

IN THE SUPREME COURT OF CANADA

(On Appeal from the Court of Appeal for Québec)

BETWEEN:

LOUISE GOSSELIN

APPELLANT

and

LE PROCUREUR GÉNÉRAL DU QUÉBEC

RESPONDENT

and

ATTORNEY GENERAL OF ALBERTA
ATTORNEY GENERAL OF MANITOBA
ATTORNEY GENERAL OF NEW BRUNSWICK
ATTORNEY GENERAL OF ONTARIO
ATTORNEY GENERAL OF BRITISH COLUMBIA
RIGHTS AND DEMOCRACY

COMMISSION DES DROITS DE LA PERSONNE ET DE LA JEUNESSE
THE NATIONAL ASSOCIATION OF WOMEN AND THE LAW
CHARTER COMMITTEE ON POVERTY ISSUES

INTERVENORS

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PART I: STATEMENT OF FACTS

1. NAWL wishes to highlight aspects of the record that reveal the impact of the challenged section of the *Social Aid Regulation* on young women and men in the 18-30 age group, to underscore the specific ways in which the challenged provision put young women at risk, and to emphasize certain facts about the legislative context of the *Regulation*.

2. In s. 23 of the *Regulation*, the Respondent government determined that an adult's ordinary needs corresponded to a monthly amount ranging from \$434 as of April 1st, 1985, to \$507, as of January 1st, 1989 ("the regular rate"). Section 29(a) of the *Regulation* nonetheless stipulated that the assistance of single adults less than thirty years of age and able to work could not exceed a monthly amount ranging from \$158 as of April 1st, 1985, to \$185 as of January 1st, 1989 ("the reduced rate").

Sections 23 and 29(a), *Regulation Respecting Social Aid*, R.R.Q., c. A-16, r.1.

3. The social assistance benefits received by young women and men on the reduced rate were insufficient to allow them to meet basic needs for food, clothing and shelter. They underwent extreme stress and had to resort to degrading and criminalized survival strategies such as begging and petty theft. They were often malnourished. The reduced rate was also associated with suicidal thoughts, suicide attempts and actual suicide.

Testimony of Psychologist D. Gratton, Vol. 2, at 320-321; P-7, Vol. 6, at 1039; P-9, Vol. 8, at 1409; P-9.2, Vol. 8, at 1440,1443; P-10, Vol. 9, at 1559; testimony of L. Gosselin, Vol. 1, at 103; P-6, Vol. 5, at 879.

4. The evidence confirms that because of the lack of stable housing, of a phone, of food, of clean clothes, and of the ability to pay a hairdresser or buy tickets for public transportation, the reduced rate actually detracted from young women and men's chances of carrying out a successful job search. Similarly, the reduced rate multiplied the material and psychological obstacles that young women and men had to overcome in order to participate in employability programs.

P-6, Vol. 5, at 878; testimony of Psychologist D. Gratton, Vol. 2, at 321-323, 334; P-7, Vol. 6, at 1040-1041, 1049. See also P-9, Vol. 8, at 1410, 1413; P-9.1, Vol. 8, at 1421-1422; P-9.2, Vol. 8, at 1441.

5. The reduced rate put women at risk in specific ways. For example, the record reveals that as a survival strategy, some young women on the reduced rate had children in order to become eligible for benefits at the regular rate of social assistance.

Testimony of community worker A. Sandborn, Vol. 2, at 227; P-9, Vol. 8, at 1412; P-9.2, Vol. 8, at 1442.

6. Because of the hunger and inadequate nutrition they experienced during pregnancy and prior to conception, women who began their pregnancy on the reduced rate of social assistance were particularly likely to have low birth-weight babies. Low birth-weight has harmful consequences that can last a lifetime. A low birth-weight baby puts greater demands on its mother. Without special care and attention, low-birth weight babies' initial disadvantage in life is compounded.

P-9, Vol. 8, at 1411-1413; P-9.2, Vol. 8, at 1441-1442; testimony of community worker A. Sandborn, Vol. 2, at 231; testimony of Dr. C. Colin, Vol. 3, at 449, 451; P-10, Vol.9, at 1552; P-9.5, Vol. 8, at 1505-1508.

7. A number of young women on the reduced rate engaged in prostitution, or accepted unwanted sexual advances to try to keep their apartments, to pay monthly expenses, such as heat and electricity, or to buy food.

Testimony of Community Worker A. Sandborn, Vol. 2, at 202, 210, 221-223; P-6, Vol. 5, at 875, 876, 879; P-9, Vol. 8, at 1406, 1409; P-9.2, Vol. 8, at 1440; P-9.2, Vol. 8, at 1443.

8. Louise Gosselin was no exception. The record shows that she had to resort to degrading ways of surviving, such as exchanging her sexual availability for shelter and food. At one point, in order to obtain money to buy clothes so that she could look for a job, Ms. Gosselin engaged in prostitution.

Superior Court Decision, Vol. 18, at 3391; testimony of L. Gosselin, Vol. 1, at 106.

9. At a time when she had nothing to eat, a man from whom Ms. Gosselin was obtaining food drove her home and attempted to rape her. One of the limited choices of housing available to Ms. Gosselin while she was receiving the reduced rate was renting a room in a Boarding House, and even this option left her without money for food or clothing. Boarding Houses are a male-dominated milieu, and while Ms. Gosselin was renting a room in a Boarding House, she was a victim of sexual harassment by male boarders.

Testimony of L. Gosselin, Vol. 1, at 128; P-6, Vol. 5, at 876; testimony of Psychologist D. Gratton, Vol. 2 at 332; P-7, Vol. 6, at 1047.

10. At times, Ms. Gosselin was homeless, and slept in temporary shelters.

Testimony of L. Gosselin, Vol. 1, at 126-127.

11. The record shows that Ms. Gosselin's material poverty became an impediment to her showing up in person to apply for jobs. The psychological consequences engendered by the reduced rate of social assistance undermined Ms. Gosselin's capacity to adapt to new situations and overcome routine obstacles, which made it harder for her to keep occasional work as a cashier, waitress or cook.

Testimony of Psychologist D. Gratton, Vol. 2, at 332-333; P-7, Vol. 6, at 1047-1048.

12. Despite Ms. Gosselin's efforts to improve her situation through participation in various employability programmes, she was greatly affected throughout the period at issue by the severely constrained choices with which the reduced rate left her. Undisputed expert testimony indicated that without professional help, the psychological consequences engendered by the reduced rate could have lasting repercussions and possibly compromise Ms. Gosselin's ability to live her life fully.

