

NOVA SCOTIA UTILITY AND REVIEW BOARD

DENISE BOULTER et al.

and

NOVA SCOTIA POWER INC. et al.

INFORMATION REQUESTS

TO: BRUCE PORTER FROM: THE ATTORNEY GENERAL OF NOVA SCOTIA

1. Are you proffering opinions in your testimony? If yes, are the opinions based on specialized knowledge? If yes, from what discipline is the specialized knowledge based? Summarize your education, training and experience in that discipline.

My testimony includes both fact and opinion based on specialized knowledge and expertise in the area of human rights and poverty. My education, training and experience is outlined in my curriculum vitae, attached to the Report.

2. Who prepared your testimony?

I prepared it.

3. You state that [sic] to explain and justify your opinion that implementing lower utility rates for impoverished households is a reasonable response to the unique circumstances of this group and the interest at stake on page 3. Is your purpose in participating in this proceeding to advocate for the implementation of lower utility rates for impoverished households?

No that is not my purpose. My purpose was to provide information on discriminatory attitudes and prejudices against low income people, on how these may be reflected in a policy of refusing to accommodate the unique circumstances of poor households.

4. *Do you advocate for lower utility rates for impoverished households as part of your advocacy work? Do you advocate for lower utility rates in your capacity as counsel or agent representing low income clients? If yes, before what tribunals?*

No, I have not advocated for lower utilities rates for low income households, either in my own capacity or in my capacity of agent representing low income clients.

5. *What portion of your testimony is part of your advocacy?*

None of my testimony is part of my advocacy.

6. *What association do you have with the Affordable Energy Coalition and individual interveners who have claimed rights violations?*

I have no association with the Affordable Energy Coalition.

7. *Who are [sic] the persons who have intervened to claim violations of their equality rights are you testifying on behalf of? What knowledge do you have of them and their circumstances? What knowledge do you have of violations of their equality or human rights? Who is violating those rights? How are those rights being violated? When are those rights being violated?*

I am testifying on behalf of all of the individuals and interveners. I have no knowledge about their individual circumstances but I am knowledgeable about the circumstances of those living in poverty and dealing with other forms of disadvantage, and in particular about the effects of housing and utilities costs on members of these groups.

With respect to the questions about violations of the equality rights of the individuals involved in this case, how and when their rights may have been violated and by whom, my understanding is that these are among the legal issues that are being argued before the Board in this case and which will be decided by the Board. My testimony was not intended to offer a legal opinion on these questions, but to provide facts and expert opinion about discriminatory attitudes and prejudices experienced by low income people, to assist the Board in deciding these legal questions.

8. *Who retained you to provide your testimony? When? Were you requested in writing to provide an opinion? If yes, provide a copy of written instructions and requests. Provide a copy of notes of oral instructions and requests. What information and/or documentation were you given by counsel? Advise of information and provide a copy of documentation. What information and/or documentation were you given by other persons? Advise of information and provide a copy of documentation.*

Vince Calderhead, counsel for Denise Boulter retained me. After speaking on the telephone the previous week, I received correspondence on April 13, 2007 from Mr. Calderhead. A copy of the correspondence is attached as Exhibit 1.

9. *What research, inquiries and investigation did you conduct in the preparation of your testimony? Who did you speak with in the preparation of your testimony? What information and documentation did they provide to you? Advise of information and provide a copy of documentation.*

My inquiries and investigation into discriminatory attitudes and prejudices about poor people has been carried out over the last 20 years, including inquiries and investigations made in preparing expert evidence on discriminatory attitudes and prejudices against poor people in the context of other cases.

For the purposes of this Report, I undertook some additional research into discriminatory statements about poor people in Nova Scotia. In the course of this research I found references during legislative debates to “welfare cheats” but had been unable to track down an article in the *Chronicle Herald* that was referred to in the debates. I asked Mr. Calderhead if he might have a student available to him to assist me in getting a copy of this article and others on the general topic of what is referred to in the media as “poor-bashing”. Mr. Calderhead informed me that he did not have a student available, but he undertook a search through an electronic database available to him. He was unable to find the article, but provided me with the complete results of the electronic search. A copy of his email and the documentation is attached at Exhibit 2 of the Appendix.

10. *You state that a recent peer review of research found that it was among the highest quality that had been reviewed on page 5. Provide a copy of that review.*

A copy of the Review is attached as Exhibit 3.

11. *You state that you have been qualified as an expert to give opinion evidence on pages 7 and 8. In what cases and what was the nature of your opinions? Have you previously testified regarding utility rate determination? If yes, in what cases and what was the nature of your opinions?*

I have provided expert evidence in the following cases. The nature of opinion evidence offered is outlined in brackets for each case:

Janos Robert Gunther and Janosne (Maria) Gunther, personally and as litigation guardian for Anita Gunther and Melinda Gunther v. Attorney General of Canada (Ontario Superior Court Of Justice File no. 05-CV-294199PD1) and Chantal Bavunu Krena, personally and as litigation guardian for Ketsia Krena and Jodick Moudiandambu v.

