1.

176. Section 45 sets out one of the economic and social rights. It reads:

45. Every person in need has a right for himself and his family, to measures of financial assistance and to social measures provided for by law, susceptible of ensuring such person an acceptable standard of living.

177. When it adopted the Québec *Charter*, the Québec National Assembly clearly wished to establish a domestic law regime that reflects the principles

and standards set out in international human rights law. As Robert J. and then L'Heureux-Dubé J. (*Gosselin* S.C.C.) underscored at length in their respective dissenting opinions, section 45 of the Québec *Charter* bears a close resemblance to Article 11 of the *ICESCR*. According to the United Nations CESCR, Article 11 of the *ICESCR* contains “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of subsistence needs and the provision of basic services” (CESCR, *Report on the Fifth Session*, UN ESCOR, Supp. No. 3, UN Doc. E/1991/23 (1991) at para. 10).

178. Just as Article 11 of the *ICESCR* contains a core obligation to ensure satisfaction of subsistence needs, section 45 of the Québec *Charter* creates an obligation to ensure subsistence needs *through legislation*, as opposed to delegating this vital role to organizations in the voluntary sector such as food banks and shelters or religious organizations.

179. In the Supreme Court of Canada, the bench was divided on the issue of the justiciable nature of section 45 of the Québec *Charter*. Yet to differing extents, not only L'Heureux-Dubé J. but also Gonthier, Iacobucci, Major and Binnie J.J., and McLachlin C.J. all recognized that section 45 must have a certain degree of justiciability.

180. Except in the reasons of L'Heureux-Dubé J., the reasons for judgment erroneously interpreted the expression “provided for by law” as diminishing the scope of the right set out in section 45. Speaking for the majority, McLachlin C.J. concluded that “[a]lthough s. 45 requires the government to provide social assistance measures, it places the adequacy of the particular measures adopted beyond the reach of judicial review.”

181. However, this case does not raise the question of the level at which a person reaches “an acceptable standard of living.” The government of Québec itself had established, by regulation, the rate (approximately \$466 per month) necessary to cover the “basic needs” of a person in need of last-resort assistance or, in other words, the financial assistance susceptible of ensuring a person an acceptable standard of living within the meaning of section 45. In the case at bar, there was no adequacy issue.

182. It was admitted that no person, over or under thirty, could survive on \$170 per month. Within the framework established by the government itself, Louise Gosselin was denied the right to financial assistance “susceptible of ensuring a person an acceptable standard of living” set out in section 45. Thus, even within the artificially narrow framework in which the majority placed section 45, Louise Gosselin's claim should have succeeded.

183. It is true that for some of the period in question, Louise Gosselin did receive the regular rate. Indeed, approximately 11.2 per cent of women and men under the age of thirty requiring last-resort assistance were able to receive the regular rate. However, even when she was able to participate in one of the employment programs and received the regular rate, her right to financial

assistance under section 45 was not respected. As her testimony so eloquently conveys, even when she was on the basic rate, her experience of last-resort assistance was rife with fear—fear of hunger, fear of cold, fear of being homeless—in a way that was intimately linked to the ever-present threat of being relegated once again to the reduced rate. This situation cannot be said to respect the “equal worth and dignity” of each member of Québec society that is set out in the preamble of the Québec *Charter* and that should inform interpretation of its provisions.

184. Having proclaimed a right to financial assistance and social measures for persons in need, the Québec legislature was then precluded from making that right conditional on the fulfilment of certain conditions such as participation in a program. The government had determined that Louise Gosselin was in need of last-resort assistance under the terms of the *Social Aid Act*. It had determined the amount of social assistance required to meet the “basic needs” of any individual. Under section 45, it was then obligated to provide that minimum amount of assistance to Louise Gosselin as well as other persons under the age of thirty.

## V. Remedy

### A. Remedy under the Canadian Charter: Overview

185. Pursuant to section 52 of the Canadian *Charter*, the Women’s Court of Canada declares that section 29(a) of the Québec *RRSA* was invalid from 17 April 1987, the date on which the Canadian *Charter* came into force in Québec.

186. Louise Gosselin sought an award pursuant to section 24(1) of the *Charter* compensating the members of the group for the difference between the regular benefit and the reduced rate for the periods when they received the reduced rate. Before we decide this question, it is useful to review the principles that inform the Court’s approach with respect to remedy in the case of violations of *Charter* rights and freedoms.