Testimony of Psychologist D. Gratton, Vol. 2, at 322-335 and at 318-319; P-7, Vol. 6, at 1041, 1047; testimony of Dr. C. Colin, Vol. 3, at 455-456.

13. When she reached her 30th birthday, and became eligible for the regular rate of social assistance, Ms. Gosselin felt as though she had won a victory simply because she had managed to stay alive.

Testimony of L. Gosselin, Vol. 1, at 143.

14. The reduced rate was a part of a social assistance scheme that was financed jointly by the federal government and the Québec government through an agreement signed May 31st, 1984 under the *Canada Assistance Plan* [CAP]. The 1984 CAP Agreement was renewed in 1986 and in 1989.

Superior Court Decision, Vol. 18, at 3398; testimony of government employee D. Bouffard, Vol. 4, at 626-629.

Canada Assistance Plan, R.S.C., c. C-1.

15. The CAP authorized the federal government to make payments to provincial governments to enable them to finance and administer social assistance programmes and other social assistance-related services, subject to certain conditions. The CAP conditions included a requirement that the provinces provide financial assistance to persons in need in an amount that takes into account their basic requirements. The CAP further stipulated

that a person reliant on social assistance must not be forced to participate in a work activity project as a condition for receiving assistance.

CAP, supra, ss. 6, 15(3).

16. Under the 1984 *CAP* Agreement, the federal government co-financed Québec's social assistance scheme on the condition that participation in a work or training activity programme was voluntary. However, NAWL argues below that, in fact, for the 18 to 30 group, participation in these programs was not voluntary, considering the extremely coercive context surrounding them.

PG-3, Vol. 10, at 1796; testimony of Government Employee D. Bouffard, Vol. 4, at 627.

PART II: ISSUES

17. NAWL adopts the statement of issues contained in the Appellant's factum.

PART III: ARGUMENT

A. NAWL's Position

18. This appeal raises the question of whether it is a permissible legislative choice to reduce the social assistance entitlement of a group composed of otherwise eligible recipients, such that its members are deprived of the means to meet basic needs for food, clothing and shelter. This is the first time that this Court has considered the question of how *Charter* equality rights apply to such a denial of adequate social assistance.

19. The position of NAWL is that s. 29(a) of the *Québec Regulation Respecting Social Aid* violates ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms*, and is not justified under s. 1. NAWL submits further that s. 29(a) violates s. 45 of the *Québec Charte des droits et libertés de la personne*.

20. In this factum, NAWL focuses primarily on the violation of s. 15 of the *Charter*. NAWL submits that s. 29(a) infringes s. 15 of the *Charter* on the ground of age.

21. In order to understand the full discriminatory impact of s. 29(a), the s. 15 analysis must take into account the fact that the group is composed of young poor people and includes both women and men. When the overt discrimination based on age, the poverty of the group, and the harmful gendered effects of a denial of adequate social assistance are all taken into account, it is clear that s. 29(a) is discriminatory in a substantive sense,

and that the Respondent government has not shown that the violation of s. 15 equality rights is justified in a free and democratic society.

B. Section 29(a) Violates Section 15 of the *Charter*

22. The first and second stages of the s. 15 inquiry, as articulated in *Law*, are easily satisfied in this appeal. Section 29(a) draws a facially explicit, detrimental distinction, based on the enumerated ground of age.

Law v. Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497.

23. NAWL submits that s. 29(a) is also discriminatory in a substantive sense, having regard to the ways in which it reinforces the pre-existing disadvantage of young poor women and men; the severity and extent of the harmful impact on important interests, including interests that engage women's rights to equality, security, and liberty; the comprehensive character of the scheme from which they were excluded; and the lack of correspondence between the ground of age and the needs of the claimants.

24. This Court has said that governments have a duty to ensure that legislative distinctions do not have an adverse impact on disadvantaged groups. In *Rodriguez v. British Columbia*, the Chief Justice stated that, "to promote the objective of a more equal society, section 15(1) acts as a bar to the executive enacting provisions without taking into account their possible impact on already disadvantaged classes of persons." These obligations of governments toward disadvantaged groups were confirmed by the Supreme Court in *Vriend* and *Eldridge*.

Rodriguez v. British Columbia, [1993] 3 S.C.R. 519 at 549.

Vriend v. Alberta, [1998] 1 S.C.R. 493.

Eldridge v. British Columbia (Attorney General), [1997] 3 S.C.R. 624 at 676-682.

1. Young Poor People Are a Disadvantaged and Vulnerable Group that Experiences Negative Stereotyping and Prejudice

25. This Court has stated further that probably the most compelling factor favouring a conclusion that differential treatment is discriminatory in a substantive sense is "pre-existing disadvantage, vulnerability, stereotyping or prejudice experienced by the individual or group."

Law, supra at 534.

26. In this appeal a substantive equality analysis mandates a focus not just on the facially explicit distinction based on age, but on the combination and intersectionality of age,

poverty, and gender. In keeping with the contextual approach adopted by this Court, all of the affected group's traits, history and circumstances are relevant to determining whether the impugned regulation has the effect of demeaning human dignity.

Corbière v. Canada (Minister of Indian and Northern Affairs), [1999] 2 S.C.R. 203 at 220-221; and per L'Heureux-Dubé J. at 250, 255, 259.

27. 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. The stigmatization and poverty that they experience lead to feelings of shame, inadequacy, and lack of self worth.

M.A. Deniger, *Le B.S.: mythes et réalités* (Montréal: Conseil canadien de développement social, 1992).

Conseil permanent de la jeunesse, *Dites à tout le monde qu'on existe* (Québec : Conseil permanent de la jeunesse, 1993) at 12, 14.

J. Swanson, *Poorbashing: The Politics of Exclusion* (Toronto: Between the Lines, 2001) at 1-8 and 90-105.

M. Jackman, "Constitutional Contact with the Disparities in the World" (1994) 2(1) *Review of Constitutional Studies* 76 at 77-101.

J. E. Mosher, "Managing the Disentitlement of Women: Glorified Markets, the Idealized Family, and the Undeserving Other" in S. M. Neysmith, ed., *Restructuring Caring Labour: Discourse, State Practice and Everyday Life* (Toronto: Oxford University Press, 2000) at 32, 35.

S. Baxter, *No Way to Live: Poor Women Speak Out* (Vancouver: New Star Books, 1988) at 11-15.

28. Single young people who are considered "capable of working" and who seek social assistance are particularly vulnerable to negative stereotyping as lazy and irresponsible, and thus suffer loss of self-esteem. Further, in all jurisdictions in Canada this group falls farthest below Statistics Canada's low-income cut-offs.

PG-4, Vol.11, at 1967-1968, 2034.

