

# STANDING UP FOR YOUR SOCIAL AND ECONOMIC RIGHTS

How to fight for your rights



Centre for Equality Rights in Accommodation  
Social Rights Advocacy Centre

# STANDING UP FOR YOUR SOCIAL AND ECONOMIC RIGHTS

This booklet explains how you can use international law to protect human rights called “social and economic rights”.

It tells you how Canadian governments have agreed to make sure that Canadian laws protect your social and economic rights. It also tells you how people who have the power to make decisions affecting your life have to respect these human rights. It will give you some ideas of how to stand up for your rights when laws or decisions violate your right to social and economic security or dignity.

## WHAT ARE SOCIAL AND ECONOMIC RIGHTS?

Social and economic rights are fundamental human rights which guarantee social and economic security and dignity. They include rights such as:

- the right to adequate food, clothing and housing
- the right to the highest attainable standard of health
- the right to education
- the right to social security
- the right to freely chosen work and
- the right to decent working conditions

## WHERE ARE SOCIAL AND ECONOMIC RIGHTS FOUND?

In 1948, the United Nations adopted the Universal Declaration of Human Rights. This was the first of many international human rights documents that talked about social and economic rights as human rights. Canada signed the Universal Declaration. Since then Canada has signed other human rights treaties which recognize social and economic rights, such as the International Covenant on Economic, Social and Cultural Rights.

International human rights are monitored by the United Nations. They cannot be enforced directly by courts or tribunals in Canada. But Canada and the provinces have promised to make sure that these rights are protected by Canadian laws, and that government policies and decisions follow international laws about human rights.

A decision that affects your dignity or your social and economic security can be challenged if it violates a social and economic right like your right to housing, education, health or social security.

### ONE EXAMPLE: SANDRA'S RIGHT TO DENTAL CARE

Sandra is a single mother with three children living in Nova Scotia. She is on social assistance while going to university. Sandra has gum disease and needs special dental treatment. If she does not have the treatment, she will lose her teeth. The treatment is not included in the list of dental services that social assistance provides. However, the regulations for social assistance in Nova Scotia say that other dental services are allowed when a person has a special need. The worker dealing with Sandra's case would not approve the gum treatment. They said they could approve dentures, which would mean Sandra would have to lose all of her teeth. Sandra appealed the worker's decision. She argued her social and economic rights were violated when she was denied the special dental treatment she needed. She said that the decision violated her right to the highest attainable standard of physical and mental health. Sandra won the appeal. The Nova Scotia Department of Community Services was ordered to allow Sandra to have the special dental treatment.

### WHAT KINDS OF LAWS AND DECISIONS VIOLATE SOCIAL AND ECONOMIC RIGHTS?

Public officials cannot make decisions that violate your human rights. This includes all social service workers, welfare administrators, housing officials, school principals or administrators, and public health or hospital staff.

Sometimes, public officials have no choice. Sometimes they are following laws that deny your human rights. In these cases, the law is the problem, not the person making the decision.

When this happens, the law should be challenged. You need to get a legal clinic or a lawyer to help you go to court to show that the law is unconstitutional, which means that it violates the Canadian Charter of Rights and Freedoms.

On the other hand, sometimes the law is flexible and the person making the decision could have made a different one. They could have made a decision that did not deny you security or dignity. In these cases, their decision can be challenged for not respecting your human rights. Sandra's case was an example of this kind of decision. Here are some examples of the kinds of decisions you could challenge. They violate different social and economic rights.

## Decisions that violate your right to housing

Under international law, the right to housing means that people should not be evicted without a fair hearing and without considering whether they have somewhere else to live. This may mean that the eviction procedures used in Canada violate human rights. It may also mean that landlord and tenant tribunals or courts should not evict you for owing a small amount of rent if you have nowhere else to live.

## Decisions that violate the right to education

International human rights law says that every person has the right to free primary education. If your school is charging fees for things which are important for your child's education, they may be violating the right to education. The school principal or the Board of Education may have made a decision that does not recognize your child's right to an education.

## Decisions that violate the right to an adequate standard of living

An adequate standard of living means that you have the right to have all of your basic needs met. Some decisions by welfare workers may deny you an adequate standard of living. You can challenge

these decisions when the welfare worker used "discretion" or had some choice about the decision. For example, if a welfare worker could approve a special payment to help you pay your heating bill or cover food for a special diet and refused to approve it, this decision may violate your right to an adequate standard of living.

## Decisions that violate your right to health

Everyone in Canada has the right to the highest standard of physical and mental health. Hospitals that do not provide interpreter services for deaf patients or do not accommodate other disabilities may be violating your right to health. Welfare workers who refuse to give people money to see a medical specialist may also be violating this right. Also, a welfare worker who refuses to allow a health benefit - as in Sandra's case - could be challenged.

