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# **Standing Committee on Justice and Human Rights**

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**EVIDENCE**

**Thursday, May 19, 2016**

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**Chair**

**Mr. Anthony Housefather**



## Standing Committee on Justice and Human Rights

Thursday, May 19, 2016

• (0850)

[English]

**The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)):** Ladies and gentlemen, I'm going to call the meeting to order.

I'd like to welcome everyone to this meeting of the Standing Committee on Justice and Human Rights as we recommence our study of the court challenges program and hear from our last group of witnesses on the equality provisions and the equality panel.

I'd like to welcome Ms. Avvy Go, who is representing the Metro Toronto Chinese and Southeast Asian Legal Clinic. One of our other witnesses is on his way up. As a result, I've asked Ms. Go to go first, and she has kindly consented.

Ms. Go, the floor is yours.

**Ms. Avvy Go (Clinic Director, Metro Toronto Chinese and Southeast Asian Legal Clinic):** Thank you.

My name is Avvy Go. I'm the clinic director of the Metro Toronto Chinese and Southeast Asian Legal Clinic. We're a community-based legal clinic in Toronto serving low-income non-English-speaking people from the Chinese and Southeast Asian communities.

I'm also a former equality rights panel member of the court challenges program and was first vice-chair of the board of directors of the program when it first became incorporated as a separate entity.

I would like to commend the Government of Canada for restoring funding to the court challenges program, and I want to thank the committee for giving me the opportunity to comment on how to make the program better.

**The Chair:** I'm sorry. The interpretation for Mr. Rayes is not working, so can I ask you to hold for one second, please?

**Ms. Avvy Go:** Yes.

**The Chair:** Welcome, Mr. Elliott.

**Mr. R. Douglas Elliott (Member, Honorary Advisory Board, Egale Canada Human Rights Trust):** I'm sorry, Mr. Chair. I wasn't told about the change of location.

**The Chair:** There are no worries.

I'd like to welcome Doug Elliott, who is here from the Egale Canada Human Rights Trust. He is a member of the honorary advisory board.

We've just started. You'll be after Ms. Go in terms of your statement, but right now we're waiting for the translation to get fixed.

[Translation]

Is the interpretation coming through?

[English]

Okay, Ms. Go. Please continue.

**Ms. Avvy Go:** As I was mentioning, I'm a former panel member and vice-chair of the program. The court challenges program, in my mind, has always played a critical role in advancing access to justice for many historically disadvantaged groups, in particular racialized communities, women, and people with disabilities who are among those who need support the most in accessing the legal services due to a number of barriers, in particular because they tend to be overrepresented among the low-income population in Canada.

Some people argue that we no longer need the court challenges program because equality jurisprudence is by now well developed. With all due respect, that is simply not the case. If anything, of all the various sections in the Canadian Charter of Rights and Freedoms, section 15 jurisprudence has often seen the greatest uncertainty and changes over the last decade, in particular the last 10 years.

While the charter represents the ideal of justice and equality that this country strives to achieve, the reality is that systemic racism is still very much alive and well, and is embedded in our legal system and reflected in many of the laws and policies, both at the federal and provincial level. Due to their lack of political power, marginalized groups continue to look to the court as a forum to voice their grievances and a place to advance social change.

Over the last 10 years the ability of these groups to launch charter litigation has been severely limited due to the de-funding of the court challenges program, and the fact that many under-resourced provincial legal aid programs do not fund test case litigation.

The 10-year hiatus of the program coincided with the period of a growing number of community groups, as well as lawyers, looking to the courts to advance racial equality claims. Yet ironically, it was during this time when the legal profession itself was becoming more diverse and more interested in racial justice that their access to funding, support to charter litigation, was cut.

According to Professor Bruce Ryder at Osgoode Hall Law School, the number of section 15 rulings by the Supreme Court of Canada has gone down over the last decade, and the depth of the court's engagement with section 15 issues has declined as well. He points out that many of the recent decisions from the Supreme Court focus on other charter issues and offer very little and brief reasons for rejecting the section 15 claim. There is currently no significant section 15 cases pending to which the Supreme Court has granted leave. This is so, notwithstanding the growing concerns regarding a multitude of legal issues affecting racialized groups, particularly in the criminal justice system.

The de-funding of the court challenges program has clearly had a direct and negative impact on the development of equality rights jurisprudence, particularly with respect to race-based equality claims.

Looking forward, we want to make the program better, but we also want to protect what has made the program a success. What has worked is the government's model, which ensures the program is accountable to its constituent communities, while at the same time maintaining its independence from the government.

While the program has managed to be an extremely efficient and effective organization, there are changes that can be made to enhance its success. We have included a number of our recommendations in the written submission. I'm going to highlight three in particular here.

First of all, we think that the program should expand coverage to fund arguments based on section 7 of the charter in addition to section 15, in cases where the section 7 argument is used specifically to advance substantive equality for disadvantaged groups.

The second point is to expand coverage to fund cases dealing with provincial laws, especially in provinces, not just provinces where the legal aid program does not provide for test case funding, but where the funding might be inadequate as well.

Thirdly, we should allow the court challenges program board the flexibility to reallocate funds among different categories of expenses within the program, so as to better respond to the needs of the equality-seeking groups and to address any emerging issues.

●(0855)

In conclusion, the program is one of the most unique and remarkable institutions that Canada has created to strengthen our country's democracy through the protection of minority rights. The government's decision to restore the funding represents a new opportunity for racialized and other marginalized groups to engage in a dialogue with the court and to help ensure that the government lives up to its promise under the charter.

**The Chair:** Thank you very much, Ms. Go.

Now we'll go over to Mr. Elliott.

Mr. Elliott, welcome.

**Mr. R. Douglas Elliott:** Thank you very much, Mr. Chair.

May I say, I fully agree with everything that my long-time friend, Ms. Go, has just said.

Egale Canada Human Rights Trust welcomes the opportunity to present to the committee today. Egale is Canada's only national charity promoting lesbian, gay, bisexual, and trans human rights through research, education, and community engagement. Founded in 1995, Egale was one of the top consumers of the court challenges program during its former existence under the skilled leadership of then executive director, John Fisher.

Allow me to brag a little bit. No other group has been more successful in achieving equality through the courts and through the use of the court challenges program.

Egale welcomes plans to reinstate the court challenges program and the opportunity to assist this committee in its important work. I might say, in reference to Ms. Go's comments about the stagnation of the jurisprudence, that I actually won the last section 15 case in the Supreme Court of Canada. It was the Hislop case, in 2007, almost 10 years ago. That should tell us something. Reinstatement provides an opportunity to critically assess the positive features and limitations of the former program, while also imagining what a more effective version might look like.

Canada is a leader in the world in ensuring protection from discrimination on the grounds of sexual orientation. Canada was one of the first countries in the world to legalize equal marriage. That progress is in no small part due to the impact of the CCP. However, in the years since the CCP was cancelled, Canada has rested on its laurels.

Canada has fallen behind other countries in advancing the rights of sexual minorities, particularly in recognizing the rights of transgender, transsexual, two-spirit, and intersex persons. It will come as no surprise to you that I'm going to urge you all to vote in favour of the bill to add gender identity and gender expression. It's a welcome development. However, it's noteworthy that since the court challenges program was cancelled in 2006, not a single case has reached the Supreme Court of Canada that considers gender identity or gender expression as an analogous ground. In my view, that's no coincidence.

It's to be remembered that when section 15 of the charter was approved in 1982, legislators declined to expressly include sexual orientation, let alone gender identity, in its language. However, the door was left open for the inclusion of sexual orientation as an analogous ground. This was recognized in the report of the former parliamentary committee on equality rights by Patrick Boyer on compliance with section 15.

Regrettably, none of the report's recommendations on law reform respecting sexual orientation were taken up by Parliament despite a promise by then attorney general John Crosbie to do so. It was clear that there was a lack of political will to do the right thing. Members of our community would have to fight to establish their rights in the courts. We did so, and we won. Perfect equality is a goal towards which we should always strive as a society. Canada has come far on that journey, but it still has a long way to go. A revived court challenges program will assist our country to advance.

I do have a written submission that I urge you to consult, but I'll highlight some of the recommendations that we're making.

We strongly support the reinstatement of the court challenges program, an excellent program that Egale used frequently. That program has made a significant contribution to cases helping to reduce discrimination based on sexual orientation. As my colleague Ms. Go has highlighted, it's no coincidence that the termination of the court challenges program has coincided with the stagnation in the jurisprudence regarding section 15. There has been no progress on gender identity and gender expression equivalent to that which was made on sexual orientation. A renewed court challenges program, quite frankly, is a matter of fairness. It will help level the playing field between marginalized groups and governments. If we had spent a tiny fraction of the monies that are expended defending charter violations to protect charter rights, we would be a much better country.

• (0900)

It's really important to realize that one of the things the court challenges program did was to present a way to engage the private bar. The amount of resources that were devoted by the private bar to these cases far exceeded the amount of resources that were expended by the government. It is a classic leveraging of private resources and mobilizing of those private resources through government seed money, and I might also say, it developed excellence in the bar.

CCP will enhance equality, and improved equality enhances the quality of life for all Canadians. We have only to look to the example of North Carolina to realize what happens when you promote inequality. There are devastating economic consequences for everyone.

The court challenges program administration should be independent and cost-effective, and as a consumer, I can tell you that we were very satisfied with the previous administration of the program. We believe that funding of consultations should be included in the court challenges program again. We recognize that caps on funding cases are needed, but they will need to be set at higher levels. The amount for trials was especially quite inadequate.

As with the language rights support program, funding should be based on merit. Previously the program would not allow funding with respect to tribunals, and it would not allow funding of matters under provincial jurisdiction. I always found that bizarre, because the federal government appears in court all the time on matters that involve provincial jurisdiction. They have a right to appear if the charter is engaged. It's not meddling in provincial jurisdiction. The federal government always has an interest in promoting and protecting charter rights.

