

“That’s a Really Nice Coat You’re Wearing:” Dignity, Agency, and Social Inclusion in  
the Administration of Welfare

by

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B.A., York University, 2000  
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A Thesis Submitted in Partial Fulfillment of the  
Requirements for the Degree of

MASTER OF LAWS (LL.M.)

in the Faculty of Law

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University of Victoria

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## **ABSTRACT**

This thesis examines the manner in which dignity and agency, as aspects of social inclusion, are constituted in the context of welfare administration, and assesses the potential of legal regimes, particularly the human rights system, to address violations of dignity and agency within social welfare regimes. Administrative institutions are the primary nexus of interaction between social welfare law and policy and those they would purport to benefit; the specific focus in this thesis is British Columbia's social welfare bureaucracy. The administrative welfare interactions are explicated through analysis of policy documents and lived realities using narratives, both hypothetical and real, based on original interviews with third-party witnesses to interactions between welfare workers and clients. The potential of the human rights regime to address affronts to dignity and agency are examined through the lens of lived experience and drawing on current legislation and jurisprudence. I conclude that the welfare process involves affronts to the dignity, agency, and social inclusion of people living in poverty, that the human rights regime is inadequate to address these affronts, and that it is necessary to challenge existing concepts of social welfare and human rights, and to imagine more appropriate and functional institutional models of welfare policy.

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## **ACKNOWLEDGEMENTS**

I would like to acknowledge the invaluable support of my supervisor, Hester A. Lessard, and my co-supervisor, Dr. Marge Reitsma-Street, as well as other faculty members, including Jeremy Webber, John McLaren, and Gillian Calder. I thank the individuals who participated in my study for sharing their knowledge and perspectives. I am also indebted to many of my friends, family and colleagues for their encouragement, patience and assistance, particularly Dawnis Kennedy, Perry Shawana, Charles Yung, Lauren Marsden, Tim Bailey and the Sargent/Sims.

## **CHAPTER 1: SOCIAL INCLUSION, DIGNITY AND AGENCY IN THE ADMINISTRATION OF WELFARE**

### ***I. Introduction***

Over the past 25 years, Canada's social welfare strategy has undergone an ostensible shift from a Keynesian welfare state to a neoliberal paradigm. The resulting impacts on social welfare policy have been detrimental to Canadians living in poverty, further burdening the citizens most at risk of economic, social, and political exclusion. This paper will not argue for a return to the distributive politics of the Keynesian welfare strategy; even if this were politically feasible, it is not an appropriate model for addressing poverty because it does not confront issues of indignity, lack of agency, and social exclusion, which are inherent in the maintenance of existing socio-economic power structures. Instead, it is necessary to consider potential strategies that will function in post-Keynesian Canadian society. Administrative institutions are the primary nexus of interaction between social welfare law and policy and those they would purport to benefit; I will focus specifically on British Columbia's social welfare bureaucracy as an example of this. The restructuring of welfare programs over the last 25 years in Canada provides an opportunity to challenge existing concepts of social welfare and human rights, and to imagine more appropriate and functional institutional models of welfare policy. Such models should serve to resist and reverse those longstanding patterns of oppression that are carried out through degradation and demoralization of individuals and communities within governmental and non-governmental welfare structures.

Income polarization in Canada is increasing, and concurrently it is becoming increasingly evident that governmental income assistance programs are inadequate to

meet even the most basic material needs for food, shelter, and health, as will be demonstrated in Chapter 2. Although there are clear links between law, policy and poverty, there is little research on the institutional dynamics that support these relationships and their effect on the dignity and lived experience of people living in poverty. Many studies and reports document poverty in a quantitative sense. How many people are poor? What is their income level? What should the poverty level be? How high should welfare rates be, given the cost of living? These questions are important, but when the commodifiable aspects of poverty are prioritized in policymaking, it serves to relegate issues of personal dignity, identity, and lived experience to the margins of research agendas and policy proposals. The latter aspects of poverty should be central to policymaking, as they are central to the lives of those living in poverty. The integration of the perspectives of people living in poverty and using welfare systems has the potential to disrupt narratives about the poor based on stereotypes and the notion of charity that serve to undermine participation and inclusion on the part of those most affected by social welfare policy.

The lower-level administration of social policy demands attention; it is integral to the maintenance of a legal/economic power structure that is fundamentally oppressive, and as such it serves as a potential site of resistance and reconstruction. The locally negotiated, “front line” aspects of social welfare administration do not exist in a dichotomous relation to structure and policy – in fact, they are essential to that structure. To change the dynamics of front-line work is to change the basis on which policy and administrative structure operate. Moreover, the front-line administration of welfare policy is a physical and conceptual space in which welfare recipients are already present,

which makes it a most appropriate location for considering strategies by which the law could better meet their needs.

Poverty is correlated as a cause and an effect of risks to security, mental and physical health, and social inclusion; furthermore, it is clear that the social and economic deprivation of poverty is more likely to affect women, immigrants, refugees, youth, the elderly, racialized minorities, indigenous people, people with disabilities,<sup>1</sup> and individuals raised in low-income families.<sup>2</sup> Although members of these groups are ostensibly protected from discrimination by human rights law, the bureaucratic depoliticization of struggles to meet social and economic needs within and without state systems renders this discrimination invisible and increases the risk to these populations. This thesis will examine the manner in which dignity and agency, as aspects of social inclusion, are constituted in the context of the administration of welfare, and will assess the potential of legal regimes, particularly the human rights system, to address violations of dignity and agency and the institutionalized patterns of oppression that they represent.

## ***II. Social Inclusion, Dignity and Agency***

My critique of welfare structures will be focused on the interconnected concepts of social inclusion, dignity and agency, with regard to the needs of people living in poverty and using welfare systems.

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<sup>1</sup> K. Lee, *Urban Poverty in Canada* (Ottawa: Canadian Centre for Social Development, 2000); G. Galabuzi, *Canada's Creeping Economic Apartheid* (Toronto: Centre for Social Justice, 2001).

<sup>2</sup> R. Shillington, *Adding Social Condition to the Canadian Human Rights Act: Some Issues* (Manotick: Tristat Resources, 2000) at 9-10.

Existing definitions of poverty illustrate the inextricable relationship between poverty and social exclusion. For example:

People are deprived if they cannot obtain, at all or sufficiently, the conditions of life – that is, the diets, amenities, standards, and services – which allow them to play the roles, participate in the relationships, and follow the customary behaviour that is expected of them by virtue of their membership in society. If they lack or are denied the incomes, or more exactly the resources, including income and assets or goods in kind, to obtain access to these conditions of life they can be defined to be in poverty.<sup>3</sup>

Social exclusion means being visible in a food bank line, or because you wear the same clothes every day; it also means being invisible. Many of Canadian society's social expectations have an unspoken requirement of money – that a person will have a car, or decent clothing, or furniture, or a phone; people living in poverty understand that these things are necessary for social inclusion, and will construct themselves as higher-income people no matter what the cost, thereby rendering themselves invisible. By social inclusion, I mean the extent to which individuals are able to participate as equals in social and political structures and relationships without relinquishing their identity or obscuring their situation. However, social exclusion should not be defined as an atomized condition attributable to individuals outside of the context of relationships within society, and neither should its definition be limited to constraints on the ability of individuals to participate in economic transactions.<sup>4</sup>

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<sup>3</sup> D. Raphael, *Poverty, Income Inequality, and Health in Canada* (Toronto: Centre for Social Justice, 2002) at 3.

<sup>4</sup> For a critical perspective on the use of the term 'social exclusion,' see L. G. Gingrich, "Social Exclusion as an Individual Kind" (2003) 52 *Can. Rev. of Soc. Pol.* 93.

Nancy Fraser's concept of "participatory parity" is helpful in understanding the notion of social inclusion. For Fraser, participatory parity lies at the centre of our conceptions of justice. She defines participatory parity in terms of two fundamental characteristics, both of which must be present to achieve such parity. The first, "objective" criterion relates to the redistributive dimension of justice and mandates distribution of resources in a manner that guarantees the autonomy of individuals, and autonomy is gauged in terms of the ability to participate freely and fully in relationships.<sup>5</sup> The second characteristic relates to the recognition dimension of justice. Fraser describes it as follows:

In contrast, the second condition for participatory parity is "intersubjective." It requires that institutionalized patterns of cultural value express equal respect for all participants and ensure equal opportunity for achieving social esteem. This condition precludes institutionalized value patterns that systematically depreciate some categories of people and the qualities associated with them. Precluded, therefore, are institutionalized value patterns that deny some people the status of full partners in interaction—whether by burdening them with excessive ascribed "difference" or by failing to acknowledge their distinctiveness.<sup>6</sup>

In this thesis, I will focus on this intersubjective dimension. Fraser's argument is directed at restoring the redistributive dimension to our concepts of justice in light of the current ascendance of identity politics or the politics of recognition. My project, in contrast, is to illuminate the recognition dimension of the injustice of poverty. As Fraser

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<sup>5</sup> N. Fraser & A. Honneth, *Redistribution or Recognition: A Political-Philosophical Exchange* (London: Verso, 2003) at 38.

<sup>6</sup> N. Fraser, "Social Justice in the Knowledge Society: Redistribution, Recognition, and Participation" (2001) online: Heinrich Böll Stiftung <<http://www.wissensgesellschaft.org/themen/orientierung/socialjustice.html>> (date accessed: July 11, 2005).

argues, the two dimensions-recognition and redistribution-are both crucial components of justice.<sup>7</sup> However, while it has become orthodox to assert that the politics of recognition has superseded the older, class-based politics of redistribution,<sup>8</sup> in the context of poverty the reverse is true. As I will discuss in Chapter 3, too often poverty is understood in purely economic, redistributive terms. This reductionism hampers our ability to imagine strategies and remedies to address poverty. Thus, there is a need to make more explicit the harms of misrecognition which are an integral feature of the injustice of poverty. I will use Fraser's reconception of recognition set out above. Key to her reconception is her rejection of an individualized frame which foregrounds psychological flourishing and self-realization.<sup>9</sup> Instead, she argues that misrecognition when conceived as a matter of justice must be placed in a socially-grounded relational frame which foregrounds the ways in which "institutionalized patterns of cultural value" such as stereotyping and the moral denigration of identities prevents the full participation in social and political life of members of marginalized groups.<sup>10</sup>

The second concept which informs my analysis-dignity-is intrinsically linked to social inclusion. The concept of dignity, the idea that a person is "worthy of esteem and honor, due a certain respect, of weighty importance"<sup>11</sup> is essential to the development and

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<sup>7</sup> Fraser & Honneth, *supra* note 5 at 34.

<sup>8</sup> See, e.g. W. Eskridge, "Channelling: Identity-based Social Movements and Public Law" (2001) 150:1 U. Pa. L. Rev. 419 at 420.

<sup>9</sup> Fraser & Honneth, *supra* note 5 at 28.

<sup>10</sup> *Ibid.* at 38.

<sup>11</sup> C.K. Chan, "Placing Dignity at the Center of Welfare Policy" (2004) *Journal of International Social Work* 47:2 at 228.

sustainability of relationships. In the field of social policy, Chak Kwan Chan identifies the four main elements of dignity, namely: equal human value, self-respect, the use of autonomy, and positive mutuality, the process by which people's social needs are met through relationships with others.<sup>12</sup> Some of these terms, particularly equality and dignity, are often touted in the rhetoric of human rights, including human rights legislation, tribunal decisions, the *Canadian Charter of Rights and Freedoms*<sup>13</sup> and surrounding jurisprudence.<sup>14</sup> In theory, these ideas represent the most fundamental commitments of Canadian society: in practice, they may foster a perception of Canada as a just society. However, they are inadequate responses to the most difficult aspects of living in poverty: the social exclusion and demoralization that are attendant upon economic hardship.

The concept of agency also captures an important component of social exclusion. As Fraser argues, the objective and intersubjective dimensions of exclusion are rooted in the notion of each individual's entitlement to participate freely and fully in the interactions and relationships that form his or her social world. A commitment to participatory agency ensures that individuals are not constructed as passive consumers of an array of goods and opportunities that they have had little or no role in creating. Social exclusion and the related affronts to dignity and individual agency are politicized as an

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<sup>12</sup> *Ibid.*

<sup>13</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

<sup>14</sup> See, e.g. *Law v. Canada (Minister of Citizenship and Immigration)*, [1999] 1 S.C.R. 497.

aspect of oppression. Recognition of agency is essential for people to meaningfully participate in society through the use of autonomy and positive mutuality.

As I will elaborate, the persistence of the charity model in social welfare structures is directly at odds with the social inclusion, dignity and agency of people living in poverty. It functions to relegate impoverished individuals to the margins of society through stereotyping, moral regulation, coercion and disrespect, thereby undermining their participation and well-being. As such, institutionalized value patterns in which “some individuals and groups are denied the status of full partners in social interaction”<sup>15</sup> contribute to the oppression of impoverished people. Unjust, asymmetrical power relations persist not only between people living in poverty and administrative and bureaucratic structures with which they interact, but also between individuals and within our culture through stereotyping and “poor-bashing,” the most damaging aspect of which is the internalization of unworthiness and blame.<sup>16</sup>

My study begins in Chapter 2 with a brief overview of the development of the welfare state in Canada. In this Chapter, I will analyze the historical and current situation of social welfare through an exploration of the ideological foundation and persistence of the notion of “charity,” particularly with regard to the power relations implicit in the interactions between welfare structures and people living in poverty who use welfare systems. In Chapter 3, I will analyze the ideological underpinnings of the Canadian welfare state in terms of the manner in which poverty and those living in poverty are

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<sup>15</sup> Fraser & Honneth, *supra* note 5 at 29.

<sup>16</sup> See e.g. J. Swanson, *Poor-Bashing* (Toronto: Between the Lines, 2001).

constructed and perceived. In Chapter 3, I will also introduce the hypothetical narrative of Mouna. I will use her story to explore the lived experience of poverty and the welfare system. I have chosen to use this narrative, and the narratives revealed by my research, in an attempt to include marginalized perspectives that are often excluded from discussions about poverty and social welfare. In Chapter 4, I will offer the results of my research on the relationships within the British Columbia welfare system, with a focus on the perspectives, needs and experiences of people living in poverty who use the welfare system. My study data consisted of five intensive interviews with “witnesses” of interactions between the Ministry of Human Resources and applicants and recipients of welfare. The purpose of this part of the thesis is to give a more grounded and particularized account of how the ideology of charity operates at the front line level and of the daily texture of affronts to dignity, agency, and social inclusion. In Chapter 5, I engage in a critical analysis of what would seem to be the most auspicious mode of addressing these affronts, namely human rights legislation and tribunals. Here I will reintroduce the hypothetical narrative of Mouna to critically assess the potential of the human rights system to address issues of dignity, agency and social inclusion. Finally, in Chapter 6, I will conclude with a short overview of my findings and the implications for future directions arising from my study.

## **CHAPTER 2: THE HISTORY OF SOCIAL WELFARE AND POVERTY IN CANADA**

This Chapter will offer an overview of social welfare in Canada and current perspectives on poverty, paying particular attention to the values and constructions that underlie and maintain existing power structures. Specifically, I will examine the extent to which understandings of social welfare and poverty in Canada operate on a charity model and the role of stereotyping, oppression and exclusion of people living in poverty and those who use the social welfare system. Charity is constructed as beneficial to the recipients thereof, and although their economic situation may improve because of charitable relationships, such relationships serve to undermine social and political aspects of the recipients' well-being. By erasing the citizenship of those living in poverty in this manner, the charity model depoliticizes the issue of poverty.

In simplest terms, charity is understood as a sort of generosity, wherein those who have the means to meet their needs choose to share with those who do not have sufficient means to do so. Charity is by definition redistributive but does not seek to alter the structure under which redistribution occurs. It therefore does not operate to challenge inequality or question the sustainability of current social orders. In fact, charity relies on inequality and the perpetuation of unmet need for its existence. Relationships based on charity tend to construct the benefactor as a morally righteous, sympathetic agent and the recipient as a passive, (morally, intellectually, physically) inferior, misguided, or unfortunate subject. Power within this relationship locates control in the giver. If a recipient of charity deviates from or seeks to challenge the structure of this relationship, she risks losing the material benefits of charity as well as risking further exclusion and

powerlessness. In terms of poverty and social welfare, this model marginalizes those living in poverty by undermining meaningful participation in decision-making. Moreover, when charity is understood as being purely beneficial to those in need, there is a barrier to challenging the inequalities inherent in charitable structures. The charity model does not accommodate the actual narratives of those in need – their lives are constructed to suit existing social orders, which by definition are at odds with the autonomy or inclusion of the recipients of charity as persons.

When European newcomers arrived on this land, they were unable to survive independently due to poor health and nutrition and ignorance of the land. First Nations people assisted them, providing the basics of life through the skills of the people and the knowledge of the land and its resources. Although indigenous/non-indigenous relations are not the focus of this thesis, it is essential to acknowledge this aspect of social welfare in Canada, particularly as an account of this is conspicuously absent from most of the literature on Canadian social welfare.<sup>17</sup> European ideologies continue to dominate social welfare discourse. To understand current perceptions and institutional practices concerning poverty and social welfare in Canada, it is necessary to contextualize these concepts historically. My historical analysis will demonstrate that the ways in which we

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<sup>17</sup> University of Calgary Applied History Research Group, “Canada’s First Nations: European Contact” (no date) online: The Applied History Research Group: Multimedia History Tutorials <[http://www.ucalgary.ca/applied\\_history/tutor/firstnations/encounters.html](http://www.ucalgary.ca/applied_history/tutor/firstnations/encounters.html)> (date accessed: 3 June 2005). For more information on First Nations/European relations in Canada, see e.g. J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada*, 3<sup>rd</sup> ed. (Toronto: University of Toronto Press, 2000); A.J. Ray, *I Have Lived Here Since the World Began: An Illustrated History of Canada's Native People* (Toronto: Lester Publishing Ltd., 1996).

conceive of poverty are rooted in practices that undermine the dignity, agency and citizenship of people living in poverty and maintain the ideology of charity.

In English law, the moral categorization of people living in poverty can be traced at least as far back as the 17<sup>th</sup> century.<sup>18</sup> To a large extent, this occurred via the division between worthy and unworthy poor. The identification of certain groups of people as more or less deserving of charitable benefit resulted to a large extent from church influence on the state. For example, mothers who had been deserted by their husbands and people with mental or physical disabilities were constructed as more deserving. The church provided support to the deserving poor, and the state developed a system of workhouses for the less deserving poor. The living conditions in workhouses were sufficiently revolting to serve as a disincentive to those seeking government aid.<sup>19</sup>

In the late 18<sup>th</sup> century, English Canada rejected the English state system of “Poor Law,” which determined the state’s role in providing aid to the poor.<sup>20</sup> These laws were specifically left out in favour of leaving the responsibility for the poor to private or church-based charitable institutions and families. There were, however, some “aberrant forms” of the English system that persisted in Canada, including experimentation with

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<sup>18</sup> See, e.g. R. Humphreys, *Sin, Organized Charity, and the Poor Law in Victorian England* (New York: St. Martin’s Press, 1995); G. R. Boyer, *An Economic History of the English Poor Law, 1750-1850* (Cambridge: Cambridge University Press, 1995); D. Marshall, *The English Poor in the Eighteenth Century: A Study in Social and Administrative History* (London: Routledge, 1926).

<sup>19</sup> B. Carniol, *Case Critical: Challenging Social Services in Canada*, 4<sup>th</sup> ed. (Toronto: Between the Lines, 2000) at 26.

