

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CANADA WITHOUT POVERTY

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER Rule 14.05(3)(g.1) of the *Rules of Civil Procedure*, R.R.O. 1990, O. Reg. 194 and under the *Canadian Charter of Rights and Freedoms*

AFFIDAVIT OF LEILANI FARHA

I, Leilani Farha of the City of Ottawa in the Province of Ontario, AFFIRM AS
FOLLOWS:

1. I am the Executive Director of Canada Without Poverty (CWP), formerly known as the National Anti-Poverty Organization (NAPO). I have held this position since September 2012. As such I have knowledge of the facts to which I depose, except where I have relied on information from others in which case I expressly so state, the source of the information and I believe the information I am conveying to be true.

A. Introduction and Overview

i) My Background

2. In June 2014, I was appointed by the United Nations Human Rights Council as the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context. Special Rapporteur mandates are part of the special procedures of the United Nations Human Rights Council. There are 55 Special Rapporteurs and independent experts covering a wide range of thematic issues and country-specific situations. It is an unremunerated honorary position in which I present an annual report to the United Nations Human Rights Council and the United Nations General Assembly.

3. I was awarded an Honorary Doctor of Laws by Mount Saint Vincent University in Halifax in November 2015, and the Spirit of Barbra Schlifer Award in June 2013. A copy of my *curriculum vitae* is attached as Exhibit A of this affidavit.

ii) Canada Without Poverty (CWP)

4. CWP is an incorporated, not-for-profit and charitable organization whose primary purpose is the relief of poverty in Canada. CWP was granted charitable status by the Charities Division of Revenue Canada in 1973 as the National Anti-Poverty Organization (NAPO).

5. In 2009, the name of the organization was changed from the National Anti-Poverty Organization to Canada Without Poverty. CWP is based in Ottawa, Ontario.

6. Under CWP's *Certificate of Continuance* dated October 14, 2014, CWP's objects are:

1. To relieve poverty in Canada by:
 - a. Advancing the knowledge of, and the study of, poverty in Canada by organizing conferences and workshops on topics related to poverty;
 - b. Undertaking and supporting research into factors that contribute to poverty and the most appropriate ways to mitigate these;
 - c. Producing and disseminating articles, commentary and reports on topics related to relieving poverty;
 - d. Providing information to government officials, and the public to increase knowledge of poverty related issues and how to more effectively relieve poverty;
 - e. Working with food banks, soup kitchens, homeless shelters, social housing providers and other social agencies to relieve poverty while promoting respect for the human rights of people living in poverty; and,
 - f. Directing people to the government programs and offices by which people may access benefits to which they may be entitled;
2. To uphold and ensure compliance with international human rights law as it relates to the relief of poverty, including, among others, the *Universal Declaration of Human Rights*, the *International Covenant on Economic, Social and Cultural Rights* and the *Convention on the Rights of Persons with Disabilities*;
3. To receive and maintain a fund or funds and to apply all or part of the principal and income therefrom, from time to time, to charitable organizations that are also registered charities under the *Income Tax Act* (Canada); and,
4. To do all things incidental and ancillary to the attainment of the above objects.

A copy of CWP's *Certificate of Continuance* is attached as Exhibit B of this affidavit.

7. CWP is governed by a Board of Directors with personal experiences of living in poverty and draws on a network comprised of over 9,000 individuals living in poverty, organizations representing low-income individuals and members of the general public. CWP communicates with this network through a variety of means, including Twitter, Facebook, mass electronic

communications, workshops, information sessions and other face-to-face meetings. Under the direction of the Board of Directors and drawing on its large network, CWP seeks to alleviate poverty in Canada by promoting a better understanding of the lived experiences of poverty, challenging social exclusion and stigmatization of people living in poverty and identifying and promoting effective policies and strategies for the relief of poverty.

8. CWP relies primarily on charitable donations to hire staff, maintain an office and website and to carry on its activities. CWP would not be able to perform its national role of relieving poverty if it were to lose its charitable status. CWP's total revenue is approximately \$318,000, all of which is derived from donations – 79% from charitable sources including individuals, foundations and corporations and 21% from unions.

iii) Overview

9. The remainder of this Affidavit addresses the following points:

- (a) From the time of its formation as a charity with the purpose of the relief of poverty in 1973, NAPO/CWP has engaged with political processes in order to identify and promote changes to laws and policies necessary for the relief of poverty. NAPO/CWP has viewed such activity as a critical component of its activities to promote its charitable purpose.
- (b) During the 1990s NAPO's approach to the relief of poverty in Canada was informed by the emergence of a global framework for the relief of poverty which prioritized the need to address marginalization and social exclusion as aspects of poverty and to promote the active participation of people living in poverty in

strategies to address it. During the 1990s NAPO began to participate in reviews of Canada's record on poverty before UN human rights bodies and in 1995 NAPO attended the World Summit for Social Development. UN human rights bodies expressed concern about the extent of poverty in Canada, recommended changes to laws and policies and urged the Canadian government to enter into a dialogue with NAPO and other groups. The Copenhagen World Summit adopted a *Programme of Action*, signed by Canada and other states, affirming that poverty is characterized by a lack of participation in decision-making and that strategies to address poverty must ensure participation of those affected.

- (c) In 2009 CWP participated in comprehensive reviews of poverty reduction strategies by the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA Committee) and by the Senate Subcommittee on Cities of the Standing Senate Committee on Social Affairs, Science and Technology. Extensive reports submitted to parliament by these Sub-Committees recommended that in order to ameliorate poverty in Canada, governments must make significant changes to laws and policies, work in partnership with organizations working on poverty issues and engage directly with people living in poverty.
- (d) CWP's experience has been consistent with the findings of these reports. CWP has found that effective poverty relief requires strategies to remedy the social and political marginalization of people living in poverty and to facilitate their active participation in identifying necessary changes to laws and policies.

