



Conference Report

Getting the Bill Right – An Update Introduction and keynote address

INTRODUCTION - Fiona McCausland: Over the course of the following two days, we hope to further progress the of the Bill of Rights debate. Our specific aims are to review the Bill of Rights Forum report and assess it against current International Human Rights Standards.

We also hope that by doing this, we can help to identify gaps in terms of international law. And, with the aid of the very impressive range of speakers that we have over the two days, hopefully suggest positive solutions or ways around some of the current debates within the reports and the Bill of Rights processes generally.

As we listen to the debates, we will bear these benchmarks in mind in assessing how we can secure a strong and inclusive Bill of Rights for all. This is an opportunity to progress a vision for our community into the future for our children.

KEYNOTE ADDRESS - Bruce Porter:

I am very pleased to be a part of this and as some of you know, I have actually been here before. I feel like I am a regular return person on this and feel I am part of the process. But, I was not involved in the Bill of Rights Forum. So, when I had the opportunity to look at the results, I had not heard anything about the limited process or the time constraints etc.

I was incredibly impressed with the results, the research and the depth of knowledge that was reflected as well as the extensive discussion on all of the most critical issues in human rights today. I found that the approach to issues

like equality rights was incredibly modern and substantive. I think there was a really keen understanding of the relationship among rights and the importance of what we call a substantive approach to rights, like the right to life and the right to equality. So I was incredibly impressed. And, of course, as someone who works in the area of poverty and social and economic rights, I was immensely pleased to see the prominence of economic and social rights in the report's recommendations.

I have often been struck by how societies with histories of conflict and serious violations of civil and political rights e.g. South Africa have had the deeper understanding of the interdependence of rights. They have been more intent when it comes to preparing constitutions or Bills of Rights, to ensure the equal protection and status of economic and social rights along with civil and political rights because they understand and have experienced the way in which poverty and destitution and deprivation intersects and interacts continually with violations of civil and political rights.

I was not all that surprised to see the very thorough and impressive coverage of economic and social rights in the report. I was, of course, just slightly disappointed - and it is interesting to hear that there was not a lot a time to reach consensus - to see that there was a lack of consensus on the issue of enforcement of economic and social rights, that there are still some who would like to have some kind of provision distinguishing economic and social rights by suggesting that they, unlike civil and political rights, would not be justiciable.

The reason I am particularly concerned about that is that this is an issue that has plagued us in the international community for over forty years. And, perhaps unfortunately, it does not seem to work to be able to say, "let's recognise these human rights but deny people access to a hearing in order to be able to enforce them." It really is fundamental to our experience and understanding of human rights in order for things to actually be treated by governments as human rights and to be experienced by citizens as human rights and to be understood, in general, as human rights - that the rights holders have some kind of access to a place where they can explain their situations, seek some kind of adjudication, and ask for some kind of remedy.

So, what worries me is that if you had a Bill of Rights which suggested that social and economic rights are important but they are not justiciable, it actually tilts the whole Bill away from what has been emphasised in some of the other

provisions, which is what I was referring to as the substantive content of rights. The report clearly recognises that all human rights have both positive dimensions and negative dimensions. Negative dimensions in the sense that we have to be protected against state action or interference with our dignity and security, but positive dimensions in that often it is the most disadvantaged groups which rely on positive measures of protection and provision from the state for those who are most in need.

All human rights have this kind of dual dimensionality. But, if you tell courts that they have no authority or mandate to deal with a substantive right to food or right to housing or right to education, then you are really telling them that you do not want courts to be ordering governments to take positive measures. You do not want them to deal with this positive component of rights or at least, not very much.

The experience in other jurisdictions has been that if you try to sever off these social and economic rights as a separate category, when in fact they really are not, like if you are looking as a person with a disability for positive measures of accommodation in order to participate in education, or if you are asking for a particular kind of provision in health care etc, then it is very difficult to say that this is a social and economic right or a civil and political right. Is it discrimination that you are facing a denial of adequate healthcare? Is it discrimination in education or is it denial of adequate education that is geared to your needs?

We now recognise, in the modern human rights movement, that these rights are really inseparable; that they should not really have been divided up in the first place and that we have to understand them as they were understood in the Universal Declaration as a whole package that intersects and is intertwined.