Psychological Evaluation of L. Gosselin, P-7.1, Vol. 6, at 1045-1047.

N. Rehnby & S. McBride, *Help Wanted: Economic Security for Youth* (Vancouver: Canadian Centre for Policy Alternatives, 1997) at 7, 15.

M. 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 378-379.

National Council of Welfare, *Women and Poverty Revisited*, (Ottawa: National Council of Welfare, 1990) at 93-94.

K. Scott, *Women and the CHST: The Profile of Women Receiving Social Assistance in 1994* (Ottawa: Status of Women Canada, 1998) at 47.

29. 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 most provinces. As well, public reports have recommended that protections against discrimination based on social condition be increased.

See: “Appendix” to NAWL factum.

Canadian Human Rights Act Review Panel, *Promoting Equality: A New Vision*, (Ottawa: Department of Justice, 2000) at 106-113.

B.C. Human Rights Commission, *Human Rights for the New Millenium: Recommended B.C. Human Rights Code Amendments for British Columbians by British Columbians* (Victoria: B.C. Human Rights Commission, 1998) at 12-13.

B. Black, *B.C. Human Rights Act Review: Report on Human Rights in British Columbia* (Vancouver: Government of British Columbia, 1994) at 169-171.

30. 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 (Qué. Trib.).

Québec (Comm. des droits de la personne) v. Whittom (1993), 20 C.H.R.R. D/349 (Qué. Trib), affirmed in (1997), 29 C.H.R.R. D/1 (Qué. C.A.).

Lambert v. Québec (Ministère du tourisme) (No. 3) (1997), 29 C.H.R.R. D/246 (Qué. Trib).

Falkiner v. Ontario (Ministry of Community and Social Services) (1996), 140 D.L.R. (4th) 115 (Ont. Gen. Div. Crt) per Rosenberg J. at 138-139, 153.

Falkiner v. Ontario (Ministry of Community and Social Services, Income Maintenance Branch) (2000), 188 D.L.R. (4th) 52 (Ont. Sup. Crt of Just.) at 86, 98.

Dartmouth/Halifax County Regional Housing Authority v. Sparks (1993), 101 D.L.R. (4th) 224 at 230-235.

31. There is a growing legislative recognition that the age group affected in this appeal is vulnerable to discrimination. Human rights protections against age discrimination were originally non-existent and then were made available to people ages 45 to 65. Significantly, in a number of jurisdictions, human rights protections have now been extended to younger people, including adults between the ages of 18 and 30, in acknowledgement of the fact that they also experience discrimination in the labour force, in tenancy, and in services.

W. S. Tarnopolsky & W. F. Pentney, *Discrimination and the Law: Including Equality Rights under the Charter*, looseleaf ed. (Toronto: Carswell, 1985) at 7-1 to 7-11.

McKinney v. University of Guelph, [1980] 3 S.C.R. 229 at 291-292.

2. Section 29(a) Exacerbates Pre-Existing Disadvantage, Stereotyping and Vulnerability

32. The detrimental consequences of s. 29(a) are multiple and they exacerbate pre-existing disadvantage. Section 29(a) plays on and perpetuates a negative stereotype of young poor people. The premise of s. 29(a) is that young poor people will not seek employment or undertake job training unless they are coerced into it by means of severe economic deprivation.

33. Further, to exclude a group of people in need from the equal benefit and protection of a comprehensive social assistance scheme is profoundly injurious to the sense of self-worth and belonging of those who are excluded. Section 29(a) conveys the message that the young poor women and men who are excluded are less worthy than others, less entitled to respect and concern, and less entitled to participate equally in their society.

34. As illustrated by the facts, such a drastic reduction of a social assistance benefit is threatening to young people's mental and physical health, and to their psychological and physical integrity. The harmful effects on the claimants of trying to live on \$170 a month included having to resort to degrading and criminalized survival strategies such as begging and petty theft, prostitution; extreme stress; diminished capacity to seek employment and to participate in employability programs; malnourishment; a compromised capacity to bear a healthy baby; and suicide.

35. Lack of adequate social assistance has particular harmful effects on women, which were not considered by the courts below. However, in this case, the nature and extent of the harm of s. 29(a), and its potential to reinforce pre-existing disadvantage, cannot be fully assessed unless the particular harmful effects on women members of the group are taken into account. A law or policy that is gender-neutral on its face may, nevertheless, implicate sex equality concerns because of the social, political, or legal context of the group affected.

New Brunswick (Minister of Health and Community Services) v. G.(J.), [1999] 3 S.C.R. 46 per L'Heureux-Dubé at 99-100.

Dickason v. University of Alberta, [1992] 2 S.C.R. 1103, per L'Heureux-Dubé J. at 1191-1192.

36. Access to adequate social assistance programs is a key issue for women. Social assistance recipients are predominantly women. A profile of women receiving social assistance reveals that levels of reliance on social assistance are high among Aboriginal

women, women who are recent immigrants to Canada and Québec, and women with disabilities. This makes the adequacy of social assistance programs especially important to the well-being of these particularly vulnerable groups of women.

Conseil du statut de la femme, *Quelques statistiques sur les femmes et la pauvreté*, (Québec : Gouvernement du Québec, 1995).

Canadian Panel on Violence Against Women: *Changing the Landscape in Achieving Equality* (Ottawa: Status of Women, 1993) at 63-65.

K. Scott, *Women and the CHST*, *supra* at 17-21, 27-32.

37. The situation of young poor women needs to be understood in the context of women's overall economic inequality. Poverty is a fact of many women's lives. In Canada, more women than men are poor, they experience greater depths of poverty than men, and they are more likely to be poor at virtually every stage of their lives.

M. Townson, *Report Card on Poverty*, (Ottawa: Canadian Centre for Policy Alternatives, 2000) at 1, 3-8.

S. Day and G. Brodsky, *Women and the Equality Deficit: The Impact of Restructuring Canada's Social Programmes* (Ottawa: Status of Women Canada, 1998) at 5-8.

Statistics Canada, *Women in Canada: A Gender-based Statistical Report* (Ottawa: Ministry of Industry, 2000) at 103-105, 107, 135-138.

38. Women are poor for different reasons than men. Women's poverty and economic inequality are caused by a number of interlocking factors including the economic penalties that women incur when they are unattached to men. Unattached women have high rates of poverty.

M. Townson, *Report Card on Poverty*, *supra* at 6.

K. Scott, *Women and the CHST*, *supra* at 46-47.

C. Lochhead & K. Scott, *The Dynamics of Women's Poverty in Canada* (Ottawa: Status of Women Canada, 2000) at 13-15.

Statistics Canada, *Women in Canada 2000: A Gender-based Statistics Report*, *supra* at 135-138.