Attorney General of Canada (Ontario Superior Court Of Justice File no. 06-CV-312099PD2) Evidence on discriminatory attitudes and prejudices against poor people and families with children living in poverty and/or relying on social assistance; security and dignity issues affecting poor people and families with children; effect of the absence of a fee waiver for applications for Humanitarian and Compassionate consideration under the section 25(1) of the *Immigration and Refugee Protection Act* on social assistance recipients, parents living in poverty, single mothers, racialized minorities, persons with disabilities and newcomers to Canada).

Andrew Graham et al. v. Ontario (Attorney General) et al (Ontario Superior Court of Justice File No. 02-CV-232667CM3) (Opposing counsel stated that qualifications would not be challenged, settlement pending after impugned policy amended.) Evidence on discriminatory attitudes and prejudices against poor people and families with children relying on social assistance; security and dignity issues affecting poor people and families with children.)

Keyvan Rasekhi Nejad, Malihe Shali, Komeil Rasekhi Nejad A Minor Under the Age of 18 Years by his Litigation Guardian Keyvan Rasekhi Nejad, And Soheil Rasekhi Nejad a Minor Under the Age Of 18 Years by his Litigation Guardian Keyvan Rasekhi Nejad v. Thomas Volpe and The General Accident Assurance Company Of Canada (Ontario Superior Court Of Justice Div. Ct. File No. 328/03) Evidence of discriminatory attitudes and prejudices against poor people and families with children relying on social assistance; security and dignity issues affecting poor people and families with children; affect of advance costs orders on access to justice.

Dale Broomer et al v. Ontario (Attorney General) et al, Ontario Superior Court of Justice (Divisional Court) File No.: 420/0. (Evidence on discriminatory attitudes and prejudices against poor people, systemic patterns of discrimination in the justice system; security and dignity issues of people in poverty. Qualifications not challenged, but case was settled)

Ontario Municipal Board File No. R030064, OMB Decision No. 0569 (May 15, 2004) Nature of discriminatory attitudes and prejudices against homeless people and people living in poverty. Effect of zoning restrictions prohibiting shelters for the homeless in some residential areas of Toronto.

Ontario Ministry of Public Safety and Security, Office of the Chief Coroner, Inquest Into the death of Kimberly Ann Rogers, (Verdict of the Jury released 19 December, 2002) (Sentencing patterns in welfare fraud and comparison of penalties for fraud in Employment Insurance, Workers' Compensation and Social Assistance; Inadequacy of social assistance rates in Ontario to pay for adequate housing.)

Falkiner v. Ontario (2000), 188 D.L.R. (4th) 52; *Falkiner v. Ontario (Ministry of Community & Social Services)*, [2002] 59 O.R. (3d) 481 (C.A.) (Discriminatory attitudes

and prejudices toward social assistance recipients and single mothers; intersectionality of discriminatory attitudes and prejudices toward single mothers and social assistance recipients. Inadequacy of social assistance rates to pay for housing.)

R. v. Clarke, [2003] O.J. No. 3883 (Ferrier, J.) Discriminatory attitudes and prejudices toward poor people and people who are homeless. Intersectionality of discriminatory attitudes and prejudices and comparison of discriminatory attitudes and prejudices toward poor people and attitudes and prejudices toward racialized minorities and other groups.

Masse v. Ontario Ministry of Community and Social Services (1996), 134 D.L.R. (4th) 20. Discriminatory attitudes and prejudices toward poor people and people on social assistance. Inadequacy of social assistance rates in relation to housing costs. Effects of the 21.6% cuts to social assistance rates.)

Dudnik v. York Condominium Corp. No. 216 (No. 2)(1990) 12 C.H.R.R. D/325 (Ont. Bd. Inquiry) (Nature of discrimination against families with children in rental accommodation. History of amendments to Ontario's Human Rights Code to prohibit adult only apartments.)

Kostanowicz v. Zarubin (1994) 28 C.H.R.R. D/55 (Ont. Bd. Inq.) Nature and effect of discriminatory attitudes and prejudices against people on social assistance.

12. *You state that discrimination because of poverty is a distinct form of prejudice and discrimination similar in nature to other forms of discrimination such as race, citizenship, sex or disability on page 8. On what facts do you base this statement? If documentary, provide a copy of the document. What is your purpose in making this statement in your testimony?*

I base this statement on my years of experience overseeing assistance to thousands of individuals and groups facing discrimination because of poverty and others facing discrimination on other grounds, including race, citizenship, sex and disability. I outline the nature of this experience, and other facts on which I base this statement, on pp. 8 – 19 of my Report. The purpose is to assist the board to understand the nature and extent of discriminatory prejudice and attitudes toward poor people, to consider whether such discrimination is similar in nature to discrimination on other grounds, to assess how discriminatory attitudes and patterns may have affected policies related to the setting of utilities rates and to consider what measures might be undertaken to address the social and historical disadvantage of poor people.

