

Title: "Social Policy and Social Rights in Canada: Historical Reflections"

Author: Bruce Porter

Published in: *The Philanthropist*, [Journal Poverty and Human Rights in Canada](#)

Date: June 20, 2016

Original Link: <http://thephilanthropist.ca/2016/06/social-policy-and-social-rights-in-canada-historical-reflections/>

Date of PDF Download: June 21, 2016

Social Policy and Social Rights in Canada: Historical Reflections

By Bruce Porter

This article is the fourth in a [series](#) on Poverty and Human Rights in Canada.

SUMMARY: This article traces Canada's legislative progress following the federal government's ratification of the two Covenants that codified the Universal Declaration of Human Rights 40 years ago – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The author urges the new federal government to restore its commitment to these two Covenants and the re-integration of social rights within legislation and programs.

RÉSUMÉ: Cet article retrace les progrès accomplis au Canada sur le plan législatif après la ratification, par le gouvernement fédéral, des deux pactes qui ont codifié la Déclaration universelle des droits de l'homme, il y a 40 ans : le Pacte international relatif aux droits civils et politiques, et le Pacte international relatif aux droits économiques, sociaux et culturels. L'auteur presse le nouveau gouvernement fédéral de réaffirmer son engagement à respecter ces deux pactes et de réintégrer les droits sociaux dans la législation et les programmes.

i. The 40th Anniversary of Canada's Binding Commitment to International Human Rights

May 19, 2016 was the 40th anniversary of Canada's ratification of the two covenants that codified the Universal Declaration of Human Rights (UDHR) – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both covenants were adopted by the UN General Assembly in 1966 and came into force ten years later. Though there have been a number of very important human rights treaties adopted by the UN and ratified by Canada, our historic ratification of the twin covenants which, along with the UDHR make up the International Bill of Human Rights, warrants some celebration. It also calls for some serious reflection on whether Canada has lost sight of its binding commitment to the full range of international human rights and whether the pledge from the new government in Ottawa to return to a more constructive relationship with the United Nations will include a renewal of that commitment.

By ratifying the two Covenants simultaneously, Canada embraced the unified architecture of the Universal Declaration of Human Rights as originally drafted by the Canadian John Humphrey. Alongside of, and without distinction from "civil and political rights" such as the rights to life, liberty,

security of person, non-discrimination, and freedom of religion, expression and association, the UDHR included “economic, social and cultural” rights to education, social security, just and favourable conditions of work and “a standard of living adequate for the health and well-being ... including food, clothing, housing and medical care and necessary social services...” Without distinguishing between the two categories of rights, the UDHR also affirmed the principle that everyone has the right to an effective remedy for violations of rights granted by law.

Canada’s adherence to the entirety of the International Bill of Human rights reflected a significant difference in the understanding of human rights from the dominant paradigm in the U.S. at the time. Rights in the U.S. were generally viewed as negative rights – protecting personal liberty and property from governmental interference or discriminatory practices – and grounded in a national constitutional identity rather than in international consensus.^[1] Certainly, the U.S. civil rights movement provided the catalyst for the emergence of new human rights movements in Canada during the 1960s and 1970s, focusing on non-discrimination, and leading to the adoption of human rights legislation in all provinces. However, human rights in Canada were also understood to rely on a more positive role played by governments to ensure access to the basic requirements of human life, security and dignity through social programs, healthcare, education, and protection of workers. Canada’s adoption of the two covenants in 1976 provided human rights movements in Canada with a framework that included both the positive and negative dimensions of human rights.