39. Women of colour, Aboriginal women and women with disabilities are more vulnerable to poverty than other women.

Statistics Canada, *Women in Canada 2000: A Gender-based Statistics Report*, *supra* at 199-200, 203-206, 225-226, 230-233, and 256-259.

C. Lochhead & K. Scott, *The Dynamics of Women's Poverty*, *supra* at 15-18.

40. Poverty has profound effects on women's lives. It limits women's access to justice, to expression of their ideas, and to participation in political life. It affects women's health and their ability to look after their children. It affects not only women's individual opportunities, but also the ability of women as a group to improve their status and conditions.

Canadian Panel on Violence Against Women, *Changing the Landscape*, *supra* at 65.
 Canadian Research Institute for the Advancement of Women (CRIAW), *Women and Poverty* (Ottawa: CRIAW, 2000).
 S. Day & G. Brodsky, *Women and the Equality Deficit*, *supra* at 94-95.

41. Poverty diminishes women's decision-making autonomy, and increases their vulnerability to violence, sexual exploitation, and coercion. These are traditional patterns of women's subordination to men, which in a situation of below-subsistence income are reinforced and exacerbated.

42. Forced to survive without the means to meet basic needs, women become prey to pressure to exchange their sexual services for food and shelter, either in transitory relationships with men, or as prostitutes. Young women are particularly vulnerable to such commodification of sexuality as a survival strategy.

F. Ouellette, *Femmes sans toit ni voix* (Québec : Les Publications du Québec, 1989) at 7-8, 13-14, 25.

É. Bouchard and B. White and S. Fontaine, ed., *Les femmes itinérantes : une réalité méconnue* (Québec : Conseil du statut de la femme, 1988) at 14, 16, 24-25.

43. Homelessness and life in communal shelters increases women's vulnerability to sexual assault and sexual harassment.

É. Bouchard et al., *Les femmes itinérantes*, *supra* at 12.

S. Lenon, "Living on the Edge: Women, Poverty and Homelessness in Canada" (2000) 20(3) Canadian Woman Studies 123 at 125.

S. Novac, J. Brown and C. Bourbonnais, *No Room of Her Own: A Literature Review on Women and Homelessness* (Ottawa: Canada Mortgage and Housing Corporation, 1996) at 20-23.

44. Inadequate social assistance, services and shelter all exacerbate women's inequality in domestic relationships, diminish their capacity to leave abusive relationships, and increase their vulnerability to violence.

United Nations, Commission on Human Rights, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, UN Doc. E/CN.4/2000/68/Add.5 (2000) at paras. 4, 8, 70, 76.

J. Mosher, "Managing the Disentitlement of Women," *supra* at 31 and 33-34.

Canadian Panel on Violence Against Women, *Changing the Landscape*, *supra* at 65.

45. Women living on social assistance experience the profound and negative effects of poverty when receiving "regular rates" intended to meet basic needs. These negative effects are greatly exacerbated when, as here, a group of young women's social assistance is cut by two-thirds.

46. These patterns are borne out in this case. The record shows that the severe poverty associated with extremely inadequate social assistance deprived women in the 18-30 category of decision-making autonomy in their relationships with men, including coercing them to enter and maintain unwanted sexual relationships, exposing them to sexual harassment and an increased risk of violence, and diminishing their reproductive freedom.

47. In addition, none of these harms can be assumed to be temporary. 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 18 and 30 exacerbates their pre-existing social and economic inequality, and increases their vulnerability to poverty 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 social assistance rates for young single people, will inevitably have an effect on their lives after age 30, in terms of psychological well-being, physical health, access to job opportunities, and eventually their financial security as older women.

3. Nature and Scope of Affected Interests

(a) *Comprehensiveness of the Scheme*

48. In Canada, the right to social assistance for persons in need has been regarded as an incident of social citizenship. This is reflected in the comprehensive character of the Social Aid Act. As in *Vriend* and contrary to *Law*, the legislation at issue purports to provide a comprehensive scheme of protection for rights that are fundamental to human dignity, in this case social assistance for all members of society, in the event that they find themselves without means of subsistence.

M. Jackman, “Women and the Canada Health and Social Transfer”, *supra* at 387.
Vriend, *supra* at 547-552.

(b) *Lack of Correspondence Between Age of Claimants and Their Needs*

49. In *Law*, this Court found that, in general, there is a correlation between age, employability and one’s prospect of long-term income replacement. However, this case is distinguishable from *Law*. The fact that by virtue of being younger, a person may have a longer period of life ahead of them for the purposes of long-term income replacement (*Law*) is irrelevant here because the consequences of being unable to meet immediate

financial needs are so grave. The fact that one has a theoretical capacity to achieve long-term financial security is no answer to an immediate inability to secure adequate food, clothing and shelter.

50. Further, under the challenged regulation everyone who was affected was, by definition, without any means of subsistence and in need of social assistance. Given this legislative framework of individual assessment of need, whether statistically speaking people over 45 have had more difficulty in finding work than those under 45 is, again, irrelevant.

51. There is no evidence that the amount of social assistance required by a person under age 30 to meet basic requirements for food, clothing and shelter is any less than the amount required by a person over 30.

52. Moreover, any suggestion that s. 29(a) is an ameliorative provision is belied both by its detrimental effects and by the comprehensive character of the *Social Aid Act*.

53. The only statutory provision challenged in this appeal is s. 29(a). The Respondent's defences based on the government's training and employability programs must be assessed under s. 1 of the *Charter*, and the Respondent held to an appropriately onerous burden of proof.

(c) Importance of Affected Interests

54. This Court stated in *Law* that the discriminatory calibre of differential treatment requires an evaluation, not only of the economic, but also the constitutional and societal significance attributed to the interest(s) affected.

Law, supra at 540.

55. The interests affected in this case have an extremely high degree of constitutional and societal significance. The impugned regulation deprived young women and men of last-resort assistance, forcing them to go without food, clothing and shelter. It had profound effects on interests in physical, sexual, and psychological security and health, liberty and decision-making autonomy, equality, and effective citizenship, especially for young women.

56. Recognition by Canadian and Québec governments of the importance of the need of every person for adequate food, clothing and shelter is confirmed by the ratification of the *International Covenant on Economic, Social and Cultural Rights [ICESCR]*. Article

11 provides that everyone has a right to an adequate standard of living including adequate food, clothing and housing and to the continuous improvement of living conditions. Article 12 guarantees the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Article 2 guarantees the enjoyment of this right without discrimination of any kind. Furthermore, section 45 of the Québec *Charter* guarantees the right of a person in need to financial assistance capable of ensuring an acceptable standard of living.