The tribunal should be irrelevant. Lots of people go to tribunals these days. In the province of Quebec, for example, most gays and lesbians use the provincial human rights mechanisms to redress wrongs. That is the model used by the language rights support program. I've talked to lawyers who work with that program, and they find that it works exceptionally well. It's better to have wise people like Ms. Go look at the cases that come forward and assess them based on which ones are likely to have the greatest impact on protecting and promoting charter rights.

Thank you very much. I will be happy to answer your questions, and I urge you to have a look at our 10-page written submission.

**The Chair:** We actually received your written submission, so I think everybody's already had a chance to look at it.

**Mr. R. Douglas Elliott:** Excellent. Thank you, Mr. Chair.

**The Chair:** I'd like to welcome Carmela Hutchison from the DisAbleD Women's Network of Canada.

Ms. Hutchinson, welcome.

**Ms. Carmela Hutchison (President, DisAbleD Women's Network of Canada):** Thank you.

**The Chair:** I'm sorry you didn't necessarily have a chance to catch your breath. You've just arrived and I'm asking you to speak. I hope that's okay.

You have eight minutes. Your time starts now.

**Ms. Carmela Hutchison:** Thank you very much.

We wish to acknowledge the Algonquin people on whose traditional lands we gather today. We thank the Government of Canada for granting the inquiry to the missing and murdered aboriginal women.

The DisAbleD Women's Network of Canada is a national feminist cross-disability organization whose mission is to end the poverty, isolation, discrimination, and violence experienced by Canadian women with disabilities and deaf women. The DisAbleD Women's Network of Canada has a long history of advancing rights through the courts both on its own and in conjunction with other equality-seeking organizations such as LEAF and the Council of Canadians with Disabilities.

I testified before the Status of Women's standing committee on December 4, 2007, regarding the impacts of cuts to the court challenges program. Before I begin I'd like to take one moment as I appear before you to acknowledge that this is a great day for Canada to see the restoration of the court challenges program. However, for the DisAbleD Women's Network of Canada, it's merely a break in the clouds. We are so far behind even with court challenges that the restoration of the program is a wonderful first step. But make no mistake, from where we sit, we're bailing the ocean with a teaspoon.

Canadian women with disabilities are no different from any other women with disabilities in the world. Article 6 of the CRPD, which is the Convention on the Rights of Persons with Disabilities, applies as much to us as it does to any of our sisters.

Therefore, our first recommendation is for Canada to ratify the optional protocol without delay. As part of a national disabilities act, it will become imperative to ensure that the legislation of our country is free of barriers for women with disabilities. However, this will generally make it free for barriers for men as well, because in most instances women's rights are everyone's rights. This will involve inter-ministerial collaboration as well as broad stakeholder consultation. DAWN Canada would hope to be included in such a process, as it is today, and to be active participants in helping shape our own future and the future of Canadians.

DAWN-RAFH Canada is a member organization of the court challenges program of Canada. We believe the current governance structure has been effective in its stewardship during challenging times. Properly resourced, we believe it could continue to provide robust leadership to Canadians. We agree with recommendations made by other colleagues that the criteria be expanded to include an indigenous stream, a minority language stream, and an equality stream that goes beyond section 15 of the charter. There also should be a newcomers stream for immigration issues and for other ethno-cultural groups. It is very important to provide proper inclusive support for intersectional inclusion such as disability accommodation, linguistic accommodation, sexual orientation, and to support proper participation in all phases of litigation.

At the court challenges program of Canada's annual general meeting, there was openness to thinking about cases being assessed on their facts and merits rather than the artificial caps and criteria that limit how far a case can actually be pursued. We also agree with the Council of Canadians with Disabilities that provincial and territorial cases as well as human rights tribunals should be funded by an enhanced court challenges program of Canada.

DAWN Canada has done extensive work to address the criminalization of mentally ill women, especially with respect to Ashley Smith. We've also mentioned Kimberly Rogers, who died as a result of a lack of access to both criminal and poverty law representation. Today we are going to focus more deeply on the lack of access to civil legal aid.

In West Coast LEAF's brief, they identified the very serious issues faced by lack of access to civil legal aid particularly in respect of family and poverty law matters that has the most direct impact on the respect and preservation of their rights.

We can give you examples from just this week alone in the organizations we work with. There is a woman with a disability who is trying to ensure her property rights from inheritance, and another who is trying to sell her home after a very bad divorce where her abusive ex-husband prevented the sale of the home by placing a caveat on it. Before this he had placed a business in her name that had gone insolvent, which took her years to get resolved.

There is also a woman with a disability who is in two landlord-tenant disputes after having had to flee dangerous housing environments due to her health. We had one young mother, who is fighting breast cancer, in a divorce process that involves a custody dispute, and she is also in a grievance process with an employer who fired her while she was pregnant. There was a woman living in long-term care who was assessed the ambulance bills for her four hospital admissions even though she is only on comforts allowance. This was

finally reversed, but it took several weeks and she had the attendant stress of that during that time.

● (0905)

Another example is a woman who was admitted to a psychiatric hospital and was physically assaulted by a co-patient, and who is being given no help for either physical or psychological recuperation from expenses associated with the attack. A newcomer woman, who had a stroke and depression that's refractory to medication, is unable to find a way to have her current concerns addressed about electric shock treatment, which has also compounded her health concerns. Finally, there is a woman who is trying to leave the sex trade facing eviction and we're trying to help her find appropriate housing, income supports, and medical care to support the application for disability supports.

Our last comments and recommendations are directed to our own DAWN-RAFH Canada brief, "Recommendations: Meeting the Needs of Victims of Crime in Canada", which was submitted to the Department of Justice Canada for the development of a victims' bill of rights for September 27, 2013, outlining the needs for proper disability accommodation to support the needs of victims of crime with disabilities, who are overrepresented amongst the victim population.

In DAWN-RAFH Canada's fact sheet, which is attached to our brief, there are many facts about the different ways in which women with disabilities are subjected to greater risks of violence against them because of the way they're brought into contact with a greater number of people through the process of caregiving and an emphasis on compliance with authority figures as part of living with a disability. In the 2014 report on criminal victimization in Canada, we note that mental health and intellectual disability is often associated with violent victimization, more than four times higher than people who assessed their mental health as excellent or very good. There were 230 incidents per 1,000 population, compared with 53 in the general population.

DAWN-RAFH Canada intervened in the D.A.I. case in 2012, which was a landmark case that helped people with mental disabilities be able to give their evidence as would any other witness, by simply giving an oath to tell the truth. We've never been able to determine whether or not the full impact of this ruling helped survivors to come forward.

Ongoing research as to outcomes of decisions is important, as identified by other colleagues. In the same way we have forged ongoing relationships with the Status of Women office and the office for disability issues, we hope our appearance before you twice in the last two weeks clearly demonstrates a need for ongoing work and dialogue, supported by a dedicated program funding envelope, so that our sisters, women with disabilities across Canada, may also enjoy justice, rights, and dignity along with our fellow Canadians.

Thank you.

•(0910)

**The Chair:** Thank you very much, Ms. Hutchison.

We very much appreciate all of the interventions of each of the panellists, and now we're going to move to questions.

We're going to start with the Conservatives.

Mr. Cooper.

**Mr. Michael Cooper (St. Albert—Edmonton, CPC):** Thank you to all of the witnesses for your testimony this morning.

I'll ask my first question to Mr. Elliott.

In your presentation you noted, of course, that equality of marriage was achieved in Canada, and you mentioned that the court challenges program played an important role in that achievement. I was wondering if you might elaborate on that. The legislation on equality of marriage was passed in Parliament in 2005. It was a free vote. It had the support of members in all of the major political parties. It wasn't as a result, for example, of a Supreme Court decision saying to Parliament, you must do something. Parliament, in a lot of ways, was out before the courts on equality of marriage.

**Mr. R. Douglas Elliott:** With respect, Mr. Cooper, I will have to disagree with you on that. I think the record is quite clear that, with the exception of the hate crimes changes, all of the actions that have been taken with respect to sexual orientation have been in response to court rulings.

The first legal marriage in Canada took place at the Metropolitan Community Church of Toronto, a church that I attend, and I know at least one member of your committee has attended on occasion. On January 14, 2001, that marriage was legally recognized by the Ontario Court of Appeal in its ruling in the Halpern case on June 10, 2003. By the time Parliament passed the Civil Marriage Act, the courts had already spoken in virtually every province. You will recall that it was the decision of then-attorney general Martin Cauchon to not appeal to the Halpern ruling that led ultimately to the Civil Marriage Act, and then the reference to the Supreme Court of Canada, where I appeared for the Metropolitan Community Church of Toronto. By the time Parliament acted in 2005, in fact we had equal marriage in virtually the entire country as a result of the court.

It was an important step, and I will say that I was heartened that there was all-party support for that measure. Some of the finest speeches I've heard in Parliament were made in connection with that act. It was definitely, I will concede, not in compliance with the court ruling but it was catching up with the courts, in my view.

**Mr. Michael Cooper:** Thank you for that, Mr. Elliott.

In your written submission you talk about renewing funding for consultations in light of limited funds being available in the program and you make reference to a consultation on equal marriage strategy as well as a trans rights strategy. Could you elaborate a little about the consultation process and how that works and what the benefits are?

•(0915)

**Mr. R. Douglas Elliott:** Yes, I'm happy to do so, Mr. Cooper.

That's an excellent question. Let me use the equal marriage one because I was involved in that. At the time we were contemplating

addressing the problem of equal marriage, many groups across the country had views about how to approach that problem. Litigation was under way in Quebec. People in British Columbia and Ontario wanted to bring litigation. There was a lot of discussion about the effective strategy, and frankly, some people even within the LGBT community were wondering whether we should even be doing it at all.

Egale was given a modest amount of money to organize a conference in Toronto that brought together stakeholders from all parts of Canada, to have a very candid discussion about these issues, about the various strategies that could be deployed. For example, the people in British Columbia argued the provincial government was prepared to support an equal marriage challenge, and that's where we ought to proceed first. The people in Quebec were saying they already had litigation under way and that we ought to be supporting their measure.