13. *You state that the majority of those relying on social assistance or who are homeless are women, children and persons with disabilities on page 9. On what facts do*

you base this statement? If documentary, provide a copy of the document. What is your purpose in making this statement in your testimony?

I have reviewed relevant sources of data from National Council on Welfare, Statistics Canada, Canadian Council on Social Development, and data on homelessness from a number of provinces and municipalities in Canada, as well as statistics from provincial social assistance authorities over the past decade. This data has shown that in general, about a third of social assistance recipients are children and about half of adult recipients rely on social assistance because of a documented disability – either short term or long term. The majority of adult recipients are women. In my Report, I state that the combination of women, people with disabilities and children constitutes the majority of people relying on social assistance. This is clearly an understatement, intended simply to contrast with the common stereotype of single employable men representing the majority of people on welfare.

I have attached the Social Assistance Report 2005, (Exhibit 4) produced with the assistance of all of the provinces and territories and extracted from provincial and territorial data systems. According to the data provided in this Report, in Nova Scotia, short and long term disabled persons represent approximately 55% of social assistance cases in Nova Scotia. Children represent 32% of recipients.

Data on those who use shelters have shown that women and children are the fastest growing group using shelters for the homeless in recent years. There is no reliable data on the number of homeless, either in total numbers or by category. The only available data is restricted to those living in shelters and living on the street. However, these types of surveys drastically under-represent the number of homeless women and children. Single homeless women are far less likely to “live rough” on the streets than single homeless men, and women with children will for obvious reasons avoid living on the streets at all costs. In most cases this would result in losing custody of their children. Most women with children are also extremely reluctant to move into shelters, and will usually rely on friends, family or acquaintances for emergency accommodation when they are homeless.

My opinion that women and children constitute the majority of the homeless is based on my work with homeless people for many years, and my knowledge that shelter data represents only a fraction of the number of homeless women and children

14. *You state that discriminatory treatment of poor people constitutes a fundamental attack on the dignity of that group on page 9. On what facts do you base this statement? If documentary, provide a copy of the document. What is your purpose in making this statement in your testimony?*

This statement is based on my years of experience working with people living in poverty, their communications with me about the effect of discriminatory treatment on their dignity

and security and my understanding of the dignity and security issues facing this group, as outlined in my evidence. There is also documentation from poor people themselves about the effect of discrimination or what is sometimes referred to as “poor-bashing” on their dignity and security, which substantiates my own observations and experience. Footnote 11 in my Report refers to a book by Jean Swanson, who experienced these attitudes as a woman living in poverty and has worked with poor people for many years. The experience of low income people in Nova Scotia is described and addressed in a booklet entitled “Single Mothers Survival Guide” originally written by Brenda Thompson about her experiences as a low income single mother in Nova Scotia, published and periodically updated by the Nova Scotia Public Interest Research Group, available at <http://survivalguide.nspirg.org/>. This document is attached as Exhibit 5 of the Appendix.

By saying "discriminatory treatment", are you proffering a legal opinion? If yes, what are your qualifications to proffer a legal opinion?

My statement was not intended to proffer a legal opinion about what is or is not prohibited in law. It was intended to provide information about “discriminatory treatment” in the sense of treatment based on negative stereotype and prejudice about the group. My purpose in making the statement was to assist the board to understand the nature and extent of discriminatory prejudice and attitudes toward poor people, the dignity interests at stake, and how these may affect policies related to the setting of utilities rates, so as to be in a better position to adjudicate the legal issues involved in this case.

15. *You state that discriminatory treatment of poor people "seeks to achieve political or social cohesion and consensus among the more advantaged in society" on page 9. On what facts do you base this statement? If documentary, provide a copy of the document. What is your purpose in making this statement in your testimony?*

This statement is based on my years of experience working with people living in poverty, with respondents in human rights claims, with government officials, courts, adjudicators and policy makers, and my understanding of the social, historical and political dimensions of discrimination against poor people and other disadvantaged groups. It is included in the Report in order to provide some understanding of the causes of the rise in discriminatory attitudes toward poor people at times when increased poverty is most clearly the result of systemic causes rather than of individual moral failures or negative characteristics imputed to the poor.

I have attached at Exhibit 6 a Report prepared by Ekos Research for the Government of Canada which describes the paradoxical coexistence among affluent respondents of both a recognition that poverty is the result of systemic causes and “moral” explanations of poverty based on discriminatory stereotypes which attribute poverty to moral failures of the poor. This document provides one example of how government policy was developed in response to discriminatory attitudes and on that account failed to adequately address the

systemic causes. The National Child Benefit Supplement, which was developed by the Federal Government subsequent to its receipt of this study to respond to child poverty, was framed so as to deny the full financial benefit to social assistance recipients – often the poorest families. This exclusion has been widely condemned, including by a number of United Nations human rights bodies.