187. The Supreme Court of Canada has ruled that section 24 must be interpreted in a way that achieves its purpose of upholding *Charter* rights by providing effective remedies for their breach. McLachlin C.J. has stated in the context of criminal law that “a right, no matter how expansive in theory, is only as meaningful as the remedy provided for its breach” (*R. v. 974649 Ontario Inc.*, [2001] 3 S.C.R. 575 at para. 20 [*Dunedin*]; see also *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3 at para. 55).

188. In the context of criminal law, section 24(1) is described as “a cornerstone upon which the rights and freedoms guaranteed by the *Charter* are founded, and a critical means by which they are realized and preserved” (*Dunedin*, at para. 20). In much the same way, in the context of social programs that are found to be inconsistent with the *Charter*, sections 52(1) and

24(1) of the *Charter* form the cornerstone upon which the equality guarantee is founded and a “critical means” by which section 15 equality rights must be “realized and preserved.”

189. Even seen through the excessively narrow (and some would say distorting) lens of public law principles, a remedy is available to the plaintiff. Indeed, regardless of its precise interaction with constitutional and human rights law, state immunity is never unlimited. In this case, the government asked a group of already very poor welfare recipients defined by age to bear a disproportionate burden of a fiscal crisis affecting the entire province. These individuals, who were by definition in need of last-resort assistance, assumed this burden at the price of their physical and psychological security. Lack of political power kept this group from protecting itself in the political arena of majority-rule government. State immunity cannot now prevent the courts from preserving this vulnerable group’s constitutional right to a meaningful remedy from the courts.

190. When general public law principles may come into conflict with constitutional principles guaranteeing fundamental rights and freedoms to all Canadians, the Supreme Court of Canada has said that the guiding principle is one that allows “a balance between the protection of constitutional rights and the need for effective government” (*Mackin v. New Brunswick (Minister of Finance)*; *Rice v. New Brunswick*, [2002] 1 S.C.R. 405) [*Mackin*]. In striking this balance, the Court must be mindful of Canada’s obligations under international law.

191. Specifically, Article 8 of the *Universal Declaration of Human Rights* stipulates that:

[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

192. Article 2(3) of the *ICCPR* specifies that government representatives must not be granted immunity for human rights violations:

(3) Each State Party to the present Covenant undertakes:  
 (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

193. *CEDAW*, *supra*, and the *Convention on the Elimination of All Forms of Racial Discrimination*, (1969) 660 R.T.N.U. 195, contain similar provisions on the right to effective remedy in case of discrimination on the basis of sex and race.

*B. The Scope of Louise Gosselin's Right to a "Just and Appropriate" Remedy under Section 24(1)*

194. Government conduct that is "clearly wrong, in bad faith or an abuse of power" will lead to an award of damages for the harm suffered as a result of the application of an unconstitutional legislative provision (*Mackin*, at para. 78). In addition, although state immunity may in certain circumstances be relevant when broad public policies are subsequently found to be unconstitutional, the government is nonetheless always required to "respect the 'established and indisputable' laws that define the constitutional rights of individuals" (at para. 79).

195. First and foremost, in a context of a deep economic recession, the purpose of the reduced rate was above all a financial one. We reiterate the central fact that it was admitted that no one could survive on \$170 per month. The government of Québec had fixed the rate necessary to cover "basic needs" at approximately \$466 per month. With shocking disregard for the desperate hardship that this imposed on many individuals, it effectively required welfare recipients age eighteen to twenty-nine years old to contribute the difference between the basic rate and the reduced rate. It is this disregard for young people on welfare that suggests a stereotypical and negative attitude towards their actual and potential worth as members of Québec society.

196. Second, not surprisingly, in this case, the record shows that the government knew that the deprivation of people in need under thirty caused by section 29(a) was "clearly wrong." For example, in 1984, after a Montreal newspaper article reported the results of a study on the nutritional status of recipients on the reduced rate, the material and psychological deprivation caused by the reduced rate was pointed out in the Québec National Assembly. The *Journal de Montréal* article quoted in the National Assembly stated:

As for young social assistance recipients between 18 and 30 years of age who live on \$151 per month, they can choose between a roof over their heads and not eating, or eating and sleeping in parks [translation] (*Gosselin SCC*, PG-42, vol. XVII, at 3214).