It provided an opportunity for our group to have a very focused discussion about the way forward in a way that's not possible without that kind of assistance. I can't remember the amount that was given, but it was something like \$25,000. It was a very modest amount of money for the whole equal marriage process. I believe Egale got about \$160,000 in funding, whereas I know the federal government spent \$400,000 on expert witnesses in the Ontario litigation alone, so you got a lot of bang for your buck, Mr. Cooper.

**The Chair:** There is time left for a small question, if you want, Mr. Cooper.

**Mr. Michael Cooper:** I'm okay.

**The Chair:** You're okay.

Mr. Tilson, you wanted to ask one small question?

**Mr. David Tilson (Dufferin—Caledon, CPC):** How much time do I have?

**The Chair:** I'm pretty flexible. Ask the question.

**Mr. David Tilson:** Both Ms. Go and Mr. Elliott referred to the issue of funding for litigation. This has been a problem for all groups. The only one I'm familiar with, which was a long time ago, was the legal aid system in Ontario, which has always been underfunded. There have always been a whole bunch of people who cannot get funding, and as a result they represent themselves, which in turn drives the legal system crazy because the poor judges have to be fair. It makes the cases longer. It may even create some discrepancy between parties, I don't know.

Ms. Go in particular asked for expanded coverage for provincial laws. Wouldn't a lot of that be done through provincial legal aid? The only one I'm familiar with is the Ontario system, but I'm sure they are identical throughout the country. My question is for both of you, if we have time.

**Ms. Avvy Go:** I come from Ontario, and in a way we are very privileged. The Ontario system is a far superior system compared with other provinces. Ontario actually has test case funding. During the time when court challenges weren't around, a lot of groups actually looked to the Ontario test case funding to seek funding to do charter litigation.

Whether or not legal aid is properly funded, the fact is that even in provinces where there is legal aid, they do not always fund test case litigation.

In a way, having test case litigation may address some of the issues of under-resourcing of legal aid in the sense that the test case funding is a way of addressing an issue that affects a large number of people, whereas without the test case, every single person will be subject to the same unjust law, or the same discriminatory law, or having the same problem with law, and they go before the court over and over again and they will require legal aid over and over again.

The idea of test case funding is to make the law better so you don't have as many people appearing before the court or as many problems, which will result in having people appear before the court.

I also want to speak briefly to the consultation issue. It is not just about addressing, for instance, challenges within a particular community. Case consultations are allowed in different groups. For instance, even if I'm just going to launch a charter challenge on the issue that affects immigrants alone, case consultations allow the various groups to come together to talk about whether or not my strategy or the strategy I'm going to use will have a negative impact on other groups. It's a very important way of engaging the communities.

Mr. Elliott talked about getting a bang for the buck as far as lawyers are concerned. You get a lot more bang for the buck as far as communities are concerned.

There are hundreds and thousands of hours of volunteer work that go into this kind of litigation from the community side, and it's a way of building a community of shared interests and shared goals to make Canada a better place. It's the same idea behind test case litigation as well. All of that will make the system better, and hopefully in the long run reduce the need for legal aid.

● (0920)

**The Chair:** Thank you.

I think that answered the question. We're going to move now to the Liberals.

Ms. Khalid.

**Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.):** Thank you, Chair,

Thank you to the presenters and the information you have provided us today.

Firstly, I'd like to ask Ms. Go. You had mentioned in your brief and also today about systemic racism in the system, and the possible expansion of the CCP to include section 7 rights.

Can you give us some specific examples of cases that depict these kinds of issues?

**Ms. Avvy Go:** One example is a case that was actually argued in the Ontario court that we were involved with. It deals with the "right to housing" issue. A number of organizations intervened in that case.

There are statistics showing, for instance, among the homeless and under-housed population that there is a very high population of racialized communities—aboriginals, women, women with disabili-

ties—so they are terribly under-housed or homeless. The challenge was the lack of a housing strategy to deal with that issue.

In that context, of course section 15 is one argument in the sense that the lack of policy has a disproportionate impact on these disadvantaged groups; but section 7 is also an issue concerning the right to security, so that issue was also being argued.

If that case were to be funded by the court challenges program, then the court challenges program would only fund the section 15 arguments and not the section 7.

I can tell you when I was on the panel, it's very artificial sometimes. You have to just ignore the section 7 thing, but in fact the two are somewhat related. I think more and more so as well, with the court coming more to a realization that equality might be a principle of fundamental justice under section 7, that the two sections are actually becoming more and more connected.

**Ms. Iqra Khalid:** Thank you.

We've heard testimony from a lot of witnesses over the past months as we have been studying the court challenges program and access to justice. Many witnesses have raised the concern that the court challenges program comes and goes at the whim of the government.

Can I ask all three panellists to comment on how they think we could make this program more permanent and safeguard it from the whim of the government?

**Mr. R. Douglas Elliott:** I wish I had an answer to that.

I think it is a problem. Parliament is sovereign and can always repeal a law. I'm not sure there's anything that can be done to fully guarantee it could never be changed.

Short of embedding it in the Constitution and making a constitutional amendment, so that we would have something that looked like the German constitution with an obligation to protect rights and to rehabilitate.... I would love to see that, but I don't think this committee wants to go down that road right now. Short of that, I don't have a solution.

● (0925)

**The Chair:** Ms. Hutchison.

**Ms. Carmela Hutchison:** That would be my intervention.

When we talk about different intersections, the one I also want to touch on is immigration of people with disabilities. That's another intersection where people with disabilities struggle tremendously, and that is another point of intersection that has to be addressed.

When we talk about housing, the right to housing, the right to social support, and the right to legal representation, these are all conflicting rights with sections 7 and 15. These are important places where we have to look, because there are those intersections under the charter where court challenges need to be expanded. That would be my additional intervention.



The other piece I would like to mention briefly is where we have self-represented clients, some of the places.... Ontario has such a rich access to legal aid. I deal, in the DisAbled Women's Network Canada, with people from all provinces. I live in Alberta, where we do not have such rich access. The volunteer legal programs have.... The volunteers can't do anything. It ends up that I—

**The Chair:** Ms. Hutchison, I'm sorry, but could I bring you back to the question, which is how to safeguard the program?

You're answering a different question, and that's taking away time from this side.

Can you come back to the question that was asked? The question that was asked was how to safeguard the program from the whims of government.

**Ms. Carmela Hutchison:** Sorry...embedded in the Constitution.

**The Chair:** Thank you.

Sorry, I thought you had gotten into that, and then you....

I need to make sure everybody's time allocation is fair.

Ms. Go.

**Ms. Avvy Go:** I don't have a solution.

I think that as more and more Canadians realize the importance of the program, it will also be more difficult for the government to repeal it.

**The Chair:** Thank you.

You have time for one short one, if you want.

**Ms. Iqra Khalid:** Thank you.

I appreciate that.

We've also heard testimony from various witnesses about how the court challenges program has worked in the past with respect to which cases get funded and which cases do not. We've heard questions about the transparency of the previous system.

In what way do you think we can make the new system more transparent and more accessible?

**The Chair:** Perhaps you could refer to one person on the panel to answer.

**Ms. Iqra Khalid:** Yes. I will ask Ms. Go.

**Ms. Avvy Go:** There have been different reiterations of the program. A long time ago, it was not an independent body. It was attached to Canadian Heritage through a university. It was defunded or cancelled, and then it was brought back and became an independent body.

I think becoming an independent body will give it more opportunities to deal with questions of transparency. However, at some point we also have to realize that, when people come to the program for funding, there may be situations where the applicants do not want that information made public, so we need to address that issue. Maybe if we could find a way of summarizing the reasons or types of cases being challenged, without giving out information about the individual applicant, this would make decisions more transparent.

Transparency and accountability can also be strengthened by changing the board structure or by recruiting, reaching out to more community groups. The program is still not very well known to many groups out there, even though it's been effectively going on for 10 years. Aboriginal groups and racialized minority groups, for example, are not as familiar with the program.

As the program membership grows, the accountability structure will get stronger. As the program becomes accountable to more communities, it will need to be more transparent. Some funding is required for outreach and promotion.

• (0930)

**The Chair:** Thank you, Ms. Go.

Now we will go to Mr. Rankin.

**Mr. Murray Rankin (Victoria, NDP):** Thank you, Chair.

I'd like to say welcome to everyone. It's nice to see you again, Mr. Elliott. I can attest to the excellence of Egale Canada and their legal advocacy. I had the honour of working with Egale during the same-sex marriage case back in 2003.

I want to talk about money, because that seems to be the topic *du jour* here.

In your brief, Mr. Elliot, under the heading, "Leveraging the Private Sector", you talked about cross-subsidization by small and medium-sized law firms. You said expert witnesses are key in section 15 litigation, and often provide their services free or for modest fees. You pointed out there's a heavy evidentiary burden in section 15.

I'd like all witnesses to talk about how we're going to divide a very small pie. Do we take one or two cases? I think you've suggested a \$225,000 funding cap for litigation. That may be a reasonable number, but I can tell you we're not going to get many cases done.

Ms. Go, you were a panel member on the court challenges program. Can you tell us how you see it working? Will we do a few big blockbuster cases and very few others? How do we decide how to divide a small pie between equality-seeking groups?

**Ms. Avvy Go:** We have dealt with this in different ways. One of them, as Mr. Elliott mentioned, is that we kind of have to look at the merits of the case, so not every single application that comes to us will be funded. We do have to try to find and fund cases that will advance equality. Sometimes we get maybe a few cases or several cases that challenge more or less the same issue, and in those cases we'll try to encourage the groups to work together. Sometimes we have individual applicants who have a very good case, but are not necessarily represented by the right counsel. We will also try to encourage them to reach out to people who have the expertise as well. We find all kinds of ways to leverage the little money we have.

