

**the POVERTY and  
HUMAN RIGHTS  
PROJECT**

**The Right to Social Assistance**

**British Columbia's Two Year Time Limit**

**14 Questions and Answers**

**October 2003**

## **Introduction**

British Columbia is the only province in Canada to place a time limit on welfare eligibility. From diverse perspectives, many people are concerned about the harmful results of this harsh and unprecedented new rule. This report is a response to numerous requests that the Poverty and Human Rights Project has received from concerned groups and individuals for an analysis of the human rights implications of the 24 month cut off rule.

No court in Canada has ever been asked to determine the constitutionality of a welfare rule that permits a government to completely deny social assistance to a person in need, based solely on the duration of their reliance on welfare. This means that there is no single legal decision that provides a definitive basis for predicting how the courts will respond if faced with a legal challenge to the British Columbia rule.

However, there are central touchstones in constitutional and international human rights law that support the view that the 24 month cut off rule is not consistent with people's rights to security and equality as guaranteed by the *Charter of Rights and Freedoms*, or with the values that underlie the *Charter*. The goal of this report - which is written in a question and answer format - is to describe these touchstones. Through this report the Poverty and Human Rights Project hopes to raise public awareness about the importance of strong social and economic rights for all Canadians, and the threat to human rights commitments that is posed by British Columbia's two year time limit.

### **1. Are welfare rules tougher than ever in British Columbia?**

**Yes.** In recent years, there have been cuts to social assistance rates by successive governments in British Columbia. These have had harsh effects, driving the incomes of social assistance recipients far below the poverty line. But in addition to more cuts to welfare rates, the current Government of British Columbia has introduced rules regarding eligibility for welfare that are tougher than ever before.

Here are a few of the new rules:

- Before being permitted to apply for social assistance, prospective applicants are required to do a three-week work search. During this period they receive no financial support.<sup>1</sup>
- Applicants must not only exhaust all other income alternatives (disability pension, unemployment insurance, workers' compensation, etc.), they must deplete almost all assets.
- To be eligible for social assistance, applicants must satisfy the government that they have been in the workforce for the previous two years, earning at least \$7000 per year or working at least 840 hours for each of these two years.<sup>2</sup>
- Recipients must comply with government-imposed "employment plans." If they do not, their income assistance can be reduced. This rule applies to dependent youth once they turn 16 years old as well as to adults.<sup>3</sup>
- Single parents are now considered to be employable when their youngest child turns 3 years old.<sup>4</sup>

There are more. **But the toughest new rule is the 24 month cut off.** This rule says that people are only allowed to claim social assistance for a total of 24 months out of every 60 months.<sup>5</sup> As a result, those who cannot find or maintain steady work will have their benefits cut once their 24 months are up. **The 24 month cut off will start affecting welfare recipients on April 1, 2004.**

## **2. Why is the 24 month cut off particularly disturbing?**

**Denying social assistance to any person in need, without regard for their individual circumstances, is wrong.**

Under this rule, some people will be denied social assistance - even if it means that they cannot meet their basic needs - just because their period of need lasted longer than the government would like.

Because of the 24 month cut off, more people in British Columbia will be homeless, hungry, and without adequate clothing. Their health will be

compromised, and their capacity to pursue employment and education opportunities diminished. Some people will be placed under acute pressure to choose demeaning and criminalized strategies for survival. Women will have greater difficulty leaving violent relationships and will experience greater pressure to exchange sex for food and shelter.

Living under such conditions is detrimental to people's physical and psychological integrity, to their safety, and to their sense of equal worth. It also greatly diminishes their ability to participate in civic affairs, and their faith in social and political institutions.<sup>6</sup>

### **3. Will some single parents be affected by the 24 month rule?**

**Yes. While single parents will not be cut off social assistance after 24 months, those with children aged 3 and older will have their welfare cheques cut by \$100 per month.<sup>7</sup>**

There are about 19,000 single parent families receiving welfare in British Columbia now, and almost 90% of these families are headed by single mothers. The Ministry of Children and Families has classified 10,270 of these single parents as "expected to work." If they cannot find work and adequate childcare before April 1, 2004, these parents face a further reduction to their already inadequate incomes that will force them to choose between paying the rent and feeding their children. Some mothers and children will end up homeless.

### **4. What is the Government's rationale?**

**The government says that the 24 month cut off is an incentive to find work.** However, social assistance recipients are already obliged to seek work. Moreover, they are subject to extensive requirements to report regularly on their job searches, and the government can terminate their benefits if they fail to meet reporting requirements or turn down employment opportunities.<sup>8</sup> This makes the imposition of the 24 month cut off redundant. The rule is punitive for welfare recipients, not helpful.