International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XXI), 21 UN GAOR, (Supp. No. 16), UN Doc., A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, Articles 2, 11, and 12.

57. Constitutional and quasi-constitutional norms such as s. 36 of the *Constitution*, ss. 7 and 15 of the *Canadian Charter*, and s. 45 of the Québec *Charter*, are all expressions of Canada and Québec's intention to give life to their international human rights obligations in the social and economic field, and to provide for the enforceability of those rights by the courts. The *CAP* condition that assistance be consistent with a person's basic requirements, and the *Social Aid Act*, the statutes in force at the time, are also expressions of these intentions.

Constitution Act, 1982, s. 36.

M. Jackman, "Women and the Canada Health and Social Transfer" *supra*, at 391-401.

B. Porter, "Judging Poverty: Using International Human Rights Law to Refine the Scope of Charter Rights" (2000) 15 *Journal of Law and Social Policy* 117 at 137-162.

58. As recognized by international and regional bodies, poverty is more than a shortage of money. Poverty affects the enjoyment of all other human rights. Access to food, clothing and shelter is fundamental to every person's life, liberty, and security.

United Nations Development Program, *Overcoming Human Poverty: UNDP Poverty Report 1998* (New York: UNDP, 1998) at 14-15.

Inter-American Commission on Human Rights, *Annual Report 1993*, 85th Session, Washington, D.C. 1 February 1993, OEA/Ser.L/V/II.85 at 522-523, 527.

59. The denial of means of subsistence is an even greater affront to human rights when it occurs in relatively wealthy societies such as Québec and Canada, where there is no reason for an underclass of destitute people to exist.

United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations on Canada under Articles 16 and 17 of the Covenant*, U.N. Doc E/C.12/1/Add. 31 (10 December 1998) at paras. 3, 24.

60. Severe poverty of the order manifest in this appeal also contributes directly to contraventions of women's constitutional rights to equality, liberty, and security.

R v. Ewanchuk, [1999] 1 S.C.R. 330 at 361-366.

R. v. Morgentaler, [1988] 1 S.C.R. 30 per Wilson J. at 166.

New Brunswick (Minister of Health and Community Services) v. G. (J.), *supra* at 76-78, 101-102.

Blencoe v. British Columbia (Human Rights Commission), [2000] 2 S.C.R. 307 at 340-341.

L. LaMarche, "An Historical Review of Social and Economic Rights: A Case for Real Rights" (1995) 15(2) Canadian Woman Studies 12 at 12.

S. Day, "The Indivisibility of Women's Human Rights" (2000) 20(3) Canadian Woman Studies 11-12.

61. The *Convention on the Elimination of All Forms of Discrimination Against Women* [CEDAW] obligates the governments of Canada and Québec to take all appropriate measures in the political, social, economic and cultural fields to ensure the full development and advancement of women. The CEDAW guarantees women the right to decision-making autonomy with respect to their reproductive health, and freedom from sexual harassment and violence. The CEDAW also provides specifically that women have a right to adequate nutrition during pregnancy.

Convention on the Elimination of All Forms of Discrimination Against Women, GA Res. 34/180, UN GAOR, 34th Sess. (Supp. No. 46) UN Doc. A/34/46 (1982) Can. T.S. 1982 No. 31, Articles 2, 3, 5, 12(2).

62. The seriousness of the impact of poverty on women was recently recognized by 187 governments, including Canada, in the *Beijing Platform for Action* [PFA], which identifies as a critical issue for women's equality: "the persistent and increasing burden of poverty on women."

United Nations, *Report of the Fourth World Conference on Women, Beijing, China, 4-15 September 1995*, A/CONF.177/20, 17 October 1995, at para. 44.

63. The PFA, which is a contemporary interpretative aid to the CEDAW, expressly recognizes the linkage between women's poverty and the increased likelihood of women being forced into situations in which they are vulnerable to sexual exploitation, and commits governments to adopt economic policies to address the poverty of women.

United Nations, *Report of the Fourth World Conference on Women, Beijing, China*, *supra*, at para. 51.

64. Treaty monitoring bodies have expressed concern about the impact of poverty on women in Canada, and particular concern about the disproportionate impact on women of

inadequate social assistance, noting that inadequate social assistance increases women's vulnerability to domestic violence.

United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations on Canada under Articles 16 and 17 of the Covenant*, *supra* at para. 28.

United Nations Committee on the Elimination of All Forms of Discrimination Against Women, *Adoption of the report of the Committee on the Elimination of All Forms of Discrimination Against Women on its Sixteenth Session: Concluding Observations of the Committee on the Elimination of All Forms of Discrimination Against Women (Canada)*, 29 February 1997, A/52/38/Rev.1 at paras. 327-331, 336.

United Nations Human Rights Committee, *Concluding Observations of the Human Rights Committee on Canada*, 65th Session, UN Doc. CCPR/C/79/Add.105 (7 April 99) at para. 20.

65. The *Charter* is the primary vehicle through which international human rights, including the human rights of women recognized in *CEDAW*, achieve domestic effect.

R v. Ewanchuk, *supra* per L'Heureux-Dubé J. at 365.

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817 at 860-862.

S. Day and G. Brodsky, *Women and the Equality Deficit*, *supra* at 116-120.

66. There is thus an extremely high degree of constitutional and societal significance associated with the interests affected in this case. Denial of the means of subsistence affects interests that have long been recognized as worthy of the highest level of protection in Québec, in Canada and in the international community, including interests related to women's equality rights.

4. Conclusions on the Third Stage of the Section 15 Analysis

67. Section 29(a) causes numerous and severe harms to the affected group that impinge upon human dignity and constitute discrimination in a substantive sense. More particularly, s. 29(a) withdraws crucial assistance for food, clothing and shelter from young poor women and men reliant on social assistance and thereby exacerbates and reinforces the pre-existing material disadvantage and inferior social status of a group that is vulnerable to having its needs and concerns overlooked. Section 29(a) reinforces the stigmatizing assumption that young poor women and men who seek social assistance are not among the deserving poor entitled to equal social citizenship, and will not seek employment and job training unless forced to do so through the imposition of a severe economic penalty. The extreme poverty resulting from rates as low as those set by s.

29(a) has specific detrimental impacts on young poor women that reinforce traditional patterns of social and economic inequality and subordination.

C. Section 29(a) Violates s. 7 of the Charter, and is Not Justified

68. NAWL endorses the submissions of the Charter Committee on Poverty Issues, regarding s. 7 and the related s. 1 defence.