As I mentioned, the case litigation is not the only way. We talk about case consultation and impact studies, and all of those things will enhance the value of the charter as well. That's why I talk about the necessity of giving the board the flexibility to move funds around. I remember when I was a vice-chair, one of the struggles we had was constantly having to deal with the Department of Heritage. To put it bluntly, they would micromanage. We had a funding agreement. I can't remember the figures, but we had maybe \$500,000 for this or \$10,000 for that, and then we always had to try to argue that since we didn't use up all of the funding in one pocket maybe we could move the funding to a different pocket so we could maximize the global envelope of funding for the court challenges program.

**Mr. R. Douglas Elliott:** Thank you very much for your kind words, Mr. Rankin.

I love the word "flexibility" that Ms. Go used. That's how the language rights support program works right now. You get really fine people running the program, who get the benefit of seeing all of these cases and seeing the trends in the jurisprudence, and they are in the best position to make the call about where we're going to have the most impact, whether there is an intersectional case or they're seeing how section 7 is evolving, and they pick the cases based on maximum impact.

If you got the sense from my presentation that I'm saying you should be focusing on fewer cases and doing them right, that's exactly our message. There used to be a \$100,000 cap for trials, but I believe it's now \$125,000. If you went to my firm, for instance, and asked if it would do a trial for \$125,000, you know, our managing partner would have a stroke. No one will take on a case. It's better to have a realistic budget that will actually get a law firm to engage than it is to have a low budget so it looks as though you're going to be able to fund lots of cases. In fact you're not going to fund any or you're going to get really poor-quality cases because you're going to get people coming forward who will take them on because they want to make a buck even though the cases are no good.

• (0935)

**Mr. Murray Rankin:** Ms. Go talked about how sometimes they're not represented by the right counsel, so they might find they are with a person who will charge one-third of what someone else charges, but of course often they'll get one-third of the quality. That's a problem too.

**Mr. R. Douglas Elliott:** You get what you pay for.

**Mr. Murray Rankin:** You get what you pay for in so many things in life.

You don't see a problem therefore in balancing between...? A section 15 case could have impact on other groups, but a case involving disabled women is not like a case involving a racialized minority or same-sex rights. How do you explain to equality-seeking groups that you're going to take this one on when it seems that nothing on the face of it has to do with their issue, but it could advance section 15 generally? That's a hard job.

**Ms. Avvy Go:** To be fair on this, I think that was the least of our problems. Partly it's because we had a very strong network of community members who are in support of the program. There were conversations, dialogues, and case consultation and case networking,

so there was a lot of trust among the different groups that we were not going to do anything that would jeopardize anybody else.

We also recognize that everybody in Canada has issues. There's no hierarchy of equality or inequality. I don't think that is a problem, but the problem is often the limited funding. For instance, DAWN may have 10 cases, but we can fund only one of them.

**Mr. Murray Rankin:** I want to drill down a little into the practical problem of evidence.

I want to go back to the point that was made about the fact that expert witnesses can often provide this free or for modest fees, but once again, you might need the top expert who is in fact not prepared to give away his or her time. Is this something that we should be alive to here? In other words, should there be an expanded budget for the evidence required in these complicated cases? Or is that asking too much?

**Mr. R. Douglas Elliott:** I think they should have the flexibility of being able to fund expert witnesses, but I will tell you that in the equal marriage challenge that I did, my budget was \$500 for expert witnesses. The government spent \$400,000 on expert witnesses, and I won.

**Mr. Murray Rankin:** Your expert was prepared to give away his or her time.

**Mr. R. Douglas Elliott:** That's right, and they're not always.

May I say that a lot of these issues.... Here's where we really face a problem. In some of these cases, it may be that the expert you really need.... I'm doing a case right now dealing with access to sterile injection equipment in prisons. The best model for that is Switzerland. I have to get an expert from Switzerland if we're going to be able to advance this case. That's going to cost for his time but also for his transportation to come here. There does need to be some money for experts.

**The Chair:** Mr. Fraser.

**Mr. Colin Fraser (West Nova, Lib.):** Thank you very much.

Ms. Hutchinson, you can go ahead and answer the question, briefly.

**Ms. Carmela Hutchison:** I have one very quick comment. In our organization, there are a lot of women who have lived experience, but there are also women with academic backgrounds and expertise who have spent their lives educating themselves, yet they're often expected to give away that expertise and that education for free.

That is a justice issue. Their work is not funded. They're expected to give it away for free. They get kicked in the teeth every time—"why don't you get a job?"—but nobody will pay for their work. That is an issue of justice.

**Mr. Colin Fraser:** Thank you very much for that answer.

Thank you to all of the panellists for attending today and providing us some very helpful information.

Ms. Hutchinson, you mentioned that one change you'd like to see is different streams. You mentioned the equality stream in particular, and it goes beyond just section 15. I'd like you to expand on that. We've heard some mention, obviously, of how we should be looking at section 7 as well, but are you thinking even beyond that? What did you mean by expanding on the equality rights beyond section 15?

● (0940)

**Ms. Carmela Hutchison:** I'm weak on this because I'm not a constitutional lawyer, so I'm going to look to my colleagues for help in this. My understanding of section 7 is that it talks about access—and help me with this, please—and that it's access to income support, access to housing, and access to the fundamental social contract with Canadians. It is access to immigration.

People with disabilities have problems accessing all of those things. In DAWN Canada, and also in the other organization that I'm president of provincially, which is the Alberta Network for Mental Health, we spend our daily life on this. Our mandates are subsumed by people in basic needs crises. We have no way of protecting people's access to those support services and benefits. There's no way for us to advance people's rights in those areas. It's a constant issue for us.

**Mr. Colin Fraser:** Thank you.

If I can turn for one moment to you, Ms. Go, in your presentation, you talked about some issues that are still live issues that need to be determined by the court. You mentioned section 15 issues. You said that especially in regard to a criminal law context with race-based situations, there are still some uncertainties in the law.

What do you see coming that needs to be determined by the courts in those situations?

**Ms. Avvy Go:** Hopefully, with the reinstatement of the court challenges program, many of the issues.... For instance, there are issues around carding, which is police racial profiling, and issues around the overrepresentation of aboriginal and African Canadians in the criminal justice system. There are a lot of issues at both the provincial and the federal level, whether they're under the Criminal Code or the Police Services Act, that are ripe for a challenge under section 15, but of course under section 7 as well—that would be another example—and under other sections of the charter that deal with criminal issues.

I think that's why some of the groups are advocating for looking at cases that will advance substantive equality irrespective of which section is being argued under the charter, as opposed to looking at just section 15. My view is that I think section 15 should still be the anchor section, but that we should also fund arguments under other sections, whether it's section 7 or section 8, or section 12 in some of the immigration cases, if they are used to advance substantive equality.

**Mr. Colin Fraser:** Thank you very much for that answer.

Go ahead, Ms. Hutchison.

**Ms. Carmela Hutchison:** I have one addition to that. There is also discrimination by diagnosis. As I talked about overrepresentation with criminal cases, there would be brain-injured and mentally ill people. They are also overrepresented as victims of violence, and

it's often because they lack access to income support. That would be again that mix-up of section 15 and section 7 rights.

**Mr. Colin Fraser:** Thank you very much.

I will turn to Mr. Elliott. Mr. Rankin had asked a question that prompted an answer regarding merit. I know you mentioned that in your presentation, and Ms. Go touched on it as well, that merit needs to be looked at in a case in order to determine the best allocation of resources to get the best bang for the buck, so to speak.

I'm wondering how this worked previously under the old iteration of the court challenges program, and if you're suggesting any changes should be made with regard to judging the merit of these cases.

**Mr. R. Douglas Elliott:** What happened under the old program was that merit was assessed by independent experts. I will say—and I don't want to make Ms. Go blush—they did a pretty good job of picking the merits of the case.

I am led to believe that the similar process that's used now with the language rights support program is also working really well. There is a relationship of trust that builds up between the experts and the community groups, especially through these intersectional consultations.

What was frustrating for us under the old program were the restrictions that were put on that flexibility, the artificial distinction between section 15 and section 7, for example. That's probably the biggest problem because the jurisprudence under section 7 has exploded.

You're talking about intersectional issues like the Insite case from British Columbia, for example. There you're talking about injection drug users who are often indigenous people, who are often people with disabilities, with mental health issues, and they needed access, for their health needs, to clean needles. That was a section 15 and a section 7 case, but if Ms. Go was back with the old rules, she would have to say you need to parse those issues in order for us to fund. It's a ridiculous situation.

The other problem we had was we had some really important cases like Vriend and M. versus H. that involved provincial legislation. They were very impactful. The federal government was there arguing in those cases, and may I say, I was very glad they were supporting us in the Vriend case. They had a stake in what was going on, but Ms. Go didn't have the ability to fund those important cases because they were provincial jurisdiction.

● (0945)

**Ms. Avvy Go:** Can I talk very briefly about the...?

**The Chair:** It has to be very brief because we have to switch panels. This will be the last comment from this panel.

**Ms. Avvy Go:** The panel was also supported by a very good staff component, and they do a lot of research to analyze the case and analyze the merits of the case. Some of the research is outstanding. The research should have been made available to the parties as well.

That is the research that talks about the substantive equality and how the arguments can be improved. That makes the decision of the panel much easier.

**Mr. Colin Fraser:** Thank you very much.

**The Chair:** Thank you very much, Ms. Hutchison, Mr. Elliott, and Ms. Go. Thank you so much for your contribution. We will take all of your words and your briefs under advisement. Again, the presentations were very interesting, and we really appreciate it.

**Mr. R. Douglas Elliott:** Thank you, Mr. Chair. I'm happy to answer further questions from any of you.

**The Chair:** I'd like to ask the members of the next panel to come forward. We'll have a short break as we exchange panels.

• (0945) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (0950)

**The Chair:** I would like to welcome all of our witnesses on our next panel. Thank you so much for coming. The committee very much appreciates your coming to Ottawa to convey your views to us.

