

# HUNGRY FOR JUSTICE: Advancing a Right to Food for Children in BC

Laura Track



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Written by: Laura Track

Researchers: Raji Mangat, Carmen Cheung and Laura Track.

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Thank you to the Law Foundation of BC for their decades of support to the BC Civil Liberties Association.

The Law Foundation of BC  
1340-605 Robson Street  
Vancouver, BC, V6B 5J3  
[www.lawfoundationbc.org](http://www.lawfoundationbc.org)



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900 Helmcken Street, 2<sup>nd</sup> Floor, Vancouver, BC V6Z 1B3  
Phone: 604.687.2919 | Toll free: 1.866.731.7507 | Fax: 604.687.3045  
[www.bccla.org](http://www.bccla.org)



# **HUNGRY FOR JUSTICE:**

## **Advancing a Right to Food for Children in BC**

By Laura Track



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Special thanks to the dozens of individuals we consulted for this report, who shared their experiences of food insecurity with us. We dedicate this report to all the parents who struggle to ensure their children have access to adequate nutritious food each month.

Almost every consultation event took place at a community-based, non-profit organization. We are very grateful to the following organizations for providing space for meetings, recruiting participants, spreading the word about our project, and lending us their expertise:

- Atira Women's Resource Society
- BC Poverty Reduction Coalition
- Carnegie Community Action Project
- Downtown Eastside Neighbourhood House
- Downtown Eastside Kitchen Tables Project
- First Call: BC Child and Youth Advocacy Coalition
- Fort St. John Women's Resource Society
- Gordon Neighbourhood House
- Greater Vancouver Food Bank Society
- Kelowna Living Positive Resource Centre
- Maxxine Wright Place
- Mount Pleasant Community Centre
- North Shore Neighbourhood House
- Potluck Café Society
- Povnet
- Raise the Rates
- Starting Smart Pregnancy Resource Centre
- Hazelton Storytellers' Foundation
- Together Against Poverty Society

This report was written by Laura Track for the BC Civil Liberties Association. Research was conducted by Raji Mangat, Carmen Cheung and Laura Track. Thank you to Jim Braunagel for report layout and design, and to Micheal Vonn and Josh Paterson for editorial support.

# EXECUTIVE SUMMARY

*“A country as wealthy as Canada has no excuses for failing to live up to its international commitments.”* – BC Civil Liberties Association, “Civil Liberties Aspects of Homelessness: General Reflections (April 2004)

When the UN Special Rapporteur on the right to food conducted a mission to Canada in 2012, he expressed extreme distress about the extent of hunger he found in so affluent a country. Nearly a million children and adults relying on food banks to supplement their inadequate diets each month. Extreme inequalities between Indigenous and non-Indigenous communities. Canada, he said, is failing to uphold the right to food and must take urgent action to address the problem now.

The right to food is clearly protected in international human rights agreements that Canada has signed and agreed to uphold. But what does it mean to have a “right” to something when that right so often goes unfulfilled? Despite Canada’s commitments under international human rights law to respect, protect and fulfill the right to food, there is a substantial disconnect between the promise of the right and its achievement.

To be useful and effective in improving people’s lives, the right to food, like all rights, must be legally enforceable. It must be capable of adjudication by the courts, and its violation must result in accountability and action. A meaningful right must create a corresponding legal obligation on someone or some institution, such as government, to ensure that the right is respected, protected and fulfilled. Therefore, to be meaningful, a right to food must place a legal obligation on government to address hunger and food insecurity through its spending and policy choices. If the obligation is not met, people whose right to food has been violated must be able to take their claim to court, and a judge must be able to order remedies for the violation.

The BC Civil Liberties Association believes that Canada’s *Charter of Rights and Freedoms* is a vehicle through which the right to food could be enforced and made meaningful in people’s lives. To make our case, we have travelled around the province hearing stories about people’s experiences of food insecurity and the challenges they face in putting adequate, nutritious food on their families’



tables. We've heard about low wages and grossly inadequate social assistance rates that prevent people from purchasing the food they need, expensive produce and extensive distances that create barriers to food security for people in remote communities and the physical and psychological health impacts that hunger and poverty have on parents and their children.

We've also researched the ways in which low income individuals and communities have used the law to advance their rights in court. We've explored the successes and failures that people experiencing homelessness, extreme poverty and other violations of what are called "economic and social rights" have had in the courts, and we've drawn lessons from these cases to inform our analysis of how Canadian law protects the right to food.

Historically, plaintiffs have faced significant challenges in using the *Charter* to advance "positive rights" claims – claims that require the government to take positive action to fulfill people's basic needs. The right to housing, food, or an adequate standard of living are all considered "positive rights" because their fulfillment requires government action and spending. Judges are often hesitant to settle these kinds of cases, citing concerns about their proper role. While it's true that it's the government's job to determine budget priorities and make spending choices, and it's important that courts don't usurp the role of Parliament and the legislatures by making decisions that properly belong to our democratically elected representatives, that doesn't necessarily mean that courts shouldn't find a *Charter* breach and order accountability when human rights like the right to food have been violated.

Protecting rights costs money. Even traditionally "negative" rights, like the right to a vote or to have a fair trial, require government spending. You can't have a fair trial without a functioning justice system, and courthouses, judges' salaries and support staff all cost money. Judges regularly require government spending in these contexts. For example, judges will stay criminal charges against people accused of crimes when overbooked courts and an insufficient number of judges mean it has taken too long for the accused to get their case heard, depriving them of their right to a fair trial. So while fulfilling the right to food would require the investment of public resources, this is no different than the fulfillment of any other right. Moreover, we know from research that fulfilling the right to food would actually save the government money over the long term, in health care

and other social services costs, as well as by bringing in more tax dollars from higher earning, more productive, happier and healthier workers.

Our goal in conducting this research was to determine whether the right to food is a legally enforceable human right protected by the *Charter*. We have concluded that for children, who are particularly vulnerable to the negative health effects of malnutrition and entirely reliant on others to provide for their food needs, there is a positive obligation on government, arising from children's *Charter* protected rights, to ensure they have access to adequate, nutritious food. Moreover, we argue that when children's right to food has gone unfulfilled, courts have the jurisdiction and authority under the *Charter* to declare the government's actions unconstitutional, and to order remedies for this breach of children's rights.

International human rights law supports the right of *everyone* in Canada to a life free from poverty and hunger. In our view, successfully achieving the recognition of a *Charter*-protected right to food for children in Canada, and a corresponding duty on the Canadian government to protect and uphold that right, represents the best first step towards broader human rights protections against poverty for all.

# PART 1: INTRODUCTION AND OVERVIEW

When the UN Special Rapporteur on the right to food conducted a mission to Canada in 2012, he expressed extreme distress about the extent of hunger he found in so affluent a country. “Canada has long been seen as a land of plenty,” he noted, “yet today one in 10 families with a child under six is unable to meet their daily food needs” and “people are simply too poor to eat decently.”<sup>1</sup> Noting the nearly one million children and adults who rely on food banks to supplement their inadequate diets and the extreme inequalities between Indigenous and non-Indigenous communities, as well as the absence of a national food security strategy or legal protection for the right to food, he denounced the country’s state of food insecurity as “unacceptable” and urged the federal government to adopt a national right to food strategy.

The federal government’s response was to launch a personal and highly undiplomatic attack.<sup>2</sup> Leading members of the government characterized the Special Rapporteur as a “meddling academic” who was wasting UN resources investigating Canada when he could have been somewhere with real hunger and food security issues.<sup>3</sup> This is not the first time international criticism of Canada’s human rights record has been received with hostility. When the UN Committee on the Rights of the Child commented negatively on Canada’s human rights performance with respect to growing poverty among Indigenous, immigrant and disabled children, the Canadian government dismissed those concerns as misplaced and politically motivated.<sup>4</sup> This approach, described by the Special Rapporteur as a new “Canadian self-righteousness”,<sup>5</sup> suggests a government

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1 United Nations, Office of the High Commissioner for Human Rights, News Release, “Canada: National food strategy can eradicate hunger amidst plenty – UN rights expert” (16 May 2012).

2 Bruce Porter & Martha Jackman, “Introduction: Advancing Social Rights in Canada” in Martha Jackman & Bruce Porter, eds, *Advancing Social Rights in Canada* (Toronto: Irwin Law, 2014). [Advancing Social Rights in Canada]

3 Open letter from human rights organizations and allied individuals to Prime Minister Stephen Harper concerning the Government of Canada’s treatment of the United Nations human rights Special Rapporteur on the right to food (30 May 2012) online: [www.amnesty.ca/sites/default/files/canadaletterpmonsr30may12.pdf](http://www.amnesty.ca/sites/default/files/canadaletterpmonsr30may12.pdf).

4 Porter and Jackman, *supra* note 2.

5 Sarah Schmidt, “UN envoy blasts Canada for ‘self-righteous’ attitude over hunger, poverty” *Postmedia News* (15 May 2012).

view of human rights violations as something that only happen in other countries, and a disregard for the lived experience of hundreds of thousands of people in Canada experiencing food insecurity, poverty and deprivation.

With the *Canadian Charter of Rights and Freedoms* now entering its fourth decade, growing economic inequality and violations of economic and social rights – rights to food, water, housing, and an adequate standard of living, among others – disproportionately experienced by Indigenous people, single mothers and their children, people with disabilities, racialized groups and newcomers to Canada – call into question Canada’s commitment to human rights and social justice. At home and at the international level, Canada has failed to support the development of legal protections for economic and social rights,<sup>6</sup> and resisted strenuously any attempt to utilize existing tools, including the *Canadian Charter of Rights and Freedoms*, as a means to address economic disadvantage and the systemic discrimination that creates, perpetuates and reinforces poverty.<sup>7</sup>

These economic and social rights are tightly interwoven with the fulfillment of what are traditionally thought of as civil and political rights, such as freedom of expression, freedom of conscience and security rights. Without access to adequate food, water, shelter, education and income, it is very difficult to enjoy and benefit from these more traditional human rights guarantees. Can the right to freedom of conscience and expression, for example, be meaningfully exercised without access to an adequate education? Is the right to life truly protected absent a right to food, water and shelter – the basic necessities of life? The Supreme Court of Canada has interpreted the *Charter’s* protection of “security of the person” to include the protection of one’s physical and mental health;<sup>8</sup> surely this must include some protection for the basic determinants of health, particularly for the vulnerable?

Research shows that the conditions in which people are born, grow, live, work, and age have a greater impact on health than medical treatments, lifestyle

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6 Most recently, Canada failed to support the development of, and has refused to ratify, a complaints procedure allowing those whose economic and social rights have been violated to seek international adjudication of their claims.

7 See e.g. *Tanudjaja v Attorney General (Canada)*, 2013 ONSC 5410, aff’d 2014 ONCA 852, leave to appeal to the SCC filed January 28, 2015.

8 See *New Brunswick (Minister of Health) v G(J)*, [1999] 3 SCR 46.

choices, or hereditary factors.<sup>9</sup> These conditions have come to be known as the “social determinants of health” and, as the World Health Organization notes, “are shaped by the distribution of money, power and resources at global, national and local levels, which are themselves influenced by policy choices.”<sup>10</sup> The social determinants of health are largely responsible for health inequities, the “unfair and avoidable differences in health status within and between countries.”<sup>11</sup> Income, food security, employment and working conditions, education and literacy, environment, housing, social exclusion and access to health services are commonly associated with the most significant health inequities in Canada, along with Aboriginal status, gender, race and disability.<sup>12</sup> Of all of these, income is the most significant determinant of health in Canada because of its influence on all of the other factors:

Level of income shapes overall living conditions, affects psychological functioning, and influences health-related behaviour such as quality of diet, extent of physical activity, tobacco use, and excessive alcohol use. In Canada, income determines the quality of other social determinants of health such as food security, housing and other prerequisites of health.<sup>13</sup>

As Juha Mikkonen and Dennis Raphael explain, governments not only influence, but are often directly responsible for, social determinants of health:

There is much evidence that the quality of ... health-shaping living conditions is strongly determined by decisions that governments make in a range of different public policy domains. Governments at the municipal, provincial/territorial, and federal levels create policies, laws and regulations that influence how much income Canadians receive through employment, family benefits, or social assistance, and the quality and availability of affordable housing, the kinds of health and social services and recreational

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9 Juha Mikkonen & Dennis Raphael, *Social Determinants of Health: The Canadian Facts* (Toronto: York University School of Public Health and Management, 2010) at 7.

10 World Health Organization, *Social Determinants of Health*, online: [www.who.int/social\\_determinants/en/](http://www.who.int/social_determinants/en/).

11 *Ibid.*

12 Mikkonen & Raphael, *supra* note 9.

13 *Ibid.* at 12.

opportunities we can access and even what happens when Canadians lose their jobs during economic downturns.<sup>14</sup>

In a 2008 report, the World Health Organization puts it even more succinctly: “unequal distribution of health-damaging experiences is not in any sense a ‘natural’ phenomenon but is a result of a toxic combination of poor social policies and programmes, unfair economic arrangements, and bad politics.”<sup>15</sup>

Rights to be free from poverty and to enjoy an adequate standard of living are protected in numerous international human rights treaties that Canada has signed and agreed to uphold. The economic and social rights protected by these treaties map closely onto the social determinants of health. Under international human rights law, Canada has a legal obligation to respect, protect and fulfill rights to food, housing, clean water, education, just and favourable conditions of work, and an adequate standard of living. However, the levels of poverty, food insecurity and deprivation in Canada would seem to suggest that the Canadian government does not consider these to be binding legal obligations it is required to uphold. And because international treaties are not enforceable in domestic Canadian courts, anti-poverty advocates, lawyers and activists must rely on other tools to challenge these rights violations as justiciable legal issues that domestic courts can and should attempt to remedy.

The *Canadian Charter of Rights and Freedoms* is one such tool. Our goal in conducting this research was to determine whether the right to food is a legally enforceable human right protected by the *Charter*. We conclude that for children, who are particularly vulnerable to the negative health effects of malnutrition and entirely reliant on others to provide for their food needs, there is a positive obligation on government, arising from children’s *Charter* protected rights, to ensure they have access to adequate, nutritious food. Moreover, we argue that when children’s right to food has gone unfulfilled, courts have the jurisdiction and authority under the *Charter* to declare the government’s actions unconstitutional, and to order remedies for this breach of children’s rights.

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14 *Ibid* at 7-8.

15 World Health Organization, *Closing the Gap in a Generation: Health Equity through Action on the Social Determinants of Health* – Final Report of the Commission on Social Determinants of Health (Geneva: World Health Organization, 2008) at 1.

Without denying that children's poverty is a result of their parents' poverty and that children's rights will be best fulfilled when their families' rights are fulfilled, there are pragmatic legal reasons for focussing our analysis on children. International human rights law supports the right of *everyone* in Canada to a life free from poverty and hunger. In our view, successfully achieving the recognition of a *Charter*-protected right to food for children in Canada, and a corresponding duty on the Canadian government to protect and uphold that right, represents the best first step towards broader human rights protections against poverty for all.

## THE BCCLA'S Right to Food Project

To determine whether it is possible to make a legal argument in favour of a right to food for children, the BCCLA set out to investigate the ways in which hunger and food insecurity are impacting BC families. In six BC communities: Vancouver, Surrey, Victoria, Kelowna, Fort St. John and Hazelton, we heard from parents and service providers about what food insecurity looks like in their lives and their strategies for responding and coping.

While each community raised unique issues, there was remarkable overlap in what we heard. Everywhere, parents lamented low wages, inadequate social assistance rates and the high cost of other necessities, including housing, child care and transportation, that prevented them from securing the food necessary to meet their families' nutritional needs. They described visits to food banks where they received food that went some way towards supplementing their diets, but which was insufficient to fully meet their needs, and was often unhealthy and of poor quality. Parents also spoke of extreme time constraints due to work and care obligations that prevented them from spending time growing food in a garden and preparing healthy meals from scratch. We heard gratitude for the charitable food initiatives that helped them keep food on the table until the end of the month, but also anger and frustration that they did not have the opportunity or supports to allow them to meet their own needs.

Throughout this report, we provide snapshots from our consultations with each of these six communities, and include quotes from participants that serve to illustrate the points we make. We also highlight a number of community-based initiatives and projects that are working to help address people's unmet food

needs. These are inspiring stories of community solidarity, motivated by care and concern for neighbours and communities. They are tremendously important initiatives. At the same time, more is needed: a legally enforceable *right* to food, that does not depend on charitable impulses or good hearted volunteers, but which places a legally enforceable obligation on governments to respect, protect and fulfill the right to food. Fulfilling the right to food is a societal obligation, but not one that can be met by small projects operating on shoe-string budgets, nor even by the highly organized and well-funded Canadian food bank network described in Part 3. While there are many ways to meet people's *need* for food, the right to food can only be fulfilled by government.

The BCCLA is a legal organization, with expertise in human rights and Canadian constitutional law. We are not food policy experts, and have not engaged in the level of research, consultation and collaboration that would be necessary to develop policy solutions to food insecurity in Canada. Nor is that the intent of this project. In this report, we make no recommendations about how government should go about fulfilling the right to food; we leave that important work to groups like Food Secure Canada, who with their *Resetting the Table: A People's Food Policy for Canada* initiative have created a truly grassroots response to Canada's food crisis, and have developed policy solutions aimed at securing a right to food for all, including a nationally-funded "children and food strategy", including school meal programs, school gardens, and food literacy programs to ensure that all children at all times have access to the food required for healthy lives. It is beyond the scope of this report to delve into these policy options or to comment on the work being done by Food Policy Councils and other advisory-type entities across the country. Our contribution is to develop a legal framework for conceptualizing food and food security, to advocate for a rights-based approach to food, and to outline a legal argument in support of *Charter* protections for hungry children in Canada.

In the next section, we provide snapshots from our consultations in six BC communities: Vancouver, Surrey, Victoria, Kelowna, Fort St. John and Hazelton. Then, in Part 2 we set the context for the rest of this report; we define concepts like "food insecurity" and examine the extent of the problem here in Canada. In Part 3, we look at the responses that have arisen to the problem of food insecurity, and argue that charitable responses, while meeting the needs of some



food insecure individuals and families, cannot begin to address the scale and depth of the problem. Part 4 sets out our legal analysis and argues that the *Canadian Charter of Rights and Freedoms* can and should be interpreted to protect the children's right to the adequate, nutritious food they need to support their growth and development.

## VANCOUVER

In Vancouver, we interviewed participants at the Mount Pleasant Community Centre and the North Shore Neighbourhood House. The Mount Pleasant Community Centre partners with the Vancouver Food Bank Society to distribute food to those in need. It is also a part of the Curbside Fresh Market pilot, a project aiming to bring affordable fresh produce to areas of the city with limited food access. The North Shore Neighbourhood House hosts a space for a food bank and soup kitchen on Wednesday mornings, and offers community members the opportunity to grow their own fresh fruits and vegetables in a community garden adjacent to the building.

Almost everyone we spoke to in Vancouver was receiving some form of social assistance; many were on disability assistance. Participants uniformly criticized the insufficiency of their social assistance cheques in allowing them to buy enough healthy food for themselves and their families. Many also noted the high cost of food in Vancouver, as well as the high cost of housing and transportation, which cut into their food budgets. Several parents expressed worry about their children's health as a result of inadequate food, and described the steps they are forced to take to try to ensure their children's nutritional needs are met.

*"I have hardly enough money to feed myself and my family. We ration our food. We eat one portion. I give my son three meals a day, but give myself and my spouse only two or one. I do that quite often, a few times a week."* – A mother of a 6 year old son who receives disability assistance

*"I worry about my grandson. Sometimes I feel like I'm failing him because I'm stretched so thin."*  
– An Indigenous mother and grandmother who cares for her 7 year old grandson

*Re the North Shore Neighbourhood House community garden for food bank users: "If you are talking about programs that involve food, I think the community farm thing is awesome. ... [It is] the difference between feeling like you are a charity case and contributing to something that you receive a benefit from and you are giving back. It changes how you feel about yourself, which goes on to change everything in your life. It changes your ability to provide for yourself in other ways. You feel like you are in a position of power over yourself. – A mother of two*

## SURREY

In Surrey, we interviewed participants at the Maxxine Wright shelter for women. The shelter is open to women who are pregnant or have a newborn; there is also second stage housing for women with young children (priority is given to women with a child under the age of two). The shelter provides meals and there is a kitchen available for women who wish to purchase and cook their own food.