To tell the courts that they have to figure out which component is which and to avoid ever hearing or providing any kind of remedy for rights, which they would deem to be in the category of economic and social rights, really gives them both an impossible task and a discriminatory tilt away from those who may be most in need—those who need positive measures from the state and towards those who may be more interested in being protected from state interference.

Even though it would seem like maybe a nice compromise to say, “Let’s have economic and social rights in the Bill but let’s not have them enforceable in the same way as civil and political rights,” my concern is that our experience in the past and in international law and other domestic regimes, has been that this actually results in a kind of double standard where you are suggesting that people have human rights but there is nothing they can really do with them.

I understand the concerns of some, that this would represent i.e. to have courts involved in economic and social policy issues, reviewing those in light of economic and social rights provisions. The concern then is that we are expanding the role of the judiciary beyond what people in common law traditions, like Canada, the UK, and Ireland, are used to. We generally think that elected legislatures and governments are supposed to be making decisions about social programmes and resource allocation, not unelected courts.

These are not concerns that should be taken lightly, of course, and I am not suggesting that in any of your discussions they can be taken lightly. What I do want to suggest, is that we have asked the wrong question when we come at this debate. It is about whether these rights are justiciable; whether this is an appropriate role for courts to be coming involved in reviewing these kinds of decisions about what positive measures are required to ensure that people have access to adequate food, clothing, housing, education and work.

The problem is that when we look at human rights, we are supposed to first of all, look at it from the perspective of the rights holder. What are the human rights that we really need protected in society? Do we think it is appropriate to have, in the midst of adequate resources, children going hungry or increasing numbers of people in need of housing? Is this related to the fundamental human rights values that we are trying to protect i.e. the dignity and security and equality? I think that most people would agree that they are.

If we start from that perspective, then we may also see that the kinds of human rights that we are most concerned about having some kind of place for people to go, to have government reminded of what obligations they may have, would be the rights of the most vulnerable people i.e. those who face discrimination, those who have the least access to political processes, those who have the least leverage in our society.

If you think about it from the standpoint of who needs protection, how serious are the issues and do we want them included in a Bill of Rights so that we have some sort of effective recourse for those people, then you get a very different kind of perspective on the question of economic and social rights than if you take as your starting point, what we want the role of the courts to be and what do we want the role of the legislatures to be.

I am suggesting that in dealing with this question, it might be worth turning things upside down and starting with what kinds of rights we need protected. And, then we will start to figure out what kind of role we want for the courts, what kind of role we want legislature and what kinds of roles we want for many, many other institutions and bodies. My message will be, essentially, that we really oversimplify and distort the question if we think of this as a question of what the role of the court is and what the role of the legislature is.

What we are really dealing with in the increasing attention to economic, social, and cultural rights internationally, is a human rights crisis of unprecedented proportions. We are seeing in the midst of economic development, an unprecedented affluence in many countries, increasing poverty, increasing hunger, increasing social and economic inequality, increased starvation and increased homelessness.

We learnt from the economist Amartya Sen, in his early work on famine, that we really misunderstand the idea of a famine if we think that famines are created by a scarcity of food. He analysed a number of famines and found that in fact there is adequate food. The problem is what he called, 'enlightenment system failure.' This complex system would determine what you are entitled to in terms of property and income and, if necessary, assistance from different programmes. It is this complex system of entitlements, which determines whether somebody in Northern Ireland or in Canada is really going to get access to enough food to feed their children or access to housing. It is not a simple relationship between the individual and the state - are you going to give me a house or not? That is really not what economic and social rights are about. It is about framing these entitlement systems in a way that ensures that these basic human rights values are respected.

So, it engages a whole range of decision-making, not just whether governments are building enough housing, but what are the bases on which a family can be evicted; if the eviction might be into homelessness; whether a person gets emergency assistance for a particular kind of need etc. Almost any

decision that is made, either by the state apparatus or by private sector actors, can engage these basic human rights values which are contained in something like the right to adequate housing or the right to adequate food.

When we start to see the shift in the last ten years towards trying to bring economic and social rights into the mainstream of our human rights culture and of our understanding of human rights, what we are really seeing is a response to a human rights crisis and a search for a human rights solution - a way of actually addressing this entitlement system failure as a human rights failure.