- (e) NAPO/CWP found that people living in poverty faced increasingly widespread stigmatization and negative stereotypes during the 1990s and that such stigmatization has continued to the present day. CWP has responded to this challenge by developing programs to combat stigmatization, encourage the recognition of the equal dignity and human rights of people living in poverty and facilitate the more active engagement of people living in poverty in public policy related to the relief of poverty.
- (f) On a number of occasions when CRA has reviewed the activities of NAPO/CWP it has informed NAPO/CWP that activities which it considers essential for the relief of poverty are considered political activities and must be severely restricted for compliance with section 149.1(6.2) of the Act. CRA has clarified that whenever CWP staff, volunteers or members publicly express a view about the government's laws or policies – either suggesting that they should be retained or that they should be changed - such expressions constitute political activity and as such must be monitored, reported and restricted.
- (g) After the federal government made a special budgetary allocation to CRA to enforce the political activities restrictions more rigorously, CWP was required to provide to CRA minutes of all meetings, copies of all emails exchanged by the staff, volunteers, and board members, all publications and other communications.
- (h) CWP was informed by CRA in January 2015, following its review of the documentation, that approximately 98.5% of CWP's activities constituted political activities contrary to the restrictions imposed by section 149(1) 6.2.

CRA found, for example, that hosting a dinner where people living in poverty could communicate with members of parliament and other decision-makers constituted political activity because recommendations for changes to laws and policies were discussed. Organizing and hosting policy summits with social policy experts was political activity because recommendations for changes to laws and policies were formulated and disseminated. Offering an online course on international human rights was found to be political because it created an atmosphere conducive to advocating for changes to laws and policies. Publishing links on a website to newspaper articles and other materials which recommended changes to laws and policies was political activity.

- (i) CWP has been informed by CRA that in order to conform with section 149.1(6.2) of the Act it must monitor, report to CRA and severely restrict the content of published materials, websites, emails, workshops, panels, public education campaigns, online courses or any public expression of views by its staff or members about laws, policies or decisions of the government. It has also been informed that initiatives taken to encourage interaction between people living in poverty with politicians and other decision-makers about strategies for the relief of poverty must be severely restricted.
- (j) CWP has found that the restrictions imposed by section 149.1(6.2) are contrary to its charitable purpose and prevent it from pursuing the relief of poverty in a reasonable and effective manner. It has found that the restrictions:
 - prevent the development of balanced, evidence-based policy informed by the knowledge and experience of those directly affected;

- further the marginalization, stigmatization and social exclusion of people living in poverty;
- restrict effective association and collective action for the purpose of the relief of poverty;
- require an unreasonable degree of monitoring and control of the expression of opinions and reasonable political participation by CWP staff, members and volunteers;
- render political activities for the relief of poverty particularly vulnerable to interference; and
- create a significant chilling effect on the free exchange of ideas about the most effective means to relieve poverty.

10. Put simply, section 149.1(6.2) of the *Income Tax Act* accepts that relief of poverty is a charitable purpose, but imposes restrictions on the manner in which CWP can pursue that charitable purpose by restricting political activity. This, we say, is an unconstitutional violation of the rights of CWP and its members to freedom of expression under section 2(b) and to freedom of association under section 2(d) of the *Charter of Rights and Freedoms*. CWP wishes to pursue its purpose of relieving poverty – a purpose Parliament has accepted as a legitimate charitable purpose – without interference with the expression or promotion of ideas that are critical to the effective pursuit of that legitimate charitable purpose.

The Restrictions on Political Activities in the *Income Tax Act* are Fundamentally at Odds with CWP's Charitable Purpose.

11. Based on these facts, CWP asserts that section 149.1(6.2) infringes the rights of CWP and the rights of its staff, members and volunteers to freedom of expression and association as guaranteed by section 2(b) and section 2(d) of the *Canadian Charter of Rights and Freedoms*.

12. CWP's belief, based on much internationally recognized research into poverty and its causes, is that poverty in Canada is primarily the result of laws and policies that neglect the needs or fail to ensure the dignity of people living in poverty. CWP further believes, again based on internationally recognized research into poverty and its causes, that such laws and policies are the result of the social and political marginalization of people living in poverty such that their needs are inadequately understood and addressed. CWP's experience has shown that effective poverty relief requires strategies that remedy the social and political marginalization of people living in poverty by facilitating and increasing their active participation in the development of laws and social policy.

13. CWP therefore believes that to effectively relieve poverty it must promote the participation of those living in poverty in policy discussions and other democratic processes, and encourage its members to identify and promote changes to laws and policies necessary for the relief of poverty. This conviction is crucial in keeping with CWP's charitable purpose of poverty relief on behalf of people living in poverty. Indeed, when properly understood, CWP's charitable purpose cannot be achieved without the public advocacy interest that section 149.1(6.2) restricts as political.

14. While CWP encourages its members to identify and promote changes to laws and policies for the relief of poverty, CWP does not have as its purpose the adoption or retention of any particular laws or policies. CWP only promotes changes to laws and policies that are necessary for the relief of poverty – a means to achieve a purpose (the relief of poverty), and not a purpose in itself.

B. NAPO/CWP's Activities for the Relief of Poverty in Canada

i) Formation and activities of NAPO

15. NAPO was formed in 1973, as a result of a resolution of the Poor Peoples' Conference, a national gathering of low-income citizens held by the National Council of Welfare (NCW)¹ in Toronto in January 1971. The organization was registered as a charitable organization on October 25, 1973.

16. During the 1990s NAPO became part of a global approach to the relief of poverty, focusing on ensuring the active participation of people living in poverty in policy development and decision-making and combatting marginalization and social exclusion linked to poverty.

17. Through the 1970s, NAPO became recognized as the coordinating national umbrella organization for poverty and low-income groups in Canada, and the vehicle through which people living in poverty could engage with the federal government for discussion and action on issues directly related to the relief of poverty.

