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l'alimentation  
et  
l'agriculture

Organización  
de las  
Naciones  
Unidas  
para la  
Agricultura  
y la  
Alimentación

**INTERGOVERNMENTAL WORKING GROUP FOR THE  
ELABORATION OF A SET OF VOLUNTARY GUIDELINES TO  
SUPPORT THE PROGRESSIVE REALIZATION OF THE RIGHT  
TO ADEQUATE FOOD IN THE CONTEXT OF NATIONAL FOOD  
SECURITY**

**Rome**

**Right to Food Case Study: Canada**

**Study conducted for FAO in support of the Intergovernmental Working  
Group on the Elaboration of a set of Voluntary Guidelines for the  
Realization of the Right to Adequate Food in the context of National  
Food Security**

This Annex is available (in English only) from the Food and Agriculture Organization of the UN (FAO), on request. It can also be obtained from the FAO website at [www.fao.org/righttofood](http://www.fao.org/righttofood).

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**February 2004**

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## Right to Food Case Study: Canada

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## Acronyms

AAFC	Agriculture and Agri-Food Canada
APEC	Asia-Pacific Economic Cooperation
APF	Agricultural Policy Framework
BSE	Bovine Spongiform Encephalopathy
CAFB	Canadian Association of Food Banks
CANSIM	Statistics Canada
CAP	Canada Assistance Plan
CAPFS	Canada's Action Plan for Food Security
CCN	Canadian Council on Nutrition
CESCR	Covenant on Economic Social and Cultural Rights
CFIA	Canadian Food Inspection Agency
CHST	Canada Health and Social Transfer
CIHR	Canadian Institutes of Health Research
CPNP	Canada Prenatal Nutrition Program
CRC	Convention on the Rights of the Child
EU	European Union
GDP	Gross Domestic Product
HRDC	Human Resources Development Canada
LICO	Low Income Cut-offs
NAFTA	North American Free Trade Association
NCB	National Child Benefit
NCW	National Council of Welfare
NFU	National Farmers Union
NPHS	National Population Health Survey
OECD	Organization for Economic Cooperation and Development
PSE	Post-Secondary Education
RNI	Recommended Nutrient Intake
UNDP	United Nations Development Programme

## About the Study

This case study was prepared in the period September 2003 - February 2004. It was a joint project researched, written and edited by the Lead Consultant, Graham Riches, in conjunction with three associate consultants with particular sets of expertise regarding food policy and human rights in Canada. The consultants held two workshops. The first held in Ottawa at the start of the project, considered the FAO terms of reference for the study and determined the importance of exploring the right to food in Canada in relation to three key sectors (agriculture, fisheries and food - Rod MacRae; health and nutrition - Aleck Ostry; and economic and social policy - Graham Riches). Don Buckingham researched the legal and justiciability questions. A second workshop was held in Vancouver closer to the end of the project to review findings, draw conclusions and advise on the final preparation of the document by the lead consultant.

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Graham Riches  
Lead Consultant  
Vancouver, 28.1.04

The Human Right to Adequate Food

*Today's society, unlike yesterday's is capable of feeding its poor.*

*To do otherwise is an error of government'.*

Fernand Braudel, World Press Review, 1985.

*Hungry Canadians, searching for their legal entitlement to food,  
find in the law bits and pieces of the right, not a full course meal.*

Robert Robertson, 'The Right to Food: Canada's Broken Covenant'  
in Canadian Human Rights Yearbook, 1989-1990.

*A serious commitment to charity and beneficent action requires  
commitment to material justice and so to political change.  
Practical reasoning about hunger has an audience only when it  
reaches those with the power to bring about that change.*

Onora O'Neill, Faces of Hunger, Allen and Unwin, 1986.

*Food is 'everyday' - it has to be, or we would not survive for long.  
But food is never just something to eat.*

Margaret Visser, Much Depends on Dinner, Harper Perrenial Canada, 2000

## Executive Summary

This case study examines the human right to adequate food in the context of national food security within Canada. The right to food is explored from the competing perspectives of moral obligations (charity), political commitments by the state and justiciability as a legally enforceable claim. It assesses the extent to which a rights based approach has been applied to three policy sectors (agriculture/fisheries, nutrition and health and economic and social policy).

The study finds that the right to food exists in Canada and that, at a national level, the country is food secure. Yet there are serious disconnects between the claims and rhetoric of Canada's right to food approaches and their full implementation.

**Strengths:** Canada is a wealthy country with a democratic federal and parliamentary system of government and, in recent years, judged by the UNDP Human Development Index to be the best country in the world in which to live. Since the mid 1990s Canada has enjoyed a period of strong economic growth and the federal government has generated six successive budget surpluses.

Canada's food security lies in its ability to produce and supply sufficient food (including imports) to feed its population; a well developed food regulation and safety system; and access to food, including nutritious foods, being assured for the large majority of its population.

The right to food finds direct and indirect expression in Canada's constitution, international legal commitments, domestic law and national, provincial and local plans and administrations:

- Canada's ratification (1976) of the *International Covenant on Social Economic and Cultural Rights* and more recently the *Convention on the Rights of the Child* (1992) commits it to 'respect, protect and fulfil' the right to food.
- The Federal Government has stated internationally that the *Charter of Rights and Freedoms* (1982), as interpreted by the Supreme Court of Canada does protect internationally recognized economic, social and cultural rights. The Supreme Court has recognized the rights of Aboriginal peoples to traditional food gathering.
- While the right to food is not explicitly written into existing statutes, bits and pieces of the right can be found in federal and provincial laws and policies regarding agriculture, food safety, nutrition and health and the welfare state. Notably, in 2002, Quebec has passed an *Act to Combat Poverty and Social Exclusion*. *Canada's Action Plan for Food Security* (1998) recognises the right to food as a developing concept.
- Actions by civil society including charitable food banks, alternative community food projects, the development of local, provincial and national food security movements and food policy councils indicate increasing concern about the right to food.

**Weaknesses and disconnects:** These include the failure of the federal and provincial governments fully to comply with their international obligations to 'respect, protect and fulfil' the right to food; the limits of current decisions by the courts respecting the justiciability of the right and a lack of federal and provincial accountability and coordination in terms of developing a national food policy.

- In terms of international obligations, Canada's eroded social safety net and inadequate welfare benefits fail to ensure the right to food of vulnerable peoples including social assistance beneficiaries, single mothers and their children and Aboriginal peoples. The institutionalisation of charitable food banks since 1981 has enabled governments to neglect their obligations to provide adequate income support necessary for the purchase of nutritious foods.
- Regarding justiciability there is a disconnect between the submissions of the Federal government, the Supreme Court and the lower courts in Canada in terms of the legal

protection of the right to food, particularly in the case of vulnerable Canadians. While the Federal government has explicitly acknowledged that the *Canadian Charter of Rights and Freedoms* (1982) has been interpreted by the Supreme Court to protect economic and social rights, the protection appears very weak (Gosselin case, 2002). In addition justiciability is slow, costly and difficult to implement.

- From the perspective of accountability and coordination food policy making in Canada is fragmented. Despite the declaration of *Canada's Action Plan for Food Security* (1998) Canada lacks a coherent national food policy. The *Action Plan* is without the legal framework necessary to achieve its stated goals. While civil society plays important public education, advocacy and accountability roles, it is underfunded.
- An important emerging issue is that Canada is enmeshed in an unsustainable agricultural system that may become less productive. Ecological sustainability is likely hampered by the increasingly aggressive focus on the entanglement of the agri-business sector in global trade. The combination of these two factors may act in the long run to weaken domestic autonomy (food sovereignty) in developing food and nutrition policy directed at the optimal nourishment of the population.

**Lessons learned and recommendations:** For Canada these include clarification of the role of the right to food in international conventions (e.g. CESCR, CRC) which it has ratified; the reversal of the erosion of Canada's welfare state and the strengthening of social safety nets (including income support, social housing and national child care; the need to develop a national 'joined-up' food and nutrition policy and action strategy (including targets, benchmarks, accountability); and the development of food policy councils at local and municipal levels. Furthering justiciability requires expanding *Charter* protection; ensuring the re-instating Court Challenges program will be used for cases concerning the right to food; considering framework legislation in relation to agricultural and food policy and expanding the role of Human Rights codes to include protection of economic and social rights.

From the perspective of the draft Voluntary Guidelines despite Canada's strong record of economic growth, there are challenges to be met in securing the right to adequate food as a fundamental human right. Dependence on charitable food aid points to the need to clarify the role of the right to food in political statements of national commitments to human rights conventions. It underlines the need for adequate programmes of social security inclusive of vulnerable peoples and of the just distribution of wealth and income in society. Fragmented food policy should be replaced by 'joined-up' food policy (linking agriculture, sustainability, nutrition and health and social welfare) as well as intergovernmental and inter-departmental coordination and accountability. The current limits of justiciability underline a strong need for efficient and workable mechanisms for claiming the right to food. Finally the role of civil society in advancing economic and social rights and particularly the right to food requires strengthening.

## A. Current Food Security Issues and the Right to Food in Canada

### 1. INTRODUCTION

This case study examines the relationship between the human right to adequate food and national household food security within Canada. It assesses the extent to which a rights-based approach has been applied to ensure food security within three policy sectors: agriculture/fisheries and food within a sustainable agricultural system; nutrition and health in terms of the realization of a coherent federal food policy focused on the optimal nourishment of the population; and economic and social policy with particular reference to the adequacy of Canada's social safety net for vulnerable peoples. It considers the extent to which Canada has moved to 'respect, protect and fulfill' the right to food and, in particular, the justiciability of the right to food for the most vulnerable. It examines whether the right to food has been implemented and, if so, whether this can be improved; and to consider input for the formulation of the draft Voluntary Guidelines for the Progressive Realisation of the Right to Adequate Food in the Context of National Food Security.

Canada is a federal state with a [primarily] written constitution, including a charter of rights and freedoms, and enjoys a well-established system of parliamentary democracy. The two most important constitutional documents establishing this democracy and setting out the powers of (and limits to) the federal and the 10 provincial governments are the *Constitution Act, 1867* (formerly named the *British North America Act, 1867*) and the *Constitution Act, 1982* (which contains the *Canadian Charter of Rights and Freedoms*). According to the Canadian constitution and the concept of the "division of powers", control over every subject matter is allocated to either the federal level of government or to the ten provinces, or in some limited cases to both. Canada also comprises three territories, granted democratic and governmental powers by the federal government.

Canada's somewhat complex legal and constitutional framework is indicative of its rich history as a nation born of other nations. Originally the product of French, English and First Nations peoples, Canada today represents a new world society comprising a multi-ethnic and multi-cultural population of 30.8 million people (World Bank, 2002). Canadian citizenship is prized and the country continues to attract immigrants and refugees from around the world.

Canada is an advanced industrial nation, a member of the G7, OECD, NAFTA and APEC, and a country of vast natural and human resources, of disparate geographical regions and with a challenging northern climate. Testimony to Canada's high standard of living is that for the six year period 1994-2000, it topped the United Nations Human Development Index as the best country in the world in which to live. Currently it is ranked in third place among the High Human Development Countries (UNDP, 2003).

In light of Canada's achievements and its international record of commitment to human rights, including the right to adequate food, it might seem unlikely that at the beginning of the 21<sup>st</sup> century that food security has not been fully realized. Indeed, Canada has a strong market dominated agricultural sector, produces or trades for sufficient food to feed its population and is a significant exporter of grain, oilseeds, livestock and food aid to many parts of the world. Access to food is assured for the majority of Canadians as a function of their employment and levels of income, and through the availability of food in an orderly market. For the unemployed or those lacking the necessary income, Canada's welfare state has, at least until recent years, provided a system of modest income support and a social safety net. There are significant expenditures on food safety by the federal and provincial governments and it is widely assumed that the food is of good nutritional quality. It could therefore be argued that Canada is a food secure nation.

## 2. CURRENT STATE OF FOOD SECURITY AND FOOD POVERTY IN CANADA

Yet there is a growing body of research pointing to critical areas of food insecurity in Canada today, including a significant and growing incidence of food poverty. This is recognized by *Canada's Action Plan for Food Security* (1998), developed in response to the 1996 World Food Summit, which defined food security as existing 'when all peoples, at all times, have physical or economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life' (AAFC, 1998).

### *i. food availability*

Canada has sufficient food supplies (primarily through production with some trading of especially fruits and vegetables and processed goods) and has a sophisticated system to ensure food safety. However, progress on resolving natural resource degradation is slow; there is little recognition or commitment within broader policy circles to ensure the economically marginalized have access to a nourishing diet; the food production and distribution system is challenged by globalization; and nutritional health remains a secondary consideration in the overall design of the food and agriculture system.

### *ii. food accessibility*

The *National Population Health Survey* (NPHS) reported that in 1998/99 "over 10% of Canadians, or an estimated 3 million people were living in food insecure households. That is, because of lack of money, at least once in the previous 12 months they worried that there would not be enough to eat, and/or they did not eat the variety or quality of food that they wanted, and/or that they did not have enough to eat" (Che and Chen, 2002). 2.4 million Canadians - 8% of the population - experienced 'compromised diets' and 1.2 million people - 4% of the population - were found to be food poor' (Rainville and Brink, 2001). Social assistance recipients were at much greater risk of lacking access to food compared to other income groups and children and young people, single parent (lone mother) families and Aboriginal households off-reserve were at high risk (Che and Chen).

Data on food bank usage tell a similar story. The 2003 *Annual Hunger Count Survey* of the Canadian Association of Food Banks (CAFB) reports that 777,869 people living in Canada (or 2.4% of the population) used a charitable food bank (i.e., resorted to emergency food assistance) in March of that year. Thirty-nine percent of food bank users were children under the age of 18 years. The CAFB estimates that nearly 60% of households accessing food banks were families with children which suggests that women as mothers are significantly impacted by food insecurity. The survey also reported that 67% of Canadians were "seriously concerned" about hunger.

### *iii. causes of food insecurity*

The causes of food insecurity in Canada today are structural and institutional. Structural determinants point to a stubbornly high and persistent incidence of poverty, unemployment and growing income inequality. The prevalence of food insecurity has not been helped by a deteriorating social safety net, and the re-commodification of welfare rights. These causes are not aided by a policy environment with divided federal, provincial and municipal constitutional and operational responsibilities resulting in fragmented approaches to food and nutrition policy-making and the failure to develop a coherent and 'joined up' national food and nutrition policy. There is a lack of a clear and agreed relationship between agriculture and nutrition policy in terms of optimal nourishment, and between nutrition and income support policies respecting vulnerable populations.

Such fragmentation within Canada is exacerbated by the disconnect between the official national and international positions of the federal and provincial governments to ensure domestic compliance with their international obligations to fulfill the human right to food in Canada. Lack

of political will remains a significant impediment to the recognition and concrete implementation of the right to food and the achievement of national food security.

*iv. current actions by the state and civil society*

Following the introduction of *Canada's Action Plan for Food Security* in 1998, the Federal Government has compiled two Progress Reports (2000 and 2002) addressing different dimensions of the *Action Plan*. It has also established a Food Security Bureau within Agriculture and Agri-Food Canada to coordinate and monitor key actions identified in the *Action Plan*.

In spite of Canada's international commitments, no new legislation has been created at the federal level explicitly to protect the right to adequate food, nor does existing constitutional or human rights legislation, federal or provincial, contain such express provisions. It can, however, be said that the protection of the right to food is indirectly, and perhaps partly, guaranteed through existing laws, such as the federal *Food and Drugs Act*. This legislation ensures not only adequate food inspection and recall procedures for unsafe food but also that food adulterers are prosecuted and that false advertising of food is curtailed. Protection of the right to food is also indirectly embedded in the ability of nutrition policy making institutions, such as Health Canada, to deliver legislation and to develop and recommend nutritional standards and policies. However, the establishment of the Canadian Food Inspection Agency (CFIA) in 1997 and the increasing international harmonization of food and nutrition standards may operate to divide, and even quiet the nutrition and health policy-making 'voice' at the federal level.

The right to food is also protected, or should be, by Canada's publicly funded social safety net, consisting mainly of the federal Employment Insurance and provincial social assistance programs and more broadly, minimum wage legislation, the National Child Benefit and Old Age Security, which includes a guaranteed income supplement. It should be noted that in 2002 the Quebec Government introduced an *Act to Combat Poverty and Social Exclusion* including its own action strategy.

Direct recognition or "justiciability" of the right to food by Canadian courts has been practically non-existent. Even for vulnerable peoples, judicial recognition of the right to food has met with little success to date. "Justiciability" is difficult at present for two reasons: given past cases in lower courts and the lack of clear direction from the Supreme Court of Canada, the chances of success are very low; and the costs of bringing such cases, particularly for vulnerable peoples, is very high. In principle however, the Federal Government has stated internationally that the *Canadian Charter of Rights and Freedoms*, as interpreted by the Supreme Court of Canada, does protect internationally recognized economic, social and cultural rights decisions. Recent Supreme Court decisions, regarding the right of Aboriginal and Metis people to gather and process their own food according to traditional practices may go some distance, - and indirectly through entitlement to traditional law and treaty rights - to the justiciability of the right to food for First Nations peoples.