<sup>20</sup> English law was officially adopted as a replacement for the civil code in Upper Canada in 1792, with the passing of *An Act Introducing English Civil Law into Upper Canada* 32 Geo. III, c. 1, s. 3.

workhouses, the auctioning of impoverished people, and incarceration of the poor.<sup>21</sup> In French Canada the poor were cared for primarily by church-based organizations.<sup>22</sup>

Throughout the 19<sup>th</sup> century, the Canadian government gradually increased financial contributions to municipalities and non-governmental charitable organizations, a number of which were specifically mandated to assist the worthy poor and spare them from the humiliation of nascent municipal welfare processes.<sup>23</sup> By the late 19<sup>th</sup> century, the Canadian “Charitable Organization Society,” a non-governmental precursor to the field of social work, began sending visitors into the homes of the poor, to provide “morally uplifting companionship,” and also in order to determine eligibility for aid.<sup>24</sup> The Charitable Organization Society was therefore policing the boundary between the poor and the rest of society. Citing Giovanna Procacci, Patrick Burman describes the categorization and control of the poor in Canada as “pauperism,” in which the poor were seen as adversaries to social order: “[The] pauper was seen as a morally flawed individual whose plight became a project of redemptive activity by the helpers.”<sup>25</sup> Canadian helping professionals and volunteers were invested in the project of helping the poor, and concurrently defending the status quo from the poor. For example, they

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<sup>21</sup> P. Burman, *Poverty's Bonds: Power and Agency in the Social Relations of Welfare* (Toronto : Thompson Educational Pub., 1996) at 25.

<sup>22</sup> Carniol, *supra* note 19 at 25.

<sup>23</sup> Burman, *supra* note 21 at 38.

<sup>24</sup> Carniol, *supra* note 19 at 31.

<sup>25</sup> Burman, *supra* note 21 at 28-30.

resisted increases to benefit rates, based on the concern that such increases would lead to population growth among “undesirable” groups.<sup>26</sup>

The Canadian government established workers’ compensation and old age security provisions in the 1910s and 1920s. At the same time, Ontario and Manitoba created Mothers’ Allowance programs.<sup>27</sup> By 1933, it is estimated that fifteen to twenty percent of the Canadian population was reliant on relief from municipal authorities and aid from charitable organizations.<sup>28</sup> Working class protests and organization throughout the 1930s led to increases in federal participation in social programs; however, the Canadian government made it clear that its intention in doing so was to preserve and encourage capitalism.<sup>29</sup> During this period, governmental perceptions of poverty relied heavily on stereotypes and moral categorization of the poor. In 1917, for example, Alberta’s Superintendent of Neglected and Dependent Children stated that the mothers who were reluctant to come forward were more likely to be deserving of benefits, and those who were more persistent were likely unworthy of benefits.<sup>30</sup> In 1928, the Manitoba Royal Commission on the administration of child welfare reported that

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<sup>26</sup> D. Guest, *The Emergence of Social Security in Canada*, 3<sup>rd</sup> ed. (Vancouver, University of British Columbia Press, 1997) at 80.

<sup>27</sup> S. Hick, “Canada’s Unique Social History” (no date) online: Canada’s Unique Social History <<http://www.socialpolicy.ca/cush/m3/m3-t16.stm>> (date accessed: 3 June 2005).

<sup>28</sup> J.C. Turner & F.J. Turner, eds., *Canadian Social Welfare*, 4<sup>th</sup> ed. (Toronto: Allyn & Bacon, 2001) at 84.

<sup>29</sup> R.B. Blake & J. Keshen, *Social Welfare Policy in Canada: Historical Readings* (Mississauga: Copp Clark Ltd., 1995) at 227.

<sup>30</sup> *Ibid.* at 126.

“chronic dependence” on family benefits was a result of mental deficiency and innate degeneracy, and as such was a “waste of human effort and public funds.”<sup>31</sup>

In 1935, the federal government introduced the “New Deal”: a package of social benefits legislation, including unemployment insurance,<sup>32</sup> which was struck down by the courts as being *ultra vires* the federal government.<sup>33</sup> At the end of the 1930’s a Royal Commission of Dominion/Provincial relations determined that “the provincial government should retain responsibility for unemployed people who were unemployable, or the “deserving poor” -- seniors, single-parents, the disabled, and the federal government should have the responsibility for the employable or “non-deserving” poor.”<sup>34</sup> As such, the federal government received provincial support during World War II to introduce a means-tested unemployment insurance program. Throughout the 1940s, social programs were expanded, however, stereotypes about poverty persisted within Canadian institutions. In 1945, for example, the Canadian Bar Association published an ostensibly scientific article connecting poverty with mental and physical inferiority, and identifying a “social problem group” in which:

...mental deficiency, much physical inefficiency, chronic pauperism, and recidivism are all more or less closely related part of a single focal problem... poor mental endowment “manifesting itself in an incapacity for social adjustment and an inability to manage one’s own affairs” may not

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<sup>31</sup> *Ibid.* at 128.

<sup>32</sup> *Ibid.* at 228.

<sup>33</sup> *Canada (A.G.) v. Ontario (A.G.)*, [1936] S.C.R. 427; *Canada (A.G.) v. Ontario (A.G.) (The Employment and Social Insurance Act)*, [1937] A.C. 355 (J.C.P.C.).

<sup>34</sup> Hick, *supra* note 19.

be merely a symptom but rather the chief contributory cause of these kindred social evils.<sup>35</sup>

The article concludes that:

It is therefore of first importance that we should keep a constant check on the extent to which economic poverty and poor mentality affect the community, so that we may know whether the quality of the people-who constitute our most fundamental form of real wealth-is getting better or worse.<sup>36</sup>

Throughout the 1950s and 1960s, the federal government introduced a number of pieces of social assistance legislation, including the 1956 *Unemployment Assistance Act*, in which a means test was replaced by a needs test and the 1966 *Canada Assistance Plan*, which was also needs based rather than means based.<sup>37</sup> During this time, the federal and provincial governments developed cost-sharing strategies in support of comprehensive programs to redistribute wealth to Canadians in need. Welfare programs continued to expand until the mid 1970s. Even during the peak of social security programs, however, stereotypes about the poor were persistent. In 1970, Health and Welfare Canada published a report on welfare intake procedures in which the authors state: "There must be a background of abuse [of the welfare system] and lying if most of the social workers say about their clients, 'This man seems to be telling the truth.' The assumption is that there are people on welfare who are not."<sup>38</sup> The same report uses the idea of

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<sup>35</sup> D.C. Jones, *The Social Problem Group: Poverty and Subnormality of Intelligence* (Toronto: Canadian Bar Association, 1945) at 43.

<sup>36</sup> *Ibid.* at 50.

<sup>37</sup> Hick, *supra* note 27.

<sup>38</sup> The Federal-Provincial Study Group on Alienation, *An Exploratory Study of the Intake Interviews in Public Welfare Offices in Montreal*, (Toronto: Health and Welfare Canada, 1970) at 36.

“rehabilitation” to describe the goals of welfare,<sup>39</sup> which implies that the responsibility for poverty belongs primarily to the clients, who require improvement. The perception that welfare recipients are untrustworthy was not held exclusively by workers or government officials, but also by the recipients themselves. A federal-provincial study published in 1971 reports that 94% of welfare recipients surveyed indicated that welfare workers should check up on recipients to confirm their initial need, and 87% percent agreed that workers should continue to check up on recipients to make sure that they still qualified for welfare.<sup>40</sup>

From the mid-1970s to the late 1980s, funding to many federal and provincial social assistance programs was gradually reduced in what has been called the “crisis of the welfare state.”<sup>41</sup> Neoliberal policies shifted towards reliance on, rather than mediation of, the free market.<sup>42</sup> As a result, non-governmental charitable services resurfaced as pillars of the welfare system. Canada’s first food bank opened in 1981; food banks have since become an essential, if unacknowledged, tier of the welfare system. The increasing prevalence of the food bank as an informal welfare institution allows the government to ignore its responsibilities with regard to the food security of

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<sup>39</sup> *Ibid.* at 35.

<sup>40</sup> The Federal-Provincial Study Group on Alienation, *The World of the Welfare Recipient*, (Ottawa: Health and Welfare Canada, 1971) at 140-141.

<sup>41</sup> J. Rice & M. Prince, *Changing Politics of Canadian Social Policy* (Toronto: University of Toronto Press) at 107. But see also J. Siltanen, “Paradise Paved? Reflections on the Fate of Social Citizenship in Canada” (2002) 6:4 *Citizenship Studies* 395, in which Janet Siltanen uses an analysis of the historical context of Canadian social policy to argue that the position that Canada underwent a “golden age” of social citizenship via the Keynesian welfare state is untenable.

<sup>42</sup> *Ibid.* at 108.

citizens and disregard the inadequacy of welfare depoliticizing hunger in Canada.<sup>43</sup> The federal *Canada Assistance Plan* set specific standards for the administration of welfare benefits throughout Canada; legally and philosophically it was needs-based. Since its abolition in 1996, provincial laws have been revised significantly.<sup>44</sup> Although welfare caseloads were at their highest during the 1990's,<sup>45</sup> welfare rates have been frozen or lowered, welfare has become more difficult to obtain and maintain, and strict surveillance, fraud, and workfare policies have become entrenched in welfare policy. My study takes place in the context of the neoliberal political climate described above, and in the following chapters I will elaborate on the manner in which the core values of neoliberalism: liberal individualism, market-led growth and efficiency, and the privatization of services are reinforced through the ideology of charity. I will provide a detailed description of the British Columbia welfare regime as a preface to my analysis of the empirical data on worker-client relations in the administration of welfare.

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<sup>43</sup> G. Riches, "Reaffirming the Right to Food in Canada: The Role of Community-based Food Security," (no date) online: International Development research Centre <[http://web.idrc.ca/es/ev-30624-201-1-DO\\_TOPIC.html](http://web.idrc.ca/es/ev-30624-201-1-DO_TOPIC.html)> (date accessed: 4 June 2005); M. Hurtig, *Pay the Rent or Feed the Kids* (Toronto: McClelland & Stewart, 1999) at 44.

<sup>44</sup> A. Moscovitch, "Canadian Health and Social Transfer: What Was Lost?" (1996) 37 *Can. Rev. of Soc. Pol.* 66.

<sup>45</sup> Rice & Prince, *supra* note 41 at 129; See also National Council of Welfare, *Welfare Incomes 2003* (Ottawa: National Council of Welfare, 2004), Appendix A (The National Council on Welfare reports that there were 369,900 people on welfare in British Columbia in 1996, and 180,700 in 2003).

### **CHAPTER 3: CURRENT PERCEPTIONS AND PERSPECTIVES ON POVERTY IN CANADA**

This chapter will illustrate the ideological entrenchment of social exclusion, indignity and denial of agency in constructions of poverty and people living in poverty, as well as within the legal and administrative structures with which impoverished people interact. First, I will offer a critical perspective on the manner in which poverty is measured in primarily economic terms. I will then explore several themes that emerge from existing perceptions and constructions of poverty and people living in poverty, namely: the role and persistence of moralization, inferiority, and categorization of people living in poverty; the construction of poverty as a situation in which people are expected to exhibit passivity and compliance, rather than agency; the failure of societal and political conceptions of poverty to capture the relational, dynamic, and fundamentally social dimensions of the experience of being poor; the role of narrative, voice, and participation; and the impacts of current understandings of poverty on the dignity of people living in poverty. Finally, I will offer a hypothetical narrative based on the current policy and practices of the British Columbia Ministry of Human Resources as an example of the impact of these constructions in the lived experience of an individual.

#### ***I. The Material Measurement of Poverty***

There is considerable debate in Canada concerning the measurement of poverty; roughly speaking, there are two categories of poverty measurement. The “absolute” measure of poverty attempts to determine the amount of income required to survive. Chris Sarlo’s poverty lines are well known and serve as an example of the “absolute” approach. He suggests that a family of four (two adults and two children) in Canada in

2001 could live on \$19, 662 per year, or \$1638.50 per month.<sup>46</sup> This amount, Sarlo contends, is sufficient to meet “basic needs”; by which he means food, shelter, clothing and health care. Sarlo includes \$100 per year for “miscellaneous” spending<sup>47</sup>; presumably this is meant to cover school supplies, toys, field trips for children, all recreational and social activities for a family, childcare and other such “luxuries.” Although Statistics Canada has consistently denied that its “Low-Income Cut-Offs” (LICOs) represent poverty lines<sup>48</sup>, they are often used as such by governmental and non-governmental social policy researchers. These measures use a “relative” measure of low-income; that is to say, they “mark income levels where people have to spend a disproportionate amount of their incomes on food, shelter, and clothing.”<sup>49</sup> The LICO for the family of four described above is \$29, 163, before taxes.<sup>50</sup> Any measure of poverty will inevitably be based upon value judgments about what constitutes poverty or the necessities of life. However, in making these value judgments, dominant approaches to measuring poverty are not attentive to the perspectives of poor people. The Winnipeg Social Planning Council’s “Acceptable Levels of Living” is one of the few poverty measures that was designed in collaboration with several “Low Income Consultants”

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<sup>46</sup> C. Sarlo, *Measuring Poverty in Canada* (Vancouver: The Fraser Institute, 2001) at 35.

<sup>47</sup> *Ibid.* at 20.

<sup>48</sup> As the National Council of Welfare points out, Statistics Canada likely refuses to identify LICOs as poverty lines because “the federal government does not want to give official recognition to poverty.” National Council of Welfare, *Income for Living?* (Ottawa: National Council of Welfare, 2004) at 2 [hereinafter *Income for Living?*].

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.* at 3. This figure is the product of Statistics Canada’s calculation, which uses a 1992 base, increased based on the Consumer Price Index.

(people actually living in poverty). The resulting measures of poverty were quite close to the LICO and almost twice as high as Sarlo's basic needs amount.<sup>51</sup>

It is not within the scope and intent of this thesis to thoroughly analyze the debate over poverty lines in Canada. No matter which measure is used, poverty is a reality for millions of Canadians. Moreover, the percentage of people living in poverty in Canada has not decreased since 1985 despite general economic growth, the benefits of which do not appear to be "filtering down" to those in the lower income brackets.<sup>52</sup> The measurement of poverty lines should alert Canadians to the existence and extent of individuals and families' inability to meet their basic economic needs, and as such may contribute to the acknowledgement and identification of poverty; such measurement, however, is essentially a one-dimensional exercise. These measures provide numerical and statistical data about poverty as an economic phenomenon, but they fail to contextualize poverty. Poverty may be understood as an economic disadvantage, but it is also experienced in terms of its social, political and relational impacts. With the exception of the Winnipeg Social Planning Council, these means of identifying poverty exclude the perspectives of people living in poverty. This functions to preclude their participation in social policy design; as Richard Shillington points out:

Public officials under the direction of political masters design our social programs. So, for example, government programs to support low-income Canadians are designed and administered by a policy elite holding various university degrees, who in all likelihood never have and never will live on low incomes. In fact, the interests of the low-income beneficiaries are

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<sup>51</sup> Winnipeg Harvest and Social Planning Council of Winnipeg, *Acceptable Living Level 2003* (Winnipeg: Winnipeg Harvest and Social Planning Council, 2003) at 10.

<sup>52</sup> Hurtig, *supra* note 43 at 3-4.

represented only through bureaucratic benevolence, without reference to or input from the group they purport to serve.<sup>53</sup>

Furthermore, the poverty line method fails to draw attention to the manner in which poverty correlates with race, immigration status, gender, age, disability, geography and intersections thereof,<sup>54</sup> as well as to the persistence of the effects of poverty from one generation to another.<sup>55</sup> Other issues profoundly implicated as causes and effects of poverty include mental and physical health problems, and, perhaps most significantly, social exclusion.<sup>56</sup> Moreover, most people who live in poverty live far below the LICO, and using it as a poverty line risks misrepresenting the actual economic circumstances of those individuals.<sup>57</sup> In general, measures and definitions of poverty, whether “relative” or “absolute,” tend to focus on the market value of easily identifiable economic needs of individuals and exclude less tangible concepts. Poverty is often characterized as an individual, acontextual and primarily material experience. Thus it is easy to understand how, in law and policy, concepts such as agency, dignity and social inclusion continue to be ignored and trivialized.

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<sup>53</sup> R. Shillington, *Social Exclusion in the Design and Administration of Social Programs*. (Canadian Centre for Social Development: Ottawa, 2003) at 1.

<sup>54</sup> See, e.g., Lee, *supra* note 1.

<sup>55</sup> R. Shillington, *Adding Social Condition to the Canadian Human Rights Act: Some Issues* (Tristat Resources: Manotick, 2000) pp. 9-10.

<sup>56</sup> Health Canada, *A Report on Mental Illnesses in Canada* (Health Canada: Ottawa, 2002) pp. 22-23; Health Canada, “What Determines Health?” online: Public Health Agency of Canada website <<http://www.hc-sc.gc.ca/hppb/phdd/determinants/index.html>> (date accessed: 4 June 2005) [hereinafter *What Determines Health?*].

<sup>57</sup> Hurtig, *supra* note 43 at 34.

Much of the policy debate surrounding poverty and welfare in Canada has focused on the details of economic distribution. As Lorne Sossin points out, this debate leaves the basic economic order unchallenged<sup>58</sup>; Sossin states:

The legal-administrative means of translating social welfare programs into action are not some passive, as it were propertyless medium, they are connected, rather, with a praxis that involves the isolation of facts, normalization and surveillance, the reifying and subjectifying violence of which Foucault has traced right down to the most delicate capillary tributaries of everyday communication.<sup>59</sup>

Governmental and non-governmental policy analysts often describe the inadequacy of welfare benefits to meet material needs, and insist that it should be a priority to improve access to welfare, and increase welfare rates and benefits;<sup>60</sup> they argue for more and better redistribution of wealth. This is consistent with dominant neoliberal politics: Martha McCluskey argues that neoliberalism is problematic not because of its lack of attention to redistribution, but rather because of its focus on redistribution, which she describes as “seductive yet treacherous.”<sup>61</sup> In her view, neoliberalism relies on a double standard – that is, when richer people want a larger share of the wealth, their industriousness is praised as efficient, but when poorer people want a larger share of the wealth, the resulting redistribution is perceived as detrimental to economic efficiency,

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<sup>58</sup> L. Sossin, “Redistributing Democracy: An Inquiry Into Authority, Discretion, and the Possibility of Engagement in the Welfare State” (1994) 26 Ottawa L.R. 1 at 6.

<sup>59</sup> *Ibid.* at 4.

<sup>60</sup> See, e.g. *Income for Living?* *supra* note 48; S. Klein & A. Long, *A Bad Time to Be Poor* (Vancouver: Canadian Centre for Policy Alternatives, 2003).

<sup>61</sup> M.T. McCluskey “Efficiency and Social Citizenship: Challenging the Neoliberal Attack on the Welfare State” (2002) 78 Ind. L.J. 783 at 788.

and therefore to the well-being of society.<sup>62</sup> McCluskey further contends that the neoliberalist assertion that redistributive welfare supplants market freedom functions to relegate welfare recipients to “non-citizen” status in society.<sup>63</sup> In this way, welfare recipients are outsiders, constructed primarily in terms of their deleterious effects on mainstream economic, social and political relations.

The construction of poverty as a primarily material phenomenon predominates in the policy discourse surrounding poverty. As such, the manner in which poverty should be addressed is often understood in terms of economic redistribution; this fails to contextualize poverty in terms of its social aspects, and does not challenge existing social orders that function to maintain inequality.

## *II. Moral Regulation*

Community engagement with poverty in Canada is deeply connected with dominant moral discourse. Patrick Burman conducted a study in Ontario in which nineteen low-income individuals and eighteen service providers from governmental and non-governmental organizations were interviewed with a view to assessing the nature of social service transactions. Burman describes the situation prior to the advent of the welfare state as one in which the poor were often jailed, and forced into manual and domestic labour situations, and where “community responses to this moral and class dissonance within its midst, though sometimes well intentioned, took the form of

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<sup>62</sup> *Ibid.* at 806.