Former Prime Minister Pierre Trudeau had written of the importance of economic and social rights as a young academic,^[2] and his campaign for the “just society” in the late 1960s drew on widespread public acceptance of social rights as a central component of Canada’s national identity at a time when identity and distinctness from the U.S. had become a preoccupation. Trudeau affirmed in June of 1968 that “most people take it for granted that every Canadian is assured a reasonable standard of living. Unfortunately, that is not the case ... The Just Society will be one in which all of our people will have the means and the motivation to participate.”^[3] While it is undoubtedly true that the right to an adequate standard of living remained an aspiration rather than a reality for many in Canada at the time – just as enjoyment of non-discrimination and other civil and political rights was not a reality for many – it is worth reminding ourselves that when Canada ratified the two covenants in 1976, the problem of “homelessness” referred to a few hundred transient men living in “flop houses” in Canada’s largest cities and “food banks” were a strange phenomenon in the U.S. that was unknown in Canada. While there has been important progress in relation to civil and political rights in Canada in the forty years since the ratification of the two covenants, progress in the realization of economic, social and cultural rights is somewhat harder to affirm.

The cold war division of the UDHR into two covenants was a significant compromise of basic principles of international human rights, understood to be “interdependent, indivisible, inter-related and universal.”^[4] The bifurcation was agreed to in large part to allow the U.S. and some other western countries to restrict their commitment to the civil and political rights components of the Universal Declaration. The compromise of dividing indivisible rights into two categories, however, also had longer term negative consequences, even for countries like Canada where both categories of rights were recognized. The two categories of rights tended to be ranked hierarchically, as “first and second generation rights,” and distinguished on the basis of “justiciability.” Civil and political rights were viewed as first generation rights for which states must ensure access to justice through courts or tribunals while social and economic rights, referred to as second generation rights, were described as aspirational goals to be realized through social policy and legislation rather than as justiciable rights to

be adjudicated by courts.

ii. Enforceable Rights and Social Programs

At the time that Canada ratified the two covenants, the distinction between enforceable rights and social policy goals or principles was not as significant or damaging as it became in later years when lower courts rejected poverty-related claims under the Canadian Charter as matters for legislatures rather than for courts. When Canada ratified the two covenants, social rights were embedded in social policy so as to accord these rights about the same degree of legislative protection and judicial oversight as civil and political rights. There was no significant difference in the status accorded to socio-economic rights compared to civil and political rights in Canadian law.

The Canada Assistance Plan Act (CAP)^[5], originally adopted in 1966, was a central pillar of the implementation in Canadian law of the right to an adequate standard of living. In order to receive cost-shared federal funding, provinces undertook to create social assistance programs to provide financial aid or other assistance to any person in need, in an amount that took into account basic requirements. Provinces were also required to ensure access to justice for anyone wishing to appeal a decision regarding eligibility for assistance. The federal government was legally obliged to enforce compliance with the requirements of CAP by withholding transfer payments in the event of non-compliance. CAP also ensured access to justice to individual claimants. The Supreme Court of Canada accorded public interest standing to Jim Finlay, a social assistance recipient in Manitoba, who believed that his province had failed to provide assistance at a level that covered basic requirements, to challenge the federal government's failure to enforce compliance with CAP.^[6] If the level of assistance he had received did not meet a reasonable standard of adequacy, the court would order that federal cost-sharing be withheld from the province until the adequacy standards were met.^[7] Canada was thus able to inform the UN Committee on Economic, Social and Cultural Rights (CESCR) that CAP "guaranteed the right to an adequate standard of living and facilitated court challenges of federally-funded provincial social assistance programmes which did not meet the standards prescribed in the Act."^[8]

These legal remedies available to someone denied financial assistance necessary for food or housing were in practice not significantly different from, or less effective than, remedies available to someone alleging a violation of a right to freedom of expression or non-discrimination. The Canadian Bill of Rights^[9] provided very limited protection of civil and political rights at the federal level, with effective legal remedies largely sacrificed to an over-riding deference to parliament. More robust protections were provided by provincial human rights legislation, beginning 1962 and subsequently in federal human rights legislation in 1977, but apart from Quebec's Charter of Human Rights and Freedoms of 1976, human rights legislation was restricted to the right to equality and non-discrimination on particular grounds and in defined areas.