Despite relative inertia by the state, civil society is active nationally and at provincial and local levels. Indeed, food poverty in Canada is increasingly understood as a moral question involving charitable responses rather than as a political issue of distributional justice requiring immediate action by the state or as a human rights issue requiring justiciable rights. Evidence of this can be seen in the emergence and institutionalization of charitable food networks and alternative food programs, the development of national and provincial food security coalitions and local, municipally supported food policy councils, through the work of farm religious organizations and some businesses leading the way with their acceptance of responsibilities to implement the human right to adequate food.

### **3. RATIONALE FOR A RIGHTS-BASED APPROACH AND FRAMEWORK**

Three main reasons support the employment of a rights-based analytic framework for examining and promoting food security in Canada. First, human rights are an important part of the Canadian legal and political landscape and already shape the way in which many government policies and

programs are developed and delivered. Second, Canada has undertaken international obligations to recognize and implement the right to food. Third, Canada remains food insecure despite its wealth of human capital, natural resources and industrial infrastructure. However, it is important to understand that any rights based approach must be accompanied by action.

*i. the right to food and its relevance*

The right to adequate food is 'realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or its procurement' (General Comment 12, par 6, 1999.) It also recognises 'the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights' (General Comment 12, 1999).

The rights-based approach to food focuses not only on program goals, production outcomes and economic indicators but also on the provision of basic minimum standards for all Canadians. It is ironic that this approach appears so novel in the area of the food poverty and the "fundamental right to be free from hunger" when a rights-based approach to civil and political rights has long been accepted as the norm in other areas of Canadian life.

Indeed, the development of a rights-based approach is particularly relevant today, a time when Canada is on the one hand aggressively signing on to international accords advocating the right to food and yet, on the other at the domestic level, engaging in actions which have arguably reduced vulnerable Canadians' entitlement to income and food. Advocating for the development of a domestic framework which explicitly recognizes the right to food would: require the Federal Government to reconcile its disconnected international and national approaches; catalyze the mobilization of broad political will across ideological positions to secure the reduction of hunger and poverty and increased nutritional health; create the moral and international legal legitimacy for pursuing these issues more vociferously within Canada; and finally provide the necessary framework and language upon which legislation can be implemented and to which justiciable rights can be given effect.

*ii. probing the origin and content of the right to food*

In light of the fact that no Canadian statute, federal or provincial, yet makes explicit reference to the "right to food", can it realistically be argued that the right exists at all? The short answer is an unequivocal "Yes". The "right to food" is as much an indivisible part of the bundle of human rights as any other human right. Evidence for this claim comes largely from Canada's commitments under international law and its ratification of the *International Covenant on Economic Social and Cultural Rights* (1976); *Food Aid Conventions* (since 1967) and the *Convention on the Rights of the Child* (1989).

The human right to adequate food is a legal right which addresses head-on the moral, political and social issues relating to food poverty and food insecurity in Canada at the present time. As a moral question, many individual Canadians donate their time and money to charitable organizations devoted to meeting the immediate needs of food insecure people. However there is a tension between benevolence and appropriate political action. Food insecurity for many Canadians raises issues of human rights and distributive justice culminating in state action and policies or programs implemented through legislation, which may outline new rights and obligations that are enforceable with the assistance of Canadian courts and tribunals. As well the *Constitution Act, 1982* requires the federal government to provide for equalization payments to promote equal opportunities and to ensure that provinces have sufficient revenues to provide comparable levels of public service to all Canadians. The *Canada Assistance Plan* (1966), repealed in 1996, served such a purpose. As the federal cost sharing mechanism for funding social assistance transfer payments to the provinces, it recognized food as a basic human need, though avoided defining it as a human right. However, since its repeal, the replacement program neither recognises food as a basic need nor defines it as a human right, nor ensures that provinces take steps to ensure access to food for all, especially vulnerable Canadians.

### *iii. key food security and food policy issues in Canada*

According to the above instruments Canada must develop a national strategy in order to implement the right to food to achieve food security. Notwithstanding *Canada's Action Plan for Food Security*, a national strategy built on the human right to adequate food does not currently exist. The development and implementation of such a strategy poses a considerable challenge for all levels of government, civil society and the corporate sector.

In particular a rights based approach to achieving food security would address a number of 'disconnects' between Canada's 'right to food' commitments and their implementation; translate Canada's international rights talk into implementable domestic action including the justiciability of the human right to food; reverse the erosion of the welfare state and rebuild Canada's social safety net by de-commodifying social rights and ensuring adequate income benefits; work to overcome the institutionalisation of charitable food banks; address the food needs of Aboriginal peoples; ensure that women and children do not go without food; develop joined up food and nutrition policy across all levels of government; ensure that agricultural systems in Canada operate in ways that are environmentally sustainable; and that agriculture, health and social policy have a powerful 'place' at the table in developing joined up food and nutrition policy.

## **B. Survey of Long Term Trends: Food Insecurity in Canada**

### **1. ECONOMIC AND SOCIAL POLICY**

This section considers the right to food and food access from the perspective of recent Canadian economic and social policies and specifically their impact upon Canada's social safety net. It briefly reviews the post World War II origins of the Canadian welfare state and the more recent shift, influenced by welfare reform, from universality to an increasingly residual and selective social safety net. It identifies indicators of food poverty as well as the shifts in eligibility and entitlements as they apply to income support programs. Despite the adoption in 1998 by the Federal Government of *Canada's Action Plan for Food Security* and its recognition of the links between poverty and domestic food insecurity, social policy trends since the mid 1980s point to the neglect by the federal and provincial governments of the human right to food in terms of the most vulnerable.

#### *i. welfare state: early developments and shifting priorities*

The post World War II development of the Canadian welfare state was based on demand side Keynesian economic policies including full employment and economic growth; universal social programs and a guaranteed social minimum (Guest, 1997). These policies were informed by a determination not to revisit the economic woes of the 1930s as well as a commitment to meet the needs of ordinary working people and of the poor. While developments were slower than in some European societies, it could be said that by the late 1960s the main building blocks of the welfare state were in place: *Unemployment Insurance* (1940), *National Housing Act* (1944), *Family Allowances* [paid to all mothers] (1945), *Old Age Security* (1951), *Canada Pension Plan* (1966), *Old Age Security-Guaranteed Income Supplement* (1966), *Canada Assistance Plan* (1966) and the *Medical Services Act* (1968) ushering in universal health care.

The social safety net (federal employment insurance and provincial income assistance or 'welfare' as it is known in Canada) was considerably strengthened by the introduction of the *Canada Assistance Plan* (CAP). CAP was started in 1966 and served as the main vehicle for funding welfare and selected social services over the next 30 years. The federal legislation setting up CAP provided for open-ended 50-50 conditional cost-sharing between Ottawa and the provincial and territorial governments. While CAP did not explicitly establish a right to benefit, it did recognize food, clothing and shelter as basic human needs. The legislation required provinces and territories to make welfare assistance available to all persons found to be "in need," it required them to set up a system for individuals to appeal the decisions of welfare officials, and it forbade them from imposing minimum periods of residence before people could qualify for welfare. It also required

provinces to provide welfare in an amount that took into account a person's basic requirements". While provinces could require claimants to look for work, they could not withhold benefits. Conditional cost-sharing permitted the Federal Government a monitoring role in relation to provincial social assistance spending.

From the perspective of the human right to food, it is of particular interest to note that 1966 was also the year in which Canada signed the *International Covenant on Economic Social and Cultural Rights* and indicated its commitment to progressively realise this right. It ratified the Covenant in 1976.

An early sign of the weakening of the Canadian welfare state, and of the federal role, was the emergence of charitable food banks in the 1980s. They provided, and continue to provide concrete evidence of the breakdown of the social safety net. Benevolence as opposed to rights - based approaches (e.g., adequate welfare income entitlements) to food poverty elimination became more acceptable as a consequence of the increasing acceptance by governments of supply side economic policies which continue to drive and shape the Canadian economy including its labour market, agricultural and fisheries policies, nutrition and health care and social policy.

CAP was repealed in 1996 and replaced by the *Canada Health and Social Transfer*, a block funding formula which permits the provinces to allocate their health, education and social program funding according to their own priorities, and frees them from federal monitoring. (though health care spending [it is more like "standards"] is subject to greater federal scrutiny). Coupled with significant cuts in transfer payments to the provinces, it effectively closed the door on the ability of the federal government to hold provinces accountable for their spending on the social safety net. While the provinces have retained welfare appeal tribunals (although no longer required to do so), claimants from other provinces must not be disadvantaged in terms of eligibility or benefit levels, the consequence for social assistance programs is that provinces have tightened welfare eligibility and cut income benefits. In the last two decades, Canada along with many other OECD countries, has engineered a profound shift in federal and provincial social policy towards market driven, neo-liberal concepts of social welfare. Informed by the assumptions and objectives of welfare reform, the shift from 'passive' to 'active' systems of welfare rejected the notion of an entitlement to benefit placing the responsibility on claimants to move back into the labor force or be 'moved' back. Spending on the provincial safety nets was cut back. In terms of food poverty, the state increasingly came to depend on the charitable food network

British Columbia proposed the most radical changes in welfare policy. It became the first government in Canada to plan the introduction of time limits on the receipt of welfare - no more than two years of benefits in any five-year period - before benefits would be reduced or eliminated entirely. While public pressure has resulted in this policy being withdrawn (February 2004) B.C. has nevertheless imposed a three-week waiting period on people seeking welfare and a two-year "independence test" that requires most applicants for welfare to have a past work history of two years or more. All three requirements would have been disallowed under the terms of the CAP and are examples of non-compliance with the obligation to 'respect, protect and fulfil' the right to food. The intent of such welfare policies is to guarantee benefits only to those who are willing or able to have an attachment to the labour market (i.e. have a job, look for work, undertake training). Esping Andersen (1990) has referred to this as the 'commodification of welfare'. If you are unable to find work and cannot enter the labour market you are denied rights of survival (1990). In other words claimants' right to adequate food has been abrogated by both levels of governments.

Quebec has been the only province talking seriously about improving the social safety net and other income support programs. In 2002, the former Parti Quebecois government, under pressure from an influential citizens' anti-poverty coalition, passed, with all party support, an *Act to Combat Poverty and Social Exclusion*, a broadly structured approach based on the *Quebec Charter of Rights and Freedoms*. One of the goals of the program is making sure all persons have incomes that allow them to live in dignity and participate fully in their communities. However, following a change of government, there has been delay in implementing an *Action Plan*, as

prescribed by the Act. It is unclear whether the strategy will survive under the new Liberal government.

In the North, the government of the Northwest Territories has been promoting “productive choices” for welfare recipients. The category includes education, volunteer work, parenting, addictions counseling or treatment, and traditional activities pursued by Aboriginal people such as hunting, fishing, trapping and harvesting. Support of traditional activities could include less conventional forms of welfare such as money for ammunition, equipment or snowmobile repairs.

### *ii. economic growth and fiscal conservatism*

The recession of 1990-1991 ushered in a period of rising unemployment and employment insurance claims, growing welfare caseloads, climbing poverty rates and a general deterioration in many other indicators of social and economic well-being. The bad news continued for several years in the aftermath of the recession. It was 1996 before most of the bad indicators peaked, and it was 2001 or 2002 before they returned to pre-recession levels. During this period the federal government and many provincial and territorial governments redoubled past efforts to bring their finances under control. Most of them, rather than raise taxes, chose to balance their budgets by making drastic cuts in spending, including spending on social welfare and income support programs. Fiscal conservatism became the order of the day.

A recent study of the economic performance of the administration of the former Prime Minister Jean Chretien (replaced in December 2003 by Paul Martin, the former Finance Minister during this period), reports strong economic growth since 1994. In the previous decade the standard of living rose by 13% but between 1993-2003 real GDP per capita jumped by 29% pointing to an improved and increasing standard of living for ordinary Canadians (Orr, 2003). However, it was only the highest paid quintile of Canadian earners who increased their share of the national income while for others incomes remained flat or lost ground (Statistics Canada, 2001).

For the same period the study also notes that the official unemployment rate was lower than in the previous decade (8.4% vs. 9.6%), and that the trend was commendable ‘falling from over 10% in 1994 to only 6.8% in 2000, with an unfortunate move upwards to 7.7% this year’ (ibid, p. 4). Inflation for the 1994-2003 period was held to an average of 2% per annum. However, in the author’s view ‘the key economic decision of the Chretien era was no doubt, the tough decision to reduce government spending to reverse the upward trend in the debt burden (ibid).

Significantly, in 1997-98, the federal government recorded its first surplus since the 1969-70 fiscal year and has seen sizeable surpluses every year since. In addition to paying down the national debt, some was spent on health care, post-secondary education and monthly cash payments to families with children, but much of the money went to income tax cuts and more generous tax expenditures for well-to-do Canadians. The social safety net did not benefit from federal government surpluses as the costs of federal reductions were downloaded to the provinces resulting in further social spending cutbacks.

### *iii. food poverty: trends and indicators*

Food poverty results from ‘the inability to acquire or consume an adequate quality or quantity of food in socially acceptable ways, or the uncertainty that one will be able to do so’ (Radimer et al, 1992). Its growth and prevalence in Canada can be understood in terms of three sets of indicators: structural, prevalence and policy. Structural indicators point to the conditions which give rise to food poverty: poverty, low income and unemployment and the number of those dependent on the social safety net. Prevalence indicators are survey estimates of the nature and incidence of food insecurity. Policy indicators refer to the adequacy of wage and benefit levels and the welfare eligibility criteria which impact the human right to food.

#### ***a. Structural indicators***

*Poverty:* In 2001, one in ten people or three million Canadians, were living in poverty (See Table 1, Appendix, p. 41). However it should be noted that while poverty rates for children under 18 and adults under age 65 rose through the first half of the 1990s, they peaked in 1996 and were still

declining as of the last published figures for the year 2001 (Statistics Canada 2003b). Nevertheless it is evident that single women and single parent families led by women, as well as Aboriginal children and families continue to experience high rates of poverty.

*Unemployment:* Foreshadowing the changes in poverty rates in the 1990s, the rate of unemployment peaked in 1993 at 11.4% followed by a steady decline to 6.8% in 2000 before rising again to 7.7% in 2002 when 1.2 million Canadians were jobless. This marked a return to the unemployment levels of 1989/90.

*Social assistance and unemployment insurance beneficiaries:* In the wake of the 1990-91 recession, the number of persons in receipt of social assistance peaked at 3.1 million or nearly 11 % of the population. Large welfare caseloads and continuing uncertainties about government finances led to changes in welfare policy in many provinces and territories. Cuts were the order of the day in many jurisdictions and in the six year period 1995-2001 the numbers receiving social assistance fell by 37% to 1.9 million people (NCW). Employment insurance beneficiaries fell by 46% from 1.1 million in 1991 to 584,404 in 2002. However this was an increase of 70,000 over the year 2000 (CANSIM, Table 276-0001).

### ***b. Prevalence indicators***

*Food bank usage:* Charitable food banks have become trend indicators of the growth and extent of food poverty across the country. The first food bank in Canada was established in Edmonton, Alberta in 1981. In 2003 the *Annual Hunger Count Survey* (CAFB, 2003) reports there are 639 charitable food banks with more than 2,648 affiliating agencies providing emergency food relief to 777, 869 users in the month of March. This represented a 5.5% increase since 2002 and a rise of 9.0% over the previous five years. Compared to the first such survey conducted in 1989 there was a doubling of food banks recipients. Thirty-nine percent of food bank users were children or young people under the age of 18 yrs; 55.8 per cent were receiving social assistance while 12.9 percent held jobs. 40 percent of food banks reported difficulty in meeting the demand for emergency food relief.

*Markers for food insecurity:* Since the late 1980's food banks have become institutionalized and are bearing the brunt of meeting the food needs of the most vulnerable Canadians (See Table 2, Appendix, p. 41). In the period 1989-2001, while the numbers in poverty rose by 18.2% and those receiving welfare assistance increased by 2.5 %, the numbers of food banks recipients grew by 97.8%. More tellingly, between 1997-2001, while poverty rates fell by 20.4% and the numbers receiving social assistance dropped by 31.1 percent, food banks usage increased by 12.5%. Moreover, in 2002 and 2003 food bank usage continued to increase. Bearing in mind that food bank usage is regarded as an underestimate of food poverty, this is a telling indictment of federal and provincial governments' decisions to tighten welfare and eligibility, cut income support and reduce welfare rolls. As a consequence, the burden of support has fallen on charity. For more than twenty years food banks have provided concrete evidence of the breakdown of the social safety net (Riches, 1986, 2002). The provision of charitable food aid has enabled governments to limit the eligibility of welfare claimants and to reduce already inadequate benefit levels, thereby denying claimants sufficient income to put food on the table. In other words, the latent if unintended function of food banks has been to permit the state to deny the human right to adequate food.

