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Submissions To: Special Senate Committee on Poverty

Re: Poverty and Civil Liberties

From: Canadian Civil Liberties Association

Per: A. Alan Borovoy
General Counsel

Thursday, April 16, 1970 Ottawa

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INTRODUCTION

The Canadian Civil Liberties Association is a national organization with a number of chapters across Canada. Our membership consists of over one thousand people and includes a wide variety of callings and interests - lawyers, writers, professors, business men, trade unionists, minority groups, television personalities, actors, etc.

We have been organized essentially to protect the freedom and dignity of the individual against unreasonable invasion by society. The relationship between poverty and our objectives is an obvious one. People without means are the most vulnerable to encroachments on their freedom and dignity.

The ensuing submissions were gleaned from our experience in attempting to vindicate the rights of impoverished people. As our experience develops, we would hope to make additional representations on this important subject.

PART A - Poverty and Civil Liberties - Some General Observations

Clearly, it will require much more than the extension of civil liberties to abolish poverty in this country. Of necessity, a civil liberties submission will not deal with the various economic solutions which have been recommended in our succession of wars on poverty. Nowhere in this submission will there appear either a favorable or a critical evaluation of fiscal and monetary policy, the nationalization of industry, the white paper on taxation, or the Prices and Incomes Commission.

Civil liberties are concerned less with the substance of government economic policy than with the method by which existing policy is administered and the process by which change in policy is effected. The civil liberties contribution to the problem of poverty lies mainly in overcoming the disadvantages of poverty in the administration of existing law and the processes available to change the law. Our thrust will be essentially twofold.

1. How can we promote greater equality for the poor under existing law?

2. How can we increase participation of the poor in the processes to change the law?

PART B - Poverty and the Procedural Protections of Existing Law

(1) Legal Rights and Legal Service

One of our favorite social doctrines is equality under the law. Every man - black or white, Jew or Gentile, Protestant or Catholic, rich or poor is entitled to equal treatment under the law - the right to present his evidence, the right to cross examine his adversary's evidence, the right to be presumed innocent until proved guilty.

Of course, there is an uncomfortable dichotomy between possessing and enjoying these legal rights. In our complex society, we cannot enjoy legal rights without legal service. Between the doctrine and the reality of legal equality stands the lawyer trained to navigate through the increasingly murky sea of laws, customs, restrictions, and regulations. But the very complexity of legal training has compounded the costs of legal services.

Thus it is clear how the fact of poverty can subvert the goal of equality. Meagre resources cannot purchase costly services. Yet costly legal services are indispensable to equal legal rights.

The challenge of poverty to the goal of equality is to devise a method for making the voices of the law responsive to the call of the voiceless.

Thus far, Canada has responded to this challenge with a series of publically subsidized legal aid plans in the many jurisdictions of this country. Our problem is to determine whether and to what extent the present state of legal aid can resolve the dichotomy between equality in legal theory and equality in legal practice.

Regrettably, very few comprehensive studies have been undertaken into the state of legal aid service in this country. Thus, whatever material we have will be more suggestive than conclusive. Within these rather severe limitations, we will do the best we can.

Our own organization's survey into the administration of various aspects of criminal justice has already yielded some suggestive information about legal aid service in Winnipeg, Halifax, and Montreal. Although we have not yet had the opportunity to subject our findings to proper analysis and indeed even to complete our findings, some of the preliminary material is rather revealing.

Of thirty-seven accused persons whose cases were disposed of on the court calendars of five randomly chosen days in Winnipeg, only six were represented by counsel. The magistrates court disposed of criminal charges against thirty-one persons who had no legal representation. Thirty-six persons were convicted: in fact all thirty-six pleaded guilty as charged. Ten of them were sentenced to various terms of penal incarceration. Yet the one hundred and sixty thousand dollars currently allocated for the year ending March 31, 1970 represents a substantial increase in Manitoba's public commitment to legal aid. In the year ending March 31, 1969, there was an allocation of only forty thousand dollars of public funds.