Courts and tribunals were very much involved in adjudicating claims that would generally fall into the category of social and economic rights – workers' health and safety protections, social security, just and favourable conditions of work, protection from arbitrary eviction and access to financial assistance or health care. Courts did not insist that they lacked the competence or legitimacy to adjudicate poverty issues or to assess the adequacy of social assistance benefits. They were not accused of "second guessing" executive decision-making in areas of social policy. Nor did social policy experts protest that courts and lawyers should be kept out of social policy. When Jim Finlay won the right of poor people to enforce the right to an adequate standard of living by way of CAP, the victory was celebrated not as a

means for courts to interfere with social policy but rather as a way for people living in poverty to hold governments accountable and to affirm their right to an adequate standard of living.^[10]

iii. Social Rights and the Canadian Charter of Rights and Freedoms

The Canadian Charter of Rights and Freedoms, adopted in 1981 after unprecedented public engagement, should be understood in the context of Canada's distinctive commitment to a holistic understanding of human rights, embracing both covenants. The Charter was tied to the affirmation of a distinctive Canadian constitutional identity and to Canada's commitments to socio-economic rights and international human rights law.

The wording of section 7 of the *Charter*, which guarantees the "right to life, liberty and security of the person" drew on the text and unified framework of article 3 of the UDHR. A proposed amendment to add a right to "the enjoyment of property" to section 7 would have brought Canada more within the American constitutional paradigm but it was rejected.^[11] The wording of the section 7 requirement that any deprivation of life, liberty or security of the person be "in accordance with the principles of fundamental justice" was preferred over a reference to "due process of law" in part because of concerns around the use of the due process clause in the U.S. during the *Lochner* era as a means for propertied interests to challenge the promotion of social rights.^[12]

The negotiation of the text of the Charter was particularly affected by the emergence of social movements organized around equality-seeking constituencies in Canada at that time – particularly women, people with disabilities, racialized groups and anti-poverty groups. All of these groups linked their struggles for justice and equality to Canada's ratification of the two covenants and to emerging international human rights movements. As the Charter was being debated, people with disabilities were mobilizing around the International Year of Persons with Disabilities in 1981 and appearing at hearings before an All Party House of Commons Committee considering the rights of persons with disabilities.^[13] Women's groups were mobilizing around the UN Decade for Women and the drafting of the text of the new Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the UN General Assembly in 1979. Canada signed CEDAW along with 64 other countries at a ceremony at the Copenhagen World Conference for the Decade for Women in July of 1980. CEDAW affirmed that governments have positive obligations to promote socio-economic equality for women and recognized women's rights to social security, maternity leave and access to health care.^[14]

These international developments converged with parallel developments in Canada. In landmark cases such as *Action Travail des femmes v Canadian National Railway*,^[15] brought before a human rights tribunal in July, 1981, women's groups in Canada were challenging systemic inequality and insisting that both governments and private actors had obligations to take positive action to address it. Similarly, in cases such as *Huck v Odeon Theatres*,^[16] commenced in 1980 in Saskatchewan, disability rights groups succeeded in establishing that the right to non-discrimination encompasses a positive duty to accommodate unique needs associated with disability. "Substantive equality," as articulated by women's organizations, the disability rights movement and other equality seeking groups in Canada embodied the holistic human rights paradigm that Canada had signed onto in 1976. It was remedial in its focus, a hybrid of group and individual rights, focused on positive obligations of governments to maintain adequate social programs and services, and demanded systemic change.

In the debates about the drafting of the Charter, social movements rallied around the concept of equality as an over-arching right, linked to international human rights norms and encompassing the rights in

both the ICCPR and the ICESCR. Women's organizations orchestrated an historic cross-country campaign for changes to the heading of non-discrimination rights to "equality rights" and demanded the inclusion of a right to the "equal protection and equal benefit of the law" to ensure that the *Charter* would directly engage with government obligations to institute programs and benefits to address historic patterns of exclusion and disadvantage.^[17] Then Justice Minister Jean Chrétien accepted the proposed changes in the wording "to stress the positive nature of this important part of the *Charter*."^[18] Disability rights organizations demanded that mental and physical disabilities be added to the list of prohibited grounds of discrimination in section 15 of the new *Charter* and succeeded in making Canada the first democracy to include disability as a constitutionally prohibited ground of discrimination.

