

BEFORE THE
NOVA SCOTIA UTILITY AND REVIEW BOARD

AFFORDABLE ENERGY COALITION)	
AS WELL DENISE BOULTER <i>et al.</i>)	
)	
vs.)	Docket No. P-886
)	
NOVA SCOTIA POWER, INC. <i>et al.</i>)	

Evidence

of

Bruce Porter

On Behalf of:

Affordable Energy Coalition (AEC)
Halifax, Nova Scotia as well as Denise Boulter *et al.*

Counsel:

Vincent Calderhead
Nova Scotia Legal Aid

April 23, 2007

1. I am a consultant, researcher and advocate in the area of human rights, housing and poverty. Three of my particular areas of expertise are:

i) the analysis of discriminatory attitudes and prejudice against people living in poverty;

ii) the assessment of dignity and security interests of poor people in relation to housing and related services; and

iii) the assessment of the impact of particular policies on poor people.

2. In Part I of this statement I outline my relevant expertise and experience. In Part II, I draw on this experience and expertise to describe prevalent patterns of negative stereotyping of and the nature and extent of discrimination against the poor. I describe ways in which discriminatory patterns of stereotyping and stigmatization of the poor has undermined important measures to address their financial needs by imputing moral failures to poor people, blaming systemic poverty on affected individuals in a process of “scapegoating”, and encouraging a hostile, punitive or “get tough” approach to poverty, justified as making poor people “pay their own way”.

3. In Part III, I explain that it is now widely recognized in Canada that the problem of widespread discrimination against poor people requires legal remedies, including remedies under human rights legislation. I explain that protection from discrimination of this sort requires and includes not only protection from discriminatory differential treatment, such as refusals to rent to or provide utilities to poor people, but also to discriminatory failure to address the unique needs and circumstances of poor people, by

adjusting or waiving requirements, factors or qualifications which deny poor people access to housing, employment or essential services.

4. In the final section, I consider the issue of the setting of utilities rates from the standpoint of discriminatory patterns of behaviour toward the poor. I explain and justify my opinion that implementing lower utilities rates for impoverished households is a reasonable response to the unique circumstances of this group and the interest at stake. I explain that a prohibition of differential rates or a refusal to accommodate the needs of impoverished households constitutes an unreasonable failure to address the disadvantaged circumstances of this group and to protect its fundamental dignity and security interests. I conclude that a refusal to accommodate the needs of impoverished households in this respect conforms with prevalent patterns of discrimination against the poor.

PART I: QUALIFICATIONS

5. My academic and employment experience is outlined in my *Curriculum Vitae*, attached as Appendix A. From 1987 until September 2002, I was the Executive Director of the Centre for Equality Rights in Accommodation (CERA), a charitable non-profit organization with offices in Toronto and Ottawa. Under my direction and supervision, CERA staff, including both lawyers and community legal workers, provided advice and representation in the area of human rights in housing, engaged in research on issues of discrimination and human rights, ran programs aimed at preventing homelessness,

provided legal and community education in human rights, and worked with non-governmental organizations (NGOs) and governments in other countries to promote human rights, particularly the human right to housing.

6. The vast majority of those reporting discrimination to CERA were low income households. As the Executive Director of CERA, I reviewed most human rights complaints filed by CERA staff and regularly consulted with case workers about cases of alleged discrimination which had been reported to them. I also carried a number of cases myself, including representing claimants before human rights tribunals in the major systemic cases taken forward by CERA.

7. I engaged in extensive research during these years on discrimination in housing against low income households and on causes of evictions and homelessness. For example, I worked with Professor Michael Ornstein, a statistical expert at York University, in analyzing available data on income, household rent, apartment turnovers and utilities costs to determine the effect of various equality seeking characteristics on the amount of rent and utilities paid by tenants renting apartments. At CERA we also arranged through a Freedom of Information Request to access Rental Housing Tribunal data on all terminations of tenancy in Ontario, so as to better understand the reasons for evictions and the groups affected. I have analysed this data in different contexts, including for the preparation of a special research report for the Toronto Mayor's Homelessness Action Task Force and another report prepared for the City of Toronto, on possible measures to prevent evictions.

8. In October, 2002, I left CERA to pursue more independent research, to help establish a new non-profit organization focusing on social rights, to work on systemic human rights and poverty issues and to devote more time to international human rights work, both in Canada and internationally.

9. I am presently the Director of the Social Rights Advocacy Centre and the Co-Director, along with Professor Martha Jackman of the University of Ottawa, of a five-year Social Sciences and Humanities Research Council research project into social rights accountability in Canada. The research is being conducted by a consortium involving five universities and four non-governmental organizations across Canada and includes research into improving mechanisms for the protection and enforcement of social rights such as the right to housing. A recent mid-term peer review of the research found that it was among the highest quality that had been reviewed.

10. Since 1994, I have also acted as Co-ordinator of the Charter Committee on Poverty Issues (CCPI), a coalition of advocates, legal experts and low income people formed to provide an effective voice for poor people in Canada before courts, tribunals and human rights bodies, both within Canada and in international human rights fora. I have conducted extensive research and case development for CCPI on poor peoples' rights under the *Charter*, other Canadian law and under international human rights law. I have co-ordinated research for CCPI's interventions in a number of important cases, including 11 cases before the Supreme Court of Canada.

11. I continue to research and publish work on poverty, housing and human rights. For example, publications in the last year include an article on historical expectations associated with section 15 of the *Charter* in the *Supreme Court Law Review*, a co-authored chapter on the justiciability of social and economic rights under the Canadian Charter for a forthcoming book published by Cambridge University Press, and a chapter on human rights and discrimination against poor people in Canada, entitled "Claiming Adjudicative Space: Social Rights, Equality and Citizenship" for a book to be published next month by UBC Press. Other recent publications are listed in my *Curriculum Vitae*.