<sup>63</sup> *Ibid.* at 789.

moralized discipline and moralized economic exploitation.”<sup>64</sup> Burman’s study highlights the prevalence of moralized service provision in current non-governmental charitable organizations, in which it is commonly believed that the poor need to be “saved.”<sup>65</sup> One of his examples is a food bank worker who appears offended at the prospect that his clients only come for the food; the worker expects the clients to pay more attention to the “good the Church does” and the “gospel of Jesus Christ.”<sup>66</sup>

The moral regulation of people living in poverty also occurs on a less formalized basis through the persistence of stereotypes about the poor and about welfare recipients. This phenomenon can be understood, as Nancy Fraser puts it, as a type of “institutionalized value pattern” that “systematically depreciate some categories of people and the qualities associated with them,” and as such functions to preclude participatory parity.<sup>67</sup> In a report assessing the addition of social and economic rights to the *Canadian Human Rights Act*, the Canadian Human Rights Act Review Panel highlights patterns of stereotyping against the poor as evidenced by media commentary. The main type of moral stereotyping the Panel considered was the conception of the poor as having substandard parenting skills, and needing instruction on how to become better parents. For example, one Globe and Mail editorial presented the view that “...children in poor families have the parental deck stacked against them in the first three years of their life...A supply side approach to poverty would invest mightily in the time availability

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<sup>64</sup> Burman, *supra* note 21 at 32.

<sup>65</sup> *Ibid.* at 75.

<sup>66</sup> *Ibid.* at 76.

<sup>67</sup> Fraser, *supra* note 6.

and parenting skills of poor parents.”<sup>68</sup> Readers and columnists echoed this sentiment in several other mainstream news publications.<sup>69</sup>

Moral stereotyping of the poor is not limited to media practices; some government actors also perpetuate such stereotypes. The Panel cites Mike Harris, a former premier of Ontario, who stated that a prenatal welfare supplement had been eliminated because he feared it would be spent on beer.<sup>70</sup> Another report quotes Al Palladini, Harris’s Minister of Economic Development, as commenting that street people were detracting from Toronto’s tourism potential, and that some street people were on the street because “they want to do it.”<sup>71</sup> Finally, the Panel cites a federal research project on child poverty in which it was reported that the majority of financially secure people explained poverty as the moral responsibility of the poor, using such characteristics as lack of skills, laziness, idleness, alcohol abuse and abuse of the system.<sup>72</sup>

People living in poverty are intimately aware of the pervasiveness of moral stereotyping aimed at denigrating them, as well as the social exclusion entailed by such stereotypes. In a report on street people, one street person told an interviewer: “I think you are wasting your time, because they’re never going to change. They like it the way it is. They feel we are down here because we deserve it; because we are lazy and drunks,

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<sup>68</sup> Canadian Human Rights Act Review Panel, *Promoting Equality: A New Vision* (Ottawa: Department of Justice Canada, 2000) at 119.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.* at 120.

<sup>71</sup> Hurtig, *supra* note 43 at 46.

<sup>72</sup> Canadian Human Rights Act Review Panel, *supra* note 68 at 120.

the bottom of the barrel.”<sup>73</sup> A person who received welfare for a number of years in British Columbia commented that what bothered her most about welfare was people’s judgments of her, such as insinuations that she was a bad parent. The stereotypes she identified as the most common were that welfare recipients are unskilled, drug addicts or alcoholics, lazy and unmotivated.<sup>74</sup> Users of non-governmental food services in Vancouver described serious discomfort with the fact that they were “forced” to listen to moral/religious sermons before they were allowed to eat.<sup>75</sup>

One of the ways in which current welfare regimes have institutionalized stereotypes about people living in poverty and welfare recipients is through the construction of welfare fraud as a significant or widespread problem in spite of evidence that it is actually quite rare. In Ontario, the provincial government set up a welfare “snitch line”; a phone hotline that was intended to provide an opportunity to inform the government of welfare fraud. According to Legal Aid Ontario, half of the people reported were not on welfare at all, and of those who were on welfare and suspected of fraud, only 1% were eventually found guilty of fraud.<sup>76</sup> Similarly, in Quebec, a study on welfare fraud investigation found that the cost of investigation was three times higher than the amounts that were recovered through remedy of fraud and administrative

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<sup>73</sup> R. Morris, *Street People Speak* (Toronto: Mosaic Press, 1987) at 111.

<sup>74</sup> A. Miles, “A Memoir of My Welfare Years” (2004) online: The Fulcrum Project <<http://www.thefulcrumproject.org/yourstories.html>> (date accessed: 5 June 2005).

<sup>75</sup> Swanson, *supra* note 9 at 141.

<sup>76</sup> Carniol, *supra* note 19 at 105.

errors.<sup>77</sup> Gavigan and Chunn describe this phenomenon as a transformation from “welfare fraud” to “welfare as fraud.”<sup>78</sup> Those who attempt to meet their need legitimately through welfare systems are subject to moral sanction when they enter the system, whether or not they have committed any criminal or fraudulent acts. Similarly, Canadian food banks have cited fear of “abuse” as a reason for stricter rules and more intrusive administration.<sup>79</sup> Peter Squires, writing in the British context, identifies the focus on abuse as part of the paradigm of the “disciplinary welfare state” in which:

...concerns about the long-term unemployed, the ‘workshy’, the ‘inadequate’, the ‘abusers’ and the fraudulent are the product of a coherent mix of ideological themes...from a proposal for eliminating want, meeting needs, promoting rights, and achieving a whole range of broadly ‘social aspirations through the positive economy of incentives which Beveridge hoped his plan might mobilise, a rather more ‘anti-social’ climate has emerged.<sup>80</sup>

Another aspect of the moral regulation of the poor by the government is the categorization of the poor into deserving and undeserving; the B.C. Ministry of Human Resources categorization of applications provides an illustrative example: the “employable single” welfare recipient is understood to be more at fault if she cannot find work, whereas the disabled parent is less likely to be blamed. Jean Swanson describes this dichotomy using the example of a golf charity campaign in Vancouver that was called “Basics for Babies.” She suggests that this has more moral appeal than “Basics for

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<sup>77</sup> *Ibid.* at 106.

<sup>78</sup> D. Chunn & S. Gavigan, “Welfare Law, Welfare Fraud, and the Moral Regulation of the ‘Never Deserving’ Poor” (2004) 13:2 *Social and Legal Studies* 219 at 220.

<sup>79</sup> *Poor-bashing*, *supra* note 16 at 142.

<sup>80</sup> P. Squires, *Anti-Social Policy: Welfare, Ideology and the Disciplinary State* (London: Harvester Wheatsheaf, 1990) at 176.

Hungry, Homeless, Drug Addicts.”<sup>81</sup> The categorization of a person as deserving of benefits may make the receipt of economic benefits easier, however, such categorization is imbued with expectations that a “deserving” person will not exercise agency, participate politically, or insist on the inclusion of her own voice in decision-making, and that she will be amenable to, or even grateful for, the beneficial intervention of the powerful. This construction is intimately connected with what Sue Ruddick calls “social death,” which she describes in terms of the way in which homeless people are alienated from mainstream society. This social death is actively endorsed by legal systems that draw the line between the “agents” and the “victims” – the undeserving and deserving poor.<sup>82</sup> This distinction is articulated and enforced in the exercise of discretion employed by both governmental and non-governmental agencies dealing with the poor.

### *III. Passivity vs. Agency*

In the context of non-governmental charities as well as welfare regimes, the poor are constructed as powerless, passive subjects, who should be controlled; they are not understood to be persons, but rather “cases to be administered.”<sup>83</sup> In this context, there are a variety of roles the poor may play – they may be constructed “as client, as lost sheep, as socialization project, as potential activist, as bearer of innumerable deficits that providers are disposed to fill...”<sup>84</sup> In her analysis of so-called “safe streets” legislation,

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<sup>81</sup> Swanson, *supra* note 16 at 136.

<sup>82</sup> S. Ruddick, “Metamorphosis Revisited: Restricting Discourses of Citizenship” in J. Hermer & J. Mosher, eds., *Disorderly People: Law and the Politics of Exclusion in Ontario* (Halifax: Fernwood Publishing, 2002) at 56.

<sup>83</sup> Sossin, *supra* note 58 at 4.

<sup>84</sup> Burman, *supra* note 21 at 17.

Dianne Martin points out that begging itself is not criminalized – the passive, invisible forms of begging are legally acceptable, but “aggressive”, visible begging is a crime.<sup>85</sup> A similar expectation is at work in welfare, and speaking out or disagreeing with a worker can have serious material and legal consequences. For example, in the welfare office described by my study participants, clients who are identified as “hostile” to workers (often those who vigorously dissent from the decisions of the workers) are sent to an ancillary welfare office with fewer services, and may also have their benefits withheld. Drawing attention to the political roots of poverty can be particularly problematic. One B.C. welfare recipient received a negative response when she attempted to share information about the causes of poverty during a mandatory “job club” for welfare recipients. She explains: “I was perceived as ‘negative’ when I was really wanting to wake people from their brain-washing so that they’d take the positive step of protesting the insulting process we’d been pressured into.”<sup>86</sup> These situations serve as examples of the manner in which political agency is sometimes actively punished and political exclusion enforced in the administration of welfare benefits.

The worker-client relationship that forms the basis for the administration of welfare could be understood as the location of an “intersubjective co-production of meaning by both provider and client.”<sup>87</sup> However, policy and procedure actively devalues and erases client narrative and voice, which precludes client participation in

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<sup>85</sup> D. Martin, “Demonizing Youth, Marketing Fear: The New Politics of Crime” in J. Hermer & J. Mosher, eds., *Disorderly People: Law and the Politics of Exclusion in Ontario* (Halifax: Fernwood Publishing, 2002) *supra* note 82 at 101.

<sup>86</sup> Miles, *supra* note 74.

<sup>87</sup> Burman, *supra* note 21 at 18.

locally-negotiated decision-making as well as in higher-level policy. The worker-client relationship is prone to oppression because the worker represents an institution that has the power to affect the other person's only means of meeting their most basic needs; this relationship may potentially have a profound impact on the social inclusion, dignity and agency of individuals. In the context of my research, participants reported that, in some cases, welfare recipients aren't even allowed to see their own files. A welfare recipient in British Columbia reports that her worker failed to make the rules and expectations clear, and that the welfare office seemed designed specifically to limit contact between staff and clients. She even had to keep her chair quite far away from the front reception desk so she wouldn't cause a "security breach."<sup>88</sup> The exclusion of clients from participation in the context of welfare administration can be understood as an aspect of assimilation; that is to say, the client is forced to transform herself to fit the existing categories of need. When a client must reconstruct her identity in exchange for citizenship entitlements, it is also a form of domination.<sup>89</sup> The lack of participation implied by this reconstruction undermines legitimacy in a purportedly democratic state.<sup>90</sup> The relations that endorse this type of oppression must be examined not only in terms of existing patterns of

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<sup>88</sup> "Dana" (Anonymous), "My Adventures Applying for Welfare" 39 *Taproot* 1 at 1 [hereinafter "My Adventures Applying for Welfare"].

<sup>89</sup> L. Gingrich, "Theorizing Social Exclusion: Determinants, Mechanisms, Forms and Acts of Resistance" in W. Shera, ed., *Emerging Perspectives on Anti-oppressive Practice* (Toronto: Canadian Scholar's Press, 2003) 3 at 14.

<sup>90</sup> Sossin, *supra* note 58 at 40.

inequality, but also in terms of “the freely expressed identities and needs of low income persons themselves.”<sup>91</sup>

#### ***IV. The Relational Nature of Poverty***

Academic and legal conceptions of poverty often conceive of it as a one-dimensional, static, or event based phenomenon. However, from the perspective of those who have experienced poverty, it becomes clear that it is, in fact, relational, dynamic, and social; these aspects of the experience of poverty are implicitly connected with the social exclusion that is often associated with poverty. Patrick Burman describes poverty as “not fundamentally about attributes of persons facing economic hardship, but about the wrenching and realignment of personal projects, relationships and exchanges following on hardship.”<sup>92</sup> One of the United Nations’ annual Human Development Reports describes poverty as “the denial of opportunities and choices most basic to human development – to lead a long, healthy, creative life and to enjoy a decent standard of living, freedom, dignity, self-esteem, and the respect of others.”<sup>93</sup> The ability to meet the latter criteria is fundamentally related to the ability of individuals to pursue and maintain interpersonal relationships, and to effect change and control in their own lives. The impact of poverty on social relations is explained by one welfare recipient in British Columbia. She describes her shame at being unable to drive her kids to summer camp

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<sup>91</sup> Burman, *supra* note 21 at 19.

<sup>92</sup> *Ibid.* at 17.

<sup>93</sup> Hurtig, *supra* note 43 at 16.

(she had no vehicle), or pay fees for school trips – when she tried to speak to the school principal about these issues, she encountered an assumption that any parents who couldn't pay were simply too cheap.<sup>94</sup> The material aspects of poverty are invariably attached to social and relational consequences; for example, when it is necessary to choose between food, rent, and medical care, there may be loss of dignity and self-worth, but also a detrimental affect on the person's ability to participate meaningfully in the lives of others and society at large; hunger, homelessness, and illness are socially debilitating. Moreover, social isolation and emotional stress has been linked with physical and mental health problems for people living in poverty,<sup>95</sup> which further undermines the potential for participation in social relations.

In one study of the needs and narratives of homeless people, many informants emphasized social and relational needs as being central to their negative experiences of poverty. Several people cited loneliness and lack of human contact as the worst aspect of poverty.<sup>96</sup> The interviewees also identified understanding, social life, relationships and family life as basic needs that remained unmet in their lives.<sup>97</sup> These aspects of poverty and the social needs of people living in poverty are not necessarily addressed by social services. One interviewee, for example, stated that he received more money and better

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<sup>94</sup> Miles, *supra* note 74.

<sup>95</sup> Raphael, *supra* note 3 at 6; See also E. Lightman, A. Mitchell & D. Herd, *Struggling to Survive: Ontario Works Recipients Talk about Life on Welfare* (Toronto: University of Toronto Faculty of Social Work, 2003) at 19.

<sup>96</sup> Morris, *supra* note 73 at 43.

<sup>97</sup> *Ibid.* at 53.

treatment on the street than he had in the welfare system.<sup>98</sup> Another stated that he felt that some charitable agencies had been helpful, but that “I wish they would give me more time to talk, and listen to me sometimes.”<sup>99</sup> In another study of welfare recipients in Ontario, one interviewee described a situation in which her welfare worker told her that if her family could assist by buying groceries for her children, she did not need to be on welfare.<sup>100</sup> Welfare discourages the sharing of resources that may be a survival strategy for some individuals; the rules in British Columbia are similar to those in Ontario in this regard.

In British Columbia’s welfare system, the clients are also discouraged from forming relationships with workers. One welfare recipient stated that during her time on welfare, she dealt with a different worker every time she went to the welfare office, and that none of the workers gave her their names.<sup>101</sup> The setup of the welfare office also made her feel isolated; she was required to use a public phone in the front of the office to dial a 1-800 number that was answered by a person in an office on the other side of an office partition, only a few feet away, rather than speaking to the same worker in person.<sup>102</sup>

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<sup>98</sup> *Ibid.* at 40.

<sup>99</sup> *Ibid.* at 99.

<sup>100</sup> Lightman, Mitchell & Herd, *supra* note 95 at 4.

<sup>101</sup> “My Adventures Applying for Welfare,” *supra* note 88.

<sup>102</sup> *Ibid.* at 5.

Like poverty, power is “performative, relational, positional, and discursive.”<sup>103</sup> People living in poverty are governed by regimes that restrict their most basic freedoms, undermine their relationships and encourage social exclusion and isolation; because these mechanisms and their effects are fundamentally related to social needs, resistance must also take place in the social sphere. For example, Parin Dossa explains how the life of a disability assistance recipient in Ontario is “compartmentalized” by legal and medical regimes. These regimes require the reconstruction of her identity as marginalized in order to receive benefits. However, even within these strictures, she meets her social needs and identifies on her own terms and her “personhood is reaffirmed in the...space of social relationships.”<sup>104</sup>

#### *V. Dignity*

Although many of the policy debates surrounding the issue of poverty focus on the material and easily measurable needs of individuals, as noted earlier, poverty is primarily a social, relational phenomenon, and as such, poverty must be understood contextually in terms of unmet social and relational needs. The National Anti-Poverty Organization (NAPO), comprised of people who have lived or are currently living in poverty, provided a report to the Committee on Economic, Social, and Cultural Rights during its consideration of Canada’s performance as a party to the International Covenant on Economic, Social, and Cultural Rights. In that report, NAPO described poverty as:

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<sup>103</sup> R. Sin & M.C. Yan, “Margins as Centres: A Theory of Social Inclusion in Anti-oppressive Social Work” in W. Shera, ed., *Emerging Perspectives on Anti-oppressive Practice* (Toronto: Canadian Scholar’s Press, 2003) 25 at 34.

<sup>104</sup> P. Dossa, “On Law and Hegemonic Moments: Looking Beyond the Law Towards Subjectivities of Subaltern Women” in D. Chunn & D. Lacombe, eds., *Law As a Gendering Practice* (Toronto: Oxford University Press, 2000) 138 at 153.

Feeling self-conscious about the amount of generic products you have at the checkout, not being able to afford the large bag of powdered milk, only being able to afford hamburger as your meat, fasting one day a week, walking 30 blocks to apply for a job to save the bus fare, then walking back. Finally getting your high school diploma and then finding out that it makes no difference. Being turned down for an Emergency Food Voucher by a Social Worker who is making at least \$20 an hour, in a union, and eating good tonight.”<sup>105</sup>

People who are living in poverty and those who use the welfare system frequently experience disrespect and humiliation based on their social condition. These experiences occur in the context of the administration of state-based welfare benefits as well as in public social situations. The National Council of Welfare reports that welfare is a degrading experience for the vast majority of recipients.<sup>106</sup> Welfare recipients in Ontario confirm that the experience of being on welfare is humiliating, degrading and demeaning.<sup>107</sup> People using non-governmental charities have used similar language to describe their experiences with the administration of those charities: humiliating, cold, impersonal, degrading.<sup>108</sup> One food bank user describes being yelled at by a worker when she requested not to have creamed corn in her food hamper.<sup>109</sup> Dignity and respect have been cited as major unmet needs by several authors interviewing people living in

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<sup>105</sup> National Anti-Poverty Organization, “National Anti-Poverty Organization Brief to UN Committee on Social, Economic, and Cultural Rights” (no date) online: PovNet website <[http://www.povnet.org/human\\_rights/geneva-napo.htm](http://www.povnet.org/human_rights/geneva-napo.htm)> (date accessed: 5 June 2005) at para. 134.

<sup>106</sup> Hurtig, *supra* note 43 at 294, citing National Council of Welfare, *Welfare Incomes 1996*, (Ottawa: National Council of Welfare, 1997).

<sup>107</sup> Lightman, Mitchell & Herd, *supra* note 95 at 9.

<sup>108</sup> Swanson, *supra* note 16 at 135.

<sup>109</sup> *Ibid.* at 141.

poverty.<sup>110</sup> One welfare recipient in British Columbia discusses the lack of respect for the autonomy of welfare recipients in work-for-welfare regimes. She argues that if people must work for welfare, this work should be freely chosen.<sup>111</sup> She identifies the lack of choice as the most important problem with work-for-welfare, not the low rates. Another welfare recipient describes his child being teased at school: the other children were saying to him, “You’re on welfare, you take our money!”<sup>112</sup> Deprecation in institutional and social relations leads to a myriad of mental and emotional effects: a toll on self-esteem and well-being,<sup>113</sup> poorer health<sup>114</sup>, and the internalization of stereotypes and oppressive behaviours. The latter aspect is perhaps the most insidious aspect of the negative social treatment of people living in poverty. One person describes her experience of poverty as follows:

...the hardships came in the contrasts with how other people were living and how they saw us as lesser...It wasn’t like, ‘Oh, we’re different and that’s okay.’ It was like, ‘Oh, we’re different and that’s really not okay.’ We were the ones to blame...[t]he good values were on them, and the bad values were on us. That started out this process of noticing the differences and blaming myself and my parents.<sup>115</sup>

Internalized oppression undermines the potential for resistance because it entails the acceptance of oppressive conditions as morally justified; as another person living in

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<sup>110</sup> Morris, *supra* note 73 at 112; P. Capponi, *The War At Home* (Toronto: Viking Press, 1999) at 132.

<sup>111</sup> Miles, *supra* note 74.

<sup>112</sup> Swanson, *supra* note 16 at 155.

<sup>113</sup> Lightman, Mitchell & Herd, *supra* note 95 at 11.

<sup>114</sup> *What Determines Health?*, *supra* note 56.