The guarantee of equality rights in section 15 of the Charter was delayed in coming into force in order to provide time for governments to adjust laws and policies to accord with what was seen as the Charter's most transformative provision. In 1985, a parliamentary sub-committee charged with considering what changes were necessary heard from equality seeking groups from across the country. A recurrent theme was that section 15 must be interpreted to include Canada's commitments to economic, social and cultural rights under international law. Women's organizations asserted that "the poverty of women in Canada is a principal source of inequality in this country."^[19] People with disabilities referred to Canada's international human rights obligations under the ICESCR to affirm that equality means a decent place to live; access to meaningful work and an adequate income; and a full range of social opportunities. Aboriginal representatives, anti-racism groups and others all referred to the importance of addressing systemic discrimination and socio-economic inequality. For the rights holders, at least, the Charter was expected to be interpreted within the holistic framework of Canada's international human rights commitments.

The early jurisprudence from the Supreme Court of Canada suggested that these expectations could be realized. The Court affirmed that the Charter should be presumed to provide at least the same level of protection as international human rights law that has been ratified by Canada – including both the ICCPR and the ICESCR.^[20] It rejected attempts by corporations to read corporate economic rights into section 7 of the Charter, noting that property rights had been intentionally excluded from the Charter but was careful to explain that the same was not true of rights "included in various international covenants, as rights to social security, equal pay for equal work, adequate food, clothing and shelter ..."^[21] These rights, according to the Court, "should not be excluded from the scope of section 7 at such an early stage of the *Charter*'s development."^[22]

iv. Neoliberalism and the Loss of Social Rights

On the social policy side, the years after the adoption of the Charter were largely defined by the rise of neoliberalism and the sustained assault on social rights in programs and legislation. The international debt crisis in the 1980s followed by a number of national debt crises in the 1990s gave impetus to the International Monetary Fund's (IMF's) single minded global agenda of structural adjustment and the deconstruction of rights-based social programs. Canada was not immune from the IMF's agenda. In a secret letter to Canada's Finance Minister, Paul Martin, in December 1994, the IMF noted that Canada's economic growth had been strong but "there is no room for complacency." The federal government was pressed to cut social programs, reduce transfer payments to the provinces, restrict eligibility for unemployment insurance and revoke the Canada Assistance Plan in favour of a system of block funding.^[23] Two months later, in Martin's February 1995 budget, the surprise announcement was made that CAP would be revoked and replaced by block funding under the Canada Health and Social

Transfer, with dramatic reductions in transfers and no requirements of adequacy or access to justice. Five months after that, the newly elected Harris Government in Ontario, after winning an election on the basis of stereotyping and stigmatizing the victims of the severe global recession of the early 1990s, announced a 21.6% cut to social assistance rates that would force an estimated 120,000 households to move from their homes and exhaust the capacity of food banks.^[24] At the end of the year, the IMF wrote again to the Finance Minister, congratulating him for his “political courage” in the 1995 Budget and welcoming the “sharp cuts in spending” in Ontario, while pressing for more of the same.^[25]