12. I have been invited to speak as an expert on human rights, housing and poverty issues by, among others, the U.N. High Commissioner on Human Rights, the South African Constitutional Assembly, the United Nations Centre for Human Settlements, the French Ministry of Foreign Affairs, the Committee for the Administration of Justice in Northern Ireland, and a number of Law Faculties including the University of Barcelona, Columbia University, Northeastern Law School, Georgetown University and Suffolk University.

13. I have been retained by the National Judicial Institute as a keynote speaker on poverty issues at meetings of judges in Nova Scotia, New Brunswick, Alberta, and Ontario. I also addressed a meeting of judges and lawyers from Japan, China, Mongolia and the Republic of Korea at a meeting in Ulaan Baatar, Mongolia organized by the

Office of the U.N. High Commission of Human Rights and the International Commission of Jurists. Other recent speeches and presentations are listed in my *Curriculum Vitae*.

14. I have been qualified as an expert before a number of tribunals and courts to give opinion evidence on the nature of discrimination against poor people and the effect on poor people of particular policies and regulations. For example, I provided expert evidence on discrimination against social assistance recipients in *Falkiner v. Ontario*. In that case, the Court of Appeal for Ontario found that receipt of social assistance is an analogous ground of discrimination under section 15 of the *Charter*. I was qualified as an expert and provided evidence about prosecution and sentencing patterns for welfare fraud compared to other types of fraud in the Coroner's Inquest into the death of Kimberly Rogers (a pregnant woman who died while under house arrest for welfare fraud) and provided similar expert evidence in support of a *Charter* challenge to the automatic lifetime ban from welfare upon conviction of welfare fraud in Ontario in *Broomer et al. v. Ontario*. The recommendations of the Jury in the Kimberly Rogers Inquest included a recommendation that the automatic lifetime ban from welfare be rescinded. This recommendation was subsequently implemented by the Ontario Government, and the *Broomer* case was settled.

15. I provided evidence with respect to prevalent discriminatory attitudes toward the poor and the homeless in *R. v. Clarke et al.* in the context of challenges for cause in jury selection. In that case, Justice Ferrier stated that he relied primarily on my evidence and expertise in concluding "that there is widespread prejudice against the poor and the

homeless” and that “this bias could incline a juror to a certain party or conclusion in a manner that is unfair.”¹

PART II: POVERTY AS A GROUND OF DISCRIMINATION

i) Discrimination Because of Poverty is a Distinct and Widespread Form of Discrimination, Similar in Nature to other Prohibited Forms of Discrimination

16. Though it intersects with other grounds of discrimination, as will be described below, discrimination because of poverty is a distinct form of prejudice and discrimination, similar in nature to other forms of discrimination such as discrimination because of race, citizenship, sex or disability.

17. Discrimination on the ground of poverty is the most common form of discrimination in housing. Since CERA began its work in 1987, the trend toward discrimination against the poor has been on the increase. Receipt of public assistance was the most common form of prohibited discrimination reported by callers into CERA during my fifteen years there, and this pattern has continued since I left.

18. Many instances of discrimination against poor people, in fact, are disturbingly reminiscent of the most destructive forms of racial discrimination. Even invidious theories of the genetic inferiority are applied to this group. An example of this in Nova Scotia was seen in a successful complaint filed against a police officer who, at a

¹ *R. v. Clarke*, [2003] O.J. No. 3883 at para. 18 (Sup. Ct.) (QL).

community forum on drug abuse, stated that parents on welfare are “dipping into a limited gene pool” and ought to be on birth control.²

19. Discriminatory notions that low income people should not have children because they are inferior parents and their children will create social burdens or social problems are common. A 1999 article in the *Toronto Sun* typified this attitude, in characterizing single mothers as “impossibly selfish” for entering parenthood “single, as a lark.”³

Similarly, a lead editorial in *The Globe and Mail* on strategies to address child poverty by William Thorsell asserted that “children in poor families have the parental deck stacked against them” and recommended investing in programs to improve on the parenting skills of people living in poverty as a key component of any attempt to address child poverty.⁴

20. As with discrimination against other groups, discrimination against poor people encourages false generalizations about members of the group to accentuate imputed negative characteristics. Social assistance recipients, the homeless and other poor people, for example, are often characterized as able-bodied men who are idle at the tax-payers' expense. In fact, the majority of those relying on social assistance or who are homeless are women, children and persons with disabilities.

21. Poor people are often characterized as being irresponsible with money when in fact they must be extremely conscientious and careful in budgeting in order to survive.

²*People on Welfare for Equal Rights v. Constable Michael Spurr* (8 October 1991) (Nova Scotia Police Review Board) at 4-5 [on file with author].

³ Christine Blizzard “Breaking the Poverty Cycle” *The Toronto Sun*, November 28, 1999.

⁴ *Globe and Mail*, November 30, 1996.

Low income women report to me that higher income shoppers will scrutinize their shopping cart and lecture them on cost-savings strategies when, in fact, most shoppers would find it impossible to feed, provide housing and meet all other costs of a family on social assistance rates.

22. Low income tenants are widely believed by landlords and others to pose a greater risk of default on rent. Instead of allowing low income tenants to choose the most affordable and appropriate accommodation they can find, landlords impose their own “affordability” guidelines that are completely unrealistic for poor people. A common rule used to assess risk is to determine whether the tenant would be paying more than 30% of income toward rent – a ratio which is impossible for a social assistance recipient or most low wage earners to achieve. In fact, studies have shown no difference in the risk of default associated with low income tenants who must pay more than 30% of income toward rent.

23. Despite enduring severe hardship because of inadequate income and high rent, poor households make a priority of paying their rent, sometimes going into debt in other areas, in order to avoid homelessness. They know that once they default on rent, they will find it virtually impossible to find another apartment because they will have a negative landlord reference and a record of rent default on their credit. Yet they face widespread discrimination in the housing market because of the false association of rental default and poverty, and are forced into over-priced accommodation because of the widespread imposition of inappropriate affordability criteria by landlords. Rather than

recognizing and accommodating the survival strategies of poor people, they are denied housing on the basis of false stereotypes.

