

TRISTAT RESOURCES

Adding Social Condition to the Canadian Human Rights Act: Some Issues

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Adding Social Condition to the Canadian Human Rights Act: Some Issues

Introduction

It is with a sense of caution that I have prepared this report on social condition and the Canadian Human Rights Act (CHRA). My research experience has concerned social policy, tax policy and the impact of income and support programs on low-income Canadians. Although, I have been an expert witness and advisor to the Canadian Human Rights Commission, this background is no preparation for a legal argument. This report presents social realities but avoids the related legal issues. Therefore, this report will attempt to be a useful background document to a legal discussion and will avoid, to the extent possible, the discussion itself.

I have been asked to prepare this report to address the circumstances of disadvantaged Canadians. In particular, this report explores social conditions in Canada to inform the discussion about adding social condition to the CHRA.

This paper explores the issue of adding social condition to the Canadian Human Rights Act from the perspective of a social policy researcher and admittedly an advocate for policies helpful to low-income children. The legal issues of social condition have been discussed in a number of papers (Jackman and Porter, 1999; Day and Brodsky, 1999; Greschner and Prescott, 1999).

I will not address the extent to which the social and economic circumstances of low-income Canadians offend human rights because this is essentially a legal question. Opinion will differ on the extent to which the circumstances described below should be addressed by human rights legislation.

There are two parts to this report. Part 1 documents the economic and social circumstances of those who might seek relief on the ground of social condition in the CHRA. Part 2 discusses the identification of social condition and the types of practices or legislation which might be challenged using the ground of social condition in the CHRA.

Part 1 – Social Condition: The Canadian Situation

This review of social condition and its potential use in the CHRA takes place at a time of dramatic change in the economic circumstances of Canadians. The general economic condition is one of slowly increasing average real incomes. Yet, this improvement in the norm is taking place simultaneously with signs of increasing disparities; a growing underclass of people homeless or with precarious shelter (e.g. families in motel rooms provided by social services). Also, there is a growing contingent labour force which relies on non-standard employment (part-time, temporary or seasonal).

Before discussing the potential role of social condition in the CHRA, the following sections review the circumstances of low-income Canadians. This material describes

economic realities as a basis for considering the human rights ground of ‘social condition’.

Social Condition – Inequality and Injustice

Social condition, poverty, economic disadvantage, social class or position – these terms describe a circumstance that many Canadians will be aware exists. The highlights from the discussion below are as follows:

- Economic disadvantage tends to be passed generation to generation. Those raised in poverty are much more likely to live in poverty.
- Economic disadvantage limits choices, and economic precariousness leaves little hope for escape. There is a good deal of movement across poverty lines, between employment and social assistance, between jobs. In the midst of these changing particulars there is stability in the precarious economic situation.

That there is inequality in the economic circumstances of Canadians has been well documented. That this inequality can be the basis for injustices has also been well documented. These injustices can lead to a variety of circumstances contrary to stated Canadian values:

- Many Canadian have incomes inadequate to meet their minimum needs.
- Poverty restricts the lives of many Canadians, limiting their choices in food, clothing and shelter. For children it denies what other Canadians take for granted; recreation, holidays and school field trips.
- Poverty has impacts on health, education and children’s subsequent income.
- Many disadvantaged Canadians are subject to prejudice. That is, preconceived notions about low-income people being lazy, or uncaring parents. This further restricts the choices available to low-income Canadians.

It should be noted that the mere existence of inequality does not imply an injustice. As long as Canadians are not homogeneous in terms of age and education then a market place that rewards seniority and knowledge appropriately will have inequalities in income.

It may be useful to think about the consequences of social condition in the following three broad categories:

- inadequate income to meet basic needs.
- inequality in income, health, education and opportunity.
- prejudice, discrimination and neglect.

These will be dealt with in the next three sections.

Inadequate Income to Meet basic Needs:

Homeless people and food banks are evidence that some Canadians do not have access to the basic necessities of life. The existence of an underclass of Canadians without access to food, clothing and shelter is becoming increasingly evident.

Nevertheless, Canadian investigators and advocates have gathered data that, taken together, provide compelling evidence of substantial growth. Thus, one group has estimated that in Toronto 25,000 people were homeless in 1996, double the number in 1994; the Good Shepherd Hostel reports a 30% increase in people using its overnight shelter between 1995 and 1996; and the Metro Children's Aid Society reports a 33% increase in households sharing accommodation and a 52% increase in families in shelters over the same period. Workers on the Anishnawbe Street Patrol in the same city estimate a doubling of the number of persons on the street between 1993 and 1996. (Canadian Public Health Association ; 1997 Position Paper on Homelessness and Health).

There is evidence that certain activities by landlords (despite current provincial legislation) exacerbate the housing problem:

For poor households, the search for shelter is made even more difficult by landlord resistance. Survey data suggest that one-third of small-scale landlords and two-thirds of corporate landlords with rental housing affordable to persons receiving social assistance would not rent available units to persons receiving such payments. (Canadian Public Health Association; 1997 Position Paper on Homelessness and Health)

For those with little or no economic power their ability to provide for themselves will often depend on provincial legislation including minimum wage and welfare legislation.

The adequacy of minimum wages for meeting basic needs depends on one's view of what those needs are (see discussion below on poverty definitions). It is clear though that the purchasing power of minimum wages is declining over time. For the period from 1976 to 1995 minimum wages, after adjusting for inflation, have fallen in most provinces by more than 25% (Schellenberg and Ross, 1997).

At the same time as the minimum hourly wage is falling in real terms, hours or employment are less assured. Non-standard employment, of various types, is becoming more common. This includes seasonal, temporary, part-time jobs. These all contribute to a more precarious employment environment.

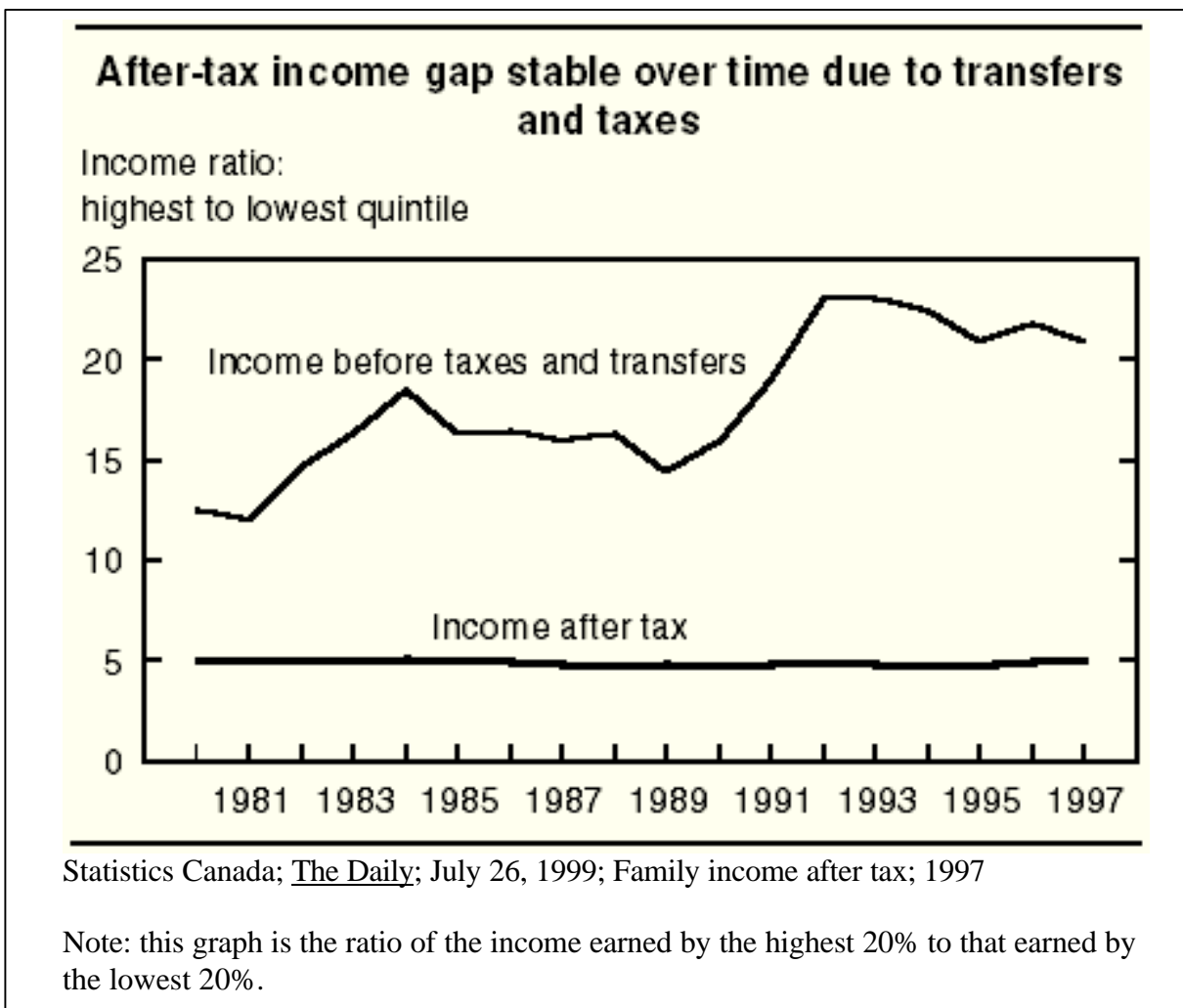
Employment either full-time or non-standard is increasingly providing incomes which will not meet a family's basic needs. Thus, there has been an increasing reliance on welfare by low-income families. Yet, there have also been well publicized cuts to welfare support levels. In most provinces support levels have been falling recently (National Council of Welfare, 1997-98).

