

Bringing home the right to food in Canada: challenges and possibilities for achieving food security

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Abstract

We offer a critique of Canada's approach to domestic food security with respect to international agreements, justiciability and case law, the breakdown of the public safety net, the institutionalisation of charitable approaches to food insecurity, and the need for 'joined-up' food and nutrition policies. We examined Canada's commitments to the right to food, as well as Canadian policies, case law and social trends, in order to assess Canada's performance with respect to the human right to food. We found that while Canada has been a leader in signing international human rights agreements, including those relating to the right to food, domestic action has lagged and food insecurity increased. We provide recommendations for policy changes that could deal with complex issues of state accountability, social safety nets and vulnerable populations, and joined-up policy frameworks that could help realise the right to adequate food in Canada and other developed nations.

Keywords
Right to food
Canada
Food security
Joined-up food policy
Human rights
Justiciability

The right to food was first recognised as a fundamental human right in 1948. Since then, Canada and many other OECD nations have signed several national and international agreements promoting the right to food (see Table 1). However, food security has not been achieved in Canada despite strong economic growth in the past decade and a comprehensive *Charter of Rights and Freedoms*, with which food security could be embedded into a domestic human rights framework. (In the context of this paper, the term food security is broadly defined as the availability of food, equitable access to food, and adequacy of the food supply in terms of culture, nutrition and sustainability. It includes not only the current situation, but also potential vulnerabilities in the future.) Moreover, Canada's policy infrastructure, exemplified by *Canada's Action Plan for Food Security* (drafted in response to the 1996 World Food Summit) and the Food Security Bureau (established to oversee implementation of the *Action Plan*), articulates a commitment to the progressive realisation of the right to food¹.

This paper addresses three questions. First, why, despite Canada's declared intention to achieve food security in the international arena within a human rights framework, has domestic action towards the right to food stalled? Secondly, why, despite recent strong and steady economic growth and the presence of an internationally renowned *Charter of Rights and Freedoms*, has Canada been unable

to ensure the right to food for its vulnerable populations? Thirdly, why, in spite of the existence of a food security policy infrastructure created in large part in response to international debates and domestic civil society pressure, has little progress been made to improve food security in Canada?

We explore these questions by examining (1) Canada's commitments to the right to food in terms of international human rights agreements; (2) the lack of support for the right to food in Canadian case law; (3) the breakdown of the social safety net; (4) the institutionalisation of food banks in Canadian society; and (5) the lack of 'joined-up' food and nutrition policy. We offer recommendations for implementation of the right to food in Canada as well as a role for the field of public health nutrition in ensuring this right.

Canada's commitments to the right to food

There are several reasons for taking a rights-based approach to food security in Canada. Canada is often viewed by other countries as a successful welfare state and a beacon of human rights. Human rights are an important part of the Canadian legal and political landscape and already shape the way in which many government policies and programmes, both domestic and international, are developed and delivered. Finally, Canada has undertaken

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Table 1 Canada's commitments to the right to food

Type of agreement	Name of agreement	Year	Description
International	Universal Declaration of Human Rights ²	1948	<ul style="list-style-type: none"> • Declaration adopted by United Nations General Assembly, including Canada • Describes set of human rights to be protected internationally, including Article 25(1) right to an adequate standard of living, including food
International	International Covenant on Economic, Social and Cultural Rights (ICESCR) ³	1966	<ul style="list-style-type: none"> • Internationally binding treaty ratified by and in force in Canada since 1976 • Explicitly recognised in Article 11, the right to an adequate standard of living, including food, and the fundamental right to be free from hunger
Domestic	Canadian Charter of Rights and Freedoms ⁴	1982	<ul style="list-style-type: none"> • Included in Canadian Constitution • Sets out essential rights and freedoms for all Canadians, including rights to life and equality
International	Convention on the Rights of the Child ⁵	1989	<ul style="list-style-type: none"> • International multilateral treaty ratified by and in force for Canada since 1991 • Articles 24 and 27 set out obligations for rights of children to health and to an adequate standard of living
International	World Declaration on Nutrition ⁶	1992	<ul style="list-style-type: none"> • Non-binding declaration endorsed by 159 countries in World Conference on Nutrition, Rome, 1992 • Recognises food as part of a right to an adequate standard of living
International	Rome Declaration on World Food Security and World Food Summit Plan of Action ⁷	1996	<ul style="list-style-type: none"> • Non-binding declaration adopted by 186 countries at the World Food Summit • Seeks clarification of content of the right to food
International	Code of Conduct on the Human Right to Adequate Food ^{*8}	1997	<ul style="list-style-type: none"> • Series of guidelines and principles for nations to implement the right to adequate food, including state obligations at the national and international level
Domestic	Canada's Action Plan for Food Security ⁹	1998	<ul style="list-style-type: none"> • Federal policy framework in response to commitments of the World Food Summit Plan of Action, including plans for cross-sectoral participation in efforts to achieve the right to food • Led to formation of the Food Security Bureau within Agriculture and Agri-Food Canada¹⁰ • Two progress reports^{11,12}
International	General Comment 12, The Right to Adequate Food (Article 11 of ICESCR), Committee on Economic, Social and Cultural Rights (CESCR) ^{*13}	1999	<ul style="list-style-type: none"> • CESCR's interpretation of the content and implementation of the right to adequate food as outlined in the ICESCR • Not officially binding but considered authoritative • Establishes precise content and means of implementation of the right to adequate food^{14,15}

* Not commitments *per se*, but documents interpreting the meaning of the 'right to food' and guidelines for implementation.

numerous international commitments to recognise and implement the right to food.