24. Similarly, attitudes toward poor people who become homeless are rarely informed by an adequate understanding of the plight of homeless people. Rather than understanding and addressing systemic causes of homelessness, such as the growing gap between income of low wage earners or social assistance recipients and the cost of rent and utilities, discriminatory attitudes tend to blame the homeless for their plight and promote the stereotype that homelessness is a lifestyle choice among young people. The result is that the virtually insurmountable barriers facing those who are young and poor in need of adequate housing are left unaddressed. A young single person on social assistance is not provided with an income that is sufficient to access housing in any province in Canada. Even if a young person is able to find work, prospective landlords of more affordable or desirable apartments usually require a higher level of income, a reference from a previous landlord, a security deposit and a longer term employment reference. Young people are simply unable to meet these requirements.

25. Low income parents are widely assumed, even in progressive social policy circles, to lack parenting skills. A common negative stereotype applied to low income single mothers is that problems that children living in poverty may encounter in schools are largely related to inadequate parenting by single mothers at home. The Ontario government retained Angus Reid to conduct a poll in 1999 to test public reaction to the

idea of forcing parents on social assistance to attend a parenting course and sixty-seven per cent of respondents agreed with the idea.⁵

26. While it is perhaps reasonable to assume that single mothers relying on social assistance, given the many challenges they face, might not measure up to every middle class standard of good parenting, the reality is that they often manage to surpass general standards in spite of the barriers they face. A special tabulation from Statistics Canada's National Longitudinal Study on Children and Youth revealed that an astonishing 94.4 per cent of single mothers in receipt of social assistance ensured that their children were read to once a week or more, slightly *higher* than the average for all two-parent households.⁶ Given the lower education and literacy levels of social assistance recipients, these data suggest incredible determination on the part of single mothers living in poverty to overcome barriers and to provide their children with every opportunity possible. The data conform with my own experience of the extraordinary dedication of this group of parents to providing adequately for their children, and the way in which they are victims of false, negative stereotypes about their value as parents.

⁵Tom Blackwell, "Even Tougher Welfare Rules on Back Burner: 1999 Ontario Poll Shows 67% Favoured Parenting Classes for Recipients," *Ottawa Citizen* (25 July 2000) A3.

⁶Human Resources Development Canada, Strategic Policy, Applied Research Branch, Special Tabulation [on file with author]. Because of the longitudinal nature of this study, it is not possible to assess the statistical significance of these data, but it is possible to conclude that there is no significant difference between single mothers on social assistance compared to all couples. I appreciate the assistance of Michael Ornstein, Director of the Institute of Social Research at York University, in interpreting the data. See also J. Douglas Willms, "A Study of Vulnerable Children," in J. Douglas Willms, ed., *Vulnerable Children: Findings from Canada's National Longitudinal Survey of Children and Youth* (Edmonton: University of Alberta Press, 2002).

iii) Stigmatization and Scapegoating: Attributing Poverty to Individual Moral Failures Rather than Addressing Its Systemic Causes

27. As with discrimination on other grounds, discriminatory treatment of poor people constitutes a fundamental attack on the dignity of the group. It seeks to achieve political or social cohesion and consensus among the more advantaged in society by imputing negative characteristics and blame on the disadvantaged group. Discrimination works against an understanding of diversity and of complex social and economic inequality and in this sense, constitutes a serious impediment to sound public policy.

28. Stigmatization is a common feature of discrimination against low income individuals and households. For example, poor people report that they are stigmatized when they live in public housing projects or in specifically allocated units in mixed income housing projects. Proposed housing developments which are targeted to poor people or shelters for homeless people often meet with community resistance. Concerns raised include all of those raised in racially discriminatory neighbourhood reactions in the past – declining property values, increased crime and violence, fear of the effect of low income children in the schools and concerns about “ghettoization”.

29. Stigmatization and discrimination against the poor relies on imputing inadequacies or moral failures to poor people as an explanation of their poverty rather than recognizing poverty as a failure of larger economic and political systems beyond the control of affected individuals. A memorandum prepared for the federal government in 1997 by Frank Graves of Ekos Research on public responses to a proposed initiative to

address child poverty accurately described the attitudes of the more affluent toward those relying on social assistance. The memorandum warned government officials that:

Welfare recipients are seen in unremittingly negative terms by the economically secure. Vivid stereotypes (bingo, booze, etc.) reveal a range of images of SARs [social assistance recipients] from indolent and feeble to instrumental abusers of the system. Few seem to reconcile these hostile images of SARs as authors of their own misfortune with a parallel consensus that endemic structural unemployment will be a fixed feature of the new economy.⁷

30. This discriminatory tendency to characterize the poor as “abusers of the system” and as victims of their own moral failures rose dramatically in response to the rise in structural unemployment during the recession of the early 1990s. Food banks tracking the treatment of poverty issues in the media documented a dramatic shift from sympathy towards intolerance following the 1992 recession, precisely at the time when one would expect greater sympathy for the plight of the poor, and when it would be most obvious that poverty is caused not by moral failures but by larger structural changes and governmental policy choices.⁸

31. The rise in discriminatory attitudes toward the poor was noted by politicians and resulted in major policy changes. Premier Ralph Klein of Alberta noted in March 1993 that: “There is a public mood that we have to get really tough on those who abuse the

⁷ *Ibid.* See also Ekos Research Associates Inc., *Memorandum Concerning Child Poverty Focus Groups: Revised Conclusions* (4 February 1997) [on file with author, secured through a Freedom of Information request].