16. *You state that stigmatization is a common feature of discrimination against low income individuals and households on page 9. On what facts do you base this statement? If documentary, provide a copy of the document.*

This statement is based on my years of experience working with low income people, and dealing with landlords and other respondents to human rights complaints. My Report and attached documents provide a number examples of the types of stigmatization which I have observed and which led me to this conclusion. The Ekos Memorandum attached as Exhibit 6 provides documentary evidence of stigmatization. A number of other documents are attached as Exhibit 7 which provide further examples of the kinds of stigmatization to which I refer in the Report. I have attached as Exhibit 8 a section of the Report of the Canadian Human Rights Review Task Force, chaired by former Supreme Court of Canada Justice Gerard La Forest, describing the stigmatization of the poor and the basis for the panel's conclusion that the Canadian Human Rights Act ought to provide protection against discrimination because of poverty or "social condition."

17. *You refer to government endorsed promotion of discrimination and scapegoating of the poor on page 17. On what facts do you base this statement? If documentary, provide a copy of the document.*

I base this on my years of experience dealing with poverty issues, my knowledge of government policies in relation to poverty and housing, and statements by officials and politicians. I have provided a number of examples of discriminatory actions and statements by government officials in my Report. These include promoting the idea that "taxpayers" are being "cheated" by welfare recipients, that "taxpayers" should monitor the private lives of recipients, that recipients are likely to be criminals, that social assistance recipients are genetically inferior and that they should not have children, and that social assistance recipients are inferior parents who should be forced to take parenting courses. I have attached as Exhibit 7 a number of documents which provide examples of this type of government behaviour.

18. *You state that government endorsed promotion [sic] [of discrimination and scapegoating of the poor] constitutes a profound attack on dignity and equality on page 17. On what facts do you base this statement? If documentary, provide a copy of the document.*

This statement is based on my experience working with low income people facing discriminatory attitudes, prejudices and actions from government officials and similar actions by private actors. I have provided a number of examples in the Report. A document which illustrates the way in which poor people experience these attacks on dignity and equality and strategies they must employ to try to maintain dignity and security is provided in the *Single Mothers Survival Guide* prepared by Brenda Thompson, a single mother in Nova Scotia, attached Exhibit 5. It is noteworthy that when Ms. Thompson criticized the Government's treatment of women on welfare, a Cabinet Minister responded by disclosing confidential personal information about the paternity of her child in the national media. The decision of the Nova Scotia Provincial Court in respect of this action by the Minister, in the case of *R.v. Edmund Morris*, [1988] N.S.J. No. 383 is attached as Exhibit 9. It illustrates the unique vulnerability experienced by low income people, and low income single mothers in particular, when engaging in political life and asserting entitlements of citizenship, including the right to comment on government policy and programmes which affect their dignity and security.

19. *You refer to an exaggeration of the extent of welfare fraud on page 18. What was the exaggerated extent of welfare fraud? What do you say is an accurate extent of welfare fraud? On what facts do you base this statement? If documentary, provide a copy of the document.*

I have examined data on successful fraud prosecutions of social assistance recipients in Ontario when alleged fraud was rigorously prosecuted and found that those accused of fraud either pled guilty or were found guilty in approximately 0.1% of total caseload. Higher estimates of fraud, in the range of 2 – 3%, have included cases where no fraud has been established and cases of overpayment caused by administrative error. Such estimates are therefore not reliable. As documented by the Auditor General in Ontario when he reviewed overpayments in Ontario's welfare programme, administrative errors are extremely common. Such errors also result in recipients being denied payments to which they are entitled, but these are not publicized the way recovered overpayments are publicized. I am aware from my analysis of this issue for the Coroner's Inquest into the Death of Kimberly Rogers. (Ms. Rogers died in her small apartment, while pregnant, during a heat wave, confined to house arrest after pleading guilty to welfare fraud) that many recipients plead guilty to welfare fraud on the advice of counsel when the existence of actual fraud is doubtful.

Even accurate data on those who are convicted of welfare fraud may exaggerate the extent of fraud in the public's mind. If, for example, a single mother unable to provide food for her children, was given a donation from a neighbour who wanted to help out, or some extra cash from the father of the children, many would not consider it fraudulent to use the gift as it had been intended, for food, rather than telling Social Services to deduct this amount from the monthly cheque. Such survival strategies, however, are defined as fraudulent in many social assistance regimes. Simply stating that fraud occurs, without explaining the

differential standards that are applied to social assistance recipients in comparison with others, tends to exaggerate the “immorality” of recipients in the public’s mind.