*Food security surveys:* Canada lacks comprehensive hunger prevalence surveys such as those conducted in the United States, but a number of studies conducted in the 1990s have begun to estimate the prevalence of national food insecurity. The most recent study, the *National Population Health Survey* (1998/99), included a *Food Insecurity Supplement*. It revealed (see Table 3, Appendix 1 p. \*) that 'in 1998, approximately 3,000,000 respondents, approximately 10.2 per cent of the population in Canada, lived in a household that stated that an episode of food insecurity was experienced in the past year. The proportion of respondents who were children was higher (13.4%) than respondents who were adults (9.3%). Most of these food insecure households were food anxious (8%) or compromised their diets (7.8%). About 4.0 percent of Canadians, or 1,200,000 experienced an episode in the last year when they or someone in their household did

not have enough food to eat because of lack of money' (Rainville and Brink, 2001). The 1996/97 NPHS similarly found that 4.5 percent of Canadians "did not always have enough food to eat" (ibid). It should be noted that these findings are likely an underestimate as homeless people, Aboriginal peoples living on reserve and those lacking access to a telephone were excluded from the survey.

The survey also reveals that 57.6% of food insecure households were receiving social assistance at the time of the survey and that 27.6% of food insufficient households were single parent households with children under the age of 25. And, as in the 1994 *National Longitudinal Survey of Children and Youth* survey, individuals in food insufficient households had a statistically significant higher risk of poor self-reported health status including poor/fair health, multiple chronic conditions, obesity, distress and depression.

### ***c. Policy indicators***

The adequacy of minimum wages and social security benefits are policy choices made by governments. As such they have a crucial bearing on the capacity of low income individuals and families to purchase the necessities of life, including food, and to participate in society. Similarly, the choices governments make in determining social spending and the criteria governing programme eligibility are markers of the extent of the state's compliance in implementing the right to food.

*Adequacy of minimum wage incomes:* Increases to provincial minimum wages since 1989 made it possible for unattached persons working 40 hours a week, 52 weeks a year to approach the poverty line for the largest city in the province. Single persons in BC would be at 103 % of the post tax LICO, and single persons in Saskatchewan would be just above the line at 101.6 %. In other provinces, minimum wage incomes ranged from 75.9 % of the poverty line in Alberta to 97 % in P.E.I. Minimum wage workers are said to hold only about four percent of all jobs in Canada, but increases in minimum wages tend to push up other relatively low wages.

*Adequacy of social assistance benefits:* Welfare has long been the social safety net of last resort for Canadians under age 65, but the income provided by provincial and territorial social assistance programs typically falls thousands of dollars below the poverty line. Even with the addition of federal child benefits for families with children under 18, welfare incomes are meagre. Total welfare incomes in all provinces fall well below the poverty lines for the largest city in each province (see Table 4, Appendix, p.42). The most generous benefits provided single employable people with only 45% of the poverty line; single disabled persons with 74% and families with 89-91%. Frequently, however, benefits were much lower.

The inadequacy of welfare benefits was underlined in the 2003 report of *The Cost of Eating in BC* compiled by the BC Region of the Dietitians of Canada and the Community Nutritionists Council of BC. It reported that current welfare rates in British Columbia do not always cover two of the basic necessities of life: nutritious food and housing at the low end of the rental market. A family of four, for example, could wind up \$17 short every month after paying for food and shelter - and before spending a dime on clothing, household supplies, bus fare, the daily newspaper, school supplies for the children or low-cost recreation

*Adequacy of employment insurance benefits:* The maximum UI benefit in 1990 was \$384 a week (or \$498 in 2003 dollars) at an earnings replacement rate of 60 percent. The maximum EI benefit in 2003 was \$413 a week at a replacement rate of 55 percent. Actual weekly benefits varied with previous insured earnings, but the maximums were the same in all parts of Canada. Partly offsetting these cuts was a family supplement for low-income families with children that was phased in over several years. For workers with previous net family income of \$20,921 or less, the current supplement can boost the earnings replacement rate as high as 80% in large families (HRDC web site a).

Unlike welfare, which bases entitlements on the financial circumstances of the entire family unit, unemployment insurance is based on individual entitlements - except in the case of the

supplement for low-income families with children. In a one-earner family with the sole earner on EI and no other major source of income, money would certainly be tight.

*Adequacy of Canada Child Tax Benefit:* In the context of child poverty, federal benefits for children with families under 18 were evolving throughout the late 1970s and 1980s. As of 1993, the monthly Family Allowance benefits received by most families with children, the non-refundable child tax credit claimed at income tax time, and the refundable child tax credit for low-income and middle-income families were replaced by a single Child Tax Benefit paid monthly to all families that qualified. However, under an arrangement subsequently endorsed by most provincial and territorial governments, whereby the two benefits are paid by Ottawa to low-income and middle-income families, the supplement is “clawed back” by certain provincial and territorial governments from families on welfare through reductions in social assistance or related benefits.

As of July 1, 2003, the maximum benefit for the first child in a family (excluding the supplement for children under seven) was \$2,632. The 2003 budget projected an increase to \$3,243 as of July 1, 2007. Campaign 2000 is calling for an increase to at least \$4,400 and an end to the clawback of the NCB supplement from families on welfare. The group’s latest “report card” in 2003 says its proposals would address the deep levels of poverty facing families and also assist families of modest incomes struggling on limited budgets.

*Conclusion:* Trend analysis of Canadian economic and social indicators for the period 1989-2003 point to two contradictory developments with significant implications for food security and the human right to adequate food. On the one hand, Canada’s economic indicators since the mid 1990s point to a growing economy and rising standard of living coupled with declining rates of poverty and unemployment. The federal deficit has been eliminated and there have been six years of substantial annual budget surpluses. On the other hand social spending cutbacks informed by the policy prescriptions of welfare reform have resulted in the shrinking of the social safety net, more limited programs of income assistance and a heavy reliance on charity and faith based organizations. While social assistance and employment insurance caseloads declined, food bank usage continues to increase. Yet charitable food banks report they are unable to cope. They are important indicators of the entrenched nature of food poverty and the continuing neglect by governments of their obligations to ‘respect, protect and fulfil’ the human right to adequate food through ensuring adequate welfare incomes, affordable housing and childcare programmes.

## 2. AGRICULTURE/FISHERIES AND FOOD POLICY

Canada does not currently have a national food policy that could serve as the foundation for a rights-based framework. The federal and provincial governments have extensive agricultural policy, some nutrition policy and programming, and social and economic policy that has a significant impact on food security. However, these policy domains are largely disconnected. A brief period in the 1970s saw such a food policy considered but this multidepartmental initiative ultimately failed due to opposition from the Department of Agriculture (MacRae, 1999). Since the 1970s, there have been no serious attempts to constitute a joined up food policy, which partly explains the fragmented and contradictory nature of *Canada's Action Plan on Food Security*. This absence also explains in part the peculiar situation Canada is in - an abundant food supply, but one skewed in ways that do not actually serve well domestic food security needs.

### *i. supply*

For decades, Canada has more than adequately provided enough food to meet the aggregate needs of the population. On a per capita basis, Canada produces excesses of cereals, pulses, vegetable oils, beef, pork and fish, largely meets consumption of dairy, chickens, eggs and turkeys (the supply managed commodities), but does not meet consumption requirements in fruits and vegetables. Canada is particularly weak in these production areas, as domestic production now only meets 19% of fruit consumption and 67% of vegetable consumption (not including potatoes). These levels have dropped dramatically from 50 years ago when Canada was largely self-sufficient in basic fruits and vegetables (Warnock, 1982; 1984). Production deficits are

compensated by imports. Generally, Canada's strength lies in bulk commodity production (e.g. wheat), although there have been significant investments over the past 20 years in increasing food processing activity. Certain sectors, for example wheat processing, remain weak in this regard.

### *ii. production versus trade*

Canada is firmly committed to the current global food trading system. Roughly half Canada's domestic production is exported. In the context of the rights-based approach which also requires sustainable food production and distribution, governments in Canada believe that global trade in food is an essential component of ensuring availability. The *Action Plan* expresses this commitment through equating fair trade to achieve food security with freer trade (*Commitment 4: trade and food security*)

Import - export trends demonstrate that Canada's reliance on the global trading system continues to increase. From 1987 - 2002, exports have risen 224% by dollar value and imports by 278%. The federal government is planning for Canada to account for 4% of global agrifood exports by 2005, up from a 3.3% average in the 1960-1996 period, a 21% increase. When the bulk cereal and animal trades are removed from the equation, imports in fact match exports, suggesting that reliance on imports of food other than bulk grains and animals is increasing as a consequence of this export focus.

However, commitment to the current global trading system brings with it significant vulnerabilities in a right to food context, vulnerabilities which governments have not acknowledged. Without providing any evidence or argument, the *Action Plan* suggests that it is possible to construct a freer trade system under the current trading environment that optimizes sustainability and food security. Agroecological theorists have concluded this is impossible (MacRae, 1999).

### *iii. vulnerabilities*

*Economic vulnerabilities:* Canada's reliance on exports is viewed by neo-classical economists as evidence of comparative advantage theory. The theory would suggest that Canada is smart to overproduce grain and animals at the expense of fruits and vegetables, but there is an argument amongst economists that significant theoretical flaws exist in comparative advantage theory (cf. Daly and Cobb, 1989:209-229), negating the claim that comparative advantage in trade produces widespread social and economic benefits to trading nations themselves. Although new trade theories are in place that recognize these theoretical flaws, the dominant economic institutions have not made extensive use of them (Cohen, 1991).

The limited empirical research conducted in Canada suggests that overproduction of grains and certain animal products at the expense of fruits and vegetables has not necessarily improved farm income or consumer welfare. Relative to retail prices and farmer cost of production, farm gate prices for grain and hogs have been low for years and realized net farm income continues to decline, despite productivity gains. Consumer prices for further processed goods have risen substantially over this period of flat farm gate prices. Realized net farm income adjusted for inflation is essentially zero in Canada because input costs have continued to rise while prices remained low (NFU, 2003). Similarly, fruit and vegetable consumption and prices have been rising, but farm gate prices, while climbing since 1971, have had significant rate of increase declines since the 1990s. Typically in the OECD, the value of agricultural production is captured largely by input suppliers, processors and retailers (Vorley et al., 1995) and that additional value is paid by consumers in increasing prices. If that value capture was producing increased employment in the food processing, distribution and retailing sectors, there might be a case for societal benefits despite financial penalties for farmers and consumers. However, job losses, or shifts to low-wage jobs, in the food industry have paralleled those in other economic sectors.

Canadian agricultural policy continues, directly or indirectly, to create economically untenable conditions for farmers. Consequently, the number of farmers and farm workers continues to decline (a net loss of around 11% of farmers from 1996-2001). Farm financial safety nets,

including the program established under the new Agricultural Policy Framework, are widely viewed as inadequate by farm organizations.

Not only may there not be the claimed net economic advantages from Canada's reliance on an export- import agricultural economy, but the country may additionally be losing economic opportunities. Although Canadian data is limited, there is some evidence from international studies that export economies reduce local economic multipliers (Hoffer and Kahler, 2000). In other words, Canada's food system, which currently employs 1 person in 7, could actually be a greater contributor to employment (with the attendant potential for reductions in food insecurity) than it currently is.

*Distribution and food quality vulnerabilities:* The food system has been moving to just-in-time inventory systems, meaning that for many essential foods, only a 3-4 day supply exists in major urban centres at any one time. Around 80% of it is brought in by truck. For example, 50-60% of all produce consumed in Toronto is imported (Streff, 1997), mostly from Florida, California and Mexico. All this leaves cities more vulnerable to food shocks - disruptions of these long supply lines resulting from crop failures, weather-induced transport difficulties, and transport-related strikes. Such events have produced near shocks in the past, in the form of bad weather (e.g., the eastern Canada ice storm of 1998), trucker blockades and pest problems in countries of import.

There is some evidence of declining nutritional value in some fruits and vegetables transported over long distance associated with early harvest to meet processor, transport or cosmetic requirements and lengthy periods between harvest and consumption. There can be up to a three week discrepancy between harvest date and optimal levels of vitamin C in some vegetables (Shewfelt, 1990). With Canada's reliance on trucked fruits and vegetables from California, there can often be a 5-10 day gap between harvest and consumption, with possible losses of some nutritional constituents in the 30-50% range (Klein, 1987). Does it matter if long-distance transport compromises nutritional value? Probably not for the majority, but most Canadians do not meet guidelines for fruit and vegetable consumption and there exist particular higher risk populations for whom such losses could be significant.

#### *iv. sustainable resource use*

Although Canada has an enviable reputation for environmental quality, the reality in the agriculture sector is that resources and environmentally sensitive habitats have been destroyed in the name of food production and the federal government has been slow to react to the situation. There have been some improvements since the late 1970s when degradation of soil and water resources associated with agriculture became a policy issue. But Canada now lags behind other countries in the OECD on many agri-environmental measures (OECD, 2000), and international markets have started to take notice, in some cases demanding that Canadian producers demonstrate their compliance with environmental performance protocols. A recent report from World Wildlife Fund Canada (WWF, 2003) shows that the seven terrestrial ecozones in which agriculture is the dominant land use are the most ecologically compromised landscapes in the country and agriculture is a significant (though not sole) contributor.

Many of the sustainable agriculture commitments under the *Action Plan* are vague and do not address the fundamental resource degradation realities facing the nation. The advent of the increasing production of genetically engineered crops also poses new and significant challenges. In terms of progress related to these limited commitments, much has been initiated, framed, conceptualized and researched, but little has actually been implemented.

Partly in response to the potentially significant economic consequences of being environmental laggards, the federal government has initiated a new *Agricultural Policy Framework (APF)* that attempts to integrate five previously separated areas of policy - farm financial safety nets, environment, food safety, innovation and rural renewal. On the environmental front, they have set targets that must be met within a five year period. Unfortunately, the targets are exceedingly modest in scope and the programs currently being put into place will only generate these improvements with significant levels of farmer uptake, a situation that is not assured by current

supports available to producers. Moreover, it is not clear that they will even be able to measure whatever improvements will be readily measurable and their connections to programming apparent. This stands in stark contrast to the targeted and well supported programs in Europe and the US that are attempting to accelerate the adoption of environmentally friendly farming practices. By the end of the five year APF cycle, Canada will likely lie further behind the US and EU than it does today.

Some Canadian farm organizations and at least one province are now examining payments for environmental stewardship to improve environmental performance and farm finances, inspired by supports currently provided to farmers in the EU.

There is no clear data on when Canada's agricultural practices might so degrade the resource base as to threaten its long-term productivity and national food security. However, the system is fragile. Input costs continue to rise while the pace of productivity gains has declined, often a sign that soil and other biotic resources are under stress. These rising costs have significantly damped net farm income, and now, according to Statistics Canada data, more than 50% of farm family income is derived from off-farm employment. Most indicators of biodiversity on farmed landscapes are in long-term decline. Farming systems are highly vulnerable to market (e.g., BSE) and climatic (e.g., increased weather variability) shocks. An unspoken rationale for the new APF is to limit federal government financial exposure to emergency financial bailouts of the farm sector, but unless the right policies and programs are put in place, the farm sector will be as fragile, if not more so, in coming decades.

As in most parts of the world, major fish stocks have dramatically collapsed. Canada's management of the northern cod is widely viewed as a case study in poor management of the resource. Currently the salmon fishery is also in deep trouble. More significant commitments to a sustainable fishery than sustainable agriculture were made in the *Action Plan*, but implementation has been slow, fish stocks are generally not recovering, employment in the fishery remains dramatically lower than pre-1992 levels (except in fish processing operations that rely on imported fish and aquaculture), and domestic production of seafood as a percentage of domestic consumption has dropped from 233% in 1988 to 126% in 2002. Only the burgeoning aquaculture sector has kept the ratios from dropping lower, but the domestic aquaculture industry is under siege for threatening biodiversity (WWF-Canada, 2003) as it follows an industrial agriculture model. The federal policy is widely criticized for focusing on elimination of small and medium fishers, while retaining access for large vertically integrated corporations. A nearly \$2 billion five-year social adjustment program in Atlantic Canada is helping fishers stay out of debt for the time being, but critics argue that it amounts to nothing more than a massive social welfare program. Management of marine habitat is also criticized (WWF-Canada, 2003).