⁸ A 1991 Gallup poll found that eighty-four per cent of the public believed hunger in Toronto to be a “very serious or quite serious” problem. In 1993, after two years of increasing unemployment, economic hardship, and dramatic rises in the number of households relying on food banks, this number had dropped to fifty-five per cent: *Kearney v. Bramalea Ltd.* (1998), 34 C.H.R.R. D/1, [1998] O.H.R.B.I.D. No. 21 (QL) (Expert Report, Gerard Kennedy, “Coping Strategies of People Using Food Banks” (1994)).

system.”⁹ Six months later, Premier Michael Harcourt of British Columbia told the media: “We want to clean the cheats and deadbeats off the welfare rolls.”¹⁰ Premier Harcourt later expressed regret about these comments, acknowledging that welfare fraud was no more prevalent than other types of fraud, but explained that coverage of alleged welfare fraud in the media had become “relentless”: “Every day, a camera in your face about this welfare case or that welfare case.”¹¹ A year later, Prime Minister Jean Chrétien spoke of welfare recipients and the unemployed in a speech to an affluent audience, stating: “it is better to have them at 50 per cent productivity than to be sitting at home, drinking beer, at zero per cent productivity.”¹²

32. Similarly, Mike Harris’s 1995 election campaign in Ontario centred on promises of dramatic cuts to welfare rates and a “get tough” policy on “welfare cheats.”¹³ After his government was elected, when welfare recipients and health experts protested the elimination of a \$37 monthly pregnancy benefit for expectant mothers, citing reliable evidence of the difficulty of maintaining a nutritious diet on welfare benefits,¹⁴ Premier Harris responded that “what we’re doing is making sure that those dollars don’t go to beer.”¹⁵

⁹Todd Kimberly, “Reforms Open to Change - Klein,” *Calgary Herald* (28 March 1993) 1.

¹⁰Quoted in Judy Rebick, “Kick ‘Em Again: Welfare/Poverty,” online: Community Action: Person to Person <<http://www.alternatives.com/capp/v-rebick.htm>> (date accessed: 9 August 2004).

¹¹Jean Swanson, *Poor-Bashing: The Politics of Exclusion* (Toronto: Between the Lines, 2001) 100.

¹²Geoffrey York, “Foes Jump on Remark by Chretien,” *The Globe and Mail* (22 April 1994) A4.

¹³Thomas Walkom, “There is Something Going on Among Voters,” *Toronto Star* (27 May 1995) B1; “The Three Populist Feelings that Put Harris in Power,” *Toronto Star* (30 September 1995) B4.

¹⁴Nicholas Vozoris, Barbara Davis, and Valerie Tarasuk, “The Affordability of a Nutritious Diet for Households on Welfare in Toronto” (2002) 93 *Canadian Journal of Public Health* 36.

¹⁵Margaret Philp and Richard Mackie, “Beer Gibe Earns Harris a Blast: Ontario Premier Says Pregnancy Nutrition Allowance was Scrapped so ‘Those Dollars Don’t go to Beer,’” *The Globe and Mail* (17 April 1998) A1. For an analysis of the implications of this remark, see Janet E. Mosher, “Managing the

33. Unlike other government expenditures, and in defiance of data to the contrary, governments and the media responded to and exacerbated the rise in discriminatory attitudes toward the poor by increasingly characterizing financial assistance as benefiting “cheats” or “deadbeats”, who, in the words of the Minister of Community and Social Services in Ontario are “stealing from the hard-working Ontario taxpayers who foot the bill.”¹⁶ The extent of welfare fraud was commonly exaggerated in a manner which tended to stigmatize the large number of people relying on assistance in the mid-1990s.

34. Most provinces, including Nova Scotia, witnessed major initiatives to “crack down” on “welfare cheats” and these were often applauded in the media.¹⁷ Estimations of the extent of fraud and the gains from crackdowns were irresponsibly exaggerated. The Nova Scotia legislature was told that by hiring eight staff to act as “fraud cops” the government would “pry \$11 million from the fingers of welfare cheats.”¹⁸ In Ontario, the Harris Government set up a website with a “Welfare Cheat Sheet” to advertise its “tough crackdown” on welfare fraud. The website claimed that over \$58 million had been recovered “in overpayments”. What it did not disclose was the fact that “overpayments” were predominantly due to administrative and clerical errors, many of which also resulted

Disentitlement of Women: Glorified Markets, the Idealized Family, and the Undeserving Other,” in Sheila M. Neysmith, ed., *Restructuring Caring Labour: Discourse, State Practice, and Everyday Life* (Toronto: Oxford University Press, 2000) 30.

¹⁶ *Ibid.*

¹⁷ Stephen Bornais, “Hotliners cheer hunt for cheats” *The Daily News (Halifax)* Wednesday, October 9, 1996, p. 9.

¹⁸ Hansard, Legislature of Nova Scotia, Fifty-sixth General Assembly, Third Session, April 24, 1995, 4:00 p.m.

in under-payment. This was only revealed subsequently, in a Report from the provincial Auditor General.¹⁹

35. The Maritime provinces have themselves been the collective victims of negative stereotyping related to reliance on financial assistance. An example is when Stephen Harper, as the leader of the Alliance Party, describe an alleged “culture of defeatism” related to economic dependency in the Maritime provinces. Nevertheless, within these provinces, those who are poor and forced to rely on social assistance are also stigmatized by the more affluent. A Nova Scotian woman with a middle class background who found herself relying on welfare for a time was motivated to produce a documentary on the stigmatization of the poor. She noted: ““It's definitely a prejudice. If you're raised with middle-class values you think you are better than 'those people.' ... I no longer have an illusion that I am any better. And that's a good thing.”²⁰

iv) Political Marginalization: Poor People as ‘Non-Citizens’

36. Government-endorsed promotion of discrimination and scapegoating of the poor constitutes a profound attack on dignity and equality that operates at all levels of political

¹⁹Office of the Provincial Auditor of Ontario, *2002 Annual Report of the Provincial Auditor of Ontario* (Toronto: Queen’s Printer for Ontario, 2002), s. 3.01, online: Office of the Provincial Auditor of Ontario <<http://www.auditor.on.ca/english/reports/en02/en02fm.htm>> “Between May and December of 2001 [it] inexplicably produced 7,110 discretionary benefit payments totalling \$1.2 million to recipients who were ineligible” (*ibid.* at 40). A review of 148 cases found that “in one month alone,” social assistance workers had erroneously paid beneficiaries more than \$123,457 for which they were not eligible (*ibid.*). The Auditor attributed these errors to, among other things, administrative and computer errors, poor file keeping leading to inadequate screening of ineligible applicants, lack of internal control procedures, and overwork among staff.

