

LEGAL AND SOCIAL CONSIDERATIONS FOR THE RIGHT TO BASIC INCOME

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POVERTY REDUCTION AND BASIC INCOME GUARANTEE

POVERTY AND LOW INCOME

“Poverty is the consistent lack of resources, choices, opportunities and power that people need to live fully in their communities. People living in poverty know the constant threat of always being a little behind, of running out and never catching up, of making hard choices between one need and another.”

- Social Planning Council of Winnipeg

WELFARE FROM BELOW

- ◆ Lived experiences of the welfare system
 - ◆ Stigma
 - ◆ Reliance on food banks
 - ◆ “referral fatigue”
 - ◆ physical, mental and emotional stresses



POVERTY TRENDS

- ◆ 1 in 7 Canadians live in poverty (LIM)
- ◆ Rising inequality: 1995-2008 increases in median income
 - ◆ Incomes rose 31% for top and 14.5% for bottom
- ◆ High inflation of food, shelter and education costs
 - ◆ 6X rise in price of residential homes (1976-2011)
 - ◆ 4.1% rise in cost of meat, veg and fruit in 2015

POVERTY DEMOGRAPHICS

◆ Women and children

- ◆ In Manitoba, 34% of female lone-parent families live below poverty line - largest category
- ◆ 29% of Manitoba children grow up in poverty (2015)

◆ Single Canadians - 31% aged 18-64 are low income, compared to 14% for Seniors (eligible for OAS/GIS)

◆ Persons with disabilities - 52% not in paid employment

◆ Newcomers to Canada - 27% versus 13% (general)

INDIGENOUS PEOPLES

- ◆ 1.4 million Indigenous people in Canada (2011)
 - ◆ 61% First Nations, 32% Metis and 4% Inuit) (2011)
 - ◆ Rate of pop'n growth is 4X higher than non-Indigenous
 - ◆ Median age 27.7 (Indigenous) versus 40.6 (non)
- ◆ Income: Median \$22,000 versus \$33,000 (non)
- ◆ On-reserve: 36% reliant on income assistance versus 5.5% national rate

SUCCESS WITH SENIORS

- ◆ Existing guaranteed income for Canadian seniors 65+ through OAS, GIS, CPP
- ◆ “How a GAI could put food banks out of business” by Emery, Fleisch and McIntyre 2013 (U Calgary)
 - ◆ Only 5.9% of seniors below poverty line
 - ◆ Rate of food insecurity among 65-69 group is half that of those aged 60-64 - consumption-based indicator of poverty
 - ◆ Improvements in self-reported physical and mental health

WELFARE IN MANITOBA: EIA

- ◆ Employment and Income Assistance (EIA)
 - ◆ Program of last resort since 1960s, intended to give short-term, emergency assistance
- ◆ Changes in society: female employment, family composition, de-institutionalization of persons with disabilities
- ◆ Growth of precarious employment - part-time, short-term, low/no benefits, low wage service sector

MANITOBA ASSISTANCE ACT

- ◆ Provides for administration of Employment and Income Assistance program in Manitoba
- ◆ Section 2: *“Subject to this Act and the regulations, the Government of Manitoba may take measures to provide to residents of Manitoba those things and services that are essential to health and well-being, including a basic living allowance, an allowance for shelter, essential health services and a funeral upon death.”*

INADEQUACY OF WELFARE

- ◆ Provincial governments have generally sought to keep benefits low and reduce caseloads
- ◆ Ill-suited approach for those with multiple barriers to employment or ongoing disabilities (Stevens, 2011)
- ◆ Budgets fail to keep pace with rising cost of basic needs
- ◆ Separate “pension-like” disability income studied
- ◆ Paternalism versus freedom

THE WORK OF POVERTY

- ◆ **Bureaucracy: Welfare administration costs and functions**
 - ◆ Determining eligibility and containing expenditures
 - ◆ Monitoring compliance with rules and regulations
 - ◆ Social work? ie. psychological support and building capacity
- ◆ **The Work of Being Poor**
 - ◆ “Referral fatigue” - navigating a patchwork landscape of agencies and services
 - ◆ Volunteerism, care work, travel times, waiting