All of the women we interviewed at Maxxine Wright had young children; some had newborns and several were pregnant. Many shared that they had fled a violent spouse and were at the shelter to protect themselves and their children from abuse, while also addressing their own challenges. Most were receiving social assistance and, for the meals they did not eat at Maxxine Wright, relied on food banks to help supplement their and their children's diets. One mother shared that trying to attend the food bank with her one year old was a "nightmare", as it was crowded, noisy, and there was nowhere to put him.

All of the mothers, but the new mothers in particular, expressed concern about the nutritional needs of their newborns, and worried that their babies were not getting the vitamins and nutrients they needed to grow and thrive. They recognized how their own malnutrition might prevent them from producing nutritious breast milk for their children, and one mother worried that her inability to properly nourish her child could result in her abusive ex-partner getting custody. None felt like food banks offered an adequate solution. Several of the mothers noted that they adhere to a halal diet, and were unable to find culturally appropriate foods at the food bank.

*[Re food bank]: "You are still getting the scraps. It's not fresh and it's not appealing. It's really sad. You get table scraps and it makes you feel like you're a dog – you get*

*[someone's] leftovers. That's good enough. I think it's crazy and it makes me feel worse, because I have never been on income assistance up until now. It makes me feel like I'm nothing, kind of like a loser."* – A mother of an 8-month old son on social assistance

*"It's just difficult and when you have a disabled child and a disability [yourself], it is harder to make ends meet if they need to eat certain foods. In my case, the bad situation is even worse. The healthier [my son] eats, the calmer he is, but I can't feed him healthy food all the time. I can't cancel out a meal or a snack with him – it manifests in behavioural problems."* – A mother of two sons aged 6 and 2. The 6-year old suffers from ADHD

*"I feel stressed out and anxious about food – what are you going to eat next? Where is it going to come from? You never know – you can never have a little too much of anything."* – A pregnant mother who also has a 4-year old daughter

## FORT ST. JOHN

In Fort St. John, we spoke to participants at the Fort St. John Women's Resource Society. The Women's Resource Society offers a supportive space for community members, including men, to connect, obtain resources and referrals to other services, and attend educational workshops. It houses a 12 bed shelter for women and an "outreach store", which offers free food, clothing, basic necessities, condoms and bus passes.

According to participants, food is expensive in Fort St. John, and it can be difficult to access fresh fruits and vegetables, particularly in the winter. All of the participants relied on the food bank to help meet their food needs, and many also attended a daily soup kitchen, both hosted by the Salvation Army. There is also a Friendship Centre that some participants attended for occasional meals. One participant, a 58-year old First Nations man who provides financial support for his adult daughter and 6-month old grandson, attends the Salvation Army soup kitchen every day and said ""If it wasn't for the soup kitchen, I don't know what I would do." Travelling between different food providers can be challenging, particularly for participants without access to a vehicle. "Finding food is a full-time job", reported one mother.

Feedback on the food bank was mixed. One participant described it as "okay", but noted that they ask for identification and personal information, and if you

can't provide it, they say they don't have to help you. Other participants reported that they could not get a sufficient quantity of food from the food bank, and that the quality was also poor; food is often out of date, and some participants reported throwing out much of what they received because it had gone bad. There are also limits on how many times per month a person can attend, and one participant expressed frustration at being turned away after she had used up all her visits.

Several participants had health problems, including one mother who had had breast cancer and another who suffered from diabetes and osteoarthritis. They struggled to obtain foods that supported their health while also providing for their children.

*"[Healthiness] of food causes a certain amount of anxiety. Getting healthy food is a big concern for me."* – A mother of two

*"People should have access to food. It is a necessity. It shouldn't be a luxury. With the price of things, it turns out that food is a luxury. Today, a necessity is out of reach for the average person."*

– A mother of two receiving income assistance

*"I get less than half of what I need for bills. But you can either have a roof or you can eat. I have \$0 for food. I don't think I've had a proper meal in over three months. I never have meat, rice."*

– A mother of two adult children who also cares for her young nieces and nephews

## HAZELTON

In Hazelton, we spoke to participants at the Storytellers' Foundation and Starting Smart Pregnancy Resource Centre. Storytellers brings Gitxsan and non-Gitxsan communities together to share and learn from and with one another, and promotes community economic development that reflects the diverse values and socioeconomic visions of community members. The Pregnancy Resource Centre, located in the Grace Lynn Family Centre, provides pregnancy outreach through a weekly drop-in program, and also supports families with toddlers through parenting workshops and other supports.

Participants in Hazelton offered a unique perspective on food security issues in their community. While several participants do turn to the food bank from time to time, the majority meet a significant proportion of their food needs through gardening, fishing, hunting and gathering. Fishing and hunting moose are common activities, and many participants who are not hunters themselves receive jarred moose and salmon from friends and relatives. There is also a tradition of community feasts in Hazelton, and many people share and obtain food at feasts, which are held frequently in and around the community. Sharing – bringing food to neighbours and friends and turning to others when in need – is a key aspect of food security for many participants in Hazelton. People also often share rides into larger centres to go grocery shopping. Food can be expensive at the small local grocery store, and many participants often travel to Smithers and Terrace for their food and other household needs. Those without access to a vehicle are often able to get a lift with another family.

Because of their reliance on the land and the traditional histories associated with practices like hunting and fishing, participants in Hazelton spoke about the importance of protecting their natural resources from development and extractive projects that could threaten the habitats on which moose, fish and people depend. While concerns about the inadequacy of incomes and social assistance rates and the impact on their ability to buy food were raised by participants, the emphasis remained on traditional sources of food and the threats to those traditional practices posed by resource development projects. People also noted a lack of time and resources to be able to engage in those pursuits. For example, it's impossible to go hunting without a truck, which requires fuel, and these can constitute barriers.

*“Neighbours and friends respond to people’s needs. They bring you food. That’s how our culture works. We feed each other... There’s a backup system for everybody. You’re always in the place you belong, and it doesn’t matter where you go, your community is there for you. Our culture is self-sufficient.” – An Indigenous elder*

*“It’s hard to get fresh produce at the grocery stores here, as it’s trucked in from so far away. It’s limp and practically rotten by the time it’s on the shelves, especially in the winter. I’d love to have better access to fresh produce. It’s always the unhealthy foods that*

*are cheapest, and I see a lot of kids at school with [sugary sodas] and junk food. It's what their parents can afford."* – An Indigenous mother of four

## KELOWNA

In Kelowna, we met with staff from the Living Positive Resource Centre, who work in harm reduction, outreach and education. The Resource Centre began as an HIV/ AIDS service organization in 1992, but has since expanded its mandate to serve anybody in the Central Okanagan experiencing concerns related to housing, income, nutrition, and access to health care, including addiction and mental health services. While they have traditionally served an older male clientele, they are seeing more and more young families, including single mother-led families.

There is one main food bank location in Kelowna and a satellite location in the nearby community of Rutland. There is also one volunteer organization that makes deliveries. Access to the food bank is restricted to people who have housing, though they are considering an exception for people who are working towards being housed (for example, people staying in a recovery house). There are also a few drop-in resources that offer food, but they mostly offer things like pastries, coffee, or a cup of soup.

The Living Positive Resource Centre has its own food program, supported by donations from across the Okanagan. The Okanagan Fruit Tree Project, which organizes volunteers to pick excess fruit from backyard fruit trees and orchards, is a partner, which means the Centre is often able to offer fresh fruits. However, fresh fruits don't last long and must be transported, refrigerated, and prepared quickly. It is a challenge to make use of all the fresh fruit they receive, and clients with gastro-intestinal issues and those without consistent and reliable access to washroom facilities are unlikely to want a box full of fruit.

Staff report that they are unable to meet the demands on the program: they have over 100 people signed up, but have the resources to make up only 15-20 bags of food each week. They give priority to families and people with serious health concerns. One of the problems they have noticed for parents is the challenge of translating food from the food bank into lunches for kids, because the bulk of

their donations are canned goods. They note: “You can’t send your kids to school with a can of tomato soup.”

While these advocates agree that the food bank is providing critical support for families in need, there are still huge problems. Transportation is one significant barrier to accessing the food bank; for people without access to a vehicle, transporting the food home is a challenge. Much of the donated food requires cooking, and not all clients have the equipment or know-how to prepare a meal from the food on offer. In addition, some people cannot even eat the food because of dental problems. Dental issues “have a major effect on people’s nutrition,” they report, no dentist in the area will provide service at the low rates offered by the Ministry of Social Development for dental care.

Low social assistance rates are a problem in Kelowna; housing can be very expensive and transportation costs can eat up a sizeable portion of people’s monthly budgets. People report standing outside the Ministry office for four hours at a time, often with children in tow, simply to access the benefits to which they are entitled. Those who cannot stand for such a long time end up sitting on the sidewalk.<sup>16</sup>

## VICTORIA

In Victoria, interviews were conducted by the Together Against Poverty Society (TAPS), an advocacy and anti-poverty organization. TAPS provides free, face-to-face legal advocacy for people with income assistance, disability benefits, employment and tenancy issues, as well as legal education workshops and trainings. Some of the interviews were conducted at a non-profit service provider that runs the biggest food bank on Vancouver Island and offers additional services including advocacy, counselling, nursing, and access to free clothing and home starter kits. Interviews were also conducted at a local non-profit that provides services to low income single parents, offering parenting programs and one-to-one services for young and expecting parents facing challenges in their lives.

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16 For more on these issues see BCPIAC, *Access Denied: Shut Out of BC’s Welfare System* (Complaint to the Ombudsperson regarding service delivery at the Ministry of Social Development and Social Innovation, May 2015).

Perhaps the most striking aspect of the Victoria participants' stories was the extremely hard work that goes into meeting their families' food needs. Participants spoke of travelling between numerous different service providers each day to access free food, sometimes having to wait in long lines; long treks by bus or on foot to buy groceries, often with small children in tow; and spending long hours preparing soups, stews and sauces from scratch that can be frozen and saved. This is extremely stressful for parents, and many reported that they have little time for much else. One mother, whose child has food sensitivities and other health problems, told interviewers that she was "constantly worried and preoccupied with feeding her family with enough food, with nutritious food and food that is appropriate for her child's health needs." Another, when asked how often the family's food needs are on her mind, replied: "every day. Constantly."

The experience of hunger and food insecurity was also stressful for children; participants reported trying to shield their kids from the realities of their situation, noting that it was hard on their children not to have the same kinds of snacks and lunches as their more fortunate friends and classmates. One mother noticed her kids worrying when they heard her use the word "poor". She doesn't say it anymore.

Participants also reported making significant sacrifices to their own health in order to ensure their children did not go to bed hungry. Many reported skipping meals and, when they did eat, taking tiny portions so as to ensure there was enough to go around. One mother had lost 50 pounds since separating from her husband and going on social assistance; another had lost 60 pounds in the year she was on disability assistance.

*"I'm constantly hungry and stressed out"* – A mother of two on income assistance

*"I'm so tired of starving myself so they can eat"* – A mother of three

*"I always want to make sure my kids always get fed first before me because I know they need it more than me."* – A mother of two, one of whom has learning disabilities



## PART 2: FOOD INSECURITY IN CANADA

### Defining the issues – what is meant by food (in)security?

The United Nations Food and Agriculture Organization defines food security as existing when “all people, at all times, have physical and economic access to sufficient, safe, nutritious food to meet their dietary needs and food preferences for an active and healthy life.”<sup>17</sup> This definition identifies three critical elements of food security: an available and reliable food supply; access to food that is sufficient, safe and nutritious both in quantity and quality to meet people’s daily dietary requirements for a healthy and productive life; and access to food that is culturally acceptable and appropriate.<sup>18</sup>

Conversely, food *insecurity* means having “limited or uncertain availability of nutritionally adequate and safe foods, or limited or uncertain ability to acquire acceptable foods in socially acceptable ways.”<sup>19</sup> Food insecurity indicates deprivation of access to a basic human need: nutritious food in sufficient quantities and quality to maintain good health. The experience of food insecurity can range from worrying about running out of food before having enough money to buy more, to being unable to afford a balanced diet, to being unable to access traditional food sources, to going hungry, missing meals, or not eating for an entire day or more because of a lack of food and money for food.<sup>20</sup>

We heard from a significant number of parents who described what food insecurity looked like for them. Many spoke of skipping meals, limiting portion sizes, and going to bed hungry.

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17 *Canada’s Action Plan for Food Security: A Response to the World food Summit* (Ottawa: Agriculture and Agri-Food, 1998) at 9.

18 *Ibid.*

19 Sue Ann Anderson, “Core indicators of nutritional state for difficult-to-sample populations” (1990) 120 *Journal of Nutrition* 1557.

20 Valerie Tarasuk, Andy Mitchell & Naomi Dachner, *Household Food Insecurity in Canada 2012* (Toronto: Research to Identify Policy Options to Reduce Food Insecurity (PROOF), 2014). [PROOF Study]

*"I have hardly enough money to feed myself and my family. We ration our food. We eat one portion. I give my son three meals a day, but give myself and my spouse only two or one. I do that quite often, a few times a week."* – A mother of a 6-year old son

*"There are days when my husband and I don't eat because our kids need to eat. And those days are getting more and more [frequent]. Some days, I will have crackers for dinner because there is not money to feed us all...I try to provide the best I can for [my children] food-wise, I am just meeting the bare minimum of what my kids should eat in a day...I am compromising a lot. There are times when I am compromising meals for my husband and myself, or I am compromising quality for the quantity, which I should not have to do. I should not have to compromise both quantity and quality to make ends meet."*

– A mother of three children under the age of 10

As defined above, food security requires the ability to "acquire acceptable foods in socially acceptable ways."<sup>21</sup> Obtaining food through food banks and soup kitchens are not "socially acceptable" ways of accessing food. Food security must also mean *dignified* access to food.<sup>22</sup> This means not having to rely on charitable donations of food – food banks, soup kitchens, and the like – to meet your need for adequate nutrition. This implies having a *right* to food, which entails government recognition of food as a fundamental human right, and legal recourse if that right to food is violated.

Food insecurity is a result of economic insecurity. In affluent societies like Canada, it is first and foremost a problem of income poverty and inequality, not an inadequate food supply.<sup>23</sup> It is a result of the interaction of three factors: low incomes (whether wages or social assistance); high food costs; and the costs of other non-food essentials, like housing and transportation, that affect how much money is left over for food. As rents increase, for example, people have less money available for purchasing food. People's mobility and their proximity to

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21 Anderson, *supra* note 19.

22 The Ryerson University Centre for Studies in Food Security has refined the definition of food security to include the principle that food should also be produced in environmentally sustainable ways that do not compromise the dignity, self-respect, or human rights of producers or consumers; see online: [www.ryerson.ca/foodsecurity/definition/index.html](http://www.ryerson.ca/foodsecurity/definition/index.html).

23 Graham Riches, "Confronting First World Hunger: Food Charity or the Right to Food, or, Wasted Food for Surplus People?" (Dr. Richard Spence Lecture on Social Policy, 26 January 2015).

places where food is sold are also important factors, especially in rural and remote regions.

*“You can’t afford to pay your rent unless you use your food money and then you are left going to food banks.”* – An Indigenous mother and grandmother who cares for her 7 year old grandson

Over the past thirty years, Canada has seen a shrinking of the social safety net, restructuring of the social service sector, and prioritization of private sector economic growth over other considerations.<sup>24</sup> These economic policies have contributed to an increase in low wage, precarious work at the expense of secure middle class jobs, and have limited access to critical services, further entrenching poverty and inequality. As described in more detail below, nearly two-thirds of food insecure Canadians are working poor, unable to afford adequate nutritious food on their meager wages.

Canadians have also lost important legal protections against deprivation. Until 1996, the federal government transferred money to the provinces specifically earmarked for health, post-secondary education, welfare and social services under the *Canada Assistance Plan (CAP)*. The *CAP* created an entitlement to an adequate level of financial assistance for anyone in need, regardless of cause, in exchange for shared federal funding of provincial social assistance costs.<sup>25</sup> The *CAP* requirement to provide an adequate level of social assistance was subject to judicial review for reasonable compliance, and to systemic (though not individual) remedy by the courts.<sup>26</sup> While the *CAP* did not explicitly establish an individual right to a benefit, it did recognize food, clothing and shelter as basic

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24 Graham Riches & Valerie Tarasuk, “Canada: Thirty Years of Food Charity and Public Policy Neglect” in Graham Riches & Tiina Silvasti, eds, *First World Hunger Revisited: Food Charity or the Right to Food?*, 2nd ed (New York: Palgrave Macmillan, 2014).

25 Advancing Social Rights in Canada, *supra* note 2.

26 See *ibid* at 10-11. In *Finlay v Canada (Minister of Finance)*, [1986] 2 SCR 607, the Supreme Court of Canada determined that an affected individual had public interest standing to challenge provincial non-compliance with the adequacy requirements of *CAP*. Subsequently, in *Finlay v Canada (Minister of Finance)*, [1993] 1 SCR 1080 at para 81, the Court found that *CAP* “requires assistance to be provided in an amount that is compatible, or consistent, with an individual’s basic requirements” but provides some flexibility in how that determination is made.

human needs, and held the provinces accountable for providing sufficient benefits to allow people to meet these basic needs.<sup>27</sup>

The *CAP* was repealed in 1996 and replaced by the Canada Health and Social Transfer (CHST), a block funding formula that removed minimum funding requirements for social services and left spending decisions entirely to the provinces. It was coupled with significant cuts in transfer payments to the provinces and no longer recognized food as a basic need.<sup>28</sup> Many have analyzed the ways in which the termination of the *CAP* eroded the provision of social services across the country.<sup>29</sup> It led to the introduction of stringent eligibility requirements for social assistance benefits based not on need but on labour market attachment, as well as strict work requirements, resulting in thousands of people being removed from the rolls.<sup>30</sup> In 2004, social funding was separated from health funding and the CHST was replaced by the Canada Health Transfer and the Canada Social Transfer. While an improvement over the CHST, the Canada Social Transfer still provides block funding for all social and educational programmes, perpetuating the accountability problems of the CHST.<sup>31</sup>

The vast majority of participants identified the insufficiency of social assistance benefits as the primary barrier to their ability to meet their food needs. A mother caring for her two adult disabled children shared:

*“We have three fixed incomes and we do everything together to make it cheaper. But financially, I can feel the pinch now. There is less and less at the end of the month.”*

A single mother receiving disability assistance said this about the days before the next month’s cheque is issued:

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27 Karen Rideout et al, “Bringing Home the Right to Food in Canada: Challenges and Possibilities for Achieving Food Security” (2007) 10:6 *Public Health Nutrition* 566.

28 *Ibid.*

29 See e.g. Margot Young, “The Social Union Framework Agreement: Hollowing out the State” (1998-1999) 10 *Const F* 120.

30 Bruce Wallace, Seth Klein & Marge Reitsma-Street, *Denied Assistance: Closing the Door on Welfare in BC* (Canadian Centre for Policy Alternatives, BC Branch: March 2006).

31 Rideout et al, *supra* note 27.

*“It is probably the worst day every month that I think I could ever possibly go through, and then it happens again the next month, when I have nothing. There’s just nothing, there is nothing, and I don’t know what to do.”*

## Who experiences food insecurity in Canada?

Food Banks Canada’s annual *HungerCount* report provides important data on the number of people experiencing food insecurity in Canada. This research found that in the month of March 2014, 841,191 people turned to food banks in Canada.<sup>32</sup> Over one-third were children. In fact, nearly half of the households helped were families with children.

Over and above the 841,191 people helped by food banks in March 2014, soup kitchens, shelters, school breakfast initiatives and other programs also served 4,308,140 meals and snacks to a broad population of Canadians.<sup>33</sup> Years after the end of Canada’s recent recession, food bank use remains near record levels, and stands 25 percent higher than in 2008, before the recession began.<sup>34</sup> Food bank use is not a post-recession phenomenon, however; Canadian food banks have provided help to at least 700,000 people every month for the past 15 years.<sup>35</sup>

However, even these huge numbers of people seeking help from food banks represent only a small proportion of the total number of people experiencing food insecurity in Canada. For a variety of reasons—long distances, lack of transportation, restricted hours of operation, and stigma associated with using food banks, among others—the majority of people experiencing food insecurity do not access the services of food banks. In fact, research indicates that less than one-quarter of food insecure households make use of food banks.<sup>36</sup>

Drawing on data from Statistics Canada’s 2012 Canadian Community Health Survey, researchers concluded that 1.7 million Canadian households experienced

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32 *HungerCount: A Comprehensive Report on Hunger and Food Bank use in Canada, and Recommendations for Change* (Food Banks Canada, 2014). [HungerCount 2014]

33 *Ibid.*

34 *Ibid.*

35 *Ibid.*

36 Sharon Kirkpatrick & Valerie Tarasuk, “Food insecurity and participation in community food programs among low-income Toronto families” (2009) 100:2 *Canadian Journal of Public Health* 135.

food insecurity in 2012.<sup>37</sup> Given low response rates from low income communities, this is surely an undercount.<sup>38</sup> Nevertheless, this translates to one in every eight households—some 4 million individuals—and includes well over a million children.