To the extent that we deny people a hearing, to the extent that we take stories of impoverishment and homelessness in the midst of affluence and deny them any place where we can actually hear those stories as human rights stories and have them considered as human rights stories, we are silencing one of the biggest human rights violations of our time.

When we think about this question of justiciability, instead of thinking about whether the courts should be doing something, we really have to think about whether we want certain kinds of people dealing with certain kinds of problems to access to a hearing. This paradigm shift, this change in the way that we think of the problem, is how I would describe the changes at the international and regional, and increasingly, the domestic level in a number of places.

Internationally, we have been wrestling with this question of the justiciability of economic and social rights for over 40 years. The International Covenant on Civil and Political Rights, which was adopted in 1966 and came into force in 1976, had, accompanying it, an optional protocol that provided for a complaints procedure for anyone who had experienced violations or alleged violations of civil and political rights and had exhausted their available remedies within their own country. So, many countries ratified the optional protocol and so you have the ability to take a case to the Human Rights Committee and have an adjudicative decision made on it.

For forty years we have had this nurturing of our understanding of what civil and political rights are all about with individual stories. The context in which you can start to understand what this right really means in terms of individual people, their own dignity issues, their own historical context, and the historical

context of the governments and the states in which people are living and alleging violations.

This way we have of taking individuals and understanding their own interests and then expanding that into what we call universal norms, is central to the way in which human rights have developed. If you take economic and social rights and deprive them of that same kind of process where people are coming forward as individuals and explaining certain circumstances where adjudicative bodies or human rights institutions are required to say that everybody has a right to housing, but what does that mean in this context, for this indigenous family in Northern Canada?

This ability to contextualise human rights, in particular context, is fundamental to what I would call the methodology of human rights. It is fundamental to make sure that people have hearings and that we learn how to listen. If we deny access to hearings and adjudication then we have deprived ourselves of that lifeblood of human rights understanding.

If we say economic and social rights are non-justiciable, we are not saying that we do not want the courts to dictate social and economic policy, so much as we are saying that we do not want to hear from people who have been denied the right to adequate housing.

All of this is about to change because there have been amazing changes over the last ten years on all levels. Most significantly, about three weeks ago, the UN Human Rights Council adopted by consensus a new complaints procedure, an optional protocol to the Covenant on Economic, Social and Cultural Rights. So, after forty years, that historical inequity has been corrected. Once we have sufficient number of ratifications and once this goes through the General Assembly, probably on December 10th, the same date that your Human Rights Commission is supposed to report back, we will have a complaints procedure for economic, social, and cultural rights adopted by the UN General Assembly.

The debates over this have raged, as you can imagine, on all the same kinds of issues which I am sure have been debated at meetings here about whether or not it is appropriate to adjudicate and hold governments accountable for issues related to resource allocation. And, the consensus has really shifted.

The consensus now is that it is appropriate, it is important, and, in fact, where we have increasing numbers of countries protecting economic and social rights

and courts engaging with these issues, our experience domestically and regionally, is that it does not expand dramatically the authority of the courts, where the courts are adjudicating these kinds of claims.

In South Africa, which may be the most energetic example where we have had a fair number of economic and social rights cases go to the South African Constitutional Court, if you looked at economic and social policy and resource allocation decisions, you would never suggest that the court is somehow rewriting budgets or having any major impact in that way. They hear selective cases. They hear stories. And, in most cases, they leave the remedy up to the government to figure out how you change the programme in order to comply with the constitutional requirement of a right to adequate housing.

What is most important in this process, it has become clear in South Africa and elsewhere, is the engagement through the adjudication and the claiming with these issues of dignity and equality that are at the core of economic and social rights. So, for example, in South Africa, the first case that went to the Constitutional Court dealt with the difficult issue of allocation of health care resources, to dialysis. And it put the court in a very difficult situation. How do you second-guess the government with very scarce resources and an AIDS crisis, whether you provide dialysis to a certain kind of patient? So, on that case, the court really adopted a hands-off policy and suggested they were virtually never going to be second-guessing governments on these kinds of decisions.

But, then a second case came along and it dealt with 300 families living under plastic on a sports field in Wallacedene, with the rains coming - no toilet facilities, no access to any services and many children living in those circumstances. In that case, the court clearly saw the connection between its role in protecting vulnerable groups and these fundamental, constitutional human rights interests of dignity and equality.