#### *v. consumer protection*

Canada has well developed anti-adulteration, food labeling and consumer fraud prevention laws, although enforcement has now become a problem following years of government cutbacks and reorganizations. Canada used to allocate this responsibility across several departments, most notably the Department of Consumer and Corporate Affairs. This Department was abolished in 1996. Today, the burden of consumer protection with respect to food products falls almost entirely on the Canadian Food Inspection Agency which, with limited funds and personnel, is increasingly seen to monitor only food safety issues. Canadian law is also relatively weak in the area of competition law and has done little to reduce waves of mergers and acquisitions in the food industry.

#### *vi. food retail prices*

There are currently no mechanisms to prevent or protect against high consumer food prices, although monetary policy has been designed to keep inflation pressures low. Although Canada has the second lowest average food costs in the world, it has created a food distribution system that makes food more expensive at the retail level than it need be. A high level of corporate concentration gives food distributors the power to force consumer costs up, while paying low

prices to farmers (Lopez et al., 2002; NFU, 2003). A USA study using 1975 data found an estimated 6% increase in food prices due to corporate concentration (Parker and Connor, 1987). Relevant Canadian studies are lacking but our levels of corporate concentration are much higher than the U.S., so consumer prices may be higher here as a result. Unnecessarily higher food prices increases of this magnitude may not be significant to middle and upper income earners, but can be significant problems for low-income people. Furthermore, there is some evidence in Canada that low-income households face average higher retail food prices in their neighbourhoods than middle class citizens do (Horton and Campbell, 1986). A 1992 study in Halifax noted a 5% higher price in inner-city supermarkets where many low-income neighbourhoods are located as compared to suburban ones (Travers, 1993).

A less well studied, but critical question, is the impact of environmental externalities on food prices and the food insecure. In industrial countries, food prices do not reflect their real costs, with the environment and human health absorbing unpaid costs externalized by food producers, processors and retailers. In that sense, cheap food is an illusory concept and such a situation cannot continue indefinitely because of the burden imposed on natural resources. If such costs are internalized, how they affect retail food prices for those on limited budgets is not well understood. Would higher prices associated with cost internalization be neutralized by lower prices associated with new competitiveness initiatives to counter the impacts of corporate concentration?

### 3. NUTRITION AND HEALTH POLICY

The purpose of this section is to describe the history of the evolution of nutrition policy making institutions and nutrition policy in relation to food safety, consumer protection, food fortification, nutrition education and the issue of obesity and, then, to describe the successes and failures in this area. The way in which nutrition policy-making institutions have evolved, the extent of their evolution, and their relative power and policy influence, in relation to food and agriculture, are key components to ensuring the implementation of the right to food. In order for a population to obtain safe and nutritious food, nations require institutions for the inspection and ongoing surveillance of food quality backed by criminal sanction and consumer protection laws. But, typically, in the agricultural systems of many developed nations, power has passed up the food chain, so to speak, from the individual farmer to the processors, distributors, and retailers of food. And typically, these sectors of agri-business have become increasingly corporatized and commodified. This has led to some measure of corporate capture of the nutrition policy and regulatory apparatus in order to promote the smooth functioning of the system rather than the protection of consumers. This compromise, essentially, a weakening of nutrition in relation to food and agricultural policy, - and a dimension which impedes the development of a joined up food and nutrition policy- can directly impact food security if consumer food safety is compromised.

#### *i. ensuring the right to safe food*

In Canada, the legislation ensuring a safe food supply, (i.e., free from deliberate contamination) was passed as the *Adulteration Act* of 1874 (Curran, 1954). Under the authority of this federal criminal legislation, inspection facilities, laboratories, and an inspectorate were organized and were operating effectively across the country by 1919 (Davidson, 1949).

This early legislation, which has been amended and strengthened repeatedly, is an example of consistent federal action which established the legislative and civil service infrastructure necessary to make the right to uncontaminated food a reality with positive benefits for the health of Canadians. By 1920, this legislation was renamed the *Food and Drug Acts* and expanded to prevent mislabeling and false advertising by food manufacturers and retailers as consumer protection was extended from restricting contamination to preventing dishonest advertising. (Curran, 1954; Davidson, 1949).

The first challenges to this act came from food companies intent on exploiting the public's fascination with new vitamin discoveries in the 1920s and 1930s. The challenge was met with enhanced regulatory oversight of food advertisements and health claims as well as the

development of a national vitamin laboratory to assay vitamin levels in various advertised foods (Health Reports, 1939). Thus, Canada acted early and effectively to put a regulatory apparatus in place to ensure the provision of safe food (Ostry et al., 2003a).

Although Canada's food safety system is viewed as one of the best in the world, it must oversee an increasingly complex and changing agri-business landscape which offers numerous points of challenge such as in regulating increasing long-distance transport of goods, the concentration of processing and production in large-scale facilities, year round access to previously seasonal foods, intensive reliance on chemicals and biocides, and the enormous financial pressures on farmers and small manufacturers (MacRae and Alden, 2002). For example, the food safety apparatus now imposes requirements on farmers and processors that favour larger, more centralized operations involved in trade. Government, in the era of cutbacks, has moved to new frameworks for program delivery, shifted some responsibilities to the private sector, and changed the inspection process. It appears government may be attempting to shift potential liability to the private sector. Responsibilities and agencies have been reorganized, legislation amended, and new systems for managing risks put in place. A related problem is that the food surveillance system is failing to “see”, in both policy and scientific terms, opportunities to significantly reduce the generation of hazards, so that the risks can be reduced or eliminated rather than managed.

*ii. the evolution of nutrition policy and policy-making institutions in Canada*

During the 1930s, the League of Nations encouraged members to establish national nutrition councils to implement the right to food by first developing national dietary standards, second, by conducting dietary surveys to ascertain the extent of under-nutrition, and third by using this information to encourage more production and wider distribution of food in order to promote better nutrition in the face of the persistently high unemployment of the times (Canadian Preparatory Committee Report, 1936; League of Nations Mixed Committee Report, 1936).

During the crisis of the Great Depression in the 1930s, several dietary surveys were undertaken of urban working class and unemployed families which demonstrated deficiencies in energy, protein, calcium, and vitamin B intake and created concerns about the extent of malnutrition particularly among poor Canadians (Hunter & Pett, 1941; McHenry, 1939, 1941; Young 1941). Further surveys in other urban regions in the late 1930s revealed that the main dietary deficiencies among poor Canadians were for “vitamins B, C, and in calcium, iron and vitamin A, in that order“ (Pett, 1942). Thus, in the 1930s Canadian nutritionists identified under-nutrition as a problem among some economically deprived sub-populations, mainly in urban regions.

These dietary surveys were coordinated by the Canadian Council on Nutrition (CCN) which was established in 1938 following the League of Nations’ appeal. The CCN, disbanded in 1972, was a part of the federal government’s nutrition infrastructure (although with a limited advisory role to federal health department) for 30 years and played an important role in developing Canada’s nutrition and dietary research capacity including its food fortification policies from the 1950s through to the early 1970s and in coordinating provincial nutrition education policies. On its demise Health Canada assumed its functions. Thus, Canada has not had an independent federal nutrition policy making institution such as the CCN in place for the past 30 years.

After World War II, the *Food and Drugs Act* was used increasingly, (often, but not always, in conjunction with policy makers within the CCN) not just as a tool to enforce criminal sanction against adulterators, but also directly to effect health goals through regulated fortification of food in order to ensure the nutritional status mainly of vulnerable populations. By the late 1950s, through the *Food and Drugs Act*, many foods including salt, margarine, fruit juices, milk and cereal products were fortified with vitamins and minerals in order to reduce nutritional deficiencies among vulnerable populations. When, after nearly two decades of their virtual disappearance, cases of clinical scurvy and rickets re-appeared among Aboriginal children, mainly in Manitoba, and among poor children in Toronto and Montreal in the mid-1960s, fortification of milk products with vitamins D and C was initiated through the act (Barsky, 1967).

### *iii. nutrition education*

The CCN attempted to develop coordinated national policies on nutrition by providing leadership for provincial ministries of health and education and by developing national dietary standards and guidelines. These efforts led to various provincial programs of nutrition education. In the early years the CCN advocated strongly for a national school feeding program but was ignored. A major difference in nutrition policy between Canada and other developed nations such as Japan, the United States, and the UK has been the lack of a national school feeding program. This may indicate the relative historical lack of power of nutrition policy makers to influence central government.

As in most nations food growers, processors, and retailers have also had a strong role in nutrition education. For example, in Canada in the 1920s and 1930s, the lead in nutrition education was taken by the Department of Agriculture in alliance with the newly formed federal Department of Health. Up until the development of concerns about high fat diets beginning in the 1950s, the nutrition education objectives of agriculture and health officials were congruent as Agriculture built Canadian livestock capacity and nutrition research at the time advocated the consumption of vitamin rich protective foods (particularly milk and meat) as the best way to combat under-nutrition (Ostry et al., 2003b).

As Ancel Key's research linking meat and milk diets to coronary heart disease (which was climbing through the 1950s and 1960s) became more widely accepted, nutritionists began to sound the alarm about a Canadian diet high in saturated fats (Keys, 1970). However official dietary guidelines continued to advise Canadians to eat milk and meat rich diets until the early 1990s. The shift to the promotion of high cereal, fruit, and vegetable diets in official dietary guidelines did not occur in Canada until relatively late (1992) an indication perhaps of the lack of an effective and joined up food and nutrition policy. Canada was slow to promote nutrition education policies that went counter to the dominant interests of the agri-business sector.

### *iv. food insecurity and obesity*

The post-war economic expansion and the growth of the welfare state came to a halt in Canada in the early 1970s. As well, the early 1970s witnessed an agricultural crisis as grain prices plummeted. This was accompanied by rapid food price inflation and, for the first time since the 1930s, growing food insecurity. In the period 1970 to 1972 Canada launched the first and the largest population-based nutrition survey ever undertaken. The results of this nationally representative survey indicated that the main nutritional problem facing Canadians was that just over half the population was overweight (Beaton, 1981) and approximately 17% of the population was grossly obese (Sabry, 1979).

At the same time the survey demonstrated widespread shortages of iron, particularly among infants, adolescent girls and women of child-bearing age (Sabry, 1979). Mean intakes for iron and thiamine among adolescent girls, women aged 20 to 39 years, and pregnant women were below recommended levels regardless of income. Among adolescent girls and women aged 20 to 39, in the lowest income families mean intake of calcium was below recommended levels. Patterns of obesity in the 1973 survey showed that among young women, higher prevalence was associated with lower income; while among young men the reverse was true (i.e., low income men had lower prevalence of obesity than high income men). The nutritional status of males was generally better than for females at all ages levels and the nutritional status of aboriginals was in general worse than for non-aboriginal people (Myers & Kroetsch, 1978).

While Canada has not repeated this nationally representative survey (although one is planned in the next few years), the limited surveys since then indicate that this pattern of obesity and under-nutrition existing side-by-side, and sometimes even within the same sub-populations, is still present and that the prevalence of obesity has increased dramatically especially among Aboriginal peoples, and among those with the least education and income (O'Loughlin et al., 1998).

v. *towards the present- successes and failures in nutrition policy*

In general, Canada has done well in terms of establishing the legislation and infrastructure to ensure the food supply is uncontaminated notwithstanding the recent discovery of BSE infected cows in Alberta.

The essential nutrition problems that were identified in the 1972 national nutrition survey were over-nutrition existing side-by-side with nutritional deficiency and where nutritional deficiencies existed these tended to be worse among low income Canadians and Aboriginal peoples.

The main policy responses to this survey were, on the one hand, programs such as 'Participation' (introduced in 1972) based on encouraging greater physical activity among the population to reduce overweight and obesity and, on the other hand, in order to address observed nutrient deficiencies, the expanded mandatory fortification policies of the 1960s and 1970s. It is difficult to determine whether policies to encourage greater physical activity in order to reduce overweight and obesity have been a success as these policies evolved at the same time that education ministries across Canada reduced funding for physical education in the schools. However, expansion of fortification policies over the past 25 years has likely helped to limit nutritional deficiencies among the economically vulnerable. There is, for example, considerable evidence that the prevalence of neural tube defects has dropped since widespread folate fortification of flour in 1998.

In terms of promoting healthy eating, the official dietary guidelines issued to the Canadian public remained largely unchanged in the twenty years between the release of the 1972 survey results and 1992, retaining their focus on promoting milk and meat consumption. While official dietary guidelines and dietary advice have been slow to change, since 1992 they have been modernized and now actively promote diets high in cereal, vegetables, and fruits. The slow official response has not been helped by major popular changes in dietary habits. These have included the increased proportion of meals eaten outside the home (CIHR, 2003), of which an increasing proportion of these are in "fast food" restaurants (CIHR, 2003); the increasing size of restaurant portions; and decreasing prices and increased availability and advertising of energy dense high fat foods all of which have worked to undermine nutrition education programs and policies and dietary guidelines aimed at changing dietary habits. These programs have been further undermined by the excessive promotion of diets such as the Atkins diet, which undermine the central tenet of nutrition education programs which is the eating of a variety of foods.

Over the past decade, the main nutrition policy initiatives, at the federal level, have been to harmonize Canadian nutrition standards with the United States and to develop a policy of mandatory food labeling (by 2006) mainly for processed foods. In terms of the former, NAFTA has meant increased trade, including trade in food, with the U.S. Harmonization of standards facilitates this trading relationship. In terms of the latter policy thrust, nutritionists theorize that labeling will better inform consumers who in turn will force industry, through healthy choices fostered through better food label literacy, to produce more healthy foods. However, it should be noted that mandatory food labeling, while in the public interest, will likely benefit those who need it least because food label literacy is highest among the most educated and financially secure segments of the population.

These secular changes and nutrition policy thrusts are occurring against the backdrop of the accelerated erosion of the Canadian welfare state and social safety net. The progressive income re-distribution policies of the post-war era have been slowed and in some cases reversed. These trends, that is, the weakening of welfare state legislation, reduction in the nutrition-policy making powers at Health Canada, and increased leeway given to industry to "educate" the public through relaxed rules governing health claims, illustrate that government policy makers, are in a steadily worsening legislative and policy making situation vis a vis nutrition. This works against the possibility of developing a joined up food policy so that agricultural, nutritional and welfare goals can be effectively co-ordinated. This policy making disconnect occurs at a time when the federal government has through its endorsement of *Canada's Action Plan for Food Security* increased the

rhetoric about the rights of poor people in Canada and its support of international legislation promoting the right to food.

## C. Implementation of the Right to Food

### 1. ENABLING ENVIRONMENT: LEGAL STRUCTURES AND JUSTICIABILITY

This section of the case study will focus on identifying key features of Canadian legal structures as they bear on food security and the implementation of the human right to food. It examines Canada's international legal commitments, its constitutional framework, as well as pertinent legislation, institutions, and processes that enhance and detract from the ability of Canadian governments to implement the right to food. While one must be cautious not to overemphasize the role of law and legal institutions in the rights dialogue, the legal regime not only is instrumental in enforcing such rights, it is also essential in defining what those rights consist of and the instruments by which they might be implemented.

#### *i. Canada's commitments under international law*

Internationally Canada is a strong advocate for the protection and advancement of human rights. As such it has been instrumental in contributing to the international community's attempts to formulate, recognize and implement specific human rights. The right to food is no exception. Chart 1 below presents the international legal instruments that set out the right to food, the date of their adoption, their legal force, states' support for each instrument, Canada's position vis-à-vis the instrument as well as the basic content of the instrument regarding the right to food.

**Chart 1: Instruments Important in the Recognition and Development of the Right to Food**

<b>Instrument</b>	<b>Drafted</b>	<b>Legal Status</b>	<b>States' Support</b>	<b>Canada's Position</b>	<b>Content</b>
Universal Declaration on Human Rights	1948	Non-binding declaration of the UN GA	48 for, 0 against and 8 abstentions	Voted for adoption	Sets out the ensemble of human rights to be protected internationally
Geneva Conventions and Additional Protocols	1949	International multilateral treaties	Depends on specific treaty	Most are binding on Canada	Establishes rights and obligations for states to respect and protect food rights during conflict
Covenant on Economic, Social and Cultural Rights (CESCR)	1966	International multilateral treaty	141	Binding on Canada since 1976	Establishes state obligations to protect economic and social rights including the right to be free from hunger and to an adequate standard of living, including food particularly in Art. 11
Food Aid Conventions	1967	International multilateral treaties renewed periodically	Originally 18 under the 1967 agreement, now over 20	Binding on Canada since 1967	Establishes state obligations to provide a minimum amount of international food aid
Covenant on the Rights of the Child (CRC)	1989	International multilateral treaty	194	Binding on Canada since 1992	Establishes immediate rights and obligations for states for rights for children including nutrition (Art. 24, 27)
Rome Declaration and Plan of Action	1996	World Food Summit	187	Non-binding	Seeks clarification of the content of the right to food and suggests international bodies complete the task
General Comment 12 of the Committee on ESCR	1999	Decision of the Committee on ESCR – strong, legal language	Implicitly 141, but instrument is that of the Committee, not the states	Not officially binding but serves as a interpretation of Article 11 of the CESCR	Establishes the precise content and implementation of the right to adequate food

As Canada has signed and ratified the CESC, it has been bound since 1976 to comply with the implementation requirements of the CESC. Since that time, the federal government has re-committed the state to progressively realize the right to food generally as well as in the specific areas of nutrition, development, women's and children's rights and indigenous people. In 1989 as a corollary to the international initiative leading to the conclusion of the *Convention on the Rights of the Child*, the House of Commons in an all-party resolution committed itself to the eradication of child poverty in Canada by the year 2000. The resolution did not however have the force of law, nor did it contain justiciable rights to enhance measures to eradicate child hunger and child poverty. Since 1989 child poverty has declined but child hunger judged by those turning to food banks has increased by 155,552 (CAFB, 2003).