18. Throughout the 1980s and 1990s, NAPO was frequently invited to discuss policy initiatives with Members of Parliament and other government officials. For example, in the fall of 1983, NAPO presented a brief to a task force of Members of Parliament on pension reform. In 1984, NAPO submitted a brief to a federal commission regarding changes to access to generic

¹ The National Council on Welfare (NCW) was an arm's length body created by the Government Organization Act of 1969 to provide independent advise to the federal Minister responsible for the welfare of Canadians regarding "any matter relating to social development that the Minister may refer to the Council for its consideration or that the Council considers appropriate." For many years the NCW provided important independent data, policy recommendations and critical assessment of legislation and policy affecting poverty in Canada. In the 2012 budget, in which the federal government announced new measures to crack down on charities suspected of engaging in political activity, the federal government also eliminated all budgetary allocations to the National Council on Welfare, effectively shutting down this independent statutory agency.

drugs for people living in poverty. In 1985, NAPO was invited to meet with the Finance Minister as a part of pre-budget consultations.

19. In the 1990's NAPO became part of a global movement to address poverty through the more active participation of people living in poverty in policy development and decision-making by asserting their human rights.

20. In 1993, NAPO participated in the review of Canada before the UN Committee on Economic, Social and Cultural Rights in Geneva in 1993. In its Concluding Observations on Canada, the Committee expressed concern about "evidence of hunger and the reliance on food banks operated by charitable organizations," inadequate social assistance rates, discrimination against people living in poverty and a lack of attention to the problem of homelessness. The UN Committee recommended a number of changes to laws and policies and a "concerted Government action to eliminate the need for food banks."² The Committee recommended "that the key governmental bodies concerned enter into a dialogue at the domestic level with the representatives of the Canadian non-governmental organizations that have presented information to the Committee."³ As the first major expression of concern from a UN Human Rights treaty-monitoring body about poverty in Canada, the UN Committee's report prompted considerable discussion in Parliament and Canadian media.

21. In 1994-95, NAPO was a member of the Canadian Non-Governmental Organizing Committee that brought delegates of Canadian Non-Governmental Organizations, including people with experiences living in poverty, to the first gathering of heads of states focused on the

² United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations: Canada*, 10 June 1993, E/C12/1993/5 (1993) at para 26 (attached as Exhibit C).

³ *Ibid.* at para 31.

eradication of poverty: The World Summit for Social Development, held in Copenhagen in 1995. The Summit adopted *the Copenhagen Declaration on Social Development* and *Programme of Action of the World Summit for Social Development*, signed by Canada, which recognized “an urgent need to address profound social problems, especially poverty, unemployment and social exclusion, that affect every country.”⁴ The *Declaration* affirmed that “empowerment” of people living in poverty is a fundamental principle of all effective initiatives to address poverty. “Empowerment requires the full participation of people in the formulation, implementation and evaluation of decisions determining the functioning and well-being of our societies.”⁵

22. The *Programme of Action* of the World Summit for Social Development emphasized that poverty is manifested both as lack of income and productive resources sufficient to ensure sustainable livelihoods and as “social discrimination and exclusion.”⁶ *The Programme of Action* noted that poverty “is also characterized by a lack of participation in decision-making and in civil, social and cultural life.”⁷ It recognized that it is essential to ensure “that decisions are based on accurate data and are taken with the participation of those who will be affected.”⁸ To this end, as part of their commitment to address poverty, states agreed to strengthen community organizations and non-profit non-governmental organizations, “enabling them to participate constructively in policy-making and implementation” and “establishing legislative and regulatory frameworks, institutional arrangements and consultative mechanisms for involving

⁴ United Nations World Summit for Social Development, *Copenhagen Declaration on Social Development*, 14 March 1995, A/CONF166/9 (1995) at para 2 (attached as Exhibit D).

⁵ *Ibid.* at para 26(o).

⁶ United Nations, World Summit on Social Development, *Programme of Action of the World Summit on Social Development*, 14 March 1995, A/CONF166/9 (1995) at para 19 (attached as Exhibit E).

⁷ *Ibid.*

⁸ *Ibid.* at para 7(a).

such organizations in the design, implementation and evaluation of social development strategies and programmes.”⁹ The *Programme of Action* prioritized the need for “national poverty eradication plans to address the structural causes of poverty” with “time-bound goals and targets for the substantial reduction of overall poverty and the eradication of absolute poverty.”¹⁰

23. Subsequent to the Copenhagen World Summit, NAPO/CWP framed its work for the relief of poverty in Canada within an international framework for addressing poverty based on the principles articulated in Copenhagen.

24. In 1996, NAPO participated in Habitat II in Turkey – a United Nations effort to address the challenges of poverty and homelessness in the context of urbanization. In 1998, NAPO co-hosted a Poverty Roundtable in Santiago, Chile, considering common issues of poverty in the Americas. These and other international forums emphasized that strategies to relieve poverty must be accompanied by measures to promote the equal citizenship and full participation of people living in poverty in the design and implementation of effective strategies to relieve poverty. Combatting social exclusion and promoting participation in the development of effective strategies have thus been central components of NAPO/CWP’s activities to reduce poverty.

25. In April 2009, CWP made submissions to the House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA Committee) which had undertaken a comprehensive study on the role of the federal government in reducing poverty in Canada. The Committee released its report in 2010, entitled

⁹ *Ibid.* at para 85.

¹⁰ *Ibid.* at para 26(b).