Three randomly chosen court calendars from Halifax during the month of January 1970 depict something of the Nova Scotia pattern. Of fifty-nine disposed of accused, only seven were represented by counsel; fifty-two were unrepresented. During this time, fifty-one persons were convicted on the basis of forty-seven pleas of guilty and four findings of guilt. Six persons went to jail. The Nova Scotia Government is currently spending about twenty-five thousand dollars per year on legal aid.

Of twenty-six disposed of accused in three randomly chosen court calendars from early February in Montreal, only four were represented by counsel and twenty-two were unrepresented.

Although as high a number as thirteen went free because of withdrawls of the charges or acquittals, eight were convicted and five were committed for trial. We have no record yet of incarcerations during this period.

Although the province of New Brunswick has committed itself to the principle of enacting a legal aid plan, at present it does little more than pay the defence of poor prisoners who are indicted or committed for trial in a restricted number of serious offences.

Eligibility for government subsidized legal aid in Saskatchewan requires an annual income amounting to less than two thousand dollars for unmarried persons and twenty-five hundred dollars for married persons. Although we have no evaluations or statistical evidence on the operation of the plan, we can well imagine what quantity of legal service is available for poor people on the basis of these near - starvation eligibility requirements.

The actual fees payable to lawyers under the plan bolsters the picture. In any case tried in the district court judges criminal court, the half day fee for senior counsel is fifty dollars and, on a plea of guilty, twenty dollars. Junior counsel in the same situation are entitled to forty dollars and fifteen dollars. In magistrates court, senior counsel are entitled to forty dollars for a half day and twenty dollars on a plea of guilty and junior counsel to forty dollars and fifteen dollars. On the private market, such a schedule of fees could purchase little more than the introductory salutations at the beginning of the hearing.

By contrast, during the year ending March 31, 1969, the province of Ontario incurred a net cost of over seven million dollars to subsidize

legal fees in close to fift thousand cases. Significantly, these statistics represent assistance both in criminal and in civil cases.

When we are dealing with the fundamental civil liberty of equality before the law, a situation of "regional disparities" is especially repugnant. To this end, our first major objective should be the equalization of legal aid services throughout the country. It is no longer tolerable to perpetuate a state of affairs in which indigent persons who run afoul of the same law in different provinces will owe their legal protections less to the quality of their act than to the place where it occurred.

Accordingly, we recommend a system of federal grants to insure everywhere in Canada at least that state of subsidized legal aid that is available in Ontario. Some adjustments might be made in other federal services in order to promote equity between those provinces that provide these legal services through their own resources and those calling for a greater share of federal assistance. However, because of the resources at its control and the pivotal character of its role, it is the federal government which must take the initiative.

But the goal of equality under the law requires that we go beyond the level of legal aid experience in Ontario. The bulk of Ontario's publically subsidized legal aid has been used in litigation. What this means is that most of the help we have given to the poor has arisen after the damage has been done. But General Motors' battery of lawyers provides assistance in avoiding the courtroom ..

In order to promote both greater equality and greater substance in the exercise of legal rights in Canada, we must devise a more effective programme of state - subsidized preventive legal service. In this connection, we associate ourselves with the concept of a community legal clinic physically located in the residential areas of the poor. The concept calls

for state - salaried lawyers who operate a store front clinic that aggressively attracts the patronage of the poor.

The lawyers would be encouraged to specialize in the problems of the poor - consumer credit, landlord - tenant, welfare, workman's compensation, unemployment insurance etc. Unlike the traditional law practice that refrains from advertising its services, the state- subsidized clinic would go looking for problems. Because of generations of alienation from the legal world, poor people are often unaware that their problems can be resolved or even characterized on a legal basis. That is why tradtional law practice is often irrelevant to their needs. The clinic lawyers would publish and distribute literature, visit homes, speak at community meetings in order to promote a maximum use of their services. The emphasis would be what it is in the corporate world - how to vindicate their clients' interests, as much as possible, without resort to litigation.