At the international level, Canada is bound to submit reports to the Committee on Economic, Social and Cultural Rights outlining its progress in implementing economic, social and cultural rights in Canada. Canada's last report to the Committee of on Economic, Social and Cultural Rights was its third periodic report, which was reviewed by the Committee in November 1998. The Committee's concluding observations, published in December 1998 found a number of unresolved issues concerning economic rights that adversely affect individual Canadians' right to adequate food (CESC, 1998). Canada's fourth periodic report was due on June 30, 2000 but has yet to be submitted to the Committee.

So despite the Canadian government's strong international advocacy for the right to food -- its role at the World Food Summit in 1996, its co-sponsorship with Cuba of Resolution 1999/24 "The Right to Food" adopted by the United Nations Commission on Human Rights in April 1999 and the presentation of *Canada's Action Plan for Food Security* (1998) -- there is still some distance to go for the full implementation of the right to food in Canada. This conclusion is further reinforced when one considers the gaps which have emerged in human rights implementation due to our constitutional, legislative and judicial interpretation of economic, social and cultural rights in Canada.

#### *ii. Canada's constitutional framework*

Canada is a federal state consisting of one federal, ten provincial and three territorial governments which share power according to a written constitution and various intergovernmental agreements. The judiciary, which must arbitrate private and public law disputes, is organized such that practically all cases must be initiated in a lower court and upon appeal, work their way progressively up to the Supreme Court of Canada, which creates binding precedents that the lower courts must then follow and apply. The Supreme Court of Canada is bound by the valid laws of Canada, by Canada's two primary constitutional documents--the *Constitution Act, 1867* and *Canadian Charter of Rights and Freedoms* (being Part I of Schedule B of the *Constitution Act, 1982*), by constitutional conventions and by international law that has been incorporated or implemented into Canadian law. Thus the content of the Canadian Constitution as well as the laws of Canada must be understood and interpreted in light of international commitments. Chief Justice Dickson of the Supreme Court of Canada pronounced in 1987 that:

The content of Canada's international human rights obligations is, in my view, an important indicia of the meaning of the "full benefit of the Charter's protection". I believe 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. (Public Service Employees Relations Act - Court of Canada) (Alta.) [1987] 1. S.C.R. 313.

*The Constitution Act, 1867* contains important provisions for the establishment of Canadian governments and institutions. It also contains, in sections 91 - 95, important provisions which divide the legislative competences and jurisdictional responsibilities between the federal and provincial governments and as between their respective legislative, executive and judicial branches. The federal government has exclusive competence in areas pertaining to national interests, such as defence, foreign affairs and trade, currency, shipping, currency, banking and the protection of intellectual property. Exclusive provincial legislative powers include municipal

affairs and the establishment of municipal governments, the protection of personal and real property in the province, the regulation of commerce in the province, the maintenance of health care institutions, courts, educational institutions, the development of labour standards and all other matters of property and civil rights arising from activities taking place in the province. Health, education and social welfare also fall within provincial jurisdiction.

As well, the *Constitution Act, 1867*, explicitly in its text or implicitly through judicial interpretation concedes that several matters will be ones of concurrent or shared legislative competence between the federal and provincial governments. Examples include: agriculture, immigration, and the environment. Shared powers over agriculture are also affected by the respective governments' competences over health and nutrition, criminal law and provincial regulation of property and commercial rights of transaction occurring entirely within a province. While social programs were originally presumed to be primarily provincial responsibilities under the division of powers in ss. 91 and 92 of the *Constitution Act, 1867*, Canadian legal and political history has shown that both the federal and provincial governments have evolving legislative mandates empowering them to provide for the general welfare of persons. The provincial governments generally have the power to enact laws for matters affecting property and civil rights of persons, that is matters affecting the general welfare of persons. As such each province has enacted legislation which provides for benefit schemes for disadvantaged and vulnerable persons, for labour standards and for health benefits.

However, the federal government has always had an important role in providing legislation and funding in this area through three mechanisms. First, the federal government at Confederation assumed a responsibility under ss. 114-118 of the *Constitution Act, 1867* to provide equalization payments to the provinces. These provisions were carried over and made more explicit in the *Constitution Act, 1982*, s. 36. which requires that the federal government continue to make equalization payments to promote equal opportunities for the well-being of Canadians, to further economic development to reduce regional disparities and to provide essential public services of reasonable quality to all Canadians. Secondly, the federal government has been granted over the years new powers by constitutional amendment to create programs to provide for the well-being of all Canadians. One such example was an amendment to empower the federal government to introduce Canada-wide social security programs for unemployment insurance and pensions. Finally, the federal government can, by contract with the provinces, enhance equalization payments for specific welfare purposes or provide additional targeted funding should it so wish and should a province decide to take up the offer of the federal funding, even if those funds will be used for purposes that are wholly within the competence of the provincial governments.

*Charter of Rights and Freedoms, 1982*: From a human rights perspective the governing constitutional document in Canada is the *Canadian Charter of Rights and Freedoms*. This document, introduced by constitutional amendment in 1982, protects all individuals from certain kinds of government action and binds the federal, provincial and territorial governments of Canada. The *Charter's* language reflects a bias for the protection of civil and political rights such as freedom of speech, association, religion and the protection of democratic freedoms rather than the protection of economic, social and cultural rights, although provisions such as those guaranteeing equality and freedom from discrimination (s. 15) and the right to life (s. 7) would, on a plain reading of the words, appear to protect economic rights (including the right to food) as well. Before the Committee on Economic, Social and Cultural Rights the federal government has publicly accepted this interpretation. "The Supreme Court of Canada has stated that section 7 of the Charter may be interpreted to include the rights protected under the Covenant. ... The Supreme Court has also held section 7 as guaranteeing that people are not to be deprived of basic necessities. ... The Government of Canada is bound by these interpretations of section 7 of the Charter" (CESCR, 1998).

However while the federal government may have stated that the Charter protects economic and social rights, Canadian courts have not yet held that s. 7 actually requires Canadian governments to respect, protect and fulfil (facilitate and provide) the right to food in Canada. In fact, with respect to the justiciability of economic, social and cultural rights under the Charter, quite the

opposite has been the case in lower courts' decisions, where they have made it clear that the Charter does not protect such rights or give the claimant any right of action (Jackman and Porter, 1999). Even at the Supreme Court of Canada, the response to whether the Charter protects economic, social and cultural rights and provides for the justiciability of those rights is very guarded.

The landmark Supreme Court of Canada case of *Gosselin v. Quebec (Attorney General)* directly addressed the issue of economic, social and cultural rights and their protection under the Canadian Charter. In *Gosselin*, the Supreme Court of Canada dismissed Ms. Gosselin's claim against the government of Quebec for deficiencies in her welfare entitlement for the years 1984-1989. During that period (the legislation setting out the entitlements in question was repealed in 1989), Ms. Gosselin, then under 30 years of age was entitled to only \$170/ month, one third of the entitlement determined by the legislation to be the minimum amount necessary to supply the basic necessities of life. Ms. Gosselin claimed that the legislation violated her s. 7 right to life, liberty and security of the person and her s. 15 rights to equality and freedom from discrimination as persons 30 years and older were entitled to the full amount of \$460 per month. Lower courts denied Ms. Gosselin's claim on both grounds. The Quebec Superior Court held that the courts cannot substitute their judgment in social and economic matters for that of legislative bodies.

By a very narrow margin of 5 judges to 4, the Supreme Court of Canada upheld the lower court result. Chief Justice McLachlin, writing for the majority, was not convinced that this case merited s. 7 protection. The Chief Justice held that Canadian law did not yet place a positive obligation on the state to ensure that each person enjoys life, liberty or security of the person. Rather, s. 7 only restricted the state's ability to deprive people of these. Such a deprivation, she maintained did not exist in this case. The Chief Justice concluded:

The question therefore is not whether s. 7 has ever been -- or will ever be -- recognized as creating positive rights. Rather, the question is whether the present circumstances warrant a novel application of s. 7 as the basis for a positive state obligation to guarantee adequate living standards. I conclude that they do not" (*Gosselin*, 2002, SCC per McLachlin C.J.).

In a powerfully reasoned dissent, Madame Justice Arbour, then of the Supreme Court and now the newly appointed UN Commissioner on Human Rights, cogently articulated the role of the Canadian Charter in protecting economic, social and cultural rights and permitting the justiciability of such rights:

While the claim asserted here hardly in itself has the potential to bring "all of the elements of the modern welfare state" under judicial scrutiny, the concern raised by this justiciability argument is a valid one. Questions of resource allocation typically involve delicate matters of policy. Legislatures are better suited than courts to addressing such matters, given that they have the express mandate of the taxpayers as well as the benefits of extensive debate and consultation. ... [T]his case raises altogether a different question: namely, whether the state is under a positive obligation to provide basic means of subsistence to those who cannot provide for themselves. In contrast to the sorts of policy matters expressed in the justiciability concern, this is a question about what kinds of claims individuals can assert against the state. The role of courts as interpreters of the *Charter* and guardians of its fundamental freedoms against legislative or administrative infringements by the state requires them to adjudicate such rights-based claims. One can in principle answer the question of whether a *Charter* right exists -- in this case, to a level of welfare sufficient to meet one's basic needs -- without addressing how much expenditure by the state is necessary in order to secure that right. It is only the latter question that is, properly speaking, non-justiciable (*Gosselin*, 2002, SCC per Arbour J.).

Another disturbing case raises similar *Charter* issues. Unfortunately, the claimant committed suicide before her case went to trial. In the case of *Rogers v. Ontario (Works, Administrator for the City of Greater Sudbury)*, Kim Rogers sought to invoke her Charter rights to challenge the

treatment she received under the *Ontario Works Act*, which deprived her of being able to secure the necessities of life. During a four year period, Rogers received about \$50,000 in student loans while she was in receipt of social assistance. She used these moneys to obtain a diploma in Social Work but was convicted for social assistance fraud as she had not reported her income from the student loans. When convicted in April 2001, she was forced to repay \$62,000, placed under a six month house arrest order and banned from receiving social assistance for the rest of her life. In May 2001, now pregnant, she was granted an injunction to receive social assistance pending the hearing of the constitutional challenge. The trial judge found that withholding assistance would violate her human rights and would create a situation that would jeopardize the health of Ms. Rogers and the fetus thereby adversely affecting not only mother and child but also the public - its dignity, its human rights commitments and its health care resources (*Rogers*, Epstein J. and *JurisFemme* 2001). For many reasons, there is overwhelming public interest in protecting a pregnant woman in our community from becoming destitute.

Several important points are raised by these cases. First, litigating entitlements to economic, social and cultural rights takes a very long time (almost 13 years in the *Gosselin* case)--time that vulnerable groups can ill afford as was demonstrated in the Rogers case. Then there is the question of cost to take a case to court at all. Third, there is still the disappointing legal result that the highest law of the land still does not recognize the full extent of the implementation of the right to an adequate living, or the right to food, or in terms of Canadian terminology, the right to life, liberty and security of the person which includes the right of access to basic necessities, including food. According to the Chief Justice, while it is conceivable that the Charter does not necessarily preclude the recognition of such rights, s. 7 violations which impose positive obligations on the state to fulfill (that is to facilitate or to provide) economic necessities are still beyond the interpretation of Canadian courts and are not protected. Madame Justice Arbour's dicta to the contrary, while well-reasoned and in consonance with international law, are not currently law in Canada. Epstein J.'s practical approach to resolving the temporary plight of Kim Rogers was laudable--and arguably the correct legal course of action if s. 7 rights are to protect Canadians from food insecurity in crisis situations--but it was not a case from which a solid legal precedent can be established and it remains the action of one lower court judge, and unfortunately, not legal doctrine from Canada's highest court.

*Human Rights Codes*: Starting in the 1960s, legislation was passed by the federal and provincial governments in the form of Human Rights Codes to protect individuals from discrimination when seeking housing, services, goods and employment. These Codes protect individuals from discriminatory actions by private individuals against other private individuals. Protection varies from Code to Code and may include, in addition to protection from discrimination, protection from harassment and sexual harassment and guarantees of pay equity (Buckingham, 1997). Rarely has such protection against discrimination and equality been successfully argued for food or any other economic, social or cultural rights. Jackman and Porter rightly point out that "[i]ssues related to social and economic rights, even where they intersect clearly with issues of equality or security of the person, have been found by the courts to be outside the ambit of the Charter or human rights protections." (Jackman and Porter, 1999) While there has been academic literature imploring Canada to use its system of human rights laws, codes and institutions to further advance the recognition and implementation of economic, social and cultural rights, little action has been taken. Even, the International Committee on Economic, Social and Cultural Rights has forcefully urged Canadian governments to take this step.<sup>1</sup>

Thus given existing case law, it would be difficult to give vulnerable persons legal advice that would extend much hope that Canadian courts and human rights tribunals will apply the Canadian Constitution in such a way as to guarantee domestic compliance by the state with its international

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<sup>1</sup> "The Committee again urges federal, provincial and territorial governments to expand protection in human rights legislation to include social and economic rights and to protect poor people in all jurisdictions from discrimination because of social or economic status. Moreover, enforcement mechanisms provided in human rights legislation need to be reinforced to ensure that all human rights claims not settled through mediation are promptly determined before a competent human rights tribunal, with the provision of legal aid to vulnerable groups (CESCR, 1998a, at para 51)).

obligations respecting the right to food. There is therefore a significant disconnect between the Supreme Court of Canada's dicta that s. 7 and s. 15 could possibly protect a claimant's right to food and the actual reality of receiving a satisfactory judgment which indeed does respect, protect and fulfil that right. Uniform justiciability of the right to food in Canada remains a doubtful, expensive and time-consuming exercise.

### *iii. federal and provincial legislation*

Claimants who challenge Canadian governments for infringement of the right to food, of course, must ground their claims by citing offending provincial or federal legislation. Without reference to the Charter or Human Rights Codes, some litigants have tried to establish their economic rights as the basis for invalidating one piece of Canadian legislation as against another. Thus in the 1993 case of *Finlay v. Canada (Minister of Finance)*<sup>2</sup> Charter rights were not specifically argued. However, in that case the claimant who suffered from permanent disabilities alleged federal legislation (Canada Assistance Plan) and provincial legislation (Manitoba Social Assistance Allowances Act) operated so as to permit deductions from his living assistance payments to recover previous overpayments. The effect of this action was that it was impossible for him to meet his basic living requirements. The claimant alleged that the interaction of the federal and provincial legislation permitting this negative and debilitating effect, must render the legislation invalid. The Court however disagreed and the claimant was forced to continue to receive less than the government recognized minimum amount for the necessities of life.

There is not, however, only bad news as the above cases might suggest regarding the measures to protect Canadians' right to adequate food. In fact the matrix of federal and provincial legislation that touches upon food security, human health and economic entitlements is vast and complex (Reddekopp, 1999). Several federal and provincial statutes go some distance to respecting, protecting and, even in some limited circumstances, fulfilling Canadians' right to adequate food. While there may be in some cases a vast gulf between legislation designed to recognize this right and its widespread and systematic implementation across the country, without the legislation, recognition of the right would be vastly impaired. In this section of the case study some broad categories of Canadian legislative action are presented as a basis for the evolving recognition and implementation of the right to food in Canada. Amartya Sen proposes that hunger occurs because of a lack of resource entitlements to food. He lists four primary resource entitlements as trade, labour, inheritance or transfer, and production. It is useful to analyze Canadian legislation recognizing and implementing the right to adequate food in terms of Sen's broad categories of entitlements, which are the ways in which humans acquire the food they need to meet their daily nutritional requirements (Sen, 1981).

Federal and provincial legislation provides for a fair trading system. For the promotion of a fair trading system the federal government has introduced the *Competition Act* and the *Criminal Code* to prevent market manipulation and fraud. Provinces have introduced licensing requirements for many of the professions and occupations that process and distribute food as well as consumer protection statutes. For the promotion of a safe food distribution, the federal government has implemented a whole system of agricultural and food statutes to oversee the development of food crops and livestock as well as their safe preparation and sale of these products for national and international markets.