Canada has a strong record of ratifying international human rights accords which advocate the right to food (Table 1²⁻¹⁵). The language and tone of these agreements signifies that Canada has agreed to work within an international human rights framework and has an obligation to take steps to respect and fulfil such rights¹⁶. This creates moral, legal and ethical imperatives to bring this human rights framework home by developing a domestic food policy infrastructure based on the right to food¹³.

International conventions to which Canada is signatory that address economic, social and cultural rights could be interpreted as legally binding according to our own *Charter*. Importantly, provisions in the *Charter* such as those guaranteeing equality and freedom from discrimination (s. 15) and the right to life (s. 7) would

appear to protect economic rights (including the right to food). The federal government publicly accepted the following interpretation of the *Charter* before the Committee on Economic, Social and Cultural Rights: 'The Supreme Court of Canada has stated that section 7 of the *Charter* may be interpreted to include the rights protected under the Covenant. ... The Supreme Court has also held section 7 as guaranteeing that people are not to be deprived of basic necessities. ... The Government of Canada is bound by these interpretations of section 7 of the *Charter*³. Thus there are at least two legal interpretations indicating that the *Charter* could provide a sound legal foundation to uphold the right to food within Canada.

Despite its healthy economy and wealth of natural resources, there is a growing incidence of food poverty in Canada. Canada has sufficient food supplies and a sophisticated system to ensure food safety, although

natural resource degradation is occurring and the food production and distribution system is challenged by globalisation. Nutritional health remains a secondary consideration in the overall design of the food and agriculture system. Reports from the 2000/01 Canadian Community Health Survey state that 14.7% of the Canadian population aged 12 and older experienced food insecurity¹⁷, even more among vulnerable groups described below.

The right to food: international/domestic disconnect

Justiciability and the right to food

'Justiciability' refers to the right of all people to a judicial or other effective remedy when their rights have been violated⁵. In Canada, justiciability plays out in terms of case law. When legal ambiguities are challenged, courts set legal precedents with their decisions that are cited in future cases as guidance on how the law is to be interpreted. Thus, legal challenges by people seeking a remedy for violations against their right to food should be successful if the right to food is justiciable in Canada.

Nevertheless, in spite of clear statements regarding the justiciability of the International Covenant on Economic, Social and Cultural Rights (ICESCR), there has been little progress in Canada in transferring this international stance to domestic legal precedent. The Canadian constitution makes no explicit reference to the 'right to food'. *The Constitution of South Africa*, on the other hand, contains three explicit references to food and nutrition rights and state requirements to legislate such rights; the South African Human Rights Commission has been mandated to monitor its implementation. Brazil has introduced *Fome Zero*, a national zero hunger policy, and is in the process of institutionalising the right to food through a variety of national level policy and programme initiatives¹⁸.

The language of the *Canadian Charter of Rights and Freedoms* reflects a bias for the protection of civil and political rights over economic, social and cultural rights. The origins of such a bias originated in the drafting of the *International Bill of Human Rights* by the United Nations General Assembly in 1951. At the time, it was decided to separate human rights agreements into two types: civil and political rights, and cultural, economic and social rights. Civil and political rights were absolute and easily protected in the courts. The integration of economic, social and cultural rights into a capitalist market economy was economically costly, as it required the provision of welfare and other comprehensive programmes. By separating the two sets of rights, it was hoped that countries not willing to ratify a set of economic, social and cultural rights might at least ratify civil and political rights¹⁹.

Canadian courts have not yet held that section 7 of the *Charter* actually requires Canadian governments to respect, protect and fulfil (facilitate and provide) the right to food in Canada. In fact, with respect to the justiciability of economic, social and cultural rights under the *Charter*, lower courts' decisions have clearly not protected such rights²⁰. Even at the Supreme Court of Canada, interpretation as to whether economic, social and cultural rights are justiciable is weak.

Outside the *Charter*, Canada does not have any legislation that explicitly protects the right to food. Canadian courts and human rights tribunals are in a position to give legal precedent in upholding the right to food under the auspices of the *Charter*, the *Universal Declaration of Human Rights* and the ICESCR. Human rights tribunals have not been used and the court system has not upheld the right to food in the cases that have come before it (see *Gosselin v. Quebec*)²¹. According to the Committee on Economic, Social and Cultural Rights, Canadian courts have taken a 'rigid classification' of economic, social and cultural rights, stating that they are outside the power of the courts and that positive enforcement of such rights is a legislative rather than a judicial matter²⁰.