²⁰ David Swick, “Poorly portrayed: There's more to poverty than what's in the media” *The Daily News* (Halifax) Monday, March 13, 2000, p. 2.

and social life. The exaggeration of the extent of welfare fraud and the enlisting of “taxpayers” to police welfare has changed the way communities relate to those in need. Landlords and neighbours are encouraged to monitor the private lives of single mothers on assistance and to report how frequently a lover may have stayed overnight.²¹ Neighbours are able to precipitate the withholding of desperately needed benefits until a report has been investigated, rendering recipients unable to pay rent or to provide for other basic requirements until they can prove themselves innocent of spurious accusations. Basic survival strategies of low-income households—such as borrowing money from a friend to meet a rent payment, eating regularly at the home of friends or family, or relying on a sister to feed one's children several times a month—can be the basis for allegations of undeclared income and fraud.²²

37. Measures of financial assistance or subsidy that are necessary to ensure dignity and security to those living in poverty thus become sources of shame, guilt and exclusion. Poor people find themselves portrayed in the media or treated by politicians as non-citizens, described as a ‘problem’ for governments to address on behalf of voters and tax-

²¹ The Ministry of Community and Social Services reported in 1997 that 41 per cent of terminations or reductions of benefits from “snitch line” reports related to an undeclared spouse: Janet Mosher *et al.*, *Walking on Eggshells: Abused Women’s Experiences of Ontario’s Welfare System* (5 April 2004) at 51, online: DisAbleD Women’s Network Ontario <<http://dawn.thot.net/abuse.html>> (date accessed: 9 August 2004). The definition of “spouse” used by the Ministry was found to be discriminatory in *Falkiner v. Ontario (Ministry of Community and Social Services)* (2002), 59 O.R. (3d) 481 (C.A.), leave to appeal to S.C.C. granted, [2002] S.C.C.A. No. 297 (QL). The appeal, which had been filed during the tenure of the Conservative government, was abandoned by the Attorney General of Ontario after the election of a Liberal government: “Ontario drops welfare appeal to Supreme Court, single moms win battle” *Canadian Press* (2 September 2004) (QL).

²² For analysis of the criminalization of survival strategies and the threat of fraud allegations, see Margaret Jane Little, *No Car, No Radio, No Liquor Permit: The Moral Regulation of Single Mothers in Ontario, 1920-1997* (Toronto: Oxford University Press, 1998); Mosher, “Disentitlement,” *supra* note 44; Janet Mosher, “The Shrinking of the Public and Private Spaces of the Poor,” in Joe Hermer and Janet Mosher, eds, *Disorderly People: Law and the Politics of Exclusion in Ontario* (Halifax: Fernwood, 2002) 41; Mosher *et al.*, *supra* note 50.

paying citizens rather than as a group of citizens whose needs and wishes ought to receive equal consideration and respect. Programs to address poverty which, historically in Canada, were viewed as a means of ensuring basic 'entitlements' of social citizenship are increasingly seen as a form of charity, contingent on the largesse of the 'taxpayer' and the public assessment of the moral deservedness of the recipients. Poor people have thus, in a fundamental sense, lost their equal 'citizenship' status.

38. While politicians tend to hold themselves accountable to the healthcare consumer in the area of healthcare or to parents and students in the education system, public policy in relation to poverty tends to be viewed more from the perspective of the rights of the more affluent than the rights of those citizens who find themselves in need of assistance or of social programs. Thus, welfare reform in Nova Scotia was increasingly promoted as meeting the demands of business people and "taxpayers", rather than as better meeting the needs of the poor. As noted by Brian O'Neill writing in the *Chronicle-Herald*, when Premier Hamm announced the 2000 welfare reforms to a business audience, focusing on the need to keep social assistance income lower than employment income:

When governments want to make or change policies that affect business, they consult with business. When governments want to make or change policies that affect the poor, they consult with . . . business. So it was within this logical framework that Premier John Hamm delivered his "state of the province" address to the Metropolitan Halifax Chamber of Commerce on Nov. 1.²³

²³Brian O'Neill, The politics of poor-bashing in Nova Scotia, *The Chronicle-Herald Opinion*, Thursday, November 16, 2000, p. B2.

v) Intersection of Discrimination Because of Poverty with Other Grounds of Discrimination

39. Discrimination against the poor is affected by the demographic make-up of the poor. Economic and social trends such as the feminization of poverty, the breakup of the traditional family, increased poverty among female-led single parent families and among persons with disabilities, youth unemployment, widespread poverty among Aboriginal people, and changing refugee and immigration patterns all inform public attitudes toward those living in poverty. Discriminatory attitudes and stereotypes about the poor frequently provide a more acceptable gloss on invidious discriminatory attitudes toward racialized minorities, youth, Aboriginal people, people with disabilities and women with children. Without effective protection from discrimination on the basis of their poverty and disadvantage, members of these groups are likely to find protections from discrimination on other grounds largely ineffective at addressing systemic patterns of exclusion and disadvantage.

40. My experiences at CERA and elsewhere have demonstrated that prejudices and stereotypes about poor people intersect and overlap with other prejudices and discriminatory stereotypes. In part, this is because low income households usually have a number of intersecting characteristics linked to discrimination. The Report on Child Poverty in Nova Scotia, for example, shows that while the over-all poverty rate for children in Nova Scotia was 18% based on 2001 Statistics Canada Low Income Cut-Offs, more than half of children of female lone parent families were poor, more than half of

children of new immigrants were poor, 42% of children in visible minority families and 38% of children of parents with disabilities were poor.²⁴

41. Not only do low income households face discrimination because of their income, they are also the most likely to face discrimination on other grounds. Racialized minorities, people with disabilities, single mothers and youth are subjected to more discrimination on the basis of their race, disability or marital status when they are poor than when they are better off. Members of visible minorities arriving from impoverished countries tend to face more discrimination on the grounds of race, ethnicity and place of origin than those from more prosperous countries. Negative attitudes toward families with children and the rise of ‘adult only’ apartments and communities are strongly tied to the fact that families with children who rent apartments or who choose to purchase condominium apartments rather than single family houses are generally lower income families. Adult only policies in ‘luxury’ condominiums and rental apartments effectively guarantee a higher income “exclusive” community by excluding low income families with children.