THE COSTS OF POVERTY

- ◆ Health costs: diabetes, heart disease, cancer, liver and kidney disease, stress-related conditions, infant mortality, higher incidences of hospitalization, and poor mental health
- ◆ Lost productivity
- ◆ Justice, Child Welfare
- ◆ Murdered and Missing Indigenous Women and Girls
- ◆ Human suffering - not quantifiable but very real

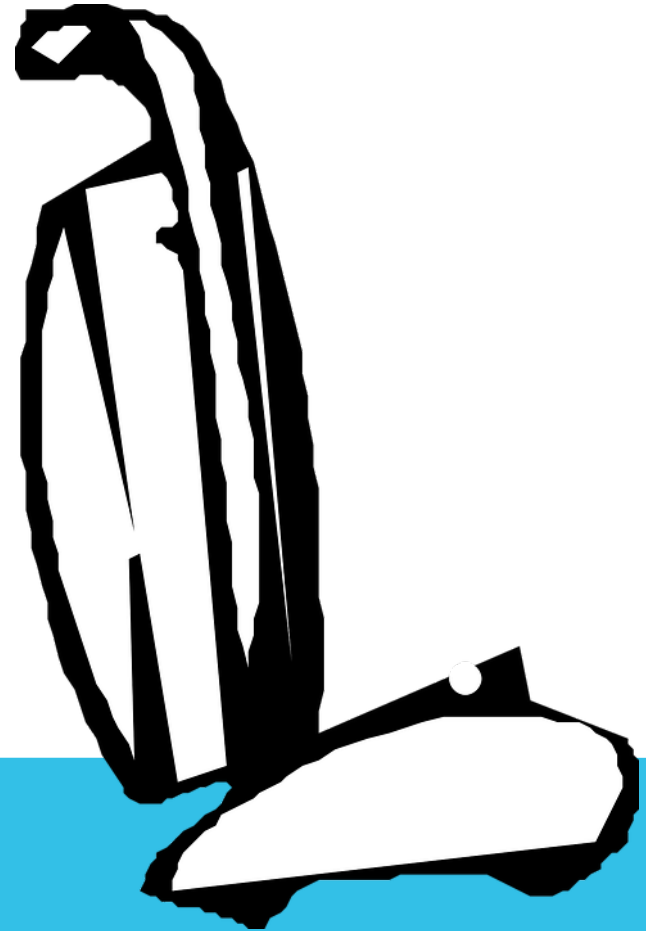
BASIC INCOME: REFLECTIONS

- ◆ BIG is not a “silver bullet”
- ◆ Minimum income could establish a floor - provided that floor is not set in the basement, ie. too low
- ◆ Risk that “austerity agenda” sees BIG as cost-cutting measure
- ◆ Acceptable Living Level (ALL) - Winnipeg Harvest
- ◆ Redirect and reinvest funds toward effective strategies

ACHIEVING SOCIO-ECONOMIC INCLUSION

PROTECTING THE RIGHTS OF PEOPLE LIVING IN POVERTY

- ◆ Poverty finds itself in a legal vacuum
- ◆ The law and human rights are meaningless to the most disadvantaged individuals if families and groups do not have money to access their essential needs.



**FOR PEOPLE LIVING IN POVERTY, ACHIEVING A
RIGHT TO BIG IS ABOUT JUSTICE NOT CHARITY.
POVERTY IS A HUMAN RIGHTS ISSUE.**

ADDRESSING THE LEGAL VACUUM OF “SOCIO-ECONOMIC INCLUSION”

- ◆ The following challenges are part of the broader legal strategy to achieve the right to socio-economic inclusion:

- Challenging welfare
 - Welfare on reserves
 - Welfare in Manitoba

- Expanding the legal protections of social disadvantage
 - Manitoba Human Rights Commission
 - Canadian Human Rights Tribunal

WELFARE ON RESERVE

- ◆ Welfare for First Nations living on reserve is funded and managed differently.
 - ◆ The 'Income Assistance Program' for First Nations living on reserve is managed through Indigenous and Northern Affairs Canada
 - ◆ Objectives: provide funding so people living on reserve can *meet their basic needs* and deliver welfare in a manner that is *reasonably comparable* to province or territory of residence
 - ◆ Anticipated results: to alleviate hardship, maintain functional independence on reserves, encourage greater self-sufficiency for First Nations
 - ◆ Delivered through policies, not law.