Of course, within the context of this submission we are not able to deal adequately with the details of such a proposal. It is not difficult to conceive of a wide variety of problems which would accompany the introduction of such a programme. Suffice it, at this stage, to point up the desirable direction of government effort. To this end, we join the community and legal aid services programme of the Osgoode Hall Law School at York University in recommending

> " a joint federal - all province study.... of probable legal needs of indigent areas under an all - service providing legal aid scheme."

As an additional aid in working out the details of such a proposal, the federal government should undertake much sooner the establishment of some legal aid clinics on a demonstration project basis. They could provide a useful guide to the ultimate development of a nation - wide comprehensive programme of all - purpose legal services.

The gap between the theory and practice of Canadian legal equality is great indeed. As a whole, legal aid in this country is little more than a ritual gesture on the road to equality. As such, it is more of a salve to those who have, than a help to those who need. With respect, it is time we were more serious.

(2) Some Additional Protections in the Criminal Law

At almost any time, we could walk into a Canadian prison and find a number of people who are suffering forced confinement without ever having been found guilty of a criminal offence. Sometimes the incarceration under such circumstances has gone on for days, sometimes for weeks, and sometimes even months.

In a great number of these situations, the imposition of the penalty is attributable more to poverty than to any other factor. Many of these people are languishing in jail because they lack the financial means to pay the bail which has been set in their cases. Great numbers of those charged with criminal offences whose trials are delayed must purchase their freedom with money during the interim period. Thus, the liberty of the subject often depends less on the nature of the impugned conduct than the size of the accused's wallet.

Our legal system contains fewer inequities more offensive to the principle of legal equality than the concept of financial bail. Persons, whom the law presumes innocent, suffer long periods of incarceration essentially because they are too financially poor to purchase their freedom.

This deformity in our legal structure was persuasively brought to our attention a number of years ago in Martin Friedland's classic study "Detention Before Trial". Unfortunately, there has been little significant change since the publication of Professor Friedland's work.

A few random tests undertaken more recently convey the same basic pattern. When our organization examined a Toronto court calendar for August 1968 we found that an aggregate total of two hundred and thirty-two days were spent in jail by approximately six people against whom all charges were withdrawn during the month of August. A sixty-eight year old man was arrested and charged with making a false statement on July 3rd. He sat in custody until August 1st when his charge was withdrawn. The prosecution withdrew charges against other people who had already been in custody for 19 days, 16 days, 33 days, 5 days, and 2 days. Perhaps the most shocking of these cases occurred on August 2nd. A charge of possession of narcotics was withdrawn against a man who had been arrested for this offence on March 23rd. He had been deprived of his freedom for 131 days and, in the final result, the prosecution decided it lacked sufficient evidence to go to trial.

The same court calendar discloses an aggregate total of 235 days of jail time which were served by four people whose ultimate penalty was either probation or suspended sentence. One of these cases involved a seventeen year old boy who was arrested on June 3rd, charged with possession of a dangerous weapon and a breach of the Liquor Control Act. From June 3rd until August 1st. 58 days, this boy sat in custody. On August 1st, the Crown withdrew the serious charge of possessing a dangerous weapon and the court imposed one year probation for the liquor offence.

Recent news stories suggest that a year and a half later, we would probably find similar cases in many jails throughout the country.

Significantly, not even the goal of public safety is adequately protected through the bail system. Often, the wealthy accused who are able to purchase their freedom until trial pose much

greater threat to society than many of the impoverished accused whose financial insolvency keeps them locked up until trial. In the greatest number of cases, we achieve virtually nothing with financial bail except incarceration of the poor.

Fortunately, the Federal Minister of Justice has announced his intention to reform the bail laws. We should give this effort every support. To this end, The Canadian Civil Liberties Association recommends the adoption of a different system for determining the issues of freedom and detention before trial. Consistent with our legal presumption of innocence all accused should be, prima facie, entitled to their freedom before trial, unless the Crown can satisfy the court of one of the following:

1. Because of the nature of the offence with which he is charged and the life style he has been pursuing, the accused is not likely to appear in court for his trial.

2. Because of the accused's propensity to commit dangerous acts against persons and property, it is not safe to set him free.

