

S.C.C. FILE NO. 23861

IN THE SUPREME COURT OF CANADA
(Appeal from the Appeal Division of the
Supreme Court of Prince Edward Island)

BETWEEN:

THOMAS P. WALKER and JOHN M. ROBERTSON

Appellants
(Plaintiffs)

- and -

THE GOVERNMENT OF PRINCE EDWARD ISLAND

Respondent
(Defendant)

FACTUM OF THE INTERVENOR
CHARTER COMMITTEE ON POVERTY ISSUES

Vince Calderhead
B.C. Public Interest Advocacy Centre
815 - 815 W. Hastings Street
Vancouver, B.C.
V6C 1B4
Telephone: (604) 687-3063
Facsimile: (604) 682-7896

Solicitors for the Intervenor Charter
Committee on Poverty Issues

Philippa Lawson
The Public Interest Advocacy Centre
1 Nicholas Street - Ste. #1204
Ottawa, Ontario
K1N 7B7
Telephone: (613) 562-4002
Facsimile: (613) 562-0007

Ottawa Agent for the Intervenor CCPI

LIST OF COUNSEL

Mary Eberts
LAW OFFICE OF MARY EBERTS
Suite 200, 8 Price Street
Toronto, Ontario
M4W 1Z4
Telephone: (416) 920-3030
Facsimile: (416) 920-3033

Eugene Meehan
LANG MICHENER
Suite 300, 50 O'Connor Street
Ottawa, Ontario
K1P 6L2
Telephone: (613) 232-7171
Facsimile: (613) 231-3191

Wendy M. Matheson
**TORY TORY DESLAURIER &
BINNINGTON**
Telephone: (416) 865-8133

Ottawa Agent for the Appellants

Solicitors for the Appellants

Roger B. Langille
Charles P. Thompson
Legal Services Section, 5th Fl.
Shaw Bldg. - 105 Rochford Street
Charlottetown, P.E.I.
C1A 7N8
Telephone: (902) 368-4594
Facsimile: (902) 368-4563

Brian A. Crane
GOWLING, STRATHY & HENDERSON
160 Elgin Street
Ottawa, Ontario
K1P 1C3
Telephone: (613) 236-1781
Facsimile: (613) 563-9869

Solicitors for the Respondent

Ottawa Agent for the Respondent

Deborah K. Lovett
Ministry of Attorney General
Legal Services Branch
5th Fl., 609 Broughton Street
Victoria, B.C.
V8V 1X4
Telephone: (604) 356-8400
Facsimile: (604) 356-9284

W.G. Burke Robertson
Messrs. BURKE-ROBERTSON
70 Gloucester Street
Ottawa, Ontario
K2P 0A2
Telephone: (613) 236-9665
Facsimile: (613) 235-4430

Solicitors for the Intervenor,
Attorney General of British Columbia

Ottawa Agent for the Intervenor A.G. of B.C.

LIST OF COUNSEL

Shawn Greenberg
Department of Justice
Constitutional Law Branch
7th Fl. - 405 Broadway Avenue
Winnipeg, Manitoba
R3C 3L6

Telephone: (204) 945-2878
Facsimile: (204)

Solicitors for the Intervenor, Attorney
General of Manitoba

GOWLING STRATHY & HENDERSON
160 Elgin Street
Ottawa, Ontario
K1N 8S3

Telephone: (613) 232-1781
Facsimile: (613) 563-9869

Ottawa Agent for the Intervenor
A.G. of Manitoba

W. Brent Cotter, Q.E.
Deputy Attorney General
10th Fl. - 1874 Scarth Street
Regina, Saskatchewan
S4P 3V7

Telephone: (306) 787-8385
Facsimile: (306) 787-9111

Graeme G. Mithcell
Solicitors for the Intervenor, Attorney
General of Saskatchewan

GOWLING STRATHY & HENDERSON
160 Elgin Street
Ottawa, Ontario
K1N 8S3

Telephone: (613) 232-1781
Facsimile: (613) 563-9869

Ottawa Agent for the Intervenor, A.G. of
Saskatchewan

Me Dominique A. Jobin
Me Kathleen McNicoll
MINISTÈRE DE LA JUSTICE
Direction du droit constitutionnel
1200 route de l'Église, 2e
Sainte-Foy, Québec
Telephone: (418) 643-1477
Facsimile: (418) 646-1696