²⁴ Raven, P. and Frank, L. (2004) *The Nova Scotia Child Poverty Report Card 2004*. (Halifax: Canadian Centre for Policy Alternatives, 2004) p. 13. Statistics Canada’s Low Income Cut-Offs (LICOs) describe households considered to live in “straightened circumstances.” While Statistics Canada has not proposed that this or any other measure be adopted as a “poverty line” the LICOs are widely used as an indicator of the extent of poverty, and are certainly accepted as an indicator of the relative rate of poverty among different groups. During the course of the recent review of Canada’s compliance with the International Covenant on Economic, Social and Cultural Rights in, Canada reported to the U.N. Committee on Economic Social and Cultural rights that: “While Canada has no official measure of poverty, the Government of Canada typically uses Statistic Canada’s after-tax low-income cut-offs (LICOs) as a proxy.” Canada’s Fifth Periodic Report to the U.N. Committee on Economic, Social and Cultural Rights, E/C. 12/CAN/5 at para. 121.

42. Housing targeting low income households is opposed by neighbourhoods because they believe it will create a “ghetto”. Though it is often unspoken, it is well known that because blacks and immigrants are more likely to be poor, housing for low income people will have a higher proportion of black and immigrant households. Negative stereotypes associated with low income housing feed on negative racial stereotypes and anti-immigrant prejudices, and *vice versa*.

43. A human rights board of inquiry, considering the effect of discrimination on the basis of poverty or income level on racialized minorities and newcomers in Toronto held:

The kind of segregation that results from income based discrimination leads to differentiation in the rental markets into locations of prime rental housing that is occupied primarily by moderate income white residents and poor housing that is occupied by low-income and mostly black residents. Very often these two ‘locations’ are different not so much in terms of the actual rent levels but rather in the quality of housing. The quality of the housing is then confused in public attitudes with the living habits of the residents and increasingly negative images are fostered about low income visible minority tenants. In effect, low income black residents end up paying comparably higher rents for poor quality housing and then pay a serious social price for the negative images created by the locations in which they are forced to live.²⁵

44. Similarly, discriminatory attitudes toward people living in poverty intersect with and exacerbate discrimination against people with disabilities. About one quarter of women with disabilities live in poverty (below Statistics Canada’s low income cut-off). Almost one-third of people with speaking disabilities or learning disabilities live in poverty. People with disabilities living in poverty are likely to be dependent on government programs, so that failure of governments, employers and landlords and other

²⁵ *Sinclair and Newby v Morris A Hunter Investments Limited* (Unreported, Ontario Human Rights Board of Inquiry, Mary Anne McKellar, Decision No 01– 024, 5 November 2001) at 13.

institutions to accommodate needs arising from disabilities, and failures of governments to ensure adequate financial assistance for those with disabilities act in concert to increase the poverty and social isolation of people with disabilities.

vi) Discriminatory Attacks on Programs and Policies Providing Assistance to the Poor

45. Discriminatory stereotypes applied to the poor encourage the notion that assistance to the poor will simply encourage them to be lazy, to drink too much beer, to have too many children, be bad parents, to budget badly, or to make bad choices in life. This kind of logic, based on false, negative stereotypes attributing moral failures to the poor, have had a detrimental effect on public policy in recent years in Canada. Cuts to social programs on which the poor rely and refusals by governments to respond meaningfully to the growing crisis of poverty and homelessness can be directly attributed to the stigmatizing of the poor.

46. The link between negative stereotyping and program cuts is sometimes hidden but at other times quite explicit. The article in the Toronto Sun referred to above, in which single mothers were morally condemned for having children, did not stop at the condemnation of individuals. The author proceeded to programs providing assistance to low income children. Even breakfast programs in school designed to address a growing hunger problem in Canada, the author suggests, should be abolished. “We compound their [single mothers’] folly by telling them not to bother learning how to feed their

children a nutritious breakfast. Don't worry, we say. Send your kids to school and we'll set up a breakfast program.”²⁶

47. Instead of 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 (rather than eliminating a childcare program), providing access to more subsidized housing (rather than eliminating funding for social housing), we have witnessed, in the last 15 years, cuts to all of major social programs and a new focus on programs and policies designed to ‘get tough’ with the poor.

48. The result of the attack on programs providing assistance to the poor has been disastrous. We have seen an unprecedented rise in homelessness and hunger and depth of poverty among the most disadvantaged groups, during years of unprecedented economic growth and prosperity. Emergency provision of food through food banks, virtually unheard of thirty years ago, is now a critical means of survival for three quarters of a million people every month.²⁷ Low income parents are increasingly confronted with the choice, as captured in the title of a recent book on poverty in Canada, of either paying the rent or feeding the kids.²⁸ Inability to afford or obtain adequate housing has become a

²⁶ Christine Blizzard “Breaking the Poverty Cycle” The Toronto Sun, November 28, 1999.

²⁷ Canadian Association of Food Banks, *Hunger Count 2003: A Surplus of Hunger*, Prepared by Lisa Orchard, Rob Penfold & Don Sage (Toronto, October, 2003). Online at <www.cafb-acba.ca/pdfs/other_documents/HC2003_ENG.pdf> The first food bank in Canada opened in 1981 in Edmonton.

