

THE PROTECTION OF SOCIAL AND ECONOMIC RIGHTS UNDER THE *CANADIAN HUMAN RIGHTS ACT*¹

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Introduction

In 1997, on the eve of the fiftieth anniversary of the *Universal Declaration of Human Rights*, the Canadian Human Rights Commission acknowledged for the first time that poverty is a fundamental human rights issue in Canada, inextricably linked with violations of the right to equality guaranteed under the *Canadian Human Rights Act (CHRA)*.² As Chief Commissioner Michelle Falardeau-Ramsay stated in the Commission's *Annual Report*: "The international community has recognized for some time that human rights are indivisible, and that economic and social rights cannot be separated from political, legal or equality rights. It is now time to recognize poverty as a human rights issue here at home as well."³ While the Commission rejected the suggestion that poverty issues are completely beyond its legislated mandate, it called for a review of the narrow scope of human rights protections under the *CHRA*, asking in particular: "whether the Canadian human rights system is based on a definition of "human rights" which is too restrictive."⁴

The Canadian Human Rights Commission is not alone in identifying violations of social and economic rights of women and other disadvantaged groups as one of the most critical equality issues of our time, nor in recommending the inclusion of social and economic rights within federal human rights legislation. In its 1999 review of Canada's compliance with the *International Covenant on Civil and Political Rights (ICCPR)*,⁵ the Human Rights Committee underlined the discriminatory effects of poverty and social program cuts in Canada.⁶ The Committee also criticized the lack of effective remedies for human rights violations in Canada, recommending that "relevant human rights legislation be amended so as to guarantee access to a competent tribunal and to an effective remedy in all cases of discrimination."⁷ It pointed to gaps between protections under the *ICCPR* and those available under the Canadian *Charter* and other domestic human rights statutes, recommending "that consideration be given to the establishment of a public body responsible for overseeing implementation of the *Covenant* and for reporting on any deficiencies."⁸ When, during oral questioning of the Canadian delegation, the Human Rights Committee asked about the gaps between

¹This paper is an abridged version of "Women's Substantive Equality and the Protection of Social and Economic Right Under the *Canadian Human Rights Act*", published by Status of Women Canada, October, 1999, online at www.swc-cfc.gc.ca.

²R.S.C. 1985, c. H-6.

³Canadian Human Rights Commission, *Annual Report 1997* (Ottawa: Canadian Human Rights Commission, 1998) 2.

⁴*Ibid.* at 8.

⁵*International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47 (entered into force 23 March 1976, accession by Canada 19 May 1976).

⁶United Nations Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee (Canada)*, Geneva, 07 April 1999, CCPR/C/79/Add. 105 (1999) at paragraph 20 [hereinafter *Concluding Observations, 1999*].

⁷*Ibid.* at paragraph 9.

⁸*Ibid.* at paragraph 10.