69. NAWL submits that s. 7 rights must be interpreted through the lens of ss. 15 and 28, to realize the goal of ensuring that interpretations of the Constitution respond to the realities and needs of all members of the society including women and particularly, young poor women.

New Brunswick (Minister of Health and Community Services) v. G. (J.), supra at 99.

70. An implication of interpreting s. 7 through the lens of women's equality rights, as well as Canada's international human rights obligations, is that a failure to provide social assistance in an amount adequate to meet the needs of young women lacking other means of subsistence must be understood to engage the right to security of the person.

71. Access to adequate social assistance is fundamental to the realities, needs and substantive equality rights of young women because of their disproportionate poverty as women, and because of the particular ways in which lack of access to the means of subsistence exacerbates and reinforces women's economic inequality, constrains women's choices, subjugates them to men, and profoundly compromises their liberty and security, including their rights to reproductive autonomy and to freedom from violence.

D. Section 29(a) is Not Justified Under s. 1 of the Charter

72. This Court has held that deference is not a threshold determination that can be made about certain kinds of legislative decisions. It would be particularly inappropriate for social assistance schemes to be treated as a class of legislation that *a priori* is subject to heightened judicial deference, given that the people who are most likely to be negatively affected by such an approach are disadvantaged people, such as women, who are already subject to discrimination.

M. v. H., [1999] 2 S.C.R. 3 at 61-62.

73. Poverty is a key manifestation of long-standing systemic discrimination experienced by women, people of colour, Aboriginal people and people with disabilities.

Consequently, equality for women and other systemically disadvantaged groups cannot be secured by treating discrimination in social assistance schemes as a question of government allocation of scarce resources, subject to excessive judicial deference.

74. The infringement of s. 15 rights occasioned by s. 29(a) is not a reasonable limit which is demonstrably justified under s. 1. The Respondent has failed to establish that s. 29(a) is animated by a pressing and substantial objective. In the alternative, if s. 29(a) is found to have a pressing and substantial objective, it nevertheless cannot be justified because it does not satisfy the requirements of rational connection, minimal impairment, and proportionality.

75. The ultimate standard against which a limit on a *Charter* right must be shown to be reasonably 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 which enhance the participation of individuals and groups in the society.

M. v. H., *supra* at 59.

76. The commitments contained in s. 36 of the *Constitution*, the *Social Aid Act* and the conditions for provincial funding established by *CAP*, as well as being expressions of Canada's obligations under international human rights law, must be understood as expressions of the values that underlie the *Canadian Charter*. The provision of aid of last resort to destitute women and men is one of the hallmarks of twentieth century democracy. These values must inform the Court's appreciation of what can constitute a pressing and substantial objective.

Slaight Communications v. Davidson, [1989] 1 S.C.R. 1038 at 1056-1057.

U.S. v. Burns (2001), 195 D.L.R. (4th) 1 at 36-38.

77. The primary objective of s. 29(a) is to provide a negative financial incentive to persons eligible for social assistance who are between the ages of 18 and 30 in order to reduce the welfare rolls, and incite these people to join the job market.

78. This objective fails the initial step of the s. 1 analysis for three reasons. This is an impermissible objective because it rests on a discriminatory stereotype, namely that members of one group, defined by a prohibited ground of discrimination, will not seek employment unless forced to do so. The proof of this stereotype lies in the fact that people over 30 were not subjected to the same negative financial incentive, and yet there

was no evidence that the under 30 group was any less likely to avail itself of employment opportunities than the over 30 group.

79. Nor is there any evidence that there were many available employment opportunities, which young people could have filled. The evidence is that in the 1980's many people under 30 were unemployed.

80. Secondly, on its face s. 29(a) directly contradicts the very purpose of the *Social Aid Act*, because it is a deliberate denial of adequate benefits to a group of eligible beneficiaries. As such, it is not a permissible objective.

Vriend v. Alberta, *supra* at 557.

Grace v. British Columbia (Lieutenant Governor in Council), [2000] B.C.J. No. 1201 (B.C.S.C.) at paras. 71-103.

81. Thirdly, s. 29(a) is inconsistent with the *Canadian Charter* values of respect for human dignity, social justice and equality, and faith in social and political institutions, and therefore does not constitute a pressing and substantial objective. Section 29(a) discriminates against a vulnerable group including extremely vulnerable young women, and is inconsistent with international human rights obligations to refrain from discrimination, to overcome the poverty and inequality of women, and to progressively realize the right to an adequate standard of living.

82. Further, s. 29(a) is in violation of a *CAP* requirement. This Court has held that the *CAP* establishes a legally enforceable obligation to provide social assistance in an amount "compatible or consistent with a person's basic requirements". The Respondent government had determined that the regular rate was the amount necessary to cover a person's basic requirements. Just as jurisprudence of this Court precludes a government from putting forward a discriminatory purpose under s. 1, so too should this Court refuse to accept as pressing and substantial an objective, the pursuit of which contravenes federal legislation, and violates a mandatory condition of a federal cost-sharing agreement. To do so would undermine public confidence in governments and courts, both of which are central to the fabric of Canadian social and political institutions.

CAP, *supra* at s. 6(2).

Finlay v. Canada (Minister of Finance), [1993] 1 S.C.R. 1080 at 1125-1126.

83. NAWL submits that even if the government's objective were a pressing and substantial objective warranting overriding the constitutional rights of young poor women and men, the Government has not discharged the onus placed on it, by showing that

drastically cutting the social assistance of this group of eligible social assistance recipients is rationally related to the goal of facilitating entry or re-entry into the job market. There is no evidence that members of this group had disproportionately failed to seek employment. Further, there is evidence that lack of access to adequate social assistance actually diminished the ability of members of this group to seek and obtain employment.

84. Section 29(a) does not minimally impair the s. 15 equality rights of young poor women and men. Even if s. 29(a) is viewed as part of an endeavor to encourage people to participate in government training and workfare programmes, the Respondent has failed to show that drastically cutting the social assistance of this group was necessary to the achievement of the objective. The Respondent has also failed to show that there was a reasonable basis for believing that its training and employment programmes would offset the harm of s. 29(a), considering the deficiencies of those programs. Contrary to the *CAP* agreement between the federal government and the Québec government, participation in the employability programs for the 18 to 30 group was not voluntary because of the highly coercive context in they were made available to this group. Further, under *CAP* and the Québec *Charter*, workfare is prohibited.

Lambert, supra.