Most Canadians secure their food by buying it in stores and markets, a simple exchange of money for food products. Food security for the majority of Canadian, therefore, is assured through respecting and protecting their ability to earn a living either from the profits from entrepreneurial endeavours or from salaries from employment and the availability of an abundant food supply. Federal and provincial governments have created a range of legislation to support general entrepreneurial endeavours, to respect and protect labour and workplace standards, and to promote general population health.

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<sup>2</sup> [1993] 1 S.C.R. 1080

However, for vulnerable groups such as the unemployed, the disabled, single parent families and Aboriginal people may be precluded from entrepreneurial activities or employment for a variety of reasons. These vulnerable groups often must rely on a combination of financial transfers from government and in-kind food contributions from food banks or other charitable organizations.

Over the past 50 years federal and provincial governments have provided social security entitlements for low income Canadians. However, in light of the emergence and institutionalization of charitable food banks, the question is whether they adequately fulfill the human right to food.

Despite these legislative endeavours, poverty still exists in Canada and while some legislative efforts have improved certain Canadians' chances for continuous access to adequate food, other recent legislative changes have led to an erosion of Canada's social safety net and negatively impacted food security for some Canadians, particularly the most vulnerable--social assistance beneficiaries, women and children, and Aboriginal and First Nations people.

This discussion leads then to the last method of securing food entitlements--production. Canadian legislation is abundant in the area of producer programs and marketing systems. However, Canada continues to import large quantities of food for its population as it cannot or does not produce enough to satisfy all aspects of consumer demand for food. As mentioned above, it is safe to assume that by even the most generous calculation less than 10% of Canadian secure their direct nutritional requirements through their own production. However, the other 90% of the Canadian population depends almost entirely on food to be available for them to purchase or to secure in kind as charity or as part of a barter economy for their food security. Does this reality and Canada's international commitment to recognize and implement the right to adequate food for all Canadians require Canadian government's to develop and maintain an efficient and sustainable agricultural system?

#### *iv. legal institutions and processes - some conclusions*

The above review of the legal instruments and institutions responsible for the recognition and implementation of the right to food in Canada to reveal important disconnects between international obligations and domestic compliance. Legislative instruments that protect the food system in Canada, that provide market opportunities and that ensure workplace safety and social security are vital in assisting Canada to meet its obligation to secure the right of middle-income and high-income Canadians to adequate food. However they fail to secure the rights and food needs of the most food vulnerable in Canada and to ensure the realisation of a joined-up food policy and the optimal nourishment of the population in sustainable ways.

Two important questions must be addressed. First, is the legislation now in place working? Does it lead to more Canadians being more food secure? Does the legislation provide rights that can be administratively or judicially transformed into entitlements to make persons more food secure? To answer this question one must examine existing institutions and processes to determine if food rights are being transformed into entitlements when necessary and when they are not, to determine if such rights and entitlements are justiciable in Canadian courts.

Currently the institutions responsible for administering the legislation reviewed above are numerous both at the federal and provincial levels and result in fragmented approaches to food security. Implementation of commercial and trade matters falls to agriculture and Agri-Food Canada, Industry Canada, and the Department of Foreign Affairs and International Trade. Implementation of labour rights falls to Human Resources Development Canada and its provincial counterparts, often Ministries of Labour. General health matters fall to Health Canada with food safety issues coming under the administration of the Canadian Food Inspection Agency.

It is however, in the area of the administration of general and specific social security programs that the real complexity appears. The federal government administers and funds national programs such as old age security and block funds other provincial social safety net programs. When a difficulty with entitlements under any of these programs arises, some limited administrative remedies are available, such as welfare appeal boards, employment insurance tribunals. These

tribunals are bound by the statutory rules of their enabling legislation and by the *Canadian Charter of Rights and Freedoms*, being creatures of Canadian government. Their decisions are reviewable under the principles of administrative law before Canadian courts. If however, the reviewing court (e.g., the Divisional Court in Ontario) finds that the tribunal has a reasonable basis for its decision having followed proper rules of procedures; it will rarely overturn the findings of their welfare bodies or their appeal bodies.

The second question is more fundamental. If existing rights and benefits are not sufficient or are not justiciable to bring them up to levels to secure adequate food, then is the general right to food that Canada has committed to at the international level justiciable in Canadian courts? Here, the food insecure person faces many obstacles in Canada. Currently, as discussed above there is a very real concern as to whether vulnerable groups can seek redress in Canadian courts to the right to food.<sup>3</sup> The limited view of the ambit of economic, social and cultural rights of the Supreme Court as well as the denial of such existence of such rights by lower courts is problematic.

Thus without a constitutional challenge to expand the conclusion of Gosselin (or perhaps to have the Arbour reasoning adopted in a majority judgment), the current path to recognizing the right to food continues to be ongoing discussions and consultations between the Canadian government and civil society.

## 2. MACRO-POLICIES - MOVING FROM RIGHTS TO IMPLEMENTATION

This section evaluates the practical steps Canada has taken in implementing a national strategy on food security, the extent to which state policies of redistribution and resource allocation are directed, or might be directed at the progressive realisation of the human right to adequate food, the adequacy of the current monitoring mechanisms and the role of civil society in terms of achieving national food security.

### *i. Canada's Action Plan for Food Security*

In 1998, in response to the World Food Summit (Rome, 1996), the Federal Government acting with Agriculture and Agri-Food Canada (and based on 'consultations' with representatives of agri-business and civil society), announced *Canada's Action Plan for Food Security*. It declared the right to food as its first priority but regarded this as an international work in progress with an important role for civil society (CAPFS, 1998:5). It focused on actions directed at both domestic and international food security recognizing parallels between the two arenas. It stated that food security implied access to adequate food and that sufficient food supplies, poverty reduction, social justice and sustainable food systems were essential conditions. Two subsequent documents reviewed developments anticipated in the 1998 report.

In terms of domestic food security, the *Action Plan* made six commitments to: *an Enabling Environment* including a national social safety net; *Access to Food* recognizing the relationship between poverty and food insecurity and the importance of access to safe and nutritious food, the reinforcement of healthy eating practices, traditional food acquisition by Aboriginal communities and a monitoring system for food insecurity; *Sustainable Agriculture and Rural Development* reflecting a concern and interest in ensuring the development of new technologies to protect the resource base and enhance long term competitiveness through value added production while at the same time identifying environmental challenges; *Trade and Food Security* in terms of promoting fair trade while at the same time remaining committed to more liberalized trade and encouraging the competitiveness of Canadian goods and services; *Emergency Prevention and Preparedness* particularly the threats to food supplies posed by natural disasters and *Promoting Investment* in Canada's agri-food sector. Each of the six commitments identified different actions to be considered or undertaken.

One analyst has found 'genuine merit' in that the federal government recognized food insecurity as a domestic problem and was only one of a handful of nations to prepare a plan and with broad-

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<sup>3</sup> M. Jackman and B. Porter, *supra*, at 58-64.

based, multi-sectoral participation (Boeckner,2003). However, Boeckner argues there is little evidence that subsequent to the *Action Plan* formulation, food security has been integrated into the planning processes of even the most relevant Ministries, an example of the disconnect between rhetoric and action. Nor one might add is there an identifiable sense that the *Action Plan* is the key to developing a federal-provincial co-ordinated and joined-up food policy let alone being the instrument for the progressive realization of the right to food.

Indeed, from a legal perspective it lacks a very important element. While the Plan and the reports are keen to acknowledge the "right to food" in several places in the documents, operationally and institutionally there seems to be little commitment to the actualization of the right in Canada. Operationally, the three documents offer little in the way of explicit recognition of what the right to food is in Canada and how it will be implemented in its three dimensions of 'respect, protect, and fulfil.' For example, will there be a "food security impact assessment" that will have to be completed before new legislation is passed? Perhaps a guiding principle for the operationalization of the right to food in Canada would be that set out by the Committee on Economic, Social and Cultural Rights in 1998:

The Committee, as in its review of the previous report of Canada, reiterates that economic and social rights should not be downgraded to "principles and objectives" in the ongoing discussions between the Federal Government and the provinces and territories regarding social programmes. The Committee consequently urges the Federal Government to take concrete steps to ensure that the provinces and territories are made aware of their legal obligations under the Covenant and that the Covenant rights are enforceable within the provinces and territories through legislation or policy measures and the establishment of independent and appropriate monitoring and adjudications mechanisms. (CESCR: Canada 10/12/98)

Institutionally speaking, a review of all three of the documents reveals that there has not been any input from or consultation with federal or provincial Department of Justice representatives, nor with members of federal or provincial Human Rights Commissions. This is a glaring oversight if one is advocating the domestic recognition and implementation of the right to food in Canada. The laws that will need to be drafted will come from the Department of Justice lawyers and drafters. As well, the laws implementing agricultural, nutrition and social policy that will have to avoid violation of the right to food will also have to be vetted by these same lawyers and drafters.

#### *ii. redistribution*

In terms of acting on the causal relationship between poverty and food insecurity as identified in CAPFS, the prospects for more generous redistributive policies supporting the implementation of the human right to food and strengthening Canada's social safety net at this time are not propitious.

As noted earlier, since the mid 1990s Canada has enjoyed strong economic growth and a rising standard of living for the average Canadian. Since 1994 this has been supported by growth in full-time employment climbing by 15.3% to 12.5 million jobs in 2002. Part-time employment grew by 13.5% to 2.8 million positions over the same period accounting for nearly a fifth of all jobs (Statistics Canada, 2003).

However, while the financial health of the federal government has improved, Ottawa is playing a smaller role in promoting the well-being of Canadians. One indication is the continuing decline in program spending, including transfers to individuals and to provincial governments (e.g., through the CHST), as compared to the size of the Canadian economy. *Fiscal Reference Tables* compiled on a public accounts basis by Finance Canada show a drop in federal program spending from 15.8 percent of gross domestic product in 1989-90 to 11.6 percent in 2001-02. During that same period, budgetary revenues were down from 17.3 percent of GDP to 15.9 percent. Similar patterns occurred in the expenditures and revenues of the provinces and territories collectively. Indeed, in light of the new Prime Minister's act to freeze certain elements of federal expenditures, there is little prospect of additional funding support for Canada's social safety net let alone new monies for social housing, school meal programs or a national child care program.

### *iii. allocation of resources*

Comparing fiscal year 1989/90 (in constant 2003 \$) to the projected federal budget outlays for 2004/05, (see Table 5, Appendix, p. 43) it would seem there is little prospect for increased social safety net spending. While health care spending grew by nearly one half, combined spending on post secondary education and welfare and social services declined by 3.3% indicating the policy and funding commitments of the federal government. It is correct that modest amounts of additional federal money were added in 2000 as a result of an agreement with provinces and territories on early childhood development, and a 2003 agreement on child care. However given that provincial governments are struggling with their own deficits it is hard to see them shifting resources away from health and post secondary education to targeted safety net programs.

### *iv. monitoring and recourse*

In 1998 the Federal Government 'established the Food Security Bureau as a virtual organization currently located within the Global Affairs Bureau of AAFC, with a mandate to co-ordinate and monitor the implementation of the *Action Plan*' (AAFC, 2002, 2<sup>nd</sup> Progress Report). A Joint Consultative Group on Food Security was re-established to carry out this task comprising representatives from 12 federal departments and agencies, provincial and territorial governments and individuals from 30 civil society organizations. Importantly the Second Progress Report does refer to the monitoring of prevalence rates for food security in the Canadian Community Health Survey and to food security initiatives in Saskatchewan and New Brunswick. It also identifies one of the key activities of the newly created Canadian Food Security Network to monitor the progress on the implementation of the *Action Plan* (pp32-33).

However, it remains unclear what role, if any, the Food Security Bureau plays or may be permitted to play, in holding to account federal, let alone provincial ministries with key responsibilities for advancing food security. Certainly it serves as a consultative mechanism with civil society and provides funding support for national food security conferences but at best it appears to have a minimal role in terms of leadership, accountability or policy formation.

Monitoring Functions elsewhere in the federal government include the activities of CFIA with respect to ensuring food safety.

### *v. role of non-government organizations*

In recent years governments in Canada, corporations and civil society (domestic and international NGOs, local communities and academia) have been working around the issue of food security. The participation of the Canadian Government in two World Food Summits (1996 and 2002); the introduction of *Canada's Action Plan for Food Security* (1998); the establishment of the national Food Security Bureau in Agriculture and Agri-Food Canada and the associated Inter-Departmental Committee on Food Security; recent survey research directed at food insecurity by Health Canada and Human Resources Development Canada are all important indicators of public interest.

Evidence of civil society responses can be seen in five main areas: charitable food networks; alternative community food projects; partnerships between civil society, governments and the corporate sector; food security networks, farm organisations and food policy councils; and research, public education and policy advocacy.

*Charitable food networks:* while no comprehensive study exists in Canada of the nature and extent of charitable feeding programmes in Canada, it is safe to say that an extensive range of services are now being provided through the voluntary sector and sometimes with the support of public funds. Emergency food programmes, often affiliated with food banks, include soup kitchens, and a wide range of breakfast, lunch and supper programmes that are provided through, shelters, missions and social welfare agencies. Direct feeding programmes also include meals on wheels directed at housebound senior citizens and school meal programmes delivered in partnership through local school boards.

It should be noted that nationally representative surveys showed that only one third of hungry families had used a food bank, or other charitable food institution in the year prior to the surveys indicating that two-thirds of food insufficient families do not use these institutions. Two of three studies of the nutrient intakes of food bank users indicate some nutritional deficiencies among food insecure families.

At the same time some food banks also engage in public education and advocacy. At the national level the Canadian Association of Food Banks (CAFB) not only produces its annual *HungerCount Survey* but uses this to lobby the Federal Government regarding the inadequate income security system in Canada. It also plays a leading role in seeking the domestic compliance of the Canadian government with its international obligations regarding the human right to food particularly in regard to the inadequacy of social assistance benefits.

*Alternative community food projects:* An important departure from charitable food giving has been the introduction of good food box programs, pioneered in Toronto in the early 1990s. These are an innovative and important development in that they do not involve food handouts. In rejecting charitable giving they seek to encourage self reliance through the purchase of nutritious and safe foods at low prices. This can be achieved through centralized purchasing and economies of scale and through establishing links with local producers (2003: [www.vcn.bc.ca/gfb.community](http://www.vcn.bc.ca/gfb.community)). Collective kitchens and community gardens also reflect this philosophy and are important sources of nutritious foods in urban environments.

*Voluntary-corporate-public partnerships:* such partnerships are common in the provision of food aid and food banks benefit in a number of ways. First through the food received from local food stores and supermarkets. Second, the National Food Sharing System established by the CAFB in 1995 with the support of 63 corporate food companies such as Campbell Soups, Kraft, Kelloggs, H.J. Heinz and Quaker Oats transports, courtesy of the two national rail companies (CP Rail and Canadian National), donated food from food companies and some national and provincial marketing boards to food banks across the country. Third, Kraft Canada funds the annual *HungerCount Survey* (Riches, 2002).

A second example is the development in Canada since the 1980s of school-based feeding programs. In a 1989 survey 121 school and community based were reported feeding hundreds and thousands of school children each school day (Canadian Education Association 1989). The number and scope of these programs expanded in the 1990s (Health Canada 1999). Some of these programs are quite large and offer a range of services. For example, the Montreal Island School Council operates a feeding program for 26,000 children providing food supplements, snacks, and subsidized milk and juice. A Toronto Board of Health survey in Toronto undertaken in 1998 identified over 200 child nutrition programs feeding approximately 30,000 children (Basrur, 1998). Other school boards in Regina, Calgary, Vancouver, and Toronto provided free meals to students who are unable to pay (Papamandjaris, 2000).

The funding of child feeding programs is haphazard. Most are financed through local sources such as municipal governments, school boards, social and public health agencies, food companies, and private donors (Cassell 1990; Health Canada 1999; McLennan 1989; McIntyre et al 1998, 2001; Raine et al, 2003). These programs are largely small-scale, volunteer driven and operate on principles of “charity” rather than a “rights” or “social justice” framework (Health Canada, 1999; Shaw et al, 1999). Besides New Brunswick, B.C. is the only province in Canada to fund province school-based child feeding programs. In 1989 it initiated a comprehensive school meal program currently administered by the Ministry of Children and Families with additional financial support from the Ministry of Education (Health Canada, 1999, Henry & Allison, 2000). Approximately 300 of the province’s 1200 elementary schools participate. The program provides meals to all children regardless of financial circumstances.

A third example is the Canada Prenatal Nutrition Program (CPNP) set up in 1995 by Health Canada to improve the birth weights and health status of Canadian infants. The services are directed at pregnant women who face conditions of risk that threaten their health and the development of their babies. Provincial funding also supports locally provided services such as

the Pregnancy Outreach Program (POP) in British Columbia. All of the CPNP and most of the POP sites offer food and vitamin supplements, nutrition counselling and breast feeding support as well as dietary assessments and transportation services (BC/POP, 2003). Again this service is not adequately funded as in 2001/02 815 of the 9303 clients were referred to food banks.