These trends, increasing precarious employment, reductions in the minimum wage and government cuts to welfare rates have increased the number of persons for whom meeting basic needs is a struggle.

Inequality in Income

That there is a great deal of income inequality in Canada is not in dispute. The U.N. ranks Canada number one in average standard of living and tenth in income inequality. Among OECD countries Canada's poverty rate, based on the share of income going to low-income children, tends to be second or third highest (Ross, Shillington and Lochhead, 1994).

Over the last 15 years the inequality in wages, monies earned in the labour market, have increased dramatically (see Chart below). Increased government expenditures on social assistance and unemployment insurance have offset the increasing inequality in the market place. As well, income taxes have also reduced inequality so that the inequality in income after tax has been relatively steady.



According to Statistics Canada the reason for the increasing disparity in market income, (money earned in the labour market) is that low-income families are hit hardest during recessions.

Between 1980 and 1984, families in the lowest quintile experienced a 22% drop in pre-transfer income while those in the highest saw a decline of only 3%. Between 1989 and 1993, the decreases were 27% and 6%, respectively. (Statistics Canada; The Daily; July 26, 1999; Family income after tax; 1997)

The impact of increasing disparity has not been limited to a falling *share* of income for low-income families. It has also sometimes meant falling absolute incomes.

... those in the lower reaches of the earnings distribution appear to not only be doing *relative* worse, but, in some cases, they are experiencing *absolute* declines as well [emphasis in original] (Statistics Canada, Canadian Economic Observer, Oct. 1997; #11-010).

These data document that, the income tax system and transfer programs (like welfare and unemployment insurance), have done their redistribution job. The increased inequality in incomes from the market place have not been reflected in disposable incomes (after tax and transfers). Yet, these data do not include the impact of recent reductions in social assistance rates and unemployment insurance. Based on recent cut-backs, one should expect greater inequality in after-tax income in the near future.

The impact of limited income is goes beyond consumer items (less elaborate diet, unfashionable clothing or used car). Evidence is accumulating that it influences the most basic aspects of our human condition – health.

For example, the following data document that those with the highest incomes; those in the highest quintiles enjoy increased life expectancy of about 8 to 11 years.

Health Characteristics Winnipeg 1986					
Income Quintile					
	Q1	Q2	Q3	Q4	Q5
Life Expectancy					
Male	65.3	70.5	72.8	74.3	76.6
Female	74.4	77.8	79.5	80	82.1
Source: McCain and Mustard, 1999					

Other health effects are not all as dramatic as life expectancy. Statistics Canada reports how many Canadians have not been to the dentist in the last 3 years; 31% of the lowest income and 6% of the highest. By contrast, the lack of relationship between income and physician visits suggests that Medicare obviates some health effects. About 73% of highest-income

Canadians rate their health as 'Very Good' or 'Excellent', compared to 47% of lowest-income. Not surprisingly there is also a psychological impact; the risk of clinic depression is 'probable' for 9% those lowest-income compared to 3% of the highest-income (Statistics Canada, The Health of Canadians).

Equality of Opportunity and Child Poverty

The affects of low-income are not limited to the parents and have a dramatic impact on the health, education and life chances of children raised in poverty.

The Canadian value as stated in the Constitution and elsewhere is one of equal opportunity. The following data demonstrate first that an individual's life chances depend a great deal on the economic circumstances of their birth. Indeed, while there is some economic mobility between generations in Canada, we are still some distance from a "level playing field."

The relationship between income and the health, social and educational outcomes for children is complex. On the one hand the chances of problems and delayed development for low-income children are higher.

"The highest proportion of children who are experiencing at least one serious learning or behavioural difficulty is in the lowest socioeconomic group." (McCain and Mustard, 1999)

While being a low-income child is a risk factor, it does not predestine a child to poor outcomes. Sometimes community factors and parenting can overcome the disadvantages associated with poverty. As well, problems are not exclusive to low-income children.

Because of the size of the middle class, the largest number (rather than the highest percentage) of children who have a serious difficulty are in middle-income families. (McCain and Mustard, 1999)

The impact of low-income parents begins at birth.

"Looking at selected communities across Ontario, those that are lower on the socio-economic scale tend to have a higher proportion of low birth-weight babies." (McCain and Mustard, 1999)

In terms of the developing human capital through education, it is clear that equality of opportunity is a very distant ideal. While some of this result is likely due to cultural factors, better educated parents value formal education, the pattern is exceedingly strong. For example, only 9% of the children of the poorly educated have degrees compared to 44% of the children of better educated Canadians. The attached table and chart demonstrate that this disparity in access to post-secondary education exists despite assumption that student loans will protect low-income children from recent increases in tuition fees.

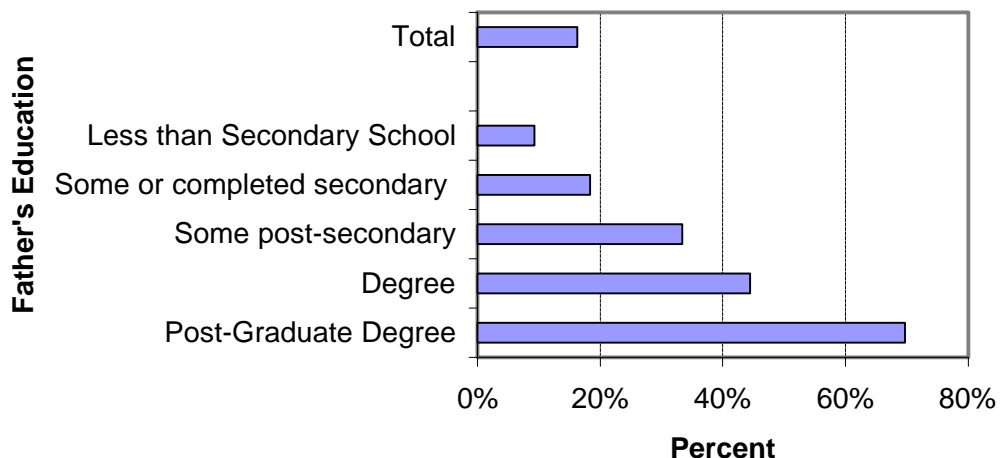
Percent of Canadian Born Adults Aged 25-54 with a University Degree by Father's Education

Father's Education	
Total	16%
Less than Secondary School	9%
Some or completed secondary	18%
Some post-secondary	33%
Degree	44%
Post-Graduate Degree	70%