Federal Poverty Reduction Plan: Working in Partnership Towards Reducing Poverty in Canada, reporting on the results of widespread consultation as well as research on poverty reduction strategies in other countries.¹¹ The Committee noted that the relatively successful poverty reduction strategies in Ireland had involved participation and consultation with people living in poverty and that it had been important in both the U.K. and Ireland to adopt “a broad understanding of poverty and social exclusion to address the root causes of these problems.”¹² The Committee’s key recommendation was for a “shift in perspective” in Canada, so that reducing poverty was no longer viewed as traditional “charity work” but rather on partnership and consultation with community organizations and people living in poverty and involving significant changes to laws and policies.¹³

26. The Committee’s over-arching recommendation in its report was that “the federal government immediately commit to a federal action plan to reduce poverty in Canada that would see, during its first phase, the implementation of the recommendations.”¹⁴ The recommended action plan “should incorporate a human rights framework and provide for consultations with the provincial and territorial governments, Aboriginal governments and organizations, the public and private sector, and people living in poverty, as needed, to ensure an improvement in the lives of impoverished people.”¹⁵

27. CWP has continued to actively engage with United Nations procedures, participating in all periodic reviews of Canada before the UN Committee on Economic, Social and Cultural

¹¹ House of Commons, “Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities” by Candice Hoeppner in *Federal Poverty Reduction Plan: Working in Partnership Towards Reducing Poverty in Canada*, 40th Parl., 3rd Sess (November 2010) (attached as Exhibit F).

¹² *Ibid.* at 90.

¹³ *Ibid.* at 2.

¹⁴ *Ibid.* at 251.

¹⁵ *Ibid.*

Rights and the UN Human Rights Committee over the past twenty years, as well as the more recently instituted Universal Periodic Review before the UN Human Rights Council. Most recently, in July 2015, CWP participated in the review of Canada by the United Nations Human Rights Committee to review Canada's compliance with the International Covenant on Civil and Political Rights. CWP and many other organizations raised concerns before the Human Rights Committee about growing restrictions on freedom of expression and association in Canada, including restrictions imposed on charities. Subsequently, the Human Rights Committee issued Concluding Observations, expressing concern about "the level of apprehension within a broad sector of civil society about the State party's current policies in the areas of political, social and human rights advocacy" and about "the ambit of s. 149.1 of the *Income Tax Act*."¹⁶ The Committee recommended "measures to ensure that the application of section 149.1 of the *Income Tax Act* does not result in unnecessary restrictions on the activities of non-governmental organizations defending human rights."¹⁷

C. Responding to the Rise of Stigmatization of People Living in Poverty

28. During the 1990s, NAPO's strategies for the relief of poverty were affected by an increase in stigmatization of people living in poverty, particularly after the global economic recession of 1992-93. NAPO discovered that even though unemployment was skyrocketing because of global economic factors, those who were unable to work and were forced to rely on social assistance to survive were increasingly blamed for their own situations. As Premier Ralph

¹⁶ United Nations Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, (13 August, 2015) CCPR/C/CAN/CO at para. 15 (attached as Exhibit G).

¹⁷ *Ibid.*

Klein of Alberta noted in 1993 “[t]here is a public mood that we have to get really tough on those who abuse the [welfare] system.”¹⁸

29. NAPO members engaged with politicians and governments across the country to try to combat stigmatization of people living in poverty. For example, in March 1993, NAPO members met with Premier Michael Harcourt of British Columbia after he told the media, “[w]e want to clean the cheats and deadbeats off the welfare rolls.”¹⁹ Premier Harcourt apologized for these comments, acknowledging that welfare fraud was no more prevalent than other types of fraud, but explained that coverage of alleged welfare fraud in the media had become “relentless.”²⁰ He stated, “[e]very day, a camera in your face about this welfare case or that welfare case.”²¹ A year later, NAPO expressed concern when Prime Minister Jean Chrétien spoke of welfare recipients and the unemployed in a speech to an affluent audience, stating that, “it is better to have them at 50 per cent productivity than to be sitting at home, drinking beer, at zero per cent productivity.”²² The Prime Minister subsequently apologized for the comment.

30. Furthermore, NAPO expressed concern about punitive policies and program changes which accompanied the rise of stigmatization and discrimination in the mid-1990s. NAPO raised particularly serious concerns about the revocation of the Canada Assistance Plan (CAP) in 2005, which had required provincial welfare rates to cover the cost of basic requirements in order to be

¹⁸Todd Kimberly, “Reforms Open to Change - Klein”, *Calgary Herald* (28 March 1993) A1 (attached as Exhibit H).

¹⁹ Michael Harcourt, cited in Bruce Porter, “Claiming Adjudicative Space: Social Rights, Equality and Citizenship” in Margot Young et al, eds, *Poverty: Rights, Social Citizenship, and Legal Activism*, (Vancouver: UBC Press, 2007) 77 at 83 (attached as Exhibit I).

²⁰ Jean Swanson, *Poor-Bashing: The Politics of Exclusion* (Toronto: Between the Lines, 2001) at 100 (attached as Exhibit J).

²¹ *Ibid.*

²² Geoffrey York, “Foes Jump on Remark by Chretien”, *The Globe and Mail* (22 April 1994) A4 (attached as Exhibit K).

eligible for federal cost-sharing. NAPO members spoke out about the effects of the subsequent 21.7% cut to Ontario welfare rates. NAPO members also expressed concern when the cancellation of a monthly \$37 pregnancy benefit for expectant mothers in Ontario was justified by Premier Harris on the basis of “making sure that those dollars don’t go to beer.”²³ The Premier subsequently issued an apology.

31. In light of these experiences, NAPO determined, based on its long experience in the field and relying on the most up-to-date international research and analysis, that effective strategies for the relief of poverty require concerted efforts to combat discriminatory scapegoating, stereotyping and political marginalization of people experiencing poverty. In 1998, NAPO made submissions on poverty discrimination and prejudice to the Standing Senate Committee on Constitutional Affairs in support of a Private Member’s Bill that would prohibit discrimination against people living in poverty under the *Canadian Human Rights Act*. NAPO also made a submission to a Parliamentary Committee about the need to address discriminatory barriers in accessing basic banking services for people who are poor. Additionally, NAPO actively advocated against by-laws that prohibited poverty and homelessness related activities such as sleeping in public spaces.