And so, it took then a much more active role and said, "You have done good work in terms of your housing policy, government, but you have not paid enough attention to the most desperate, to the most needy. These families must, somehow, get more attention than they have. We have not seen any evidence from your housing policy that you are adequately addressing these needs. And, so, what you need to do is redesign your housing policy so that you are at least addressing this need. We are not saying that you can address all homelessness in South Africa, we are not telling you how to do particularly,

we are telling you that you have to do something more than you are doing now and report back to us on what you are doing.”

So, it was the adoption of what is called a ‘reasonableness review standard’ in this case called Grootboom, that resulted in there being a Grootboom allocation which governments have put in place in most local municipalities to ensure that they are adequately addressing the needs of the most destitute in terms of their housing policy. It has not bankrupted the government. It has not changed housing policy dramatically. But, it corrects it in the direction of improved protections for vulnerable groups who otherwise would not have received a hearing. More significantly, it makes everybody understand that economic and social rights, like the right to housing, really are human rights. It really made the difference to the court to have a court full of homeless families sitting in front of them and to read the story of Irene Grootboom and others and what they were going through, trying to hang onto their children and survive as families. The court could see the values that were at stake.

The issue then of what is at stake in terms of the role of the courts in putting economic and social rights in a Bill such as the Northern Ireland Bill of Rights is not so much that you would have the court engaging in rewriting budgets or redesigning social policy, but correcting a justice system so that you are hearing from everybody and ensuring that a Bill of Rights is dealing with the security issues and the equality issues and the dignity issues of everyone. To really have an inclusive Bill, it is so important to ensure that economic and social rights have equal status. Not just in terms of being in the text, but in terms of providing institutional mechanisms in order to provide hearings.

This really is a requirement of international human rights law. I heard that one of the principles of the Human Rights Consortium is that there should be no backsliding from international human rights commitments. One of the active areas of disagreement or discussion between countries, like Canada and, in some cases, the UK and Australia and a few others, has been that some countries have suggested that they can ratify the Covenant on Economic, Social and Cultural Rights by the idea that everyone has a right to adequate housing but treat this as a non-justiciable policy objective - an aspiration of governments rather than as anything that could be claimed and enforced in courts.

In 1998, the Committee adopted a General Comment. I think it is the most important General Comment the UN Committee has ever adopted, General

Comment Number 9, which pointed out that under international law in Article 8 of the Universal Declaration, is the principle that every human right has to be subject to an effective remedy before some kind of administrative tribunal or adjudicative body; that a right without a remedy is no right at all.

This does not mean that every economic and social right has to have immediate access to a court in order to be enforced. Countries like Canada may decide that they want to redesign the notion of effective remedies and rely on administrative tribunals with eventual access to courts. They did set out the perimeters of what they call, 'effective remedies,' where it has to be fair process and has to be accessible and timely and affordable. So, it cannot be an illusory remedy.

But, as long as you are giving people a place to go where they can get a fair hearing and access to some sort of remedy, even if it was an ombudsperson in some circumstances, there are city charters, there is a myriad of opportunities now in our complex, legal, and administrative systems where decisions are made. There is a myriad of opportunities for people to say, "Hold it a minute—you just made a decision to deny me special assistance for something or you just made a decision to evict me from public housing for a certain kind of behaviour and the result is going to be homelessness or the result is going to be not being able to feed my children." And, that is not consistent with international law and it is not consistent with economic and social rights. So that decision is not reasonable.

It is not just a matter of going to court and saying, "I am homeless and I want you to solve it," it is much more often, like other legal issues that go before decision making bodies, bringing a value system, a framework to give to the court or to the decision maker, and say that this has to be considered. If you want to make a reasonable decision, you cannot avoid thinking about the issue of homelessness as a violation of fundamental human rights.

What we are seeing is that economic and social rights have diverse application. Really what we are talking about is a value system that has to inform all decision-making in a society. If we go back to Amartya Sen's notion of an entitlement system failure, we are not going to solve the problem of homelessness and poverty just having people going to court and saying, "I want more money from the government." We must have a way in which these decisions that are made regarding how much people are paid, and how much

they get on social benefit, and what is the basis for exclusion from work or from education.