WELFARE ON RESERVE (CONTINUED)

Issues:

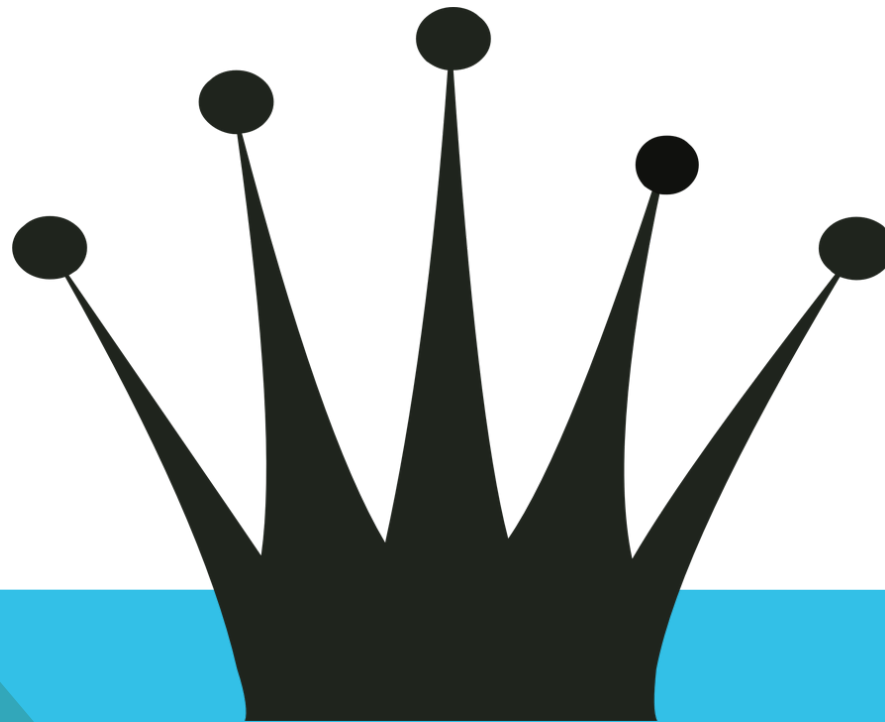
- INAC has failed to provide the delivery of welfare at standards “reasonably comparable” to province and territories

- INAC has relied on inadequate standards

HONOUR OF THE CROWN

- ◆ Requires Federal Government to act fairly and diligently with Indigenous people
- ◆ Must be at stake in *all* the Federal Government dealings with Indigenous people
- ◆ Imposes positive obligations + engages responsibilities and requires action by Federal Government

**“IF THE HONOUR OF THE CROWN
EXISTS, THEN PROVE IT!”**



CANADIAN HUMAN RIGHTS COMPLAINT

Pursuant to s. 5 of the CHRA, INAC discriminates in providing welfare services on reserve on the basis of race and/or national or ethnic origin, by providing inequitable and insufficient funding for those services.

- ◆ Three part test to substantiate a prima facie case of discrimination:
 - ◆ Do First Nations living on reserve have characteristics protected from discrimination?
 - ◆ Are they denied services, or adversely impacted by the provision of services by INAC?
 - ◆ Is the protected characteristic a factor in the adverse impact or denial?

DO FIRST NATIONS LIVING ON RESERVE HAVE A CHARACTERISTIC PROTECTED FROM DISCRIMINATION?

- ◆ Race, and national or ethnic origin are prohibited grounds of discrimination
- ◆ Recent cases at the Canadian Human Rights Tribunal and the Supreme Court of Canada have confirmed First Nations possess these characteristics
- ◆ First Nation welfare recipients are particularly vulnerable

ARE FIRST NATIONS LIVING ON RESERVES DENIED SERVICES, OR ADVERSELY IMPACTED BY THE PROVISION OF SERVICES BY INAC?

Section 5 of the *CHRA* states:

- ◆ It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public
 - ◆ (a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or
 - ◆ (b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

ARE FIRST NATIONS LIVING ON RESERVES DENIED SERVICES, OR ADVERSELY IMPACTED BY THE PROVISION OF SERVICES BY INAC?

- ◆ INAC delivers a benefit to First Nations living on reserve - welfare rates are suppose to be delivered at “reasonably comparable” rates BUT:
 - ◆ this ignores the reality of individuals living on First Nations
 - ◆ very little indication on how this term is defined
 - ◆ the standard is flawed - welfare rates set by provinces are set too low

IS THE PROTECTED CHARACTERISTIC A FACTOR IN THE ADVERSE IMPACT OR DENIAL?