Procureures du Procureur
général du Québec, Intervenant

Me Sylvie Roussel
NOËL, BERTHIAUME, AUBRY
111 rue Champlain
Hull, Quebec
J8X 3R1

Telephone: (819) 771-7393
Facsimile: (819) 771-5397

Correspondante à Ottawa

LIST OF COUNSEL

Me Marcel Rivest
RIVEST, SCHMIDT, MOREAU,
DE-SAUTELS ET TARDIF
7712 rue Saint-Hubert
Montréal, Québec
H2R 2N8
Telephone: (514) 948-1888
Facsimile: (514) 948-0772

Procureur pour l'Ordre des
comptables généraux licenciés
du Québec, intervenant

Maurice C. Cullity
Christine H. Medland
DAVIES, WARD & BECK
P.O. Box 63, 44th Floor
1 First Canadian Place
Toronto, Ontario
M5X 1B1
Telephone: (416) 863-0900
Facsimile: (416) 863-0871

Solicitors for the Intervenors,
Certified General Accountants
Association of Ontario

Institute of Chartered Accountants
of Prince Edward Island, Intervenor

NOËL, BERTHIAUME, AUBRY
111 rue Champlain
Hull, Québec
J8X 3R1

Telephone: (819) 771-7393
Facsimile: (819) 771-5397

Correspondants à Ottawa

Henry S. Brown, Q.C.
GOWLING STRATHY & HENDERSON
160 Elgin Street
Ottawa, Ontario
K1N 8S3

Telephone: (613) 232-1781
Facsimile: (613) 563-9869

Ottawa Agent for the Intervenors Certified
General Accountants Association of Ontario

McCARTHY TÉTRAULT
1000 - 275 Sparks St.
Ottawa, Ontario
K1R 7X9
Telephone: (613) 238-2000
Facsimile: (613) 563-9386

Ottawa Agent for the Intervenors, Institute of
Chartered Accounts of Prince Edward Island

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PART I

Statement of Facts

1. The Intervener Charter Committee on Poverty Issues adopts the statement of facts contained in the Appellants' Factum.

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PART II

Points in Issue

2. With respect to s. 7 of the *Charter*, how should this Court deal with claims for the protection of interests which have an economic dimension?
3. What distinctions in principle exist between the interests sought to be protected in the present appeal and the interests which CCPI is concerned with such that a measure of caution needs to be utilized so as not to decide both in the present case?

15

Part III
ARGUMENT

Issue 1

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4. The Intervener, CCPI, is a national coalition, founded at a meeting held in Ottawa in June, 1989 at the initiative of the Court Challenges Program, the National Anti-Poverty Organization, and the Public Interest Advocacy Centre. CCPI was formed because representatives of these and other organizations from
10 across Canada were concerned that poverty issues were not being addressed effectively in litigation, and that very few claims were being advanced before the courts by people living in poverty, particularly under the *Canadian Charter of Rights and Freedoms* (the "Charter").

15

5. CCPI was formed for the purpose of bringing together low-income activists and poverty law advocates to ensure that poor people in Canada are able effectively to assert and secure their rights under the Charter, human rights legislation, and other laws in Canada. CCPI has initiated and intervened in litigation in order to ensure that the Courts are better informed about poverty issues, and that cases
20 addressing these issues are argued fully and responsibly, and in a manner that is directed by and accountable to low-income people themselves.

25

6. CCPI wishes to accomplish two things in this intervention; 1) advance an interpretation of s. 7 of the *Charter* which, in its submission, will be useful to the Court in the resolution of this case and, in particular, what has been referred to as the 'economic rights' issue; and 2) urge upon the Court a measure of caution in deciding the s. 7 issue in this appeal so as to avoid interpreting that section in a way which would have the inadvertent effect of deciding issues such as the

right to an adequate standard of living or social security, questions raised by *Irwin Toy (infra)* but which are not presently before the court.

Dignity or Economic Rights?

5

7. The parties to this appeal, as well as the interveners, join issue on the question of whether s. 7 of the Charter protects interests which have an economic component to them. It is submitted by the appellants that "liberty" enshrines the right to self-actualization, including the right to pursue an occupation. A host of other
10 submissions, (including, notably, the Attorneys-General), prefer to regard this as the protection of 'economic interests'.