The government's rationale is based on the assumption that people *want* to be on social assistance and do not want to work. The implication is that social assistance recipients will not seek work unless forced to - by deprivation. This negative stereotyping of poor people ignores the facts that this is a time of high

unemployment in British Columbia, and that, historically, there is a close correlation between rates of unemployment and numbers of people on social assistance.<sup>9</sup> It is also well known that people reliant on social assistance experience discrimination in the job market, and may be refused jobs because of prejudice.

Although there are some exemptions<sup>10</sup> to the 24 month cut off, these are limited and insufficient to make the 24 month rule fair. The government's own documents suggest that the imposition of time limits will disproportionately affect people who have barriers to employment but who are deemed "employable."<sup>11</sup> People with no other source of income will have their benefits eliminated starting in April 2004, including people with hidden disabilities, older people, and people living in rural communities where work is hard to find.

#### **5. Does the 24 month cut off represent a shift in Canadian social policy?**

**Yes. Since the introduction of a nation-wide social assistance program in Canada in the 1960's, there has never been an arbitrary time limit on eligibility that has the effect of cutting a person off social assistance regardless of need.**

Over the last fifty years, Canadian governments have worked collaboratively to create a social safety net that will ensure that all Canadians have adequate supports when they are old, disabled, unemployed, having health problems, or otherwise in need. Social assistance has been an essential element of this safety net, designed to assist persons in need and to prevent and remove the causes of poverty.

The prospect of a flat denial of social assistance based on a time limit represents a significant shift away from the established commitment to protect the basic well being of all residents. Canadians have a strong investment in Canada's social programs, both as a practical foundation for shared community life, and as a part of Canadian identity.

**6. Does denying social assistance to people in need also violate human rights?**

**Yes. The 24 month cut off violates basic human rights that are guaranteed by the *Canadian Charter of Rights and Freedoms*<sup>12</sup> and by international human rights treaties that Canada has ratified.**

A complete denial of social assistance to a person in need, based solely on the duration of their reliance on social assistance, violates any reasonable interpretation of the rights to security of the person and equality protected by sections 7 and 15 of the *Charter of Rights and Freedoms*.

Section 7 of the *Charter* states:

*Everyone has the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice.*

Section 15(1) of the *Charter* states:

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

Section 7 and section 15 *Charter* rights are linked and must be interpreted by reference to each other, and to the Constitution as a whole.

Section 36(1)(c) of the Constitution commits the government of Canada and the provincial governments to:

*...providing essential public services of reasonable quality to all Canadians.*

The central value underlying all human rights, including *Charter* rights, is respect for the inherent worth and dignity of the person.

## **7. How do the section 7 rights to life, liberty and security of the person apply here?**

**The section 7 right to security of the person imposes a positive obligation on governments to protect people from serious threats to their physical and psychological integrity.<sup>13</sup> Without doubt, the denial of social assistance to meet basic needs constitutes such a threat.**

In *Gosselin v. Quebec (Attorney General)*,<sup>14</sup> Justice Louise Arbour of the Supreme Court of Canada held that cutting the social assistance rate for young adults to \$170 a month, which was well below subsistence level, constituted a violation of their section 7 right to security of the person, and perhaps their right to life as well.<sup>15</sup>

Justice Arbour explained:

“[A] minimum level of welfare is so closely connected to issues relating to one's basic health (or security of the person), and potentially even to one's survival (or life interest), that it appears inevitable that a positive right to life, liberty and security of the person must provide for it.”<sup>16</sup>

The majority of the Court chose not to decide in *Gosselin* whether the section 7 right to security of the person could obligate a government to provide social assistance. Rather, the majority expressly left the question open.<sup>17</sup>

## **8. How does the section 15 right to the equal benefit and protection of the law apply?**

**For any individual to be denied access to the means of subsistence is a profound affront to the inherent worth and dignity of the person, which is the core value of section 15.**

In a country as wealthy as Canada, for a government to refuse social assistance to a person in need is a blatant signal that that person is not regarded as equal in worth. For persons in need, social assistance is a crucial dignity-constituting benefit.