<sup>115</sup> Swanson, *supra* note 16 at 152.

poverty explains it: “I don’t feel we’re as deserving as people who have money. I know logically that’s not right, but emotionally that’s how I feel about it.” The same person stated that when she heard negative stereotypes about the poor, she thought “Maybe they have a legitimate point.”<sup>116</sup> Organized political mobilization of the poor becomes difficult due to internalized oppression, or more specifically the individualized and moralized nature of that oppression.<sup>117</sup> Because the dominant view is that people are poor because of innate inferiority, bad judgement, or are otherwise individually morally responsible, people do not want to identify as “poor.” The social and political emphasis on the passivity, victimhood and gratitude as desirable characteristics in the poor makes it extremely difficult to be “poor and proud.” The difference between poor and non-poor, per se, is not a source of oppression or exclusion. Rather, it is the meaning attached to that type of difference, and as such to the identities established through the experience of that difference that serves to exclude and oppress.

#### *VI. Mouna’s Story: A Narrative Example*

The following hypothetical narrative<sup>118</sup> serves to illustrate the manner in which the themes discussed in this chapter are persistent in British Columbia’s current welfare structure. In this example, we see how Mouna is constructed as morally inferior, and subject to enforced passivity and scrutiny in a manner than undermines her dignity and

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<sup>116</sup> *Ibid.* at 154.

<sup>117</sup> *Ibid.* at 159.

<sup>118</sup> For detailed critical perspectives on the use of narrative in legal scholarship, please see C. Sheppard & S. Westphal, “Narratives, Law and the Relational Context: Exploring Stories of Violence in Young Women’s Lives” (2000) 15 *Wisconsin Women’s L. J.* 335 and R. Robson, *Sappho Goes to Law School* (New York: Columbia University Press, 1998) at 87-111.

agency. Although this narrative is hypothetical, it is based on the current policy and practices of the B.C. Ministry of Human Resources. It is designed to reflect a realistic situation in which a person living in poverty might find herself. Elements of the narrative are taken from stories I've encountered over the past year, as well as from my personal experiences with poverty and the welfare system.

*Mouna is a thirty-four year old woman from Morocco, who came to Canada six months ago as a skilled immigrant. She is a doctor with several years of experience in a general practice clinic in Tangier, and has also spent a number of years working at home, raising her son, who is now fifteen. She also has a daughter with her who is three years old. She is married. For the past six years, her husband has been working part-time as a bank clerk, and has worked in the home. Due to administrative holdups in the immigration process, her husband has not been able to obtain his visa to join her in Canada. Her first language is Moroccan Arabic, and she speaks French fluently, as well as being able to get by in English. She moved to Victoria with her children soon after arriving in Canada as she has one cousin living here. Her son has been attending Vic High since September, and is enjoying his classes and has made quite a few friends in his year. Mouna has been trying to find work in which she can use her medical knowledge, even though she knows she cannot work as a doctor unless she pursues further training at a Canadian medical school. For two months, she worked part-time cleaning offices in downtown Victoria, but the work was temporary and she was laid off a month ago. She applies to a few jobs each week, but finds it difficult to conduct a job search with her three-year-old in tow - sometimes, potential jobs are not on the bus route and she cannot apply. Her cousin has offered some financial support until she gets on her feet, but she would much prefer to be working; she also knows that her cousin has a family to support and can't afford to offer much. She and her cousin agreed that sharing groceries would be more economically efficient, and the cousin often drops by with fruit, vegetables and milk for Mouna's family. Mouna lives in a three-bedroom apartment in Fernwood, and the rent is \$900 a month, not including utilities. Mouna's cleaning job paid the rent, but there wasn't much left over, and she has relied heavily on food banks and the \$100 per month that her*

*husband sends to try and make ends meet. She has been unable to pay her phone and hydro, and is concerned that they will be disconnected. She also needs to buy her children some warmer clothes, but doesn't have the money. If she were on her own, she knows she could find a way to get by without government aid, but she is unwilling to let her children go without, and she decides to apply. Mouna considers herself an independent and educated woman, and never imagined that she would be in the situation of applying for welfare; she feels ashamed, stressed and anxious. She sometimes wishes that she had stayed in Morocco, but is determined to make the best of her current situation - she hopes it will get easier when her husband arrives in Canada.*

*When Mouna arrives at the welfare office and asks how to apply for welfare, she is told that she cannot apply for three weeks, and that she must conduct a thorough work search during that time. Mouna explains that she has already been looking for work for 6 months, and that this is her last resort. She feels ashamed to be in this office with her daughter. The person behind the desk tells her that all applicants must do a three-week work search, and proceeds to book her an appointment for three weeks later. Mouna states that she is concerned about her phone or hydro getting cut off. The worker confirms with Mouna that she has only missed one month's payment on those bills, and her services will likely not get cut off before the intake appointment. For the next three weeks, Mouna follows the job search guidelines she picked up at the welfare office; she borrows money to pay for a babysitter so that she can attend resumé workshops. At the resumé workshops, an employment counsellor recommends that she remove her medical degree and experience from her resumé, as it would not be "a good match" for local job needs. This is distressing to Mouna – she worked quite hard for her qualifications and experience, and wants to be respected as a professional even if she can't work in her field. Even so, because she needs the money, she does as the employment counsellor says.*

*Mouna returns to the welfare office after three weeks. She has not found a job, and is becoming more worried about her financial situation. The welfare worker, Cheryl, asks Mouna a variety of personal questions about her living situation and finances. Mouna*

tells Cheryl that her husband is still in Morocco, but helps her out as much as he can by sending a small cheque. Mouna also tells Cheryl that she has been going to food banks, and she feels awful about it – she tells Cheryl that she gave a lot of money to charities when she was working as a doctor, and doesn't see herself as poor. Cheryl tells Mouna that she is considered employable, and will need to sign an employment plan in order to be eligible for assistance, which may include attending an employment program. Cheryl tells her that her husband should be sending more money, and that Mouna should ask for it, as this is a possible source of funding that Mouna has not yet exhausted. Cheryl states that she has sympathy for Mouna's situation, and approves her for welfare, minus the \$100 that her husband sends. Mouna is eligible to receive \$780.58 per month from welfare. She is also eligible for \$247.00 per month for her child tax credit. Mouna asks the worker if there is any way for her to bring extra money into the household while she's on welfare, and Cheryl tells her that she must accept any employment that is offered to her, but that the amount she earns will be deducted dollar for dollar from her cheque. Cheryl does mention that income earned by a child under 19 is not taken off the cheque.

Mouna leaves the office reduced to tears. She does not want to accept "any job," but she knows that her financial situation makes it impossible to refuse the worker's requirements. For the next month, she attends an employment program and uses the rest of her cheque to pay a babysitter to take care of her daughter. She considers the fact that her son could work after school, and the money would not be taken off the cheque, but cannot bring herself to ask him to work instead of doing his after-school activities. Her cousin brings fresh food over after work to supplement the canned and packaged food Mouna gets from the food bank, and often stays to visit. On one such occasion, a Ministry worker, Susan, comes to Mouna's door. When Mouna opens the door, the worker sees Mouna's cousin with a bag of groceries and a jug of milk. She asks Mouna what was going on, and Mouna says that she had paid her cousin to pick up some groceries. The worker leaves the house, and Mouna is called the next day by a verification officer, who asks that she come in for another appointment. At the appointment, Joe, the worker, asks her many questions about how she is feeding her family and whether she lied to the worker who visited her house. Mouna becomes angry,

*and ends up shouting at Joe “She was just bringing some food for my kids, she’s my only family here!” Joe asks her to leave the office immediately and Mouna is charged with fraud for failing to report the extra food she had been receiving. Mouna is cut off welfare until she is “compliant.”*<sup>119</sup>

It is apparent in Mouna’s case that poverty is constructed as an individual and static experience, in which her family and other relationships are either undermined or disregarded. Her family relationships with her husband and cousin are understood only in terms of potential income, and her role as a mother is unacknowledged by the Ministry except in terms of how much welfare she is entitled to receive. Furthermore, the past and present context of Mouna’s life in terms of her role in society is disregarded in favour of a fixed identity as employable welfare recipient. Mouna’s attempt to adapt to her circumstances by relying on her cousin for groceries is punished by the discontinuation of her welfare benefits; as such, the welfare regime effectively curtails the possibility of a dynamic response to changing circumstances because it deviates from the assigned role of welfare recipients.

The manner in which the Ministry employs surveillance – via an unscheduled visit from a Ministry worker – is premised on an assumption that Mouna’s life should be under much closer scrutiny than that of others. Implicit in this is the concept of moral inferiority: Mouna is constructed as innately untrustworthy, and her privacy is devalued. When Mouna becomes angry with her worker because she disagrees with the Ministry policy of surveillance and treatment of the gift of groceries as income, she is charged with fraud and cut off welfare. There is no room for dissent, negotiation or voice –

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<sup>119</sup> *BC Employment and Assistance Manual, infra note 126.*

unless the voice is “compliant.” The expectation of the Ministry in Mouna’s case is that she should be passive and unquestioning of the Ministry’s authority, if she wishes to continue receiving benefits.

In the B.C. welfare system, applicants are categorized as “employable” or “unemployable” and treated accordingly – this distinction maps neatly onto the concept of the poor as “deserving” or “undeserving” that arises from the charity model. According to common stereotypes, a young, white, able-bodied man is employable, and thus undeserving of welfare – there is no good reason for him not to have a job. The single Indo-Canadian woman with visible disabilities and children is assumed to be unemployable – she “obviously” can’t fit into the work force, and is deserving of welfare. The individual’s identity is thus fixed in terms of a power structure that is founded on the moral inferiority of those who must ask for help, and the related obligation to belong either to a category of helpless victims (the woman of colour with disabilities) or lazy welfare bums (the young white man). If a person manages to obtain welfare, their agency is further curtailed by a strict system of surveillance that extends beyond the welfare office to include surveillance of people’s homes and their activities in public.

These and other policies undertaken in B.C. and other Canadian jurisdictions serve to undermine the power, agency and dignity of recipients, subject them to social and moral control and deny their citizenship and inclusion. The concerns enumerated in this chapter illustrate the need for a deeper examination of welfare processes in terms of power and the experience of poverty. Using the example of welfare administration in Victoria, British Columbia, the next chapter will explore the themes that emerge from the

perspectives of those who have experienced poverty and the welfare system.

#### CHAPTER 4: WITNESSING WELFARE APPLICATIONS IN BRITISH COLUMBIA

Using the research that I conducted for this thesis, this chapter will offer a view of interactions between the British Columbia Ministry of Human Resources, responsible for administering welfare, and people applying for or receiving benefits, via the perspective of third party advocates who worked with clients over the past two years. In this chapter, I will explore the themes that emerge from the social and historical analysis in Chapters 2 and 3, in addition to other patterns and experiences described by the study participants.<sup>120</sup> For my research I chose third-party advocates, or “witnesses,” rather than the clients themselves, for several reasons. First, welfare clients are often in vulnerable and volatile situations, and as such the risk of emotional and psychological stress would have been considerable; I was unable to provide sufficient support or compensation to justify the risk of the research to clients. Second, the perspectives provided by third-party advocates are distinctive insofar as they provide a certain degree of detachment from the welfare process; the informants in my study reported observations of their own direct communication with clients and workers individually, as well as observations of worker-client interactions. Finally, the presence of advocates allows us to view the welfare process through the lens of a “best-case scenario,” as advocates serve, to a certain extent, to moderate the power differential between workers and clients.

Research for this project was comprised of five 1.5-3.0 hour interviews with advocates in a British Columbia city who had observed in-person, telephone, and written

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<sup>120</sup> It is of note that the situations described by participants in the study are, to a certain extent, “best case” scenarios because they were all witnessed by advocates; the concerns discussed in this chapter may be even more serious for clients who are unaccompanied in welfare offices.

interactions between the Ministry of Human Resources and people who were applying for or receiving benefits.<sup>121</sup> The interviews were structured, and many of the same questions were asked of participants, but the interview questions were also flexible to adapt to the narratives given by the participants. The interview questions requested participants to describe their observations of the interactions between the Ministry of Human Resources and people who were applying for or receiving benefits under the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act*. Participants were asked to describe two recent situations in which they had observed such interactions, but in conducting the interviews, I encouraged participants to describe other interactions they had witnessed as they came to mind. The interview questions focused on the needs and impacts of the client and the behaviour of both the client and the Ministry of Human Resources representatives, particularly in terms of power in the welfare process. Participants were chosen to reflect a variety of perspectives via a diversity of gender, race, age, class and ability backgrounds. All five of the participants were, or had been, paid advocates working with community organizations. The names used in the description of the data collected in this study are pseudonyms, and identifying information has been omitted in order to preserve anonymity. To ensure that I did not add undue bias to the study, the interview questions did not seek to obtain value-specific information in a leading manner (e.g. what was the worst situation you observed?) but rather requested descriptions of specific aspects of the welfare process as observed (how did the client use their voice?) Similarly, the data I have used from the interviews were

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<sup>121</sup> This study received approval from the University of Victoria Human Research Ethics Committee on March 24, 2005. A copy of the *Certificate of Approval* is attached to this thesis as Appendix A. A copy of the consent form used in the study is attached to this thesis as Appendix B.

not selected based on the degree to which they support specific negative assumptions about the welfare system. Instead, data from the interviews were organized thematically based on patterns emerging from the entire set of data. Data were excluded from discussion in this paper when they were irrelevant to the focus of the paper (e.g. detailed discussions of the need for a guaranteed annual income in Canada not included).

By exploring the perceptions and observations of witnesses to interactions between the Ministry of Human Resources and welfare applicants and recipients, I do not intend to construct a complete or totalizing narrative that claims objective or empirical authority with regard to the nature of the welfare bureaucracy in B.C. Rather, I am interested in enlarging the dialogue surrounding welfare and power by bringing together examples of perspectives that are generally not considered in the policy process.<sup>122</sup> This chapter is intended to be read with a view to understanding and situating the impact of the Ministry of Human Resources' formal and informal policies and practices on the lives of people applying for or receiving benefits. Specifically, I intend to provide material by which the relationship between the legal/bureaucratic structure of welfare and the lived experiences of people using the welfare system may be assessed with a particular focus on the role of stereotyping, human dignity, social inclusion and exclusion, and agency of welfare applicants and recipients. In order to situate my analysis of the research data, I will first provide an overview of major features of British Columbia's welfare regime.

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***I. Welfare law and policy in British Columbia: Recent Developments***

The main purpose of the welfare regime, according to the Ministry of Human Resources is to move people towards what it calls “sustainable employment”, and to help those most in need. In its annual report on these welfare programs, the Ministry evaluates its own performance primarily on the reduction of the number of people receiving benefits.<sup>123</sup> It does so despite the lack of evidence that reduced welfare caseloads correlate with an increase in sustainable employment. Given the mandate of the Ministry of Human Resources and changes to welfare law and policy that have made it more difficult to receive and maintain welfare benefits, it is possible that the reduction in the number of welfare recipients is primarily attributable to barriers in the welfare system, rather than an increase in sustainable employment. The current B.C. government has made its position on welfare abundantly clear:

In the 1990s one in ten British Columbians was on income assistance – one out of ten – six in ten single mothers and one out of every seven children. The welfare system was costing taxpayers \$2 billion a year, and the caseload was going up. What a waste. What a waste of both taxpayers’ dollars and human potential. Looking back at all that waste, I am proud of how far we have come.<sup>124</sup>

In 2002, the British Columbia government effected several significant changes in welfare legislation and policy that persist in the Ministry of Human Resource’s current practices. These changes fall under four broad categories: 1) Changes to eligibility and application requirements, 2) Changes to rates, benefits and earnings exemptions, 3)

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<sup>123</sup> British Columbia Ministry of Human Resources, *2003/04 Annual Service Plan Report* (Victoria: Ministry of Human Resources, 2004) [hereinafter *2003/04 Annual Service Plan Report*].

<sup>124</sup> British Columbia, Legislative Assembly, *Debates*, (19 February 2004) at 8655-8656 (Hon. Stan Hagen).

Changes to sanctions and penalties and 4) Changes to decision-making and appeal processes.

#### A. Eligibility and Application

In order to become a welfare applicant in British Columbia, a person must first be an “enquirer” for three weeks. “Enquirers” must usually meet work search requirements and attend an orientation session prior to obtaining any financial support from the Ministry. This requirement also applies to people with disabilities who wish to apply for disability benefits. Applicants may be required to wait longer to receive welfare if their work search is not considered to be satisfactory.<sup>125</sup> Although it is possible for people to request an “Emergency Needs Assessment” to obtain an intake interview sooner, they must demonstrate that they have an immediate need for food, shelter, or medical treatment, and “the enquirer must demonstrate that alternative resources (including personal assets and income, family and friends) have been accessed and that no resources are available to meet that need.”<sup>126</sup> Furthermore, in the *Employment and Assistance Act* and *Regulations*, “employable” welfare recipients may not receive benefits for more than 24 out of 60 months.<sup>127</sup> Although the regulation and policy manual<sup>128</sup> have been

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<sup>125</sup> *Ibid.* at 25.

<sup>126</sup> British Columbia Ministry of Human Resources, *BC Employment and Assistance Manual*, online: <<http://www.mhr.gov.bc.ca/publicat/VOL1>> (date accessed: 5 June 2005), s. 6.1 [hereinafter *BC Employment and Assistance Manual*].

<sup>127</sup> *Employment and Assistance Act*, S.B.C. 2002, c. 40, s. 36 [hereinafter *Employment and Assistance Act*]; *Employment and Assistance Regulation*, B.C. Reg. 263/02, s. 27. [hereinafter *Employment and Assistance Regulation*].

<sup>128</sup> *BC Employment and Assistance Manual*, *supra* note 126, s. 7.16.

amended to include numerous exceptions to this rule, it remains part of the legal regime, and is unique among Canadian jurisdictions.

### **B. Rates, Benefits and Earnings Exemptions**

Although welfare rates for single people with disabilities, “employable” singles under 55, and childless couples under 55 were maintained in the welfare policy overhaul, the majority of welfare recipient categories saw their welfare rates reduced by \$45 to \$145 per month, which represents a loss of up to 19% of the total cheque.<sup>129</sup> Crisis grants for food, shelter and clothing were capped, and other benefits, such as work-related childcare benefits, were eliminated. Students are no longer eligible for welfare. In order to obtain welfare, most applicants must now demonstrate that they have been financially independent (which often means having worked in paid jobs) for at least two years in their lives.<sup>130</sup> Recipients of regular welfare benefits are no longer able to keep any of their earnings or child support payments – these forms of income are deducted dollar-for-dollar from a person’s welfare cheque.<sup>131</sup>

### **C. Sanctions and Penalties**

“Employable” welfare recipients, including families, are subject to a number of penalties for non-compliance with employment plans and for neglecting to declare outside income. The penalties range from deductions from monthly cheques to complete

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<sup>129</sup> Klein & Long, *supra* note 60 at 20.

<sup>130</sup> *Ibid.* at 19.

<sup>131</sup> *Ibid.* at 23.

disentitlement.<sup>132</sup> Furthermore, there are numerous sanctions for failing to provide information for verification, failure to pursue income, and fraud.<sup>133</sup> As Marge Reitsma-Street points out, surveillance has also increased under B.C.'s new welfare regime.<sup>134</sup> Unfortunately, policy materials relating specifically to the operations of the verification and compliance branch of the Ministry of Human Resources are currently unavailable, online or otherwise.<sup>135</sup>

#### **D. Decision-making and Appeal Processes**

The welfare appeal process was streamlined in the restructuring of welfare in British Columbia. As a result:

...the current and independent Income Assistance Appeal Board has been abolished and replaced with an Appeal Tribunal as noted under Section 19 (2) of the Employment and Assistance Act, which consists of “(a) a chair and at least one vice chair appointed by the Lieutenant Governor in Council, and (b) the members appointed by the minister.” In addition, funding has been cut to most Native and Community Law Centres. And, there is no longer a statutory mechanism for legal assistance for poverty and welfare law appeals, nor is there any legal aid funding for matters related to disputes regarding welfare eligibility, termination, or cuts.<sup>136</sup>

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<sup>132</sup> *Ibid.*

<sup>133</sup> *BC Employment and Assistance Manual*, *supra* note 126, s. 7.6.