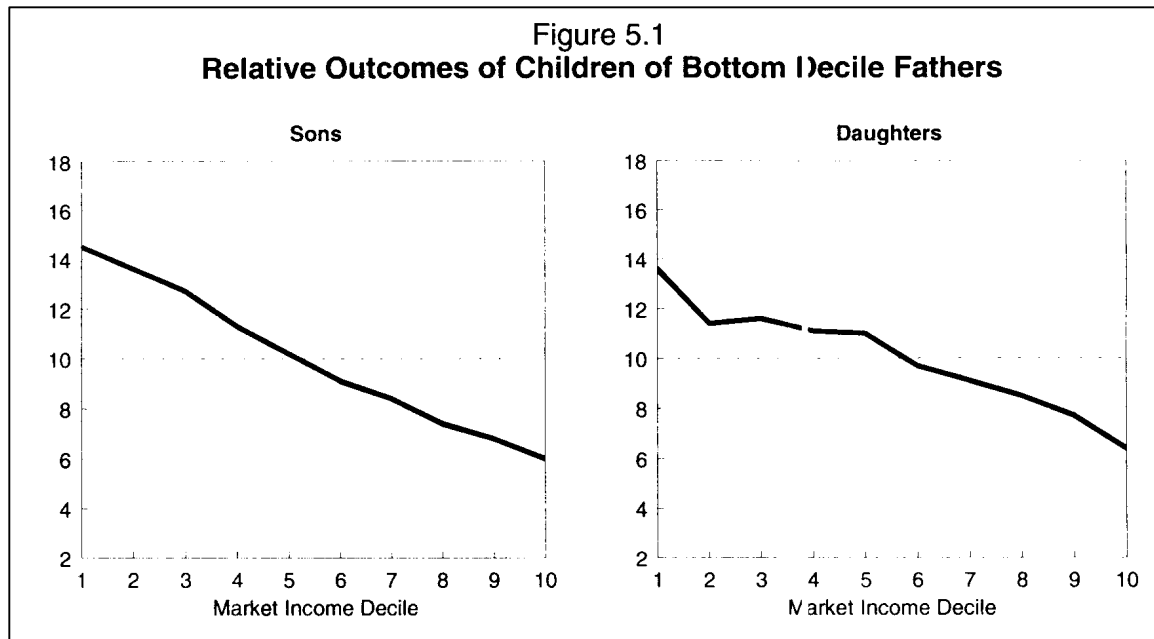
Special Tabulation
 International Adult Literacy Survey, 1995
 OECD and Statistics Canada

(the pattern is similar to that based on mother's education)

Percent of Canadian Born Adults Aged 25-54 with a University Degree by Father's Education



Predictably variations in education become reflected in incomes later in life. The chart below illustrates the income deciles of the sons and daughters of low-income parents. The clear pattern is that these children are far more likely to have low- rather than high-incomes. Some do move to higher income ranges but this is not the norm. (Corak and Heisz, 1998)



It is possible that the social class of children is not as predetermined by their parents as it once was. It is also clear that Canada does not have a rigid class structure. Yet the graph shows that we still have some distance to go to reach the ideal of equality of opportunity.

The fact that children living in low-income families perform less well on a variety of tests has been recently documented by a series of surveys conducted by Statistics Canada. The following table summarizes the results. Low-income children are often twice as likely to report problems than children who are not low-income.

A series of graphs which illustrate the relationship between family income and a range of outcomes for children is included in the Annex. They show an over-representation of a

Percent of Children with Identified Problem				
	Poor	Not Poor	Overall	Ratio – Poor:Non -poor x 100
Standard Score For Repetitive Language Measure	27.4	12	16.1	222
Child Repeated A Grade At School?	9.4	4	5.5	212
Children Doing Poorly In School	5.4	3	3.3	199
Std Score-Motor, Social Dev (0-47 Mnths)	15.2	14	14.1	111
Standard Score For Repetitive Language Measure	27.4	12	16.1	222
Hyperactivity - Inattention (2-3 Years)	13.5	7	8.4	204
Prosocial Behaviour Score (Age 2-3 Years)	8.6	15	13.0	59
Emotional Disorder-Anxiety (2-3 Years)	21.2	13	15.5	158
Physical Aggression & Opposition,2-3 Yrs	15.3	11	12.1	139
Separation Anxiety Score (2-3 Years)	15.9	8	10.2	199
Hyperactivity – Inattention (4-11 Yrs)	12.3	10	10.3	126
Prosocial Behaviour Score (4-11 Yrs)	10.6	10	10.2	105
Emotional Disorder-Anxiety (4-11 Yrs)	12.3	8	8.8	159
Aggression Score (Age 4-11 Years)	15.5	12	12.7	131
Indirect Aggression Score (4-11 Years)	16.6	10	11.9	159
Property Offences Score (4-11 Years)	14.4	7	8.9	197
Source: Special Tabulations National Longitudinal Study of Children and Youth - CCSD.				

range of problems for lower-income children.

Prejudice, Discrimination and Neglect

In the evolving understanding of disability, the term ‘handicap’ has come to take on a special meaning. The disability resides with the person. The handicap is a result of society’s response to the disability; either in the prejudice and prejudging of one’s capabilities or the unwillingness to make reasonable accommodations so that someone with a disability can participate at their maximum.

In a similar fashion, in the discussion of social condition, we can differentiate between the limitations and restrictions from being low-income and the added burden because of stigma or prejudice toward the poor.

The existence of such stereotyping has been acknowledged by the government in its discussion of Senate Bill S-11 (a bill which would have added social condition to the grounds of the CHRA).

We also recognize that, historically, the legal system and many other institutions in society have operated in a manner that is to the detriment of those at the lowest

rungs in society. We would like to see the end of such stereotyping. The issues we wish to study and discuss are whether this bill is the best way to accomplish this or whether it will have other, perhaps unintended, effects” (Ms. Sanderson, Dept. of Justice. - The Standing Senate Committee on Legal and Constitutional Affairs, May 27,1998)

Some would hold that it is not poverty itself but the associated discrimination which should be a human rights issue. Fred Robertson a board member at the National Anti-Poverty Organization stated as much before the Senate committee.

“[T]he issue here is not poverty itself, but, rather the gratuitous discrimination against the poor. ... Those of us on the receiving end of this treatment understand what a blatant affront to human dignity this treatment is.” Fred Robertson, NAPO testimony, Senate Standing Committee on Legal and Constitutional Affairs.

The distinction between poverty and the prejudice associated with poverty may allow the courts to interpret the difference between denying a bank loan because one is low-income (which may be appropriate) and denying the same loan to a social assistance recipient but not an employed applicant with the same income (based on stereotypes).

This prejudice against the poor goes so far as to question their concern and caring for their children. Examples, can be found that go so far as to suggest that parents with low-incomes must be forced to feed their children:

“What consigns children to poverty is a change in attitude of their parents. ... To enter into parenthood single, as a lark, because you just felt it would be a fun thing to do, is impossibly selfish.

We compound their [the parents’] folly by telling them not to bother learning how to feed their children a nutritious breakfast. Don't worry, we say. Send your kids to school and we'll set up a breakfast program. Do vast droves of kids starve to death during the summer vacation when the programs aren't available? Of course not. Their mothers are forced to feed them.”

Breaking the poverty cycle, November 28, 1999, by Christina Blizzard - Toronto Sun

Others simply classify low-income parents as irresponsible.

“If we want children to get a good and healthy start in life, what we need more than anything else is responsible parents.” C. Sarlo, Fraser Institute, Fraser Institute Web-Site- Downloaded July 30, 1997.

It is striking, the ease with which commentators question the love of poor parents for their children. The following comments directed to any other religious or racial group would attract immediate condemnation.

“It might be good for teachers and health workers who come in contact with Canada’s poorest parents to help them as well. It’s possible that loving attention to one’s children cannot be learned. But what a shame it would be if our compassionate society did not try to teach it.” Editorial – Globe and Mail, April 21, 1997.

“That’s why health and education policy makers should help Canada’s most needy children, often the poorest ones, by helping their mothers and fathers learn how to be better parents.” Editorial – Globe and Mail, April 21, 1997.

“In general, children in poor families have the parental deck stacked against them in the first three years of their life... A supply-side approach to poverty would invest mightily in the time availability and parenting skills of poor parents...” William Thorsell; – Globe and Mail, Nov 30, 1996.

Ontario Premier Mike Harris cut a \$37 welfare supplement for pregnant beneficiaries – expressing concern that the funds were squandered.