I would like to introduce Mr. Bruce Porter, who is the executive director of the Social Rights Advocacy Centre. From Canada Without Poverty, we have Harriett McLachlan, who is the president of the board of directors, and Michèle Biss, who is the legal education and outreach coordinator. Welcome. From the Charter Committee on Poverty Issues, we have Bonnie Morton, who is the chairperson and who, I understand, was previously on the panel for the court challenges program.

**Ms. Bonnie Morton (Chairperson, Charter Committee on Poverty Issues):** No, not on the panel, I am on the board.

**The Chair:** We really appreciate your expertise. We are going to hear your statements first, and then we are going to take questions.

We are going to start with Mr. Porter.

**Mr. Bruce Porter (Executive Director, Social Rights Advocacy Centre):** Thank you very much, Mr. Chairman. Thank you, everyone, for inviting me to participate in this very important and energizing discussion.

I was involved with the court challenges program right from its inception, and I have worked on a number of test cases, both funded by court challenges and not funded by court challenges. I have worked extensively with my colleagues on the panel, both with Canada Without Poverty—previously the National Anti-Poverty Organization—and with the Charter Committee on Poverty Issues.

On the second page of the statement that I distributed, I have outlined some of the key recommendations that I share with my colleagues with respect to the program. I don't intend to focus too much on those in my presentation. I would highlight just a couple of them and allow my colleagues to develop them further.

We believe it is critical to expand the scope of the program to include selective cases under section 7, dealing specifically with socio-economic deprivation and disadvantage, and poverty issues. I thought the previous panel spoke very well on the issues of intersectionality. I don't think we want to open everything. We really need to stick to the kind of focus that the program has traditionally had on issues of disadvantage, but poverty issues certainly need to be addressed, under both section 7 and section 15.

The other thing I would highlight is the importance of having access to international human rights mechanisms where domestic

remedies have been exhausted. We are finding increasingly that domestic jurisprudence intersects with international jurisprudence. I am involved in a number of cases now where we have taken petitions to the UN Human Rights Committee when domestic remedies have been exhausted. It is a very important corrective mechanism, in order to keep working on a case where we haven't had a successful outcome in the domestic courts.

Because I am working a bit more internationally in recent years, I thought it might be more helpful for me to focus a little bit on a big picture about the way in which you could situate the review of the court challenges program in the broader issues of access to justice and what the charter ought to mean. Specifically, I would suggest that this committee should engage directly with the Prime Minister's commitment, in the mandate letter to the Minister of Justice, for the government to undertake a serious review of the positions that it is advancing in litigation. It seems to me that access to justice means a lot more than restoring funding to the court challenges program, as important as that is. It also means restoring our commitment to the charter and what it was expected to mean. I thought it would be helpful to just review some of my experience with what the charter was expected to mean and how we have, to some extent, lost sight of those original ideas and visions. I think it is time for us to recommit to those.

This year, the United Nations is celebrating the 50th anniversary of the adoption of the two covenants that codify the universal declaration: the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, both of which were adopted by the UN General Assembly in 1966 and opened to ratification 10 years later.

Remarkably, today, May 19, happens to be the 40th anniversary of Canada's ratification of the two covenants. This is something that really deserves to be celebrated, because by ratifying the two covenants simultaneously 40 years ago, Canada distinguished itself from the U.S. and many other countries by expressing a commitment to the unified framework of the Universal Declaration of Human Rights, a framework which, as we know, owed a lot to the distinguished Canadian John Humphrey.

The Cold War division of the UDHR into two covenants, of course, has made us pay a price. There was, for a number of years, the idea that social and economic rights—rights to food, housing, clothing, and access to health care—were somehow second-rate rights, and that access to justice wasn't fundamental to those rights in the same way that it is fundamental to civil and political rights. That view has simply been rejected. It has been rejected by most governments around the world. It has been rejected by the UN General Assembly and Human Rights Council.

Significantly, in 2008, the UN General Assembly adopted the optional protocol to the International Covenant on Economic, Social and Cultural Rights. I was involved for many years in the debate leading up to that historic moment, a moment which Louise Arbour, when she was High Commissioner for Human Rights, after having been on our Supreme Court, described as absolutely historic; she said it was “human rights made whole”. Finally, we are recognizing that people living in poverty, suffering from hunger and denials of access to housing, are entitled to the same principle of access to justice as those whose civil and political rights have been denied.

What we have in Canada is moving backwards on that issue. Canada has not taken a progressive position at the UN with respect to the understanding of social rights as being equally entitled to access to justice. While the international community has made significant progress, Canadian courts and governments have moved backwards. On rare occasions, when people living in poverty have been able to mount court challenges to inadequate social assistance rates, homelessness, or denials of access to health care necessary for life, they have faced the most extreme position from Canadian governments, which have argued that governments have no positive obligation to protect the right to life, security of the person, or equality, or to take measures to address homelessness, hunger, or poverty.

These positions are not only at odds with international human rights; they are at odds with what the charter was expected to mean.

• (0955)

A few years ago, on the occasion of the 25th anniversary of the charter, I was asked by the court challenges program to do some research into the historical expectations of equality-seeking groups when the charter was adopted. As part of the research, I reviewed the transcripts and submissions made to the Subcommittee on Equality Rights of the Standing Committee on Justice and Legal Affairs, chaired at that time, as you may remember, by Patrick Boyer. It was that committee that recommended the extension of the court challenges program to include equality rights.

I was quite struck by how equality-seeking groups in 1985 in Canada were ahead of their time in affirming a concept of substantive equality, and of human rights made whole, just as Louise Arbour has spoken of them in the modern context. Their concept of equality drew heavily on Canada's commitment to social rights under international law. Women's organizations asserted that the poverty of women in Canada is a principle source of inequality in this country, and that governments' obligations to address it had to be a focus of section 15. People with disabilities referred to Canada's international human rights obligations to affirm that equality means a decent place to live, access to meaningful work, 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.

Yet we have lost that shared commitment to this kind of inclusive and progressive understanding of what the charter means. That can't be blamed solely on courts. The Supreme Court of Canada, in fact, has left open the question of the scope of the charter to protect social rights. A review of Canada by the UN Committee on Economic, Social and Cultural Rights, in February, made it clear that it is up to

the government to adopt and promote the interpretations of the charter that accord with Canada's international human rights obligations. The committee urged the government to meet with civil society organizations to discuss what positions should be taken, and to ensure that judges are provided with education about their obligations to ensure consistency with Canada's international human rights obligations. These hearings can perhaps be the beginning of a new conversation about what the charter really ought to mean, and a renewed commitment to fully including those who are living in poverty in that conversation.

Thank you.

• (1000)

**The Chair:** Thank you very much.

Now we'll go to Ms. McLachlan and Ms. Biss.

The floor is yours, ladies.

**Ms. Harriett McLachlan (President, Board of Directors, Canada Without Poverty):** Thank you.

Thank you for inviting Canada Without Poverty to appear at this important study on access to justice. CWP is a federally incorporated, charitable organization dedicated to the elimination of poverty in Canada. Since our inception in 1971 as the National Anti-Poverty Organization, we have been governed by people with direct, lived experience of poverty, whether in childhood or as adults. This lived experience of poverty informs all aspects of our work.

I am the president of the board of directors, and although I'm an educated professional, I've lived most of my life in poverty. I have first-hand experience of the substantial barriers in access to justice for the one in seven people in Canada who are living in poverty. I truly believe that if the justice system were accessible, I would not have endured 34 years of poverty. I'm joined in my comments by Michèle Biss, Canada Without Poverty's legal education and outreach coordinator and human rights lawyer.

One of the principal barriers in accessing the justice system for people living in poverty is the lack of availability of financial resources. The cost of legal advice, administrative fees, and other collateral costs directly restrict those living in poverty from accessing legal mechanisms. In communities where legal aid is not available, primarily in civil and administrative matters, the most marginalized who are living in poverty are often denied justice. For example, as noted by the UN Committee on Economic, Social and Cultural Rights in their 2006 concluding observations, cuts in British Columbia for civil legal aid in family law services disproportionately affect women. Instead of remedying this service gap, B.C. took further measures to eliminate all funding for such poverty law matters as housing and eviction, welfare, disability pensions, and debt.

We live in an era when social protections for the most vulnerable are under near-constant threat. One of the underlying causes of the constant mining of such programs is attitudinal. It's attitude. In Canada, despite the obvious systemic nature of poverty, there remains a dominant discourse that stigmatizes poor people as undeserving and lazy. As a result, any provision of services, no matter how paltry, is deemed an act of benevolence on the part of governments, rather than governments meeting their human rights obligations to ensure the active participation in democracy of people who are poor.

The entrenched stigma associated with living in poverty is often internalized, and can result in a fear of reprisal and further prejudice, particularly when people are trying to claim their legal rights. This fear of asserting one's rights through the justice system is exacerbated by the growing trend of aggressive litigation by the government, which asserts that rights claims of this population should not be heard. For example, in the *Tanudjaja v. Attorney General* case, when four homeless individuals attempted to assert their right to housing in the courts, the government respondent filed a motion labelling this exercise of rights as frivolous and vexatious. This left homeless people with no recourse to claim their basic human rights, and occurred without any review of 9,000 pages of expert evidence filed by the applicants.

The court challenges program validated the legitimacy of poor people as rights holders. It acted as a mechanism to combat discriminatory stereotypes of poor people by providing access to justice.

My colleague Michèle will now take over.

• (1005)

**Ms. Michèle Biss (Legal Education and Outreach Coordinator, Canada Without Poverty):** Prior to 2006, the court challenges program was exceptional in our opinion, and while we are encouraged by the government's decision to re-fund the equality rights component of the program, we emphasize that modernization may not require a complete revamping of the program. Instead we suggest that the best aspects of the program be retained, those that were effective, particularly for people living in poverty wishing to claim their rights.

There were many unique aspects of the court challenges program about which others have no doubt spoken, but what is less talked about is the way in which the program served as an accountability mechanism, to ensure that Canada implemented its international human rights obligations.