Rates of food insecurity are highest in Canada's North, especially in Nunavut, and in the Maritimes.<sup>39</sup> In BC, 225,600 households – 12.7 percent of all households – experienced food insecurity in 2012, the highest rate yet observed in this province since statistics were first gathered in 2005.<sup>40</sup>

Not only does food insecurity impact a broad range of people in Canada, it affects them deeply. Of the 1.7 million households who experienced food insecurity in 2012, 786,100 were classified as “moderately food insecure,” indicating compromises in the quality and quantity of food they had consumed over the past 12 months. An additional 336,700 households were classified as “severely food insecure,” reporting clear indications of food deprivation among household members.<sup>41</sup>

Some groups of people in Canada experience higher than average levels of food insecurity than others. Households with children have higher rates of food insecurity than households without children (15.6% compared to 11.4%) and lone parent families led by mothers have the highest rates of all, with 34.3% of these families experiencing food insecurity, compared to 17.2% of lone parent families led by fathers.<sup>42</sup> Overall, 16.5% of children in Canada—approximately 1.15 million children—lived in households affected by food insecurity in 2012, and

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37 PROOF Study, *supra* note 20 at 2.

38 The numbers exclude individuals living on First Nations reserves. While nearly half of all First Nations people in Canada live on reserve, the report contains no data on their food security. The report also contains no data on food insecurity among homeless populations, because the survey is limited to Canadians with domiciles. Thus, although First Nations people and people experiencing homelessness comprise relatively small proportions of the total population, “their high levels of vulnerability to food insecurity must mean that the true prevalence of food insecurity in Canada is to some extent underestimated because of their omission.” PROOF Study, *ibid* at 6.

39 A government program to subsidize the increased cost of shipping food to remote northern locations, called Nutrition North, was recently criticized by the Auditor General for a lack of transparency and accountability, and northerners have long complained that the subsidy does little to lower the high cost of groceries. See 2014 Report of the Auditor General of Canada, Chapter 6, and Steve Rennie, “Nutrition North food subsidy program: What went wrong? *CBC News* (21 December 2014).

40 PROOF Study, *supra* note 20.

41 *Ibid* at 8.

42 *Ibid* at 10.

nearly two-thirds of these children were in moderately or severely food insecure households.<sup>43</sup> The prevalence of food insecurity in households with children is even higher in Nunavut and the Northwest Territories, where 62.2% and 31.6% of kids, respectively, live in food insecure households.<sup>44</sup>

*“It is a terrible thing to have your children say ‘we don’t have money for food’. And you think, what can I do? What can I sell? Do we cancel our TV? What do we do?”*

– An older mother supporting two adult sons

Unsurprisingly, food insecurity is closely tied to income: the lower a family’s income, the more likely they are to be food insecure. The source of a household’s income is also strongly related to food insecurity. Food insecurity affected 69.5% of Canadian households reliant on social assistance (welfare and disability support programs); in BC, where social assistance rates have been frozen since 2007, the rate of food insecurity was 76%.<sup>45</sup> Households whose main source of income was wages and salaries comprised nearly two-thirds of food insecure households in Canada, reflecting the inadequacy of minimum wages to meet the basic needs of the working poor.

*“[The problem is] poverty. Everything is going up. Nobody likes to come here [to the food bank] and beg for food. If everything goes up, what can you do? There is no disposable income, even for people who work. I heard that they work full-time jobs and they don’t have enough food. That’s appalling. Because you have no self-esteem anymore. When you work, you are supposed to be self-sufficient. People working on minimum wage can’t make it happen. ...At least the minimum wage should go up. \$10.45 is not enough. Something has to change. The inequality between inflation and the rates – that has to change. Something is not working here.”* – A mother and full-time caregiver to two disabled children

Racialized and Indigenous individuals experience higher levels of food insecurity than the Canadian average. Households where the respondent was Indigenous or African-Canadian had a rate of food insecurity that was almost two-and-a-half times that of all Canadian households (28.2% and 27.8%

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<sup>43</sup> *Ibid* at 13.

<sup>44</sup> *Ibid*.

<sup>45</sup> *Ibid* at 11.

respectively, versus 12.6% in Canada overall).<sup>46</sup> Recent immigrants (within the last five years) also experience significantly greater food insecurity than people born in Canada.

## What are the impacts of food insecurity in Canada?

### Individual Costs

What does it mean to be food insecure in Canada? It means stress and fear that that you're going to run out of food before your next pay or social assistance cheque arrives. It means sacrificing nutrition and balance in your family's diet because you cannot afford healthy foods. It means skipping meals, cutting portion sizes, and going hungry.

Moreover, a lack of food can also mean a severely restricted ability to participate in public life. Struggling to meet your families' food needs means less time and energy to attend community meetings, to write and speak out on important issues, or to become involved in various causes. Food insecurity inhibits the exercise of other rights and undermines democratic freedoms.

Food insecurity can also mean ill health. Food insecurity in Canada is linked to a number of chronic health problems, including type 2 diabetes and high blood pressure, as well as higher levels of depression, stress, anxiety, social isolation, eating disorders, impaired cognitive abilities, and increased use of clinical services.<sup>47</sup> Food insecure households often lack the money to buy fresh and healthy foods, and people who are food insecure tend to have a less varied diet and a lower intake of fresh fruits and vegetables. Conversely, food insecure households tend to rely on cheaper and highly processed food options with higher levels of sodium, trans fat, and sugar, which can lead to health issues including diabetes, heart disease and obesity.<sup>48</sup> Not having access to adequate and nutritious food makes treatment and management of these and other chronic health conditions that much more difficult.

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<sup>46</sup> *Ibid* at 12.

<sup>47</sup> Joint Civil Society Submission to the United Nations Special Rapporteur on the Right to Food Mission to Canada (15 December 2011) online: <http://foodsecurecanada.org/sites/foodsecurecanada.org/files/RTFCanadaJointCivilSocietySubmission2r.pdf>.

<sup>48</sup> Nicholas Vozoris & Valerie Tarasuk, "Household Food Insufficiency is Associated with Poorer Health" (2003) 133 *Journal of Nutrition* 120 at 122.



Food insecurity is also linked to lower levels of positive parent-child interactions, poorer infant feeding practices, poorer psychological health among children, and depression and suicidal tendencies in adolescents.<sup>49</sup> Research on food insecurity among children reveals far-reaching negative impacts on their health and educational attainment. Nutritionally deprived children experience more health problems including anemia, weight loss, colds, and infections, and have more school absences and learning problems than food-secure children.<sup>50</sup> They are less able to concentrate and perform well at school, which threatens their opportunity to gain an education and vital life skills. Recent research in Canada has also shown that the experience of hunger has profound impacts on children's physical and mental health, manifesting in increased rates of depression and asthma in adolescence and early adulthood.<sup>51</sup> It has also been associated with behavioural and psychosocial problems.<sup>52</sup>

Food insecurity among children is closely tied to child poverty, which has been recognized for decades by the federal government as a significant problem in Canada. In 1989, the House of Commons passed an all-party resolution setting the goal of eliminating child poverty in Canada by the year 2000.<sup>53</sup> However, despite this promise, child poverty rates, as measured by the Low Income Measure (LIM) after income taxes, actually increased in Canada and most provinces between 1989 and 2012.<sup>54</sup> In BC, the number of children 0–17 years old living in poverty increased to 169,420 children in 2012 from 118,300 children in 1989, an increase of 51,120 children. BC's child poverty rate rose to 20.6% from 15.5% over these 23 years, and has been among the highest in the country for over a decade.

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49 Food Secure Canada, *Resetting the Table: A People's Food Policy for Canada* (April 2011) at 21.

50 Graham Riches, "Right to Food Case Study: Canada" (Rome: Food and Agriculture Organization, 2004).

51 Lynn McIntyre et al, "Depression and Suicide Ideation in Late Adolescence and Early Adulthood are an Outcome of Child Hunger" (2013) 150 *Journal of Affective Disorders* 123; Sharon I. Kirkpatrick et al, "Child Hunger and Long-Term Adverse Consequences for Health" (2010) 164 *Archives of Pediatrics & Adolescent Medicine* 754.

52 Vozoris & Tarasuk, *supra* note 48 at 124.

53 First Call, BC Child and Youth Advocacy Coalition, *2014 BC Child Poverty Report Card* (November 2014).

54 *Ibid.*

*"It's very stressful for my health. I get pretty stressed trying to figure out the food situation."* – An Indigenous elder who cares for his daughter and 6-month old grandson

## Social Costs

The impacts of food insecurity specifically and poverty more generally are not just felt by individuals. We all pay when members of our communities go hungry. Poverty is consistently linked to poor health, lower literacy, poor school performance for children, more crime, and greater stress for family members.<sup>55</sup> It is society as a whole that bears the costs of poverty, through higher public health care costs, increased policing and crime costs, lost productivity, and foregone economic activity.

The Conference Board of Canada estimates that the annual economic cost of food insecurity in Canada is between \$4.4 billion and \$5.5 billion.<sup>56</sup> The costs of poverty more broadly are similarly staggering. Researchers have calculated that poverty costs federal and provincial governments between \$8.6 billion and \$13 billion annually in lost income tax revenue alone.<sup>57</sup> The combined social costs of poverty in Canada (which take into account increased costs of health care, crime, intergenerational costs and lost productivity) were estimated to be \$24.4 to \$30.5 billion in 2007.<sup>58</sup> In BC, the Canadian Centre for Policy Alternatives has found that maintaining the status quo on poverty costs the province \$8.1 to \$9.2 billion each year.<sup>59</sup> Conversely, implementing a poverty reduction strategy would cost just half that: roughly \$4 billion. By failing to address the issue of poverty in a meaningful way, governments are losing money, and people's lives are being negatively impacted.

Having secure access to adequate amounts of nutritious food allows people to meet their other basic needs: people have greater freedom to pursue higher

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55 Iglia Ivanova, *The Cost of Poverty in BC* (Vancouver: Canadian Centre for Policy Alternatives BC Office, July 2011).

56 Alison Howard & Dr. Jessica Edge, *Enough for All: Household Food Security in Canada* (Conference Board of Canada: 2013) at 10. [Enough for All]

57 Nathan Laurie, *The Cost of Poverty: An Analysis of the Economic Cost of Poverty in Ontario* (Toronto: Ontario Association of Food Banks, 2008).

58 *Ibid.*

59 Ivanova, *supra* note 55.

levels of education, find better-paying jobs, take part in their communities and participate in public life. On the job, they take fewer sick days and improve their productivity.<sup>60</sup> Adults with insufficient diets are less able to obtain and maintain employment. Being hungry or worrying about putting food on your family's table can lead to poor job performance, which can result in reprimands, poor performance evaluations, missed opportunities for promotions and bonuses, and even outright job loss due to absenteeism, errors, or performance and productivity issues.<sup>61</sup> This contributes to a vicious cycle of low income levels and income insecurity, which cause and exacerbate household food security.

Food insecurity and poverty can also fracture families and result in steep social costs for communities. Family poverty and food insecurity are commonly cited reasons for social workers to intervene in families and apprehend children.<sup>62</sup> Child welfare legislation in BC deems a child to be in need of protection if they have been or are likely to be physically harmed because of “neglect” by their parent.<sup>63</sup> Neglected children have a right to be safe and cared for, and when their parent is unable or unwilling to provide a child with the care they need, it is incumbent on child protection authorities to intervene. However, the vast majority of families investigated for neglect live in poverty; in most cases, it is not that parents do not wish to provide for their children's needs, but rather, they are unable to secure the safe housing and adequate food their children need because of their inadequate incomes.<sup>64</sup> In the majority of cases, these parents are receiving social assistance benefits, the amount of which is determined by government.<sup>65</sup> Despite the requirement set out in child welfare legislation to provide support services to families if those services would allow the family to provide a safe and nurturing environment for the child,<sup>66</sup> parents are not offered the supports they need to meet their children's health and nutritional needs, and

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60 Enough for All, *supra* note 56.

61 *Ibid* at 10.

62 See Darcie Bennett & Lobat Sadrehashemi, *Broken Promises: Parents Speak About B.C.'s Child Welfare System* (Vancouver: Pivot Legal Society, 2008).

63 *Child, Family and Community Services Act*, RSBC 1996, c 46, s 13(1)(d). [CFCSA]

64 Bennett & Sadrehashemi, *supra* note 62.

65 Katherine Schumaker, *An Exploration of the Relationship between Poverty and Child Neglect in Canadian Child Welfare* (PhD thesis, University of Toronto, 2012).

66 CFCSA, *supra* note 63, s 2.

children are often apprehended and taken into care on the basis their parents' poverty. This is particularly true for Indigenous mothers, who have endured generations of state interference in their lives and borne the brunt of interventionist policies that do not support them to meet their own needs.<sup>67</sup>

The Supreme Court of Canada has affirmed that the removal of a child can constitute a violation of their parent's right to security of the person, protected by section 7 of the *Charter*.<sup>68</sup> A fair procedure is critical to the constitutionality of the removal. An argument could be made that failing to provide the material supports a parent needs to maintain custody of their child does not meet the requisite level of fairness required by *Charter*, and is a violation of a parent's section 7 rights.

Several of the mothers who participated in our study worried that going to the food bank or seeking other forms of assistance would draw the attention of the Ministry of Children and Family Development (MCFD) and put their children at risk of apprehension. One woman shared that the lack of food she was able to provide was cited by MCFD as one of the primary reasons she had lost custody of her children. They also made disparaging comments about the cleanliness of her home; she told us that she often had to choose between buying food and buying cleaning supplies, as her income assistance rarely allowed her to do both. An advocate for young, low-income mothers echoed these concerns:

*"There is a perception that if they [moms] ask for help around basic things like food and formula they would be perceived as not able to parent their children and then be under further scrutiny by MCFD, resulting in removal or continued surveillance. Chronic surveillance by MCFD is described by [moms] as traumatic and terrifying, even when they are just home alone, because they know MCFD could come by at any time. I don't hear many resources being provided by MCFD directly, though foster parents do get resources."*

Advocates in Kelowna told us about a recent case they were aware of in which a child from a poor family was apprehended by the Ministry for neglect, and that there is "real and genuine fear about how access to housing and food is

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67 Marlee Kline, "Complicating the Ideology of Motherhood: Child Welfare Law and First Nation Women" (1993) 18 *Queen's LJ* 306.

68 See *New Brunswick (Minister of Health) v G(I)*, *supra* note 8.

connected to hanging on to your kids.” People they work with express a fear of losing their children to the Ministry and use the language of rights in this context: “I have a right to feed my kids” and “I have a right to house my kids.”

## What does it cost to have nutritious food?

Health Canada’s National Nutritious Food Basket is a tool used to monitor the cost and affordability of healthy eating in Canada.<sup>69</sup> It describes the quantity needed of about 60 foods that represent a basic, nutritious diet for people of different ages and sexes. Based on the cost of these essentials at a random selection of grocery stores around the province, researchers at the Provincial Health Services Authority calculated that the average monthly cost of a nutritious food basket for a family of four in BC was \$914 in 2013, an increase of \$45 from 2011.<sup>70</sup>

For a family of four on income assistance, the cost of the food basket amounts to 47% of their total monthly income.<sup>71</sup> Given that housing alone takes up at least 60% of the budget of a family on income assistance, these families simply cannot afford the healthy food basket. A family of four in which one parent is working for \$11/hour – above BC’s minimum wage of \$10.25/hour – would have to spend over a third of that income to purchase the healthy food basket. After paying for housing, there is very little left over for other living costs like transportation, clothing, and children’s activities.

## Where do we go from here?

Food insecurity resulting from low income and a high cost of living affects millions of Canadians and hundreds of thousands of British Columbians. Despite research showing that governments could save public money by addressing hunger and poverty proactively, and that greater economic equality in societies

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69 Health Canada, National Nutritious Food Basket, online: [www.hc-sc.gc.ca/fn-an/surveill/basket-panier/index-eng.php](http://www.hc-sc.gc.ca/fn-an/surveill/basket-panier/index-eng.php).

70 Dieticians of Canada, *Cost of Eating in British Columbia, 2013* (Provincial Health Services Authority, 2014). The actual cost of food varies from community to community within each region: the Island Health Region had the highest monthly food cost for a family of four, at \$948, with the Northern Region close behind, at \$939. The Interior Health Region had the lowest monthly food cost, at \$862. It is important to note that this does not take into account the cost of cooking utensils and supplies, proper food storage facilities, or any special dietary needs or cultural or other food preferences that may influence people’s food choices and food costs. [Cost of Eating]

71 Dieticians of Canada, *Cost of Eating in British Columbia*, 2011 at 6.

leads to better outcomes for everyone,<sup>72</sup> child poverty in BC has been the highest in the country for a decade, food bank usage remains at all-time highs, income assistance rates have failed to keep pace with inflation and are desperately inadequate, and BC is the only province in Canada that does not have a poverty reduction strategy.

We turn now to consider what individuals and communities are doing in response to hunger, food insecurity, and the poverty that lies at the root of these outcomes.



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<sup>72</sup> See Richard Wilkinson & Kate Pickett, *The Spirit Level: Why Greater Equality Makes Societies Stronger* (New York: Bloomsbury Press, 2010).

## PART 3: CHARITABLE RESPONSES TO FOOD INSECURITY IN CANADA

For most of us, the response to food insecurity we are most familiar with is the food bank. Many of us participate in Christmas food drives at our workplaces, donate non-perishables at the supermarket, or volunteer to pack food hampers at the local distribution centre. Canadians are also increasingly familiar with soup kitchens and other similar spaces; we see the long lines of people snaking down sidewalks, and perhaps we even volunteer to serve meals from time to time. Less visible are the many creative and community-based responses to food insecurity—community kitchens, community gardening initiatives, and the like—as well as the groups of citizens and residents coming together to form food policy councils and reframe food advocacy from a charitable model and towards one that is centered on rights, dignity, autonomy, and equality.

Government, for its part, has also developed a number of responses to problems of food insecurity in some communities and populations. However, a comprehensive, rights-based response has yet to be implemented. Canada is one of the only industrialized countries without a nationally supported and funded school food program, for example.<sup>73</sup> The federal government takes the position that such an initiative is within the jurisdiction of the provinces, which have responsibility for education under the constitution.<sup>74</sup> However, as advocates for a national program point out, Health Canada has spoken often about its “commitment to promoting healthy living and healthy weights, and preventing chronic disease for all Canadians.”<sup>75</sup> Surely, they say, a federally supported and funded school food program aimed at ensuring that all children have access to at least one healthy and nutritious meal each day would promote this stated goal?

The patchwork of provincial programs bolsters the claim that national action is needed; in BC, local school districts have adopted a variety of food programs

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73 Food Secure Canada, “Moving Forward with Strength and Diversity: Raising the Bar on Student Food Programs” online: <http://foodsecurecanada.org/resources-news/news-media/moving-forward-strength-and-diversity-raising-bar-student-food-programs>. Five provinces do fund school food programs.

74 *Ibid.*

75 Katie Hyslop, “Does Canada Need a National School Food Program?” *The Tyee* (13 October 2014).

from universal hot lunches or breakfast -- where every child eats free -- to regular pay-to-eat cafeterias; a fresh fruit and veggie program that provides a free locally-produced snack to every student 13 times a year; or in some districts, nothing at all.<sup>76</sup>

While some schools are doing what they can to support children's food needs using public funds, for the most part, child and family food insecurity is addressed mostly through charitable endeavours. In this section, we consider the rise of food banks over the past 30 years and examine some of the potential unintended consequences of their institutionalization in Canadian society. While providing much needed supplements to families' inadequate diets, do charitable food initiatives threaten the efficacy of more rights-based claims? Does their expansion and entrenchment run the risk of letting government off the hook for meeting its human rights obligations by providing the illusion that something effective is being done about the problem of hunger?

*"There will always be a place for charity, but charitable responses are not an effective, principled or sustainable substitute for enforceable human rights guarantees."*

– Louise Arbour, former Supreme Court of Canada Justice and UN High Commissioner for Human Rights<sup>77</sup>

## Institutionalization of food banks

While emergency food initiatives to address short-term crises have existed for generations, food banks are a relatively new phenomenon in Canada. The first food bank was opened in Edmonton in 1981 in response to the economic recession and the failure of government policies to provide a sufficient safety net to mitigate its impact. Others quickly followed in BC and Saskatchewan. Originally conceived of as a short-term emergency measure, now, more than 30 years later, food banks have become an entrenched and integral part of contemporary Canadian society.