On the basis of these criteria, the entitlement to freedom would be behavioural rather than financial. By reshaping our law in this way, we could maximize the conditions of freedom and minimize the disadvantages of poverty, without significant jeopardy to the interests of public safety.

Another inequity in the criminal law concerns the imposition of monetary penalties for criminal conduct. Obviously, this punishes the poor man more severely than the rich man. Moreover, when the

fine is demanded immediately more poor men than rich men will be forced into prison. Again incarceration is more attributable to financial limitation than to criminal behaviour. Accordingly, we recommend a mandatory system of reasonable instalments for the payment of criminal fines. At least, this would give the poor offender a more equal chance to avoid the jail house.

(3) Some Special Protections in the Welfare Law

The concept of legal equality requires adjustments not only in the general law applicable to everyone but also in the special laws applicable to the poor i.e. welfare law. What about the complex of procedures and rights in the body of the law which deals especially and daily with most impoverished people in our society? Do the laws of special application to the poor provide the procedural fairness that characterize the laws of general application to everyone?

In this regard, we applaud the initiative undertaken by the federal government in the Canada Assistance Plan. In order to promote procedural due process for the impoverished recipients of federal welfare funds, the participating provinces must provide a "procedure for appeals".

Again we regret that such a measure may be more of a ritual gesture than a legal safeguard. An investigation of provincial welfare practices will disclose the violation of some of the most fundamental canons of procedural fairness known to the law. On most of these issues, the Canada Assistance Plan maintains a resonant silence. Moreover, even some of the provincial appeal procedures, notwithstanding the requirements of federal law, contain more verbal bark than legal bite.

Our experience with public welfare administration in the province of Ontario has disclosed a rather questionable practice at the outset of a recipient's relationship with many municipal welfare administrations. The recipient is required to sign a special consent form giving welfare officials a continuing right of access to his home. The affront to the principle of legal equality is clear. The privacy of the home is one of the most sacred doctrines in our legal tradition. This doctrine protects all the rest of us including the most dangerous criminals. Unless there is a situation of hot pursuit, even the police are obliged to secure a judicial warrant before entering the home of a dangerous criminal.

In this way, the innocent indigent on welfare claims fewer legal rights than the suspected robber at large. To effectuate the principle of equality between the general law and the poor law, the Canada Assistance Plan should provide another condition on the use of federal money - no welfare officer should be entitled to compel access to the home of a welfare recipient unless he can secure a warrant upon satisfying a disinterested judicial officer that there are reasonable and probable grounds for the belief that a search of the premises will disclose a violation of the law.

Recently, an Ontario deserted wife on welfare received some shocking news when she opened her mail one morning. A letter from the Director of Family Benefits simply informed her that " because of information on file" she now fell into a disqualifying category, and that, effective a few days earlier, the welfare allowance for herself and four children was cancelled.

Again, the discrepancy between the poor law and the general law is obvious. The common law and statute law of general application

invariably require the right to a fair hearing. For example, if one party is sued for a minor debt, he is entitled to advance notice of the claim against him, representation by counsel, an opportunity to cross examine his adversary's evidence, an opportunity to present his own case and adjudication by a disinterested third party. In the case of our deserted wife on welfare, however, a very major matter, her entire livelihood was taken away without any hearing of any kind. Moreover, the decision - maker, far from being a disinterested third party, is the cost - conscious dispenser of welfare.

No appeal machinery can adequately rectify this violation of fundamental due process. Invariably, the appeal machinery takes time. But any delay could produce irreparable damage to the family dependent on welfare.

Much of the provincial welfare legislation in this country is silent on the issue of a fair hearing before the occasion of the first adverse decision. This situation calls for a cure at the federal level. In order to provide minimum standards of procedural fairness throughout the country, the Canada Assistance Plan should base the use of federal funds in provincial welfare administration on the condition that the provincial legislation require a fair hearing before the first adverse decision is made. If the welfare administrator is intending to deny, adversely vary, suspend or cancel welfare benefits, he should be obliged to give reasonable advance notice of his intention and reasons for so doing. This notice should include a summary of the evidence that is being relied upon. At that stage, the applicant or recipient could be entitled, with or without counsel, to challenge the evidence and present evidence and arguments of his own. This could be done orally or in writing. The hearing need not be formal or lengthy. It could take the form of an interview or discussion. The objective is to give the person

affected a reasonable and effective opportunity to persuade the administrator before the decision is made. The right of a fair hearing is so basic to procedural fairness that a federal initiative is crucial.