8. In a real sense, the Court is being asked to select between competing characterizations of the scope and content of s. 7.

15

9. The Prince Edward Island Supreme Court, Appeal Division in the present case held that the right to practise a profession is not subsumed within the "liberty" interest in s. 7 of the *Charter*. To interpret the section in such a way the court said, "stretches s. 7 beyond its limits".

20

10. In contrast, the leading case of *Wilson v. British Columbia (Medical Services Commission)* (1988), 53 D.L.R. (4th) 171 (B.C.C.A.) also involved a s. 7 claim advanced by a professional (a physician) who alleged that legislation restricting the geographic area of a province in which new physicians could practise
25 infringed their "liberty" interests.

11. In upholding the doctor's claim, the B.C. Court of Appeal treated the error at trial as one of improper characterization of the interest affected:

5 The trial judge appears to have concluded that the Appellants, in asserting a right to pursue their profession, were asserting economic rights generally, or the right to work in particular....
10 With respect, we think that puts the Appellants' case on too narrow a basis. The trial judge has characterized the issue as "right to work" (a purely economic question), when he should have directed his attention to a more important aspect of liberty, the right to pursue a livelihood or profession (a matter concerning one's dignity and sense of self-worth)

15 *Wilson, supra*, at 187

12. The present Appellants similarly characterize their claim as one which goes to their dignity and self-worth.

 Appellants' Factum, p. 26, paras. 74-5

- 20 13. The question of the scope of s. 7 was taken up but not fully answered in *Irwin Toy*. In that case, the appellant argued that corporate/commercial economic interests were protected by s. 7 and that, in non-criminal proceedings, legislation which infringed such interests could be challenged through reliance on s. 7. In
25 its decision a majority of this Court briefly reviewed the legislative history of s. 7 before concluding, *inter alia*, that "property" rights were intentionally excluded from s. 7, which "leads to a general inference that economic rights as generally encompassed by the term "property" are not within the perimeter of the s. 7 guarantee".

30 *Irwin Toy Ltd. v. Quebec (A.G.)*, [1989] 1 S.C.R. 927 at 1003-4.

14. Immediately after this statement, the Court pointed to what CCPI submits is a crucial distinction between commercial property rights and the broad range of social rights with an economic component that are recognized in international law as fundamental human rights, particularly for the most disadvantaged groups.

The intentional exclusion of property from s. 7 and the substitution therefore of "security of the person" has, in our estimation, a dual effect. First it leads to a general inference that economic rights as generally encompassed by the term "property" are not within the perimeters of the s. 7 guarantee. This is not to declare, however, that no right with an economic component can fall within "security of the person". Lower courts have found that the rubric of "economic rights" embraces a broad spectrum of interests, ranging from such rights, included in various international covenants, as rights to social security, equal pay for equal work, adequate food, clothing and shelter, to traditional property-contract rights. To exclude all of these at this early moment in the history of Charter interpretation seems to us to be precipitous.

Irwin Toy Limited v. Attorney General of Quebec, (supra) at pp. 1003-4

15. This Court affirmed in *Andrews* that the right to equality "applies to and supports all other rights guaranteed by the *Charter*." In considering the question of whether rights with an economic component are to be included in s. 7, it is important for this Court to anticipate the nature of the rights claims of the most vulnerable and disadvantaged groups under s. 7.

Andrews v. Law Society of B.C., [1989] 1 S.C.R. 143 at 185

16. When members of disadvantaged groups live in poverty, there is usually an economic component to their relationship with governments. They may rely on social assistance for basic necessities or on certain social programs to be able to work or participate in society. For this reason, there will frequently be an

economic component to *Charter* claims related to liberty and security of the person advanced by poor people. To exclude these economic interests from the ambit of s. 7 would be to render the right to liberty and security of the person an illusory right for the most disadvantaged members of society.

5

Interests with Economic Components

17. At the outset, it is important to acknowledge that simply because an interest has an economic or monetary dimension to it signifies little as to whether it ought to be protected by s. 7. A social assistance recipient who receives a monthly cheque from a social services department is receiving that which they need to maintain themselves. The fact that the form of the transfer is financial says more about the way in which society is organized than it does about the interest that is being protected - human life, dignity and the ability to participate in society.