The Supreme Court of Canada has held that section 15 requires more from governments than mere same treatment of individuals. Rather, it is a guarantee

of substantive equality that requires that pre-existing group-based inequalities be taken into account, and addressed. In *Rodriguez v. British Columbia*,<sup>18</sup> Chief Justice Lamer stated that, “to promote the objective of a more equal society, section 15(1) acts as a bar to the executive enacting provisions without taking into account their possible impact on already disadvantaged classes of persons.” The Supreme Court confirmed these government obligations toward disadvantaged groups in *Vriend*<sup>19</sup> and *Eldridge*.<sup>20</sup>

Lack of access to adequate social assistance exacerbates the inequality of disadvantaged groups. People who rely on social assistance to meet their basic needs are a group that is the target of negative stereotyping, and they lack political power. Also, certain groups that are already disadvantaged by discrimination - women, Aboriginal peoples, people of colour, people with disabilities - appear disproportionately among the poor. Their higher rates of poverty are one outcome of the diverse forms of discrimination they experience. Also, each of these groups suffers reinforced social exclusion because of their lack of economic security. Poor-bashing agendas that exacerbate pre-existing disadvantage, and vulnerability to stereotyping and prejudice, by depriving people of access to food, clothing and shelter, are inconsistent with the norm of substantive equality.

## **9. How does section 36 of the Constitution apply here?**

**Section 36(1)(c) jointly obligates the federal and provincial governments to “providing essential public services of reasonable quality to all Canadians.” For all Canadians who rely on social assistance, or who may at some point in their lives find themselves in need of social assistance, it is an essential public service.**

The plain language of section 36 of the Constitution demonstrates a clear legislative commitment to adequate social assistance programs.

## **10. Do Canadians have a right to social assistance under international human rights law?**

**Yes. Rights to social security and an adequate standard of living including food, clothing and housing are recognized as fundamental human rights under the Universal Declaration of Human Rights<sup>21</sup> and in numerous international human rights treaties that Canada has ratified.**



Particularly important is Article 11 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*<sup>22</sup> which obligates Canada to progressively realize the right of everyone to an adequate standard of living including adequate food, clothing, and shelter. Canada ratified this treaty in 1976.

The reality in Canada is that for a significant segment of the population access to food, clothing, and housing is contingent on the availability of social assistance.

### **11. How are international rights related to *Charter* rights?**

**Sections 7 and 15 of the *Charter* and section 36 of the Constitution are understood to give life to Canada's international human rights obligations, and to provide for the enforceability of those rights by Canadian courts.**

The Supreme Court of Canada has held that international human rights law is a “critical influence on the interpretation of the scope of the rights included in the *Charter*,”<sup>23</sup> and that “the *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents that Canada has ratified.”<sup>24</sup>

Questions about the interaction between the *ICESCR* and the *Charter* have repeatedly arisen before the United Nations Committee on Economic, Social and Cultural Rights to which Canada is required to report periodically. Before this Committee, Canada has stated that the *Charter* guarantees that Canadians will not be deprived of the basic necessities of life.<sup>25</sup>

The Committee on Economic, Social and Cultural Rights has made it clear that it expects Canadian courts and tribunals to adopt broad and purposive interpretations of the *Charter* that will provide legal remedies for violations of social and economic rights in Canada.

### **12. Do United Nations Committees that review Canada's performance believe that Canada is living up to its obligations to poor people?**

**No. In recent years Canada has been severely criticized by United Nations treaty bodies, particularly regarding the extent of poverty in Canada, and the lack of adequate social assistance.**

The United Nations Committee on Economic, Social and Cultural Rights registered the first severe criticism of Canada in 1993.<sup>26</sup> The Committee expressed a number of serious concerns about Canada's failure to make any measurable progress in alleviating poverty over the previous decade, or in alleviating the severity of poverty among particularly vulnerable groups, including single mothers. The Committee noted the fact that there is no procedure to ensure that social assistance rates in Canada are at or above the poverty line.

In the 1993 review, the Committee on Economic, Social and Cultural Rights also expressed concern about evidence of families being forced to relinquish children because of an inability to secure housing and other necessities; hunger and extensive reliance on food banks; widespread discrimination in housing against people on social assistance and people with low incomes; inadequate attention to homelessness and comparatively low expenditures on social housing; and the failure of lower courts to adequately enforce the right to an adequate standard of living, including adequate housing, as a component of sections 7 and 15 of the *Charter*.