Having legislated the requirement for appeal machinery as a condition of obtaining federal funds, the federal government has not exhausted its role.

Have all the provinces enjoying federal assistance complied with the requirement? Thus far, in at least one case, the province of Quebec, the Lieutenant Governor- in-Council has failed to proclaim the legislative provisions for appeal machinery. Moreover, is the provincial appeal machinery operating according to the intention of the Canada Assistance Plan?

In some cases we have our doubts.

In the province of Ontario, for example, the welfare board of review contains a number of people who had previously served for long periods of time in provincial or municipal departments. As such, they were intimately involved in the formulation and execution of department policy. Yet, it is this very policy which will so often be under attack at board of review hearings. The problem is to what extent can we anticipate a fresh and independent evaluation of welfare policy under such circumstances.

Indeed, a number of board of review judgments in the province of Ontario have dismissed welfare claims without the slightest attempt to analyze anew or even to examine the statute or regulations. These judgments have upheld the policy of the Family Benefits Branch by simply proclaiming that the disputed policy has been the practice of the Family Benefits Branch. It is rather a novel form

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of jurisprudence, to say the least, for the appellate tribunal to invoke the authority of the very tribunal whose judgment is under appeal

Both the reality and the appearance of independent procedures require that the appeal boards be made up predominantly of people from outside the ranks of welfare administration.

Independence also requires a structural separation between the operations of the appeal board and the department. In mid February 1970 an applicant for public welfare in Nova Scotia received the following letter:

> "In January you requested an appeal under the provisions of the Social Assistance Act in respect to your application for Municipal Social Assistance.....It was the unanimous decision of the Appeal Board that you do not have the budget deficit as defined under the regulations of the Social Assistance Act and, therefore, municipal social assistance to you and your family cannot be granted at this time.

Significantly, this letter was sent on the stationery of the Department of Public Welfare and signed by the Administrator of the Public Assistance Division of the Nova Scotia Department.

The imposition of departmental intermediaries creates the appearance of a dependent relationship between the appeal board and depart ment. Accordingly, another minimum standard which should be required of welfare appeal boards is direct communication between the appeal board and the public.

It appears that very few lawyers have been appointed to serve on

the welfare appeal boards. It appears also that appeal boards are often called upon to interpret statutes and regulations. Clearly, legal advice is necessary to competent performance. The present state of affairs in many of the provinces would create the impression that the appeal boards might seek legal advice from within the government service. Again, such an arrangement or even the appearance of such an arrangement would be a negation of the independent role of appeal machinery. Again, the Canada Assistance Plan should require that welfare appeal boards be given the resources to engage independent counsel.

Not all welfare boards publish the judgments they render. Clearly, publication is necessary to due process. Tomorrow's applicant is at an unfair disadvantage unless he has the knowledge of what happened to to-day's applicant.

Publication is a vital safeguard against arbitrary adjudication. In allowing for public scrutiny and open criticism, publication promotes the objectives of consistency, fairness, and improvement. Again, we have a discrepancy between the procedures provided in the general law and those in the poor law. Society has provided some kind of publication for the decisions of virtually every other tribunal that exercises judicial functions. But the tribunals which are involved in the special problems of the poor appear to operate behind a veil of secrecy.

The Canada Assistance Plan should add the requirement of publication to the minimum standards of performance which would be expected of welfare appeal boards.

It is obvious from the actual experience that the principle of due process of law in the field of public welfare requires much more than a provision for appeal. There are too many other areas where

basic procedural fairness is violated and even the right of appeal does not conform to the prevailing standards of appellate jurisprudence. Even though the federal government may wish to avoid intruding on the substance of welfare law, it has a duty, where federal funds are involved, to promote the adoption of proper procedures. The laws which are especially devised for poor Canadians should be administered with the same regard for due process as the laws of general application to all Canadians. The federal government is in the pivotal position to make this contribution to legal equality between the poor and the non-poor.