v. Social Rights Claims under the Charter: Expectations Denied

Without the social rights protections in CAP, those affected by growing poverty, homelessness and hunger had only the Canadian Charter to turn to for effective remedies to violations of rights to which Canada was committed under international human rights law. What they encountered, however, was a firm resistance to social rights within the legal culture in Canada, dominated by traditional prejudices against claims from those who would oblige governments to take positive action or allocate resources to address issues such as homelessness, hunger or poverty. The conservative constitutional scholar Peter Hogg was often cited as authority for the position that these are matters that should be left to legislatures. Hogg cited Oliver Wendel Holmes’ dictum that “these are the issues on which elections are won and lost” – something that poor people were certainly learning in an era of increasing stigmatization and poor bashing. Hogg’s constitutional conservatism found support in a parallel critique of rights-discourse put forward by prominent voices within the social democratic left, expressing concern about vesting privileged and unelected judges with the power to review social policy and programs adopted by democratically elected legislatures.^[26] The challenge to the welfare cuts in Ontario and similar challenges elsewhere were also strongly resisted by provincial governments, who consistently advocated for the most extreme interpretations of the Charter, arguing that governments have no obligation to take positive action, even where someone may be threatened with death because of hunger or lack of water or shelter. Provincial governments succeeded in having challenges dismissed by lower courts on the basis of ideas that were thought to have been put to rest during the debate on the text of the Charter – that the Charter imposes only negative obligations on governments; that social and economic rights are not justiciable and that social policy should be left to legislatures to make decisions free from judicial oversight.^[27]

When these lower court decisions were brought to the attention of the CESCR in its review of Canada in 1998, the Committee expressed concern that “provincial governments have urged upon their courts in these cases an interpretation of the Charter which would deny any protection of Covenant rights and consequently leave the complainants without the basic necessities of life and legal remedy.” The Committee expressed concern that lower courts had accepted interpretations of the Charter that were clearly at odds with Canada’s international human rights obligations “despite the fact that the Supreme Court of Canada has stated, as has the Government of Canada before this Committee, that the Charter can be interpreted so as to protect these rights.”^[28]

Only one of the cases of concern to the CESCR was granted leave by the Supreme Court of Canada and became, in fact, the only case in which the question of the status of socio-economic rights under the Charter has been considered by the Supreme Court. In the *Gosselin* case, the claimant had challenged a Quebec regulation that dramatically reduced benefits for welfare recipients under the age of thirty who were not participating in training or work experience programs.^[29] In an historic dissenting judgment, Justice Louise Arbour found that the right to security of the person under section 7 imposed a positive

obligation on governments to provide those in need with an amount of social assistance adequate to cover basic necessities.^[30] The majority of the Court left open the possibility of such an interpretation of section 7 in a future case, but concluded there was insufficient evidence to make this finding on the facts of *Gosselin*, since compensatory “workfare” provisions were available and, in the majority’s view, “the evidence of actual hardship is wanting.”^[31] The question of whether the Charter obliges governments to take any action to address documented effects of poverty and homelessness on life, health and security of the person remains an unanswered question at the Supreme Court of Canada after more than three decades. The Court has denied leave in a number of cases in which poverty issues of this sort have been considered – most recently in the historic *Tanudjaja* case, challenging the governments’ failures to address homelessness.

vi. Making Human Rights Whole Again

In the years since the two covenants came into force, the idea that socio-economic rights are not justiciable or that access to justice is any less important to claimants of these rights than others has been thoroughly discredited and rejected internationally. New constitutional democracies around the world have included socio-economic rights as justiciable rights and their courts have proven that these rights can be competently adjudicated and enforced without undue intrusion into the legislative domain. Courts have not designed social policy but rather acted as a catalyst to insist that governments make necessary changes to policies and programs to comply with socio-economic rights. In other countries, such as India, courts have interpreted broadly framed rights such as the right to life, as including socio-economic rights to save thousands of individuals from hunger, starvation and homelessness.

After Justice Louise Arbour left the Supreme Court of Canada to become High Commissioner of Human Rights at the United Nations, she played a central role in promoting the drafting and adoption by the UN General Assembly in 2008 of the Optional Protocol to the ICESCR, providing an individual petition procedure for economic, social and cultural rights to match the procedure that had been adopted in 1966 for civil and political rights. She heralded this recognition of the right of access to justice for social rights claimants as “human rights made whole.” The 50th anniversary of the adoption of the two covenants by the UN General Assembly is being welcomed this year as an opportunity to reaffirm the indivisibility of all human rights and to affirm the right of access to justice for all rights claimants.