"What we're doing, we're making sure those dollars don't go to beer, don't go to something else, but in fact, if there are requirements for the health of the mother, they'll get it from us... But it won't be a blanket cheque that can be spent on anything. It will be spent to the benefit of the child." (Premier apologizes to welfare recipients, Ottawa Citizen; – April 17, 1998).

He later apologized for the comment.

The following quote is from a 'confidential' memo based on focus groups. The groups were used in 'political testing' for the federal strategy on child poverty. One of the clearest findings was the strength of discriminatory attitudes and hostility toward parents on social assistance.

“Somewhat surprisingly, moral explanatory accounts of poverty were more common and powerful perceived causes of poverty: lack of responsibility, effort or family skills were universally cited explanations ... Most secure participants see children as deserving and their parents as less so (possibly unwitting agents of their children's misfortune) ... Welfare recipients are seen in unremittingly negative terms by the economically secure. Vivid stereotypes (bingo, booze, etc.) reveal a range of images of SARs [Social Assistance Recipients] from indolent and feeble to instrumental abusers of the system. Few seem to reconcile these hostile images of SARs as authors of their own misfortune with a parallel consensus that endemic structural unemployment will be a fixed feature of the new economy.”
(Obtained by Jean Swanson of End Legislated Poverty under Access to Information from HRDC).

The prejudice against poor persons is also reflected in the political process:

“[I]t is clear that persons receiving income assistance constitute a discrete and insular minority within the meaning of s.15. It may be reasonably inferred that because recipients of public assistance generally lack substantial political influence, they comprise ‘those groups in society to whose needs and wishes elected officials have no apparent interest in attending.’ (1991), 70 B.C.L.R. (2d) 325 (B.C.S.C.) [hereinafter Federated Anti-Poverty Groups] referenced in Poor Rights: Using the Charter to Support Social Welfare Claims; Martha Jackman; Queen’s Law Journal; Vol. 19, page 65-94,

Low-income Canadians are politically insignificant. Politicians and administrators can design programs with little concern for the interests of low-income Canadians knowing that a political fire-storm is unlikely.

Arguably, the most important federal legislation for higher-income Canadians is the Income Tax Act. Given its importance changes to the Act are usually announced in budgets which are subject to intense media coverage and detailed analysis by highly paid advocates, tax lawyers and tax accountants. Tax law is extraordinarily complex and based on principles and language which only a few technical experts understand.

In fact, Bay Street analysts ensure that tax law serves their clients interest as much as possible and are quick to publish flaws.

No comparable review takes place of the legislation which delivers benefits to low-income Canadians. This can and does lead to circumstances where administrators use rules which are unfair, unjust, capricious and would never be tolerated by high-income Canadians (Shillington 1999a).

While higher-income Canadians bemoan marginal tax rates over 50%, most all low-income Canadians experience marginal tax rates nearing 100% and indeed they often exceed 100%.

The rules are capricious in their effect. A case before the courts in Manitoba illustrates the point; someone living in rent-geared-to-income housing received a student loan. Their rent increased because the loan was considered income. The student loses a good portion of the loan to increased rent but still has a debt reflecting the full loan. Any other loan from a bank would not have affected their rent. Similarly, in Ontario a portion of a student loan are considered income for administering subsidized child-care.

On social assistance, recipients are dealt a severe blow for taking a minor loan; such as a credit card cash advance, or a loan from a family member. The funds are deducted dollar-for-dollar from their income support, leaving the family with no additional funds but still with the debt.

Civil servants on occasion may deny benefits to which clients are entitled. In N.S. subsidized nursing home care is available to families with limited means. The determination of need includes an income test and an asset test (the assets exclude principal residence). Officials in N.S. pressured a family to mortgage their home which made them ineligible for subsidized care bypassing the intent of the legislation (CTV News, Nov. 14, 1999).

The extent to which governments can leverage the image of welfare recipients as indolent was illustrated recently by a series of cuts in benefits to welfare recipients. The headline in the Ottawa Citizen (Nov. 18, 1999) indicated that welfare recipients would be required to sell their cottages. The newspaper did not indicate that current regulations already required that cottages be disposed of. The image of welfare recipients collecting support while enjoying a cottage served a useful political purpose which justified further cuts to basic living supports. It turns out that of about one million welfare recipients in Ontario about 20 own a cottage. I am told that these are situations where the cottage can't be sold due to joint ownership, or ownership in a distant country (private conversation Felicitie Stairs).

Capricious regulations tend to further marginalize the disadvantaged. Programs abound with marginal tax rates at or near 100% (Shillington 1999b). For example, programs like social assistance, legal aid and social housing are asset tested (denied to those with significant assets even if income is low). Financial assets include RRSP's but exclude pension plans; thus only those with employer pensions can have their retirement savings protected from assets tested income and social supports. Low-income Canadians are much less likely to have employer sponsored pension plans and will have done any savings in a plan which is not protected from asset tested programs.

Legislation for social programs, by its nature draws distinctions. Those most in need will presumably receive the greatest support. Yet the political process is not centrally concerned with serving the interests of low-income Canadians.

The regulations which accompanies legislation are drafted by official who typically have no experience with poverty. Since poor Canadians have little political profile, regulations are often drafted in ways which indirectly can be an impediment to low-income Canadians. In a similar way major federal businesses have little interest in accommodating the needs of low-income customers.

The kind of requirements which can have an indirect effect include; the requirement for a place of residence for government programs, the requirement to complete an income tax return for others. The linkage of government programs can exacerbate the problem; for example, eligibility for the Family Supplement portion of Employment Insurance benefits requires that one be in receipt of the Child Tax Benefit which, in turn, requires that an income tax return has been submitted by the applicant and by their (perhaps separated), spouse.

For businesses, any requirement for an address, a number of pieces of identification for a bank account will differentially affect low-income Canadians.

Part 2 – Social Condition as a Ground for the CHRA

Part 1 of this report describes the social and economic circumstances of Canadians and documented effects of three broad types:

- where basic needs are not being met,
- where economic inequality affects health, education and children's life chances
- where these conditions are exacerbated by prejudice against the poor.

These three types of circumstances are 'social problems' which can be addressed by various mechanisms; volunteer activities, government legislation or through human rights protections. Some will insist that human rights legislation should reflect social objectives which would address each of this problems. This would imply that human rights bodies would address each of these three problems; basic needs, economic inequality and the consequences of prejudice and neglect.

This report will not recommend how broad a catchment should be accorded to the use of human rights legislation to address social problems. Rather, my purpose is to describe social problems (Part 1, of this report) and the implications of adding social condition to the grounds of the CHRA.

Part 2 of this report will discuss the implications of adding social condition to the CHRA. This section will in turn:

- discuss what is meant by ‘social condition’ and its relationship to poverty and existing grounds.
- review examples of practices which might be prohibited by a ground of social condition.
- review examples of recent legislation which might have been challenged on the basis of social condition.

What is Meant by Social Condition”

This section discusses the term ‘social condition’ and how it can be used to identify those who could use it as a ground under the CHRA. Is it essentially the same as “poverty”? How is it different from “poverty”? How does social condition relate to existing protected grounds in the CHRA?

Is Social Condition Equivalent to Poverty?

The term social condition is not commonly used to identify those with a substantial economic disadvantage. Traditionally, social origin or social class would have conveyed some sense of social condition but also suggested that it was determined at birth. North American culture avoids recognizing social class and its restriction of life’s opportunities. The term poverty is far more common. ‘Poverty’ avoids the connotation that it is set at birth; indeed, much of Canadian political culture is based on the belief that poverty is based on the merit principle; that the poor are thus because of some character flaw.

In common speech economic disadvantage is usually referred to as poverty. So why not simply use the term poverty? Unfortunately, substituting ‘poverty’ for ‘social condition’ would divert much of the debate about social condition into what constitutes poverty; a very contentious issue (see next section). That debate also tends to portray poverty as dichotomous – you are poor or not. While economic disadvantage is continuous.

The term social condition is preferred to poverty also because it could include disadvantages which are associated with though not synonymous with poverty. This could include occupation, literacy, type of employment, (or unemployment). It may also include culture to the extent that ones social station is conveyed by dress, language or mannerisms.