<sup>134</sup> M. Reitsma-Street, *A Policy Analysis of the Proposed B.C. Employment and Assistance Law* (Victoria: Studies in Policy and Practice in Health and Social Services, University of Victoria, 2002) at 1.

<sup>135</sup> Although I made a formal freedom of information request for policy documents pertaining to compliance and enforcement on January 17, 2005, the Ministry did not begin processing my request until June 20, 2005 (although statutory requirements mandate a response within 30 business days); because of time constraints, the materials I received have not been included in this thesis.

<sup>136</sup> H. Michael & M. Reitsma-Street, *A New Era of Welfare: Analysis of the B.C.'s Employment and Assistance Acts* (Victoria: Studies in Policy and Practice in Health and Social Services,

Furthermore, parts of the welfare system have been privatized through the Ministry of Human Resource's contracts with employment agencies that receive remuneration based on the placement of individuals in jobs.<sup>137</sup>

## **II. Data Analysis**

As noted earlier, all names used in this chapter are pseudonyms. As a device to clarify who is the advocate and who is the clients, the advocates' names all begin with the letter "A" (Anna, Andrew, etc.) and the clients' names all begin with the letter "C" (Clare, Connor, etc.)

### **A. Claiming Welfare**

Participants in the study described a number of impacts of the welfare process. When asked what was at stake for their clients in the process, they gave a variety of answers, including health of the clients, health of the clients' children, mental health, the life of the client, ability to provide housing, physical security and safety, children's education, income, the right to parent one's children, pride, and the right not to be judged. When asked if clients had to give anything up to receive welfare, the participants indicated the following: their privacy, their dignity and autonomy, and their control over the process.

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University of Victoria, 2002).

<sup>137</sup> For a detailed critique of the privatization of welfare services in British Columbia, see Klein & Long, *supra* note 60.

When asked whether the clients perceived the welfare process as being charity, study participants indicated that for the most part, their clients did not perceive it as charity. Anna, Allison and Ashley indicated that her clients had a conception of welfare as something that should be used in the short term, just to help the clients overcome circumstances in their lives and return to independence. Some participants reported that clients had a strong sense of entitlement to welfare benefits, that welfare was a right, or that welfare was just one resource available to assist people. Ashley described one client's perception of welfare as something that she would avoid if at all possible, something that wasn't necessarily a helpful service. Allison described one situation in which a client understood welfare as a favour from the government; this was the only example in the study in which welfare was understood by a client as being charitable.

Most participants indicated that the Ministry of Human Resources did understand welfare as being charity. They cited the expectation of gratitude from their clients, the construction of clients as lazy and undeserving, and the perceived obligation to taxpayers (to spend money responsibly, giving as little as possible, and only to deserving recipients). The only case in which a participant indicated that the Ministry did not perceive the welfare process as being charity was when the client had been recently employed and was waiting for employment insurance; in that case, she observed that the Ministry saw it "as a solution to an unexpected problem."

## **B. Stereotyping and Moral Regulation**

The first interview in my study was with Anna, a woman who had worked in a British Columbia city as an advocate with welfare and disability applicants and recipients

under the *Employment and Assistance Act* and *Employment and Assistance for Persons with Disabilities Act*. In her descriptions of interactions between the Ministry of Human Resources and the applicants and recipients, there was considerable evidence of the moral regulation and stereotyping of the applicants and recipients, assumptions of their innate inferiority, and a reliance on the division between deserving and undeserving poor.

The first case that Anna described in her interview was that of Clare, a woman who had worked in the sex trade and had suffered damage to her reproductive organs as a result of sex work. Clare was on regular welfare, i.e. she was receiving \$510 dollars per month as an employable single adult, and sought Anna's assistance in order to obtain additional medical costs. While staying in the hospital for treatment, the Ministry of Human Resources had deducted the shelter portion of her welfare cheque; when Clare left the hospital, she was unable to walk, and required funds to have food delivered to her house. Anna obtained documentation from Clare's doctor stating that she did need more money from welfare, and provided it to Clare's welfare worker. Anna indicated to Clare's worker that Clare was at risk of returning to the sex trade in order to make enough money to care for herself, despite her medical condition. At that point, in Anna's words: "The worker kind of laughed and said: 'I don't even believe that she could make money doing this. Have you seen her?' And I think her exact words were: 'Who'd wanna fuck an ugly [older woman]?'"

This is a particularly harsh example of the assumptions at play between the worker and the welfare recipient: in response to a request for benefits, the worker constructs Clare as disgusting and unworthy, in Anna's words, "The word disgusting was used to describe her, to me, by the workers. She was

disgusting not just because she sold her sex, her body, for money, but because she was too ugly to do it.”

Anna indicated that throughout Clare’s case, the Ministry of Human Resources responded to expressions of need by treating her “as undeserving, [they] made moral judgments about where she was at in her life.” When asked how this process had affected Clare’s feelings or self-image, Anna reported that “...it was just reinforced that no one cared about her. That she didn’t deserve anything and in fact she got herself...she was blamed. She’d already heard that a bunch of times in her life.” When asked how the Ministry workers used their voices in their interactions with Clare, Anna indicated that “the voice that was used was always about shaming, and making her feel badly for having asked.” Later in the interview, Anna described Clare’s attitude towards welfare: although she felt a sense of entitlement to welfare, she saw it as a temporary measure to help her establish her life again, and she didn’t want a “hand out.” Anna qualified this description by adding “But always, there’s the shame of taking it. To me, that’s what charity is, when people feel ashamed to take it.” Anna described the Ministry of Human Resources’ attitude as one in which welfare recipients are expected to be grateful, that welfare is seen as “picking up the slack because they [recipients] are not showing any responsibility for their own lives.” This case illustrates the tension between the client’s resistance to a charitable benefit, or “hand out,” and the Ministry of Human Resources moral relegation of the client to an “undeserving” position. The latter categorization relies on an assumption that welfare eligibility should be determined based on moral worthiness, an assumption that resonates deeply with the concept of charity; for the

client, on the other hand, the perception of charity is uncomfortable and mixed with a sense of shame as well as entitlement.

Anna described another case in which she was advocating for an immigrant family, the Chapmans, who, with several children, were facing a situation of food insecurity. Mr. Chapman worked on call for a low wage, which was regularly deducted from the family's welfare cheque. This deduction is mandated by law under the *Employment and Assistance Regulation*.<sup>138</sup> With this family, Anna indicated that the Ministry was "perpetually mistrustful of how they were representing what their needs were." Although Anna had compiled a detailed list of expenses, the Chapman family's worker told Anna that she (Anna) was being "hoodwinked" by the family, who wanted to get "something for nothing...and have been committing fraud for months." Anna indicated that, strictly speaking, the family had been committing fraud because they had not been claiming all of Mr. Chapman's on-call income; she explained that this started happening as soon as the Chapmans realized that the pay stubs they brought in were being deducted from the welfare cheque, and that they were motivated to do this because they could not adequately feed their children on the welfare rate.<sup>139</sup> In this case, the worker characterized the Chapman family as untrustworthy and manipulative, as trying to take advantage of the system. Anna indicated that the tone of voice used by Ministry of Human Resources workers in dealing with the Chapman family was "disbelieving and patronizing," and that one worker had asked Anna why the Chapman family had come

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<sup>138</sup> *Employment and Assistance Regulation, supra* note 127, s. 28.

<sup>139</sup> For more information about food insecurity, living expenses, and the welfare rate, see Dietitians of Canada, *The Cost of Eating in BC: Impact of a Low Income on Food Security and Health* (Vancouver: Dietitians of Canada, 2004) and *Income for Living, supra* note 48.

here, to Canada. Anna had the impression that the worker disapproved of immigrant people using the welfare system. Mrs. Chapman indicated to Anna that she couldn't understand why they weren't getting the help they needed from the welfare system; she had an expectation that a Christian system should help her family. Anna indicated that this family "learned quickly there was a lot of shame associated with needing something." The Chapman family also learned that in order to survive on welfare, it was necessary to lie, given the policy of deducting 100% of earned income from welfare cheques.<sup>140</sup> This example illustrates another way in which moralization occurs; the family in this case had to choose between meeting their basic needs and remaining totally honest about their earnings; there was no way for them to do both. If they lied, they were undeserving because they transgressed legal and moral boundaries surrounding the receipt of welfare. If they told the truth, they may have been constructed as more deserving, but they were powerless to meet their need for food.

The second interview was with Andrew, a man who had worked extensively as an advocate, assisting recipients and applicants to negotiate the welfare system in British Columbia.

The first client that Andrew described was Chuck, a single man with children who did not live with him. Chuck had been on welfare for a number of years and who was being investigated because he had been earning money from odd jobs while he was on

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<sup>140</sup> People who receive benefits under the *Employment and Assistance for Persons with Disabilities Act*, S.B.C. 2002, c. 41 are eligible for an earned income exemption of up to \$400.00. *Employment and Assistance for Persons with Disabilities Regulation*, B.C. Reg. 265/02, Schedule B, s. 3(1) [hereinafter *Employment and Assistance for Persons with Disabilities Regulation*].

welfare. The Ministry of Human Resources wished to put Chuck on disability benefits, although there had been no medical evidence that he should be on disability, and furthermore, he did not wish to receive disability assistance. Andrew did a freedom of information request so that Chuck could gain access to his file with the Ministry, and Andrew saw that there were numerous comments to the effect that Chuck was slow, dull-witted, or mentally ill. There was no medical evidence in the file to support a need for disability benefits, and the workers had not discussed their comments with Chuck at any time. From what Andrew observed, the Ministry wanted to see Chuck on disability because “he would be a hell of a lot easier for them to deal with.” On disability benefits, Chuck would be allowed an earnings exemption, whereas on regular welfare, every time it comes to the attention of a worker that a person has earned money and not claimed it, a verification process begins. Andrew noted that the Ministry of Human Resources perceived the welfare process as being charitable, and that from what he observed, this was based on “the understanding that this [welfare] is just a gift. ‘You’re not entitled to this. This is just a gift. We’re only doing this for you because we feel sorry for you, because you’re pathetic. Not because you have a right to some standard of income...’”

Andrew further explained that he observed a very different attitude among workers as between disabled and non-disabled clients. For example, he stated that “somebody who with one worker was just a lazy bum, as soon as they get PWD [Persons with Disabilities designation] they go to the PWD office, and they’re somebody who is genuinely unable to work. They’re being led by their own policy structure into their understanding of poverty.” In this way, the distinction between undeserving and

deserving poor is reinforced and solidified, and benefits are distributed without reference to the person's actual needs, desires or situation.

Another client of Andrew's, Connor, had put a sum of money into trust for his children; from Andrew's perspective, the Ministry saw this as a frivolous expenditure that Connor should not have undertaken. Furthermore, Andrew observed that the Ministry treated Connor with a great deal of suspicion: "They didn't really think he was living in poverty. They thought he had thousands of dollars stashed under his mattress." As a person on welfare, he was subject to scrutiny and judgement that a middle-class person would be unlikely to tolerate.

Andrew described a phenomenon within the Ministry of Human Resources wherein certain clients' files are transferred to a non-profit/charitable service office downtown. Andrew called it the "bad boys and girls office," and the Ministry sent clients there when a worker identified them as a difficult, hostile or threatening client. Once they were at the new office, the only services available to them were through a half-time contracted worker who was rarely available. From what Andrew observed, this worker's caseload was quite large, and he worked alone. In Andrew's words, "he was never available on the telephone-ever. You could never reach him. The whole year I worked there I never once got through to him." In effect, the clients who had been deemed "bad," or "crazies" appeared to be receiving a lower tier of service than those who hadn't; this serves as an example of one of the ways in which moral regulation has been formalized in the welfare system.

The third person I interviewed, Allison, is an advocate who worked primarily with young parents. Allison described the case of a client, Crystal, who was a single mother with a history of substance abuse problems. Crystal felt quite intimidated by her welfare worker, who frequently threatened to charge her with fraud after she sent her son to live part-time with her parents. Crystal had the impression that the Ministry thought she was taking advantage of the welfare system. Allison described a situation wherein she visited a verification officer with Crystal; the verification office was

...the oddest place...when you go to the interview rooms there's a one-way mirror. It looks like it was set up to be as dehumanizing as possible...when you go into the interview room he is on one side of the desk and you're on the other side where there's this one-way mirror where you assume people are watching you.

Allison said that during the verification interview with Crystal, the worker seemed to operate on the assumption that Crystal was lying, and she was being required to rebut this assumption. As such, Allison observed that Crystal provided far more personal information than the worker actually needed to make a determination:

She actually admitted quite a few personal things that she didn't really have to admit...to prove that she was a good person, I guess, to prove that she had integrity; she was really honest, just laid out her whole past in front of him...'Yeah, I have had problems with addiction, I do have a mental health problem. I'm bi-polar.' She just told him a bunch of personal things that I don't think he had a right to know. But it was as if she didn't tell him those things that he wouldn't have believed her.

In another case that Allison described, she observed a worker questioning a client about her spending habits. The client was asking for money to buy winter coats and boots for her kids, and the worker asked "Was that for you or your kids?" When the client confirmed that the money was for her children, the worker commented "That's a really nice coat you're wearing." The client in this case explained to the worker that her

coat had been a gift two years ago, and that she had taken good care of it. Although the worker did not directly accuse the client of lying, there seems to be an underlying conception of appropriate ways that a mom on welfare should spend money, as well as an assumption that she had purchased a new coat for herself. The *Employment and Assistance Regulation* explicitly states that clothing is not considered an asset that affects a family's eligibility for welfare.<sup>141</sup> According to the policy manual, the only other reason that the worker might be interested in a "nice" coat would be as an indicator of income. In this case, if the worker was actually interested in whether the client had unclaimed income, she did not disclose this to the client. Furthermore, the client would have already given detailed information about actual and potential sources of income during the intake interview, including pay stubs, bank account information and incomes of family members.<sup>142</sup> As such, the practical and policy basis for this line of questioning is tenuous, but the moral undertones are clear: it is inappropriate for a welfare applicant to be wearing what the worker perceives as a "nice" coat, and she is expected to explain her possession of it. In this example, moral regulation is achieved through undue suspicion and scrutiny, underpinned by a construction of how this welfare applicant should and should not appear.

The fourth interview in my study was with Amos, a residential tenancy advocate who often worked with clients applying for or receiving benefits from the Ministry of Human Resources who had housing troubles. Amos gave a few examples of cases wherein moral judgement and regulation played a role in the Ministry's interaction with

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<sup>141</sup> *Employment and Assistance Regulation*, *supra* note 127, s. 11(1).

<sup>142</sup> *BC Employment and Assistance Manual*, *supra* note 126, ss. 7.9 and 7.13.

clients. He described the case of Cynthia, who had been a sex trade worker and was concerned that she wouldn't get welfare and would have to go back to sex work. Amos was helping her to request an emergency needs assessment so that she could obtain a crisis grant to pay for her rent. When Amos was reiterating Cynthia's concern about returning to sex work to her Ministry worker, Cynthia's worker asked Amos, "Well Amos, did you ever think that [sex work] is what she's really good at?" Amos observed that he denied her the crisis grant "on the heels of his comment about what he thought she might be best at in life." Amos also described a situation wherein another client, Christie, had been told by her Ministry worker that her children were brats. From Amos's perspective, this involved a moral judgement about the client's parenting skills. In a general sense, Amos indicated that the Ministry often seems to assume that anyone who comes into the welfare office is somehow inadequate, simply because they are there.

The final interview in my study was with Ashley, an advocate and outreach worker for mothers at risk of street involvement and drug or alcohol abuse. In her interview, Ashley described her observations of the case of Candace, a pregnant woman who was attempting to have her welfare cheque increased in order to be able to provide a safe home for her baby once it was born. After Candace had her initial interview with the Ministry of Human Resources worker, she was contacted by the Ministry of Children and Families, who threatened her with child apprehension. Ashley's guess is that the Ministry of Human Resources contacted the Ministry of Children and Families. The Ministry of Human Resources did not ask if she was using alcohol or drugs, or otherwise putting her child at risk. As Ashley describes it "...only with repeated phone calls from

worker to worker would they issue the money. And then it was ‘Well, we were going to give you the money all along, we just wanted to make sure you weren’t drinking, we wanted to make sure you didn’t have Dad living there.’” In this case, as in the case of Connor described above, the Ministry of Human Resources was maintaining an “invisible” conversation about the client supported by very little factual information and founded upon moral judgments; in this case, the focus was Candace’s ability to parent and care for her baby. Furthermore, as in the Chapman family described above, Ashley observed that Ann had learned that being on welfare is something to be ashamed of. Like Amos, Ashley observed that there seemed to be an assumption of innate inferiority associated with the use of the welfare system with her clients:

If you are working with women who are homeless, or who are misusing substances, who have abusive partners, who don’t look middle class...they’re in your office because they need money and they need money because they’re probably in some sort of circumstance that society doesn’t respect. So, stereotypes are all over that process.

Ashley also observed that Candace, at first, attempted to appear “deserving” to the welfare worker by “participating knowingly in the dance that is trying to appear deserving of welfare.” From Ashley’s perspective, the Ministry perceives “welfare moms” and “young moms” as undeserving because they should not have had children they could not support, and as such are irresponsible and blameworthy. Ashley described another client, Charlotte, who had been employed and was using welfare to top up her employment insurance benefits; Ashley observed that the Ministry was less morally judgmental of Charlotte than of Candace because she was “jumping through all the right hoops” and “didn’t have any abusive boyfriends or weird substance stuff.”

Ashley also described one situation in which a pregnant young woman was under scrutiny by the Ministry of Human Resources; she had given birth prematurely, and was on welfare. The Ministry immediately starting trying to determine the identity of the baby's father in order to find a source of income for the young woman and her baby. The policy manual used by Ministry workers states that "[c]lients are required to seek, accept and use all other income to support themselves before receiving assistance."<sup>143</sup> Although there are no specific directions in the policy manual with regard to single parents seeking support from the other parent of the child, the worker in this case likely considered the potential father as one possible source of income for the mother. Because the language in this section of the policy manual is quite broad—"all other income" must be sought—it leaves a certain amount of discretion to the worker to determine the types of income that a particular client has an obligation to seek. In this case, although Ashley understood this as being somewhat beneficial to the client, as she was able to have access to free DNA testing to determine paternity, it also meant that "her life got blown wide open...right off the bat." In this way, some clients must relinquish their privacy in order to meet their more tangible needs through the welfare system; their life changes and choices are subject to a considerable amount of scrutiny. Whether or not the Ministry determines the identity of the father, women and children do not receive any more money; rather, because the father's contribution would be deducted dollar for dollar from the welfare cheque, it is received it from the father *instead* of the Ministry.

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<sup>143</sup> *Ibid.* s. 7.9.

### C. Passivity

The participants in the study described a number of situations in which the Ministry of Human Resources constructed welfare applicants or recipients as passive, powerless subjects; there is also evidence that the applicants and recipients constructed themselves as such.

Anna, Ashley, and Allison all indicated that their clients attempt to construct themselves in a deferential, passive manner during interviews with Ministry of Human Resources workers. Amos also observed that when his clients had been “somewhat assertive” about welfare, “they were asked to leave the Ministry office.” Although Ashley and Anna both indicated that their clients eventually became more outwardly upset when their needs remained unmet in welfare interviews, it is clear that the clients’ behaviour implied a perceived benefit in their own passivity. In Anna’s words: “I’m trying to think of ways that I can say they tried to exercise their own power, but they couldn’t. All they could do was go in there and say they thought they deserved help.” Allison described a situation in which one of her clients, Cindy, was successful in obtaining benefits after having adopted a manner with her worker in which she “would sit up straight; she would nod, ‘Yes Ma’am, no Ma’am,’...It seemed like she was coming from a family where she learned as a child that you bow to authority, you still have your self worth but...she just seemed really well disciplined.” In this case, the client took steps to construct herself as deserving by demonstrating that she was willing to submit to the control of the welfare structure and respect the authority of the worker. The client’s apparent endorsement of existing power structures and the model of the passive, controlled client served to help her obtain benefits. The same client stated to her welfare

worker that she did not wish to receive the entire welfare cheque; from Allison's observations, this client perceived welfare as a favour, which supports the construction of welfare as a charitable benefit.