32. In 1999 NAPO made submissions to the Canadian Human Rights Act Review Task Force, chaired by Gérard La Forest, former Justice of the Supreme Court of Canada. The Task Force had been asked by the Minister of Justice to consider amendments to the *Canadian Human Rights Act* to prohibit discrimination against people living in poverty, amongst other

²³Margaret Philp & Richard Mackie, “Beer Gibe Earns Harris a Blast: Ontario Premier Says Pregnancy Nutrition Allowance was Scrapped so ‘Those Dollars Don’t go to Beer’”, *The Globe and Mail* (17 April 1998) A1 (attached as Exhibit L). Premier Harris issued an apology subsequent to his comments.

considerations. In 2000, the Task Force released its report stating that research papers and submissions provided “ample evidence of widespread discrimination based on characteristics related to social conditions, such as poverty, low education, homelessness and illiteracy.”²⁴ The Task Force stated hearing “a great deal about prejudice against people just because they are poor”²⁵ and cited NAPO’s previous submissions to the Senate Committee, “[t]he issue here is not poverty itself, but, rather the gratuitous discrimination against the poor. [...] Those of us on the receiving end of this treatment understand what a blatant affront to human dignity this is.”²⁶ The Task Force additionally cited a memo by Frank Greaves of Ekos Research that had been commissioned by the federal government to gauge public responses to a proposed initiative to address child poverty. Greaves reported that:

Welfare recipients are seen in unremittingly negative terms by the economically secure. Vivid stereotypes (bingo, booze, etc.) reveal a range of images of SARs (Social Assistance Recipients) from indolent and feeble to instrumental abusers of the system. Few seem to reconcile these hostile images of SARs as authors of their own misfortune with a parallel consensus that endemic structural unemployment will be a fixed feature of the new economy.²⁷

²⁴ Canadian Human Rights Act Review Panel, *Promoting Equality: A New Vision* (Ottawa: Minister of Justice and the Attorney General of Canada, 2000) (Chair: Honourable Gérard La Forest) at 1 [*Promoting Equality*] (attached as Exhibit M).

²⁵ *Ibid.*

²⁶ Fred Robertson, NAPO testimony, Senate Standing Committee on Legal and Constitutional Affairs, cited in *Promoting Equality*, *supra* note 32 at 1.

²⁷ Ekos Research Associates Inc, *Memorandum Concerning Child Poverty Focus Groups: Revised Conclusions* (4 February 1997) (on file with author, secured through a Freedom of Information request,) cited in *Promoting Equality*, *supra* note 24 at 2.

The Task Force concluded that discrimination on the ground of “social condition” should be explicitly prohibited in the *Canadian Human Rights Act*.²⁸ However, this recommendation has not been implemented.

33. NAPO/CWP has continued to monitor and challenge discriminatory attitudes toward people living in poverty. In 2013, I attempted to convince the editor of the Windsor Star to apologize for publishing a column in which people experiencing homelessness were described as “platoons of beggars infesting the downtown like fleas,” and which urged the public to “[s]tarve them and they’ll sneak back to where they came from.”²⁹ The column also referred disparagingly to organizations such as CWP, stating that “[t]he poverty mongers – mostly employees of various (NGO) Non-Governmental Organizations – hate that kind of talk. They like to pretend all beggars are victims of an uncaring society.”³⁰ In refusing to issue an apology, the editor insisted that it was fundamental to freedom of expression in a democratic society for such views to be freely expressed. Nonetheless, this view reflects the blatant discrimination against people living in poverty.

34. NAPO/CWP has purposely connected measures for the relief of poverty to the recognition of the equal dignity and rights of people living in poverty in order to challenge the stigma and discriminatory stereotypes behind many of the punitive measures which exacerbate poverty. NAPO/CWP has promoted and facilitated direct engagement of decision-makers and politicians with people living in poverty so that they are able to effectively understand and address experiences of poverty. Through campaigns such as Dignity for All, launched by CWP

²⁸ *Ibid.*

²⁹ Chris Vander Doelen, “Don’t Encourage Street Pests”, *Windsor Star* (9 April 2014), online: <<http://windsorstar.com/uncategorized/dont-encourage-street-pests>> (attached as Exhibit N).

³⁰ *Ibid.*

in collaboration with Citizens for Public Justice, persons with lived experiences of poverty have been encouraged to engage more actively in policy discussions about the relief of poverty. As part of Dignity for All, policy summits were organized to bring together social policy organizations, provincial anti-poverty movements, faith-based groups and front-line service agencies to consider particular policy issues such as health, food security, employment, income security, housing, homelessness and early childhood education and care. CWP also helped to organize and host a dinner entitled Dish on Dignity, at which people living in poverty joined with Members of Parliament and policy experts to discuss poverty related issues.

D. Interactions with CRA Regarding Political Activities

35. The issue of whether NAPO/CWP has engaged in political activity that section 149.1(6.2) of the *Income Tax Act* characterizes as political is a longstanding one that has impeded the activities of NAPO/CWP for a considerable length of time. It is because of this long history that CWP now puts the issue of the constitutionality of section 149.1(6.2) before the court. To place matters in context, the history of dealings with CRA on this issue is as follows.

i) NAPO's Interaction with CRA

36. In 1979, NAPO failed to file its Form T3010 and lost its charitable status while struggling to survive and remain solvent, and was re-registered as a charity in April 1982. At that time, CRA issued a letter that raised some concerns about NAPO's activities, asserting that "it is the Department's view that if an organization attempts to influence a governmental stance or action through the exercise of demand or pressure tactics in order to bring a particular view advocated by the organization into effect, it will have engaged in a non-charitable, political activity. A copy of the letter from CRA to NAPO, dated April 1, 1982, is attached Exhibit O.

37. In 1992, NAPO was audited by CRA for the fiscal year ending March 31, 1992. CRA found that some political activities undertaken by NAPO were not properly tracked and an education letter was issued to NAPO. A copy of the education letter dated February 24, 1993 is attached as Exhibit P.

38. NAPO was audited again for the fiscal period ending March 31, 1996. In this audit, CRA found that NAPO's political activities comprised 33% of its budget, above the permitted 10%. In response, NAPO took issue with CRA's calculation but undertook to create a separate system for the tracking of expenses. A copy of CRA's letter and NAPO's response are attached as Exhibits Q and R, respectively.