I provide the example in my Report (Hansard attached as Exhibit 10) of a Member of the Nova Scotia Legislature, and a current cabinet minister, Brook Taylor, stating that additional staff of eight “fraud cops” “expects to pry \$11 million from the fingers of welfare cheats”. The estimate of over 2% of additional recoveries of overpayments due to fraud exaggerated the amount of actual fraud that could be uncovered through the hiring of additional staff. Even if an additional \$11 million in overpayments were expected to be recovered by the extra staff, these overpayments would largely be the result of administrative error. It is noteworthy that the Member did not mention that expanded eligibility review, if undertaken objectively, would also be expected to uncover cases where recipients had not received benefits to which they were entitled.

20. *You refer to economic and social trends on page 20. On what facts do you base this statement?*

The trends to which I refer are well recognized by experts and courts. Examples of these trends being accepted by courts and other bodies can be found in the following documents:

Moge v. Moge [1992] 3 S.C.R. 813 at 873 and *Marzetti v. Marzetti*, [1994] 2 S.C.R. 765 where the Supreme Court took notice of the well documented fact of the “feminization of poverty” and adopted the notion that statutes should be interpreted where possible to ameliorate women’s poverty.

The relationship between changes in youth unemployment and poverty are described by the Supreme Court of Canada in the case of *Gosselin v. Quebec (Attorney General)*, [2002] 4 S.C.R. 429 at paras. 38-40.

The higher risk of poverty among recent immigrants, single mothers, people with disabilities and Aboriginal people is documented by Statistics Canada data and has been well summarized in the *Canadian Fact Book on Poverty* produced by the Canadian Council on Social Development. The “Highlights” of the Fact Book are attached as Exhibit 11. These patterns have also been recognized by various United Nations bodies, such as the United Nations Committee on Economic, Social and Cultural Rights. The Concluding Observations on Canada of the UN Committee on Economic, Social and Cultural Rights (2006) are attached as Exhibit 12.

21. *You state that low income households face discrimination because of their income and are also most likely to face discrimination on other grounds on page 21. On what facts do you base this statement? If documentary, provide a copy of the document.*

This statement is based on my 20 years of experience dealing with low income people facing discrimination on various grounds, and my observations of systemic patterns of discrimination. My reviews of thousands of intake forms at the Centre for Equality Rights in Accommodation confirmed these observations. I have provided a few relevant examples of these systemic patterns in my Report.

22. *Does discrimination because of low income occur regardless of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability? Does discrimination because of low income occur regardless of the source of the income?*

Yes it does occur independently, such as in cases where a landlord or service provider has no information on an applicant for housing or for a service other than income. It also occurs as an independent factor, compounding the effect of discrimination on other grounds, such as in cases where a landlord or a credit agency rejects an applicant because of a combination of factors, including low income and age. In other cases, discrimination because of poverty occurs in combination with other forms of discrimination, such as in the case of the “spouse in the house” rule applied to single parents on social assistance, where the Ontario Court of Appeal found discrimination in combination on three discrete grounds – receipt of social assistance, sex and marital status. The analysis of intersecting grounds of discrimination by the Ontario Court of Appeal in that case was similar to that of the Nova Scotia Court of Appeal in the well known *Sparks* case. Writing for the Court, Laskin, J. noted that: “The economic disadvantage suffered by social assistance recipients is only one feature of and may in part result from their historical disadvantage and vulnerability. yes I am comforted in this conclusion by two Nova Scotia decisions: *R. v. Rehberg* (1994), 111 D.L.R. (4th) 336 (S.C.) and *Dartmouth/Halifax County Regional Housing Authority v. Sparks* (1993), 101 D.L.R. (4th) 244 (C.A.).

As noted, the vast majority of those facing discrimination on the basis of their poverty (and of those who are poor) are members of other equality seeking groups and therefore these groups experience a disproportionate burden from discrimination based on low income. The discriminatory treatment of public housing tenants, for Irma Sparks, related to her poverty, her race and her status as a single mother. While discrimination because of reliance on welfare or “source of income” may have additional or distinctive traits, (in the same way that discrimination because of a particular disability will have particular traits), it is also possible to assess the nature of discrimination based on the broader characteristic of poverty or low income (just as one may consider the nature of discrimination on the basis of disability generally). The Court of Appeal for Nova Scotia, for example, recognized that discrimination against public housing tenants related not simply to the receipt of a subsidy, but also to negative stereotypes and attitudes toward those who are poor.

23. *You refer to "rational measures to address poverty, such as increasing (rather*

than cutting) social assistance rates, raising minimum wage, (or at least keeping pace with inflation), improving access to subsidized childcare (...), providing access to more subsidized housing" on page 24. On what facts do you base this conclusion? Do you advocate the adoption of these measures as part of your advocacy work? How long have you been advocating these measures to address poverty? If documentary, provide a copy of documents.