²⁸ M. Hurtig, *Pay the Rent or Feed the Kids: The Tragedy and Disgrace of Poverty in Canada* (Toronto: McClelland & Stewart, 1999). For a description of alternative measures of poverty in Canada, see National Council on Welfare, *Income for Living?* (National Council on Welfare: Ottawa, 2003) online at <http://www.newcnbes.net/htmldocument/reportIFL/repIncomeForLiving.htm#_Toc500047801>

significant factor in parents losing or relinquishing custody of their children.²⁹ The consequences of public policy based, at least in part, on the rise of discriminatory stereotypes about the poor, has been disastrous for those living in poverty in Canada.

PART III. Legal Remedies to Discrimination Against Poor People and the Duty to Accommodate Unique Needs

49. Given the prevalence, detrimental effect, and invidious nature of discrimination based on poverty, it is clear that legal remedies to this type of discrimination are necessary if poor people (and disadvantaged groups generally) are to have their dignity and security interests adequately protected.

50. Indeed, all provinces and territories have now provided protection from discrimination because of poverty or receipt of public assistance in human rights legislation. Nova Scotia's *Human Rights Act* prohibits discrimination on the basis of "source of income."

51. Ontario's *Human Rights Code* prohibits discrimination in housing on the ground of "receipt of public assistance." The ground of 'receipt of public assistance' has been recognized by tribunals and courts to include discrimination because of the low level of

²⁹ S. Chau, A. Fitzpatrick, J. D. Hulchanski; B. Leslie and D. Schatia, *One in Five: Housing as a Factor in the Admission of Children into Care. A Joint Research Project by the Children's Aid Society of Toronto and the Faculty of Social Work, University of Toronto*. The study found that inadequate housing or homelessness was a factor in one of five admissions of children into foster care in Toronto.

income received on social assistance.³⁰ Quebec's *Charter of Human Rights and Freedoms* prohibits discrimination because of "social condition" which has been interpreted to prohibit discrimination because of reliance on social assistance as well as discrimination because of poverty or low level of income. Nunavut prohibits discrimination because of "lawful source of income." The Northwest Territories *Human Rights Act* prohibits discrimination because of 'social condition'. Saskatchewan prohibits discrimination because of "receipt of public assistance." Newfoundland prohibits discrimination because of "social origin." Manitoba, Alberta, Prince Edward Island and the Yukon prohibit discrimination because of "source of income". British Columbia's *Residential Tenancy Act* prohibits the denial of rental accommodation on the basis of "lawful source of income." The latter provision has also been interpreted to include protection from refusals of housing based on the level of income.³¹

52. Up until 2005, the *New Brunswick Human Rights Act* remained the only provincial human rights legislation in Canada which did not include a ground related to poverty. An independent review of the *New Brunswick Human Rights Act* by Charles Ferris in 1989 strongly recommended the inclusion of "social condition" as a prohibited ground of discrimination and both the New Brunswick Human Rights Commission and the Canadian Association of Statutory Human Rights Agencies urged that social

³⁰ *Kearney v. Bramalea Ltd* (1998), 34 CHRR D/1 (Ont. Bd. Inq.), upheld in *Shelter Corporation v. Ontario Human Rights Commission* (2001), 143 OAC 54 (Ont. Sup. Ct.).

³¹ *Birchall v. Guardian Properties Ltd.*, 2000 BCHRT 36

condition be added to the Act.³² In 2005 New Brunswick's *Human Rights Act* was amended to include the ground of social condition.³³

53. The *Canadian Human Rights Act* also lacks any form of protection from discrimination because of poverty. It was reviewed by a special review panel chaired by former Supreme Court Justice Gérard La Forest at the request of the Minister of Justice in 2000. The panel was requested to consider, among other things, whether the ground "social condition" should be added to the *Act*. After extensive research and consultation, the panel released a report entitled *Promoting Equality*. The panel reported that it "heard more about poverty than about any other single issue."³⁴ The panel found "ample evidence of widespread discrimination based on characteristics related to social conditions, such as poverty, low education, homelessness and illiteracy."³⁵ The panel concluded: "it is essential to protect the most destitute in Canadian society against discrimination."³⁶

54. All of the aforementioned protections from discrimination because of income or poverty in human rights legislation ensure not only protection from differential treatment on the basis of the identified ground but also guarantee that reasonable positive measures will be taken to accommodate the needs of the identified groups where such measures

³² Charles Ferris, *Towards a Word Family* (1989) available at <http://www.gnb.ca/hrc-cdp/e/ferris2e.htm>; New Brunswick Human Rights Commission, *Thirty-five Years and Looking Forward* (2003) available at <http://www.gnb.ca/hrc-cdp/e/discus1e.htm#grounds>.

³³ *An Act to Amend the Human Rights Act*, S.N.B., c. 3.

³⁴ Canadian Human Rights Act Review Panel, *Promoting Equality: A New Vision* (Ottawa: Department of Justice, 2000), online: Department of Justice Canada <<http://canada.justice.gc.ca/chra/en/>> at 106.

³⁵ *Ibid.* at 107.

³⁶ *Ibid.* at 110.

would not impose an undue hardship. Thus, tribunals have considered whether the costs of relinquishing minimum income or affordability criteria which result in the exclusion of social assistance recipients from rental housing or of waiving the requirement of last month's rent deposit where welfare recipients are unable to provide this would constitute undue hardship. In both cases, tribunals and court concluded that these measures were reasonable and therefore legally required in order to ensure access to accommodation for social assistance recipients.³⁷ Thus, while equality protections may sometimes require 'same treatment' they may also require differential treatment where this is required in order to ensure equal access to housing, employment or services.

55. There is now increasing recognition of corporate responsibility, particularly in the area of international corporations, to ensure access to essential products and services for low income people through differential pricing as a component of broader human rights obligations. Pharmaceutical companies, in particular, have been urged by international bodies to adjust the pricing of essential medications so as to ensure access in developing countries.