These historical developments in other jurisdictions and at the United Nations rank among the most important and transformative advances in international human rights in recent years. Canadian courts, governments and social policy experts have not, to date, absorbed their implications. The Harper Government spoke against the adoption of the Optional Protocol to the ICESCR when it was adopted by the General Assembly (though Canada did not vote against it), and Canada has still not ratified it. Canada has also not yet ratified other complaint procedures that would engage with socio-economic rights under the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child.

The new government in Ottawa has an historic opportunity to restore the integrity of Canada’s forty-year commitment to the two covenants, not simply by recognizing the justiciability of social rights internationally but by committing to a reintegration of rights and social policy. There are two central components to such a reintegration.

First, the federal and provincial governments must support, rather than oppose, interpretations of the Charter that ensure access to justice for those who are homeless or denied their right to an adequate

standard of living. In his mandate letter to the Minister of Justice, the Prime Minister has committed to a review of the positions taken by the federal government in litigation to ensure consistency “with our commitments, the Charter or our values.” This review should disavow the arguments advanced by previous governments that aroused such concern internationally, return to the original scope and intent of the Charter and reaffirm a commitment to the equal status of socio-economic rights.

Second, we must work toward a reintegration of social rights within legislation and programs. Current discussions about rights-based strategies to address poverty and homelessness offer unique opportunities at all levels of government to draw on new understandings of how social and economic rights can frame policy and legislation, so as to ensure participation of stakeholders and accountability to human rights through enforceable goals and timelines and procedures for hearing and adjudicating claims.

Recognizing the equal status of social and economic rights and the rights of all to access to justice does not hand social policy over to courts any more than did CAP or the decision of the Supreme Court of Canada in the *Finlay* case. Rights must be subject to adjudication and effective remedies to achieve the status of rights in our decision-making structures. That does not mean that courts or human rights tribunals make all the decisions. Rather, they clarify what rights mean and what obligations flow from them, and ensure that the evolving meaning of rights is infused into decision-making. We have seen this process occur in some areas of equality rights in Canada, particularly around LGBT rights. It only takes a few cases to be considered by human rights tribunals and courts to establish a human right as one which must inform a myriad of policies and decisions. Poverty, homelessness and hunger have always been, at the same time, social policy challenges and human rights violations. It is not one or the other. Human rights rely on social programs to be realized and social programs rely on human rights to be effective. It is time to reconnect social policy and human rights in Canada, to reaffirm our commitment to the equal status of all human rights, and celebrate the ratification of not one, but two covenants forty years ago.

[1] Although Eleanor Roosevelt played a leading role in the development of the UDHR, and her husband promoted the “four freedoms”, including “freedom from want”, the U.S. has steadfastly resisted recognizing economic, social and cultural rights, and has still not ratified the ICESCR.

[2] Pierre Trudeau, “Economic Rights” (1961) 8 McGill LJ 122 at 125.

[3] Cited in Ron Graham, ed, *The Essential Trudeau* (Toronto: McLelland & Stewart, 1998) at 16-20.

[4] Vienna Declaration of Human Rights and Programme of Action: Adopted by the World Conference on Human Rights, Vienna, 1993.

[5] *Canada Assistance Plan*, R.S.C. 1985, c. C-1 [CAP].

[6] *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607 [hereinafter *Finlay 1986*].

[7] *Finlay v. Canada (Minister of Finance)*, [1993] 1 S.C.R. 1080 [hereinafter *Finlay 1993*].

[8] CESCR, Concluding Observations on Canada (1998) at para 19.

[9] *Canadian Bill of Rights*, SC 1960, c 44.

[10] Bruce Porter, “Claiming Adjudicative Space: Social Rights, Equality and Citizenship” in Margot Young et al, eds, *Poverty: Rights, Social Citizenship, and Legal Activism* (Vancouver: UBC Press, 2007) 77.