The United Nations has recognized the court challenges program as a human rights mechanism relevant to our international human rights treaty obligations. For example in 1993, concluding observations from the United Nations Committee on Economic, Social, and Cultural Rights stated that the program enabled disadvantaged groups or individuals to take important test cases before the courts. They commended the program and Canada for recognizing the importance of effective legal remedies against violations of social, economic, and cultural rights, and of remedying the conditions of social and economic disadvantage of the most vulnerable groups and individuals.

In its concluding observations in 1993, 1998, and 2006, the committee went further to recommend that claims at provincial and territorial levels be funded. We propose that this recommendation be implemented.

In our opinion, the review of the program also provides an excellent opportunity to consider taking steps to ensure that the program be both independent and protected by legislation. In this regard, the court challenges program should remain a free-standing institution, not associated with any academic institution as it was prior to 2006. It should also retain its autonomous equality committee, made up of members from a variety of stakeholder sectors to determine which cases should be supported by the program.

Historically, funding to this essential program has been cut many times and this "here today, gone tomorrow" attitude must stop. Access to justice and rights claims for equality-seeking member groups should be accorded the highest protection from political whims. For this reason, we suggest that the program be enacted by legislation.

We encourage the committee to assess the ambit of the program to ensure it can address the various types of equality rights claims that people in poverty wish to make. Upon modernization of the program, we recommend that the scope be opened beyond claims made under section 15 of the charter to include those claims under section 7, where claims focus on the right to life, security of the person, and equality of people living in poverty and who are homeless.

It is time for the Canadian government to acknowledge the close connection between the right to life and those who are the most marginalized, those who are living in poverty or who are homeless. For example, a study in Hamilton, Ontario, found that those living in the rich neighbourhoods had a life expectancy 21 years longer than those in poor neighbourhoods.

These numbers are not improving. In British Columbia, a recent study found a 70% increase in deaths among homeless populations in 2014 as compared with the previous year. As noted by Madame Justice L'Heureux-Dubé in the case *Regina v. Ewanchuk*, sections 7 and 15 have special significance as they are the vehicles by which international human rights laws are implemented. In the context of the particular barriers faced by people living in poverty and the role of the program in fulfilling human rights obligations, we encourage the committee to seriously consider opening the program to section 7 claims that might be particularly relevant for people living in poverty and who are homeless.

This government has taken an important step forward as an international human rights leader in the re-funding of equality claims under the court challenges program. Before us is an exceptional opportunity to ensure that those who are the most marginalized and stigmatized can access justice and claim their legal rights.

•(1010)

In summary, in its deliberation on the modernization of the program, we ask the committee to, first, retain the program's strengths from 2006; second, enact the program in legislation; and third, extend the ambit of the program to include claims at provincial and territorial levels and to section 7 claims that interact with socio-economic inequality and discrimination.

This could be an important legacy offered by this government to the 4.9 million people who are living in poverty in Canada.

We look forward to answering your questions. Thank you.

**The Chair:** Thank you very much.

We'll go to Ms. Morton.

Ms. Morton, welcome.

**Ms. Bonnie Morton:** Thank you very much.

I would also like to thank you for inviting the Charter Committee on Poverty Issues to present today.

I am the chairperson of the Charter Committee on Poverty Issues, and we lovingly know it as CCPI. I joined CCPI as someone who was living in poverty at the time, and that was back in 1989. I continue to work on poverty issues locally, nationally, and internationally as a United Church minister with the Regina Anti-Poverty Ministry.

The Regina Anti-Poverty Ministry does individual advocacy. We do public education on poverty issues, and we challenge systemic discrimination, very similar to what the Charter Committee on Poverty Issues does, but in a little different way.

CCPI is a national committee established in 1989 to bring together low-income representatives, constitutional experts, and advocates, to assist people living in poverty in Canada to claim their rights under the charter through international human rights and other laws. CCPI consults with people living in poverty, as well as experts across Canada and internationally, in developing its position on particular issues.

CCPI has never had any operational funding. We have relied on funding from the court challenges program of Canada on a project-by-project basis or a case-by-case basis, to do research, to consult with experts, and to consult with affected constituencies on many issues dealing with the application of section 15 of the charter.

CCPI would not exist if it weren't for the court challenges program. It had become clear in 1989 that issues of equality and discrimination affecting people living in poverty in Canada were not being addressed in the charter cases. The court challenges program took the initiative to organize and fund a national meeting on poverty issues. It was at that meeting in 1989 that the Charter Committee on Poverty Issues was formed. The court challenges program has also made a priority of including people with the experience of poverty in its governance.

I have been on the court challenges program in the past. I still sit on the board. In the past, I was living in poverty. Today, I now can claim I have the experience of having lived in poverty.

I was last elected to the board of the court challenges program in 2006 and I continue to be a member at this point in time. Since its formation in 1989, CCPI has intervened in 14 cases at the Supreme Court, and either initiated or intervened in many other cases at lower courts. We relied on the court challenges program for many of these interventions.

As previous speakers have pointed out, it is critical that a restored court challenges program be able to identify groups that are not getting access to justice, as it did with the people living in poverty, and assist them to build their capacity to identify key issues, assemble legal teams, and to develop evidence and arguments and ensure that the litigation strategies are linked to education and networking. In other words, the program must do more than simply respond to applications from lawyers. It must support access to justice in a variety of ways, including support for case development, for meetings, consultations with affected communities, public education, as well as follow-up to legal actions to ensure that decisions are implemented.

In its commitment to poverty issues, the court challenges program has always ensured that the groups who are affected by poverty, including aboriginal peoples, women, people with disabilities, and racialized communities, are included in litigation and outreach strategies. This commitment to equality inclusiveness within the human rights movement itself has been critical to the success of the program, and in our view must remain a central aspect of a restored program.

CCPI believes it is critically important as well that the design of the court challenges program continue to ensure accountability through linguistic and equality-seeking groups. We would not consider a program that was administered by a university, or another organization or institution, to be a restoration of the court challenges program.

•(1015)

A unique feature of the program has been that it has brought together a diverse range of groups that have worked together to ensure that litigation has been advanced in a manner that's respectful of others. You heard from Avvy Go earlier that it's also not harmful to others. Annual court challenges meetings have functioned in important ways to sustain the commitment of the equality and to ensure that we understand each other's issues better.

A critical aspect of litigation of CCPI has been to ensure accountability to a project team that includes low-income advocates, people living in poverty themselves. Sometimes we have insisted that lawyers make arguments that they may not think will be successful in the short term, but they're important to CCPI in the long-term strategy. When CCPI began its work, for example, lawyers were reluctant to cite Canada's international human rights obligations to ensure access to adequate food, housing, and an adequate standard of living, but we insisted that these rights are fundamental to our rights to equality and security of the person.

Over time, lawyers and courts have become used to referring to our international human rights. In the same way we believe that the court challenges program must be accountable to and run by equality-seeking and minority language groups in order to ensure that litigation is responsive to the needs and aspirations of the affected communities.

We also urge the committee to consider extending the mandate of the court challenges program to include international human rights mechanisms where they are used in support of domestic litigation or as a way to challenge unfavourable decisions that are contrary to international human rights.

We think engaging more effectively with international human rights mechanisms is part of the modernizing of the court challenges program. Canadian courts are out of step with international human rights standards, particularly in the area of poverty and social and economic rights. It is particularly important to people living in poverty in Canada that we have access to international mechanisms to highlight the failures of our courts in ensuring access to justice.

We also urge that this government ratify the optional protocol to the International Covenant on Economic, Social and Cultural Rights, as well as the optional protocol on the Convention on the Rights of Persons with Disabilities, and ensure that support can be provided by the court challenges program to use these mechanisms in appropriate cases.

Another critical issue for people living in poverty, as pointed out by Canada Without Poverty, is the need to extend the mandate of the court challenges program to select cases under section 7 of the charter. Also, as Bruce Porter pointed out, ensuring that we have access to food, housing, water, sanitation, health care, and other social and economic rights in a country as affluent as Canada is fundamental to the vision of substantive equality that the CCP was instituted to advance.

These issues frequently arise in relation to the courts' interpretation of the rights to life and security of the person under section 7. It's important that people living in poverty be able to advocate for interpretation of the rights to life and security of the person that do not exclude issues of homelessness, hunger, or poverty.

We believe that it's become essential that section 7 cases involving social and economic deprivation be eligible for funding under the program. CCPI also supports proposals for the extension of the program to provincial and territorial cases of national importance. Ensuring access to justice to ensure compliance with human rights by all levels of government is a responsibility of the national-level government under the international human rights law that they've committed themselves to.

In early years we had protections under the Canada assistance plan, which was an act long ago before maybe some people sitting at the table. In 1996 when it was removed and replaced with the health and social transfers, we lost the standards that were protected under that act. We no longer have any of those protections today. This means that people living in poverty rely even more extensively on the charter to ensure that provincial and territorial laws and policies do not deprive people of access to basic requirements of life, security of the person, and dignity.

•(1020)

Where it is in the context of the provincial and territorial cases for a federal case, the interpretations the Supreme Court of Canada gives to charter rights affect all levels of government. Most poverty issues are within the provincial and territorial jurisdiction, and it is important the charter committee ensures, or the court challenges program can provide, the funding to challenge some of these violations.

In conclusion, I want to emphasize CCPI welcomes the commitment of the new government, both to restoring and modernizing the court challenges program, and to reviewing the positions it has taken in court. This is particularly important—

**The Chair:** Ms. Morton, you're well over time at this point. Can I ask you to please wrap up?

**Ms. Bonnie Morton:** All right.

As I was leaving the Westin hotel this morning, where I've been graciously housed, a few steps away there was a man laying on the street, homeless. That shouldn't happen so few metres away from the House of Commons. In front of the Lord Elgin hotel a woman was holding a cap out and asking for money. That shouldn't happen in the midst of such affluence.