All these decisions have to be rethought in the context of a renewed commitment to the basic core of fundamental human rights in the Universal Declaration, that no one should be left without housing or food or clothing or access to education or access to work. And, that is what is at stake here - a rethinking of how we make decisions in our society, not a rethinking of the role of the courts, but a rethinking of how we make decisions and who we are not hearing from, and how we can hear from them better.

As long as these decisions are made by administrative bodies or tribunals, if they are made fairly, if they are made transparently, and if they are made consistently with fundamental human rights values, then this would be in compliance with international human rights law. It would be in compliance with Northern Ireland's obligations under the International Covenant on Economic, Social, and Cultural Rights.

What would not be in compliance is to say, that these are not justiciable rights. There is no place you can go for a hearing other than going back to the alleged rights violator and asking them to change their minds. That is one place you cannot ask somebody to go for a fair hearing. If the government has made a series of decisions or if a welfare administrator has made a decision which is deemed to violate a fundamental right, you cannot ask the person to rely on the sole remedy of going back to the decision maker and asking them to reconsider. You have to have some place to go where your voice is heard equally with the voice that had the authority to deny you something or make a decision that resulted in a human rights violation.

So, the suggestion then is, if we could reframe the question that General Comment Number 9 does on the Committee on Economic, Social, and Cultural Rights, to say, how would we design a decision-making apparatus with the Bill of Rights at the top containing economic and social rights as fundamental rights which have a right attached to them, to a hearing and a remedy, what would it really take to have people enjoy that right as a meaningful right in Northern Ireland?

The Committee on Economic, Social, and Cultural Rights has made it clear that at some point you may need access to courts and it is certainly incompatible with the understanding of this as a fundamental right to say you can never go

to court with it. But, it would also be impractical to suggest that the courts are going to be the place that solves all these problems, of course they are not. The courts have to be the last review mechanism, the overseer of a new system of decision making where a decision that denies somebody access to food or housing is an unreasonable decision, which could be reviewed by the court on that basis. That is what the Bill of Rights would give Northern Ireland.

That is what the Constitution in South Africa gives to the courts there - an ability to move into these circumstances, where in a case several years ago where you had a number of squatters living on someone's land so that the landowner could not use the land and felt that his right to property had been violated. The squatters had been evicted from another place and this was the only place they could find in order to have housing. By having a Constitution that contained both the right to property and the right to adequate housing, you give the court the ability to look at this situation in a holistic way and say, that the landowner really does have a right to property here and it is the government's job to protect that right. But, it is also the government's job to protect the right to adequate housing of the squatters. And, so, the court then handed it back and said that the government is really the only one that is in a position to resolve the tension between these different rights.

It described it as a rule of law question. It is a question of, if you really want a rule of law informed by these values, you have to equip the court to consider everybody's interests, not just the property owner's, but also, the people who are being denied access to adequate housing. You have to give the court the ability to really protect those values for everyone, not just for those whose rights have been violated in a particular way, but for anyone whose right to security and dignity has been violated.

So, if we reframe the discussion that way, I think that we are on the right track to being able to discuss with people what the concerns are about having the courts involved in economic and social rights adjudication. And, how can we ensure that the fears are not realised? I think by framing the question originally, just as if it is a question of how much power do we want to give unelected judges in comparison to elected legislatures, then, obviously, the idea of giving unelected judges this additional power seems reprehensible and undemocratic. But, if we reframe it in terms of what rights we want to have protected and what should the role of the court be, and how can we make sure that the court does not interfere with democratic rights, then, what we have seen in other jurisdictions is that the courts actually take quite energetically to

this role. So, for example, they start to attend more. Well, this decision that is being challenged, was it subject to committee hearings? Was it really a democratically informed decision?

And, then, when they design the remedy, it is not the courts saying, "Okay, here's how we think housing policy should work." What the court can say, and does say in these cases is, that it is up to the government to figure out how the housing policy should work. But, it are going to insist, as the court, that the government hear it from the residents of this community because it has heard a lot of serious issues that they've raised before this court or this tribunal, which have not received enough attention from the legislature. So, in that sense, you can enhance democratic processes. You can say we need this programme redesigned with consultation with the affected communities.