While poverty is almost synonymous with social condition it is seen by many as too narrow a concept. First, is usually reserved for those with limited income. This can lead to confusion about how to classify those with substantial assets but limited income (some retirees). As well, a few individuals may chose a limited income because they are students. Also, artists or the clergy accept limited incomes. These persons though will often be articulate and well educated and are not as vulnerable to exploitation as other low-income persons. They do not

therefore typically share the other subjective attributes of social and economic disadvantage which exacerbate economic disadvantage.

The following data on literacy illustrate the associations between characteristics associated with social condition. The data below show a very strong relationship between literacy and education. That low levels of literacy (Levels 1 and 2) are associated with education is not a surprise. Limited literacy can obviously lead to many circumstances where a citizen's access to services will require some accommodation by the business or government office (e.g. plain language literature). If social condition included factors like literacy then perhaps these accommodations could be required.

The Distribution of literacy on each of three scales by highest level of educational attainment, Canadian adults aged 16 and over				
Highest level of Education	Prose Level			
	1	2	3	4 / 5
Less than Grade 8	89	9	-	-
Completed primary school	59	29	12	-
Some secondary school	25	36	32	7
Secondary school graduate	12	31	40	18
Community college graduate	7	23	45	25
University graduate	-	11	33	56

Reading the Future: A Portrait of Literacy in Canada; Statistics Canada; 1996; # 89-551-XPE

Levels 1 and 2 are considered to be functionally illiterate.

That social condition is a vague and relatively new term led some Senator's caution about using it for the CHRA. Their concerns were expressed in the debate on S-11 before the Senate Committee.

“What troubles me is that the ground of discrimination itself is a value judgement, not whether discrimination has happened based on that ground. That this is a ground of discrimination that fits social condition is a subjective value judgement that ultimately will be reviewed and reviewed. The Supreme Court will say whether it is a good value judgement or not.

My question is this: Is not a huge arena for litigation opened up based on this vague term, even though human rights people seem to think they know what it means in general terms? Will this consume a huge amount of resources, dollars and legal talent that might in the long run be better spent on trying to solve the real problem if the real problem is poverty?”

Senator Bryden; The Standing Senate Committee on Legal and Constitutional Affairs, May 27, 1998.

At a minimum, adding social condition would increase the grounds for discrimination.

“It would protect persons who suffer discrimination because of their social condition regardless of whether it is connected to another ground of discrimination.” Ms. Sanderson, Dept. of Justice. - The Standing Senate Committee on Legal and Constitutional Affairs, May 27, 1998.

In response one might argue that social condition because it is broader than ‘source of income’ can assist in proscribing certain types of discrimination, based on education or type of employment. Which are not now human rights grounds.

One notes that Quebec has included social condition in its grounds for some time. Their guidelines make a number of interesting points. Quebec’s definition of social condition has been evolving and includes one’s rank, place, or position occupied within society, or the class in which they belong. Among the criteria are education, occupation and income which allow us to determine an individual’s social condition. Social condition is not an intrinsic attribute of the individuals; it is attributed to a person through characteristics that they possess and that we attribute to them. Social condition has an objective aspect – socio-economic characteristic – and a subjective aspect – the value judgements made based on the characteristics attributed to those sharing the socio-economic characteristics (Lignes Directrices Sur La Condition Sociale; Commission des droits de la personne et des droits de la jeunesse; Quebec; Mars, 1994).

The Court of Appeal of Quebec [in *Johnson v QHRC*] defined social condition as relating to the rank, place and position that a person holds in society by virtue of birth, income, occupational level, by the conjuncture of elements determining that place in society. (Tessier, H.; La condition sociale comme motif de discrimination: Une histoire et un avenir”; *Le Journal du Barreau*; Oct. 1999).

While social condition is identifiable - it can be recognized - it is not measurable. This is because it is not simply the objective concept of income. It goes further than income. Social condition connotes more the subjective characteristics of one’s circumstance which are associated with income, occupation and precarious employment. These characteristics are the result of the prejudices and preconceptions which are prevalent about individuals who are economically and socially disadvantaged.

It is decisions and practices which are based on preconceived notions about an individual’s quality and character which would be prohibited by including social condition as a ground for the CHRA.

What is Poverty?

Since poverty is very close to the concept of economic disadvantage, it would be fruitful to review the debate and literature about poverty lines. It might be tempting, but a mistake, to treat social condition as synonymous with poverty.

The following statement from the National Council of Welfare is important for linking the setting of poverty lines to the tracking of societal obligations.

“Canadians have a well-honed sense of fair play that dates from our beginning as a nation. In politics, we accept the principle of one person, one vote and the principle that governments derive their mandate to govern from the collective will of voters. In economics, we pride ourselves on the ideal of equal opportunity for all and in making it possible for everyone to share in the vast bounty that is Canada.

Simply put, poverty lines are one measure of how well our democracy is working. They delineate that minority within the democracy that stands apart from the mainstream of Canadian life because of meagre income.

The statistics that come from poverty lines are every bit as valuable as widely accepted statistics as the unemployment rate and the Consumer Price Index, yet they always seem to instill fear in the hearts of governments. Governments are loathe to admit that poverty exists in a country like Canada, but everyone knows that that poverty exists – with or without official government sanction.”

National Council of Welfare, A New Poverty Line: Yes, No or Maybe?, Winter 1998-99; Canada.

The two main approaches to poverty lines are based on absolute and relative concepts of poverty. The two terms, absolute and relative, reflect different approaches to poverty definition. Absolute poverty approaches define poverty based on the price of a market basket. Relative poverty sets a minimal income level related, somehow, to societal norms e.g. half of average incomes.

The absolute approach to setting a poverty line yields a range of values depending on what is deemed “necessary”; the size of the market basket.

The Fraser Institute’s “Basic Needs Measure” is very meager. For example, its food budget per person is less than \$25 per week. It excludes any funds for reading materials, toys or school supplies.

A new Market Basket Measure is being developed by Human Resources Development Canada which it describes as a “credible”. Based on a market basket, it is absolute but it is more generous than the market basket developed by the Fraser Institute.

The Market Basket Measure “... would have to represent a standard of living somewhere between subsistence and inclusion in Canadian society, i.e. a credible standard of living.” (HRDC, 1998; Construction of a Preliminary Market Basket Measure of Poverty).

The absolute or market basket approach can also be relatively generous – the Market basic developed by the Social Planning Council of Metro-Toronto is \$30,402 (in 1992 for a family of 2 adults and 2 children).

The most common relative measure of poverty is the Statistics Canada Low-Income Cut-Off (LICO). It is used by virtually all researchers in Canada; government, business and social policy researchers. Statistics Canada does not sanction its use as a poverty line. Instead, Statistics Canada refers to families below the LICO as living in “straitened economic circumstances.”

The dispute between absolute and relative measures of poverty is no closer to resolution.

This policy debate is essentially about the ownership of the emotive word ‘poverty’. This is important from a political point of view because the poverty line effectively makes a statement about our obligations to disadvantaged Canadians. The acceptance of the Fraser Institute’s approach would accept that ‘poverty’ is reserved for those whose destitution is life threatening. The LICO represents a relative approach which implies that the disadvantaged are entitled to some sense of “inclusion”; reminiscent of the objective ‘equality of opportunity’.

This section demonstrated that while the term social condition may convey concepts very much like poverty, the term ‘poverty’ should be avoided because there is absolutely no consensus about its meaning, let alone measurement.

Poverty Rates using Low-Income Cut-Offs	Per cent
All Families	14.0
Female Lone Parent	56.0
Elderly Couple	6.0
Single Senior	45.0
Female Single Senior	49.1
Male Single Senior	33.3
LICO's based on 1992 consumption patterns.	
Low Income Persons, 1980 to 1997, April 1997	
Statistics Canada # 13-569-XIB	

Social Condition and Existing Grounds

Many Canadians who might be protected by the inclusion of social condition as a ground already have access to one or more of the existing grounds; sex, age, marital status and ethnicity. Many of the members of existing protected groups already have low incomes; this can be demonstrated easily by comparing poverty rates for various categories of Canadians.

Poverty rates are best understood, based on access to one or more quality jobs. Women more often live in poverty when they live alone or are the head of families. Thus senior women have a poverty rate much higher than senior men or senior couples.