10

15 18. Stated differently, in a market society, the satisfaction of the bulk of human interests and needs is mediated through the exchange of value or currency. Thus, people typically meet their basic material needs through the exchange of money, goods or services. The interest sought to be met or sustained in these transactions is, however, human well-being not economic gain.

20

19. To collapse the distinction between the human need or interest that is being met and the method of its being satisfied (*i.e.* the payment of money) is to risk a mistaken characterization of the economic means for the social end.

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Jackman, Martha, "Poor Rights: Using the *Charter* to support social welfare claims" (1994), 19 Queen's Law Journal 65 at 76
Whitbread v. Walley (1988), 51 D.L.R. (4th) 509 (B.C.C.A.) at 521-2 per McLachlin J.A.

Section 7 of the Charter: Life, Liberty and Security of the Person

5 20. CCPI supports a purposive construction of s. 7 of the *Charter* which includes protection of those interests which are fundamental to human welfare. Section 7 is concerned with the well being of the living person; the inherent value and dignity of human life. Indeed, the *Charter* entrenches a commitment to social justice, one which enhances the participation of individuals and groups in society.

10 *Re Sheena B.* (1995), 176 N.R. 161 (S.C.C.) at 188-9 per La Forest J.
Rodriguez v. British Columbia (A.-G.), [1993] 3 S.C.R. 519 at 585
 per Sopinka J.
R. v. Oakes, [1986] 1 S.C.R. 103 at 136 per Dickson C.J.

15 21. It is submitted that the rights contained in s. 7 should reflect and reinforce the social and civil rights enjoyed by all Canadians, including the most socially and economically disadvantaged, for whom social programs such as social assistance (*The Canada Assistance Plan*) and medicare (*The Canada Health Act*) underpin 'life', 'liberty' and 'security of the person'.

20 22. In *Slaight Communications*, where this Court turned to the International Covenant on Economic, Social and Cultural Rights for assistance in interpreting the scope of the *Charter's* protections, the Court said that Canada's international human rights obligations are both "relevant and persuasive source(s)" for the interpretation of the *Charter's* provisions. The Court also confirmed its earlier
 25 recognition in *Reference re Public Service Relations Act (Alta)* 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 which Canada has ratified."

Slaight Communications v. Davidson, [1989] 1 S.C.R. 1038, per Dickson C.J. at 1056

Reference re Public Service Relations Act (Alta), [1987] 1 S.C.R. at 349-350

23. The right to an adequate standard of living, including adequate food, clothing and housing, has been at the core of international human rights protections. The right was part of the Universal Declaration of Human Rights and is contained in article 11 of the International Covenant on Economic, Social and Cultural Rights. The United Nations Committee monitoring Canada's compliance with the International Covenant on Economic, Social and Cultural Rights reviewed evidence that lower courts in Canada have occasionally adopted a narrow approach to s. 7, excluding the claims of the poor to an adequate standard of living as being economic in nature and therefore outside the ambit of, or only minimally protected by s. 7. The Committee expressed concern about these decisions and encouraged the Canadian judiciary to adopt a "broad and purposive" approach to the interpretation of the *Charter* "so as to provide appropriate remedies against violations of social and economic rights in Canada."

Concluding Observations of the Committee on Economic, Social and Cultural Rights, E/C. 12/1993/19, (1994) 20 C.H.R.R. C/1
 Jackman, Martha, "Constitutional Contact with the Disparities in the World: Poverty as a Prohibited Ground of Discrimination Under the Canadian Charter and Human Rights Law" 2 R. of Constitutional Studies 76 at 117-119

Issue 2

24. This Court's resolution of the 'economic rights' argument advanced by the Respondents and others may have implications for those interests which CCPI

5 25. In other words, the strong but still developing jurisprudence relating to the protection of social rights in s. 7 may be adversely affected (and, perhaps, unintentionally) should the Court make an unduly broad statement respecting the 'economic' facet of the present case.

10 26. Accordingly it is submitted that a conventional degree of judicial caution is warranted so that the somewhat analogous anti-poverty interests advanced by CCPI can be determined in a full and proper manner.

Relief Requested

27. CCPI requests that the issue for determination under s. 7 of the *Charter* be analyzed in light of the submissions herein.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Vince Calderhead
Counsel for the Intervener, CCPI

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C. TREATIES

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