Similarly, when you have individual claims, there is some concern that having an individual claim only solves that one individual issue in a kind of litigation structure when we want to be able to ensure that the problems of other groups are solved. Courts and tribunals are increasingly relying on amicus interveners, hearing from other disadvantaged groups about what is at stake for them and the policy. So, instead of it undermining democratic processes, you find that, in fact, the response to having these new judicially enforceable rights is that governments are feeling more accountable to groups that they were not hearing from before and courts are feeling more obliged to remind governments of their democratic accountability when they are making decisions that affect basic human rights interests.

So, we are really at a turning point in the human rights movement. I think it is as probably as important a turning point as the emergence of the modern human rights movement with the Universal Declaration. The division into two categories of rights, economic and social, civil and political, with an enforcement procedure or an adjudication procedure for civil and political rights and a denial of any hearings for claimants of economic and social rights. I think that is ancient history.

We are moving into a new era, a new paradigm. It is more inclusive and more than that, it is so urgently needed in the face of the violations of economic and social rights which we are seeing worldwide. Whether we can move our human rights institutions quickly enough to address this emerging human rights crisis is a critical question. Not just for every country, but also for the globe, because these really are human rights issues. They are an assault on

human rights values and they are going to be solved only when they are solved as human rights failures.

I am hoping that in the continued discussions on the place of economic and social rights in Northern Ireland, you will use the obvious expertise and understanding of issues of poverty and inequality and the links between that and civil and political rights to ensure that you lead the way in designing a Bill of Rights which understands and implements the protection of economic and social rights and thereby, a Bill of Rights that is a Bill of Rights for everyone in Northern Ireland.

QUESTIONS

Karen Eyben, Rural Community Network: You started off your talk by making the statement that if you get it right for those who are most vulnerable; you get it right for everyone. If you produce a pamphlet that is readable by someone with a learning disability, it is actually more readable by a busy chief executive, in terms of being simple and short and to the point. I was wondering if you had other example of something that is made right for those the most vulnerable and actually makes it better for those in power.

Bruce Porter: Well, one example that always comes to my mind is a case that I was involved in a number of years ago in Canada on access to housing. Landlords in Canada had adopted a policy that they would not rent to tenants who would be paying more than 30% of their income towards rent. This was on the assumption that if you were paying 60% or 70% of their income towards rent, they thought that you were much more likely to default and that it would cost the landlord all this money because you would be renting to people who were at risk of default.

So, in the context of that hearing, the landlords were fighting tooth and nail against the idea that human rights protections would prevent them from excluding low-income applicants on the basis of what they considered good business. We had to test their idea, like how much does it cost to rent to low-income people in comparison to high-income people? And, lo and behold, when the data was properly analysed, what it showed was that, in fact, low-income people are not any more likely to default on rent.

Obviously, people who lose their income are more likely to default on rent, but if you are on low-income when you are applying for the apartment, people do

make the best decisions that they can. Particularly, single mothers in Canada face such a horrible circumstance. If they are evicted for non-payment of rent, they will not be able to get any alternative housing and could very easily lose their children. So, they will go hungry in order to pay their rent and that was reflected in the statistics.

What you actually have is a policy that landlords were following which was costing them a fair bit of money because they were having vacancies as opposed to renting to low-income people. I am not sure if they have completely changed their policies but the data did have some effect.

I think there is a myriad of examples of cases where governments think they are saving money by denying somebody a bit of assistance in order to be able to deal with a disability, for example, and the result is institutionalisation. We have dealt with children who have been taken into foster care at great expense because of housing problems that could have been solved for a tenth of the expense.

Many social and economic rights claims are simple - they really benefit from the idea that the people who are living in poverty know what the causes of poverty are better than many of the analysts. And, if people would listen to them, they could solve a lot of problems that remained unsolved.

Mike Mann, Killyleagh Community Association: In the newspaper advertisements for housing rental, it will often say “no DHSS.” Is this not a breach of human rights? Should we be examining it, or is it legal?

Bruce Porter: You will have to ask somebody who knows the law here whether it is legal, but I can tell you that it is not acceptable in my view. And, we fought in Canada hard to make sure that that was made against the law.

I would definitely say that if it is not against law, it is the failure to protect from that form of discrimination and would be in violation of the European Convention. That would be my guess because there have been cases under the European Convention on discrimination on the basis of economic condition of that sort. But, others would know that a lot better than I do.