Both Andrew and Anna observed that showing anger or frustration in the welfare office resulted quickly in the client being kicked out of the office. In reference to another client, Colin, Anna stated that she had used passivity as a strategy to assist him after he had been kicked out of the welfare office for becoming angry with intake workers; she told him to "either be calm and polite, or...just completely shut up. That is your job." In this case, the advocate was endorsing a similar strategy to the one described above, in Cindy's case: she was teaching him to act in a passive, restrained manner in order to obtain the benefits he needed. As such, not only are clients disciplined directly through sanctions for unruly behaviour, but they may also be controlled indirectly through their advocates' endorsement of the ideal of the quiet, passive client.

With regard to the perception of welfare recipients and applicants as subject to a high degree of control by the Ministry of Human Resources, Anna noted that, with regard to the Chapman family described above, their worker had phoned and told Anna that the more she advocated for that family, the more "violations" the Ministry would find in the file. The worker told Anna that she already had sufficient evidence to pursue a fraud charge, and threatened to go ahead with it if Anna kept "pushing." In this case, the advocate was subject to Ministry control through threats. It is clear from the wording of the threat from the worker that the number of potential violations in the family's file was subject to his discretion, and that he would use that discretion to punish the advocate's

attempts to assist the family to obtain the necessary benefits through the Ministry's process. As such, the advocate, like the clients, is subject to the requirement of passivity and respect for worker authority, as well as the behavioural scrutiny and punishment that are used to enforce such behaviour.

Ashley gave an interesting example of the manner in which the Ministry's control over a client's life was reinforced by the normal operation of the welfare system. Charlotte, as described above, applied for welfare while she was waiting for her employment insurance benefits. She intended to rely on welfare benefits for as short a time as possible. Consistent with Ministry policy,<sup>144</sup> Charlotte was given a repayable hardship benefit to help cover living costs while she waited for her employment insurance benefits. According to the *Employment and Assistance Regulation*,<sup>145</sup> when Charlotte began receiving employment insurance, she was obligated to pay back the amount that welfare had given her. This reduced her income to a low enough level that she needed to rely on welfare again, which was "exactly what she didn't want to have happen." This instance provides an example of the contradiction between the Ministry's stated goal of fostering financial independence, and the actual operation of law and policy to increase dependence on welfare.

Both Andrew and Allison observed that physical aspects of the welfare office and behaviour of workers in Victoria contribute to the understanding that the balance of power was weighed heavily in favour of the workers. For example, Andrew observed

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<sup>144</sup> *Ibid.* s. 8.3.

<sup>145</sup> *Employment and Assistance Regulation*, *supra* note 127, s. 43.

that there is no seating for clients anywhere near where the workers sit and that barriers are maintained between people at all times. The intake workers are separated from clients and members of the public by a partition, and the spaces where workers interview clients are separated by Plexiglas barriers that give the impression of separateness without any apparent soundproofing effect. Furthermore, the workers interact with a computer screen that is not visible to clients.<sup>146</sup> The office environment reinforces the prevalence of control and scrutiny of clients in the written and unwritten policies employed by the Ministry.

Another aspect of the control of welfare recipients as observed by the study participants is the construction of welfare in terms of airtight categories into which applicants must fit if they wish to receive benefits from welfare. Ashley described welfare as a slot machine, into which you must put a certain number of the right type of coins in order to obtain a beneficial outcome; she also indicated that welfare workers were often unwilling to deviate from this construction. The case of Chuck, described above, also supports this understanding of the welfare system – the workers were encouraging Chuck to apply for disability benefits, as they perceived him as fitting into that category, which would give him a better financial situation. However, it did not fit his situation because he did not identify as a person with a disability, nor was there medical evidence to support such a claim. Many of the life circumstances faced by individuals applying for welfare benefits do not fit neatly into such categories, and as such, individuals who have profound social and economic needs are at times unable to

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<sup>146</sup> From my own observations of a Ministry of Human Resources office in March, 2005.

rely on the social welfare system to meet them. Furthermore, Anna, Amos, and Ashley all described welfare workers as “gatekeepers” to welfare benefits. As such, welfare applicants and recipients are under such strict control and categorization that their participation in the welfare process is undermined, both in terms of direct control and decision-making power on the part of the Ministry, and the failure to take account of the varied and dynamic circumstances that are profoundly connected to the experience of poverty.

Although the Ministry of Human Resources maintains an ideological and policy focus on “personal responsibility” and independence, including independence from welfare,<sup>147</sup> the situations described in this study make it clear that passivity, compliance, and relinquishment of control are crucial strategies for meeting needs through the welfare system, and as such that independence is actually undermined and discouraged.

#### **D. The Social Context of Poverty**

A number of the participants in this study identified occasions in which the Ministry of Human Resources did not consider contextual factors profoundly related to the impoverished situation of their clients. Anna, in describing what she observed in the case of Clare, explained that the Ministry did not take into account the fact that Clare had undergone major surgery to remediate the effects of sex work on her reproductive system. Clare was living in a housing situation which cost her around \$480 per month and was “relatively safe”, but in order to maintain her eligibility for welfare, she had to move into a less safe housing situation that was closer to the welfare shelter maximum (\$325 per

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<sup>147</sup> 2003/04 Annual Service Plan Report *supra* note 123 at 9 and throughout Report.

month). This move was necessary because maintaining the higher amount of rent on a total welfare income of \$510 per month means that the Ministry may “assume that you are doing something illegal to get the rest of the money.” From Anna’s observations, this failed to consider the difficulty that Clare would have in moving while she recovered from her surgery, as well as the fact that she was trying to leave sex work and required a safe living situation; both issues are inextricably related to Clare’s situation of poverty.

Anna also described an aspect of the Chapman family’s situation in which the lived reality of poverty, and attempts to alleviate poverty, had a negative impact on welfare eligibility. Mr. Chapman was working on-call, and as such the family’s income varied from month to month. The family’s changing income required that their welfare eligibility be re-negotiated each month, and in some cases their file was closed because Mr. Chapman had made too much money that month. Although it is clear in the law that a family is ineligible once they reach a certain income limit,<sup>148</sup> there is nothing in the law or policy that gives workers guidance on whether to close a file in this situation; as such, it is subject to the discretion of individual workers. When a file is closed, there is nothing in law or policy manual to preclude the operation of the requirement to undergo the three-week waiting period and work search in order to become eligible for welfare again.<sup>149</sup> In this case, the experience of poverty was dynamic; the family’s financial situation fluctuated based on Mr. Chapman’s sporadic work opportunities, but the Ministry’s means of determining eligibility was static. To deny welfare based on one month of

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<sup>148</sup> *Employment and Assistance Regulation*, *supra* note 127, Schedule B.

<sup>149</sup> I.e., having done the three-week work search recently does not appear to operate as an exception to the requirement to complete it for every person who wishes to obtain assistance. See *BC Employment and Assistance Manual*, *supra* note 126, s. 6.1.

sufficient earnings fails to take account of the lack of income stability that was a mark of poverty for the Chapman family; for the Ministry, there is no distinction between Mr. Chapman and a person who has a regular and reliable income.

Ashley described a situation often faced by her clients in which the Ministry fails to understand the social context of their lives. She stated that workers have asked her clients if they can return to live with their parents, or move to another province, when those options are not appropriate or feasible from the perspective of the client. Ashley also observed that the Ministry policy often requires pregnant clients to work until they are 7 or 8 months pregnant, and that these women are ineligible for the family rate of welfare until they actually give birth.<sup>150</sup> As such, these mothers are unable to prepare a safe and suitable home for their baby. In Ashley's words: "No woman should be asked to move the day their baby's born, and what if the baby's born mid-month?"

A related issue raised by the participants in the study was the threat of child apprehension and involvement by the Ministry of Children and Families. Anna and Allison both indicated that workers either threatened to involve or had involved the Ministry of Children and Families in order to "protect" the children of welfare recipients. Anna described a situation in which she was advocating for the Chapman family and indicated to the worker that the children needed milk and food, and that the family should be eligible for welfare. The worker responded with "...regardless of the choices these

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<sup>150</sup> The amount of support and shelter changes when a person's family includes one or more dependent children; for the purposes of rate determination, there is no distinction between a pregnant woman and any other adult recipient. *Employment and Assistance Regulation, supra* note 127, Schedule A.

parents have made, we need to protect these children.” This response undermines family relationships by blaming the poverty on the “choices” or the parents, as well as implying, in the absence of any evidence of neglect or abuse, that the children should be “protected” from those “choices.” Amos also pointed out that when children in families receiving welfare are temporarily apprehended, the welfare eligibility of the parents drops immediately,<sup>151</sup> which reduces the parents’ ability to provide a home for their children that would be acceptable to the Ministry for Children and Families.

In the case of the Chapman family, Anna observed that the Ministry failed to take into account the linguistic and cultural barriers facing the Chapman family as recent immigrants; she gave the specific example of Mrs. Chapman filling in the welfare forms without fully understanding what they said. In this case, there was no indication that the Ministry assisted the clients to better understand the forms or took into consideration the linguistic and cultural barriers faced by the Chapman family. Furthermore, there is nothing in the law or policy to indicate that the Ministry provides any specific support to people facing cultural and linguistic barriers in the welfare process; as such, the manner in which these barriers are addressed is a matter of discretion for the workers.

One of the most poignant examples of the Ministry’s failure to address the context of poverty in an individual’s life was articulated by Anna. Clark, one of her clients, had a drug addiction problem. When he was applying for welfare, he was required, as all new applicants are, to meet a two-year financial independence test. While the Ministry was collecting information from him, he indicated that he had had some income in recent

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<sup>151</sup> The rates change based on the number of children living in the home. *Ibid.* Schedule B.

years, but had spent a portion of it to maintain his supply of drugs. Although there is nothing in the policy or law to indicate that a worker would need to have information about expenditures during the two-year period, the Ministry worker required that Clark provide receipts to prove that his money had in fact been spent on drugs. For someone who is using illegal drugs, this is an impossible request to meet. For the Ministry to treat street drug expenditures in the same way as other, licit, expenditures demonstrates a failure to address the social context in which Clark's poverty occurred.

Anna gave a further example of a mother who was on welfare and who was collecting cans and bottles for return to make some extra money; on one occasion, this client's cheque was held back by the Ministry and she was required to declare the exact value of the cans and bottles she had collected. Again, this demonstrates a failure on the part of the Ministry to engage realistically with the context and impact of poverty in a client's life.

Andrew described another situation in which the Ministry refused to provide shelter costs to a person who was living in an uninsured van; the client had requested that heating oil be considered as a shelter cost, and the Ministry refused, on the assumption that any costs paid for a vehicle are transportation costs, rather than shelter costs. This discretionary decision<sup>152</sup> also fails to acknowledge the actual social context of poverty.

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<sup>152</sup> The *Employment and Assistance Regulation* stipulates that shelter costs may include utilities for any "place of residence"; it is for the workers to determine what constitutes a "place of residence." *Ibid.*

**E. Dignity and Agency**

The dignity and agency of clients, as well as their mental health and emotional well-being are inextricably connected to the way in which they are constructed as welfare recipients, the manner in which the actual context of their lives is (mis)understood by the Ministry of Human Resources, and the extent to which their experiences and perspectives are erased in interactions with the Ministry.

Some of the cases described above have clear impacts on a client's dignity, by which I mean the extent to which the treatment of a person reflects equal human value and fosters self-respect, autonomy and positive mutuality. The classification of people living in poverty as innately unintelligent, lazy, unfit parents, unattractive, untrustworthy or otherwise incapable are aspects of moral regulation, but they also undermine the concept that such people are equally valued as human beings and discourage positive self-regard. Furthermore, the attendant assumptions that people living in poverty require extreme scrutiny, control and discipline from administrative bureaucracies such as the welfare system by definition curtail their autonomy within their own lives. Finally, by failing to consider the relational and social context in of poverty, the welfare system in B.C. functions to discourage positive mutuality because it either ignores or undermines relationships in the lives of applicants and recipients, and also because the worker-client relationship exists within a power dynamic that precludes mutual respect between equals.

**F. Discretion and Access**

Through the perspectives that emerged from the study it is clear that welfare workers are perceived as wielding discretion by clients. Although Ministry workers are

required to follow the law and policy manual, and a series of computer prompts, through the gaps in policy, as well as the interpretation of broad terms such as “reasonable work search” and “place of residence,” they retain enough discretion to seriously affect the impact of the application of policy on welfare applicants and recipients. As such, the construction and understanding of discretion within the welfare system merits further exploration.

Another interesting tension that arises from the examples given by study participants is the imbalance of access to information; through close scrutiny and mandatory reporting, the Ministry is able to have access to details of clients’ lives, but the clients are unable to access information about the Ministry’s decision-making processes, and even their own files. This further detracts from the clients’ ability to manage their own lives and participate in decisions that may have profound material and social impacts on them.

#### **G. Resistance/Agency**

During the study, participants identified a number of resistance strategies which had been used by clients to better meet their needs through the welfare system. One of the most extreme tactics was described by Anna, whose client Clare had complications from surgery for a malignant breast tumour. On one occasion, she was at an appointment with a worker who was expressing disbelief regarding the severity of her medical problems, and Clare took her shirt off and showed him the tumour. The worker subsequently met Clare’s requests.

Another strategy that was described by a number of study participants was withholding information; for example, women remaining silent about the presence of their children's father in their lives, not reporting pay stubs for earned income, not claiming food or food vouchers that they had received, and not returning Ministry phone calls. All of these strategies are unlawful in terms of the legislation and policy, and as such carry a risk of penalty; on the other hand, clients were clearly able to obtain higher welfare rates and maintain a modicum of privacy using these means, which improved the extent to which their needs were met in the welfare process.

Allison described a strategy, known to some advocates as "pathologization", in which clients attempt to find ways to fit themselves into categories of PPMB (Persons with Persistent Multiple Barriers) or PWD (Persons with Disabilities) in order to receive adequate benefits. Presumably, in some cases this would mean exaggeration of existing medical conditions or discovery of "new" medical conditions that could be used to apply for disability status. As such, the applicants could construct themselves as more incapacitated and, therefore, "deserving" of increased welfare benefits.

A number of participants indicated that the clients were better able to meet their needs through the welfare system by using an advocate. Anna described the change in the way her client Clark was treated when she accompanied him to the welfare office: he told her that when she was with him, he felt that he was treated with more respect. Anna also observed that when she was at the welfare office with Clark, who had a history of communication difficulties with the Ministry, he was able to answer the worker's questions and complete the interview. Anna noted that the worker seemed "terrified" that

a third person was present at the interview. Andrew described a similar reaction to his presence at a welfare interviews: “It was quite clear that she [welfare worker] wasn’t used to having a client with somebody else there. She was used to having all the power.” Ashley also observed that her presence as an advocate seemed to play a pivotal role in obtaining benefits where the clients had been unable to obtain benefits on their own. Furthermore, Amos pointed out the possibility of resisting the Ministry’s control by using the reconsideration and appeal process; as Anna observed, though, this process can be difficult to navigate without an advocate and there is a desperate lack of resources in the advocate community to provide assistance with appeals.

The posture of compliance and passivity, described earlier, is sometimes deliberately engaged in by clients in order to have their material needs met in the welfare process. However, some clients do not wish to relinquish control and agency in the process as a means to more tangible rewards; others exercise agency to engage in resistance strategies that assist them in getting what they need from the welfare system.

#### **H. Suggestions from Participants**

When asked how the administration of welfare should be changed, the study participants provided a range of suggestions:

- Welfare rates should be increased in order to meet actual needs.
- The emergency needs assessment process should be better staffed.
- Workers’ roles and obligations should be clarified, especially around access to information.

- Applicants should be provided with information detailing their rights and entitlements.
- Policy and discretion should be made more transparent to clients.
- People should be given more privacy in the welfare office.
- Clients should not be required to wait for hours.
- Welfare should be “humanized,” through an ideological shift on the part of the Ministry and society at large.
- The welfare system should be abolished in favour of guaranteed annual income.
- Welfare workers should be more accountable.
- Welfare workers should be required to be respectful.
- People should be allowed to work part time while on welfare.
- Standards and expectations of clients should be understood contextually.
- It should be assumed that people are deserving until they prove otherwise.

## **I. Concluding Comments**

Through the information collected in this study, it is clear that applicants and recipients in the British Columbia welfare system experience the undermining of their agency and dignity through their interactions with the administrative structure of welfare administration. They are required to act in a passive manner in order to obtain benefits, and are subject to moral categorization and undue scrutiny. Welfare appears to be constructed as a charitable process. There were several examples of resistance, ranging from silence to assertive demonstration of a medical condition. The effectiveness of the latter strategy is particularly interesting because it contrasts with the apparent results of assertion in other cases - namely, the relegation of clients to a lower tier of service or

exclusion of clients from the welfare office entirely. Future research directions in this field might include a detailed examination of the role of discretion in worker-client relationships, including interviews with welfare workers and supervisors, and the experience of the reconsideration and appeal processes from the perspectives of clients, workers and witnesses. The various affronts to dignity and agency described by the study participants are in conflict with the commitment to dignity and agency offered by human rights regimes; the next chapter will assess the potential of the human rights system in British Columbia to address these violations.

## **CHAPTER 5: HUMAN RIGHTS TRIBUNALS AND POVERTY**

There are several legal structures through which a person could seek to address the affronts to dignity, agency and social inclusion described in the previous chapters, including initiating a complaint with the Ombudsman,<sup>153</sup> seeking administrative review of the decision through the welfare appeal board and strategic *Charter* litigation.<sup>154</sup> I have chosen to focus on provincial human rights regimes because they are the most accessible option, and thus the avenue most likely to be pursued by people living in poverty.<sup>155</sup> My study focuses specifically upon British Columbia.. As noted earlier, human rights regimes are founded explicitly on fundamental commitments to the dignity, agency and social inclusion of all individuals, and, as such, should provide remedies for the violations described above. Although it is possible to construct a more abstract, item by item, parsing of how these two legal regimes - the welfare scheme and the human rights code - do and do not mesh, Mouna's narrative provides an account that is less fragmented and more grounded in the lived experience of welfare clients.

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<sup>153</sup> The B.C. Public Interest Advocacy Centre is currently pursuing a complaint with the Ombudsman with regard to welfare practices in British Columbia. A full copy of the complaint is available online at <[http://www.bcpiac.com/pub/newsReleases/newsRel\\_March2005.html](http://www.bcpiac.com/pub/newsReleases/newsRel_March2005.html)> (accessed July 9, 2005).

<sup>154</sup> See, e.g. *Gosselin v. Québec (A.G.)*, [2002] 4 S.C.R. 429.

<sup>155</sup> Although federal human rights legislation exists, as noted in Chapter 3, the Canadian Human Rights Act does not currently include any protection for discrimination poverty-related grounds *Canadian Human Rights Act*, R.S.C. 1985, c. H-6.

Elaborating on the hypothetical narrative of Mouna from Chapter 3,<sup>156</sup> this Chapter will offer a critical analysis of the legal human rights approach to the lived experience of poverty. The analysis will describe the course of a “best case scenario” example of human rights tribunal litigation based on Mouna’s situation, with attention to the tangible, social, institutional and ideological barriers she would encounter as structural aspects of the human rights tribunal process. The rights approach will be assessed with regard to the concerns enumerated in Chapters 2, 3 and 4 as evidenced by the history and experience of poverty and social welfare in Canada and the experience of the British Columbia welfare system. In particular, this Chapter will assess the use of poverty-related grounds of discrimination in Canadian human rights legislation in terms of its potential to address the actual needs of people living in poverty, with an emphasis on the manner in which poverty is constructed, the participation of the claimants, and the extent to which dignity, agency, and social inclusion are supported.