In 1998, Canada was reviewed again by the same United Nations Committee, and was criticized not just for lack of measurable progress, but for dramatic cuts to social programs including cuts to social assistance rates, social services and programs, and for increasing homelessness and lack of affordable housing.<sup>27</sup> The Committee recommended that national standards for social assistance - which were eliminated with the repeal of the Canada Assistance Plan Act<sup>28</sup> in 1996 - be reinstated and that social assistance rates be set "at levels which ensure the realization of an adequate standard of living for all."<sup>29</sup>

In 1999 Canada was reviewed for its compliance with the *International Covenant on Civil and Political Rights (ICCPR)*.<sup>30</sup> The United Nations Human Rights Committee found that social program cuts and other government action responsible for perpetuating poverty and homelessness in Canada constitute discrimination against women as well as a failure to provide necessary protections to which children are entitled under the *ICCPR*.<sup>31</sup>

The Human Rights Committee joined the Committee on Economic, Social and Cultural Rights in condemning discrimination against people on social assistance. The Human Rights Committee also linked homelessness to the guarantee of the right to life under article 6 of the *ICCPR*:

The Committee is concerned that homelessness has led to serious health problems and even to death. The Committee recommends that the State party take positive measures required by article 6 to address this serious problem.<sup>32</sup>

In its 2003 Concluding Comments, the United Nations Committee on the Elimination of Discrimination Against Women expressed serious concerns about the disproportionately negative impact on women of recent cuts and changes to social programs in British Columbia, including the cuts to social assistance rates and the narrowing of eligibility rules for welfare. It recommended that the Government of British Columbia review its policies and amend them as necessary to remove their discriminatory effects.<sup>33</sup>

### **13. What should happen now?**

**The Government of British Columbia should repeal the 24 month cut off rule. It violates basic human rights and abandons the most vulnerable people.**

### **14. If the Government of British Columbia does not repeal the 24 month cut off, should the courts strike it down?**

**Yes. This provision is a violation of international human rights to social security and an adequate standard of living, and a violation of constitutional rights to security, and equality, based on any reasonable interpretation.**

The courts' role in giving life to Canada's international and constitutional human rights obligations is especially important during times when governments' commitment to human rights is weak.

Since human rights are founded on the inherent worth and dignity of every individual, the courts must ensure that every person, including the poorest and most disadvantaged, is treated with respect and concern.

## About the Poverty and Human Rights Project

This report was produced by the Poverty and Human Rights Project, in Vancouver B.C. in October 2003, with the assistance of the British Columbia Public Interest Advocacy Centre. The Poverty and Human Rights Project is a non-profit research and public education centre committed to promoting recognition and realization of rights to social and economic security. The Project Directors are Gwen Brodsky and Shelagh Day. For information about the Poverty and Human Rights project, contact PHRP@telus.net.

## Endnotes

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<sup>1</sup> *Employment and Assistance Regulation*, BC Reg. 331/2003 [*EA Regulation*], s. 3. Some people are exempted from having to do the three-week work search.

<sup>2</sup> *Employment and Assistance Act*, S.B.C. 2002, c. 40 [*EA Act*], s.8, and *Employment and Assistance Regulation*, BC Reg. 331/2003 [*EA Regulation*], s. 18. Some people are exempted from the requirement for 2 years employment.

<sup>3</sup> *EA Act*, s. 9.

<sup>4</sup> *EA Regulation*, s. 29(4)(b). Previously, parents were not considered employable until their child was 7: *Income Assistance Regulation*, BC Reg. 75/97, s. 6(2).

<sup>5</sup> *EA Regulation*, s. 27. This rule applies to every recipient of welfare, except for those classified as “unemployable”. Not included within the 24 month limit are months in which a recipient is pregnant; under 19 years of age, or aged 65 and older; a child in the home of a relative; in a training program approved by the government; receiving a reduced amount of welfare because her spouse or someone with whom she lives or shares assets has reached the 24 month limit for receiving welfare; classified as a Person with Disabilities or Person with Persistent Multiple Barriers to Employment; a single parent caring for a child, foster child or child in the home of a relative who is under three years old; a single parent caring for a child, a child in the home of a relative, or a foster child who has a mental or physical condition that requires her to be at home; not eligible for welfare because of her immigrant status; or “temporarily excused” by the government from seeking work. Rather than having their benefits cut altogether, parents with children over three years old will have their benefits cut by \$100 per month: *EA Regulation* ss. 27 and 29.

<sup>6</sup> In *R. v. Oakes*, [1986] 1 S.C.R. 103 at 136 the Supreme Court of Canada held that respect for the inherent dignity of the human person, commitment to social justice and equality, and faith in social and political institutions are among the values and principles

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essential to a free and democratic society. In *Falkiner v. Ontario*, 59 O.R. (3d) 481 (C.A.) at 512 the Ontario Court of Appeal characterized social assistance as a benefit that “may well constitute a fundamental social institution.”