But the point that you make is really critical. There has always been this tendency to suggest that economic and social rights are neutral. So we do not need to interfere with government decision making in this area because,

obviously, they are doing everything they can to help poor people, and they do not need the courts to interfere, right?

And, what that does not understand, is that the rise of poverty and hunger and homelessness in the last ten or fifteen years has been accompanied by the rise of very discriminatory attitudes towards the poor. Those attitudes inform not only the way landlords are renting out apartments, but they also inform the way governments are designing their policies in order to get re-elected. And so, poor people need protection, not only because of their poverty, but also because of the widespread negative attitudes towards the poor which are on the increase.

I think there has been a shift in Canada in the last few years, back towards understanding how reprehensible our society had become in its attitudes towards the poor. The governments in Canada would not even refer to poor people; they would refer to child poverty. You did not want to refer to poor adults because that was a negative image of welfare bums or whatever.

So, part of what we are fighting for when we are talking about the human rights that engage issues of poverty and homelessness is a question of equal citizenship and respect for people who have been denied that for a generation at least.

Elizabeth Zammit, REAL Group: The Government is debating taking a decision to no longer provide bungalows for people with disabilities and leaving that decision up to private contractors and specialised housing. This is because for them to build a bungalow for a person with a disability, they could build two houses which they can put two families into, in that space. Would we have a case, as people with disabilities now, to fight that?

Bruce Porter: It sounds to me like it is something that should certainly be taken up as the human rights principle at stake is obviously that you have to always err on the side of ensuring access to housing of choice as opposed to segregated housing options. There are complex standards of legal review on those kinds of issues that other people would know more about in this context.

I think what is important, is that these are issues that should not be seen just on a constituency by constituency basis. If you deny people with disabilities access to adequate housing, then it needs to be seen as a denial of the human rights of everyone. I would also underscore something important to

understand about economic and social rights, which is that they do have to be understood contextually, that different people have different housing needs - women, people with disabilities etc.

Sometimes people think that economic and social rights are about just quantifying indicators of for example, what the minimum standard of housing is that everybody in Northern Ireland should get. And then a court is going to order the government to spend all that money. That is not really what it is about at all. It is about a person with a disability, for example, challenging a decision by the Executive to deny them the chance to live where their children have grown up and that kind of thing. You need to understand the dignity issues in context and that is why you have to have a process where people get a hearing.

Michael Boyle, Parades Commission: You mentioned about governments shaving policies which are popular with their electorate, but what struck me in the enforcement of the justiciability of economic and social rights, is that we are obviously members of the European Community and there is a bigger drive within the European Community now to set, not just super national laws, but to ensure that they are enforced and a bigger agenda around the enforcement of economic and social rights. An obvious example is the work dealing with the rights of migrant workers. How you would see that as being a bone to us within the European Community to drive forward the agenda of enforcing economic and social rights?

Bruce Porter: I think it is going to become so important on the regional and international level to understand the principle that the first avenue of recourse has to be domestic. And, there is increasing jurisprudence in the European system as well, that there must be effective domestic remedies.

But, you have examples now of other governments being held accountable in ways that are so important and set a model. There was a decision a couple of months ago from the European Social Rights Committee, *Feantsa v. France*, where it found violations of the right to housing of a really systemic form. They have not done enough to deal with homelessness. They have not built enough social housing. They have not dealt with the inadequacy of assistance and so on.

Instead of it being like one little discreet violation of a human right, it was more the model of stepping in and saying that you need to attend to this

emerging problem because it is effecting the human rights of so many. The nature of the findings of the violation made it clear that France has to do a lot of things in order to start to comply with the European Social Charter.

I was here last year as a member of the panel that heard submissions from residents of the Seven Towers, talking about some of the issues they were dealing with. One of the things about economic and social rights is that you have to experience them in order to really get it. If you talk about it in the abstract, it sounds scary that courts are going to be making policy. But, if you actually see what happens when you give women in the Seven Towers the ability to go to even a pretend tribunal with somebody like me on it and tell their story, everything was fixed the next day. I did not have to have remedial powers sitting on that panel because the hearing was all they needed. And, once they had been heard, action was taken.

Once you see it working in other countries, they all start to play off each other and that is the hope, that now we have these mechanisms in place internationally, regionally, and domestically, we are all going to start to benefit from seeing what is happening elsewhere.