39. In 2005, during another period of instability, NAPO again failed to file its Form T3010 and its charitable status was revoked on July 1, 2006. When NAPO attempted to re-register as a charitable organization, CRA advised NAPO in a letter dated March 7, 2007, that "[t]he material supplied during the application process, together with information located on the Internet, evidences that NAPO is focused, in large part, on activities aimed at attempt to influence changes in the law or government policy." This letter is attached as Exhibit S.

40. CRA had reviewed NAPO's newsletter and noted and considered a number of activities including the following, to be political:

- NAPO works for the eradication of poverty in Canada by assisting local and regional organizations to bring voices of low-income people in Canada to decision making and policy making processes in their communities;

- NAPO participated in a national campaign to Make the Minimum Wage a Living Wage and called for the “federal government to reinstate a federal minimum wage” and for “provincial and territorial governments to raise their minimum wages”;
- “NAPO participated in a major lobby effort to ensure” that funds budgeted for “social housing get allocated and disbursed for this purpose”;
- “NAPO called on government to avoid a claw-back of the” federal childcare allowance from social assistance recipients.³¹

41. Over the next two years, communications were exchanged between CRA and NAPO’s lawyer regarding the calculation of resources allocated to political activities. During this period, NAPO revised its objects and changed its name to Canada Without Poverty. Supplementary Letters Patent were issued under the new name and CWP was re-registered for charitable status on December 8, 2009.

ii) CWP’s Interaction with CRA

42. The Notification of Re-Registration, issued by CRA for CWP, included a caution about engaging in political activity. The letter stated that:

"Political" within the charitable sector has a distinct legal meaning that often differs substantially from its popular meaning and includes attempting to bring about or oppose changes in the law or government policy. The *Income Tax Act* permits a registered charity to engage in limited political activities that are non-partisan and advance their strictly charitable purposes.

³¹ *Ibid.*

The nature of the work in which Canada Without Poverty / Canada sans pauvreté is involved suggests that it may engage in some form of political activity.

A copy of the Notification of Re-Registration, issued in December 8, 2009, is attached as Exhibit T.

43. In November 2011, CRA informed CWP by telephone that it would be conducting an audit. A CRA official attended the CWP office and CWP provided information as requested.

44. On March 29, 2012, the federal government tabled its *Economic Action Plan*, allocating an additional \$8 million to CRA over two years to audit charities for political activities. The Action Plan explained that:

The Canada Revenue Agency (CRA), as administrator of the tax system, is responsible for ensuring that charities follow the rules. Accordingly, to enhance charities' compliance with the rules with respect to political activities, Economic Action Plan 2012 proposes that CRA:

- Enhance its education and compliance activities with respect to political activities by charities.
- Improve transparency by requiring charities to provide more information on their political activities, including the extent to which these are funded by foreign sources.³²

The *Economic Action Plan* also proposed that the *Income Tax Act* be amended to introduce “new sanctions for charities that exceed the limits on political activities, or that fail to provide complete and accurate information in relation to any aspect of their annual return.”³³

³² Canada, House of Commons, *Jobs Growth and Long-Term Prosperity: Economic Action Plan 2012*, tabled in the House of Commons by the Honourable James Flaherty, PC, MP, Minister of Finance (Ottawa: Public Works and Government Services Canada, 2012) at 205 (attached as Exhibit U).

³³ *Ibid.*

45. On November 26, 2012, CWP received correspondence from CRA with respect to its audit. The letter requested the following information for every activity and project in which the Organization had been involved between April 1, 2009 and March 31, 2012:

- Copies of full itineraries, schedules, and complete contents of material presented by the Organization, in relation to meetings, online seminars, workshops, forums and presentations (either to the public or to government representatives);
- Copies of letters sent to associated and partner organizations, contractors, agents, government leaders/representatives;
- Minutes of all meetings held by the Organization, and copies of all emails exchanged by the staff, volunteers, and board members;
- Full details of all partnerships/relationships with all other organizations it deals with;
- A complete breakdown of the money, time, use of volunteers and staff and use of the facilities incurred for all activities, projects, research activities, and partnerships.

A copy of this letter from CRA is attached as Exhibit V.

46. I was required to ensure that all staff, board members, volunteers and student interns, most of whom were no longer involved or in contact with the organization, provide CRA with all communications made amongst themselves and with project partners. Many of the communications contained personal exchanges of a private nature, including in some cases, political commentary exchanged in a private capacity. Handing such communications over to a government agency – on the understanding that it was to be searched for partisan statements or criticism of laws or policies of the government – was experienced by the staff, board members, volunteers and student interns as a serious compromise of CWP’s commitment to freedom of expression and association.

47. On January 9, 2015, CWP received a letter from CRA reporting on the results of its audit and outlining areas of non-compliance. CRA found that CWP’s political activities represented

98.5% of total expenditures, in excess of the permitted 10%.³⁴ A copy of CRA letter of January 9, 2015 is attached as Exhibit W.

48. CRA characterized virtually all of CWP's activities as political primarily because CWP had publicly identified the need for changes to laws and policies for poverty relief and had encouraged people living in poverty, among others, to communicate with policy experts, politicians and other decision-makers about the most effective means to relieve poverty in Canada. CRA's determinations of non-compliance referenced relevant jurisprudence and focused on whether the reviewed activities resulted in any recommendations or advocacy for changing or retaining legislation or policy. CRA explained that a charity's activity will be considered political if it:

- encourages the public to contact an elected representative or public official to urge them to retain, oppose, or change the law, policy, or decision of any level of government;
- communicates to the public that the law, policy, or decision of any level of government should be retained, opposed, or changed; or
- indicates in its materials (whether internal or external) that the intention of the activity is to organize to put pressure on, an elected representative or public official to retain, oppose, or change the law, policy or decision of any level of government.³⁵

49. Applying these criteria, CRA identified a number of activities which, according to CRA, should have been reported and restricted as political activities. CRA determined that the Dignity for All campaign contributed to CWP's excessive political activity because it focused on formulating recommendations for a national strategy to alleviate poverty.³⁶ For example, CRA

³⁴ Letter from Canada Revenue Agency to Canada Without Poverty (9 January 2015) at 10 (Exhibit W).