These measures have been endorsed by virtually all reputable organizations and experts studying the problem of poverty as "rational" measures to ameliorate poverty.

The focus of my advocacy work is on promoting respect for and compliance with domestic and international human rights norms. The fact that such measures are components of human rights obligations is demonstrated by the Concluding Observations of the UN Committee on Economic, Social and Cultural Rights (Exhibit 12), which recommends, *inter alia*, the adoption of all of the measures I referred to in my Report, in order to implement the obligations of Canadian governments under international human rights law. Implementing measures such as those enumerated in the question represents an important component of respect for and compliance with international and domestic human rights norms, and I have certainly advocated before human rights bodies and courts for recommendations or decisions which would promote or require these measures.

24. *Do you have any knowledge of changes in federal and provincial social assistance rates in Nova Scotia in the past three years? If yes, what are the rates? When did you obtain that information? What is the source of that information? If documentary, provide a copy.*

I do not understand what is meant by "federal social assistance rates". My understanding is that social assistance rates are set by provincial authorities, or, in the case of on-reserve Aboriginal people, based on provincial rates. With respect to provincial social assistance rates, I have generally relied on the National Council of Welfare Reports for figures of welfare incomes and assessments of adequacy by province. I have attached as Exhibit 13, Tables 3.1 and 3.2 from the Council's *Welfare Incomes 2005* which provides historical welfare incomes by household composition for Nova Scotia through to the end of 2005, as well as changes between 2004 and 2005. The table shows that real income went down for single mothers and persons with disabilities between 2004 and 2005.

The UN Committee on Economic, Social and Cultural Rights was provided with data from the Province of Nova Scotia in the context of periodic reviews of compliance with the right to an adequate standard of living under the ICESCR, which I have reviewed. In November, 1998, the Committee expressed concern about the inadequacy of social assistance rates generally in Canada, noting in particular the 35% cuts to social assistance rates for single people in Nova Scotia (para. 21) and recommending that social assistance rates be set at an amount that would "ensure the realization of an adequate standard of living

for all.” (para. 41). In 2006 the same Committee expressed concern about the lack of follow-up to its earlier recommendations with respect to adequate social assistance and noted that “in most provinces and territories social assistance benefits are lower than a decade ago, that they do not provide adequate income to meet basic needs for food, clothing and shelter” (para. 21)

25. *Do you have any knowledge of changes in the minimum wage rate in Nova Scotia in the past three years? If yes, what is the rate? When did you obtain that information? What is the source of that information? If documentary, provide a copy.*

I reviewed data provided by the Government of Canada and Nova Scotia in response to an information request from the UN Committee on Economic, Social and Cultural Rights prior to its review of Canada in May, 2006 (attached as Exhibit 14). I had also reviewed data from the Government of Canada, Human Resources Development, attached as Exhibit 15. With respect to information about the erosion of the real minimum wage over time, I have benefited from analysis conducted by John Jacobs of the Nova Scotia Centre for Policy Alternatives. A submission to the Minimum Wage Committee in February, 2005 by Mr. Jacobs, attached as Exhibit 16, provides a chart showing the erosion of the real value of the minimum wage in Nova Scotia from 1978 to 2005. A more recent editorial by Mr. Jacobs describing the effects of recent increases is attached as Exhibit 17.

I understand that the minimum wage in Nova Scotia was raised by 45 cents to \$7.60 effective May 1st 2007. Even with this recent increase, the minimum wage in Nova Scotia has been increased by only about 38% in the last decade, has failed to recoup the losses against inflation prior to that time.

26. *Do you have any knowledge of changes in subsidized childcare in Nova Scotia in the past three years? If yes, what have those changes been? When did you obtain that information? What is the source of that information? If documentary, provide a copy.*

The most recent information I recall reviewing on subsidized childcare in Nova Scotia was contained in the Child Poverty Report Card 2006 (attached as Exhibit 17), which stated the following:

For the year 2003 (the most recent statistics available) at least seven in ten mothers (approximately 34,000 women) with children aged 0–5 years old participated in the workforce, while over 44,000 mothers (81%) with children aged 6 – 15 years worked outside the home. In this timeframe Nova Scotia recorded only 12, 759 regulated childcare spaces. Of these, only 3,700 children received either full or part-time subsidies from government. In relation to all children aged 0–12 years in Nova Scotia, regulated spaces were available for only 9.6 percent. Regulated childcare in Nova Scotia is about 60 percent of the Canadian average.