*Food security networks, farm organisations and food policy councils:* there is strong evidence of increasing popular participation in food security issues in recent years in Canada as can be seen from the growth of the food security movement at community, municipal, provincial and national levels. The *2001 Working Together Conference* organized by the Ryerson University Centre for Studies in Food Security and financed by the Federal Government brought together 137 key actors from civil society and government to address food security from a number of perspectives: the right to food and social justice; sustainable agriculture and food systems; community health and healthy communities and international aid and trade. As the agenda for the conference makes clear delegates' interests in food security reflected their activities across the country in the environmental, nutrition and health, social justice, sustainable agriculture and human rights movements and their commitment to integrated approaches to achieving food security.

It is significant that in each province food security networks and food policy councils are becoming organised and have important connections with municipal councils. Food security networks currently exist in five Canadian provinces British Columbia, Saskatchewan, Manitoba, Ontario and Newfoundland and Labrador with food policy councils and food security groups now established in Toronto, Ottawa, Kamloops (B.C.) and Vancouver. Food Charters have been proclaimed by city councils in Toronto, Saskatoon and Prince Albert. Such networks and councils play crucial roles through their multi-sectoral approaches to food security, through developing strong local links with municipal governments and regional health boards and through their capacity to be engaged in research, public education and policy advocacy.

However the establishment of a strong national food security movement is problematic. Of course electronic communication facilitates such a development but without government funding the possibility of bringing together representatives of civil society across Canada is not possible. Due to lack of funding a second national conference planned for Winnipeg in March 2004, has had to be postponed until the fall. The extent to which the need for public funds tempers debates and constrains policy advocacy in terms of identifying plans of action is also perhaps a matter which requires open discussion and debate.

*Research, public education and policy advocacy:* a critical role played by civil society organizations is their capacity to translate their research into public education and political change. It could well be argued that the work of the food security networks and food policy councils has at the very least succeeded in keeping food rights and policy issues on government agendas. Research into a food and nutrition strategy for Ontario by the Ontario Public Health Association (1995); publications of the Toronto Food Policy Council; a plan to put B.C. at the forefront of food and nutritional health in Canada by the Heart Health Coalition (1997); the engagement of the Canadian Foodgrains Bank in the international food rights debate; studies challenging the B.C. Government to ensure that people on welfare and the working poor can afford to eat nutritious diet by Dietitians of Canada and the Community Nutritionists Council of B.C., (2000, 2001) as well as the CAFB's *HungerCount* Surveys are important contributions to the debate about the human right to food.

However, in terms of policy advocacy perhaps the most successful impact has been the actions of the solidarity movement – the Quebec Collectif pour une loi sur l'élimination de la pauvreté - which in 2002 resulted in the passing, with all party consent in the Quebec National Assembly, of a new *Act to Combat Poverty and Social Exclusion*. The Act, based upon the rights set out in the *Quebec Charter of Human Rights and Freedoms* sets out a comprehensive national strategy part of which is focused on actions to strengthen the social and economic safety net. In particular it commits the government to: 'facilitating dignified access, for persons living in poverty, to a food supply that is both sufficient and nutritious, at reasonable costs, and simple and reliable information enabling those persons to make enlightened dietary choices' (2002, c. 61, s. 9). While

the national *Action Plan* has yet to be brought forward by the new Liberal Government in Quebec, the establishment of this anti-poverty legislation is a remarkable achievement by civil society in Quebec with important implications for holding the government accountable for implementing the human right to adequate food.

## **D. Assessment of Groups Vulnerable to Food Insecurity**

As noted in *Canada's Action Plan for Food Security* (1998) "vulnerability to food insecurity exists when people find themselves without a secure of adequate income, are unemployed, or have limited education". According to the *Action Plan*, "those groups most likely to be affected by low incomes in Canada include Aboriginal people, single mothers and their children, persons with disabilities, recent immigrants and those who have not completed high school" (p. 11). This study considers three vulnerable population groups: social assistance beneficiaries; women and children; and Aboriginal peoples.

### **1. SOCIAL ASSISTANCE BENEFICIARIES**

With few exceptions, welfare incomes in Canada are a guarantee of poverty and a strong indicator of vulnerability to hunger. The available data (e.g., NPHS, CAFB, NCW studies) clearly indicate the inadequacy of welfare benefits and the resultant food poverty of many recipients. It is therefore difficult to conclude (see Chart 2) that provincial governments are fully complying with their international obligations to respect, protect and fulfil the human right to food with respect to social assistance beneficiaries.

Statistics Canada surveys have consistently identified families led by single-parent mothers, unattached women under 65, and unattached men under 65 as three of the family types most at risk of poverty. The CAFB survey *HungerCount 2003* showed that 57 % of food bank users listed welfare as their primary source of income. It reported that 33% of them were single parents and 34% were unattached persons underlining the link between and poverty, hunger and inadequate welfare. The survey also linked cuts in welfare rates in Ontario in 1995 and more recent cuts and restrictions in B.C. welfare policies with increased reliance on food banks in the two provinces (CAFB, 2003).

Welfare recipients are at a further disadvantage compared to poor people with other sources of income, because provincial and territorial welfare programs have put strict limits on the earnings exemptions they can receive without having their welfare entitlements reduced. These welfare "taxbacks" can be as high as 100 percent - a dollar reduction in welfare for every dollar of earnings or other forms of income. British Columbia has recently eliminated exemptions on earnings entirely in the case of employable persons on welfare. It also eliminated the previous exemption of the first \$100 a month of spousal or child support received by single parents on welfare.

**Chart 2: Government Compliance with the Right to Food<sup>1</sup>**

Normative principles	Food security of vulnerable group: Social Assistance Beneficiaries				
	Adequate food			Sustainable supply	Stable access
	Nutritious	Safe	Culturally acceptable	Environmentally and economically sustainable food systems	Physical and economic access to food
Level of state obligations					
<b>Respect</b> 'must not take political or other measures destroying existing access by vulnerable populations					Non-compliance: weakening of safety net cutbacks, restrictive eligibility criteria and denial of benefits (BC) (Ont). (EI restrictions), clawback, earnings exemptions Compliance: NCB plus social security programs
<b>Protect</b> 'protect everyone from having access to food being undermined by third parties'	Food banks no guarantee of nutritious foods		Charitable food no guarantee of cultural acceptability		
<b>Fulfil</b> - Facilitate - long term policies, self-reliance - Provide - directly					Non-compliance: inadequate benefits (EI, SA, minimum wage); food banks growth; failure of safety net

<sup>1</sup> The matrix proved too complex in its design to provide a satisfactory guide to government compliance or partial or non compliance with the right to food.

## 2. WOMEN AND CHILDREN

Women are at greater risk of poverty and therefore hunger in every family type that can be distinguished by gender. As of 2001, the poverty rate of single-parent mothers with children under 18 was 31.9 percent using after-tax LICOs, and the poverty rate of single-parent fathers with children under 18 was 13.4 percent. The poverty rate for unattached women under 65 was 36.2%. (See Table 6, Appendix, p.43)

Children of single parents face a much higher risk of poverty than children of couples, as reflected in the high poverty rates for single-parent families. However, in terms of the number of poor children as opposed to their poverty rates, most poor children live in two-parent families. In terms of vulnerability to food insecurity, *HungerCount 2003* showed 306,552 children under 18 using food banks in March 2003, that is 39% of all food bank users. By way of comparison, children make up only 26% of the population at large

As well as having to make do with inadequate welfare incomes, many families with children on welfare have seen their welfare cheques reduced, or clawed back by provincial welfare departments in recent years, as the federal government has increased the child benefits it pays to low-income and middle-income families.

Younger single parents with lower educational attainment are particularly vulnerable to poverty and food insecurity. As well, several studies have indicated that nutritionally deprived children experience more health problems including anemia, weight loss, colds, and infections, and have more school absences and learning problems than food secure children so that the health and

educational deficits incurred by children, particularly of younger single mothers, may be both serious and contribute to the perpetuation of the cycle of poverty across generations (McIntyre et al., 1998; Skolnick, 1995; Wehler et al., 1992).

Two out of three studies indicate that women and children in hungry households are at risk of nutrient deficiency. In a survey of 153 women among families receiving emergency food assistance in Toronto in 1996/997 a prevalence of nutritional inadequacy in excess of 15% was estimated for Vitamin A, folate, iron, and magnesium. Sixty-five percent of the sample were lone parent families. According to the authors of this study, the level of food insecurity in the sample was such that it could put women at risk of nutrient deficiencies (Tarasuk and Beaton, 1999). In another study conducted by Badun et al (1995) of 52 low income parents of pre-school kids recruited through drop in centres in a Southern Ontario community, 65 percent experienced food insecurity. And, the median intakes for zinc, energy, iron, calcium, vitamin A, and folate in the sample were less than the Recommended Nutrient Intake (RNI).

Starkey et al (1999) undertook a representative survey of nutrient intakes of adult food bank clients from 57 different food banks in Montreal. 83% percent of subjects were on social assistance. Results indicated that dietary intakes were similar to the general Quebec population. Food bank users in this survey met the RNIs for all nutrients except calcium. Mean calcium intakes were below the RNI for women aged 18-49 and for both men and women over 50. These data were confirmed as the consumption of dairy products was also significantly less than in the general Quebec population.

Women may also be at risk of poverty and hunger even if they are in the paid labour force. One reason is that women are much more likely to have part-time rather than full-time work. The figures for 2000 for women and men 25 and older illustrate the disadvantage. The participation rate for women was 58.8 percent and the rate for men was 73.9 percent. Men 25 and older accounted for nearly 6.5 million full-time jobs and only 393,000 part-time jobs. The figures for women were 4.4 million full-time jobs and 1.3 million part-time jobs. (Statistics Canada 2001)

### 3. ABORIGINAL AND FIRST NATIONS PEOPLES

Aboriginal peoples comprise 3.3% of the Canadian population (Statistics Canada, 2003). Of the 976,305 First Nations people counted in the 2001 census, 713,000 (73 %) lived off-reserve in large and medium size cities whereas the majority of Inuit live in the cities and towns of Canada's northern territories (Statistics Canada, 2002). Poverty is a critical issue. This is, of course, more of an issue for the minority of First Nations peoples who live on reserves and those living in rural areas where they have access to fish and game. However for the majority of Canadian Aboriginal and First Nations peoples the story is more complex as these people often form the poorest segment of the Canadian urban population.

Aboriginal people in Canada have been governed under the *Indian Act* since 1867. The *Constitution Act, 1982* recognized and affirmed Aboriginal and treaty rights in the Canadian constitution laying the groundwork for a series of court challenges by Aboriginal people which defined the meaning and extent of Aboriginal rights. Over the past 15 years the Supreme Court has systematically rendered court decisions which have acted to enshrine Aboriginal (and recently, the Metis) people's right to hunt and fish in order to maintain traditional lifestyles and diets. The 1997 *Delgamuukw* case defined these rights explicitly as the right to exclusive use and occupation of land; the right to choose to what uses land can be put, and control over economic development of these lands (Delgamuukw, 1997; Thomas, 2002). A major dimension of traditional aboriginal culture pertains to food gathering and processing as aboriginal religion and culture, for tens of thousands of years, has been based on hunting and gathering. The *Delgamuukw* and subsequent cases given Aboriginal people explicit rights in relation to access to fish and game both on and off traditional lands and explicitly recognizes that in order for Aboriginal cultures to remain intact and thrive, these rights must be made a reality by expanding the management of wildlife and fish to bands as they move increasingly to self-governance. These legal decisions while not direct "right to food" legislation, have enormous significance for the

nutritional status of First Nations peoples as they provide real legal protection for them to continue to gather foods which are nutritious and culturally appropriate- and in culturally appropriate ways.

Using census data with incomes for 1995, the National Council of Welfare's *Child Poverty Profile 1998* reported off-reserve poverty rates before income taxes of 59 percent for Aboriginal children under 15; 42.7 percent for Aboriginal women 15 and older and 35.1 percent for Aboriginal men 15 and older (NCW, 2001). Nutrition surveys indicate that those Aboriginal and Metis people who live in urban situations are most vulnerable to hunger while those living in rural areas face higher unemployment, low incomes, and higher incidence of hunger than non-Aboriginal peoples. These surveys also indicate that Aboriginal and Metis people who are able to maintain their traditional diets which are based on game hunting and trapping, fishing, and harvesting of wild fruits and berries have better nutritional status than those who are exposed to "western" diets.

Through the 1980s and 1990s, there is evidence of fairly widespread nutritional deficiency and imbalance in Aboriginal communities. As late as 1986, 48 rickets cases over a 15-year period were reported in Manitoba. Forty of these were among northern Manitoba aboriginals (Moffat, 1995). Research also points to excessive intakes of energy, fat, and refined carbohydrates and deficiencies in micronutrients such as calcium, iron, vitamins A, D and folic acid. As well, Type 2 diabetes is usually a disease that appears among older age groups. However, the prevalence of Type 2 diabetes among Aboriginal children is increasing (Dean et al., 1992;1998; Harris et al., 1996) as it is among adults. Rates of diabetes appear to be higher on-reserve than off reserve (Health Canada, 2003) probably due to the adoption of a market diet high in energy, saturated fat and sugar along with an increase in sedentary lifestyles leads to an increased prevalence of obesity and diabetes (Thouez et al., 1989)

The only program that is universally available to remote areas is the Federal Mail Program, a postal subsidy that is applied to the freight on nutritious foodstuffs and has been shown to keep the cost of food down in communities (Moffatt).

## **E. Lessons Learned and Recommendations**

### **1. LESSONS LEARNED**

In a general and aggregate sense Canada is a food secure nation in terms of the production and supply of food (including imports), food safety and food distribution for the large majority of its population. It is of course a major international contributor of food grains to countries of the South.

Canada is a wealthy country with a history of progressive social policy including a broad system of income security, and until recently a well developed social safety net, and in recent years has been judged by the UNDP Human Development Index to be the best country in the world in which to live. Since the mid 1990s Canada has been enjoying a period of strong economic growth and employment creation, and the federal government has generated six successive budget surpluses.

The right to food exists in Canada but its implementation is lacking. On the one hand there is evidence supporting the claim that the human right to adequate food finds expression, directly and indirectly, in Canada's agricultural, economic, health, nutrition and social policy and in its legal instruments, institutions and international commitments. On the other hand competing evidence indicates serious disconnects between the claims and rhetoric of Canada's right to food approaches and domestic compliance and implementation. Sustained economic growth is not in and of itself a guarantor of food security.

#### *i. Building blocks: Canada's contributions*

- Canada has signed and ratified the CESCRC and since 1976 has been bound to comply domestically with implementing the right to be free from hunger and the right to food. It has

also committed itself internationally to realize the right to food generally as well as in specific areas of nutrition, development, women's and children's rights and indigenous peoples.

- In terms of domestic law while the right to food is not explicitly written into existing statutes, bits and pieces of the right can be found in federal and provincial laws and policies regarding agriculture, food safety, nutrition and health and the welfare state.
- A former Chief Justice of the Supreme Court of Canada has expressed the view that the Canadian Charter of Rights and Freedoms (1982) should be interpreted in light of Canada's international legal commitments. This would be in reference to sections 7 and 15 of the Charter.
- The Federal Government has stated internationally that the Charter, as interpreted by the Supreme Court of Canada, does protect internationally recognized economic, social and cultural rights. The Supreme Court has in recent decisions recognized the rights of Aboriginal peoples to traditional food gathering and processing practices.
- The Federal Government has pronounced *Canada's Action Plan for Food Security* (1998)
- The Government of Quebec, in 2002, passed an *Act to Combat Poverty and Social Exclusion* which also contained an *Action Plan*.
- The proclamation of food charters by a number of municipalities is indicative of policy interest by local governments
- Actions by civil society including the development of local, provincial and national food security movements and the establishment of municipal food policy councils are indicative of increasing concern about food poverty and food rights.

*ii. Disconnects: failure to implement.*

While Canadian law respects and protects the right to food of middle and upper class Canadians, it fails in several ways to respect, protect and fulfil those same rights for vulnerable peoples. Evidence of poverty and food insecurity in Canada points therefore to a failure by Canadian federal and provincial governments to ensure domestic compliance with its obligations to respect, protect and fulfil the human right to food for all Canadians. Canadian governments cannot rely on charitable good banking, a secondary part of the welfare system, to meet its obligations for the realization of the human right to adequate food in Canada. Certain constitutional, legislative and policy measures must be enhanced or introduced to make this change.