Lone-parents can only have one employed adult. As well, children

increase their basic needs while making employment more difficult (often due to the lack of adequate child-care). Thus, for non-seniors the poverty rate is highest for female lone-parents.

Couples, with or without children, often have two employed adults which reduces their poverty rate.

It has also been documented that the poverty rate for Canadians with disability is roughly double that for others (Fawcett, Gail; 1996, page 131).

The inclusion of social condition then could have the benefit of extending some protection to females and males who are homeless, live on social assistance or are otherwise economically disadvantaged.

For Canadians who are included in the existing grounds, the inclusion of social condition would have the advantage of clarity, for circumstances where the discrimination is one most clearly based on economic disadvantage.

Social Condition: Insular? Immutable?

Disadvantaged Canadians have lives characterized by flux. They change accommodation frequently. They may change from home to rental units. They change jobs more frequently. Income sources will vary over-time between wages, unemployment insurance and social assistance. These changes take place within a context of social and economic disadvantage which is largely constant.

Thus any identification of social condition based on factors such as source of income, employment category or accommodation will operate in a capricious manner; providing protection at some points in time but not others. It will miss the important over-riding fact of the economic and social disadvantage which makes the individual vulnerable to exploitation, prejudice and neglect by the major institutions of Canadian society.

Can one identify, economically disadvantaged Canadians for the CHRA in a way which clearly delineates them from others? No. To the extent that income is an important component of disadvantage and income is a continuum. That is, you could not reasonably choose an income cut-off or poverty line below which families are shut-off and isolated and above which they are not.

Are those with significant social and economic disadvantage insular, in the sense that they are isolated from mainstream society, cut-off and denied access to the political discourse which determines Canada's economic and social policy? Of course, poor Canadians are not active political participants. Obviously, low-income Canadians do contribute to political parties, rarely appear before parliamentary committees and do not have well-paid lobbyists to represent their point of view.

Thus while the definition of social condition may not be insular, low-income Canadians are insular in that generally they are isolated from the process which determines their life conditions.

Is social condition immutable? For the vast majority of poor Canadians yes, unless you believe that poor Canadians choose to be poor. With the exception of students, for whom poverty is temporary, and members of certain occupations (the clergy, artists, writers, actors), very few chose poverty.

The source of income of poor Canadians is arguably changeable. Many Canadians will move

Persons by Poverty Status in 1993 and 1994

	Poverty Status in 1994	
	Poor 1994	Non-Poor 1994
Poor in 1993	73%	27%
Non-Poor in 1993	5%	95%

Poor are below the Low-Income Cut-Offs published by Statistics Canada

Measuring Low Income and Poverty in Canada: An Update

Statistics Canada; #75F0002M

from social assistance to jobs to unemployment insurance and back on a frequent basis. Indeed, the average duration of social assistance is relatively short. This movement though between social assistance and precarious, unfulfilling jobs which pay very little, does not change significantly one's political and social condition.

Year to year there is some change in family incomes. This is also the case for low-income families. The data below demonstrate that this income movement will occasionally move a family across Statistics Canada Low-Income Cut-Off; about one quarter of families who are below the line one year are above it the next.

Persons classified by their Income Quintile of their family in 1993 and 1994

	Same Quintile	Within one Quintile
1 st	71%	93%
2 nd	57%	94%
3 rd	58%	93%
4 th	60%	92%
5 th	78%	92%

Measuring Low Income and Poverty in Canada: An Update
Statistics Canada; #75F0002M

Does this mean that they have moved from poverty to affluence or a middle income range? The analysis below compares the income quintiles of families in 1993 and 1994. These quintiles are used to study income distributions; the first quintile is the poorest 20% of families, the second quintile the next 20%, etc. As the table demonstrates, there is also some considerable movement between income quintile categories. For the lowest quintile, about 71% remain there the next year; 29% escape. Yet this movement does lead to a dramatically different lifestyle because 93% remain in the first or second quintile. There is virtually no movement

from the 1st quintile to one higher than the 2nd (only 7%).

Similarly, only about half, 57%, of those in the second quintile remain there the next year. However, 94% are in one of the first three quintiles.

Virtually all of the movement is between adjoining quintiles. So the movement rarely makes a dramatic change in the standard of living.

Social Condition and Social Assistance

To understand the difference between Human Rights grounds based the 'receipt of welfare' and based on social condition we will consider the overlap between welfare and poverty. First, families relying on welfare are guaranteed a low-income existence (using Statistics Canada Low-Income Cut-Off). On the other hand, families which are low-income could have

a variety of income sources. Many, in fact, work a full year; the Canadian Council on Social Development points out that about 30% of poor families work a full-year (Ross, Shillington and Loughheed, 1996). Indeed most poor families have some employment during the year.

The point of this is that economic disadvantage is not synonymous with being on welfare. Thus those provinces which have the ground source of income extend some protection to those on welfare at that point in time. But many economically disadvantaged Canadians are in a similar circumstance but are in receipt of unemployment or are working poor.

This is not to deny that the prejudice against welfare recipients has a particular venom (documented by HRDC focus groups above) absent from that for other low-income families but rather to assert that welfare recipients are not the only Canadians needing Human Rights protection due to their economic circumstances. A broader ground than 'source of income' is needed.

The previous section documented the movement in the incomes of families. The movement on and off of social assistance is also of interest. This section will demonstrate that while leaving welfare for employment changes a family's source of income, it rarely results in a dramatic improvement in their circumstances.

Thus the broader economic order is relatively fixed. There is some movement between types of disadvantaged families (social assistance, working poor, homeless) but almost no movement that would change appreciably the standard of living of the family.

The following tables from a number of studies examine the characteristics of jobs which social assistance recipients get when not on welfare.

The following table is for Ontario and reports hourly wages below \$10 per hour.

Job Characteristics of People who have left Welfare

	Overall	GWA single	GWA family	GWA sole support parent	FBA sole support parent
Average Hourly Wage	\$9.04	\$8.30	\$10.10	\$10.00	\$9.60

GWA refers to General Welfare Assistance and FBA refers to Family Benefits Assistance.

The average hourly wage was \$9.04, and varied from \$8.30 among single people, to \$10.10 among GWA family recipients. Weekly earnings averaged between \$300 and \$397. A single parent with one child would need to earn about \$420 per week, just to reach the poverty line. As low as these figures are – insufficient to support a family – these are averages. Many people would have reported earnings below the average.

Leaving welfare for work?; Workfare Watch Bulletin; Volume 1 Bulletin #8 November 1998,

A study of previous welfare recipients in Alberta gathered information on their employment and found that many actually earned less in their jobs than they received on welfare.

“Thus, for almost half of the social assistance recipients surveyed in this study, the jobs they held (when employed) did not provide more income than the social assistance they received (when on welfare).” Shillington, Richard; Social Assistance and Paid Employment in Alberta, 1993-1996; Population Research Laboratory; University of Alberta; 1998.

The lack of health, drug, dental and pension benefits for the types of jobs available to welfare recipients also ensures that while source of income for the disadvantaged might change their circumstance of disadvantage is a constant.

“As we might expect, additional employment benefits are more likely to come with better paying jobs. For example, for health benefits the level of coverage increases from 2% for jobs paying less than \$500 per month to 50% for middle-income jobs. The pattern for dental coverage is similar but even somewhat lower. However, we must remember that very few of the social assistance recipients in his study reported ever having middle-income jobs during the period covered by this study.” Shillington, Richard; Social Assistance and Paid Employment in Alberta, 1993-1996; Population Research Laboratory; University of Alberta; 1998.

A study by the Canada West Foundation arrived at a similar conclusion; that the employment of past welfare recipients would not likely affect their overall position in society.

Although 57.8% of the sample were employed, this is not an indication of the quality of the jobs held by this group. The acquisition of a job by these individuals is not a surprise given that the reforms were intended to make a job – any job – more attractive than welfare. The study found the following regarding the nature of the jobs held by respondents:

(1) Full- vs. Part-Time Employment: Of those working, 66% held full-time jobs, and 33% held part-time positions.

(2) Goods- vs. Service-Producing Jobs: 77% of the jobs were service-producing, and 22% goods-producing.