- ◆ INAC should not perpetuate historical disadvantages endured by First Nations people
- ◆ INAC is aware of the adverse impact of funding structure
- ◆ Substantive equality and international law principles must be considered

REMEDIES SOUGHT

- ◆ Finding that INAC has discriminated against First Nations living on reserve in the provision of welfare services
- ◆ Order that INAC cease its discriminatory practices and reform the welfare program for the funding to be reflective of the needs of First Nations living on reserve
- ◆ Order that INAC compensate First Nation recipients of welfare living on reserve.

GENDER EQUALITY: WE'RE NOT THERE YET

SUPREME COURT OF CANADA (1989)

BROOKS, ALLEN & DIXON V CANADA SAFEWAY LTD

- ◆ Those who bear children and benefit society as a whole thereby should not be economically or socially disadvantaged...
- ◆ Only women can bear children; no man can become pregnant.
- ◆ It is unfair to impose all the costs of pregnancy on one half of the population.

BUT, WOMEN DO BEAR THE COST...

- ◆ Women earn less than men
- ◆ Women have less stable connections to the workforce
 - ◆ More part-time employment
 - ◆ Mainly in “female” occupations
- ◆ Women have smaller (or no) pensions
- ◆ More than one third of women fall below the poverty line upon the break-up of a spousal relationship

WOMEN ARE DISADVANTAGED BECAUSE MOTHERS ARE DISADVANTAGED

- ◆ Women with children have significantly lower lifetime earnings than women without children, as much as 60% less
- ◆ Some Canadian statistics suggest women *without* children earn \$0.97 for every \$1 earned by men; women *with* children earn as little as \$0.52.

SOME MOTHERS ARE MORE DISADVANTAGED

- ◆ The disadvantages experienced by all mothers are felt more heavily by mothers who experience discrimination on the basis of race, physical ability (their own or their child's), sexual orientation or social class



WHY MOTHERS?

- ◆ 73% of women with children under 16 years of age are employed
- ◆ Women still do the bulk of the work of caring for children (and other dependents)
 - ◆ Mothers who are employed full-time spend an average of 50 hours a week caring for children - Fathers who are employed full-time spend an average of 27 hours a week
- ◆ Childcare is hard to access

NOT JUST MOTHERS... CAREGIVERS AND VOLUNTEERS

- ◆ 50% of women, 25% of men spend more than 10 hours a week caring for others
- ◆ 40% of women, 36% of men volunteer
- ◆ This unpaid work has immense social benefits

HOW DOES LAW CONTRIBUTE?

- ◆ The actual work of mothering is not visible or valued
- ◆ Benefit schemes discount, or devalue the impact of care work ie “workforce attachment tests”
- ◆ Mothers’ work is hyper visible when they are perceived as bad mothers and no recognition is given to the social context (usually poverty, also intergenerational effects of IRS)

EFFECTS OF PRIVATIZATION

- ◆ When work is not recognized as work and not valued
- ◆ When the costs of that work are borne by some, but not all, even though it brings benefits to society at large



WHAT MIGHT EQUALITY LOOK LIKE?

- ◆ A basic income
- ◆ Universal, high quality, accessible childcare with fair salaries for workers
- ◆ Enriched, extended maternity/parental benefits and proper tax treatment
- ◆ Restructured workplace/ improved part-time work
- ◆ Access to benefits for all workers
- ◆ Support for women in all their diversity, supporting reconciliation

EQUALITY UNDER THE *CHARTER*

◆ Section 15(1):

◆ *Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*

◆ **Section 15(2):**

- ◆ *Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*

POVERTY AND INEQUALITY ARE “WICKED PROBLEMS” AND REQUIRE A MULTI-PRONGED APPROACH

- ◆ Lorna Turnbull, The “Wicked Problem” of Fiscal Equality for Women, (2010) 22 *Canadian Journal of Women and the Law* 213

- ◆ No definitive statement
- ◆ No “stopping” rule
- ◆ Not right or wrong
- ◆ Problem is unique
- ◆ Solutions have consequences
- ◆ Political judgment needed

CONCLUSION