[11] Martha Jackman, ‘Poor Rights: Using the Charter to Support Social Welfare Claims’ (1993) 19 *Queen’s LJ* 65, 76.

[12] Sujit Choudhry, ‘The *Lochner* Era and Comparative Constitutionalism’, (2004) 2 *International Journal of Constitutional Law* 1, 16-24.

[13] House of Commons, Special Parliamentary Committee on the Disabled and the Handicapped, *Obstacles*, 32nd Parliament, 1st Session (February 1981). The *Obstacles* Report was ahead of its time in affirming a “social model of disability”.

[14] Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981. Articles 3, 11.

[15] *CN v Canada (Canadian Human Rights Commission)*, [1987] 1 SCR 1114.

[16] *Canadian Odeon Theatres Ltd v Human Rights Commission (Sask) and Huck* 9 (1985), 18 DLR (4th) 93, [1985] 3 WWR 717 (SKCA), leave to appeal to SCC refused (1985) [Huck

[17] Mary Eberts, “The Equality Provision of the Canadian Charter of Rights and Freedoms and Government Institutions” in Claire Beckton & A. Wayne MacKay, Research Coordinators, *The Courts and the Charter* (Ottawa: Minister of Supply and Services Canada, 1985) 133; Francine Fournier, “Égalité et droits à l’égalité” in Lynn Smith et al., eds., *Righting the Balance: Canada’s New Equality Rights* (Saskatoon: Canadian Human Rights Reporter Inc., 1986) 25; Bruce Porter, “Expectations of Equality” (2006) 33 *Sup Ct L Rev* 23.

[18] Statement by the Honourable Jean Chrétien, Minister of Justice, to the Special Joint Committee on the Constitution, January 12, 1981 (Government of Manitoba Archives).

[19] Porter, ‘Expectations of Equality’ (n 13) 30.

[20] *Reference Re Public Service Employee Relations Act (Alberta)*, [1987] 1 SCR 313 [59], *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038

[21] *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927, 1003.

[22] *Ibid.*

[23] The document was released in February, 1999 to the ‘Halifax Initiative’, a coalition of organisations dealing with international financial institution reform: Ecumenical Coalition on Social Justice. Online <http://www.halifaxinitiative.org/content/imfs-structural-adjustment-programme-canada-1994-1995-december-1995>

[24] (1996), 134 D.L.R. (4th) 20 (Ont. Gen. Div.), leave to appeal to Ont. C.A. refused (1996), 40 Admin. L.R. 87n, leave to appeal S.C.C. refused, [1996] S.C.C.A. No. 373 (QL) [hereinafter Masse]. Evidence, Affidavit of Michael Ornstein, Affidavit of Gerard Kennedy.

[25] Online <http://www.halifaxinitiative.org/content/imfs-structural-adjustment-programme-canada-1994-1995-december-1995>.

[26] See for example Harry J Glasbeek & Michael Mandel, “The Legalization of Politics in Advanced Capitalism: The Canadian Charter of Rights and Freedoms” (1984) 2 *Socialist Studies* 84; Andrew Petter, “The Politics of the Charter” (1986) 8 *Sup Ct L Rev* 473; Allan C Hutchinson & Andrew Petter, “Private Rights/Public Wrongs: The Liberal Lie of the Charter” (1988) 38 *UTLJ* 278.

[27] David Wiseman, ‘Methods of Protection of Social and Economic rights in Canada’ in Fons Coomans (ed), *Justiciability of Economic and Social Rights: Experiences from Domestic Systems* (Intersentia, 2006) 173; Martha Jackman, “Poor Rights: Using the Charter to Support Social Welfare Claims” (1993) 19 *Queens Law Journal* 65.

[28] CESCR, Concluding Observations on Canada 1998 at para 14.

[29] *Gosselin v. Quebec (Attorney General)*, 2002 SCC 84.

[30] *Ibid* [82]-[83].

[31] *Ibid* [83].