(3) Employment Earnings: Those working earned an average of \$1,223 per month, or \$8.74 per hour (see Figure 3).

(4) Likelihood of Layoff: Respondents felt their chance of layoff was only slightly higher than the national average.

(5) Employee Benefits: Relatively few respondents had jobs that provided benefits such as health and dental plans, and 44% had no benefits at all (see Figure 4).

Where are they Now: A Survey of Former Welfare Recipients: Canada West

Questions were raised before the Senate Committee on S-11 considering whether social condition was temporary and how the working poor might be defined for inclusion.

“Unlike the other grounds, social condition is, by its nature, temporary. We would thus be introducing a new concept into the CHRA. It is uncertain who would be covered this temporary condition. Quebec jurisprudence emphasizes that the complainant must belong to a socially identifiable group which has been subject to historically unfavourable treatment based on stereotypes and prejudice.”

Ms. Sanderson, Dept. of Justice. - The Standing Senate Committee on Legal and Constitutional Affairs, May 27, 1998.

On the contrary, the evidence here suggests that, properly understood, social condition is not temporary. The particular characteristics of one's situation may change but the fact of economic and social disadvantage do not.

Thus while the income sources of poor Canadians will vary significantly between minimum wage employment, social assistance and unemployment insurance. The position of poor Canadians as isolated for political power; in fact, the subject of prejudice and therefore political exploitation is constant.

Examples of Practices which might be Prohibited

The next section of this report will review the types of practices and legislation which could be prohibited by the inclusion of social condition. This depends in part on how social condition is included in the CHRA. Is its application restricted to prohibiting discriminatory practices or will also confer positive economic rights?

Much material published about human rights and social condition has called for human rights to include social and economic objectives (Jackman and Porter, 1999; Day and Brodsky,

1999). That is, these researchers are calling for positive economic rights. This would likely put the human rights agencies into the position of challenging legislation which would increase the incidence of poverty or increase income inequality.

Some of the implications of adding social condition as a ground for the CHRA will depend on how it is interpreted and whether it includes positive economic rights.

Access to Basic Necessities

If the government wishes to entrench positive economic rights in the CHRA then it could entrench, in some fashion, a statement that the protection of social condition includes an obligation by governments to ensure that Canadians have access to the resources needed to meet basic needs.

This could have several impacts, including:

- on federal minimum wage legislation
- on federal-provincial agreements on the operation of social programs; the conditions attached to the Canada Assistance Plan or more recently the agreements on the Canada Health and Social Transfer.
- the operation of social assistance programs in the federal sphere; on Indian reserves.

Direct refusal to deal with economically disadvantaged

If social condition is included in the CHRA but without positive economic rights then there remain a number of practices which would still be prohibited. Some examples are presented below.

There has been a great deal of attention paid to the refusal of banks to deal with low-income Canadians in the same way that they would deal with others. A committee which involved the National Anti-Poverty Organization and the Canadian Banking Association has been coordinating efforts to ensure that low-income Canadians are dealt with fairly by local banks.

It would appear that there has been some improvement in bank's provision of services to the poor; more welfare cheques are being cashed without a problem. But apparently, much remains to be done. Still, a significant proportion of clients are being refused service. The treatment of low-income clients by banks still, too often, includes:

- refusal to cash cheques.
- refusal to open accounts due to insufficient identification.
- placing funds from cheques on hold.

An additional practice is also worthy of comment. Low-income Canadians may be required to provide a deposit for utility services, such as telephone. This can result in denial of service for a reliable applicant who can afford the monthly fee but not the deposit.

Adverse Affect;

The life circumstances for low-income Canadians can mean that regulations which work well for others, create problems. Low-income Canadians will sometimes have fewer pieces of

identification (they are less likely to have a credit card) and indeed, may be homeless and therefore without an address or telephone. Their special life circumstances may include; lower levels of literacy and less access to newspapers and the internet. Each of these situations can imply that administrative regulations designed for efficiency when dealing with typical Canadians may not work well for the economically disadvantaged.

There are a range then of administrative requirements which can have an adverse effect on disadvantaged Canadians. These would include application processes which require:

- several pieces of identification
- a place of residence
- a phone number
- a user fee or an administrative fee.

As well, application processes which require the applicant to have completed an income tax return may have an adverse effect.

Certain employment practices are arguably discriminatory because of their effect on low-income Canadians. These would include employment where there is;

- an unreasonable dress code.
- a requirement to purchase tools or uniform.
- educational requirements that are not bona fide; not truly required by the job functions.

Practice or Legislation Which Exploits Political Weakness

The interests of low-income Canadians are not a central concern of most institutions. This can lead to practices which may be considered discriminatory.

An example could include the past practice of telephone companies of charging more for local service to subsidize the more competitive long-distance service. This clearly would have a disproportionate effect on low-income Canadians who are less likely to use long-distance service.

It is a common employment practice to make benefits, such as health and pension benefits, available to full-time employees but to deny them to part-time employees. A case could be made that this practice, particularly in the case of permanent part-time employees, is not justified and is hence a form of discrimination.

Much federal legislation, by its nature, makes distinctions based on economic status. The most obvious examples include the Income Tax Act, Employment Insurance, the Child Tax Benefit, Canada Pension Plan and the Old Age Security system (including Old Age Security and the Guaranteed Income Supplement and the Spouses Allowance).

This issue was presented to the Senate Committee in discussing S-11.

“The final area I wish to address today is social legislation which by its very nature makes distinctions on the basis of income or employment. For example, would the Income Tax Act be attacked on the basis that the cut-off was too low? For example,

social assistance recipients might receive the benefit but no others at a higher level of income which is still below the average.

Similarly, would the Employment Insurance Act or the Canada Pension Plan be challenged on the basis that eligibility is conditional upon employment for specified periods? These are examples of complex legal issues which warrant further study.”

Ms. Sanderson, Dept. of Justice. - The Standing Senate Committee on Legal and Constitutional Affairs, May 27,1998.

That much legislation draws distinction based on income is unavoidable. The potential exists though for legislation which deals unfairly with the economically disadvantaged since their interests are largely unrepresented in Ottawa.

There are cases of legislation which was contrary to the interests of disadvantaged Canadians. These include:

- The replacement of the Canada Assistance Plan with the Canadian Health and Social Transfer.
- The replacement of Unemployment Insurance (U.I.) with Employment Insurance (E.I.).
- The claw-back of increased Child Tax Benefit funds from social assistance recipients.
- The restriction of bankruptcy protection to the recipient of student loans.

Some of these acts may have been challenged charging discrimination based on social condition. They are discussed in greater detail in the next section.

Outside the federal sphere, there persist examples of legislation which appear to be motivated, at least in part, by a disregard for the interests and rights of low-income Canadians. Examples include Ontario’s legislation dealing with pan-handling and so called ‘squeegee kids’. Proposals have been circulated to require the figure printing of welfare recipients. Legislation exempts labour standards for those participating in ‘work-fare’ programs. These changes would clearly have a disproportionate affect on the vulnerable. These examples are mentioned here, despite being outside the federal sphere, to illustrate that legislation persists which arguably exploits the political vulnerability of low-income Canadians.

Examples of Legislation which might be Challenged

This section will discuss in greater detail two recent legislative changes which might have been challenged based on a CHRA ground of social condition. The discussion below is presented to increase our understanding of the types of issues which the Canadian Human Rights Commission might be expected to grapple with, given a ground of social condition.

The difficulties, at their root, are there because social program legislation is very complex and, by its nature draws distinctions based on social condition, usually income. The

CHRC would have to find ways to differentiate between distinctions which are bona fide and those which reflect.

The Replacement of C.A.P. with the C.H.S.T.

The replacement of the Canada Assistance Plan (C.A.P.) with Canada Health and Social Transfer (C.H.S.T.) entailed a significant reduction in the cost-sharing of the federal government with the provinces. The CHST combined the funding for Health, Post-Secondary Education and Social Assistance.

This replacement had a number of important consequences for low-income families, which were political and financial.

These impacts are important to illustrate the impact that government action can have on low-income Canadians. It is also important to illustrate which of these implications might be thought of as infringements of human rights.