Food banks can be defined as centralized warehouses or clearing houses registered as non-profit organizations for the purpose of collecting, storing and

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<sup>76</sup> *Ibid.*

<sup>77</sup> Louise Arbour, "Freedom from Want: from Charity to Entitlement" LaFontaine-Baldwin Lecture, Quebec City 2005, online: <https://www.icc-icc.ca/en/lbs/docs/LouiseArbour2005EN.pdf>.



distributing surplus food, free of charge, either directly to hungry people or to front line social service agencies that provide people with supplementary food and meals.<sup>78</sup> They vary in size and scope, from the Greater Vancouver Food Bank's huge collection and distribution programs to small, community-based agencies that collect donated food and hand out groceries or provide meals to community members.

The institutionalization of food banks in Canada is evident in their rapid proliferation over the past 30 years. In 1989, the Canadian Association of Food Banks was founded, later renamed Food Banks Canada (FBC). It was originally formed to assist with what was then believed to be a short-term need.<sup>79</sup> But within a decade, over 900 affiliated food banks were providing emergency food relief to nearly 700,000 people every month.<sup>80</sup> Today, FBC coordinates donations of food and transportation across the country, working with food banks and food programs in all provinces and territories.<sup>81</sup> The National Food Sharing System, set up in 1995, distributes donations by rail and road across the country to local food banks. The scale is remarkable: in 2013, FBC channelled 9.5 million kilograms of donated food into the food banking network.<sup>82</sup> It supports a network of over 3,000 food-related organizations operating in every province and territory, and assists nearly 850,000 individuals every month, about 85% of all food bank recipients in Canada.

FBC is heavily subsidized by the corporate food industry, with the vast majority of its food donations and operating revenues coming from corporate donors.<sup>83</sup> The FBC website lists some 25 corporate "Key Food Supporters" and "Food Contributors", including retail giants like Conagra, Campbell's, Kellogg's, and Nestlé.<sup>84</sup> In 2013, FBC rolled out a new corporate partnership initiative with

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78 Graham Riches, *Food Banks and the Welfare Crisis* (Ottawa: Canadian Council on Social Development, 1986).

79 Food Banks Canada, "About Food Banks Canada" online: <https://www.foodbankscanada.ca/About-Us.aspx> [About Food Banks Canada]

80 Canadian Association of Food Banks, *HungerCount*, 1997, cited in Graham Riches & Tiina Silvasti, "Hunger in the Rich World: Food Aid and Right to Food Perspectives" in Riches & Silvasti, *supra* note 24.

81 About Food Banks Canada, *supra* note 79.

82 HungerCount 2014, *supra* note 32.

83 Food Banks Canada, *Creating a Canada Where No One Goes Hungry: 2014 Annual Report* at 12.

84 Food Banks Canada, "Food and Consumer Product Donors" online: [www.foodbankscanada.ca/Get-Involved/Corporations/Food-Donors.aspx](http://www.foodbankscanada.ca/Get-Involved/Corporations/Food-Donors.aspx).

Walmart, Target, and Loblaws, which will see each participating retail location providing a local food bank with food and consumer products, including fresh and frozen foods.<sup>85</sup> FBC has also been active in lobbying the federal government to institute corporate tax breaks for food manufacturers and retailers who donate surplus food to food banks that would allow food businesses to write off up to twice the cost of producing the food.<sup>86</sup> Supporters in the corporate food sector see this as a win-win: it would “provide businesses with a valuable incentive to increase food donations to charity, keep thousands of additional tonnes of usable food out of landfill, bring more large donors on board, and help food banks serve more families in need,” said Garth Whyte, President and CEO of the Canadian Restaurant and Foodservices Association in a brief submitted by FBC to the federal government in 2012.

Linking solutions to hunger with solutions to the environmental problem of food waste has been a powerful frame for charitable food initiatives. The global food system wastes huge amounts of edible food, and excess food production and waste is a problem in both rich and poor countries alike.<sup>87</sup> In Canada, researchers have calculated that more than \$31 billion worth of food is wasted each year in Canadian homes, restaurants and grocery stores.<sup>88</sup> The amount of food waste in Canada has increased by 15 percent in the last four years, and equates to two percent of Canada’s total GDP. As the researchers point out, the value of our wasted food is also larger than the total economic output of the poorest 29 countries on the planet.

From the beginning, the philosophy behind early food banks was to “marry the interests of the food industry to cope effectively with surplus, unsaleable food” with the interests of grassroots anti-poverty organizations.<sup>89</sup> Essentially, the idea was that “a modern, wasteful society could act as one that provides a resource to others.”<sup>90</sup> With so much excess food in the world, food banking has come to be

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85 Food Banks Canada, *Making Connections: 2013 Annual Report*.

86 See Food Banks Canada, “Stimulating Canada’s charitable sector: A tax incentive plan for charitable food donations” (January 2012).

87 Riches & Silvasti, *supra* note 24 at 8.

88 Pete Evans, “Food waste costs Canada \$31B a year, report says” *CBC News* (11 December 2014).

89 Daily Bread Food Bank, “Still hungry for change: Fifteen years of Daily Bread” (Toronto: Daily Bread Food Bank, 1999).

90 *Ibid.*

seen as “the link between food waste and hunger,”<sup>91</sup> and a solution to both of these problems. But is using wasted, surplus food to feed people who can’t meet their own food needs really a solution to the problem of food insecurity? Or is it, as Professor Emeritus and long-time right-to-food advocate Graham Riches puts it, a “neoliberal dream come true” – a regressive alternative to redistributive economic policies and an outsourcing of the problem of hunger to charity and the corporate sector?<sup>92</sup>

Over the last three decades, food insecurity in Canada has risen in step with rates of poverty, homelessness, and inequality. During this time, wages have stagnated, income security and housing programs have been rolled back, and the federal government has downloaded responsibility for social programs and expenditures to the provinces. With the abolition of the Canada Assistance Plan in 1996, the federal government absolved itself of responsibility for setting and monitoring national welfare standards, resulting in massive cutbacks to social assistance and other critical programs and the implementation of strict eligibility rules tied to the applicant’s participation in the paid labour force. In BC, welfare rates were cut, earnings exemptions were eliminated, and a two-year time limit was implemented.<sup>93</sup> The minimum wage was frozen at \$8/hour for a decade, the lowest in the country, and a \$6/hour “training wage” was instated. In light of these regressive policy changes, it is little wonder that food insecurity has grown rapidly among not only those on welfare, but the working poor as well.

*“How in God’s name do they [government] expect us to survive and buy everything we need for the month when prices are going up? If [someone] is on income assistance – I am on disability for a reason – because I have a disability. ... I have a one-year old child to support and I find that by the end of the month when it comes close to the next cheque time – I am barely scraping by – I barely have enough food to feed her. I’m living off the food bank. That’s not fair to her. I don’t have the money to go out there and buy it because I don’t have money. Groceries, bus fare, diapers and all the baby stuff, and by that time I’m broke. How are we supposed to do that? It’s impossible!”*  
– A single mother of a one-year old daughter

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91 The Global Food Banking Network, “What is Food Banking?” online: [www.foodbanking.org/food-banking](http://www.foodbanking.org/food-banking).

92 Riches, Splane Lecture, *supra* note 23.

93 Seth Klein & Janet Pulkingham, *Living on Welfare in BC: Experiences of Longer-Term “Expected to Work” Recipients* (Vancouver: Canadian Centre for Policy Alternatives BC Office, 2008).

*"The [welfare] system is not set up in a way that you can get off [of it]. If you get a job, that money gets taken off your income assistance cheque – it gets taken off your cheque anyway, so what's the point in working? You aren't allowed to go to school full time while you are on income assistance because the funding for school is supposed to cover [living expenses] as well. ...It's not designed to help people to get back on their feet. You are down on your luck, we'll just give you enough to stop bothering us."*

– A single mother of a 2 ½ month old son

## A moral safety valve?

Without a doubt, food banks are a vital resource for many Canadians. However, they can only respond to the symptoms of poverty, and cannot address the root causes. They may also serve to deflect attention away from the responsibilities of government towards the disadvantaged, and create the illusion that something effective is being done about hunger and poverty.<sup>94</sup> This deflection is partially the result of a community food redistribution system composed of repeated food drives, fundraisers, and other food bank initiatives that are for the most part lacking any political component or analysis.<sup>95</sup> Rather than confronting food insecurity by interrogating and questioning the social policies and systemic realities that cause, maintain, and exacerbate Canadian food insecurity, an unintended consequence of this charitable impulse may be to reduce pressure on government to fulfill its responsibilities to its citizens—for upholding people's right to food. Initiatives encouraging people to "hug for hunger" by hugging a large, furry mascot;<sup>96</sup> "boink for hunger" by bouncing on a pogo stick;<sup>97</sup> or celebrate International Macaron Day by buying a coconut macaron from an upscale café, all in support of the Greater Vancouver Food Bank,<sup>98</sup> do not encourage participants to ask how Canada, one of the richest countries in the world, is also a place where every year hundreds of thousands of Canadians

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94 Ben Carniol, *Case Critical: Social Services and Social Justice in Canada* (Toronto: Between the Lines, 2005) at 138.

95 Raise the Rates, a Vancouver-based anti-poverty organization advocating for higher social assistance rates, organizes a demonstration in front of the CBC building in Vancouver each year to coincide with the radio station's "Food Bank Day." Campaigners set up an alternative radio broadcast in which social assistance recipients discuss their experiences trying to eat well on current assistance rates. They also discuss the role and impact of charitable food programs and the need to end poverty as a way of ending reliance on food banks. See online: <http://raisetherates.org/2014/12/09/poor-peoples-radio-show-15-and-1500-in-15>.

96 See online: [www.hugsforhunger.com](http://www.hugsforhunger.com).

97 See online: [www.boinkday.com](http://www.boinkday.com).

98 See online: <https://twitter.com/VanFoodBank/status/578958645276200960>.

require food provided by charities and distributed by volunteers, nor to demand effective policy changes from their elected officials.

In a discussion of these issues with the CEO of the Greater Vancouver Food Bank, he expressed the view that conceiving of food as a right is not helpful, and has the effect of “politicizing” what should instead be viewed as a basic human *need*.<sup>99</sup> When you speak of a need, he argued, no one can argue with that; we know that food is essential to life, and being reminded that there are people out there who need food and do not have access to it will inspire people to act. His comments illustrate the basic point of tension we have been describing: between seeing food as a need that charitable programs can and should continue to address, and seeing food as a right; that is, as a governmental responsibility.

Some food banks and charitable food programs *are* working to frame food as a basic human right and hunger as a policy issue that cannot be solved by charitable responses. The Stop Community Food Centre in Toronto, for example, provides food bank services as well as a community action program that empowers community members experiencing poverty and marginalization to challenge chronic income and food insecurity, guided by the philosophy that food is a basic human right.<sup>100</sup> Food Banks Canada’s most recent HungerCount report is entitled “Why do we need food banks in a country as rich as Canada?”, and a key part of its stated mission is to influence public policy to create longer term solutions, and to advocate for policy change that will help create a Canada where no one goes hungry.<sup>101</sup> However, this sits in tension with its efforts to lobby the federal government to enact corporate tax breaks for food businesses donating surplus food to food banks, a move it projects would cost the federal government \$15 million each year. This kind of corporate tax structuring undermines government’s fiscal ability to actually address the problem of hunger in any serious way, and shrinks the tax base available to fund programs that could effectively reduce the poverty that is the real cause of hunger in this country.<sup>102</sup>

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99 Personal communication with the author, 1 April 2015.

100 See online: [www.thestop.org/home](http://www.thestop.org/home).

101 Food Banks Canada, “Our Mission, Vision, and Values” online: <https://www.foodbankscanada.ca/About-Us/Vision-Mission-Values.aspx>.

102 Elaine Power, Graham Riches & Valerie Tarasuk, “Opinion: Corporate tax breaks are not the answer to hunger in Canada” *Toronto Star* (27 November 2012).

Many food researchers and activists urge a serious re-examination of the role of food banking in our wealthy societies. Mark Winne frames food banks as “poverty management strategies” that stand as a symbol of our society’s failure to hold government accountable for hunger, food insecurity, and deprivation.<sup>103</sup> Graham Riches argues that food banks are “symptoms and symbols of a welfare state in crisis, with charity, rather than rights-based income supports and social programs, now established as the publicly accepted and institutionalized response to hunger in Canadian society.”<sup>104</sup>

In the view of American food scholar and activist Janet Poppendieck, charitable food programs are both a symptom and a cause of our society’s failure to face up to and deal with the erosion of equality.<sup>105</sup> They are a *symptom* of the abandonment of our hopes for the elimination of poverty, and of a pervasive despair about actually solving problems that has turned us instead toward ways of managing them: damage control, rather than prevention. More significantly, and more controversially, she argues that the proliferation of charity *contributes* to our society’s failure to grapple in meaningful ways with poverty. Her argument is that this massive charitable endeavour:

serves to relieve pressure for more fundamental solutions. It works pervasively on the cultural level by serving as a sort of ‘moral safety valve’; it reduces the discomfort evoked by visible destitution in our midst by creating the illusion of effective action and offering us myriad ways of participating in it. It creates a culture of charity that normalizes destitution and legitimates personal generosity as a response to major social and economic dislocation.<sup>106</sup>

Poppendieck does not advocate for the abolition of food banks and an end to charitable food provisioning. She isn’t suggesting that people be allowed to starve in order to make a political point about government’s responsibility to ensure access to adequate food for everyone. What she is encouraging us all to do, however, is to think critically about the possible unintended consequences of

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103 Mark Winne, *Closing the Food Gap: Resetting the Table in the Land of Plenty* (Boston: Beacon Press, 2008) at 184.

104 Graham Riches, “The right to food: A recipe for action” (Winter, 2006) *Canadian Issues* 52 at 53.

105 Janet Poppendieck, *Sweet Charity: Emergency food and the end of entitlement* (New York: Viking Penguin, 1998) at 5.

106 *Ibid.*

charitable responses to hunger and poverty. These unintended consequences may include making it easier for government to shed its responsibility for the poor, and reassuring policymakers and voters alike that no one will starve. By harnessing a wealth of volunteer effort and donations, it makes private programs appear cheaper and more cost effective than their public counterparts, reinforcing an ideology of volunteerism and diverting attention from the fact that governments are failing in their obligations to respect, protect and fulfill the right to food.

## Charity is nice, but power is better

As long-time Vancouver Downtown Eastside anti-poverty activist Jean Swanson notes, “charity creates a relationship of power and dependence instead of equality and respect.”<sup>107</sup> According to Swanson, many low-income people see the idea of using charity to meet people’s basic needs as a concept that replaces what should be seen as a human *right* to jobs, decent wages, unemployment insurance, pensions, and welfare. In her book *Poor Bashing: The Politics of Exclusion*, she quotes an unpublished letter to the editor written by a Vancouver anti-poverty campaigner: “Private charity can’t be a foundation for the human right to an adequate standard of living because it is voluntary, unpredictable, unable to meet a national crisis, and contributors can cut charity off.”<sup>108</sup>

When the group End Legislated Poverty asked a small group of people, “what is charity?” one responder said: “To a lot people who give to charity, or who have never needed it, charity is a good thing. It’s sharing ... but when you don’t have anything to eat for yourself, let alone donate, then you see things differently. ...It’s humiliating and degrading.” One person in the study simply wrote, “Charity is nice, but power is better.”<sup>109</sup>

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107 Jean Swanson, *Poor Bashing: The Politics of Exclusion* (Toronto: Between the Lines, 2001) at 135.

108 *Ibid* at 133.

109 *Ibid* at 130.

## What's wrong with emergency food? The seven deadly "Ins"

Echoing the letter writer cited above, who explained that charity can't be a foundation for human rights because it is voluntary, unpredictable, and unable to meet a national crisis, Janet Poppendieck discusses the shortcomings of emergency food in her book challenging the notion that food banks are an effective response to hunger and food insecurity. These "seven deadly ins", as she refers to them, are insufficiency, inappropriateness, nutritional inadequacy, instability, inaccessibility, inefficiency, and indignity.<sup>110</sup>

These shortcomings of emergency food provisioning confirm many of the problems with charitable food initiatives that were described by participants in our own research across the province.

### Insufficiency

Despite their huge networks and the incredible amounts of surplus food they distribute, food banks simply cannot meet the needs of everyone experiencing food insecurity. The quantities provided are often insufficient, and the quality and appropriateness of what's on offer is often questionable. Food banks and soup kitchens simply don't have the resources to permit unlimited distribution; kitchens must ration their offerings and frequently run out of food before the last person in the line has been served, and many food banks prepare a hamper of food that is meant to last an entire week, but rarely does. Many food banks also limit the number of times someone can attend in a given month, and there is generally a limit on how much an individual or family can take on each visit. Some food banks may also impose income thresholds and other requirements for access.

The Greater Vancouver Food Bank, for example, is able to provide only a two-day food supplement to its clients, and its food depots may only be visited once per week, and not at all during the week social assistance cheques are issued.

Canadian survey data show that about three-quarters of those who are hungry never even go to a food bank. Though millions of pounds of food are donated

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<sup>110</sup> Poppendieck, *supra* note 105 at 210.



every year and hundreds of thousands of hours are volunteered, these efforts simply do not meet to the needs of the millions Canadians who are food insecure.

*“I have friends and we help each other out, when it’s not my turn to use the food bank. I’m only able to use the food bank once every two weeks – if I need help between that, I’m struggling.”* – An Aboriginal single mother of two

*“The line-ups are tremendously long and the food is not worth it. They don’t give you anything great.”*  
– A single mother of a one-year old daughter

*“I am thankful for the food banks, but sometimes it is not enough....I’m thankful – every little bit helps, but sometimes you get sick of beans and more beans. I have 12 tins of bean, and I have to think, I gotta be thankful for this. Even when you have the canned stuff, you just figure out how to make something out of it. I know how to be poor.”*  
– An Indigenous mother and grandmother who cares for her 7 year old grandson

### **Inappropriateness**

Almost no predetermined list of foods is going to fulfill the dietary needs and preferences of any large group of people, and when the consumer has no say in the composition of the bag or hamper of food, problems are bound to arise.<sup>111</sup>

Ethnic and cultural food preferences are also difficult, if not impossible to accommodate. People with chronic illnesses and disabilities may need to follow a certain kind of diet to preserve their health, and a range of health issues, from diabetes to food allergies, are almost impossible to manage on donated food.

One participant and her 11-year old son have celiac disease, which prevents them from taking advantage of most food banks and community centre meals. Gluten-free foods tend to be more expensive, and this mother, who receives disability assistance, shared that she was often in a position of having to give her son food she knows will make him sick, as she simply can’t afford to purchase foods that don’t set off his allergies. Other parents also spoke about the inappropriateness of what’s on offer at the food bank:

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<sup>111</sup> *Ibid* at 214.

*“I’m not eating what I want to eat, which is Algerian food. I don’t have enough money to buy Algerian foods from the store – it’s too expensive to do that because that kind of food is not widely available here. I don’t eat pork, and there is a lot of pork in the canned goods at the food bank.”* – A pregnant woman who came to Canada as a refugee in 2013

*“It’s just difficult and when you have a disabled child and a disability [yourself], it is harder to make ends meet if they need to eat certain foods. In my case, the bad situation is even worse. The healthier [my son] eats, the calmer he is, but I can’t feed him healthy food all the time. I can’t cancel out a meal or a snack with him – it manifests in behavioural problems.”* – An Aboriginal single mother of two

### **Nutritional Inadequacy**

Food banks are constrained in their ability to provide nutritious foods like fresh fruits and vegetables, and many of their offerings are high in fat, sodium, cholesterol, and sugar. Such foods are unhealthy for everyone, and can be particularly problematic for clients with health concerns like diabetes and heart conditions. Most soup kitchens and meal providers are unable to provide balanced, wholesome and nutritious meals, and rely on starchy carbohydrates, like donuts, cakes and muffins, to help people feel full.

Many of our participants spoke about the nutritional inadequacy of the food they were able to procure at food banks. They talked about the high fat and salt content of the canned goods on offer, concerns about GMOs, the highly processed nature of most of what’s available, and the lack of fresh fruits and vegetables, meat, milk and eggs.