As Gandhi once said, "Poverty is the worst form of violence". He also stated, "You must be the change you wish to see in the world". Let us enable all important mechanisms of change, as we modernize the court challenges program to create true access to justice for all, and in doing so end the violence of poverty in Canada.

I look forward to answering any questions.

**The Chair:** Thank you.

**Ms. Bonnie Morton:** I want to add one thing.

**The Chair:** Ms. Morton, at this point, no.

**Ms. Bonnie Morton:** I have these. I couldn't translate them, but I have these for others after.

**The Chair:** Thank you very much. The clerk will take the copies and translate them for the members of the committee.

Mr. Nicholson.

**Hon. Rob Nicholson (Niagara Falls, CPC):** Thank you very much.

Thank you very much for your testimony here today.

I know we only have a couple of minutes.

Ms. Morton, you were saying the Canadian courts are out of step when it comes to issues like poverty. You must be fairly pessimistic that, if there's a restoration, as the government has promised, of the court challenges program, we will be funding cases brought to the courts that will get no sympathy or won't give redress to these issues. Is that what you're saying?

•(1025)

**Ms. Bonnie Morton:** I'm not saying that at all. I'm saying that right now the courts are not ruling in our favour. We haven't been able to get a lot of cases into the courts either for the past—



**Hon. Rob Nicholson:** You said the courts are out of step on this issue. Is it your hope that with more cases they might start changing their mind or start changing...?

**Ms. Bonnie Morton:** We have started seeing that. I mentioned in my brief that we have seen the courts, as well as lawyers, starting to look at...and dissenting judges are using international human rights to defend their positions as well.

**Hon. Rob Nicholson:** Fair enough. Thank you.

Ms. McLachlan, thank you again for your comments as well.

You were talking about the difficult time you had when you suffered from poverty, and that some of the legal supports were not.... Were you referring to something like the court challenges program, or were you talking about civil legal aid that might be provided to you on an individual basis, as opposed to some sort of class action? What exactly were you talking about?

**Ms. Harriett McLachlan:** It was more of an individual matter, and the lack of access, that impacted my life tremendously. I don't think it would be something...maybe it could have been something to take to the court challenges program, but it was more individual.

**Hon. Rob Nicholson:** I'm not sure which province you're from, so I'm....

**Ms. Harriett McLachlan:** I'm from Quebec.

**Hon. Rob Nicholson:** The Quebec version of legal aid just would not fund cases, or.... Are you talking about things like matrimonial dispute cases, support, that kind of thing, or division of assets, or are you talking in terms of housing and getting legal support?

**Ms. Harriett McLachlan:** It's a number of those things. It's complex. As a social worker, I've seen a lot of complex cases where there are a number of different aspects that are intertwined and intersect that impact people.

**Hon. Rob Nicholson:** I presume your organization and others are supportive and lobby both levels of government with respect to legal aid funding. Would this be part of what your mission is?

**Ms. Harriett McLachlan:** That's something that needs to be looked at for sure. There needs to be some changes to that, where legal aid doesn't exist. We need to have more legal aid accessible to people. Rates sometimes are incredibly...people have to be in tremendously dire straights before being able to qualify and get access, and that needs to be looked at.

**Hon. Rob Nicholson:** I presume that part of your organization and yours, Ms. Morton, has to do with lobbying provincial jurisdictions to open their doors with respect to legal aid. Some legal aid is financed indirectly through the federal government. Nonetheless, I assume that's part of your mission. Is that right?

**Ms. Bonnie Morton:** Yes, through our ministry, we lobby for provincial monies to cover more in legal aid than it does at this point. I live in Saskatchewan. In 1987, the government changed the mandate of legal aid so that it can only cover matrimonial issues and not even.... It is only family law. It's more around the children. You wouldn't be getting a lawyer to help you with the division of assets or anything like that. As for criminal law, if you're not looking at incarceration, you don't get legal aid. Across the country, legal aid is handled differently.

**Hon. Rob Nicholson:** Thank you for your comments. That was interesting.

Mr. Porter, you've been involved with many cases over the years. You talked about the international aspect of human rights. What exactly are you proposing for the court challenges program? Is it the ability to raise these international treaty obligations, which Canada has signed on to and which have been adopted by the United Nations or other international organizations, in arguments before Canadian courts? Are you saying that the court challenges program should be expansive enough to allow you to take your case to international courts or to the United Nations? Is that what you're suggesting?

Are you suggesting that the program should be broad enough to bring the arguments into Canadian courts, or perhaps you are doing both? I'm not sure.

**Mr. Bruce Porter:** The program has been supportive of the use of international human rights to interpret section 15 of the charter, so that I think would continue to be the case.

I'm now involved in a case having to do with the denial of access to the interim federal health benefit to a person who was applying for humanitarian and compassionate consideration and was ineligible. It was found that her right to life was violated, but the Canadian courts held that this finding was in accordance with the principles of fundamental justice under the charter. The Supreme of Court of Canada denied leave. We were able to file a petition under the optional protocol to the International Covenant on Civil and Political Right, where we take the same arguments before an international human rights treaty-monitoring body. The decisions rendered under the optional protocols have a fair bit of authority. They can influence the way in which Canadian courts may review what they did and reconsider, perhaps not in that case but in another. It's not an appeal procedure, but it's an important avenue for allowing disadvantaged groups to get a rethinking of an issue by an authoritative body that can then be fed into other cases.

I would hope that the court challenges program, in cases like mine, would be able to consider.... In fact, we got funding from the test-case funding committee of legal aid to do this case at the UN, so that committee has recognized that in some instances it's important to have access to international remedies after you've exhausted domestic remedies.

That's what I'm proposing.

• (1030)

**Hon. Rob Nicholson:** My thanks to all of you.

I assume you would be looking to see that the new government is including some areas within provincial jurisdiction, like housing, some family law matters, and some aspects of poverty. I assume there would be unanimity that the government should be funding that as well.

**Ms. Michèle Biss:** It's an interesting point that you bring up, but I think it is important that we don't lose sight of the fact that under international human rights obligations all levels of government are responsible for poverty. Every level of government is responsible for the right to housing, the right to food, the right to life, as Bonnie points out, that people aren't living on the streets a block from Parliament. It's all levels of government that are responsible here. There is a role for provincial, territorial, and local governments to play.

We can't lose sight of the fact that the federal government has an important voice here. That's one of the reasons we're excited about the court challenges program, because it gives us the ability to speak to systemic issues. It gives us the ability to use the charter to say there is systemic discrimination against people living in poverty and people who are homeless. It really pertains to all levels of government.

**The Chair:** Thank you.

Mr. Hussen.

**Mr. Ahmed Hussen (York South—Weston, Lib.):** Thank you, Mr. Chair.

I'd like to thank you all for coming in and bringing forward your suggestions with respect to moving forward with the court challenges program.

I'd like to begin with Ms. Biss and Ms. McLachlan, but afterwards also I'll open it to the rest of panel. My question is with respect to what you've indicated to be our international human rights obligations and the need, as we modernize the court challenges program, to expand the scope of the program and open it to claims beyond section 15, and also dealing with poverty and homelessness.

Budget 2016 puts aside \$12 million over five years to revive the court challenges program. If you combine that with existing federal investments, total funding will be \$5 million a year for an expanded and renewed court challenges program. Do you think that amount of funding annually is adequate to deal with an expansion of the scope of the program, in addition to also dealing with provincial and territorial issues?

I'll begin with you, Ms. Biss, but the rest of you can also answer that question.

**Ms. Michèle Biss:** Yes.

When it comes to the nitty-gritty facts I will defer to my very learned colleagues about the ins and outs of dollars and how much needs to be allocated to the program. Because it was in 2006, I have never had the opportunity as a lawyer to use the program.

That being said, it's interesting you bring up budget 2016 and the funding allocated, because there's a way in which this program works in conjunction with so many other programs that are needed to address these issues, such as the way that we need adequate funding for a national housing strategy and a national anti-poverty plan, all of which use human rights as their fundamental framework. Those dollars are so important but they have to work in conjunction, in collaboration, with many other policies and laws that also work for people living in poverty.

• (1035)

**Mr. Ahmed Hussen:** Mr. Porter.

**Mr. Bruce Porter:** It's an important point. Clearly it's not going to be enough money, but on the other hand if we have a limited pot, I think the most important principle is to ensure that we're able to be involved in the most important cases and to do the best job that we can in those.

From the standpoint of poverty issues, if the most critical case around the interpretation of section 7 happens to end up, as it may very well end up, being a provincial challenge or a territorial challenge, it's so critical that we be able to participate in that case. That's where the issue will be determined by the Supreme Court of Canada, and then, as Bonnie Morton pointed out, it will bind all governments. It's not an efficient kind of restriction to say that we can't deal with the most important cases simply because they are provincial or territorial. It's going to make the job tougher for the panel to decide which ones get funding. Presumably when they have a more expanded mandate, they will be able to select the most important cases.

**Mr. Ahmed Hussen:** Ms. Morton.

**Ms. Bonnie Morton:** I guess I'd just like to remind everybody at the table that Canada cannot ratify these covenants unless every province and territory agrees to uphold the rights within. That happened in 1976. That binds our provinces and our territories equally to the commitments made within that International Covenant on Economic, Social and Cultural Rights.

It's a companion document to the civil and political rights. It was never meant to be one having more power or more jurisdiction over the other. They were to be equal documents. Social and economic rights have been lagging behind. It's time that they were brought up as equal and as valuable to civil and political rights within our courts. Is it going to take time? It probably will. Every one of our provinces and territories have a legal obligation to uphold these rights.

That's why it's important that money be given to the court challenges program to be able to allow litigation in those areas. There's \$5 million to start this program. I'm hoping it is only a beginning for the future of the program and access to justice in this country, because \$5 million is a drop in the bucket of the millions, billions, and trillions of dollars that we spend on other things in this country. Let's bring equality equal, and let's not put a limit and a price on it. This is a beginning, and I hope it's just a beginning and that we're not going to stay stagnant at \$5 million for 10 years.