### ***I. Mouna’s Situation and the Human Rights Process***

*Several days after Mouna’s meeting with Joe, the Ministry verification officer who stated that Mouna would be cut off welfare and charged with fraud for failing to claim the extra groceries she had been receiving, Mouna decides to call the welfare office again. Her rent is due in two days, and she does not have sufficient money to pay it. She has continued to search the newspapers for jobs that she could apply for, but is becoming increasingly discouraged and despondent. She is finding that she has less energy and enthusiasm for the job search, or even for her children. Her husband is still in Morocco, waiting for Immigration Canada to finish processing his documents so that he can obtain*

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<sup>156</sup> I have returned to Mouna’s narrative because it is complete, coherent, detailed and based on current policies and practices in the British Columbia welfare system. For further discussion on the role of narratives in legal scholarship, see Robson, *supra* note 118 at 87-111.

*a visa to enter Canada. He can send \$200 to help Mouna cover the rent, but she will need to find a way to come up with the remaining \$700 plus the cost of utilities, food and clothing.*

*When Mouna calls the office, she speaks with Sabrina, an intake worker. Sabrina tells Mouna that, although there will be no fraud charge against her, she has been suspended from welfare, and she will need to become "compliant" if she wishes to receive another welfare cheque. Sabrina tells Mouna that she will have to claim the value of all income, including that of the food her cousin gives her, show receipts to a verification officer, and pay back the amount she should have deducted from her last cheque. Sabrina also states that Mouna will have to continue with her employment-related obligations. Mouna tells Sabrina that her rent is due in two days. Sabrina confirms that Mouna has paid rent for the current month, indicates that the next available appointment with a verification officer is in five days, and sets up the appointment.*

*Mouna tries to find other means of paying her rent, but she has exhausted the resources available to her through friends and family, and she is ineligible for bank loans or credit because she is unemployed. She is under extreme stress. The next day, she calls the welfare office again in order to try to obtain emergency assistance. Donald, the intake worker who receives her call, informs her that she is not eligible for an emergency needs assessment because she is already "in the system", and the emergency needs assessment is for intake purposes only. He also lets her know that, in any case, her housing situation is not considered an emergency until she actually receives an eviction notice from her landlord. Donald also asks Mouna if her health or that of her children is in danger, and when she says that their physical health is fine, but the stress is starting to affect her life, Donald informs her that she is also ineligible for a crisis supplement. Donald confirms her appointment with the verification officer, and recommends that she ask for further assistance at that time.*

*Mouna is unable to pay her rent. On the first of the month, when her rent is due, she calls her landlord and explains, with considerable embarrassment, that she is having difficulties with welfare and her rent will be a few days late. Ken, the manager who*

*represents the property management company that owns her apartment, is frustrated and tells her that if he had known she was on welfare, he would never have rented to her. He further states that he doesn't understand why "you people take our tax dollars because you don't want to work." Finally, he tells her that if she's going to be on welfare and not working, he does not want to have her as a tenant. The following day, Ken personally delivers a Notice to End Tenancy document to Mouna; the document states that she must pay the rent, or she will have to move out within ten days.*

*Four days later, Mouna meets with Janice, a verification officer; by this time Mouna is visibly distressed. Mouna does not have the required information about the potential cost of groceries and the verification worker asks her to make an appointment within five days to provide the information. Mouna shows the eviction notice to Janice, who informs her that she must make sure to pay rent and obtain a rent receipt for this month in order to receive the shelter portion of her welfare cheque, and to bring the receipt to the next meeting.*

*Mouna is evicted from her home; she sends her two children to stay with her cousin for the time being, and moves into a shelter for homeless women. She is subsequently disqualified from the shelter portion of her welfare cheque, which, in addition to the \$100 deductions for her husband's contribution and the \$125 deduction for the food her cousin provides, and a back payment of \$75 for food her cousin provided last month, leaves her with a welfare cheque of \$25.58. If she does not find a living situation for herself and her children, she risks losing her child tax credit, becoming ineligible for welfare, and may also risk intervention by the Ministry of Children and Families.<sup>157</sup>*

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<sup>157</sup> The British Columbia welfare system includes a structure for reconsideration and appeal of certain decisions . Reconsideration decisions are not publicly available, and only a fraction of the Employment and Assistance Appeal Tribunal decisions are available. For further information, please see *BC Employment and Assistance Manual* , *supra* note 126, s.2, and the Employment and Assistance Appeal Tribunal's website at <<http://www.gov.bc.ca/eaat/>> (date accessed: 5 June 2005).

Most of the provincial human rights legislation in Canada gives some form of protection from discrimination on the basis of poverty, or the appearance of being poor. In Quebec<sup>158</sup> and New Brunswick<sup>159</sup>, the term used in the legislation is “social condition.” In P.E.I.<sup>160</sup>, Nova Scotia,<sup>161</sup> Manitoba<sup>162</sup> and Nunavut<sup>163</sup>, discrimination is prohibited on the basis of “source of income” or “lawful source of income.” British Columbia’s *Human Rights Code* prohibits landlords from discrimination against tenants or prospective tenants on the basis of “lawful source of income.”<sup>164</sup> In Newfoundland, human rights protection extends to cover “social origin”<sup>165</sup> and in Saskatchewan “receipt of public assistance” is listed as a prohibited ground of discrimination.<sup>166</sup> The level of protection varies; in some cases, for example, protection on these grounds applies only to tenancy situations.<sup>167</sup> Protection on these grounds appears to be litigated quite infrequently compared to other grounds of discrimination; despite the fact that it is prohibited in several jurisdictions, the Canadian Human Rights Reporter reports only 42 cases in all of Canada in which the complainant argued discrimination on the ground of

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<sup>158</sup> *Quebec Charter of Rights and Freedoms*, R.S.Q., c. C-12, s. 10.

<sup>159</sup> *Human Rights Act*, R.S.N.B. 1973, c. H-11, s. 3.

<sup>160</sup> *Human Rights Act*, R.S.P.E.I. 1988, c. H-12, s. 1

<sup>161</sup> *Human Rights Act*, R.S.N.S. 1989, c. 214, s. 5.

<sup>162</sup> *Human Rights Code*, C.C.S.M. 1987, c. H175, s. 9.

<sup>163</sup> *Human Rights Act*, S.N. 2003, s. 7.

<sup>164</sup> *Human Rights Code*, R.S.B.C. 1996, c. 210, s. 10 [hereinafter *B.C. Human Rights Code*].

<sup>165</sup> *Human Rights Code*, R.S.N.L. 1990, c. H-14, s. 6.

<sup>166</sup> *Human Rights Code*, S.S., 1993, c. S-24.1, ss. 9-17.

<sup>167</sup> E.g. *B.C. Human Rights Code*, *supra* note 164, s. 10(1).

“source of income” and five on the ground of “receipt of social assistance.” There were 47 on the ground of “social origin,” but few if any of these were related to poverty issues. On the ground of disability, it reported 592 cases, and on the ground of sex it reported 304 cases. “Social condition” was used as a ground of discrimination in 31 reported cases, and most of them were based on tenancy situations.

If Mouna chose to attempt to address her social and economic needs through British Columbia’s human rights system by initiating a complaint against her landlord, her first barrier would be in obtaining legal assistance. Legal aid in British Columbia no longer covers human rights, welfare or tenancy matters.<sup>168</sup> It is possible, but by no means guaranteed, that her case would be accepted by the Community Legal Assistance Society (CLAS), which provides legal representation to selected human rights complainants.<sup>169</sup> If her case was not accepted by CLAS, she may also be able to obtain assistance from a smaller non-profit advocacy organization, in which case the services available to her would range from information and support to partial legal representation. It is also possible that she could represent herself, in which case she would likely face a considerable disadvantage, both in terms of negotiating a foreign legal system alone and also because the property management company would almost certainly be represented by a lawyer. In any case, she would face particular difficulties accessing the human rights system because she is living in a shelter, with limited access to a private telephone,

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<sup>168</sup> Legal Services Society of British Columbia, “What problems are covered by legal aid?” (2005) online: Legal Services Society website <[http://www.lss.bc.ca/legal\\_aid/problems.asp](http://www.lss.bc.ca/legal_aid/problems.asp)> (date accessed: 19 June 2005).

<sup>169</sup> Community Legal Assistance Society, “Human Rights Clinic” online: <[http://www2.povnet.org/hr\\_clinic\\_clas](http://www2.povnet.org/hr_clinic_clas)> (date accessed: 19 June 2005).

and also because of the cultural and linguistic barriers flowing from her relatively recent immigration to Canada and the fact that English is her third language.

Assuming that Mouna's case was facilitated by a lawyer or other advocate, it is likely that she would file a complaint against the landlord and the property management company on the grounds that they discriminated against her based on her source of income. Although the landlord's statement that "*you people* take our tax dollars because you don't want to work" may have been based in part on racist and/or sexist perceptions, and although Mouna's source of income is integrally connected with her experience as a recently immigrated woman of colour with children, the evidence in this case is neither specific nor strong enough to support a separate claim of discrimination based on race, sex, or family status. Because Ken clearly stated that he did not want to rent to Mouna due to the fact that she was on welfare, her advocate would likely pursue a claim based solely on "source of income" as the ground of discrimination. Because the facts are fairly straightforward, the complaint form could be filed quickly with the Human Rights Tribunal, and the complaint would have a high likelihood of being accepted by the Tribunal. However, it often takes two months or more for the Tribunal to make the decision to accept a complaint for consideration, during which time Mouna would not be eligible for any sort of relief.<sup>170</sup> During this time, if Mouna remained in the shelter and her children live with her cousin, she would continue to be ineligible for the majority of her welfare cheque. In addition, the longer that she is unable to provide for her children,

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<sup>170</sup> Although the Tribunal does not publish information on the length of time complainants must wait between stages of the Tribunal process, this information is based on my own experience as a human rights advocate in the a human rights advocate in the British Columbia Human Rights Tribunal system.

the greater the likelihood of intervention by the Ministry of Children and Families. During this time, Mouna is likely to experience social exclusion and an undermining of her own dignity and agency because she is completely reliant on charitable services to meet her needs.

If the respondents to Mouna's human rights complaint agree to hold a settlement meeting, it would likely take place at least another two months from the time the complaint is accepted; the respondents, complainant and Tribunal would need to find a mutually amenable time to hold the settlement meeting. A Tribunal member would be present at the settlement meeting, with the role of facilitating settlement in a non-partisan manner.<sup>171</sup>

If a settlement meeting took place, the respondents would likely offer a certain amount of financial compensation, because it is less costly than undergoing a Tribunal hearing, and because the Tribunal is likely to award financial damages in this case, if it were to go to hearing. It is possible, but less likely, that the respondents would offer an apology or educational remedies, such as sensitivity training on the issue of poverty.<sup>172</sup> It is highly unlikely that the respondent would be willing to reinstate Mouna as a tenant, because, as described below, this is not a remedy available to Mouna through the Tribunal process.

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<sup>171</sup> *B.C. Human Rights Code*, *supra* note 164, s. 27.6.

<sup>172</sup> Settlement agreements are not publicly available; this speculation is based on my own experience as a human rights advocate in the British Columbia Human Rights Tribunal system.

At this juncture, Mouna would have two options: she could accept the offer of financial settlement, which would likely be in the amount of \$1000-2000,<sup>173</sup> or she could refuse the offer of settlement in order to pursue the matter at a Tribunal hearing. Accepting the offer would meet Mouna's needs insofar as it would permit her to establish a home for her children again, and provide her with funds to support her family for a certain period of time, during which time she may be able to find employment; if necessary, she may also be able to go back to her initial level of welfare assistance, as she will be able to provide rent receipts and her children will be living with her. This option would also permit Mouna a modicum of emotional and material security, at least for a short period of time. On the other hand, Mouna may feel that justice has not been served, as the respondents were not required to actually acknowledge the way in which her dignity and well-being, and that of her children, was undermined. Mouna may be enraged that any respondent with money can simply "pay off" people against whom they have discriminated; she knows that the settlement amount is a trivial sum for a property management company, and as such, she may be concerned that this would not function to change the discriminatory behaviour of the respondent. If Mouna chooses to reject the offer of settlement and pursue a formal hearing with the Tribunal, she will have to wait another several months before the hearing without receiving financial compensation.

If Mouna's case was heard before the British Columbia Human Rights Tribunal, and she was perceived as a credible witness, it is highly likely that the evidence of the landlord's statements with regard to her receipt of welfare and desirability as a client

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<sup>173</sup> This amount is based on the assumption that respondents would be willing to offer a maximum settlement equivalent to what the complainant would be likely to obtain in a judgement from the Tribunal in a successful case with similar facts. See *infra* note 175.

would lead to a finding of discrimination on the ground of source of income under the Human Rights Code; although the Tribunal is not bound by its previous decisions, a number of cases have been decided in favour of the complainant on in comparable factual situations.<sup>174</sup> In one of these cases, *Birchall v. Guardian Properties Ltd.*, the Tribunal found that the perception of people on income assistance as being unable to pay the rent and a negative impression of the Ministry of Social Services (now the Ministry of Human Resources) constituted adverse effect discrimination.<sup>175</sup> In all of the reported cases wherein source of income discrimination was proved by the complainant, the Tribunal ordered compensation for injury to dignity, feelings and self-respect, ranging from \$1000-2000; in some of the cases, compensation for out-of-pocket expenses was also awarded. Although the Tribunal ordered the respondent to cease the contravention of the *Human Rights Code* in several of the cases, it did not order an apology, education for the respondents, or any other non-financial compensation in any case,<sup>176</sup> even where such remedies were requested by the complainants.<sup>177</sup> As such, Mouna would likely receive a financial remedy similar to that which she could have obtained in the settlement process,

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<sup>174</sup> See *Neale v. Princeton Place Apartments Ltd.*, [2001] B.C.H.R.T.D. No. 6. [hereinafter *Neale*]; *Desrosiers v. Kaur*, [2000] B.C.H.R.T.D. No. 23 [hereinafter *Desrosiers*]; *Birchall v. Guardian Properties Ltd.*, [2000] B.C.H.R.T.D. No. 36 [hereinafter *Birchall*]; *Tanner v. Vlake*, [2003] B.C.H.R.T.D. No. 45 [hereinafter *Tanner*].

<sup>175</sup> *Birchall, ibid.*

<sup>176</sup> See *McDonald v. British Columbia (Ministry of Human Resources)*, [2005] B.C.H.R.T.D. No. 59 [hereinafter *McDonald*]; *Tanner, supra* note 175; *Neale, supra* note 175; *Birchall, ibid.*; *Desrosiers, supra* note 175; *Neufeld v. British Columbia (Ministry of Social Services)*, [1999] B.C.H.R.T.D. No. 23; *Larson v. Graham* [1999] B.C.H.R.T.D. No. 20; *Trudeau v. Chung*, [1991] B.C.H.R.T.D. No. 21; *Anthony v. British Columbia (Council of Human Rights)*, [1989] B.C.J. No. 1467; *B.C. Human Rights Coalition v. British Columbia (Ministry of Human Resources)* (1987), 8 C.H.R.R. D/4275 (B.C.C.H.R.).

<sup>177</sup> See especially *Tanner, supra* note 175.

but she would also obtain a written decision in her favour that would be publicly available. Although this would not meet her economic and social needs *per se*, it may be more satisfactory to her in terms of the desire to see “justice” served, and the publicity may deter further contraventions.

Although the discriminatory comments made by Mouna’s landlord would likely constitute discrimination on the ground of source of income, it is abundantly clear in both the “source of income” and “social condition” human rights case law across Canada that her actual eviction would not be considered discriminatory. Although it is obvious that her eviction was directly related to her source of income or social condition, courts and tribunals recognize unequivocally that landlords have the right to evict tenants who are in fact unable to pay the rent, and to refuse to rent to tenants where the landlord has a well-founded reason to believe that a particular prospective tenant will not be able to pay. Quebec’s Tribunal des Droits de la Personne, for example, has stated:

Il est vrai qu’un propriétaire est en droit d’exiger une caution dans certaines circonstances lorsqu’il a des motifs de croire que la locataire ne sera pas en mesure ou aura de la difficulté à payer son loyer. D’ailleurs, le Tribunal a reconnu ce droit au propriétaire dans plusieurs jugements. Cependant, avant de formuler cette exigence, encore faut-il qu’il fasse un minimum de vérifications sur la capacité de payer du locataire potentiel pour évaluer si un risque subsiste réellement.<sup>178</sup>

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<sup>178</sup> *Québec (Comm. des droits de la personne et des droits de la jeunesse) c. Fondation Abbé Charles-Émile Gadbois* (2001), CHRR Doc. 01-198 (T.D.P.Q.) at 53. An informal translation of this passage is as follows: It is the case that a landlord has the right to exercise caution in certain circumstances wherein he has reason to believe that the tenant will not be able to pay or will have difficulty paying his rent. As such, the Tribunal has recognized this as the landlord’s right in numerous judgments. However, before exercising this caution, it is necessary for the landlord to, at the very least, assess the potential tenant’s ability to pay in order to evaluate whether there is a real risk.

If the hearing was successful, the Tribunal could order the respondent to “make available to the person discriminated against the right, opportunity, or privilege that, in the opinion of the member or panel, the person was denied contrary to this Code.”<sup>179</sup> Because the actual eviction from tenancy is not considered to be a “right, opportunity, or privilege,” contrary to the Code, the remedy of reinstatement is not possible. This illustrates one of the ideological barriers that Mouna and other claimants living in poverty face in the human rights system. It is considered reasonable for landlords to exclude low-income people from their properties, and their entitlement to do so is understood by tribunals as a legal right. This functions to normalize and exacerbate existing social and economic inequalities; it also depoliticizes poverty by cloaking the power imbalances associated with inequality.

In effect, the protection from discrimination on the grounds of source of income or social condition is of limited use as a strategy to meet social and economic needs because it fails to consider the actual experience of poverty; under human rights law, not only is Mouna powerless to have her social needs met in terms of education, apology, or accommodation, she is also unable to have her material needs for housing and economic security recognized or met other than in a very temporary way.

Another, and perhaps more fundamental, aspect of Mouna’s situation which is not addressed by the human rights system is the role of the Ministry of Human Resources in creating her situation of need. The actions of the landlord are to some extent only a red herring. Although the discretion and application of policy by the intake workers and

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<sup>179</sup> *B.C. Human Rights Code*, *supra* note 148, s. 37(2)(d)(i).

verification officers in her case was profoundly influential on her situation and functioned to undermine her social and economic needs, under human rights law, Mouna would be unable to pursue any recourse with regard to the Ministry. In a recent case, a recipient of disability benefits initiated a human rights complaint against the Ministry of Human Resources based on the fact that the Ministry would not provide a transportation subsidy to him, as he lived in a rural area that was not serviced by public transportation and used a car to obtain groceries and other resources, rather than the bus.<sup>180</sup> In its decision, the British Columbia Human Rights Tribunal confirmed that “source of income” was strictly limited to the area of tenancy, and as such was not a valid ground of complaint in this case. Most significantly, the Tribunal held that the distinction made by the Ministry in its decision not to provide a transportation subsidy to the complainant was not based on disability, but rather on place of residence, which is not a protected ground under the *Human Rights Code*; as such, the complaint was summarily dismissed.<sup>181</sup> Although persons with disabilities face particular challenges with regard to meeting their basic needs, including transportation needs, the Tribunal agreed with the Ministry’s argument that disability was not relevant to the distinction made by the Ministry, although from the perspective of the lived experience of a person with disabilities, it is impossible to artificially separate the experience of disability from other aspects of that person’s experience, such as their place of residence. Arguably, the fact that the ultimate subject of such policy decisions is living with a disability is never irrelevant. If Mouna were to attempt to challenge the multiple ways in which the practices of the Ministry were

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<sup>180</sup> *McDonald*, *supra* note 177.

<sup>181</sup> *Ibid.*

informed by stereotypes and violated her human rights, she would have little chance of success. Because “source of income” is limited to tenancy, she could not use this ground to challenge the Ministry’s provision of service. Furthermore, the grounds of race, sex or family status would not succeed because, without having made any explicitly racist or sexist remarks, the Ministry would have a very strong argument that all recipients of welfare received similar treatment, and the distinctions that were made were not made on enumerated grounds. In short, the core elements of Mouna’s experience of indignity, denial of agency, and social exclusion are not captured by the human rights system.