Many participants also raised the fact that much of what is distributed at the food bank is well past its best before date. One participant reported that the bread on offer was frequently moldy. This raises serious concerns about the potential health impacts of consuming this food and feeding it to children, particularly for people with chronic health issues already. BC’s *Food Donor Encouragement Act* protects food donors and distributors of donated food from liability for damages resulting from injuries or death caused by the consumption of rotten or otherwise adulterated donated food unless they intended to injure or cause death, or acted in reckless disregard for the safety of others.<sup>112</sup> Even if the

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112 SBC 1997, c 8, s 1.

food is not rotten or rancid, it will have lost a significant proportion of its vitamins and nutrients due to age, and will not provide the same level of nourishment as fresher foods.

*“There is a real lack of choice at the food bank – too much Kraft Dinner and canned soup, and things that are past their sell by date.”* – A mother of two

*“You get less food and the worst food. Half the stuff is out of date and I throw it away. People donate expired food. It used to be better – five or six years ago.”* – A mother on disability with two children

*“The main thing I don’t like about it [the food bank] – they put out a lot of stuff that is out of date. For me it is fine, but there are a lot of mentally ill, non-English speakers and I’m concerned about them eating rancid food. When I first found the food bank, we really had to just eat what they were giving. Now I don’t take everything they are offering.”*  
– A mother of two

*“Do they think I am so hungry that I would eat this?”* – A single mother of two on income assistance

## **Instability**

Food donations are unreliable, and the surpluses that lead to large corporate donations of particular foods inevitably dry up, leading to instability and unpredictability. In times of economic downturn, contributions from individuals also tend to dry up just as need grows, because those donations often come from people who are also feeling threatened or experiencing reduced incomes.<sup>113</sup> In November of last year, donations to the Greater Vancouver Food Bank were down by 50% compared to the previous year, and remained nearly 20% lower as of Christmas Eve.<sup>114</sup> The unreliability of resources is reflected in closings and cutbacks of emergency food services, as well as constant anxiety among food bank and kitchen directors.

*“You get less food now [at the food bank] than you used to. And what they give you is horrible, it’s awful. They think that if you are going to a food bank, you should eat shit food.”* – A mother of two on income assistance

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<sup>113</sup> Poppendieck, *supra* note 105 at 218.

<sup>114</sup> “Vancouver Food Bank donations running low” *CBC News* (24 December 2014).

*“We used to do OK for milk because the food bank gave us 2 litres per child, but last month they didn’t have any. They were out of a lot of things, actually – usually we get 4-5 boxes for the family, but last month we only got two.”* – A mother of four children

### **Inaccessibility**

Issues of distance and transport are particularly significant in rural areas – both transportation of food to the food bank, and transportation of that food from the food bank to the recipient’s home. Many recipients of food charity do not have access to a vehicle, and in rural communities, public transportation may be spotty, or even non-existent. Transportation is not the only way in which rural food banks are disadvantaged; they also have fewer local sources of donations, and fewer volunteers to do the work of collecting, sorting, and distributing the donations that are received.

*“I wish the food bank would come by and drop off food because it is not always easy for women to go there, especially if they’re pregnant or have children. I also have to take my 14-month old son with me, which is difficult. I would appreciate it if they would offer to bring food to mothers in need.”* – A pregnant mother of a 14-month old child

*“[The food bank] should not be locked at certain times – it’s not a jail. They should not be turning people away. ...It’s stressful on me and other people too. It makes people feel lost.”* – An Indigenous mother whose children are not in her care due to substance abuse issues

### **Inefficiency**

The effort and expenditure required to connect hungry people with available resources is staggering. Even the best run charitable food drive involves purchasing food at retail, carrying it home or to a collection bin, transferring it to a central collection point, redistributing it to a local pantry, and then handing it out to an individual or family in need.<sup>115</sup>

Poppendieck also points out that at a more fundamental level, we have set up a duplicate food system in which food banks substitute for supermarkets and corner stores, and soup kitchens serve in lieu of cafeterias and coffee shops.<sup>116</sup>

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<sup>115</sup> Poppendieck, *supra* note 105 at 226.

<sup>116</sup> *Ibid.*

The emergency food system doesn't undermine or compete with the for-profit food system; rather, it operates in parallel, with its own distribution system, staff, and overhead costs. If its users had adequate incomes, many of those now lined up at the food bank could go to the store of their choice at their own convenience and select the foods they want most. Smaller community grocery stores would have sufficient markets to remain profitably in business, and volunteers would not have to spend time collecting, sorting, packing, and so forth.

*Re a voucher program for food: "Vouchers would be the way to go – you can get the food you know is going to be eaten. You aren't getting the stuff people are throwing away. You can get fresh food. You can get milk and eggs. You can get the food you need to eat. You are getting canned foods with no nutritional value. Vouchers would work much better – that makes more sense. People buy what they know will be eaten. Half the time, I bring only half the stuff back to the shelter."* – A mother of two on income assistance

## Indignity

The indignity of relying on food banks and free meal programs was shared with us by many of our participants. While most participants felt like they were treated well by food bank staff and volunteers, a few expressed the feeling that they were being judged and felt like they were poorly treated. An advocate in Kelowna told us that one of the local, privately run food banks has posters on the walls that say: "If you don't like the food here, get a job." Certainly, this is not a dignified environment in which to meet community members' food needs.

*"At the beginning, [using the food bank] was hard. It was kind of humiliating. I had to swallow my pride. I don't tell my sister or my friends that I come to the food bank. Many of my neighbours are poor, but they don't come to the food bank. I got over my pride. I'm not doing anything illegal."* – A mother and full-time caregiver to two disabled children

*I have been accessing the food bank for a long time, quite a few years. Over five years. It is hard here to access the [food bank]. Their attitude is awful – you feel belittled walking in there, it's not welcoming. You feel like you are bothering them to have to go there. It has always been like that at [this food bank].* – A single mother of two on disability assistance

*“You are still getting the scraps. It’s not fresh and it’s not appealing. It’s really sad. You get table scraps and it makes you feel like you’re a dog – you get [someone’s] leftovers. That’s not good enough. I think it’s crazy and it makes me feel worse, because I have never been on income assistance up until now. It makes me feel like I’m nothing, kind of like a loser.”* – A single mother of an 8-month old son

*“Sometimes it is really embarrassing to use the food bank, and other times I hold my head up and say this is what I got to do.”* – An Indigenous mother and grandmother who cares for her 7 year old grandson

## Getting it Right

Charitable and community-based food programs are not meeting the needs of the vast majority of people in Canada living with food insecurity. Food banks’ resources are insufficient to meet the needs of everyone who is food insecure and, as the participants who access them described above, their locations can be inaccessible, they may offer inadequate and inappropriate provisions, and many users expressed feeling humiliated and demeaned by the experience of attending them. Many community organizations are working hard to address some of these problems by changing their approach, not just to the distribution of free food, but to community-building, education, and advocacy around food. While it is beyond the scope of this report to attempt to describe every such initiative happening across the province, here, we profile three projects that are working to address food insecurity in their communities in a way that fosters dignity, inclusion and respect for low income people and their needs and experiences.

### **SPOTLIGHT: Food for Health in Vancouver's Downtown Eastside**

The Downtown Eastside Kitchen Tables Project, a program of the Potluck Café Society, is working to improve the health of residents in the Downtown Eastside (DTES) by increasing the availability and choice of nutritious food neighbourhood-wide. Based on a Right to Food philosophy, the project is a collaboration of residents, food and service providers and other neighbourhood groups to create a sustainable DTES food system that enables people to access abundant healthy food in a dignified manner while creating jobs in the community.

The project was co-founded in 2009 together with the DTES Neighbourhood House. Its genesis was a shared recognition that although many resources have been invested in the DTES, the provision of quality, nutritious food remains fractured, disconnected and ineffective. Much of the food available to marginalized and nutritionally vulnerable residents of the DTES does not adequately respond to the nutritional needs of the thousands of people living with compromised immune systems due to HIV/AIDS, Hepatitis C and diabetes, nor does it address basic malnutrition. According to the project organizers, there is a misperception that there is a great deal of food available in the DTES, when in fact what is available is meager, often inadequate and often has little to no nutritive value. Moreover, say organizers, “the methods by which food is distributed are, for the most part, both inefficient and lack the dignity that all individuals deserve, regardless of their socio-economic status.”

A research phase, which involved 370 individual DTES residents and 40 stakeholder representatives, identified gaps in the current DTES neighbourhood food system and led to the development of a Community Led Food Action Plan Report. The Action Plan identified community needs and priorities and a set of Food Solutions, which are being implemented on a short, medium and long term basis. A comprehensive description of the multitude of projects and initiatives being rolled out as a result of this work is beyond the scope of this report, but a few of the initiatives include inventing social, “people friendly” mechanisms for eradicating food line-ups; creating a Food Donation Management Service that includes a database allowing organizations that provide free food to list their food needs on a regular basis and obtain donations of the kinds of foods they need; and providing up-to-date and accessible information to community members about where and when they can access free meals each day.<sup>117</sup>

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117 Downtown Eastside Kitchen Tables, “About the Project”, online: <http://dteskitchentables.org/about-the-project>.

### **SPOTLIGHT: Food as Education in Hazelton, BC**

Virginia Morgan teaches a Gitksan cultural class at the Hazelton high school. The class includes First Nations art, language, and history. In recent years, Virginia has also introduced a project she calls Back to the Land. As part of the project, Virginia and her students have built a garden on the school grounds, where students help to grow onions, potatoes, celery, carrots, turnips and other vegetables. Last year, she built a smokehouse for smoking meat, fish and oolichan, and this year, she hopes to build a root cellar so that produce grown in the garden can be stored and used throughout the winter, which will allow her to expand the garden's production. She also takes students hunting and berry picking.

"The three elements of this program are food, fellowship, and friends," says Virginia over tea in a local café. "The students are learning about sustainability and connecting with the land. They develop skills they can use, and they grow food they enjoy eating. It's rewarding to see them dig up a carrot and not even wait to get inside to wash it off – they just wipe it clean on their jeans and take a big bite. They always exclaim about how it tastes nothing like the carrots from the supermarket."

Poverty is a problem in Hazelton, and Virginia knows that a lot of her students are coming to school hungry and without a lunch to get them through the day. A few times a month, she makes a big pot of soup in her classroom (she has a fridge and a stove in her class), and upwards of 60 students and teachers rotate through the room over the lunch hour to enjoy a warm bowl of soup and some conversation. "The kids aren't texting on their phones, they're chatting and relaxing together," she says. "And it's not just the poor kids who come – everyone is welcome. There's no stigma. The kids have done the work of growing the vegetables, carrying and cleaning the meat, and some of them help to prepare the soup in the morning if they're done their school work. It gives them pride to have participated. And we make really good soup."

Virginia is well aware of the challenges people in her community face accessing enough healthy food to feed themselves and their families. Her daughter has four children and struggles to make ends meet on social assistance. It's much cheaper for her daughter to buy processed foods and, with four kids, she has little time for gardening and cooking from scratch. Virginia also explains that the legacy of residential schools has left a scar on the community, and "it's difficult for some people to feel good about where and who they are." When people feel poor, she says, they don't look at gardening as something positive. They look at it as drudgery, as something they *have* to do because they're poor.



Virginia is working to change that. She shows her students the joy of getting their hands dirty, and of being in the garden and on the land. She also shows them that with a little effort and knowledge, it's really not that hard to grow good, nourishing food. She'd like to see programs like hers expanded to support community gardening throughout the region, providing people with access to space, seeds, tools, and opportunities to learn and share knowledge. "What I'm doing at the school is just planting the seeds," she says.

### **SPOTLIGHT: Food as Community at the Gordon Neighbourhood House**

The Gordon Neighbourhood House (GNH) is a community service organization in downtown Vancouver's West End. GNH supports a number of food programs, including low cost and pay-what-you-can community lunches, a volunteer-supported urban farm, and a weekly food bank. Among the core principles of its stated "Food Philosophy" is a "recognition that all members of our community have a Right to Food based on the Universal Declaration of Human Rights", as well as a "commitment to working toward increased access to food for those who are nutritionally vulnerable".<sup>118</sup>

Says Andrew Christie, GNH's Community Food Advocate, "A long-standing, systemic weakness of the charitable model of emergency resource distribution is that it has neither the aim nor the effect of changing the circumstances which create the need to access it. It troubles me deeply that today, more than 30 years after food banks began being established as a short-term, emergency response to an economic crisis, they remain the default, socially and politically endorsed response to the inequities embedded in our society. If we are to create an equitable society within our current economic and legal frameworks, then we must build a mechanism whereby an individual can meaningfully claim the right to an adequate standard of living, including rights to food, housing, and clothing. This goal of justice, as opposed to charity, is the philosophical foundation of our work."<sup>119</sup>

GNH has also been named a "Good Food Organization" by the Community Food Centres of Canada.<sup>120</sup> The Good Food Organization initiative aims to increase the capacity of community food

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118 Gordon Neighbourhood House, "Food Philosophy" online: <http://gordonhouse.org/about-gordon-neighbourhood-house/right-to-food>.

119 Correspondence with the author, 13 May 2015.

120 Community Food Centres Canada, "Good Food Organizations" online: <http://cfccanada.ca/good-food-organizations>.

security organizations to offer healthy and dignified food programs in their communities. Launched in the fall of 2014, the program offers resources, customized training, grants, and networking opportunities aimed at achieving a healthy and fair food system. Participants are committed to making a positive impact in the areas of health, social justice and sustainable food systems, and agree to carry out community food security work to the highest standard possible and to represent their communities on issues related to poverty, food and health.

GNH is also working to develop its food bank as part of the Greater Vancouver Food Bank's move towards "community food hubs." The Greater Vancouver Food Bank is working to transition its current depot model to a "more progressive, community supported environment,"<sup>121</sup> making charitable food programs more accessible and culturally appropriate. The West End is home to a significant number of seniors, and hosting a food bank at GNH once a week makes it much easier for people with mobility limitations and other challenges to access free food. GNH is working to improve the diversity of the food on offer to ensure that it is culturally appropriate and nutritionally acceptable, as well as improving the dignity of access to the program.<sup>122</sup>

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121 Greater Vancouver Food Bank Society, "Job Posting: Community Food Hub Specialist" online: <https://www.foodbank.bc.ca/sites/default/files/gvfbs-cfhspecialist.pdf>.

122 Personal communication with the author, 12 March 2015.

## PART 4: THE LEGAL LANDSCAPE

### What is meant by the “right to food”?

A human right to food means that every person, alone or in community with others, has physical and economic access at all times to adequate food or the means for its procurement.<sup>123</sup> The UN Special Rapporteur on the right to food defines the right to food as:

the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.<sup>124</sup>

The right to food is firmly established in international human rights law, set out in treaties that Canada has ratified and agreed to uphold. However, when it comes to domestic enforcement of the right to food and other economic and social rights like housing, water, or an adequate standard of living, Canadian governments are failing to meet their obligations to respect, protect and fulfill these rights, and Canadian courts have been largely unwilling to hold governments accountable for these rights violations.

So what does having a right to food *really* mean? There is an inherent ambiguity in the language of a “right”: between having a morally justifiable entitlement and having that entitlement legally recognized and enforced.<sup>125</sup> With respect to the right to food in Canada, despite our international human rights law commitments, there is a substantial disconnect between the promise of the right and its fulfillment.

To be meaningful and effective in improving people’s lives, the right to food, like all rights, must be legally enforceable. It must be capable of adjudication by the

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123 United Nations Committee on Economic, Social and Cultural Rights, *General Comment 12: The Right to Adequate Food (article 11)*, UN Doc E/C.12/1999/5. [General Comment 12]

124 United Nations Office of the High Commissioner for Human Rights, “Special Rapporteur on the right to food” online: [www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx](http://www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx).

125 David Beetham, “What Future for Economic and Social Rights?” (1995) 43 *Political Studies* 41 at 59.

courts, and its violation must result in accountability and remedial action. A meaningful and effective right creates a corresponding legal obligation on someone or some institution, such as government, to ensure that the right is respected, protected and fulfilled. Thus, to be meaningful, the right to food must place a legal obligation on government to address hunger and food insecurity through its spending and policy choices. If that obligation is not met, people whose right to food has been violated must be able to take their claim to court, and a judge must be able to order remedies for the violation.

In this section, we make the case that the right to food is a legally enforceable right in Canada, protected by the *Canadian Charter of Rights and Freedoms*. Specifically, for children who lack access to sufficient nutritious food, the *Charter* must be interpreted to impose a positive obligation on government to fulfill their food needs.

## Why speak of rights?

Few would argue that children, who are dependent on others and particularly vulnerable to the negative health impacts associated with malnutrition, should not have access to food that meets their nutritional needs. What some people do disagree about, however, is who should be responsible for responding to child malnutrition and addressing broader issues of food insecurity in our communities. We saw in Part 3 how conceiving of food as an issue for charity to respond to is insufficient: charitable food initiatives cannot meet the needs of everyone experiencing food insecurity, and they are under no obligation to continue providing the services people rely on. Conceiving of food as a *right*, however, places the obligation squarely on government, the only institution with the means, reach and bureaucratic resources necessary to ensure that the food needs of all people, everywhere in the country, are met. It acknowledges that hunger and food insecurity are not simply a manifestation of an involuntary lack of food, but are a result of what Nobel Laureate Amartya Sen calls “entitlement failure”<sup>126</sup>—a breakdown in the political and legal systems that should support people to meet their basic needs. This entitlement includes access to social

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126 Jean Dréze and Amartya Sen, *Hunger and Public Action* (Oxford: Clarendon Press, 1989).

support systems to assist people, such as children, who cannot meet their own needs.<sup>127</sup>

Speaking of rights is critical. The conception of food and other economic and social rights as *human rights* expresses the moral intuition that, in a world rich in resources, everyone ought to be guaranteed the basic means for sustaining life, and that those who are denied these basics are victims of a fundamental injustice.<sup>128</sup> Expressing this intuition in the form of a human *right* gives people the strongest possible claim to that of which they are deprived, and emphasizes the duty of responsible parties to help them access their entitlement. While there are shortcomings and ambiguities in the language of rights, in the words of Nicholas Blomley, “those who seek to create a better world have few more powerful tools than precisely the language of rights, no matter how imperfect that language might be.”<sup>129</sup>

A rights-based approach to food stands in contrast to a “needs-based” approach. Under a needs-based approach, people who lack access to food are viewed as passive recipients in need of direct assistance, but have no legal claim or entitlement to that assistance. If food donations dry up or the food bank has to close due to lack of volunteers, the people who rely on its services have no recourse, and no one has an obligation to step in to fill the gap and address the unmet need. A needs-based approach does not require informed legislation, political will, or coordinated action.<sup>130</sup> A rights-based approach, on the other hand, incorporates the idea that the provision of adequate food is not something based solely on benevolence or charity, but is the duty and obligation of a country to its people. It entails consideration of how conditions can be altered so that people can take an active role in procuring food for themselves.<sup>131</sup>

A right to food does not mean that government has an obligation to provide free food to everyone. Economic and social rights like the right to food are predicated

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127 Mariana Chilton & Donald Rose, “A Rights-Based Approach to Food Insecurity in the United States” (2009) 99(7) *American Journal of Public Health* 1203.

128 Beetham, *supra* note 125 at 44.

129 Nicholas Blomley, “Mobility, Power and the Rights Revolution” (1994) 13 *Political Geography* 407.

130 Chilton & Rose, *supra* note 127 at 1207.

131 *Ibid.*

on the idea that social, economic and political structures should tangibly support populations and individuals in providing for themselves.<sup>132</sup> According to this understanding, the right to food means the right to expect reasonable opportunities to provide food and good nutrition for oneself and one's family. The government's role is to facilitate these opportunities. In the event that someone is incapable of providing for themselves, then government has an obligation to provide the necessary resources to ensure their needs are met. This can be done not only by providing direct food assistance, but also through ensuring that people have skills, education, health care, income, and other supports to procure healthy foods for themselves and their families.<sup>133</sup>

There is an obvious moral argument regarding the imperative to fulfill the nutritional needs of children; there is also an economic argument that fulfilling children's food and other subsistence needs will save public resources down the road by reducing their health care costs and promoting their long term productivity and well-being. However, compared with other approaches, advocating for food and the other basic economic and social requirements for human agency, self-realization, development and dignity using the language of *rights* recognizes the agency and autonomy of people living in poverty as *rights holders* with claims backed by the power of law. It also corresponds to conceptions widely held among the poor themselves.<sup>134</sup> As Pierre Spitz shows in his historical survey of laws regulating food supply, the concept of a basic entitlement to food has been widespread in many cultures going back centuries.<sup>135</sup> James Scott has shown in his comparative studies of peasant attitudes to exploitation that the guarantee of basic subsistence was much more central to peasant conceptions of justice than the precise percentage of crops appropriated by landlords.<sup>136</sup> Framing these intuitions in terms of human rights provides a language that is both more urgent and more authoritative than alternative discourses of "human security", "needs" or "basic welfare goals."