27. *Do you have any knowledge of changes in subsidized housing in Nova Scotia in the past three years? If yes, what have those changes been? When did you obtain that information? What is the source of that information? If documentary, provide a copy.*

Nova Scotia was particularly adversely affected by the withdrawal of federal government funding of new social and public housing in 1993. After the completion of about 30 social housing units in 1994 there was virtually no new social housing produced in Nova Scotia for more than a decade. In 2002 the Canada-Nova Scotia Affordable Housing Agreement was signed, with a commitment of \$56 million by 2009 toward the creation and renovation of affordable housing units, but “affordability” under this program is defined as housing priced at or below average market price. This program will likely lead to the creation or renovation of about 1,000 new housing units, but some of the housing may still be unaffordable for low income renters. The stock of approximately 23,000 social housing units has not grown significantly in over a decade, despite evidence that Nova Scotia had one of the most critical “affordability” gaps (the gap between income and the amount needed to pay rent) of all provinces in Canada during that time. While I am aware of several hundred new affordable housing units that have been created under the new Affordable Housing agreement, the general pattern over the last fifteen years, during which we saw the emergence of an unprecedented crisis of affordability leading to dramatic increases in homelessness, has been one of governmental inaction.

I found the submission presented by Mr. Grant Wanzel, Ms. Patricia Richards, Ms. Louise Vanwart and Ms. Katherine Reed to the Standing Committee on Community Services particularly useful in summarizing the serious need for subsidized housing programs and the lack of government response during the 1990s (attached as Exhibit 18). I had also reviewed the summary of outcomes of the Affordable Housing Agreement produced by the Ministry of Community Services attached at Exhibit 19.

28. *You describe "legal remedies" on pages 25-28. On what facts do you rely to assert that a legal remedy is necessary?*

This statement is based on my experience of working with people facing discrimination and the importance of legal remedies in addressing the problem, as described in my Report. I am also aware that the Supreme Court of Canada stated in the *Vriend* case that the denial of access to remedial procedures for discrimination “must have dire and demeaning consequences for those affected.” I am also aware that under international human rights law, a legal remedy must be provided to discrimination.

29. *You state that all provinces and territories have provided protection from discrimination because of poverty on page 25. What provision in the Nova Scotia Human*

Rights Act do you say provides protection from discrimination because of poverty? How do you define poverty? Does discrimination because of low income occur regardless of the source of income?

Having reviewed the outcome of challenges to discrimination based on low income in other jurisdictions, such as Ontario, Quebec and British Columbia, it is clear that prohibitions of discrimination against social assistance recipients, whether they be worded as “source of income”, “receipt of public assistance”, or “social condition”, have provided protection and legal remedies to discriminatory treatment based on the low income of social assistance recipients. It has been recognized by tribunals and courts that if social assistance recipients could be denied housing or services because of their poverty, the existing protections from discrimination against this group would be rendered illusory. This has also been my experience, in working with social assistance recipients facing discrimination.

Tribunals and courts have also recognized the exclusionary effect of discrimination because of poverty on groups protected from discrimination on other grounds, including women, single parents, newcomers, racialized minorities, youth, young families and people with disabilities. This view is also consistent with the approach of the Nova Scotia Court of Appeal in the *Sparks* case.

I do not believe it is necessary or helpful to propose a universal or statistical definition of poverty in order to understand or address the problem of discrimination on the ground of poverty. Just as our understanding of disability, race, gender age and other grounds of discrimination is contextual rather than simply statistical, my view is that our understanding of poverty as a ground of discrimination must be focused on the characteristics linked to dignity and security, prejudice and stereotypes.

Poverty must be assessed in relative, rather than absolute terms, such that income levels linked to poverty in Canada are different from those in developing countries. For the purposes of assessing trends over time or the relative extent of poverty among different groups, or for determining who may be characterized as being poor, most governments and experts in Canada have used Statistics Canada’s Low Income Cut-Offs. The LICO definition is in keeping with the recognition of discrimination as arising from historical and social disadvantage. Where I have relied on a monetary definition of poverty, I have generally used these for the purpose of assessing general patterns and trends.

30. *You refer to a duty to accommodate the needs of poor people under human rights legislation extends [sic] to all levels of government and to housing providers, service providers and employers on page 28. On what facts do you base this statement? If documentary, provide a copy of the document. By saying "duty, are you referring to a legal duty? If yes, what are your qualifications to proffer a legal opinion?*

This statement is based on the wording of human rights legislation, such as the wording of

section 4 of the Nova Scotia Human Rights Act, or section 11 of Ontario's Human Rights Code. It is also based on statements from the Supreme Court of Canada such as the following, in the unanimous decision of the Court in Eldridge:

“The principle that discrimination can accrue from a failure to take positive steps to ensure that disadvantaged groups benefit equally from services offered to the general public is widely accepted in the human rights field. It is also a cornerstone of human rights jurisprudence that the duty to take positive action to ensure that members of disadvantaged groups benefit equally from services offered to the general public is subject to the principle of reasonable accommodation.”