But this requires even more than the adoption of the foregoing legislative recommendations. It also requires a continuing review function. We know now that some provinces which received federal welfare funds were delinquent in setting up appeal machinery. We know of at least one province which hasn't done so yet. When other minimum procedural requirements are written into the federal law, we must develop some machinery to guarantee that the provinces play their part. Again, this is a responsibility of the government that sets the minimum standards - the federal government.

While the federal government, itself, should be involved in the process of review, it might also assist welfare recipients to perform this function. One of the most glaring inadequacies in the administration of welfare law is the wide spread ignorance of the rights and duties created by the law. Too many welfare applicants and recipients don't know their rights and are reluctant to exercise them. Too many welfare administrators don't know their limitations and are eager to exceed them. The federal government could perform the vital service of helping to fill the knowledge gap.

~~Either by itself, or through grants~~ to the provincial governments and/or to the voluntary sector of the community, the federal

government should take the initiative in a large scale programme of public education regarding the provisions of welfare law. To this end, advertisements should appear in the press, on radio, television, tramways, taxis, billboards etc. Leaflets and other forms of literature should be especially distributed in low - income areas and public housing developments. Just as we have allocated so many resources in getting needy people off the welfare rolls, so should we spend some resources in putting needy people on the welfare rolls. Moreover, we should make a special effort to inform people of their rights and duties where we can anticipate conflict between the interests of the welfare office and the interests of the welfare recipient. Recipients are not likely to press their rights against officials unless the government has specifically advised them that they may do so. Accordingly, we would urge the federal government to promote the distribution, through the mail and in welfare offices, of leaflets and pamphlets which set out, among other matters, the rights which we have advocated in this submission.

Again, a vigorous educational programme would help to resolve the inequality between the poor law and the general law. Other government services have not been so reluctant. There has been considerable publicity about Medicare, unemployment insurance, workman's compensation, etc. Legal equality between the poor and the non-poor requires a similar effort to promote information in the welfare area. Accordingly, we request a federal government initiative in this direction.

PART C -POVERTY AND THE DEMOCRATIC RIGHT TO CHANGE THE LAW

(1) Political Pressures and Legal Restraints

But the better administration of existing law is not good enough. The road out of poverty will have to be paved with changes in law. As we have indicated, civil liberties are concerned less with the substance than with the process of change. To what extent does economic privation undermine political participation? Does our system provide a fair opportunity for the poor as well as the rich to influence legislative policy? Again, we must look behind the formal provisions and examine the substantive reality.

Pressure is the instrument of influence. Where money is an additional source of the rich man's pressure, the human body is the only source of the poor man's pressure. The pressure weapons of the poor flow from the human body - the right to speak and the right to demonstrate. Thus, in order to make the political processess more responsive to the pressures of the poor, we must examine the legal restraints on speaking and demonstrating. The more restrictive the law is of these activites, the less able the poor will be to impress their interests on government policy.

In the current era, our society has faced more challenge from dissenters of the middle class than from those of the lower class. But the experience of to-day's middle class dissenters is highly relevant for tomorrow's lower class dissenters. The law respecting dissenting speech and deed has universal application. What signs are there that the law is receptive or hostile to challenge? What can we expect in the days ahead as the poor intensify their pressures for change?

Thus far, Canada has felt few of the tensions generated elsewhere

by those attacking the status quo and the repressions returned by those defending it. But during the past year, we have seen some striking examples of the Canadian capacity for retaliatory repression in the face of unpleasant pressure. Following a series of campus upheavals in the West, a young person was charged with and convicted of criminal libel for having written in an offbeat journal that a certain judge behaved like Pontius Pilate. Following some student upheaval in the Maritimes, a student was found guilty of contempt of court and went to jail for ten days for having written in his campus newspaper that a certain trial was a " mockery of justice" and that the courts were "tools of the corporate elite". In Toronto, some young demonstrators were convicted of creating a disturbance for shouting ' traitor Trudeau' at a Liberal Party picnic. In Montreal, several outbreaks of violence in the streets provoked the enactment of a by-law prohibiting all demonstrations in the streets except, of course, the Grey Cup parade.