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<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Beetham, *supra* note 125 at 59.

<sup>135</sup> Pierre Spitz, "Right to Food for Peoples and for the People: A Historical Perspective" in Alston & Tomasevski, eds, *The Right to Food* at 169-86.

<sup>136</sup> James C. Scott, *The Moral Economy of the Peasant* (New Haven: Yale University Press, 1976).

Importantly, it also identifies the deprived themselves as the potential agents of social change and the active claimants of their rights.

*“I do think it’s a rights thing. I don’t feel like the government provides people with enough money to live on. It’s not just me – \$100 for a child – that’s the extra that you get for another little tiny person that you are supposed to feed and takes up a lot of time and energy. You can’t even pay for daycare unless you get grants from the government, and you have to jump through rings to get that. How can you work to make money?”*

– A single mother of a 2 ½ month old son

## International law and the right to food

The right to adequate food is widely recognized in international law. It was first recognized as a fundamental human right in article 25.1 of the 1948 *Universal Declaration of Human Rights* (UDHR), which provides:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The UDHR also notes the importance of social protection for children and the right of children to “special care and assistance.”

Since the UDHR’s signing in 1948, Canada has ratified a number of other international agreements protecting the right to food and other economic and social rights, including the *International Covenant on Economic, Social and Cultural Rights*, the *UN Convention on the Rights of the Child*, and the *UN Convention on the Elimination of all forms of Discrimination Against Women*. By doing so, Canada has committed itself under international law to respect, protect and fulfill the right to food.<sup>137</sup> Its ratification of these international legal agreements also demonstrates

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<sup>137</sup> Several “soft law instruments”—non-legally binding international human rights instruments, including recommendations, guidelines, resolutions or declarations—are also relevant to the right to food. They are accepted by States and serve as guidance for the implementation of the right to food. One of the most detailed is the UN Food and Agricultural Organization’s Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (the Voluntary Guidelines), adopted in 2004. The Voluntary Guidelines reflect existing human rights standards and provide useful guidance to States on how they can implement their existing obligations. They cover the full range of actions to be considered by Governments at the national level in order to build an enabling environment for people to feed themselves in

an acknowledgement that things like adequate food, housing, health care and living standards are not simply laudable goals of social policy, but are fundamental human rights, requiring progressive implementation to the maximum of available resources by all appropriate means.<sup>138</sup> At the heart of these international human rights agreements is an obligation on governments to protect vulnerable groups through appropriate legislative measures, and to take positive action to remedy socio-economic disadvantage.<sup>139</sup>

## *International Covenant on Economic, Social and Cultural Rights*

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) protects the right to food in article 11, which provides:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
  - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming

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dignity and to establish appropriate safety nets for those who are unable to do so, as well as measures to hold Governments accountable to rights holders. States are encouraged to use the Voluntary Guidelines for drafting their national strategies and programmes to fight hunger and malnutrition.

138 Advancing Social Rights in Canada, *supra* note 2 at 5.

139 Martha Jackman & Bruce Porter, "Socio-Economic Rights under the Canadian Charter" in Malcolm Langford (ed) *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge, Great Britain: Cambridge University Press, 2009).



agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need

The ICESCR recognizes the right of everyone to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of their living conditions. The ICESCR also obliges States to ensure that women and men enjoy these rights on a basis of equality. Canada signed on to this agreement in 1976.

In 1999, the Committee on Economic, Social and Cultural Rights, a body of international experts that monitors States' compliance with the ICESCR and provides guidance and recommendations for improvement, issued General Comment 12, which clarifies the meaning and content of the right to adequate food. It states that this right "is realized when every man, woman and child, alone and in community with others, have physical and economic access at all times to adequate food or the means for its procurement."<sup>140</sup> It also says that the right to food means the "availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture, and the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights."<sup>141</sup>

In General Comment 12, the Committee affirms that the right to adequate food is "inseparable from social justice", and requires the adoption of appropriate economic, environmental and social policies, at both the national and international levels, aimed at the eradication of poverty and the fulfilment of human rights for all.<sup>142</sup> The Committee also highlights the interdependence of human rights, noting that adequate food is a necessary prerequisite for the

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<sup>140</sup> *Supra* note 123 at para 6.

<sup>141</sup> *Ibid* at para 8.

<sup>142</sup> *Ibid*.

fulfilment of all other rights and is linked to the inherent dignity of the human person.<sup>143</sup>

Article 2(1) of the ICESCR requires a State party to “take steps...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” The Committee has explained what “progressive realization” entails in its General Comment 3: where violation of a protected right results from the denial of an immediate entitlement that a State party has the means to provide, such as an adequate level of social assistance, for example, or access to sufficient amounts of nourishing food in a wealthy country like Canada, the remedy is straightforward: the government must act immediately to provide the benefit that has been denied.<sup>144</sup> Beyond these immediate obligations, the progressive realization standard also creates future-oriented obligations to fulfill economic and social rights within a reasonable time, and to address structural patterns of disadvantage and exclusion which cannot be remedied immediately.

The Covenant imposes three types of obligations on States parties: to *respect*, to *protect*, and to *fulfill* the rights it includes, including the right to food. The obligation to *respect* requires States parties not to take any measures that prevent people from accessing adequate food. The obligation to *protect* requires measures by States to ensure that businesses, individuals, and other non-state entities do not deprive people of access to adequate food. The obligation to *fulfill* means that States must proactively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security. Whenever an individual or group is unable to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfill the right directly by providing the individual or group with adequate food.<sup>145</sup>

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<sup>143</sup> *Ibid* at para 4.

<sup>144</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 3: The Nature of States Parties Obligations* (art 2, para 1), UN Doc E/1991/23 (1990).

<sup>145</sup> UN Office of the High Commissioner for Human Rights, “Fact Sheet No. 34: The Right to Adequate Food” (Geneva: United Nations, 2010).

The ICESCR also protects the right to health, which includes not only timely and appropriate health care, but also “embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.”<sup>146</sup> Article 10 affirms that the “widest possible protection and assistance should be accorded to the family...particularly...while it is responsible for the care and education of dependent children,” including “special measures of protection and assistance” on behalf of children and youth.

### **Canada’s compliance with its ICESCR obligations**

The Committee on Economic, Social and Cultural Rights last reviewed Canada’s compliance with its obligations under the ICESCR in 2006.<sup>147</sup> In that review, the Committee expressed regret that many of its previous recommendations had not been implemented or addressed in an effective manner, including the insufficiency of minimum wage and social assistance rates to ensure the right of everyone to an adequate standard of living. It noted with concern that in most provinces and territories, social assistance benefits were lower than they had been a decade before, often at less than half the Low-Income Cut-Off, and that welfare rates did not provide adequate income to meet basic needs for food, clothing and shelter. The Committee also noted that over half of food bank users received social assistance, and that their continued reliance on food banks was evidence that assistance rates were too low.

The Committee recommended that Canada “significantly intensify its efforts to address the issue of food insecurity and hunger in Canada,” and reminded Canada of its “core obligation to fulfill (provide) the right to food when disadvantaged and marginalized individuals or groups are, for reasons beyond their control, unable to realize these rights for themselves through all means possible at their disposal.”<sup>148</sup> As an element of this, the Committee recommended

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<sup>146</sup> United Nations Committee on Economic, Social and Cultural Rights, General Comment 14: The Right to the Highest Attainable Standard of Health (art 12), UN Doc E/C.12/2000/4 (2000).

<sup>147</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights – Canada*, UN Doc E/C.12/CAN/CO/4 (22 May 2006).

<sup>148</sup> *Ibid* at para 61.

raising social assistance rates to “realistic levels” and adopting “all necessary measures to ensure that minimum wages are increased throughout Canada to a level enabling workers and their families to enjoy a decent standard of living.”<sup>149</sup> Noting the particular needs of women in the paid workforce, the Committee also recommended implementing adequate childcare services,<sup>150</sup> and called on Canada to observe its obligations to prevent and respond to discrimination by ensuring equal remuneration for work of equal value in both the public and private sectors.<sup>151</sup>

### *Convention on the Rights of the Child*

In addition to the ICESCR, the UN *Convention on the Rights of the Child* (CRC) also addresses the right to food, protecting in article 27 the right of every child to a standard of living adequate for their physical, mental, spiritual, moral and social development.<sup>152</sup> While parents have primary responsibility for securing these favourable living conditions within their abilities and financial capacities, States have an obligation to assist parents where needed, and to provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.

The CRC places a positive obligation on States parties to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized” in the Convention.<sup>153</sup> It also provides that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection.”<sup>154</sup> Like the ICESCR, the CRC requires States parties to work towards the progressive realization of economic and social rights, and to dedicate the maximum available resources to these efforts. The CRC also requires that States parties “ensure to the maximum extent possible the survival and development of the child.”<sup>155</sup> Given the negative

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<sup>149</sup> *Ibid* at para 47.

<sup>150</sup> *Ibid* at para 46.

<sup>151</sup> *Ibid* at para 50.

<sup>152</sup> Article 27.

<sup>153</sup> Article 4.

<sup>154</sup> Preamble.

<sup>155</sup> Article 6.2.

impacts of hunger and food insecurity on children's physical and mental health and development, fulfilling the right to food is a key component of States' legal obligations under this Convention.

### **Canada's compliance with its CRC obligations**

When it reviewed Canada's record on children's rights in 2012, the UN Committee on the Rights of the Child did not address food insecurity specifically, but did discuss Canada's high rates of child poverty. The Committee expressed concern that income inequality is widespread and growing and that no national strategy has been developed to comprehensively address child poverty, despite a commitment by Parliament to end child poverty by 2000.<sup>156</sup> The Committee was also concerned about welfare services provided to Indigenous children, which are not comparable in quality and accessibility to services provided to other children and are not adequate to meet their needs. In addition to more equitable provisioning of services, the Committee recommended that Canada develop and implement a national, coordinated strategy to eliminate child poverty as part of the broader national poverty reduction strategy, which should include annual targets to reduce child poverty.

### ***Convention on the Elimination of all forms of Discrimination Against Women***

Under the *Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW), States parties have an obligation to ensure the full development and advancement of women and to guarantee their human rights on a basis of equality with men.<sup>157</sup> The CEDAW notes that in situations of poverty, women have the least access to food, health, education, training and employment, and emphasizes the intersecting factors that result in and reinforce women's poverty, including discrimination in employment, unequal pay, and disproportionate care obligations. As the primary bearers of responsibility for the care and upbringing of children, women's inequality and deprivation have significant implications for the health and well-being of their children.

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<sup>156</sup> Para 67.

<sup>157</sup> Article 3.

Other international documents also link poverty to gender inequality, emphasizing the gendered nature of poverty and highlighting its entrenched and systemic nature. For example, in 2012 the World Development Report on Gender Equality and Development emphasised how poverty significantly limits women's gains in education, health and the paid labour force. Others have highlighted the interrelationships between poverty eradication, food security, and ending violence against women and girls. The UN Commission on the Status of Women notes that women's poverty and violence against women and girls perpetuate and reinforce once another, since poverty and exclusion from social and economic policies may prevent women from taking steps to flee violence and abuse.<sup>158</sup>

### **Canada's compliance with its CEDAW obligations**

In its last review of Canada in 2008, the CEDAW Committee did not address the right to food directly, but expressed grave concern at the fact that poverty is widespread among women, in particular Indigenous women, racialized women and single mothers.<sup>159</sup> It was also concerned by the cuts to social assistance schemes in many provinces and the resulting negative impact on the rights of vulnerable groups of women who rely on social assistance for an adequate standard of living, including single mothers, Indigenous women, African-Canadian women, immigrant and migrant women, and elderly and disabled women. The Committee was also concerned by the lack of affordable quality childcare spaces and the absence of a national housing strategy, and expressed concern at the current severe housing shortage, in particular in Indigenous communities, and at the high cost of rent and its impact on women, particularly low-income women with families.

The Committee took the unusual step of requiring Canada to report back to the Committee within a year on its progress on two issues of particular concern, including establishing and monitoring minimum standards for the provision of funding to social assistance programs, and carrying out an impact assessment of

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158 UN Commission on the Status of Women, *The elimination and prevention of all forms of violence against women and girls – Agreed Conclusions* (March 2013).

159 *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Canada*, UN Doc. CEDAW/C/CAN/CO/7 (7 November 2008) at para 39.

social programs related to women's rights.<sup>160</sup> The Government of Canada submitted its response to these questions in February 2010, but advocates argued that nothing had been done and there was very little to report.<sup>161</sup>

The disproportionate poverty of women in Canada has been criticized not only by the CEDAW Committee and the Committee on Economic, Social and Cultural Rights, but also by the Human Rights Committee, which monitors the UN International Covenant on Civil and Political Rights.<sup>162</sup> This speaks to the indivisibility of rights and the ways in which poverty and deprivation implicate not only economic and social rights, but equality and civil and political rights as well.

## The effectiveness of international human rights law as a tool for addressing the right to food

It is clear from the comments issued by these UN Committees that despite signing on to numerous international human rights agreements that protect the right to food, Canada is failing to abide by its international legal obligations. With millions of Canadians experiencing food insecurity, hunger and deprivation, it cannot be said that Canada is upholding the right to food.

As the Senate Sub-Committee on Cities observed in its 2009 report *In from the Margins: A Call to Action on Poverty, Housing and Homelessness*, international human rights continue to be viewed by the Canadian government as “closer to moral obligations than enforceable rights.”<sup>163</sup> How can it be that these international human rights obligations, which Canada has agreed to uphold, can go so utterly unfulfilled?

For one thing, international treaties are not “self-executing” in Canada; in other words, an international treaty alone cannot form the basis of a legal action in

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160 West Coast LEAF, 2014 CEDAW Report Card (Vancouver: West Coast LEAF, 2014).

161 Submission of the BC CEDAW Group to the UN Committee on the Elimination of all forms of Discrimination against Women, *Nothing to Report: A Report on Progress in Implementing Priority Recommendations made by the Committee in its 2008 Concluding Observations on Canada* (January 2010).

162 Human Rights Committee, *Concluding Observations: Canada*, UN Doc CCPR/C/79/Add.105, 7 April 1999 at para 20.

163 Subcommittee on Cities of the Standing Senate Committee on Social Affairs, Science and Technology, *In from the Margins: A Call to Action on Poverty, Housing and Homelessness* (December 2009) at 69.

domestic courts.<sup>164</sup> Rather, the treaty must first be incorporated or integrated into a domestic statute. While the federal Executive alone is empowered to enter into international treaties, it has no power to implement them in areas of provincial jurisdiction.<sup>165</sup> Human rights treaties, particularly those addressing economic and social rights like food, housing and an adequate standard of living, implicate both federal and provincial heads of power. While it is the Canadian state that is bound by these international agreements, it is often the provinces that have sole jurisdiction to implement their provisions.

In Canada, human rights treaties are typically signed on to on the basis that existing laws already conform to the treaty obligations and therefore, no new legislation is warranted. The Canadian government has repeatedly taken the position that the *Charter* protects the rights laid out in various international human rights treaties, and has resisted calls to enact stand-alone legislation protecting economic and social rights. For example, in its 1993 report to the UN Committee on Economic, Social and Cultural Rights, the Canadian government said:

While the guarantee of security of the person under section 7 of the *Charter* might not lead to a right to a certain type of social assistance, it ensured that persons were not deprived of the basic necessities of life.<sup>166</sup>

It reaffirmed this position to the Committee in 1998 when it said:

The Supreme Court of Canada has stated that section 7 of the *Charter* may be interpreted to include the rights protected under the Covenant. The Supreme Court has also held section 7 as guaranteeing that people are not to be deprived of basic necessities. The Government of Canada is bound by these interpretations of section 7 of the *Charter*.

Despite these assurances, Canadian governments have repeatedly advanced arguments in court insisting that section 7 of the *Charter* does *not* extend to

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164 Irit Weiser, "Undressing the window: Treating international human rights law meaningfully in the Canadian Commonwealth system" (2004) 37 UBC L Rev 113.

165 *Canada (Attorney General) v Ontario (Attorney General)*, [1937] 1 DLR 673 (PC), aka the *Labour Conventions* case.

166 *Summary Record of the 5th Meeting*, ESC, 8th Sess, 5th Mtg, UN Doc E/C.12/1993/SR.5 (25 May 1993).



protecting economic and social rights. The Committee on Economic, Social and Cultural Rights has noted that poverty-related cases, usually brought by women with children against government policies which deny them and their children adequate food, clothing or housing, have been largely unsuccessful. The Committee expressed concern that government defendants had urged upon the courts in these cases an interpretation of the *Charter* which would deny any protection of Covenant rights and leave the complainants without any legal remedy.

Another reason why international human rights instruments have had little impact in advancing economic and social rights here at home is the fact that the various Committee recommendations are not legally binding on Canada. While they can shine an important light on the problems, increase public awareness and galvanize action, they cannot force the government to change laws or policies on their own.

Some treaties, including the ICESCR, CRC and CEDAW, have an Optional Protocol that allows individuals and groups to file complaints with the UN about violations of human rights. The Committee will review the complaint, hear submissions from the complainant and State party, and issue a judgment on whether the complainant's rights were violated and what remedies should be offered. Cecilia Kell, for example, an Indigenous woman from the Northwest Territories, used the CEDAW complaint process to challenge the lack of legal aid to support her in a case against an abusive ex-spouse. She was successful in having the discrimination she experienced recognized by the UN Committee, which called for a comprehensive review of the territory's legal aid system.<sup>167</sup> However, these judgments, while forming a part of international law, are again not binding on the State party involved, and while States may pay a political price for ignoring them, the UN is unable to force States to comply with their rulings. An additional barrier is that in order to access these complaints procedures, complainants must "exhaust domestic remedies", which usually means they must take their complaint through the domestic legal process and exhaust all possible avenues of appeal. For a low income person experiencing food insecurity, this is an all but impossible requirement to meet. Moreover,

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<sup>167</sup> *Cecilia Kell v Canada*, CEDAW/C/51/D/19/2008 Communication No. 19/2008, Views adopted by the Committee at its fifty-first session, 13 February to 2 March 2012.

Canada has not signed on to the Optional Protocols for the ICESCR and CRC, meaning complaints to these bodies are not possible for people in Canada.

Using international legal mechanisms can be a powerful way of drawing attention to an issue and building communities to advocate for change. The resulting attention and pressure can sometimes even force governments to change their policies, as occurred when Sandra Lovelace challenged gender discrimination contained in the *Indian Act* and was successful in having a UN treaty body recognize that the *Act* violated Indigenous women's equality rights. However, the process is time-consuming, onerous, expensive and slow, and the outcome is not enforceable in domestic courts. A positive ruling may not actually bring about any real change, either for the individual complainant or the more systemic change necessary to prevent further rights violations.

The Committee on Economic and Social Rights notes in its *General Comment 9: The Domestic Application of the Covenant* that "the existence and further development of international procedures for the pursuit of individual claims is important, but such procedures are ultimately only supplementary to effective national remedies."<sup>168</sup> To be effective in Canada, the right to food, which Canada is bound by international law to uphold, must be grounded in our domestic constitutional framework, specifically, in the interpretation and application of the *Canadian Charter of Rights and Freedoms*, which *does* bind Canadian courts and which *can* be used to compel governments to reform laws and policies.

According to the Supreme Court of Canada, the *Charter* is the "primary vehicle through which international human rights achieve a domestic effect."<sup>169</sup> International human rights law is "a critical influence on the interpretation of the scope of the rights included in the *Charter*"<sup>170</sup> and there is an "interpretive presumption" that "the *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified."<sup>171</sup> In the next section, we

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168 United Nations Committee on Economic, Social and Cultural Rights, *General Comment 9: The Domestic Application of the Covenant*, UN Doc E/C.12/1998/24 (1998) at para 4.

169 *R v Ewanchuk*, [1999] 1 SCR 330 at para 73.

170 *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 70.

171 *Slaight Communications Inc. v Davidson*, [1989] 1 SCR 1038 at 1056-7.

provide a legal argument in support of the Charter's application to a claim to a right to food. The "generous" and "purposive" approach to *Charter* interpretation insisted on by the Supreme Court of Canada, which is aimed at "securing for individuals the full benefit of the *Charter's* protection,"<sup>172</sup> provides the space to find that subsistence rights like the right to food are protected within its scope.