197. In 1987, the Québec government's own social assistance policy paper, "Pour une politique de sécurité du revenu," admitted that among twelve glaring problems with the current scheme, the first was that

[i]n the current benefit structure, benefits granted to people under 30 years of age without children are lower than those granted to people over 30 years of age. This problem has been raised again and again in the media and has been the subject of

submissions by the public and concerned groups [translation]  
(*Gosselin SCC*, PG-54, vol. XVII, at 3303).

198. In 1986, public policy expert Derek Hum published an article referring to the “caprice and illogic” of categorization of youth in social security programs such as social assistance. He described the “folly of designing programs with categorical eligibility along with benefit differences based upon age or some other criteria not directly relevant” (Derek Hum, “UISP and the MacDonald Commission: Reform and Restraint” (1986) *Canadian Public Policy/Analyse de politique* 92, at 95, 97).

199. In 1985, briefs submitted to the minister responsible for social aid by professional organizations representing dietitians, nurses, doctors, psychologists, social workers, and criminologists consistently questioned the discriminatory nature of the reduced rate. Given the negative impact of the reduced rate on unemployed adults under thirty years of age, they argued forcefully for its repeal (*Gosselin SCC*, P-9.2, vol. VIII).

200. Of course, the government is not obliged to comply with the wishes of any particular citizens, or groups of citizens, when they ask for a repeal of a given legislative provision in order to stop the harm it is causing. However, when the government chooses to ignore a body of scientific literature documenting the serious harm that a regulation with a primarily financial purpose is causing to a vulnerable population, when that regulation is found to be in breach of the *Charter*, the government is precluded from invoking the doctrine of state immunity in order to avoid responsibility.

201. Section 29(a) was not in any way sanctioned by the “established and indisputable” laws of the time. In fact, it is clear that public opinion condemned section 29(a) as simply wrong. Demonstrating “willful blindness” (*Mackin*, at para. 82) with respect to its constitutional and human rights obligations, the Québec government chose, for financial reasons, to maintain destitute young women and men on the reduced rate for many years before it proceeded with global reform of its social assistance regime. In so doing, the government showed itself to be indifferent and unresponsive to the constitutional and quasi-constitutional rights of an extremely vulnerable population of Québécois.

202. If the guarantees of the *Charter* are to have meaning for all Canadians, there are limits to judicial deference to government’s policy-making role that must be recognized (*Vriend, supra*, at 559–60). In case of doubt, section 24(1) must be interpreted in a manner that provides a full, effective, and meaningful remedy for *Charter* violations.

203. The facts of this case, and the extreme vulnerability of the claimants, make this case one in which a section 24(1) remedy should be added to a section 52 declaration. The challenged regulation deprived extremely vulnerable individuals of the amount of welfare that the legislature itself had deemed necessary to meet the basic necessities of life. For the affected individuals, there



were immediate harms and for some there may be longer-term harms caused by the deprivations they experienced because of the reduced rate. It is just and appropriate that these victims of *Charter* violations be compensated for the violation of their rights. A monetary award can never completely repair the harm that has been done, but it can go some distance towards making these victims whole, and it can signal in the strongest terms that governments have a positive obligation to ensure that young men and women in need are not treated as though they were beyond the reach, and the care, of the Constitution.

204. This finding is in accordance with international law that sets out the right to effective remedy for violations of fundamental rights and clearly stipulates that the government is not to be granted immunity for human rights violations.

205. As this Court also considers an award under section 45 of the Québec *Charter* appropriate, our final words on remedy follow.

### *C. Remedy under the Québec Charter*

206. The case at bar was commenced on 17 April 1985, before the relevant provisions of the Canadian *Charter* came into effect in Québec on 17 April 1987. Do the provisions of the Québec *Charter* form the basis for a remedy to be granted to Louise Gosselin and the other members of the class action suit for the two-year period before the Canadian *Charter* came into effect in Québec?

207. Section 52 of the Québec *Charter* sets out its primacy over ordinary statutes. However, given that the social and economic rights are excluded from the ambit of section 52, this section of the Québec *Charter* clearly does not allow for a declaration that section 29(a) of the regulation is null and void.

208. Social assistance benefits are a service ordinarily offered to the public within the meaning of section 12 of the Québec *Charter*:

12. No one may, through discrimination, refuse to make a juridical act concerning goods or services ordinarily offered to the public.