PART IV: THE ACCOMMODATION OF THE NEEDS OF POOR PEOPLE IN THE SETTING OF UTILITIES RATES

56. The duty to accommodate the needs of poor people or social assistance recipients under human rights legislation extends to all levels of government and to housing providers, service providers and employers. Poor people, like other disadvantaged groups facing discrimination, require not only broad measures of financial assistance

³⁷ *Kearney, supra. Garbett v. Fisher*, [1996] O.H.R.B.I.D. No. 12 (Ontario Board of Inquiry) at para. 35.

from governments to meet the cost of housing, food, utilities, education costs, recreation, communications, culture and other components of a dignified life for themselves and their children. They also rely on measures of accommodation by other actors, including housing providers, service providers and employers.

57. So, for example, it is important that low income households may rely not only on direct financial assistance from governments in the form of social assistance or employment insurance. They also rely on the ability to access housing at a lower cost, whether through subsidized units in the public or non-profit housing sectors, or through private landlords receiving rent supplements in order to allow low income households to pay lower rents. They rely on day care fees being adjusted based on income. Access to sports for low income children often relies on measures adopted by sports organizations to allow children of low income families to pay lower rates or to have fees waived. Children of low income families may only be able to participate in school trips if fees or other costs are waived.

58. Low income people also rely on market mechanisms of differential pricing to access necessities at a lower cost than more affluent households. Long distance telephone calls may be restricted in low income households to weekends or after midnight when fees are lower. Low income people are prepared to wait longer in line, shop at different stores, or purchase stale items that are reduced in price in order to get groceries at cheaper prices than the more affluent. They purchase used clothing rather than new, or buy toys at the Goodwill Store rather than purchasing new ones. These

survival strategies rely on finding ways to access the same or similar items as are purchased by more affluent households, but at lower prices.

59. A requirement that all consumers pay the same rate for utilities and prohibiting any financial accommodation of the circumstances of low income households effectively deprives low income people of any opportunity to access utilities at a price that is affordable to them. Unlike in most other spheres of their lives, they cannot apply for a subsidy, wait for a sale, travel to a more affordable outlet and line up longer, search for a lower quality service at a more affordable price, or access a non-profit provider providing a rate geared to income. Inflexible pricing by a monopolistic provider presents the worst possible scenario for low income people – an inflexible price with no opportunity to ensure affordability.

60. The only possibility to adjust the expense in this area is to control usage. Apart from reasonable measures of conservation that are now promoted among all households, restrictions on usage are likely to affect basic dignity and health by, for example, impacting on the ability to bathe or to adequately heat one's home, read at night or operate assistive devices for persons with disabilities.

61. While the imposition of a universal rate on all consumers may appear facially neutral, it in fact conforms with a growing pattern of discrimination against the poor. Objections to differential pricing may be based on the idea that affluent customers should not have to “subsidize” the utilities of low income households, that low income

households should have to “pay their own way”, or the concern that providing services at a subsidized rate will simply encourage waste or “bad budgeting”.

62. As noted above, the insistence on removing or denying important assistance to poor people because of stereotypes about the need to “get tough” with them and make them “pay their own way” are key markers of discriminatory attitudes toward the poor. A non-discriminatory approach to this issue begins with an understanding and concerns with the plight of people who are unable to afford utilities and addresses the exclusion of a disadvantaged group from this kind of necessity as a matter of entitlement to equal dignity and security.

63. Disadvantaged groups rely for dignity and security on an approach to differential pricing that is based on the idea that services, housing and employment must be structured so as not to exclude disadvantaged groups. Inclusion and accommodation of needs should be considered as an entitlement, not a form of charity. For example, when a landlord is required to provide a wheelchair ramp for a person with a disability, the cost is retrieved from the rent of all tenants. Some might argue that the person with the disability ought to “pay his or her own way”. An equality rights approach, however, encourages the view that equal access to apartments is an entitlement, around which the rental of apartments and the setting of rent must be structured.

64. Corporate actors and service providers often provide differential pricing and ensure improved access by disadvantaged groups as a natural marketing strategy.

Telephone providers, for example, may offer Sunday service at a reduced rate despite the fact that labour and equipment costs are actually higher on Sunday, because this is an effective way of providing lower rate service to families – effectively subsidized by businesses that pay higher rates. These are simply seen as reasonable measures, often even profitable from the standpoint of the provider, to provide lower rates to those who need to access them. They are critical to the ability of low income households to meet basic needs.

65. Equality rights of poor people must be built into everyday life. Schools need to consider it unacceptable for a student to miss sports activities or a school trip because of poverty, as well as because of disability or other barriers. Sports associations need to ensure that low income children are able to participate as a matter of entitlement. Pharmaceutical companies need to consider how they can make drugs available to low income households. It is important that equality be a shared responsibility in society, promoted and implemented at every level.

66. In considering attitudes toward differential pricing of utilities, it is important to recognize that there are innumerable subsidies available to higher income households that are denied to low income households. Higher income households, for example, receive a grant from the federal government when they put money aside for their children's education. Low income families are unable to put money aside for an education fund, and hence receive nothing. Yet we do not tend to hear many objections to the fact that taxpayers are 'footing the bill' or subsidizing children of more affluent

households to go to university, while low income students must work for every dollar that they pay for university. In this sense, we must ensure that we do not apply a differential standard of scrutiny to subsidies on which poor households rely in comparison to those that are available to higher income households.

67. From the standpoint of discrimination against poor people, lower utilities rates for low income households are the equivalent of a wheelchair ramp into housing for a wheelchair user. Accommodation of unique needs can make the difference between being housed and being homeless. The interest at stake is immense.

68. A regulation prohibiting the accommodation of the needs of low income households through lower rates is, in my view, an unreasonable refusal to give equal consideration and respect to the needs of poor people. The notion that poor people must “pay their way” without any assistance or accommodation of their needs, even at the cost of losing housing or access to a basic service, is a discriminatory notion based on stereotypes and prejudices about the poor and denying poor people equal dignity and respect.

A handwritten signature in black ink that reads "J. Bruce Porter". The signature is written in a cursive, flowing style.

Bruce Porter

April 22, 2007