***a. Federal, provincial and territorial legislation and policy***

- Canada's income support programs and social safety net lack domestic compliance with its international obligations to 'respect, protect and fulfil' the right to food (CESCR) of vulnerable peoples. Existing social assistance benefits are thousands of dollars below accepted poverty lines and do not permit the purchase of a sufficient quality and quantity of nutritious food. More stringent eligibility criteria have led to: claimants being denied access to benefits; the reduction of already inadequate benefits; and to being cut off absolutely. Welfare benefits have been re-commodified and the right to exist outside the labour market made more difficult.
- The repeal of the Canada Assistance Plan (the federal-provincial cost sharing mechanism) in 1996 and its replacement by the Canada Health and Social Transfer (block funding) eliminated the federal monitoring of national welfare standards and rights and resulted in the loss of the federal monitoring role in terms of provincial welfare expenditures.
- Benevolent approaches to meeting the food needs of hungry people in the form of charitable food banks have become institutionalized over the past twenty years in Canada and have relieved the state (federal, provincial and territorial governments) of its obligations to 'respect, protect and fulfil' the right to food through ensuring adequate social security entitlements. Demands on food banks continue to grow. At the same time research has shown

that charitable food banking has failed to meet the food and nutritional needs of vulnerable populations.

### ***b. Justiciability***

- For the moment there is a disconnect between the dicta of the federal government, the Supreme Court and the lower courts in Canada as far as the legal protection of the right to food is concerned, particularly in the case of vulnerable Canadians. While the federal government has explicitly acknowledged that the *Canadian Charter of Rights and Freedoms (1982)* has been interpreted by the Supreme Court of Canada to protect economic and social rights, this protection appears very narrow given the Court's finding in the Gosselin case. The Gosselin precedent is likely to do little to encourage lower courts to protect food rights in Canada thereby making the justiciability of the right to food difficult, if not almost impossible to implement on behalf of vulnerable peoples. Thus the justiciability of the right to food is still in serious question. In practice the justiciability of the right to food is slow, costly and difficult to implement on behalf of vulnerable peoples.
- While the Charter could be understood as framework legislation, the disconnect between the stated position of the federal government, and the dicta of the Supreme Court and the lower courts suggests this development is problematic.

### ***c. Federal, provincial and territorial coordination***

- Despite the declaration of *Canada's Action Plan for Food Security* and the establishment of a national Food Security Bureau, there is little evidence of endorsement by the different levels of government in Canada, including the Assembly of First Nations, of a national strategy to achieve food security. This would necessitate agreement about policy and purposeful goal setting, indicators, benchmarks and target reductions, accountability and monitoring mechanisms, program funding and the allocation of resources. A significant omission is that the *Action Plan* lacks a concrete plan to include the legal framework necessary to achieve its stated goals.
- While Quebec is the only jurisdiction in Canada to declare, with all party support, an *Act to Combat Poverty and Social Exclusion (2002)* informed by the *Quebec Charter of Rights and Freedoms*, its Action Plan has yet to be brought forward.
- Canada lacks a coherent and coordinated approach to food policy (joined-up food policy) directed at the optimal nourishment of the population. The policy infrastructure required to ensure that food production (food/agriculture/fisheries policy) and access to nutritious and healthy food (nutrition and social security policy) is highly fragmented and the nutrition policy component is weak relative to food policy.
- Civil society across Canada has played and continues to play an important role in advancing the priority of food security and the debate about the human right to food. However, despite the fact that *Action Plan* recommends that it performs a national monitoring role, the sector is under-funded, if not to say unfunded, and in a weak position to perform such a task. It plays a stronger role at provincial and local levels.

### *iii. emerging issues*

- Canada is enmeshed in an unsustainable agricultural system that may become less productive and sustainable fairly soon. The ecological sustainability is likely hampered by the increasingly aggressive focus on the entanglement of the agri-business sector in global trade. The combination of these two factors may act in the long run to weaken domestic autonomy (food sovereignty) in developing food and nutrition policy which may damage the right to food.
- Canada has had some success stabilizing farm income and consumer prices with supply managed commodities. Only a few studies, however, have attempted to take the concept of matching production with demand (central to supply management) and applying it to a

national food production and consumption scenario. What levels of environmentally and economically sustainable production would be required in Canada to meet the optimal nutritional requirements of the population?

- A highly decentralized federal state such as Canada presents complex issues of governance in terms of achieving priority attention for food security and the development and implementation of joined-up food and nutrition policy and an adequate and secure social safety net informed by the human right to adequate food.
- Partnerships between different levels of government, the corporate sector and civil society including charity can be problematic in that the locus of accountability for ensuring compliance with the right to food is not transparent nor enforceable.
- The social construction of hunger and food poverty by the media, the corporate sector and a well-intentioned voluntary sector (e.g., food banks) as a matter of charity and not as a political issue of social justice and human rights is largely unrecognized.
- The high incidence and growing prevalence of food insecurity suggests there is a lack of political will to address the issue of food poverty in Canada

## **2. RECOMMENDATIONS TO IMPLEMENT THE RIGHT TO FOOD IN CANADA**

### ***a. Federal, provincial and territorial legislation and policy***

- Develop national joined-up food and nutrition policy within a new national action strategy with the goal of the optimal nourishment of the population. Such a new national *Action Plan* would require the full participation of the relevant ministries including federal and provincial justice departments and with representatives of civil society and the food industry. The plan should set benchmarks, targets, time frames and accountability.
- Reverse the erosion of Canada's welfare state and implement the proposed Canada Social Transfer and earmark federal funds for provincial social safety net programs with national conditions and federal monitoring. These conditions, as articulated by the Canadian Association of Food Banks, would stipulate: receipt of social assistance based solely on need; no residency requirement; a welfare appeals process; no forced work for welfare; assistance levels adequate to meet basic needs (CAFB, 2003); and benefits indexed to the cost of living.
- Living wage jobs (CAFB, 2003) and secured by provincial minimum wage rates raised above prevailing poverty lines and employment insurance reform to ensure that workers who pay into the program are able to access their own benefits in the event of job loss (CAFB, 2003).
- National and regulated child care program (CAFB, 2003) and raising of National Child Benefit maximum to meet the adequacy benchmark and ending of the claw-back of the benefit to the poorest families on welfare by all provinces (CAFB, 2003).
- Introduce a national housing strategy (CAFB, 2003) and the provision of adequate housing to ensure that high rental costs do not result in families' 'compromising their diets' or having no food.
- Federally funded school meal programs.
- Adoption of food policy charters explicitly recognizing the human right to adequate food and Canada's ratification of relevant international covenants by all municipal governments.

### ***b. Justiciability***

- Re-examine and expand Charter protection: while the Charter could be understood as all that is necessary for protecting the right to food, its impact is currently too narrow and too vague to adequately ensure the right to food for vulnerable people in Canada. Thus the Canadian judiciary needs to re-examine its precedent in the *Gosselin* case and the role of the Charter in

protecting this important right. However, the Court is not able to choose the cases it will hear. Thus to get another case before the Canadian Courts funding may be required.

- Ensure the full implementation of the Court Challenge Program: when the Canadian Charter was first adopted, the federal government provided funding for cases to establish Charter rights for groups or individuals without adequate funds. This program should be re-established for cases where individuals or groups are seeking to establish their food rights under Canadian and international law.
- Consider Framework Legislation (federal and provincial): rather than waiting for the courts to decide the issue, the federal and provincial governments could negotiate food security and right to food provisions in ongoing legislative changes to Canadian agriculture and food policy. Quebec has already gone some distance in enacting such framework legislation.
- Expand the Role for Human Rights codes to include protection for economic and social rights: rather than introducing new framework legislation, human rights codes could be amended to include justiciable rights for private violations of an individual or groups food rights.

#### *c. Federal, provincial and territorial coordination*

- In service education and training policies should be introduced and directed at civil servants duty to accommodate the provisions and guidelines of internationally ratified covenants such as the CESCR and the CRC which commit the state to implementation of the right to food.
- Inclusion of food studies and basic human rights education in primary and secondary school curricula and in relevant higher education curricula (e.g., professional education: agricultural, health, nutritional and environmental sciences and business, education, law, social work and social policy).
- Establishment and full funding of federal, provincial and municipal food policy councils and of bi-annual national conference and networks.

### 3. CASE STUDY CONCLUSIONS RE VOLUNTARY GUIDELINES

The findings of the Canadian case study endorse the idea that the right to food exists in Canada and in the context of national food security. There are **strengths** in the Canadian approach and important **building blocks**.

- There is evidence that the right to adequate food finds expression, directly and indirectly, in Canada's agricultural, economic, health (food, safety and nutrition) and social policies (at federal and provincial levels of government) and in its constitution and *Charter of Rights and Freedoms*, legal instruments, institutions and international commitments.
- Canada has introduced a *National Action Plan for Food Security* (1998) which commits the state and civic society 'to clarifying the content of the right to adequate food, as stated in the *International Covenant on Economic, Social and Cultural Rights*,' and to supporting the role of civil society in engaging 'in domestic campaigns to promote the right to adequate food' (CAPFS, 1998).
- The role of civil society in promoting the right to food and in advancing food security is also evident through the activities of charitable food networks, alternative community food projects, voluntary-cooperative-public partnerships, food security networks, farm organisations and food policy councils and through the research, public education and policy advocacy conducted by these organisations. Such activity is critical to ensuring public accountability.

However there is competing evidence which indicates serious **weaknesses** and **disconnects** between the claims and rhetoric of Canada's right to food approaches and their full implementation in an economically advanced nation with a democratic and parliamentary system of government and which is a major exporter of food grains to feed a hungry world. There are challenges to be met in securing the right to adequate food as a fundamental human right in Canada.

- In light of the fact that 10% of the Canadian population reports some measures of food insecurity and over three quarters of a million Canadians rely on charitable food each month, it is evident that Canada lacks domestic compliance with its ratified international obligations to 'respect, protect and fulfil' the human right to adequate food. It is therefore important to clarify the role of the right to food in political statements of national commitments to human rights conventions.
- While recognising that the right to food may be interpreted as being achieved through either moral (charitable) and/or political (governmental) and/or legal (justiciable) approaches, the findings of the Canadian case study suggest that the disconnects between federal/provincial political commitments (e.g. to the right to food [CESCR, CRC]) and domestic compliance coupled with the failure of the courts to guarantee the justiciability of the human right to adequate food results in significant food poverty. There is therefore a strong need for efficient and workable legal mechanisms for claiming the right.
- The findings of the Canadian case study in relation to the failure of charitable food banks to meet the needs of hungry Canadians (and to guarantee nutritious foods) endorse the idea that 'at the national level a rights-based approach to food security emphasizes the satisfaction of people's basic needs as a matter of right rather than benevolence'. Twenty years of charitable food banking in Canada has permitted governments to neglect the right to food. This implies the development of adequate programmes of national and provincial social security.
- While economic growth is clearly central to achieving food security, market failures suggest that a rights based approach is essential to ensuring the just distributions of wealth and income in society. Canada's current policies of economic growth while successful for middle and upper income Canadians have failed to ensure the realisations of the right to food for its vulnerable citizens.
- In light of the fragmented nature of Canadian food policy it is essential that a 'joined-up' national food policy (bottom-up as well as top-down) aimed at the optimal nourishment of the population be developed; and that a national plan (such has been developed in Canada) reaches across jurisdictions and departments (including justice departments) in ensuring that the building gets built.
- In light of the important role of civil society in advancing the human right to adequate food and the power of the corporate food sector in controlling the food system, funding to support civil society should be accorded priority.

## Appendix

**Table 1:**  
**Persons in Poverty, Canada, 2001<sup>1</sup>**

Estimated number ('000) %		Highest poverty rates	
All persons:	3,163 (10.4%)	Female headed single parent families	31.9%
Children under 18:	786 (11.4%)	Unattached women under 65	36.2%
Adults 18-64:	2,105 (10.6%)	Unattached men under 65	26.5%
Seniors 65+:	271 (7.3%)	Aboriginal children under 15 <sup>2</sup>	59%

<sup>1</sup> Post tax Low Income Cut-offs (92 LICOS Base), Income in Canada, Statistics Canada 2003: Statistics Canada produces two sets of low income cut-offs each year, one based on pre-tax incomes and the other based on incomes after federal and provincial income taxes. Because after-tax incomes are lower than before-tax incomes, the after-tax LICOs and the poverty rates calculated using after-tax LICOs are lower. Both sets of LICOs reflect families and individuals who spend disproportionately large amounts of their incomes on food, shelter and clothing.

<sup>2</sup> 1995 pre-tax census data, National Council of Welfare *Child Poverty Profile 1998*.

**Table 2:**  
**Markers for Food Insecurity: Changes in Poverty, Persons on Welfare and Food Bank Usage, 1989 and 1997-2000**

	Poverty <sup>1</sup>		Persons on welfare <sup>2</sup>		Food Bank users <sup>3</sup>	
	Num ('000)	% of pop	Num ('000)	% of pop	Num ('000)	% of pop
1989	2,675	10.0%	1,865	6.8%	378	1.4%
1997	3,975	13.5%	2,775	9.3%	665	2.2%
1998	3,518	11.9%	2,576	8.5%	714	2.4%
1999	3,497	11.7%	2,279	7.5%	717	2.4%
2000	3,294	10.9%	2,085	6.8%	727	2.4%
2001	3,163	10.4%	1,911	6.1%	718	2.3%
2002	N/A	N/A	1,843	5.9%	748 <sup>4</sup>	2.4%
<b>% change</b>						
1989-2001	+18.2%		+2.5%		+97.8%	
1997-2001	-20.4%		-31.1%		+12.5%	

Sources: <sup>1</sup> Statistics Canada, income in Canada (post-tax LICOs)

<sup>2</sup> HRDC welfare statistics provided by National Council of Welfare, March each year

<sup>3</sup> Annual Hunger Count Surveys, CAFB, March each year

<sup>4</sup> Numbers of food bank users rose from 748,000 in March 2002 to 779,000 in 2003

**Table 3:****Numbers and proportions of Canadian population living in food-secure and food-insecure households, 1998-1999**

Category, n (%) (numbers in thousands) <sup>1</sup>	Food secure	Food insecure				Total
		Total	Anxious	Compromised diet	Food poor	
<b>Total Canadian population</b>	26,458	3,015	2,360	2,290	1,211	29,473
	(89.8)	(10.2)	(8.0)	(7.8)	(4.1)	
<b>Adults</b>	20,470	2,098	1,655	1,612	873	22,560
	(90.7)	(9.3)	(7.3)	(7.2)	(3.9)	
<b>Children (0-17)</b>	5,988	924	705	678	338	6,912
	(86.6)	(13.4)	(10.2)	(9.8)	(4.9)	

<sup>1</sup> Survey weight was used for national numbers

Note: The categories of food insecurity in Table 3 are not mutually exclusive. Most of the time, the food poor were also anxious and/or had compromised diets

Source NPHS, cycle 3. Reproduced from Rainville and Brink, 2001

**Table 4:****Adequacy of Social Assistance benefits, Canada, 2002**

Family Type	Benefit as \$ below poverty line <sup>1</sup>	Benefit as % of poverty line
<b>Single Employable</b>	\$10,101 to \$7,225	25 to 45%
<b>Single Disabled</b>	\$8,306 to \$4,144	48 to 74%
<b>Single Parent, One Child</b>	\$7,776 to \$1,446	60 to 91%
<b>Couple, Two Children</b>	\$12,934 to \$2,349	58 to 89%

<sup>1</sup>Poverty Line /LICO

Source: National Council of Welfare

**Table 5:****Federal Health, Post Secondary Education and Social Transfer Allocations and Budget, Cash and Tax Points (Constant 2003 \$), 1989/90 and 2004/05, Canada**

<b>Federal Allocations</b>	<b>1989/90 (Billion \$)</b>	<b>2004/05<sup>1</sup></b>	<b>% change</b>
<b>Health Care</b>	17.98	26.25 <sup>2</sup>	+46%
<b>Post Secondary Education</b>	8.5	14.5 <sup>3</sup>	- 3.3%
<b>Welfare/Social Services</b>	6.49		
<b>Total</b>	<b>32.97</b>	<b>40.8</b>	<b>+24%</b>

<sup>1</sup>2003 Budget announcement

<sup>2</sup>New Canada Health Transfer (includes CHST supplement and new Health Reform Fund)

<sup>3</sup>New Canada Social Transfer - PSE and social assistance and social services

Source: Department of Finance, Canada 1989 and The Budget Plan Finance 2003

**Table 6:****Comparison of female and male poverty rates<sup>1</sup>, Canada, 2001**

<b>Lone parent mothers with children under 18</b>	31.9%	13.4%	Lone parent fathers
<b>Unattached women under 65</b>	36.2%	26.5%	Unattached men under 65
<b>Unattached seniors 65+</b>	20.5%	16.4%	Unattached men 65+

<sup>1</sup> post-tax LICOS

Source: Statistics Canada, 2003

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