³⁵ *Ibid.*

³⁶ *Ibid.* at 16.

found that the Dish on Dignity event was restricted “political activity” because discussions over dinner between people with experiences of poverty, policy experts and politicians resulted in recommendations for legislative and policy change.³⁷

50. CRA also reviewed several policy summits co-hosted by CWP in which low-income people engaged with experts about particular policy issues relevant to the relief of poverty. CRA noted that the summits resulted in the compilation and publication of policy recommendations in a number of areas, that recommendations included changes to laws and policy and fed into the development of a “model federal plan to reduce, and eventually eliminate, poverty.”³⁸ Because of these activities, the policy summits were found to be political activity which must be restricted in compliance with section 149.1(6.2) of the *Income Tax Act*.

51. CRA has clarified that the ways in which CWP encourages people living in poverty and others to engage in democratic processes constitutes restricted political activity. For example, CRA considered CWP’s “presence at various conferences, meetings and rallies” where CWP members and staff “made appearances” and “engaged with Members of Parliament” as restricted political activity.³⁹

52. CRA found that CWP also engaged in political activities to organize support for federal action to reduce poverty by “issuing media releases, publishing articles on the work undertaken by the United Nations Special Rapporteur on The Right to Food, encouraging member organizations to write to the Minister for Human Resources and Social Development, asking her

³⁷ *Ibid.* at 13.

³⁸ *Ibid.* at 12.

³⁹ *Ibid.* at 15.

to adopt the recommendations contained in the Special Rapporteur's final report, sending e-action asking supporters to send their own message to the Minister.”⁴⁰

53. CRA reviewed informational videos on CWP's website, featuring Honorary Director Ed Broadbent and members of CWP's Board of Directors offering statements on the topic of poverty. These were found to be political activities which should have been restricted because Mr. Broadbent and the board members identified a need for “political intervention and policy reform.”⁴¹

54. CRA also found e-mail communications sent to CWP's network via a list-serve to be political activity because the e-mails suggested that legislative and policy action be taken to address poverty in Canada.

55. A workshop on Guaranteed Income, the purpose of which was to “share perspectives and build understanding about approaches [to poverty]” was categorized as restricted political activity because, in CRA's view, “realizing an expanded basic/guaranteed income system for Canada could only be achieved through changes to the laws, policies or decisions of various levels of government.”⁴²

56. CRA noted political activity in regard to CWP's participation in the Red Tents Canada Day of Action for a federal housing strategy, part of a worldwide initiative to address homelessness. CRA noted that the strategy was to “use red tents and like items as symbols on the streets and in the media during the 2010 Olympics to draw attention to Canada's

⁴⁰ *Ibid.* at 14.

⁴¹ *Ibid.* at 17.

⁴² *Ibid.* at 17.

homelessness crisis, educate the public about the need for a funded national housing strategy and mobilize people across the country to pressure government to take action on homelessness.”⁴³

57. CRA found that a project involving outreach to ethno-cultural communities across Canada regarding poverty, including a questionnaire and survey, was restricted political activity because it included guidance on how to advocate for the elimination of poverty and was judged by CRA to be “promoting the Organization’s views on the elimination of poverty.”⁴⁴

58. CRA reviewed materials related to a six-week, online educational seminar on economic and social rights in international human rights law offered by CWP, in which various experts, including a law professor from the University of Ottawa, engaged online with registered students regarding assigned readings. Among other things, the course provided information on how Canada’s obligations under international human rights law can be utilized to hold governments accountable to their human rights obligations to take measures to address poverty. CRA noted that the course “focuses on the Organization’s perspective on changing the current Canadian approach to poverty relief. Creating a particular climate of opinion towards an issue for the purpose of retaining, changing, or opposing legislation is political, not charitable.”⁴⁵ As such, CRA found that the online course should have been reported and restricted as political activity.

59. CRA also reviewed a website to which CWP contributed, and indicated that any references or hyperlinks to materials that encourage the public to promote changes to laws and policies for the relief of poverty constitute restricted political activity. CRA provided as examples, a link to a report by the Canadian Association of Social Workers which included a call

⁴³ *Ibid.* at 18.

⁴⁴ *Ibid.* at 19.

⁴⁵ *Ibid.* at 19.

for more accountability in the Canada Social Transfer, and a link to a book entitled, *Living Justice: A Gospel Response to Poverty*. As described by its publishers this book was: “a resource for people interested in learning more about the situation of poverty in Canada, exploring the Christian call to respond, and searching for ways to engage and create change. It includes reflections, discussion questions, activities, and prayers that will provide insight into the situation of poverty in Canada, the challenges and opportunities we face as a society, and actions that we, as Christians, can take.”⁴⁶

60. Where the website contained a reference to a publication in which an author was critical of the Conservative government in power at the time, this was considered by CRA to constitute prohibited partisan political activity by CWP. This was the case even if the author was not staff, a member or in any way associated with CWP. For example, CRA noted that a link had been provided to a Hamilton Spectator article entitled "Housing Strategy Died in the Name of Ideology," in which "the author condemns the defeat of Bill C-545 by the Conservative Party on ideological grounds."⁴⁷ The author had no connection to CWP but CRA found that publicly providing a link to an article that was critical of the Conservative Party constituted prohibited partisan political activity by CWP.

61. The only CWP activities CRA deemed to be non-political charitable activities were primarily educational in their focus: assisting in a financial literacy project; participating in a research project on poverty and disability; and hiring a graduate student to do research with a grant from the Harvard Club of Ottawa.

⁴⁶ Citizens for Public Justice, “Living Justice: A Gospel Response to Poverty”, CPJ, online: <http://www.cpj.ca/livingjustice>.