<sup>7</sup> *EA Regulation*, ss. 27(1)(c) and 29(4)(b)(i).

<sup>8</sup> See, for example, *EA Act*, ss. 11 and 13, and *EA Regulation*, ss. 29, 30 and 32-34.

<sup>9</sup> S. Klein and A. Long, *A Bad Time to be Poor* (Vancouver: CCPA and SPARC BC: 2003) at 16.

<sup>10</sup> *Supra* note 5.

<sup>11</sup> *Ministry of Human Resources Briefing Note, Budget Initiative #38 – Time Limits – Outstanding Policy Issues*, pp. 3 and 4, CBC News British Columbia, *Welfare Reforms triggered internal warnings*, webposted July 7 2003.

<sup>12</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11.

<sup>13</sup> For example, in the case of *New Brunswick v. G. (J.)*, [1999] 3 S.C.R. 46, the Supreme Court of Canada found that the Government of New Brunswick had breached the s. 7 right to security of the person when it refused to provide a lawyer for a woman in need whose children were being apprehended. The Supreme Court of Canada has also interpreted other *Charter* rights as imposing positive obligations on governments. See: *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016; *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 [*Eldridge*]; and *Vriend v. Alberta*, [1998] 1 S.C.R. 493 [*Vriend*].

<sup>14</sup> See *Gosselin v. Quebec (Attorney General)* 2002 SCC 84.

<sup>15</sup> Justice Claire L’Heureux-Dubé concurred with Arbour J.

<sup>16</sup> *Supra* note 14 at para. 358.

<sup>17</sup> *Ibid.* at para. 82 – 83.

<sup>18</sup> *Rodriguez v. British Columbia*, [1993] 3. S.C.R. 519 at 549.

<sup>19</sup> *Vriend supra*, note 13.

<sup>20</sup> *Eldridge, ibid.* at 676 - 682.

<sup>21</sup> The United Nations General Assembly adopted and proclaimed the Universal Declaration of Human Rights on December 10, 1948 (*Universal Declaration of Human Rights*, GA Res. 217(III), UN GAOR, 3d Sess., Supp. No.13, UN Doc A/810 (1948) 71). Article 25 of the Declaration provides that everyone has the right to a standard of living adequate for their health and well-being, and for their family’s health and well-being. This includes adequate food, clothing, housing, medical care, and social services, as well as a secure livelihood in the event of unemployment, sickness, disability, widowhood, old age or other circumstances beyond their control.

<sup>22</sup> *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976), GA Res. 2200A (XXI), UN doc. A/6316 (1966) [*ICESCR*].

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<sup>23</sup> *Baker v. Canada*, [1999] 2 S.C.R. 81 at para. 70.

<sup>24</sup> *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 at para. 23.

<sup>25</sup> CESCR, *Summary Record of the 5<sup>th</sup> Meeting: Canada*, UN Doc. E/C.12/1993/SR.5, 25 May 1993 at para. 21.

<sup>26</sup> United Nations, Committee on Economic, Social and Cultural Rights *Concluding Observations on Report of Canada Concerning the Rights covered by Articles 10 – 15 of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/C.12/1993/19 as reprinted in (1994) 20 *Canadian Human Rights Reporter* C/1.

<sup>27</sup> United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights (Canada)*, 10 December 1998, E/C.12/1/Add.31.

<sup>28</sup> *Canada Assistance Plan*, R.S.C. 1985, C-1. The Canada Assistance Plan established national standards for social assistance. It was repealed in 1996, removing the requirement on the provinces that transferred funds be spent in part to provide adequate social assistance to persons in need.

<sup>29</sup> *Supra* note 27 at para. 41.

<sup>30</sup> *International Covenant on Civil and Political Rights*, GA Res. 2200A (XXI), 21 UN GAOR, (Supp. No. 16) 52, UN Doc A/6316 (1966).

<sup>31</sup> *Concluding Observations of the Human Rights Committee: Canada*, UN Doc. CCPR/C/79/Add.105 (1999).

<sup>32</sup> *Ibid.* at para. 20.

<sup>33</sup> *Report of the Committee on the Elimination of Discrimination Against Women*, UN GAOR, 58<sup>th</sup> Sess., Supp. No. 38, UN Doc. A/58/39/ (2003) at p. 56. See also *Report of the Committee on the Elimination of Discrimination against Women*, UN GAOR, 52<sup>nd</sup> Session, Supp. No. 38, Doc. A/52/38/Rev. 1 (1999), which stated that the restructuring of government in Canada “was seriously threatening to erode the significant gains and advances made by Canadian women” (para. 321).