It is one thing to punish the assaults on persons and property that preceded the foregoing acts. But it is another thing to punish unpleasant words and to prohibit non-violent demonstrations. The fact that all this happened within so short a period of time conveys both the repressive potential of our social character and the fragile basis of our right to dissent. The implications for poor peoples' pressure are as obvious as they are ominous.

If the law of dissent is neither fair nor secure, the poor dissenter will be even worse off than his non-poor counterpart. While the middle class dissenter has other resources, the poor class dissenter has only his body. Where restrictions on speaking and demonstrating can handicap middle class dissent, they can obliterate lower class dissent. Moreover, the poor will be more helpless against the pressures of police and prosecution.

Thus it is time for a more thorough evaluation of the right of lawful dissent in this country. Why do our courts retain the power to punish scandalizing statements about the courts that are made miles from the courtroom? Would a person who shouted "bravo Trudeau" be as guilty of creating a disturbance as the one who shouted "traitor Trudeau"? Is it an offence to shout nasty slogans at a noisy picnic? Does the offence arise simply because other people are likely to be provoked? Does this mean that the speaker must be silent because he might be attacked? Can the offence of participation in an unlawful assembly punish those who attract violence to themselves as well as those who incite it against others?

Should the time and route of assemblies in the streets be as subject as they are to-day to the discretion of the police? Should the right to large numbers of pickets in labour disputes be as subject to injunctive restraint as it is to-day? Should the law provide for collective bargaining in landlord - tenant disputes with some kind of protection for rent strikes as it does not to-day? Should the law punish retaliatory evictions of tenants from their homes for membership in tenant unions as it now punishes retaliatory discharges of workers from their jobs for membership in labour unions?

The effective participation by the poor in the democratic processes of changing the law requires a painstaking examination of these issues. As we have indicated, the right to speak, to picket, and to demonstrate are the chief instruments through which poor people can effectively influence legislative policy. Although this is not the place to enter upon an analysis of the legitimate extent and limits of the right of effective dissent, it is the place to request that the job be undertaken. The federal and the provincial jurisdictions are both involved. Accordingly, we recommend that the federal government initiate with the provincial governments a co-operative investigation of the law respecting the right of dissent in this country.

At issue is the confidence of poor people in the non-violent democratic processes and, indeed, the very viability of the democratic processes.

(3) Toward More Viable Pressure Groups of the Poor

To a very great extent, ours is a society of pressure groups. At any given time, government policy will reflect the balance of power among the pressure groups. For too long, those at the bottom of the economic ladder have been left out of the social consensus because they failed to organize self serving pressure groups.

At last, the situation is beginning to change. Pressure groups of the poor - welfare recipients, public housing tenants, urban slum dwellers, Indians, - are beginning to emerge all over the country. However, although the organizational activity is great, the political impact is slight. This is because the problems of internal organization are enormous and the conflict with outside groups is severe. In our complex society, effective citizen organization requires money. There must be money to recruit members there must be money to hire competent staff. All the major pressure groups in this society have resources to advance their interests. Many of these groups are exerting pressures on the government in direct conflict with the interests of poor people. There is no way that a poor people's organization can survive in this atmosphere of complexity and conflict unless it has an adequate amount of money

Yet the very poor people whose interests the organization has been designed to advance, don't have the money to support the effort. Such groups will be forced to solicit contributions from beyond their own ranks. Invariably, there are more affluent elements of the population whose generous impulses are propelled in these directions. Unfortunately, however, there are serious impediments to such voluntary donations.

Under the law, donations to such organizations are not deductible for income tax purposes. In order to secure tax deductible status, an organization must be totally involved in "charitable" activities. The exertion of political pressures to effect legislative goals falls outside of what the law considers "charitable". This constitutes a major impediment to the fund-raising efforts of the poor people's organizations. Many potential donors and most foundations will not contribute under such circumstances.