⁴⁷ *Supra* note 47 at 21.

E. CWP's Interest in Challenging the Constitutionality of Section 149.1 (6.2) of the *Income Tax Act*

i) Section 149.1(6.2) Thwarts CWP's Charitable Purpose of Poverty Relief

62. Restricting the freedom of CWP's staff and members to publicly express, publish, disseminate or promote views on the need for changes to laws and policies to relieve poverty, as required by section 149.1(6.2), is entirely at odds with CWP's understanding of effective poverty relief, and at odds with CWP's charitable purpose of relieving poverty in Canada. In particular, these restrictions undermine the role people affected by poverty play in identifying and addressing the causes of poverty, and undermine the importance of equal democratic citizenship of people living in poverty to the development of effective policies and strategies.

63. In accordance with accepted views of poverty adopted by Canada and other governments in international forums in which CWP has participated, CWP addresses poverty as a multidimensional dynamic of social exclusion, marginalization and material deprivation created by the interactive effects of laws and policies made without adequate participation or consideration of those affected by poverty. CWP's activity to relieve poverty at the national level can only be effective if CWP:

- (a) facilitates the engagement of people living in poverty in public policy discussions and political processes linked to the relief of poverty;
- (b) combats stigmatization and social exclusion and promotes equal dignity and citizenship of people living in poverty; and
- (c) addresses the need for changes to law, policy and government decisions.

64. If CWP were to restrict its primary activities for the relief of poverty to individualized assistance for people living in poverty while imposing the required restrictions on expression or collective action regarding the need for changes to laws and policies, CWP's activities would reinforce the notion that poverty is an individual rather than a societal problem and thereby exacerbate rather than relieve poverty in Canada.

ii) **Section 149.1(6.2) Contributes to the Stigmatization and Social Exclusion of People Living in Poverty**

65. In CWP's experience, the restrictions imposed on CWP by section 149.1(6.2) impede CWP's ability to combat the stigmatization and social exclusion of people living in poverty in Canada through the means that CWP seeks to pursue in accordance with modern internationally recognized principles. Restricting the democratic voices of CWP's board and membership reinforces their social and political marginalization, deprives them of equal dignity and participation in Canada's democratic systems, and defeats CWP's ability to pursue its vision in a manner that is internationally recognized as valid of how best to relieve poverty on a national scale. Such restrictions on CWP's activities are counterproductive to any sustainable attempt to relieve poverty on a national scale.

66. In CWP's view, confining the role of people living in poverty to being recipients of emergency provisions creates a relationship of dependency and powerlessness that is linked to feelings of shame, unworthiness and indignity. Section 149.1(6.2) prevents CWP from freely pursuing its view of how best to alleviate poverty through the encouragement and facilitation of people living in poverty to assume the role of active citizens, attending conferences, workshops or rallies, speaking or writing about the causes of poverty, engaging with members of parliament, providing important insights into what needs to be done to reduce and eliminate poverty and

participating in the implementation of effective strategies and programs. Section 149.1(6.2) has the effect of further stigmatizing CWP's low income members and other people living in poverty.

iii) **Section 149.1(6.2) Thwarts the Exercise of Freedom of Expression and Freedom of Association by Those Living in Poverty**

67. Section 149.1(6.2) makes it more difficult for CWP's members – and all Canadians living in poverty – to exercise their rights of freedom of expression and freedom of association in the same manner that other Canadians can. Charitable status for CWP is crucial to its ability and the ability of its members to participate meaningfully in the political process in Canada.

iv) **Section 149.1(6.2) Imposes Unreasonable Requirements on the Exercise of Authority within CWP**

68. Section 149.1(6.2) requires the Executive Director and the Board of CWP to institute a form of monitoring and control over staff, volunteers and members which is contrary to the dignity and respect which CWP wishes to accord employees, volunteers and members. Ensuring compliance with section 149.1(6.2) as directed by CRA would require me, as Executive Director, to severely restrict the ability of CWP staff, board, members and volunteers to express any criticism of the government's current policies or to make references to changes of laws or policies in lectures, speeches, presentations, blogs, tweets, emails or articles that are associated with or disseminated by CWP. In order to reduce CWP's political activity I would also be required to prohibit staff, members and volunteers from attending or participating in events where speakers may be critical of the government's current laws or policies. Such action is contrary to the reasonable exercise of authority in a workplace and would undermine the

integrity and reputation of CWP as an organization that promotes and complies with human rights and democratic values.

F. Conclusion

69. CWP believes that section 149.1 (6.2) violates the rights of CWP and of its members to freedom of expression under section 2(b) and freedom of association under section 2(d) of the *Canadian Charter of Rights and Freedoms*.

70. CWP's experience is that these restrictions: undermine the effective pursuit of its charitable purpose; perpetuate discrimination and stigmatization of people living in poverty; deny CWP's members and networks equal participation in public policy discussion and democratic decision-making; and exacerbates poverty and social exclusion among CWP's members and networks.

71. CWP has experienced the rigorous monitoring and review by CRA of communications, writings, public statements, lectures, websites and all other forms of expression of its staff, members and volunteers, as well as those of any collaborative campaigns or associations in which CWP has participated, as a severe encroachment on freedom of expression and association and a threat to Canada's democratic values.

72. When the consequences of non-compliance with reporting requirements and restrictions on political activity may include: revoked registration; loss of financial viability; effective elimination of CWP as a financially viable organization; loss of employment for staff; and potentially serious financial implications for volunteer board members, these restrictions create a significant chill on free debate and discussion of issues related to the relief of poverty.

73. CWP believes that the restrictions on expression and association in section 149.1 (6.2) are antithetical to principles of democracy and cannot be justified in a free and democratic society.

AFFIRMED BEFORE ME at the Town
of Huntsville in the Province of Ontario
on August , 2016.

Commissioner for Taking Affidavits

Leilani Farha

CANADA WITHOUT POVERTY

Applicant

and **ATTORNEY GENERAL OF CANADA**
Respondent

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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