209. Had the Court found discrimination forbidden by the Québec *Charter*, section 13 would have led to a declaration that section 29(a) was “without effect” (Pierre-Yves Bourdeau, “La responsabilité de l’État employeur ou fournisseur de biens et services à la lumière des protections offertes par la Charte,” in *La Charte des droits et libertés de la personne: pour qui et jusqu’où?* (Textes des conférences du colloque tenu à Montréal les 28 et 29 avril 2005, TDPQ/Barreau du Québec, 2005). Section 13 states:

13. No one may in a juridical act stipulate a clause involving discrimination. Such a clause is without effect.

210. However, discrimination on the basis of age and sex under the Québec *Charter* were not argued in this case. The only provision of the Québec *Charter* that was argued was section 45.

211. If a remedy lies with the Québec *Charter* then, it must lie with section 49. Section 49 sets out a right not only to *cessation* of unlawful interference with a *Charter* right but also to *compensation*:

49. Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

Specifically, section 49 of the Québec *Charter* provides for this dual remedy of cessation/compensation when there has been an “unlawful interference” with a *Charter* right. Interference is unlawful when it is the result of “wrongful conduct,” defined as a violation of:

a standard of conduct considered reasonable in the circumstances under the general law or, in the case of certain protected rights, a standard set out in the Charter itself (*Québec (Curateur public) c. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211 at para. 116).

212. Interference with section 45 was unlawful for the same reasons that a remedy under section 24(1) of the Canadian *Charter* was granted in addition to the section 52(1) declaration of invalidity. Section 29(a) violated a standard of conduct considered reasonably diligent and prudent in the circumstances. The government chose to maintain the reduced rate in spite of compelling and consistent evidence of the grave harm it caused to young women and men in genuine need of last-resort assistance and, in so doing, violated its duty of care to these young people. For these reasons, a remedy is also available under the Québec *Charter* for the period before the Canadian *Charter* came into effect.

213. Finally, the judges of the Supreme Court of Canada found that the procedural vehicle used to bring this *Charter* challenge made it difficult to consider and to evaluate damages as an “appropriate and just” remedy in the circumstances. The amount of damages claimed clearly inhibited their willingness to find in favour of the plaintiff.

214. However, given that Louise Gosselin’s challenge clearly succeeds as an individual action, there is no reason to modify our conclusion simply because her case was brought as a class action. To do so would be to frustrate both the letter and the spirit of the provisions of Book IX of the *Québec Code of Civil Procedure*, R.S.Q., c. C-25, governing class actions. The trial judge authorized the class action suit, giving Louise Gosselin the right to sue on

behalf of other members of the group because they, as individuals, suffered discrete harms similar or related to the harm suffered by Louise Gosselin. Her ability to adequately represent the group was one of the essential conditions for this authorization (Nicole Duval Hesler, “Le recours collectif: un parcours complexe” (Art. 1003 *d*; 2004) 64 *Revue du Barreau* 383 at 397). It is *res judicata* between the parties.

215. According to Hesler, a class action suit is decided in three distinct and separate stages: (1) authorization of an individual to institute a class action; (2) decision on the merits; and, as the case may be, (3) provisions for recovery. In other words, once a plaintiff is authorized to institute a class action against a certain respondent on behalf of herself and other individuals forming a specific group, at trial, her burden of proof is no different than in an ordinary civil suit. Similarly, issues of recovery should not creep into the analysis of the merits of the case (*Dikranian v. Québec (Attorney General)*, [2005] 3 S.C.R. 530). This is essential to the realization of the objectives sought by the class action provisions of the *Civil Code*—increasing access to justice and reducing the cost of the justice system.

216. McLachlin C.J. asks “How much evidence is required to compel a government to retroactively reimburse tens of thousands of people for alleged shortfalls in their welfare payments, arising from a conditional benefits scheme?” (*Gosselin* SCC, at para. 12). She states:

It is, in my respectful opinion, utterly implausible to ask this Court to find the Québec government guilty of discrimination under the *Canadian Charter* and order it to pay hundreds of millions of taxpayer dollars to tens of thousands of unidentified people, based on the testimony of a single affected individual” (at para. 47).

However, it is in the very nature of a class action suit that there, on occasion, can be “tens of thousands of unidentified people” in the group on behalf of which the action is instituted, that when the respondent is the attorney general, “millions of taxpayer dollars” can be at stake and that the evidence with respect to one individual decides the matter for the group. For example, in *Dikranian*, another class action brought under Québec’s *Code of Civil Procedure*, rights flowing from a contract between a student and a financial institution were at issue. Although no evidence was led on the situation of the approximately 70,000 other students who were also members of the group, the Supreme Court of Canada did not hesitate to allow Mr. Dikranian’s appeal. And while the damages to be recovered from the Québec government were significant (approximately forty-two million dollars), this consideration was appropriately absent from the reasons for decision on the merits of the case. Whether the rights at issue flow from a private contract or from the

Canadian or Québec *Charter*, these principles must be applied in the same way in every class action suit.