By reducing significantly federal transfers that support these programs, the funds available in provinces for social assistance, health and post-secondary education were reduced. The political reality is that the proportionate reduction in these three program areas should not be expected to be equal. The political reality is that voters rank health as a high priority; higher than post-secondary education. Both these areas are themselves ranked far above welfare. Note that recent election campaigns have been based on the promise to increase in the spending health and reduce support for welfare families.

The removal of the legislative protection for welfare recipients also illustrates how the political process can sacrifice the interests of low-income Canadians in the name of political expedience.

The C.H.S.T. replaced the Canada Health Act and the Canada Assistance Plan. The principles of Medicare, embodied in the Canada Health Act were maintained in the C.H.S.T. Indeed the federal government still threatens to withdraw financial support to maintain the principles of Medicare (most recently in response to Alberta's proposals for privately funded hospitals).

This is so much the case that in a recent major policy speech to a House of Commons Committee, the Minister responsible for the CHST stated:

"The principles contained in the Canada Health Act - of access to care based on need, not income - are, for most Canadians, not simply sections of a piece of legislation. They virtually constitute a charter of rights".

(Submission to the Committee on Economic, Social and Cultural Rights by the Charter Committee on Poverty Issues, Nov. 16, 1998).

On the other hand, the principles which had provided some legislative protection to low-income Canadians under C.A.P., far from constituting a 'charter' were generally excluded from the C.H.S.T. The protections under C.A.P. were –

1. provide assistance to every person in need - regardless of the cause of need (CAP s.6(2)(a));
2. take into account a person's basic requirements in setting social assistance rates (CAP s.6(2)(b));
3. provide an appeal mechanism so that people have a legal right to challenge decisions affecting their entitlement to social assistance (CAP s.6(2)(e));
4. ensure the right to social assistance regardless of one's province of origin (CAP s. 6(2)(d));
5. not require that people who were in receipt of social assistance perform work against their will as a condition of receiving assistance (CAP s.15(3)(a));

The only remaining "standard" or right from CAP which has continued in the CHST is the prohibition on provinces imposing residency requirements on applicants for social assistance. Thus, while all the principles of Medicare were continued, those associated with CAP were reduced to one based on residency.

The lose of these standards enabled provinces to refuse welfare out-right to persons in need and to require community service as a condition of welfare (work-fare).

Clearly the removal of the previous conditions has reduced the legislative protections of poor people. One protection required provinces to meet basic needs. Does the removal of CAP conditions infringe on the human rights of low-income Canadians? The answer depends on how broadly one views the human rights of Canadians.

Replacement of Unemployment Insurance by Employment Insurance

The difficulty in understanding the human rights aspects of legislation which draws distinctions based on economic circumstances is further illustrated by the case of the replacement of Unemployment Insurance (UI) with Employment Insurance (EI).

The federal government had designed EI foremost to reduce benefits so that an EI surplus would reduce the federal deficit. Any reduction in UI benefits could not help but have an adverse affect on economically disadvantaged families.

Beyond this initial impact of UI reductions on the economically vulnerable, could legislative changes be considered a violation of human rights? Perhaps, if UI benefits were reduced particularly for women, because they were women. Perhaps, if they were reduced based on an individual characteristic like race, gender.

The new E.I. eligibility criteria ensured that the reductions in benefits would be concentrated on those with limited labour force attachment. Thus, determining eligibility based on hours worked instead of weeks worked disadvantaged those working part-time –

disproportionately female. In a similar fashion tougher re-entrant requirements disadvantaged those who had left the labour force - disproportionately female

The important point is that parliamentarians were informed, now we know incorrectly, that these changes would not fall disproportionately on women and young people. Indeed, the house committee was and members were told...

At the first stage, any reduction in unemployment insurance will disproportionately affect vulnerable Canadians. The movement from eligibility from weeks to hours had the effect of differentially impacting on those who work part-time (women, and those working in non-standard employment). The impact placed the burden of federal deficit reduction on the most vulnerable of unemployed Canadians.

The inclusion of social condition as a ground could reasonably place the Canadian Human Rights Commission in the place of reviewing such legislation to determine if this affect was justified based on economic criteria or discriminatory.

Summary

The data presented in Part 1 of this report demonstrated that income inequality affects the lives of low-income Canadians in dramatic ways including their health, psycho-social development, education and subsequent income. Children raised in poverty are predisposed to live with reduced health, education and income.

Economic and social disadvantage were presented in three broad categories:

- Inadequate resources to meet basic needs.
- Inequitable income with impacts which extent past one's range of purchases to include impacts on one's health, as well as the health, educational opportunities and future income of children.
- institutional indifference toward low-income Canadians can result in regulations which do not serve them well. This is compounded by the prejudice which exists toward the economically disadvantaged.

The social and economical disadvantage of some Canadians is a constant in their lives. The flow between different sources of income, wages, unemployment insurance and welfare can create change in the particulars but the economic circumstances and disadvantage are a constant.

Also, constant is the vulnerability of disadvantaged Canadians to exploitation, prejudice and neglect by major Canadian institutions including government.

Thus, it would be folly and disingenuous to rely on parliament alone to protect the interests of disadvantaged Canadians. Indeed judges tend to be cut from the same socio-economic cloth as politicians and a sole reliance on them to advance the interests of the poor would be folly. A commission like the CHRC may be uniquely positioned to represent disenfranchised

Canadians. It would need to be mandated to review legislation and procedures for human rights violations and to draw together the expertise necessary to fulfil that role.

Final Observations

The labeling of those who would be protected by social condition is very difficult. The term 'social condition' should include social assistance recipients, the homeless and street kids but these are inadequate to the extent that they would miss other categories, for example, the working poor. The research presented here demonstrated that the flux in sources of income for low-income Canadians is within a context of constant economic disadvantage; thus, social condition understood broadly is immutable.

The CHRC could perform a useful function in the review of administrative procedures, both of governments and business, to ensure that they do not discriminate directly or indirectly against disadvantaged Canadians. These institutions could also be required to make reasonable accommodation for disadvantaged Canadians. When needed, the CHRC could impose remedies concerning procedures which discriminate or do not provide sufficient accommodation for disadvantaged Canadians.

The review of legislation is more problematic. The intent of legislation is often to draw distinctions based on some measure of need (e.g. income). One should not expect the CHRC to rewrite legislation in complex areas (e.g. Income Tax). It could be possible though for the CHRC to identify circumstances where distinctions based on social condition appear unjustified and report them to Parliament.

While federal departments like HRDC and Revenue Canada have a great deal of expertise in program design, they report to political masters who are primarily interested in re-election. Thus the polling of Canadians to gauge their reaction to programs is now routine. Recall that prior to implementing the Canada Child Tax Benefit, HRDC determined that Canadians would not object to the reduction in support for social assistance recipients.

We note though that a reporting role already exists.

“The mandate of the Commission includes:

- monitoring programs, policies and legislation affecting designated groups (women, Aboriginal peoples, visible minorities and persons with disabilities) to ensure that their human rights are protected;” (CHRA – Guide – CHRC web-site www.chrc-ccdp.ca).

Canada is a signatory to a number of international covenants like the International Covenant on Economic Social and Cultural Rights (ICESCR) on human rights. Canada signs these agreements after consultation with the provinces. That signature binds both federal and provincial to comply with these international agreements.

There is no monitoring body in Canada which reports to parliament on our compliance with international agreements. This would be a reasonable function to be undertaken by the CHRC.

By comparison one notes that in South Africa the newly created South Africa Human Rights Commission (SAHRC) is required to report annually to parliament on the activities. The power is conveyed as indicated below in the Constitution.

Section 184(3) Each year, the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment. (South Africa 1999, The Constituion.)

One notes further that this requires organs of state at all levels (provincial and municipal) to respond to questionnaires sent by the SAHRC on their compliance with human rights obligations.

Canada legislation and practice, both in the CHRA and elsewhere, needs improvement if it is to reflect the ideals we say we stand for. The inclusion of social condition in the CHRA would be a step, albeit a small step, in that direction.

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Annex - Children Experiencing Problems due to poverty

The following graphs were taken from a publication by the Canadian Council on Social Development (Ross and Roberts, 1999). It presents the analysis of data collected by Statistics Canada in the National Longitudinal Study of Children and Youth.