## The *Charter* and the right to food

*"The poor are not constitutional castaways."* – Madam Justice McLachlin, *R v Prosper*

In her 1994 decision in *R v Prosper*, McLachlin J (as she then was) declared "the poor are not constitutional castaways."<sup>173</sup> She made this statement in support of her argument that the right to counsel in criminal cases guaranteed by section 10(b) of the *Canadian Charter of Rights and Freedoms* "cannot be denied to some Canadian citizens merely because their financial situation prevents them from being able to afford private legal assistance."<sup>174</sup> However, with the *Charter* now more than 30 years old, it is difficult to resist the impression that the *Charter* has "little to offer people living in even the most abject poverty in our country."<sup>175</sup> Canadian courts have been at best reluctant and at worst hostile to interpretations of the *Charter* that would offer legal protections from poverty.<sup>176</sup> Yet despite this history, we argue that the right to food can be upheld in Canada's courts, and that the *Charter* is capable of providing recourse for impoverished people in Canada, specifically, children who lack access to adequate, nourishing food.

As part of our Constitution, the *Canadian Charter of Rights and Freedoms* forms part of the highest law in the land. Any law or government act that is in conflict with the *Charter* can be ruled unconstitutional by the courts, and unconstitutional

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<sup>172</sup> *R v Big M Drug Mart*, [1985] 1 SCR 295.

<sup>173</sup> [1994] 3 SCR 236 at 302.

<sup>174</sup> *Ibid.*

<sup>175</sup> Martha Jackman, "Constitutional Castaways: Poverty and the McLachlin Court" (2010) 50 SCLR (2d) 297 at 298. [Constitutional Castaways]

<sup>176</sup> In the most recent example of an unsuccessful poverty related claim made under section 7, the trial judge dismissed an application for a positive right to adequate affordable housing on the basis that it disclosed no reasonable cause of action and raised issues that were not justiciable: *Tanudjaja v Canada (Attorney General)*, *supra* note 7.

laws can be struck down and ruled of no force or effect. The *Charter* also provides for remedies when there has been a violation of the rights it protects. Anyone whose *Charter* rights have been violated can apply to the courts to obtain a remedy that the court considers “just and appropriate.”<sup>177</sup> In addition to a declaration that the law is invalid and an order striking it down, remedies can include injunctions, revision of the law by “reading in” words to statutes in order to bring them into line with the supreme law of the constitution, and financial compensation for those whose rights have been violated.<sup>178</sup>

While food and other economic and social rights are not specifically referred to in the *Charter*, the *Charter* contains two key provisions relevant to the right to food and economic and social rights more generally. The first is section 7, which protects the right to “life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” The other is section 15, which protects the right to equality before and under the law, and to equal protection and benefit of the law, without discrimination on the basis of personal characteristics such as sex, race, age, disability, or sexual orientation.

At the time the *Charter* was being drafted in the early 1980s, Canada was a very different society than it is today, in which food banks did not exist and homelessness was virtually unknown.<sup>179</sup> Jean Chrétien, then Minister of Justice and subsequently Prime Minister, noted during debates that Canada was committed to implementing its obligations under international human rights instruments protecting economic and social rights, and suggested it was therefore unnecessary to list specific economic and social rights in the constitution.<sup>180</sup> Section 36 of the Constitution does contain a joint commitment by federal and provincial/territorial governments to “promote the well-being of Canadians and to provide essential public services of reasonable quality to all

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<sup>177</sup> Section 24.

<sup>178</sup> Kent Roach, “The Challenges of Crafting Remedies for Violations of Socio-Economic Rights” in Langford, *supra* note 139.

<sup>179</sup> Bruce Porter, “Homelessness, Human Rights, Litigation and Law Reform: A View from Canada” (2004) 10 *Austl JHR* 133.

<sup>180</sup> Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada 1981: 49–70.

Canadians,” but it is phrased merely as an objective, rather than a guarantee of rights, and would not likely ground a legal claim.<sup>181</sup>

Despite the fact that economic and social rights were not explicitly included in the *Charter*, however, equality rights experts and advocates representing women, Indigenous people, the disabled and other equality seeking groups certainly considered the adequacy and accessibility of publicly funded programs, such as social assistance, universal healthcare, education and employment insurance as implicit in the *Charter*’s broadly framed rights guarantees.<sup>182</sup> Rather than pressing for explicit inclusion of economic and social rights in the *Charter*, most human rights experts and advocacy groups emphasized the importance of framing *Charter* rights, such as the right to equality, as expansively as possible. The *Charter* could then be used to require governments to take positive action to address the needs of vulnerable groups, to remedy systemic inequality, and to maintain and improve social programs on which the enjoyment of equality and other *Charter* rights depends.<sup>183</sup> Women’s groups, for example, campaigned to ensure that the *Charter*’s equality guarantee be framed to include the right to “equal benefit and protection of the law” in order to put an end to the formal, negative rights equality paradigm that had been adopted by the courts under the former *Canadian Bill of Rights*.<sup>184</sup> When then Justice Minister Chrétien endorsed the proposed changes to the section to, as he put it, “stress the positive nature of this important part of the *Charter*,”<sup>185</sup> equality seeking groups interpreted this to mean that the *Charter* would directly engage with government obligations to provide benefits and address historic patterns of exclusion and disadvantage.<sup>186</sup>

There was also an express decision by the drafters of the *Charter* to exclude property rights from the *Charter*’s protections. The proposal during the Special

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181 See Wayne MacKay & Natasha Kim, *Adding Social Condition to the Canadian Human Rights Act* (Canadian Human Rights Commission, 2009) and Hon. Noël Kinsella, “Can Canada Afford a Charter of Social and Economic Rights? Toward a Canadian Social Charter” (2008) 71 Sask L Rev 7.

182 Bruce Porter, “Expectations of equality” (2006) 33 SCLR 23.

183 Jackman & Porter, *supra* note 139 at 209.

184 Advancing Social Rights, *supra* note 2.

185 Statement by the Honourable Jean Chrétien, Minister of Justice, to the Special Joint Committee on the Constitution (12 January 1981).

186 Mary Eberts, “The Equality Provision of the *Canadian Charter of Rights and Freedoms* and Government Institutions” in Claire Beckton & Wayne Mackay, Research Coordinators, *The Courts and the Charter* (Ottawa: Minister of Supply and Services Canada, 1985) at 133.

Joint Committee hearings on the Constitution in 1981 to add a right to “enjoyment of property” in section 7 was defeated because of concerns that entrenching property rights in the *Charter* would interfere with environmental and other land use regulation, public ownership and regulation of resource-based industries and restrictions on foreign ownership of land.<sup>187</sup> The omission of property rights was intended to forestall *Charter*-based objections to government regulation of property rights, but the legislative history does not support a rejection of all individual economic and social rights claims, as is sometimes argued.<sup>188</sup>

Indeed, early on in the *Charter*’s evolution, the Supreme Court of Canada was careful to leave open the possibility that the *Charter* protects a range of economic and social rights, holding that it would be “precipitous” to exclude from the scope of section 7 such economic rights as those “included in various international covenants, [such] as rights to social security, equal pay for equal work, adequate food, clothing and shelter.”<sup>189</sup> In a foundational case known as *Irwin Toy*, the Court rejected the claim that a corporation had constitutional rights under section 7, but declined to extend the ruling to find that “economic rights fundamental to life or survival are to be treated as though they are of the same ilk as corporate-commercial economic rights.”<sup>190</sup>

Despite the Supreme Court of Canada leaving the door open to *Charter* protection of economic and social rights, most lower courts called on to consider these kinds of claims have rejected these challenges on the basis that economic and social rights are beyond both the scope of section 7 and the legitimate purview of the courts.<sup>191</sup> Instead, the scope of section 7, as elaborated to date, has tended towards the exclusion of harms linked to poverty.<sup>192</sup>

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187 Martha Jackman, “From National Standards to Justiciable Rights: Enforcing International Social and Economic Guarantees through *Charter of Rights Review*” (1999) 14 J L & Soc Pol’y 69.

188 *Ibid* at 84.

189 *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927 at 1003-4.

190 *Ibid*.

191 Jackman & Porter, *supra* note 139.

192 Phil Bryden, “Section 7 of the *Charter* Outside the Criminal Context” (2005) 38 UBC L Rev 507.

The Supreme Court of Canada, headed by now Chief Justice McLachlin, has declined leave to appeal in every significant poverty case it has been asked to consider since the early 2000s.<sup>193</sup> The last significant poverty rights case considered by the SCC was its 2002 decision in *Gosselin v Québec*. The *Gosselin* case involved a Québec welfare regulation that reduced social assistance rates for adults under age 30 to roughly one-third of the regular rate the government had established as necessary to meet basic needs for food, clothing and shelter.<sup>194</sup> The record established that the impacts of the cuts were devastating to young adults, and included malnutrition, depression, and acute psychological stress.<sup>195</sup> Young women fared particularly poorly. To survive, some felt compelled to exchange sex for money, shelter and food, while others bore children in order to become eligible for benefits at the regular rate.

Ms. Gosselin challenged the reduced rate for people under 30 on the basis that it violated sections 7 and 15 of the *Charter*. She was unsuccessful on both counts. In a 5:4 decision, a majority led by Chief Justice McLachlin held that “[o]ne day s. 7 may be interpreted to include positive obligations”, but found that the evidence in this particular case was insufficient to support such an interpretation.<sup>196</sup> Chief Justice McLachlin made clear that she was leaving “open the possibility that a positive obligation to sustain life, liberty, or security of the person may be made out in special circumstances.”<sup>197</sup> However, despite the devastating impact of the insufficient welfare rates on her health, security and dignity, Ms. Gosselin’s claim was not that “special circumstance” justifying such an interpretation.

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193 Constitutional Castaways, *supra* note 175 at 322. At the time of this report’s publication, the application for leave to appeal in *Tanudjaja*, *supra* note 7, was still pending before the Court.

194 *Gosselin v Quebec (Attorney General)*, 2002 SCC 84.

195 Gwen Brodsky & Shelagh Day, “Poverty is a Human Rights Violation” (Vancouver: The Poverty and Human Rights Project, 2009).

196 *Gosselin*, *supra* note 194 at paras 82-3.

197 *Ibid* at para 83. Arbour and L’Heureux-Dubé JJ, dissenting, held that the section 7 guarantee of life, liberty and security of the person does impose a positive obligation on government to take action to fulfill those rights. The BCCLA has affirmed its support of this dissenting view, stating: “The Association believes, in line with Arbour, J’s dissent in *Gosselin*, that section 7 of the *Charter* imposes a positive obligation on the government to implement measures to provide basic and essential minimum levels of food, clothing, and shelter to its citizens.” BCCLA, “Civil Liberties Aspects of Homelessness: General Reflections” (11 April 2004) online: [https://bccla.org/our\\_work/civil-liberties-aspects-of-homelessness-general-reflections/](https://bccla.org/our_work/civil-liberties-aspects-of-homelessness-general-reflections/).

## What's wrong with positive rights?

In denying Ms. Gosselin's and other economic and social rights claims under section 7, courts have typically drawn a distinction between what are referred to as negative rights (rights requiring non-interference by the state) and positive rights (rights requiring state action for their realization).<sup>198</sup> Those who advance this distinction suggest that adjudicating negative rights claims simply requires that judges decide whether someone has been illegitimately interfered with in the exercise of their rights.<sup>199</sup> Adjudicating positive rights is more complex: it requires judges to decide whether someone has been illegitimately denied resources to which they are entitled. In other words, it requires judges to decide whether resources have been allocated correctly, a difficult task for which judges are ill-equipped, it is argued, and a role that should be fulfilled by Parliament and the legislatures, who have the democratic legitimacy to create budgets and decide complex questions of resource allocation.<sup>200</sup>

The notion that a rights regime like the *Charter* could be considered complete without any public social and economic entitlements rest on a conception of rights that Gwen Brodsky and Shelagh Day refer to as "classical constitutionalism," which embraces a conception of the individual as autonomous and freely choosing, and of society as a threat to that freedom.<sup>201</sup> According to this view, there should be a large sphere of autonomy within which individuality can flourish, and a very limited sphere for public regulation. With respect to economic matters, *laissez-faire* policies are preferred as having a "natural ability to maximize individual freedom and to reward each person fairly according to his contribution."<sup>202</sup> Redistributive policies are seen as an interference with the market and a threat to individual liberty, and the court's role is as protector of liberty against the tyranny of the government.<sup>203</sup>

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198 Alison Latimer, "A Positive Future for Section 7? Children and Charter Change" (2014) 67 SCLR 537.

199 Cécile Fabre, "Constitutionalising Social Rights" (1998) 6:3 The Journal of Political Philosophy 263 at 280.

200 *Ibid.*

201 Gwen Brodsky & Shelagh Day, "Beyond the Social and Economic Rights Debate: Substantive Equality Speaks to Poverty" (2002) 14 CJWL 184 at 203.

202 *Ibid.*

203 *Ibid.*



Classical constitutionalism has been pivotal in articulating many of the rights that are now a critical part of our legal landscape. However, while courts must certainly protect freedom from the unjust interference of government, this classical conceptualization of rights and the role of the state does not accurately reflect the history of Canadian political institutions, and does not serve as an adequate theory of constitutional interpretation today. The creation of the post-Second World War social safety net, the signing of international human rights treaties and enactment of domestic human rights legislation, and the development of regulatory bodies in a wide range of areas, from environmental protection to workers' rights, indicate a very different vision of government than that envisioned by classical constitutionalism.<sup>204</sup>

Moreover, in our “modern society characterized by urbanization, concentrated corporate power, and significant inequalities in social condition, *freedom is often contingent on government protections and benefits*”<sup>205</sup> [emphasis added]. This was recognized by Madam Justice Wilson in *McKinney v University of Guelph*, where she said:

Canadians recognize that government has traditionally had and continues to have an important role to play in the creation and preservation of a just Canadian society. The state has been looked to and has responded to demands that Canadians be guaranteed adequate health care, access to education and a minimum level of financial security to name but a few examples. It is, in my view, untenable to suggest that freedom is co-extensive with the absence of government. Experience shows the contrary, that freedom has often required the intervention and protection of government against private action.<sup>206</sup>

The distinction between negative and positive rights draws a false dichotomy between those interests that require state intervention, including possibly financial expenditure, and those that do not.<sup>207</sup> Many civil and political rights, traditionally conceived of as negative rights, do in fact place positive obligations

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<sup>204</sup> *Ibid* at 205.

<sup>205</sup> *Ibid*.

<sup>206</sup> [1990] 3 SCR 229 at 357.

<sup>207</sup> Latimer, *supra* note 198 at 539.

on government and require significant state action and expenditure. For example, the right to vote requires state implementation of the apparatus of elections; a right to a fair trial requires a criminal justice system; and the right to property or contract requires state policing and enforcement.<sup>208</sup> Then-UN High Commissioner for Human Rights, Louise Arbour, reiterates this point by noting that “each kind of obligation may have cost implications to varying degrees, be it for the infrastructure necessary for the administration of justice, human and technical resources necessary to regulate financial or social sectors, or direct provision of water, sanitation, housing or other services as needed.”<sup>209</sup>

At the end of the day, all rights are costly.<sup>210</sup> The positive state actions required by civil and political rights to protect property, adjudicate alleged violations of free association and expression, ensure the right to vote and provide for a fair trial all require often very extensive state-funded systems, like the police and the court system. Law professor Margot Young argues that “we don’t think of this because we take these structures for granted, as basic political infrastructure of the liberal democratic state – but social programme or benefit provision is different only in its ideological heritage and thus our political comfort or familiarity with it.”<sup>211</sup>

A more traditional conception of civil and political rights also supports the protection of a right to food under the *Charter*. As Madam Justice Wilson pointed out in *R v Morgentaler*, “the *Charter* and the right to liberty guaranteed under it are inextricably tied to the concept of human dignity”, a concept that “finds expression in almost every right and freedom guaranteed by the *Charter*.”<sup>212</sup> The liberty interest protected by section 7 of the *Charter* is concerned with protecting the right and ability to make fundamental personal choices, and to “engage in those activities that are inherent to the individual.”<sup>213</sup> A person’s dignity, liberty and autonomy are fundamentally constrained by lack of access to adequate food.

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208 Margot Young, “Section 7 and the Politics of Social Justice” (2005) 38 UBC L Rev 539.

209 Arbour, *supra* note 77.

210 Young, *supra* note 208 at 551.

211 *Ibid.*

212 [1988] 1 SCR 30 at para 225, 227.

213 *B(R) v Children’s Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315 at para 121.

In a case known as *B(R)*, Mr. Justice La Forest relates the concept of liberty to the role of individuals in a democratic society.<sup>214</sup> Democracy is premised upon the principle that all citizens have the right to participate in the democratic processes of society. This principle is reflected in the *Charter's* numerous guarantees of rights essential to meaningful participation, including the right to vote, the right to freedom of expression and association, and the right to freedom of assembly. While each of these is a free-standing *Charter* right with its own content and meaning, each is also inextricably linked and to some extent dependent on the fulfillment of economic and social rights. An individual cannot truly avail themselves of the democratic and participatory rights guaranteed by the *Charter* unless they possess “life, liberty and security of the person”. As the BCCLA noted in its paper “Civil Liberties Aspects of Homelessness: General Reflections”, “if a person’s attention is consistently diverted to finding a warm place to rest for the night, they are unable to contribute their thoughts and opinions to the democratic marketplace.”<sup>215</sup> This is equally true if the source of the diversion of their attention is finding adequate food for themselves and their families.

Were Canadian courts to hold that section 7 of the *Charter* protects basic economic and social rights, they would create a kind of constitutional protection that is neither anomalous nor unique. Many modern constitutions provide for explicit recognition of social and economic rights, and other courts, in other countries, have demonstrated the ease with which the language of fundamental rights to life, liberty and security of the person can be held to protect economic and social rights.<sup>216</sup> In India, for example, courts have read into the right to life such things as a right to food, to housing, and to a healthy environment.<sup>217</sup>

In deciding economic and social rights cases under the *Charter* and imposing positive obligations on government to address violations, courts are not taking on any greater role than when they decide civil and political rights cases: they are determining whether state action comports with the requirements of the

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<sup>214</sup> *Ibid.*

<sup>215</sup> *Supra* note 197.

<sup>216</sup> Young, *supra* note 208 at 546.

<sup>217</sup> *Ibid.* Indian governments’ compliance with its human rights obligations on these issues, however, remains incomplete.

*Charter* and, if it does not, crafting remedies to address the breach. There are numerous ways to craft remedies that respect the legitimate roles of both courts and legislatures, without leaving impoverished claimants without any legal recourse at all.<sup>218</sup> Kent Roach, an expert on constitutional remedies, argues that while traditional remedies such as damages, restitution and immediate declarations of legislative invalidity can play a role in enforcing economic and social rights, “more prospective and dialogic remedies” such as delayed declarations of invalidity and retention of supervisory jurisdiction can also play a role.”<sup>219</sup>

Dialogic remedies involve a direction to governments to comply with a rights standard and report back on what they have done. A declaration that the claimant’s rights have been violated without a prescription as to how the violation must be addressed can be “an effective and flexible remedy for the settlement of real disputes”<sup>220</sup> and ensures governments are left with sufficient discretion in adopting policy options to achieve *Charter* compliance.<sup>221</sup> Such an approach heeds judicial cautions that “courts are ill-equipped to decide policy matters concerning resource allocation”<sup>222</sup> and recognizes that there is a range of legitimate responses open to governments and much can be gained by allowing governments to select the most appropriate response.<sup>223</sup> Should they fail to do so, subsequent litigation can be brought building on the initial declaration; alternatively, the initial court could retain supervisory jurisdiction to ensure a meaningful remedy is achieved.<sup>224</sup> Such an approach has been upheld in Canada in the context of an order that minority language schools be built within a certain time; in that case, a majority of the Supreme Court of Canada upheld the trial judge’s retention of jurisdiction requiring the government to report back on its progress, stressing the need for effective remedies without undue delay.<sup>225</sup> By

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218 For a discussion of available remedies to enforce socio-economic rights, see Kent Roach, “The Challenges of Crafting Remedies for Violations of Socio-Economic Rights” in Langford, *supra* note 139 at 46.

219 *Ibid.*

220 *R v Gamble*, [1988] 2 SCR 595; *Canada (Prime Minister) v Khadr*, 2010 SCC 3, at para 46.

221 Latimer, *supra* note 198 at 559.

222 *Gosselin*, *supra* note 194 at para 332, per Arbour J, dissenting.