217. To consider the procedural vehicle that Louise Gosselin used to make her claim as a reason not to grant her compensation would mean that the sum of a group of individuals' right to compensation would amount to less than one individual's right to compensation for a *Charter* breach. This cannot be right.

## ***VI. Disposition***

218. The Women's Court of Canada declares that section 29(a) of the *RRSA* was invalid from 17 April 1987 because it violated sections 15 and 7 of the *Canadian Charter of Rights and Freedoms*, and was not saved by section 1. In addition, the section violates section 45 of the *Québec Charter of Rights and Freedoms*. Damages are awarded under section 49 of the *Québec Charter* for the period between 27 February 1987, which is the date that was set for the commencement of remedies at the time the class action was certified, and 31 July 1989, which is the date when the section was repealed.

219. In this reconsideration, Louise Gosselin's claim is allowed, and the judgments of the courts below are set aside, with costs.

220. In accordance with the procedure for class action suits, the case is remanded to the Superior Court to determine the method for making claims, the exact amounts owed by Québec and the payment procedures.

**Appendix 1**  
**Social Aid Act**

(R.S.Q., c. A-16, as amended by *An Act to amend the Social Aid Act*, S.Q. 1984, c. 5, repealed by *An Act Respecting Income Security*, S.Q. 1988, c. 51, s. 92).

5... Ordinary needs are food, clothing, household and personal requirements and any other costs relating to the habitation of a house or lodging.

All other needs are special needs.

6. Social aid shall meet the ordinary and special needs of any family or individual lacking means of subsistence.

...

11. The Minister may propose a recovery plan to a family or individual who is receiving or who applies for social aid.

The recovery plan may include, in particular, the participation of an individual or a member of a family in a program of work activities or a training program established by the Minister in view of developing the recipient's qualifications for an employment.

The criteria of eligibility to a program established under the second paragraph may take the recipient's age into account.

11.1. The Government, by regulation, shall designate to which work activities programs or training programs sections 11.2 to 11.4 apply.

11.2. In the case of an individual or a family having no dependent child, needs relating to a recipient's participation in a designated program are special needs to the extent determined by regulation for each program.

In all other cases, needs described in the first paragraph are special needs to the extent determined by the Minister for each recipient, but not in excess of the amount determined by regulation. . .

31. In addition to the other regulatory powers assigned to it by this act, the Gouvernement [*sic*], subject to the provisions of this act, may make regulations respecting:

(e) the extent to which the ordinary needs of a family or individual may be met through social aid and the methods whereby such needs must be proven and appraised; in determining what the aid shall be, account may be taken of the age or capacity for work of an individual or of the members of a family having no dependent children, having had no children who are

deceased, or the fact that a family or individual is living with a relative or a child.

### *Regulation Respecting Social Aid*

This is the text of the pertinent sections of the regulation as it appeared on 17 April 1985 (R.R.Q. 1981, c. A-16, r. 1).

23. The ordinary needs of a household shall be determined in terms of its members, each month, according to the following scale:

<i>Adults</i>	<i>Dependent children</i>	<i>Ordinary needs</i>
1	0	\$ 357
1	1	\$ 488
1	2 and over	\$ 526
2	0	\$ 568
2	1	\$ 615
2	2 and over	\$ 651

However, the ordinary needs can be accorded only insofar as the costs a household incurs for lodging on a monthly basis within the meaning of section 27 are equal to or greater than \$85 for a family and \$65 for a single person. The ordinary needs are reduced by the amount by which these costs fall short of these amounts.

29. Aid for ordinary needs shall not exceed:

(a) 121 \$ per month, in the case of an individual capable of working and less than 30 years of age;

(b) twice the monthly amount prescribed in subparagraph *a* for a family without dependent children, where both consorts are able-bodied and under 30 years of age.

In the case of a family without children receiving uninterrupted aid following an application made before 1 July 1984, subparagraph *b* of the first paragraph does not apply if the said family had a child who died before 1 July 1984.

For the month in which the application was made, the amounts prescribed in the first paragraph represent the ordinary needs of the household. The latter are apportioned in the manner indicated in section 10.