I am referring, at least in part, to a legal duty. I am not proffering a legal opinion, but I am relying on extensive experience in the human rights field, including experience seeking legal remedies to discrimination against poor people, and my familiarity with both legislation and jurisprudence. My *curriculum vitae* provides details on my experiences and publications in this area,

31. *You state that a requirement that all consumers pay the same rate for utilities and prohibiting financial accommodation of the circumstances of low income households effectively deprives low income people of any opportunity to access utilities at an affordable price on page 30. On what facts do you base this statement? If documentary, provide a copy of the document. You do not include such financial accommodation in the rational measures to address poverty you provide on page 24. Have you included such financial accommodation in your testimony because that is the relief sought by the Interveners in this proceeding? If no, why have you included in your testimony?*

The statement that low income people have difficulty paying general residential rates for electricity is based on my extensive experience working with low income people facing affordability problems in relation to housing and utilities, and my review of Statistics Canada data over many years comparing housing, including utilities costs, with household income.

There are numerous rational measures to address poverty which I did not enumerate in on page 24. I was only providing some of the most well known. The importance of access to subsidized housing, where utilities are subsidized as a component of rent, does recognize the need to address affordability issues in access to utilities. I would also include, in a lengthier list of “rational measures” the need to accommodate needs related to poverty in government controlled utilities rates. On page 30 I address the problem of inflexible pricing of utilities both because I believe it is an important issue for poor people, and because I understand that the Board is examining the effect of this policy on poor people in order to adjudicate the matters before it.

32. *You state that unless financial accommodation is provided to low income*

households they will be effectively deprived "of any opportunity to access utilities at a price that is affordable to them" on page 30. On what facts do you base this statement? If documentary, provide a copy of the document. What is a price that would be affordable to them? On what facts do you base this statement? If documentary, provide a copy of the document.

The statement is based on the logical inference that if there is no provision for adjusting rates which are unaffordable to low income households, the rates will remain unaffordable to those households. By 'unaffordable' utility rates, I mean that household will be forced to take money from other basic necessities to pay for utilities, or they will be unable to pay for utilities and may lose the service. I was not asked to develop affordability guidelines for utilities for low income households for this Report, and I have not done so. My understanding is that other qualified experts are addressing this question.

33. *Are you also of the view that unless financial accommodation is provided to low income households for food, rent, personal hygiene, dental, telephone, transportation and clothing that low income households will be effectively deprived of affordable access to those goods and services? Are you of the view that this deprivation of access occurs regardless of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability or source of income?*

In my Report I outline how poor people are usually able to access these goods and services at lower prices, even where there is no explicit policy to accommodate their limited means. Food is not always the same price, and poor people will seek out the most affordable options in a marketplace with significant choices available. Poor people will seek out subsidized rent, and where unavailable, occupy lower quality housing. Personal hygiene needs are met by seeking out lower priced goods. Lower priced dental care is sometimes accessed through university training facilities or special consideration by dentists in their billings. Low income people pay lower rates for transportation by choosing the most affordable option - walking instead of using public transit, using public transit instead of driving a car, or driving lower priced cars rather than more expensive cars. As noted in my Report, the "worst case scenario" for low income people who rely on accessing the most affordable options is a public monopoly service provider of a basic necessity, where no other choices are available, and where no lower rates are available for low income households. In this situation, the need for adjusted rates to meet the unique needs of low income households is particularly important.

34. *Do you have any knowledge what low-income Nova Scotians pay for electricity? If yes, what do they pay? When did you obtain that information? What is the source of that information? If documentary, provide a copy.*

I have not been provided with any data on expenditure on electricity among low income households in Nova Scotia.

35. *Do you have any knowledge of the portion of their income that low-income Nova Scotians spend on electricity? If yes, what portion? When did you obtain that information? What is the source of that information? If documentary, provide a copy.*

I was not asked to assess the portion of income spent by low-income Nova Scotians on electricity for the purposes of this Report, and I have not done so.

36. *What knowledge do you have about how utility rates are determined? When did you obtain that knowledge? From what source(s) did you obtain that knowledge? If documentary, provide a copy of documents.*

My understanding is that the Nova Scotia Utility and Review Board has jurisdiction to set rates with respect to public utilities within Nova Scotia, but I have not examined the Board's rate determination procedures in any detail.

37. *Is there any other information and documentation obtained by you or provided to you in relation to this matter and/or your testimony not referred to in your testimony or answers to these questions? Advise of information and provide a copy of documentation.*

No other documentation has been provided to me in relation to this matter, and I have

Appendices

- 1) Email from Vince Caldherhead re. Database Search and accompanying documents.
- 2) Social Sciences and Humanities Research Council Community University Research Alliance: Mid-Term Review
- 3) Social Assistance Report 2005
- 4) Brenda Thompson et al, *Single Mothers Survival Guide*
- 5) *R.v. Edmund Morris*, [1988] N.S.J. No. 383.

- 6) Hansard, Legislature of Nova Scotia, Fifty-sixth General Assembly, Third Session, April 24, 1995, 4:00 p.m.
- 7)