85. Having regard to the factors referred to in this Court's jurisprudence, there is no need to be deferential to the legislative choice in this particular case. The group affected is vulnerable and includes extremely vulnerable young women. The group suffers from pre-existing disadvantage and negative stereotyping; the nature of the interest affected by the exclusion is fundamental; there is no evidence of the government arbitrating between competing interests. Further, there was no consideration given by the government to the right to equal concern and respect.

M. v. H., *supra* at 79-80, 82, and per Bastarache J. at 161-162.

86. There is no proportionality between the detrimental discriminatory effects of s. 29(a) and the objective the government sought to achieve. Nor is there a balance between deleterious and positive effects of s. 29(a). The Respondent Government has not met its burden to show that these violations are justified in a free and democratic society. Nor can it. Not only is s. 29(a) inconsistent with the *CAP*, it runs afoul of Canada and

Québec's international obligations under the *ICESCR* and the *CEDAW* as well as the values underlying the Canadian and Québec *Charters*.

PART IV: NATURE OF THE RELIEF REQUESTED

87. For the foregoing reasons, NAWL requests that section 29(a) be declared unconstitutional pursuant to section 52 of the *Constitution* and contrary to section 45 of the Québec *Charte des droits et libertés de la personne* and that the remedy sought by the Appellant be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Gwen Brodsky

Rachel Cox

May 29, 2001

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<i>Baker v. Canada (Minister of Citizenship and Immigration)</i> , [1999] 2 S.C.R. 817.	15
<i>Blencoe v. British Columbia (Human Rights Commission)</i> , [2000] 2 S.C.R. 307.	14
<i>Corbière v. Canada (Minister of Indian and Northern Affairs)</i> , [1999] 2 S.C.R. 203.	6
<i>Dartmouth/Halifax County Regional Housing Authority v. Sparks</i> (1993), 101 D.L.R. (4 th) 224.	7
<i>Dickason v. University of Alberta</i> , [1992] 2 S.C.R. 1103.	8
<i>Eldridge v. British Columbia (Attorney General)</i> , [1997] 3 S.C.R. 624.	5
<i>Falkiner v. Ontario (Ministry of Community and Social Services)</i> (1996), 140 D.L.R. (4 th) 115 (Ont. Gen. Div. Crt).	7
<i>Falkiner v. Ontario (Ministry of Community and Social Services, Income Maintenance Branch)</i> (2000), 188 D.L.R. (4 th) 52 (Ont. Sup. Crt of Just.).	7
<i>Federated Anti-Poverty Groups of B.C. v. British Columbia (A.G.)</i> (1991), 70 B.C.L.R. (2d) 325.	7
<i>Finlay v. Canada (Minister of Finance)</i> , [1993] 1 S.C.R. 1080.	18
<i>Grace v. British Columbia (Lieutenant Governor in Council)</i> , [2000] B.C.J. No. 1201 (B.C.S.C.).	18
<i>Lambert v. Québec (Ministère du tourisme)</i> (No. 3) (1997), 29 C.H.R.R. D/246 (Qué. Trib).	7, 19
<i>Law v. Canada (Minister of Employment and Immigration)</i> , [1999] 1 S.C.R. 497.	5, 11, 12
<i>M. v. H.</i> , [1999] 2 S.C.R. 3.	16, 17, 19
<i>McKinney v. University of Guelph</i> , [1980] 3 S.C.R. 229.	7
<i>New Brunswick (Minister of Health and Community Services) v. G. (J.)</i> , [1999] 3 S.C.R. 46.	8

<i>Québec (Comm. des droits de la personne) v. Gauthier</i> (1993), 19 C.H.R.R. D/312 (Qué. Trib.).	7
<i>Québec (Comm. des droits de la personne) v. Whittom</i> (1993), 20 C.H.R.R. D/349 (Qué. Trib), affirmed in (1997), 29 C.H.R.R. D/1 (Qué. C.A.).	7
<i>R v. Ewanchuk</i> , [1999] 1 S.C.R. 330.	14, 15
<i>R. v. Morgentaler</i> , [1988] 1 S.C.R. 30.	14
<i>Slaight Communications Inc. v. Davidson</i> , [1989] 1 S.C.R. 1038.	17
<i>U.S. v. Burns</i> (2001), 195 D.L.R. (4 th) 1.	17
<i>Vriend v. Alberta (A.G.)</i> , [1998] 1 S.C.R. 493	5, 11, 18

SCHOLARLY AUTHORITIES	PAGE
S. Baxter, <i>No Way to Live: Poor Women Speak Out</i> (Vancouver: New Star Books, 1988).	6
B.C. Human Rights Commission, <i>Human Rights for the New Millenium: Recommended B.C. Human Rights Code Amendments for British Columbians by British Columbians</i> (Victoria: B.C. Human Rights Commission, 1998).	7
B. Black, <i>B.C. Human Rights Act Review: Report on Human Rights in British Columbia</i> (Vancouver: Government of British Columbia, 1994).	7
E. Bouchard, B. White & S. Fontaine, ed., <i>Les femmes itinérantes : une réalité méconnue</i> , (Québec : Conseil du statut de la femme, 1988).	10
Canadian Panel on Violence Against Women: <i>Changing the Landscape in Achieving Equality</i> (Ottawa: Status of Women, 1993).	9, 10
Canadian Research Institute for the Advancement of Women (CRIAOW) <i>Women and Poverty</i> (Ottawa: CRIAOW, 2000).	10
Canadian Human Rights Act Review Panel, <i>Promoting Equality: A New Vision</i> (Ottawa: Department of Justice, 2000).	7
Conseil du statut de la femme, Quelques statistiques sur les femmes et la pauvreté (Québec : Gouvernement du Québec, 1995).	9
Conseil permanent de la jeunesse, <i>Dites à tout le monde qu'on existe...Avis sur la pauvreté des jeunes</i> , (Québec : Conseil permanent de la jeunesse, 1993).	6
S. Day, "The Indivisibility of Women's Human Rights" 15(3) Canadian Woman Studies 11.	14
S. Day & G. Brodsky, <i>Women and the Equality Deficit: The Impact of Restructuring Canada's Social Programs</i> (Ottawa: Status of Women Canada, 1998).	9, 10, 15
M. Jackman, "Constitutional Contact with the Disparities in the World" (1994) 2(1) <i>Review of Constitutional Studies</i> 76.	6