35.0.1 Sections 11.2 to 11.4 of the Act shall apply to the following programs established by the Minister under section 11 of the Act:

- (a) On-the-job Training Program;
- (b) Community Work Program.

Section 11.2 of the Act shall also apply to the Remedial Education Program.

35.0.2 In order to develop employability, an amount of 150 \$ is granted to the single person or to the adult of a family without dependent children for a complete month during which he participates in a program subject to section 35.0.1.

In the case of a participant in the Remedial Education Program whose work load established by the school is less than 60 hours per month, an amount of \$150 is deducted on the basis of the number of hours of work in relation to 60.

35.0.5 The amount provided in section 35.0.2 or determined by the Minister under section 35.0.3, except for child care expenses, is reduced on the basis of unauthorized hours of absence under programs subject to section 35.0.1 for the said month with respect to the required hours of participation.

In the case of the Remedial Education Program, the deduction is established according to unauthorized hours of absence from classes under this program with respect to the monthly number of class hours.

35.0.6 No reduction is made when the unauthorized hours of absence do not exceed 5% of the hours of participation established for a participant during the month.

35.0.7 The aid shall also meet the cost required by a person attending a vocational training course that makes this person eligible for an allowance under the National Vocational Training Program Act (S.C., 1980-81-82-83, c. 109).

This cost is equal to the amount of the allowance paid, as reduced under subparagraph *f* of section 40.

For recipients covered by section 29, the cost is equal to the same amount less the difference between ordinary needs under section 23 and the amount prescribed in section 29.

However, it shall not exceed:

- i. for a family, 40 \$ plus 5 \$ per dependent child, plus 50 \$ in the case of a family including only one adult;
- ii. for a single person, 25 \$;

The maximum provided in the fourth paragraph shall not apply to the month in which courses begin if aid for ordinary needs

has been granted for at least 3 consecutive months without this paragraph having been applied during the six preceding months.

Section 35.0.2 was amended, effective August 1, 1985, by O.C. 1542-85, 24 July 1985, (1985) 117 O.G. II 3690, s. 1 as follows:

35.0.2 To assist in developing aptitudes for work, an amount is granted as a special need to the single person or to a spouse in a family without dependent children, for a complete month of participation in a program subject to section 35.0.1. This amount is equal to the amount obtained when 100 \$ is subtracted from the difference between the amount paid subject to the first paragraph of section 23, taking into account section 31, to a single person under 30 years of age and the maximum amount paid under section 29, taking into account section 31, to a single person under 30 years of age.

In the case of a participant in the Remedial Education Program whose course schedule is under 60 hours per month, the amount is reduced to a prorata of the number of actual course hours with respect to 60.

The Regulation was amended, effective April 30, 1986, by *Regulation respecting social aid (Amendment)*, O.C. 555-86, 23 April 1986, (1986) 118 O.G. II 605, ss. 1, 3:

23. The ordinary needs of a household shall be determined in terms of its members, each month, according to the following scale:

<i>Adults</i>	<i>Dependent children</i>	<i>Ordinary needs</i>
1	0	\$ 448
1	1	\$ 609
1	2 and more	\$ 659
2	0	\$ 712
2	1	\$ 769
2	2 and more	\$ 815

However, the ordinary needs of a household living with a parent or a child are reduced by 85 \$.

In all other cases, the ordinary needs are reduced by the amount by which the costs incurred by the household for lodging on a



monthly basis within the meaning of section 27 are less than 85 \$ for a family or less than 65 \$ for a single person. . .

29. Aid for ordinary needs shall not exceed:

(a) 163 \$ per month, in the case of an individual capable of working and less than 30 years of age;

(b) twice the monthly amount prescribed in subparagraph *a* for a family without dependent children, where both consorts are able-bodied and under 30 years of age.

The amounts provided for in the first paragraph are increased by 8 \$ per adult except:

(a) when the household lives with a parent or child;

(b) when a single person lives with a foster family;

(c) when the household lives in housing administered by a municipal housing bureau constituted under the Act respecting the Société d'habitation du Québec (R.S.Q., c. S-8).

In the case of a family without children receiving uninterrupted aid following an application made before 1 July 1984, subparagraph *b* of the first paragraph does not apply if the said family had a child who died before 1 July 1984.

For the month in which the application was made, the amounts prescribed in the first paragraph represent the ordinary needs of the household. The latter are apportioned in the manner indicated in section 10.