## Decisions that violate your right to freely chosen work

International laws say that nobody should be forced into work. If a welfare worker tells you that you must accept a workfare placement which you feel is demeaning or inappropriate, this may violate your right to freely chosen work. Where part-time

workers are denied benefits or protections that other workers receive, this may violate their right to “just and favourable conditions of work”. Governments that do not do what is needed to make sure people with disabilities can work may also be violating the right to work.

## WHAT YOU CAN DO

You can fight decisions that violate your social and economic rights in two ways: **Use the Canadian Charter of Rights and Freedoms** or **Challenge “Discretionary” Decisions**.

### Use the Canadian Charter of Rights and Freedoms

The Charter contains rights such as the right to “life, liberty and security of the person” and the right to be equally protected by the law and to benefit from the law without discrimination.

You may be able to use the Charter to challenge laws or government policy if you are denied access to basic needs such as food, health-care, or housing, or if you are discriminated against because you are on welfare or because of your age, race, sex, disability, marital status, sexual orientation, religion or other grounds.

The Supreme Court of Canada is Canada's highest court. It has agreed that the right to life, liberty and security may include some social and economic rights such as the right to healthcare, housing, social security, or work that is freely chosen.

Louise Arbour is the United Nations High Commissioner of Human Rights. She used to be a Supreme Court judge. She has said that Canadian courts should have more courage in protecting social and economic rights, and that lawyers and advocates should not be “timid” about using the Charter to argue for these rights. Social and economic rights will not get recognized by courts and governments unless people stand up for them.

**To get advice** on whether you could use the Charter in your situation, contact the Centre for Equality Rights in Accommodation (CERA).

Phone: 1-800-263-1139

e-mail: [cera@equalityrights.org](mailto:cera@equalityrights.org)

### Challenge ‘Discretionary’ Decisions

In many cases the law is not totally clear about what you are entitled to. Someone has to interpret and apply the law. This is called “discretion”. Here are a few examples:

- a welfare worker may have a choice about giving you emergency assistance
- a welfare worker may have a choice about giving you a special benefit (as in Sandra's case)
- a housing tribunal considering whether you should be evicted may have the discretion to give you extra time to pay rent that you owe
- an education or school official may have the discretion to recognize your child's special needs

When a public official has choice about your rights, and they make a decision that is not reasonable, you can fight their decision. You can start by telling the official that you think the decision is against your human rights and showing them this pamphlet. If they won't change their mind, you can get help from an organization like a community legal clinic to see if you can take legal action, the way Sandra did.

### The Supreme Court's decision about Mavis Baker

In 1999, the Supreme Court of Canada made a very important decision. It ruled that discretionary decisions made by public officials must respect international human rights law.

An immigration officer had the choice of allowing Mavis Baker to stay in Canada or having her deported for working without a work permit. He decided to have her deported. Mavis Baker was the mother of four children born in Canada. She challenged the Immigration Officer's decision because it violated the rights of her children. The Supreme Court agreed with her. It said that the immigration officer should have decided not to deport her because forcing her to leave Canada would violate the human rights of her children. Children's human rights are outlined in the international Convention on the Rights of the Child. The Supreme Court said that decision-makers must be "reasonable". This means that their decisions should follow values that are in international human rights law.

### What does the Mavis Baker case mean?

The Supreme Court's decision about Mavis Baker's case means that everyone in Canada has the right to have government officials make "reasonable" decisions that respect their human rights.

For example, a welfare worker might have a choice between giving or refusing a discretionary benefit. If they refuse, you will be homeless. If they allow it, you will have food and shelter.

Even though the law says the worker can use their “discretion”, the worker still has to make a “reasonable” choice. They must respect your human rights to adequate food, clothing and housing, health, and education.

## DO INDIVIDUALS AND BUSINESSES HAVE TO RESPECT THESE RIGHTS?

International human rights laws and the Charter are mostly for governments, not private companies or individuals. However, social and economic rights can still apply to private companies or individuals, such as your landlord or employer.

For example, if your employer does not treat part-time workers fairly, you can challenge what they are doing using your province or territory's employment standards laws. If a landlord unreasonably denies you access to housing, you can fight for your rights using provincial or territorial human rights legislation. All courts and tribunals in Canada must interpret and apply these laws in ways that are consistent with your rights under international human rights law and under the Canadian Charter of Rights and Freedoms.

If you feel your rights have been violated by a landlord, employer, or someone else who is not part of government, **talk to a legal clinic or a lawyer**. They can tell you whether you should use a tribunal or court to fight your case.

## HOW CAN I FIND OUT MORE?

For more information and resources please go to [www.equalityrights.org/cera](http://www.equalityrights.org/cera)



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