M. 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.	6, 11, 13
L. LaMarche, "An Historical Review of Social and Economic Rights: A Case for Real Rights," (1995) 15(2) Canadian Woman Studies 12.	14
S. Lenon, "Living on the Edge: Women, Poverty and Homelessness in Canada" (2000) 20(3) Canadian Woman Studies 123.	10
C. Lochhead and K. Scott, <i>The Dynamics of Women's Poverty in Canada</i> (Ottawa: Status of Women Canada, 2000).	9
J.E. Mosher, "Managing the Disentitlement of Women: Glorified Markets, the Idealized Family, and the Undeserving Other" in Sheila M. Neysmith, ed., <i>Restructuring Caring Labour: Discourse, State Practice and Everyday Life</i> (Toronto: Oxford University Press, 2000).	6, 10
National Council of Welfare, <i>Women and Poverty Revisited</i> (Ottawa: National Council of Welfare, 1990).	6
S. Novac, J. Brown & C. Bourbonnais, <i>No Room of Her Own: A Literature Review on Women and Homelessness</i> (Ottawa: Canada Mortgage and Housing Corporation, 1996).	10
F. Ouellette, <i>Femmes sans toit ni voix</i> (Québec : Les Publications du Québec, 1989).	10
B. Porter, "Judging Poverty: Using International Human Rights Law to Refine the Scope of Charter Rights" (2000) 15 Journal of Law and Social Policy 117.	13
N. Rehnby & S. McBride, <i>Help Wanted: Economic Security for Youth</i> (Vancouver: Canadian Centre for Policy Alternatives, 1997).	6
K. Scott, <i>Women and the CHST: The Profile of Women Receiving Social Assistance in 1994</i> (Ottawa: Status of Women Canada, 1998).	6, 9

Statistics Canada, <i>Women in Canada: A Gender-based Statistical Report</i> (Ottawa: Ministry of Industry, 2000).	9
J. Swanson, <i>Poorbashing: The Politics of Exclusion</i> (Toronto: Between the Lines, 2001).	6
W. S. Tarnopolsky & W. F. Pentney, <i>Discrimination and the Law: Including Equality Rights under the Charter</i> , looseleaf ed. (Toronto: R. de Boo, 1985).	7
M. Townson, <i>Report Card on Women and Poverty</i> (Ottawa: Canadian Centre for Policy Alternatives, 2000).	9
United Nations Development Program, <i>Overcoming Human Poverty: UNDP Poverty Report 1998</i> (New York: UNDP, 1998).	13

INTERNATIONAL INSTRUMENTS

PAGE

Convention on the Elimination of All Forms of Discrimination Against Women, GA Res. 34/180, UN GAOR, 34th Sess. (Supp. No. 46) UN Doc. A/34/46 (1982) Can. T.S. 1982 No. 31.

14

Inter-American Commission on Human Rights, *Annual Report 1993*, 85th Session, Washington, D.C., 1 February 1993, OEA/Ser.L/V/II.85.

13

International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XXI), 21 UN GAOR, (Supp. No. 16), UN Doc., A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46.

13

United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations on Canada under Articles 16 and 17 of the Covenant*, Doc E/C.12/1/Add. 31 (10 December 1998).

13, 15

United Nations Committee on the Elimination of All Forms of Discrimination Against Women, *Adoption of the report of the Committee on the Elimination of All Forms of Discrimination Against Women on its Sixteenth Session: Concluding Observations of the Committee on the Elimination of All Forms of Discrimination Against Women (Canada)*, A/52/38/Rev.1, 29 February 1997.

15

United Nations, Commission on Human Rights, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, UN Doc. E/CN.4/2000/68/Add.5 (2000) at 4, 8, 70, 76.

10

United Nations Human Rights Committee, *Concluding Observations of the Human Rights Committee on Canada*, 65th Session, UN Doc. CCPR/C/79/Add.105 (7 April 99).

15

United Nations, *Report of the Fourth World Conference on Women, Beijing, China*, 4-15 September 1995, A/CONF.177/20, 17 October 1995.

14

LEGISLATION

Canada Assistance Plan, R.S.C., c. C-1.

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11.

Constitution Act, 1982, s. 36.

Regulation Respecting Social Aid, R.R.Q., c. A-16, r.1.

Social Aid Act, R.S.Q., c. A-16.

Québec Charter of Human Rights and Freedoms, R.S.Q. 1977, c. C-12.

APPENDIX

Prohibitions Against Discrimination Based on Social Condition and Related Grounds in Human Rights Legislation

Alberta

Alberta Human Rights, Citizenship and Multiculturalism Act, R.S.A 1980, c. H-11.7

“source of income”

Preamble

s. 2(1) publication

s. 3 goods, services, accommodation or facilities

s. 4 tenancy

s. 7(1) employment practices

s. 8(1) application and advertisement for employment

Definition of source of income in s. 38(1)(i.2): lawful source of income

British Columbia

British Columbia Residential Tenancy Act, R.S.B.C. 1996, c. 406

“lawful source of income”

s. 81(1)

Manitoba

Manitoba Human Rights Code, C.C.S.M. 1987, C.H175

“source of income”

s. 9(2)(j) applicable characteristics

No definition

Newfoundland

Newfoundland Human Rights Code, R.S.N. 1990, c. H-14

“social origin”

s. 6(1) accommodation, services, facilities and goods

s. 7(1) occupancy of commercial unit or self-contained dwelling unit

s. 8(1) harassment of occupant

s. 9 employment

s. 12 harassment in establishment

s. 14(1) discriminatory publication

Nova Scotia

Nova Scotia Human Rights Act, S.N.S. 1991, c.12

“source of income”

s. 5(1)(t) prohibition of discrimination

Ontario

Ontario Human Rights Code, R.S.O., 1990, c. H.19

“receipt of public assistance”

s. 2(1) Accommodation

s.2(2) Harassment in Accommodation

Prince Edward Island

Prince Edward Island Human Rights Act, R.S.P.E.I. 1988, c. H-12

“source of income”

s. 1(1)(d) definition of discrimination

Québec

Québec Charter of Human Rights and Freedoms, R.S.Q. 1977, c. C-12

“social condition”

s. 10 full and equal recognition and exercise of human rights and freedoms, without distinction, exclusion or preference

Saskatchewan

The Saskatchewan Human Rights Code, S.S. 1979, c. S-24.1

“receipt of public assistance”

Defined in s. 2(1)(m.1)

s. 9 carry on occupation, business or enterprise w/o discrimination

s. 10(1) purchase of land, unit, dwelling or property

s. 11(1) accommodation

s. 12(1) public accommodation, services or facilities

s. 13(1) right to education

s. 14(1) publications

s. 15(1) contract offered to public

s. 16(1) employment

s. 17(1) membership in professional and trade association

s. 18(1) trade unions

s. 19 application or advertisement for employment

Yukon

Yukon Territory Human Right Act, R.S.Y. 1986 (supp 1.), c.11.

“source of income”

s. 6(k.1)