**Mr. Ahmed Hussen:** Thank you.

Do I have time for one more question?

**The Chair:** You can ask one member of the panel a very brief question.

**Mr. Ahmed Hussen:** Okay.

Mr. Porter, I'd like your view on how we can guarantee the independence of the program moving forward, in terms of not being at the mercy of funding cuts or just removal of the program, as happened in 2006. Do you have any thoughts on that?

**Mr. Bruce Porter:** I'm afraid I'm going to be a bit like the previous panel and say that I don't have the magic bullet, but I think legislative enactment of some sort would at least make it seem to be more permanent. As the previous panel pointed out, I think once we have it restored, we'll do our best to make sure that no one will ever want to part with it again.

**The Chair:** Thank you very much.

Mr. Rankin.

**Mr. Murray Rankin:** Thank you.

I'd like to thank everyone for coming. This is a very provocative panel.

I want to build on a question that Mr. Hussen asked. I was thinking about how in 1993 we had a case called Rodriguez, which was decided against the person seeking physician-assisted dying. Last year we had a unanimous court that overturned it. Many years ago we had the Gosselin case in the Supreme Court, the section 7 poverty case; I can see you're all nodding. Section 7 is about the right to an adequate level of social assistance. She was challenging a Quebec law that took rights away from citizens under 30 to receive social security benefits, and she lost in that case.

Is it your view that the court challenges program should provide funding for cases like that, which might be decided quite differently today, just as the Rodriguez case was decided so vastly differently later? Do we suggest, as a committee, that the court challenges program earmark money for poverty law cases? You heard the last panel saying that we have to decide what the best section 15 case is. Whether it's sexual equality, or racialized minorities, or disability, let them figure it out, because they will make the right decisions. Or should we swing at the fences and actually command that this process include money earmarked for poverty law cases so that we can change some of the precedents in the poverty law area, just as had occurred in the physician-assisted dying context?

That's for anyone, but perhaps Mr. Porter could start, please.

• (1040)

**Mr. Bruce Porter:** I couldn't agree with you more. The Gosselin case left the issue open. We've only had two statements from the Supreme Court of Canada about whether section 7 includes social and economic rights. First was in Irwin Toy, where they left the issue open, and then in Gosselin; eight of the nine judges went out of their way to say they were leaving this open in another case. It was a very specific circumstance related to access to workfare and so on in that case.

It's kind of shocking that in 30 years of the charter we've only had one case in which the court looked at that issue. It's still open, and we haven't had the chance to re-argue it. As was mentioned earlier, homeless people seeking to address that issue in the Tanudjaja case were denied even a hearing on the evidence. So yes, the idea that...

I mean, this is sort of what the program did in the past. There wasn't a specific earmarked amount of funding, but as Bonnie

Morton pointed out, it noticed that poverty issues weren't getting the attention they deserved and took measures to work with the communities to bring cases forward. That's what would need to be done.

**Mr. Murray Rankin:** What I want to know is this. In your judgment, should we actually say as a justice committee, should we choose to do so, that there ought to be some earmarked funds to deal with this gaping problem of poverty law? Or should we just simply leave it as another one of the equality-seeking issues that the court challenges program can decide with regard to section 15 and section 7 litigation decisions?

**Ms. Harriett McLachlan:** Speaking as a person who's lived in poverty for such a long time, and as a social worker, poverty intersects so many different people for so many different reasons. My response is yes, but let's remain flexible and let's make this more explicit. People don't talk about poverty, or if they do talk about poverty it's in degrading ways. I think earmarking would help provide some legitimacy and would support something that's been dismissed for too long, where people living in poverty are degraded. At the same time, it has to remain flexible. Poverty is so broad, and intersects so many people from different walks of life. I think that's an important thing to consider.

**Mr. Murray Rankin:** An example of a section 7 homelessness case occurred in my riding. People in Victoria, B.C., were granted the right by the court to sleep in the parks, because there was no other place to stay. We have a housing crisis.

I'm looking to you, Ms. Morton, to answer this, because I thought you made an excellent point when you talked about how in the past we could have had litigation under the Canada assistance plan, but then those standards were removed and we now have the famous social transfer. The federal government gives money to the provinces to spend however they wish, it seems. We might have the ability to go after your social and economic rights if we were to suggest that those transfers have strings attached and actually get spent on the things they were supposed to be spent on, like homelessness and that sort of thing.

Are you suggesting that we make recommendations to make sure that we have greater hooks on which to give the court challenges program the ability to go after poverty issues like that one? Is that what I heard you testify?

**Ms. Bonnie Morton:** Today my presentation has been mostly around the reinstatement of the court challenges program and what it should cover, but I fully support our putting some ties into transfer payments that go to provinces.

I think that the government should reopen—and this is a form of access to justice—conversations with provinces and territories and set out what those standards will be because the CAP agreement, in 1966 when it was brought in, helped to standardize poverty across the country. Not that standardizing was good; it's not, but it helped to level poverty out across the country. Since CAP has been removed, we now have poverty in different levels all over the country and we need our federal government to negotiate with the provinces to bring some standards back into government programs and policies. That might even stop us from having to go to the court challenges program for funding because we could handle it in some other way.

• (1045)

**Mr. Murray Rankin:** Or, if not, at least you would have legislated standards against which you might have the ability to make lawsuits to deal with homelessness and poverty, and the court challenges program might rise to that occasion.

**Ms. Bonnie Morton:** Well, I do poverty advocacy in my home province because legal aid doesn't do it. What we used to do with the CAP agreement was use that when we were arguing cases. It got no farther than local and provincial appeal levels; it never got farther.

**The Chair:** We're going to pass it to Mr. McKinnon for the last questions.

Mr. McKinnon.

**Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.):** Thank you, Chair.

Thank you to all the panellists for being here and for your excellent presentations.

I'm rather intrigued about the focus all of you have put on the idea of funding access to international mechanisms. I think this is unique to this panel.

Mr. Porter, you've specified that it should be available in appropriate cases. You gave us one earlier. Would these be cases viewed through the lens of section 15 and/or 7, cases that you felt had been exhausted in domestic court cases, or are there other cases that you would recommend in this respect?

**Mr. Bruce Porter:** My experience has primarily been in relation to 7 and 15. Our position is that there has to be enhanced flexibility but that we really need to keep in mind the focused mandate that the program had on issues of disadvantage because, as soon as it gets too broad, then I think the concerns that have been expressed in previous discussions about how you manage it when you're getting too many applications, how you really select....

I think it is important for this committee to direct that the program should remain with its focus on the issues of the most seriously disadvantaged, and those tend to come up under 7 and 15, but to the extent that they may arise in other sections, it may be possible to be somewhat flexible.

As I emphasized in my presentation, it's on the issue of positive obligations to address socio-economic deprivation where the Canadian courts, as Bonnie Morton mentioned, are so out of step. In those instances it can be so critical to have access to international mechanisms because they act as a corrective. The strategic goals of the court challenges program could be significantly enhanced by

allowing them to fund access to international mechanisms in appropriate cases, but I see it as relatively rare. I don't see it as a massive expansion of the mandate.

**Mr. Ron McKinnon:** As for those international mechanisms, you mentioned a number of treaties. Are there any other mechanisms that come to mind or is it just those particular treaties that you have in mind?

**Mr. Bruce Porter:** There are a number of mechanisms that can be used. There's the regional mechanism with the Inter-American Commission on Human Rights that has sometimes been used. There are communications procedures available through special procedures, which is the special rapporteur on adequate housing, who happens to be a Canadian, Lailani Farha, at this point in time.

These are procedures where groups can take matters to various international mechanisms and where the government is obliged to respond to communications received from the special rapporteurs. There are a number of areas where this....

Most of the groups that worked with the court challenges program in the past are now working fairly actively with international human rights mechanisms. That's why I agree with Michèle that this is a modernization issue. This is the way strategic litigation is done now. It's done in a dialogue between the international and the domestic, so the court challenges program needs to be sensitive to that kind of approach.

**Mr. Ron McKinnon:** Do I have more time, Mr. Chair?

**The Chair:** You have time for another question.

**Mr. Ron McKinnon:** I have a question for Ms. Biss and/or Ms. McLachlan regarding the extension of the program to section 7 as it pertains to social and economic deprivation. Is that the only way they should be extended to section 7...? Further to that, what other sections, if any, should be brought into this, such as section 2, perhaps?

**Ms. Michèle Biss:** That's an excellent question.

As Harriett mentioned earlier, poverty can be experienced in so many different ways, with so many different types of violations. Clearly, of course, the number one that we're thinking of in terms of extending the ambit of the program is the right to life. That one is very visible. It's one that's being used quite often. In fact, quite interestingly, Mr. Rankin mentioned the *supra* in the tent city case, where the injunction was not granted to disband the camp but there is still a decision to be made. One of the primary vehicles for that conversation is the right to life under section 7.

That being said, there could potentially be some openness to talk about other sections of the charter, namely, I think, section 2, freedom of expression for people living in poverty. As we all know, for people living in poverty, there are certainly some barriers to joining the public fora.

When you think about it, this panel is quite unique. We have two members of this panel with lived experience of poverty joining this conversation. Truly, can you say when the last time was that you experienced, on the Hill, that conversation with people living in poverty? There are real barriers to freedom of expression that have manifested in different ways for people of poverty. For freedom of association, there's also a possibility that there are charter rights claims that affect people in poverty. There is certainly an option to open it up to different sections of the charter.

Looking at it right now, with the exception of funding, that's where I think my arguments, certainly from the CWP's perspective, are certainly primarily focusing on section 7, as that is the most visible one. It is interesting that you mention there is perhaps some

opening down the line to look at section 2 and perhaps other sections of the charter. Different indigenous groups have also marked certain sections of the charter where they think it could be open to that as well. It's interesting that you point that out.

• (1050)

**The Chair:** Thank you very much.

Thank you to the panel for your interventions. We very much appreciate it. We'll read your briefs carefully.

I wish everyone a wonderful day.

The meeting is adjourned.

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