223 Roach, *supra* note 218 at 52.

224 Latimer, *supra* note 198 at 559.

225 *Doucet-Boudreau v Nova Scotia* (2003) 3 SCR 3.

approaching the question of remedy in a flexible, dialogic manner, courts respect their role as upholder of rights, while at the same time acknowledging that government is best positioned to make decisions about the specifics of resource allocation.

In sum, courts should not shy away from recognizing violations of economic and social rights on the basis that they are somehow fundamentally different from civil and political rights. The notion of a distinction between the two categories of rights has been abandoned internationally; at the 1993 World Conference on Human Rights, delegates affirmed the universality of human rights, asserting that “all human rights are universal, indivisible, interdependent and interrelated.”<sup>226</sup> The fulfillment of traditional civil and political rights is tightly interwoven with the achievement of social and economic rights. As Martha Jackman notes,

To be in a position to complain about state interference with rights, one has to exercise and enjoy them. But without access to adequate food, clothing, income, education, housing and medical care, it is impossible to benefit from most traditional human rights guarantees. It requires little imagination to question the value and meaning of a right to freedom of conscience and opinion without adequate food; to freedom of expression without adequate education; to security of the person without adequate shelter and health care.<sup>227</sup>

The relationship works both ways. As Sen argues, we cannot address economic deprivation and conceive of solutions to poverty without public debates and discussion, and guaranteeing those debates and discussions requires “an insistence on political rights.”<sup>228</sup> Jackman argues that all human rights are interdependent and interrelated, and governments have a duty to respect,

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226 UN High Commission on Human Rights, World Conference on Human Rights: 14-25 June 1993, Vienna, Austria (Geneva: Office of the High Commission of Human Rights, 1995).

227 Martha Jackman, “What’s Wrong with Social and Economic Rights?” (2000) 11 NJCL 237 at 243.

228 Amartya Sen, “Freedoms and Needs” (10 and 17 January 1994) *The New Republic* 31

protect and fulfill economic and social rights on an equal footing with civil and political rights.<sup>229</sup>

In the words of former Supreme Court of Canada Justice and UN High Commissioner for Human Rights, Louise Arbour, “ultimately, the potential to give economic and social rights the status of constitutional entitlement represents an immense opportunity to affirm our fundamental Canadian values, giving them the force of law.”<sup>230</sup> These are the very values and principles that the Supreme Court of Canada has said underlie the *Charter*: respect for human dignity and personal autonomy, commitment to social justice and equality, and faith in social and political institutions which enhance the participation of individuals and groups in society. Categorizing economic and social rights as unenforceable and non-justiciable threatens to undermine the *Charter’s* ability to deliver on its promise of equal concern and respect for every member of Canadian society, and is incompatible with a substantive conception of equality, as protected by the *Charter’s* section 15.<sup>231</sup>

## An equality lens on the right to food

Poverty and deprivation of the right to adequate food, housing, and an adequate standard of living have important equality dimensions. In Canada and globally, women are disproportionately represented among the ranks of the poor. The Supreme Court of Canada has recognized that in Canada, “the feminization of poverty is an entrenched social phenomenon.”<sup>232</sup> Yet, largely missing from debates about the justiciability of poverty-related claims is an appreciation that poverty is a sex equality issue. It is a sex equality issue because women’s poverty is a manifestation of persistent, systemic discrimination against women, and because poverty exacerbates the effects of sexist, racist and other discriminatory social practices. De-linking poverty from its discriminatory roots, and from the reality of its particular and disproportionate effects on women and other

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229 See e.g., Martha Jackman, “Charter Remedies for Socio-economic Rights Violations: Sleeping Under a Box?” in Kent Roach & Robert Sharpe, eds, *Taking Remedies Seriously* (Montreal: Canadian Institute for the Administration of Justice, 2009).

230 Arbour, *supra* note 77.

231 Brodsky & Day, *supra* note 201 at 187.

232 *Moge v Moge*, [1992] 3 SCR 813.

systemically disadvantaged groups, “narrows our understanding of poverty and deprives both section 7 and 15 of important interpretive content.”<sup>233</sup>

Looking at poverty and deprivation through a substantive equality lens “reveals another basis for finding that government cuts to basic social programs, such as welfare, are inconsistent with *Charter* guarantees – they exacerbate women’s pre-existing economic and social inequality and cause gender-specific harms.”<sup>234</sup>

Since women bear primary responsibility for the care and upbringing of children, women’s impoverishment entails children’s impoverishment, and harms to women caused by impoverishment entail harms to their children. This fact was clearly on display in *Gosselin*, where evidence showed that women who were pregnant while on the reduced welfare rate were particularly likely to have low birth-weight babies, who are known to have a high incidence of health and learning problems. According to one health care provider, the nutritional status of some of these pregnant women was comparable to that of pregnant women in Holland during the Great Famines of the World War II period.<sup>235</sup>

Many of the mothers we spoke to for this project expressed deep concerns about the health and well-being of their children in light of the family’s food insecurity, and believed their children were not getting the nutrition they needed to fully develop and thrive. They also spoke often about how their own health needs suffered because they were placing their children’s needs first, doing what they could to ensure that their kids went to bed fed, while they often went to bed hungry.

*“I try to always make sure we have food, and I will go without to make sure we do. I haven’t gone shopping for clothes for three years...There are times when I get concerned: am I going to make it? I am lucky. I have people who can help me out sometimes, like my sister. Not everybody has that. One day, maybe I won’t have that. It’s scary running out of food and I’ll go without before [my children] do. It is something people shouldn’t have to worry about. It is sad that anyone should go hungry.” – A single mother of two*

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233 Brodsky & Day, *supra* note 201 at 188. High poverty rates among trans and queer communities also highlight this point. The BC Poverty Reduction Coalition has found that queer and trans youth, for example, are up to five times more likely to go to bed hungry at night because of no food in the house. See “Poverty is a Queer and Trans Issue” online: <[http://bcpovertyreduction.ca/wp-content/uploads/2014/08/2013\\_prc-lgbqt-poverty-factsheet.pdf](http://bcpovertyreduction.ca/wp-content/uploads/2014/08/2013_prc-lgbqt-poverty-factsheet.pdf)>.

234 *Ibid.*

235 *Ibid.*

*“Skipping meals has had an impact on my health. I’m tired a lot, and I’ve lost quite a bit of weight since my household is a one-income household, and not because I’m “dieting”.*

*My son is not affected because I always feed him first, with what he wants. He is a healthy eater – he eats a lot of fruit and veggies. I make sure he gets what he needs and sometimes that comes at the expense of what I need. I haven’t been able to update my glasses prescription for many, many years. It is expensive to get glasses, so I buy contacts. My son never goes without. I make sure of it. He always has what he needs: food, clothing, whatever else.” – A mother of one son earning minimum wage*

The application of a substantive equality lens to the interpretation of other provisions of the *Charter* has found favour in the courts. The Supreme Court of Canada has affirmed that “the section 15 guarantee is the broadest of all guarantees. It applies to and supports all other rights guaranteed by the *Charter*.”<sup>236</sup> In their concurring minority decision in *New Brunswick (Minister of Health) v G(J)*, a case involving a claim for publicly funded legal aid for low income parents involved in child apprehension cases, Justices L’Heureux-Dubé, Gonthier and McLachlin identified sections 15 and 28<sup>237</sup> as a “significant influence on interpreting the scope of protection offered by s. 7”, and held that “the interpretive lens of the equality guarantee should therefore influence the interpretation of other constitutional rights, where applicable, and ... principles of equality, guaranteed by both s. 15 and s. 28, are a significant influence on interpreting the scope of protection offered by s. 7.”<sup>238</sup> Sex equality was relevant in *G(J)* because of the “entrenched social phenomenon” of the feminization of poverty in Canada, and because “women, and especially single mothers, are disproportionately and particularly affected by child protection proceedings”.<sup>239</sup> It is relevant to the right to food for the very same reasons.

Women in Canada continue to bear a disproportionate share of child care responsibilities, and are more likely to retain the role of primary caregiver if their relationship with the child’s other parent breaks down.<sup>240</sup> Because of women’s

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236 [1989] 1 SCR 143 at 185.

237 Section 28 of the *Charter* states that the rights and freedoms protected by the *Charter* are guaranteed equally to men and women.

238 [1999] 3 SCR 46 at para 112.

239 *Ibid* at para 113.

240 See Maire Sinha, “Parenting and child support after separation and divorce” (Statistics Canada, 2014).



unequal economic status in Canada, due to unequal pay; over-representation in precarious, part-time and low wage work; and disproportionate care obligations that may prevent them from participating in the paid labour force and limit their options for advancement, single mother-headed household are among the poorest in Canada. Lone parent families led by mothers have the highest rates of food insecurity of any group in Canada, with 34.3% of these families experiencing food insecurity, compared to 17.2% of lone parent families led by fathers.<sup>241</sup> Protecting women's equality, as required by section 15 of the *Charter*, supports an interpretation of the section 7 rights to life, liberty and security of the person that encompasses the right to food.

## Children as a “special circumstance” under section 7

Could the unique vulnerability of children constitute that “special circumstance” justifying a positive interpretation of section 7 referred to by the SCC in *Gosselin*? Constitutional lawyer Alison Latimer believes so, and argues that the “prevailing approach to section 7 ... is ill-adapted to children” given their dependence and vulnerability, heightened capacity for development and growth, and special position in relation to the state.<sup>242</sup> The traditional liberal approach to rights, she argues, which places responsibility on the autonomous private individual rather than on the collective public state, simply does not reflect children's enmeshed and dependent nature. As Tamer Ezer, senior program officer in the Law and Health Initiative of the Open Society Public Health Program has observed in the American context:

Children are an anomaly on the liberal legal order. Conceptualizations that work in other areas of human rights break down in the context of children. Children defy the conventional view of rights as implying fully rational, autonomous individuals who can exercise free choice and require freedom from government interference. Lacking fully developed rational capabilities, children are dependent “incompetents” by definition. Furthermore, unlike the term “individual”, the term “child” does not stand alone from all others, but necessarily implies a relationship.<sup>243</sup>

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241 PROOF Study, *supra* note 20 at 10.

242 Latimer, *supra* note 198 at 545.

243 Tamer Ezer, “A Positive Right to Protection for Children” (2004) Yale Human Rts & Dev LJ 1 at 1.

Until a certain age, children simply cannot meet their own basic needs for food. They are entirely dependent on caregivers to provide them with nourishment and ensure their basic bodily needs are met. Their need for food demands positive action; it simply cannot be fulfilled without someone taking steps to provide them with the food they require to survive and thrive. This dependence grounds a conception of their right to food as a positive right, imposing a positive obligation or duty to fulfill it.

A departure from the classic liberal approach to individual autonomy with respect to children is already a well-established part of Canadian law. In the family law context, decision-makers are directed to prioritize the “best interests of the child” in all decisions that may affect them.<sup>244</sup> Where a parent or other authorized caregiver is unable to meet the requisite standard of care for a child, the state is authorized to intervene, and can remove the child from her parents’ care. Such intervention demonstrates the public’s responsibility towards children and their protection and development.<sup>245</sup> Public responsibility for the protection and development of children can also support a positive conception of their right to food, which places an obligation on government to ensure their food needs are met.

Children’s vulnerability and the importance of protecting and promoting their development are reflected in many other areas of civil law as well: they must attend school; there are restrictions on their freedom to work, marry, drive, or attend particular films; limitations periods, which bar legal action after a certain amount of time has elapsed since the occurrence of the harm, do not begin to run against children until they reach the age of majority, and so on.<sup>246</sup> The criminal law also recognizes the particular vulnerability of children. Special rules “based on reduced maturity and moral capacity have governed young persons in conflict with the law from the beginning of legal history.”<sup>247</sup> These rules protect young people from publication of their identities and emphasize rehabilitation over punishment if they are convicted of a crime.<sup>248</sup> Children’s reduced maturity

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244 See *Divorce Act*, RSC 1985 c 3 (2<sup>nd</sup> Supp) ss 16-17 and *Family Law Act*, SBC 2011, c 25, s 37.

245 Latimer, *supra* note 198 at 548.

246 *Ibid* at 549.

247 See *R v C(R)*, 2005 SCC 61 at para 41 and *Youth Criminal Justice Act*, SC 2002 c 1.

248 Latimer, *supra* note 198 at 550.

and capacity for understanding the nature and consequence of their actions, as well as their capacity to grow, mature and develop, is at the heart of the rationale for this differential treatment. Similarly, their capacity for growth and development should motivate the application of a different legal standard for children's claims to a positive right to food.

In addition to these legislative protections for children, courts have also taken it upon themselves to act as guardian for persons under a legal disability (including minors) through what is known as the court's *parens patriae* jurisdiction.<sup>249</sup> Courts act pursuant to this jurisdiction when it is "necessary for protection and education" of the child, and even where there is legislation in an area, "courts will continue to use the *parens patriae* jurisdiction to deal with un contemplated situations where it appears necessary to do so for the protection of those who fall within its ambit."<sup>250</sup> As Justice L'Heureux-Dubé said in a family law case involving a dispute between divorcing parents over their children's religious upbringing, "courts must be directed to create or support the conditions which are most conducive to the flourishing of the child."<sup>251</sup> And in *King v Low*, a dispute between a birth mother and her child's adoptive parents, Justice McIntyre opined that "It must be the aim of the Court ... to choose the course which will best provide for the healthy growth, development and education of the child so that he will be equipped to face the problems of life as a mature adult."<sup>252</sup> The protection of children is of the utmost concern. Indeed, Chief Justice McLachlin has held that the "protection of a child's right to life and to health, when it becomes necessary to do so, is a basic tenet of our legal system."<sup>253</sup>

In sum, there is strong support in Canadian legislation and jurisprudence for the recognition of a positive right to food for children under section 7 of the *Charter*. As Latimer points out, this would represent a "modest and incremental advance for social rights advocacy" in light of a history of failures to make substantial

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249 *Ibid* at 553. *Parens patriae* is a Latin phrase meaning "parent of the nation".

250 *Eve (Mrs) v Eve*, [1986] 2 SCR 388 at para 42.

251 *Young v Young*, [1993] 4 SCR 3 at 65.

252 [1985] 1 SCR 87 at 101.

253 *C(A) v Manitoba (Director of Child and Family Services)*, [2009] SCC 30 at para 127, per McLachlin CJC, dissenting, citing a concurring majority judgment in *B(R) v Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315.

progress towards a positive interpretation of section 7.<sup>254</sup> It is an approach that should be adopted by the courts “in the interests of justice – that is, to ensure that everyone has an equal opportunity to access society’s most important institutions ... which in turn will ensure the legitimacy of those institutions.”<sup>255</sup>

There are risks and shortcomings to a focus on children’s rights to the exclusion of adults in need of these same rights. It is of course virtually impossible to separate a child from the family upon which she is dependent; children experience poverty and deprivation because their parents are experiencing poverty and deprivation. As feminist legal scholars have pointed out, there is a significant artificiality to regarding the best interests of a child as being entirely distinct from the best interests of its parents and failing to appreciate the interconnectedness of a child’s and parent’s interests.<sup>256</sup> Children are not “decontextualized individuals whose interests are separate and distinct from those of their families, communities, and cultures,”<sup>257</sup> but are enmeshed and dependent actors. Children’s and parents’ rights are “mutually reinforcing” and “fundamentally linked to each other.”<sup>258</sup> However, past claims for positive rights advanced by adults under section 7 have failed, with courts expressing concerns about the “uncertain” and potentially “enormous” implications of their recognition.<sup>259</sup> While we might prefer a broader and more comprehensive legal response to poverty, homelessness, food insecurity and other forms of deprivation, advocates must “heed this caution and focus their claims more narrowly.”<sup>260</sup>

Latimer outlines a number of other risks to focusing on the positive economic and social rights of children to the exclusion of adults.<sup>261</sup> This narrow focus could reinforce incorrect and stereotypical views about people living in poverty,

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254 Latimer, *supra* note 198 at 556.

255 *Ibid* at 557.

256 Marlee Kline, “Child Welfare Law, ‘Best Interests of the Child’ Ideology, and First Nations” (1992) 30:2 Osgoode Hall Law Journal 375 at 395.

257 *Ibid*.

258 Ezer, *supra* note 243 at 42. See also GJ, *supra* note 8.

259 *Pratten v. British Columbia (Attorney General)*, 2011 BCSC 656 at para 290.

260 Latimer, *supra* note 198 at 558.

261 *Ibid* at 557-559.

including the view that they should not have children and that, if they do, their children will become social problems. It could reinforce the view that adult poverty is the product of individual moral failure or legitimate political decision-making, and risks erasing “from public discourse the realities of parents, primarily women, living in poverty, and to ignore the injustices and systemic patterns of discrimination that cause poverty.”<sup>262</sup> Latimer cautions that “great care will be needed to ensure that public advocacy and evidence assembled in any case directed at positive rights for children is sensitive and responsive to these criticisms.”<sup>263</sup> But they should not deter *Charter* challenges to insufficient state action in the face of deprivations of children’s basic needs.

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<sup>262</sup> Bruce Porter, “Claiming adjudicative space: Social rights, equality and citizenship” in Margot Young et al., eds., *Poverty: Rights, Social Citizenship and Legal Activism* (Vancouver: UBC Press, 2007) at 85.

<sup>263</sup> *Supra* note 198 at 557.

## CONCLUSION

Canada's failure to uphold its international human rights obligations to respect, protect and fulfill the right to food is evident in the experiences parents related to us in the course of this research project. These include fears of running out of food before month's end, long and unpleasant waits in food bank lines, and concerns that their children are not getting the nutrition they need to grow and thrive. Despite Canada's international legal obligations respecting the right to food, it's clear that there is a substantial disconnect between the promise of this right and its fulfillment.

The people the BCCLA interviewed for this project represent a tiny fraction of the over 4 million people in Canada who experience food insecurity each year. This translates into one in every eight households and includes well over a million children. Indigenous and northern communities are particularly affected; households led by single mothers are among the most vulnerable. This is unacceptable in a country as wealthy as Canada. There is simply no justification for allowing some of our most vulnerable and marginalized community members to face the additional stress and insecurity of worrying about meeting their families' nutritional needs.

Throughout our research, parents told us what policy changes would allow them to put healthy and nutritious food on their families' tables, including increased social assistance rates, a higher minimum wage, and a reduction in the cost of other necessities, like housing, transportation and child care. They told us that charitable food programs are not enough; like all of us, these parents want choice, autonomy and dignity in their access to food.

This report has been purposely non-prescriptive about how Canadian governments should go about fulfilling the right to food. The recommendations to Canada by the UN Special Rapporteur on the right to food to implement a rights-based national food strategy and adopt a framework law on the right to food are excellent starting points. But as we stated at the outset, we are a legal organization, not food policy experts, and we leave the important work of creating policy solutions based on these framework recommendations to the organizations with the expertise and mandate to do so effectively, informed by the communities most affected by food insecurity.

Our goal with this project was to determine whether the right to food is a legally enforceable human right protected by the *Canadian Charter of Rights and Freedoms*. We have concluded that for children, who are particularly vulnerable to the negative health impacts of malnutrition and entirely reliant on others to provide for their food needs, there is a positive obligation on government, arising from children's *Charter* protected rights, to ensure they have access to adequate, nutritious food.

In our view, traditional objections to interpreting the *Charter's* section 7 as conferring positive rights do not apply in this context. Instead, children constitute the "special circumstance" justifying a positive interpretation of section 7 referred to by the Supreme Court of Canada in *Gosselin*, the last major poverty case considered by the Court. It's time to revisit the holding in that case in the context of children's right to food, and to ensure that hungry children do not become "constitutional castaways" without meaningful protection under the *Charter*.

Children in BC are hungry for justice. It's time to ensure their claims are satisfied.

# HUNGRY FOR JUSTICE: Advancing a Right to Food for Children in BC

The right to food is clearly protected in international human rights agreements that Canada has signed and agreed to uphold. Yet despite Canada's commitments under international human rights law to respect, protect and fulfil the right to food, there is a substantial disconnect between the promise of the right and its fulfillment.

The BC Civil Liberties Association believes that Canada's *Charter of Rights and Freedoms* is a vehicle through which the right to food could be enforced and made meaningful in people's lives. To make our case, we have travelled around the province, hearing stories about people's experiences of food insecurity and the challenges they face in putting adequate, nutritious food on their families' tables.

We have concluded that for children, who are particularly vulnerable to the negative health effects of malnutrition and entirely reliant on others to provide for their food needs, there is a positive obligation on government, arising from children's *Charter* protected rights, to ensure they have access to adequate, nutritious food. Moreover, we argue that when children's right to food has gone unfulfilled, courts have the jurisdiction and authority under the *Charter* to declare the government's actions unconstitutional, and to order remedies for this breach of children's rights.