## ***II. Structural Inadequacies of Human Rights Regimes***

### **A. Poverty-related Grounds**

Although there has not been much actual litigation on poverty-related grounds of discrimination under the rubric of human rights legislation, there has been considerable academic and policy-based comment on the matter, particularly in regard to the consideration by the Canadian Human Rights Act Review Panel on the issue of whether to add the ground of “social condition” to the *Canadian Human Rights Act*. Lynn Iding describes the difference between protection from stereotypes of poverty and discriminatory behaviour (i.e. a landlord refusing a tenant who can afford the rent because she appears poor, or is on social assistance), and protection from discrimination based on ability to pay (i.e. a landlord refusing a tenant who *actually cannot afford* to pay rent).<sup>182</sup> The extension of protection on the latter basis would be consistent with the

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<sup>182</sup> L. Iding, “In a Poor State: The Long Road to Human Rights Protection on the Basis of Social Condition.” (2003) 41 *Alta L. Rev.* 513 at para. 10-12.

doctrine of ‘adverse effect’<sup>183</sup> used in human rights jurisprudence in other areas of discrimination; that is to say, a certain rental rate may appear neutral, but effectively functions to exclude certain groups (e.g. those whose source of income is welfare). If accepted, this reasoning would potentially impact the substantive equality of people living in poverty. Though this argument is attractive insofar as it attempts to consider the social inclusion of those with low incomes by eliminating virtually all material barriers to participation; courts and tribunals, however, have not yet accepted it. In the existing human rights paradigm, it is unlikely that this argument will be accepted. Taken to its logical conclusion, this argument would mean that basic goods, services and tenancy would have to be available to all persons regardless of income or ability to pay, which would, as *Iding* points out, be at odds with the economic inequality which is “a hallmark of our democratic free market.”<sup>184</sup>

A more realistic and compelling argument in terms of social needs is that which advocates the use of human rights legislation as protection from the discriminatory and harmful effects of stereotyping against the poor.<sup>185</sup> In its 2000 report, the Canadian Human Rights Act Review Panel considered the suggestion that such discrimination and

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<sup>183</sup> But see *Birchall*, *supra* note 175, wherein the Human Rights Tribunal seems to take a much narrower approach to the definition of “adverse effect discrimination.”

<sup>184</sup> *Iding*, *supra* note 183 at para. 23.

<sup>185</sup> Although there is ample evidence of stereotyping and discrimination of the poor, it is of note that some researchers believe the opposite. Chris Sarlo, for example, states: “At one time, the label “poor” was pejorative and demeaning. It was a label that people wore reluctantly and often with shame. More recently, with the advent of a fairly elaborate social safety-net, “poor” has far less stigma attached.” Sarlo, *supra* note 46 at 9. The basis on which Sarlo supports this claim is unclear.

mistreatment might be a cause of poverty, as well as an effect.<sup>186</sup> The Panel also noted that there is an interrelationship between the ground of social condition and other grounds listed in the Act; conceptually, this is significant in terms of the possibility of addressing social needs in poverty because it acknowledges some aspects of the discrimination inherent in the economic stratification of society. The Panel concluded that, although “positive” social and economic rights should not be part of the Canadian Human Rights Act, social condition should be added as a protected ground of discrimination in the Act.<sup>187</sup>

To a limited extent, this approach to the use of the protected ground of social condition in human rights legislation is undeniably useful in terms of countering the application of stereotypes to people living in poverty; however, it is quite inadequate as a method of addressing poverty as a social, relational, and dynamic phenomenon in which the participation, dignity and agency of people living in poverty plays a central role. Several authors have offered critical analyses of the issues considered in the Human Rights Act Review Panel’s report. The critique is aimed at the failure to address the material, redistributive dimension of the inequality experienced by people living in poverty. Shelagh Day and Gwen Brodsky, for example, agree that the addition of social condition is useful to help combat stereotyping and prevent discrimination in certain circumstances, but argue that it is profoundly insufficient to address women’s rights to substantive equality, including social and economic equality, especially considering

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<sup>186</sup> Canadian Human Rights Act Review Panel, *supra* note 68 at 118-119.

<sup>187</sup> *Ibid.* at 124.

international human rights standards applicable to Canada.<sup>188</sup> They conclude that the Canadian Human Rights Act should be revised to include numerous amendments, among them the affirmation that everyone to whom the Act applies has a responsibility to take positive steps to promote equality, the codification of “adverse effect” provisions in terms of women’s experience and the explicit statement that “a purpose of the Act is to ensure that economic benefits and opportunities are distributed in the society in a way that redresses the longstanding social and economic disadvantage of women, Aboriginal peoples, people of colour and people with disabilities.”<sup>189</sup> Similarly, Martha Jackman and Bruce Porter argue that international standards regarding social and economic rights should be included in the Canadian Human Rights Act, along with a positive obligation on the part of governments to address social and economic inequality, and the establishment of a Social Rights Panel.<sup>190</sup>

I do not disagree with the above critiques; the suggestions of the authors would certainly not be inconsistent with the critical lens described above. However, even if the Canadian government were to enact the legislative changes recommended by the authors, and even if all of the provincial and territorial governments were to follow suit, human rights legislation would still fall short of giving sufficient consideration to the needs and experiences of people living in poverty. As such, human rights laws containing positive

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<sup>188</sup> G. Brodsky and S. Day, “Women’s Economic Inequality and the *Canadian Human Rights Act*” in Status of Women Canada, *Women and the Canadian Human Rights Act* (Ottawa: Status of Women Canada, 1999) at 150-156.

<sup>189</sup> *Ibid.* at 157.

<sup>190</sup> M. Jackman and B. Porter, “Women’s Substantive Equality and the Protection of Social and Economic Rights Under the *Canadian Human Rights Act*” in Status of Women Canada, *Women and the Canadian Human Rights Act* (Ottawa: Status of Women Canada, 1999) at 93.

social and economic rights would form a necessary but insufficient strategy to address poverty. Although they may be effective tools for redistributive equality as argued in Chapter 1, this approach to welfare fails to confront the ways in which “institutional patterns of cultural value”<sup>191</sup> entrench the indignity, lack of agency, and social exclusion of people living in poverty.

## **B. Location**

The fact that few cases are heard by human rights tribunals on the matter of social condition, social origin or source of income does not mean that there is no struggle to meet social and economic needs within existing legal constructs. However, the locations at which these struggles take place are mostly invisible in legal and policy discourse. The legislated human rights approach is limited to a specific location; that is to say, it occurs by definition within a formal and public legal context, in which there are procedural safeguards and fairly consistent definitions, interpretations, and applications within the written law. The struggle to have social and economic needs met through the use of the law is often located in a less formal, more discretionary, and private location; when a person is in need, she does not go to court, she goes to a government office or community social service office.<sup>192</sup> She expresses her needs to a bureaucrat or social worker and waits to be informed of the result. For example, Mouna turned to the court/tribunal system only after frequent interactions with the Ministry of Human Resources in an

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<sup>191</sup> Fraser & Honneth, *supra* note 5 at 38.

<sup>192</sup> It is of note that in the current political climate, Canadian governments are downloading social service responsibilities to non-profit organizations while increasing their control through contractually-based relationships with such organizations. See J. Shields and B. M. Evans, *Shrinking the State* (Halifax: Fernwood Publishing, 1998).

administrative context, and when she did use the human rights system, the interactions with the welfare regime were categorically excluded by the legislative and jurisprudential structure of the human rights system. As such, the aspects of her experience with the welfare system that had the most profound impacts on her sense of dignity, agency and social inclusion were not subject to remedy or protection through the human rights system. Administrative welfare processes are often governed by legislation, but administered by written and unwritten policy. In some cases, formal appeals from administrative decisions concerning welfare or benefits are possible, but the access to legal resources issues described above create significant barriers to the use of such appeal processes.

In sum, the human rights paradigm does not address the predominantly administrative and bureaucratic location of attempts to meet economic and social needs. In the administrative and bureaucratic location, there is much less publicity than in the hearing room. As a result, the accountability of the administrative decision maker is significantly less than that of a judge or tribunal chair. Thus the locations at which the most profound and devastating denials of dignity, agency, and social inclusion are occurring are, for the most part, beyond legal or public scrutiny, notwithstanding the fact that those locations are the primary site of operation for a very “public” benefit regime.

### **C. Adversariality and the Relational Nature of Poverty**

The role of tribunals and courts in the legal system is inherently adversarial; formal proceedings are a zero-sum game in which there are always measurable gains for the winner and costs for the loser. Adherence to human rights legislation is achieved

through coercive measures. I do not argue that this model is useless; on the contrary, it is often the most effective way to ensure compliance with legislated human rights standards. In terms of social needs, however, the use of the tribunal/court model is destructive of relationships between parties, which are essential to the social well-being of those living in poverty. To bring an action against someone implies that you do not wish to maintain a cooperative relationship, and erodes any existing trust between parties.<sup>193</sup> The type of respect for autonomy and difference required to maintain a viable standard of dignity and social inclusion cannot be achieved using such a method because it is damaging to relationships that are fundamental to an individual's sense of worth and belonging. It requires complainants to move from a survival-induced position of passivity and compliance to a combative position without any hope of addressing the day to day assaults on her dignity and agency.

#### **D. Concluding Comments**

The formal human rights dialogue is a necessary but partial aspect of the law's potential to address social and economic concerns. The affronts to dignity, agency and social inclusion that Mouna experienced were not justiciable in any meaningful sense through the human rights system. Similarly, the concerns enumerated by study participants in Chapter 4 regarding the operation of welfare policy and practice would not find satisfactory resolution through the human rights system. It is only by challenging definitions of justice in a way that seeks to overcome the practical, institutional and

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<sup>193</sup> See, e.g. R. Ross, "Restorative Justice: Exploring the Aboriginal Paradigm" (1995) 59 Sask. L. Rev. 431.

ideological barriers experienced by people living in poverty that we will facilitate the transformative potential of justice.

## **CHAPTER 6: EXPLORING OPTIONS FOR THE ADMINISTRATION OF WELFARE**

The aim of this thesis was to explore the ideological constructions underlying conceptions of poverty and their application in the administration of social services in Canada. I have endeavoured to do so on terms that center the lives of impoverished people. Specifically, my purpose was to examine the manner in which dignity, agency and social inclusion are constituted in the administration of welfare, as well as the potential of human rights regimes to address the detrimental impacts of the social welfare system. My research on British Columbia's front-line welfare processes and policies serves as an example of broader patterns of marginalization of the poor in Canadian social welfare institutions. I used the hypothetical narrative depicting Mouna's situation to illustrate in detail the experience of a welfare regime and the potential response of the human rights system.

Through an examination of the history and current situation of constructions of poverty and social welfare in Canada, several themes were persistent in my study of the interactions between people living in poverty and the structures of welfare benefit provision. First, it was clear that the policy and legal dialogue surrounding poverty, particularly in terms of the definition and measurement of poverty, is focused on the economic aspects of poverty, with little attention to the social and relational contexts of poverty. Second, current methods of measuring poverty and advocating for policy reform in terms of more and better redistribution fail to challenge existing social and economic orders. Third, governmental and non-governmental agencies and the media perpetuate the moral regulation and stereotyping of people living in poverty. Fourth, it is also

evident that there is an expectation on the part of social service agencies that people living in poverty will act in a passive and compliant manner; deliberate engagement by welfare recipients in these behaviours also functions as a strategy to meet needs in B.C.'s welfare system. Fifth, conceptions of poverty, including those at work in social service bureaucracies, construct poverty as an individualized, static, event-based phenomenon, often failing to comprehend the experience of poverty as relational, dynamic and social. Finally, impoverished people within welfare systems are often unable to participate in shaping fundamental aspects of their lives; they also experience an erasure of their voice and situation that functions to undermine their citizenship. All of these institutionalized factors operate to insult the dignity, agency and rights to social inclusion of people living in poverty, further oppressing groups already vulnerable to marginalization.

Although the human rights regime ostensibly represents the fundamental commitment of Canadian society to dignity, agency, and social inclusion, there are ideological and practical barriers that function to prevent its effective use as a remedy for the detrimental effects of social welfare systems in the lives of impoverished people. Through the hypothetical example of Mouna's situation, it is clear that the human rights system is unable to assist her to meet her social and economic needs on her own terms; moreover, the most profoundly damaging aspects of her interactions with the welfare system would not be subject to the protection of human rights law.

The implications of the conclusions enumerated above are significant in terms of current legal and policy structures, and provide guidance for future changes. If law and policy hope to confront poverty meaningfully, and if the citizenship of impoverished

individuals is to be taken seriously, it is necessary to reconsider the structure of local and higher-level decision-making to make it more inclusive of the perspectives of people who are living in poverty. Future policy dialogue must understand poverty as a relational, social and dynamic experience, and must function to resist the moral regulation and ill-informed constructions and stereotypes that surround popular and political conceptions of poverty. Such constructions and stereotypes operate as what Fraser terms “institutionalized patterns of cultural value” which prevent persons living in poverty from participating fully in social and political life.<sup>194</sup> Although administrative discretion in itself is not necessarily problematic, when it is framed by an imbalanced power relationship, the potential for oppression is great; as such, the manner in which discretion is exercised in the administration of welfare regimes must be reconstructed to respect the dignity, agency and social inclusion of people who are receiving welfare. Because current practices in welfare regimes are underpinned by deeply entrenched ideologies based on a long history of moral regulation, charity, disrespect and distrust, any significant change will require considerable care and effort. These changes are likely only if the state understands itself as integrally involved in the well-being of its most vulnerable citizens.

Education is an essential aspect of confronting myths and stereotypes about poverty and impoverished people. Strategies to educate the public and law and policy makers, could range from consultation with representative non-governmental groups in higher-level policy discussions to fostering more decision-making power and input for

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<sup>194</sup> Fraser & Honneth, *supra* note 5 at 29.

impoverished people within the welfare process. The expression and validation of lived experience is so often precluded by the operation of welfare bureaucracies; for this to change, there needs to be space for the actual experience of poverty including its social and relational dimensions within the welfare process. In order to achieve “participatory parity,” the local administration of services must function to foster the dignity, agency and inclusion of impoverished people, which means respecting their relationships, communities and differences/identities on their terms.

When examined through the lens of lived experience, it is clear that the current human rights system is inadequate to address poverty in terms of its social dimensions. Although dignity, agency, and social inclusion are purportedly protected by human rights law, in reality human rights law falls far short of offering meaningful redress to those living in poverty, both within the social welfare system and outside of it. As such, it is necessary to reconsider the structures, locations, relationships and institutions that comprise our human rights system. The challenge is to imagine functional ways to promote the full participation and citizenship of impoverished people.

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**APPENDIX A: HUMAN RESEARCH ETHICS BOARD CERTIFICATE OF APPROVAL**



University of Victoria

Human Research Ethics Board  
Office of Research Services  
University of Victoria  
Room A240 University Centre  
Tel (250) 472-4545 Fax (250) 721-8960  
Email ovprhe@uvic.ca Web www.research.uvic.ca

## Human Research Ethics Board Certificate of Approval

<u>Principal Investigator</u> <b>Sarah Marsden</b> Graduate Student <u>Co-Investigator(s):</u>	<u>Department/School</u> <b>LAWF</b>	<u>Supervisor</u> <b>Hester Lessard</b>	
<u>Project Title:</u> <b>Witnessing Welfare Applications</b>			
<u>Protocol No.</u> <b>05-057</b>	<u>Approval Date</u> <b>24-Mar-05</b>	<u>Start Date</u> <b>24-Mar-05</b>	<u>End Date</u> <b>23-Mar-06</b>

### Certification

This certifies that the UVic Human Research Ethics Board has examined this research protocol and concludes that, in all respects, the proposed research meets appropriate standards of ethics as outlined by the University of Victoria Research Regulations Involving Human Subjects.

Dr. Richard Keeler  
Associate Vice-President, Research

This Certificate of Approval is valid for the above term provided there is no change in the procedures. Extensions or minor amendments may be granted upon receipt of a "Research Status" form.

05-057  
Marsden, Sarah

**APPENDIX B: PARTICIPANT CONSENT FORM**

CONSENT FORM  
WITNESSING WELFARE APPLICATIONS STUDY

I, Sarah Marsden, am conducting a research study for a master's thesis in the Faculty of Law at the University of Victoria. I may be contacted by phone at 414-7290, and by email at [sarahmar@uvic.ca](mailto:sarahmar@uvic.ca). My supervisor, Hester Lessard, may be contacted by phone at 721-8264 and by email at [hlessard@uvic.ca](mailto:hlessard@uvic.ca).

The purpose of the study is to gather descriptive information about interactions between representatives of the Ministry of Human Resources and applicants and recipients under the Employment and Assistance Act and the Employment and Assistance for Persons with Disabilities Act; this may include verbal interactions, written interactions, and materials generated by the benefit application. You are invited to participate in the study, which will consist of a 1.5 – 2 hour interview in which I will ask the following questions:

1. Please think of a recent case in which you observed interactions between an individual applying for or receiving benefits and the Ministry of Human Resources; what did you observe?
2. In interactions between the individual applying for or receiving benefits and the Ministry of Human Resources, how did the individual applying for or receiving benefits exercise power?
3. In interactions between the individual applying for or receiving benefits and the Ministry of Human Resources, how did the Ministry of Human Resources exercise power?

The answers to these questions must be given without identifying any of the people involved.

I will be recording the interviews on audio tape and transcribing them; if you are uncomfortable with this, or any other aspect of the study, you may choose not to participate in the study at any time without any negative consequences. If you withdraw from the study, your information will not be used in the study, and it will be destroyed within one week of your decision to withdraw. You may decline to answer any question without negative consequences. Participation in this study is completely voluntary. Within one week after the interview, I will contact you in order to ask you to verify the transcript of your interview, which will take approximately 15-30 minutes.

There is a risk of stress during these interviews, as recounting experiences of welfare administration may be emotionally difficult. In order to minimize the risk, I will endeavour to conduct interviews in quiet and private locations, and I will emphasize that if at any time you feel too uncomfortable to continue, the interview will come to a close and the information will not be used in the study. If you are experiencing this level of discomfort, I will provide you with an opportunity to discuss your feelings and offer to refer you to other persons or services.

The potential benefit to you is the opportunity to share lived experience of the administration of welfare benefits, which encourages dialogue and may empower you. This research will enlarge the body of knowledge of administrative processes under the Employment and Assistance Act and the Employment and Assistance for Persons with Disabilities Act by providing information about interactions between applicants and recipients of benefits and administrative staff of the Ministry of Human Resources.

Due to the nature and size of this study, your information will not be completely anonymous; as the researcher, I will be able to associate your answers and information with your identity. I will use pseudonyms in your information to ensure that your information cannot be associated with your identity.

All email and in person communication will be kept confidential. Contact information will be kept in a password-protected computer, and will be deleted after my last contact

with you. Interviews will take place in quiet and private places. Tapes and transcripts will be kept in a locked drawer with all identifying information removed. Tapes will be destroyed six months after completion of the study, and transcripts will be destroyed two years after the completion of the study. The transcripts and any other document which refers to this information will not include the actual name of any participant. I will provide the results of the study to you as soon as they are available.

It is possible that I will use the information from this study for future scholarly work that may be published, but this information will never be used for commercial purposes. This work may be combined with additional data created at a later date; any future research would first be reviewed by a research ethics board.

You may verify the ethical approval of this study, or raise any concerns you might have, by contacting the Associate Vice-President Research at (250) 472-4545 or [ovprhe@uvic.ca](mailto:ovprhe@uvic.ca). You may also contact my supervisor, Hester Lessard, at [hlessard@uvic.ca](mailto:hlessard@uvic.ca).

Once it is signed, a copy of this form will be left with you, and I will also keep a copy of this form. If you have any questions regarding any aspect of this study, I will answer them.

By signing this consent form, you agree to the use of the information collected in this study as described above, and all other conditions described in this consent form.

\_\_\_\_\_  
Participant (sign)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Participant (print name)

\_\_\_\_\_  
Witness (sign)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness (print name)