We, therefore, recommend that a workable formula be devised to extend tax-deductible status to pressure activities and organizations for and of the poor. Once the formula is developed, the Income Tax Act should be amended accordingly.

One other way for poor peoples organizations to secure money is through the provision of public funds. Indeed, the Department of National Health and Welfare has already begun to extend subsidies to poor people's pressure groups. The problem of course, is the limits of government's willingness to subsidize pressure upon itself. At the point where the pressure group becomes most effective it may pose a political embarrassment to government.

Even though the Minister of National Health and Welfare has made some admirable statements about his desire to give money without strings and his willingness to risk unpleasant pressures, there is a structural restriction on the autonomy of the poor people's organization. This Minister may very well be good for his word. But what about tomorrow's incumbent? Moreover, to what extent might the recipient organization restrict itself out of anticipation of political interference?

It would, therefore, be desirable to devise a method of providing some public financial assistance to poor people's organizations with a minimum of partisan influence. In this connection, we might give consideration to the establishment by government of a council with an

adequate budget and independent statutory power to allocate public funds for organizational activity aimed at the relief of poverty. In making the appointments to the council and in setting the annual budget, the government would retain a degree of control over the operation. But the control would be less direct. Moreover, if the council members, as individuals, enjoyed public respect and, as officials, enjoyed some tenure of office, they could function with a fair degree of independence.

Of course, numerous problems would accompany the attempt to establish such machinery. It is in the hope of precipitating soon a more thorough analysis of these problems, that we recommend now consideration of this concept.

PART D-SUMMARY OF RECOMMENDATIONS AND CONCLUSION

The Canadian Civil Liberties Association requests the Special Senate Committee on Poverty to recommend the following:

1) a system of federal grants to promote all over Canada a more equal and substantial level of legal aid service in civil and criminal matters.

2) a federal-provincial investigation of legal problems of indigent areas under an all-service legal aid scheme and, in the meantime, some federally-funded store-front legal clinics on a demonstration project basis

3) the reform of our bail laws to provide that all accused persons are entitled to their freedom pending trial, unless the Crown can satisfy the court that the accused is not likely to appear for his trial, or that his freedom will endanger public safety.

4) a mandatory system of reasonable instalments for the payment of criminal fines.

5) more effective federal review of the requirement for welfare appeal procedures in those provinces receiving federal welfare funds.

6) an effective federal initiative to promote in those provinces receiving federal welfare funds, the following additional minimum standards of procedural fairness:

   a) the payment of a welfare allowance will not enable welfare officers without a proper warrant to compel access to the homes of welfare recipients.

b) no one will suffer a denial, adverse variation, suspension or cancellation of a welfare benefit unless he has a reasonable opportunity to present his case before the decision is made.

c) welfare appeal boards will be composed predominantly of people from outside the present and former ranks of welfare administrations.

d) welfare appeal boards and welfare departments will be structurally separate and have separate legal counsel.

e) welfare appeal boards will publish their judgments with names deleted.

f) a major educational programme will be undertaken to more adequately inform welfare recipients, welfare administrators and the public regarding the rights and duties in the welfare law.

7) a federal-provincial investigation of the legal right of effective non-violent dissent in Canada.

8) the development of a formula to extend tax-deductible status to pressure activities and organizations for and of the poor.

9) consideration of independent grant-giving machinery to provide public funds for organizational activity aimed at the relief of poverty.

The foregoing recommendations neither disparage nor idolize those who live in poverty. We take issue with those who impute all wisdom to the poor and those who impute no wisdom to the poor. As a civil liberties organization our prime concern is the viability of political democracy. The poor must get equal treatment under existing laws and equal access to the processes which change the law. Our one commitment of faith is that more equitable decisions are more likely to flow from more equitable representation. The democratic processes cannot guarantee justice, but all other systems can guarantee injustice. This submission has been designed less for the special interests of those in poverty than for the general interests of all in liberty.

Respectfully Submitted

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