The landmark Supreme Court of Canada case of *Gosselin v. Quebec (Attorney General)*²¹ directly addressed the protection of economic, social and cultural rights under the Canadian *Charter*. In *Gosselin*, the Supreme Court of Canada dismissed a claim against the government of Quebec for deficiencies in welfare entitlement for a woman under 30 years of age, which were only one-third of the entitlement legislated to be the minimum amount necessary to supply the basic necessities of life. Ms Gosselin claimed that the legislation violated her s. 7 right to life, liberty and security of the person and her s. 15 rights to equality and freedom from discrimination.

The Quebec Superior Court denied her claim, holding that the courts could not substitute their judgment in social and economic matters for that of legislative bodies, and the case went to the Supreme Court of Canada. By a narrow margin of five judges to four, the Supreme Court upheld the lower court result. Chief Justice McLachlin, writing for the majority, held that Canadian law did not yet place a positive obligation on the state to ensure that each person enjoys life, liberty or security of the person; rather, it only restricted the state's ability to deprive people of these.

In a powerfully reasoned dissent, Madame Justice Arbour, now the UN High Commissioner for Human Rights, cogently articulated the role of the Canadian *Charter* in protecting economic, social and cultural rights and permitting the justiciability of such rights:

[T]his case raises... whether the state is under a positive obligation to provide basic means of subsistence to those who cannot provide for themselves. ... One can in principle answer the

question of whether a *Charter* right exists – in this case, to a level of welfare sufficient to meet one's basic needs – without addressing how much expenditure by the state is necessary in order to secure that right. It is only the latter question that is, properly speaking, non-justiciable (*Gosselin*, 2002, SCC per Arbour J.)²¹.

The dissent states that when a *Charter* right such as the right to food exists, the state is under a positive obligation to ensure that right is met, i.e. the right to food is justiciable. What is not justiciable is the degree to which the state must fulfil that right.

The *Gosselin* case raises several important points. First, litigating entitlements to economic, social and cultural rights takes a long time (almost 13 years in the *Gosselin* case). Secondly, these cases are expensive. Thirdly, the highest law of the land still does not recognise the right of access to basic necessities, such as food, required for an adequate living. In terms of advancing food security, the need for justiciability of the right to food in Canadian case law has been amplified because of the breakdown of the social safety net.

Breakdown of the social safety net

The early development of Canada's social safety net was based on Keynesian economic policies including full employment and economic growth, universal social programmes and a guaranteed social minimum²². The main building blocks of the welfare state were in place by the late 1960s (Table 2). The social safety net was considerably strengthened by the introduction of the *Canada Assistance Plan* (CAP) in 1966, which provided for a cost-sharing system between the federal and provincial governments (the same year Canada signed the ICESCR). While CAP did not explicitly establish a right to benefit, it did recognise food, clothing and shelter as basic human needs and held the provinces accountable for providing sufficient benefits to allow people to meet these basic needs.

CAP was repealed in 1996 and replaced by the *Canada Health and Social Transfer* (CHST), a block funding formula which permitted the provinces to allocate their health, education and social programme funding

according to their own priorities. It was coupled with significant cuts in transfer payments to the provinces and no longer recognised food as a basic need. Although the CHST ostensibly serves the same purpose as CAP, it reduced federal conditions on how provinces spent these funds, allowing them to make significant cuts to welfare rates at their own discretion. In 2004, social funding was separated from health funding and replaced by the *Canada Health Transfer* and *Canada Social Transfer*. Although an improvement over the CHST, the *Canada Social Transfer* still provides block funding for all social and educational programmes, perpetuating the accountability problems of the CHST^{23,24}.

Since 1997, Canada has seen a period of strong economic growth and an improved standard of living for ordinary Canadians²⁵. However, it was only the highest paid quintile of Canadian earners who increased their share of the national income, while for others incomes remained flat or lost ground²⁶. The social safety net did not benefit from federal government surpluses as they were partially created by cutting transfers to the provinces that resulted in provincial social spending cutbacks (Table 3). Current benefit levels of all programmes are generally inadequate to meet basic needs¹⁴.

As the Canadian social safety net has deteriorated, people already at risk for food insecurity have become even more vulnerable. Despite declining national poverty levels since 1996, vulnerable groups such as single mothers, women and Aboriginals remain at risk. In 2000/01, one-third of single mothers experienced food insecurity, as did 31% of off-reserve Aboriginals and 18% of young people aged 12–44¹⁷. Despite declining unemployment rates, over 3 million Canadians still live in poverty²⁶. Many wages are so inadequate that many with jobs, the working poor, are vulnerable to food insecurity and regularly turn to food banks for help²³.

Because of inadequacies in the social safety net (e.g. low rates and a lack of affordable housing), social assistance rates are not sufficient to provide recipients with access to adequate food. The 1998/99 National Population Health Survey found that social assistance recipients were

Table 2 Main programmes of Canada's welfare state to the late 1960s

Programme	Year
Unemployment Insurance	1940
National Housing Act	1944
Family Allowances (paid to all mothers)	1945
Old Age Security	1951
Canada Pension Plan	1966
Old Age Security – Guaranteed Income Supplement	1966
Canada Assistance Plan	1966
Medical Services Act	1966

Table 3 Federal health, post-secondary education and social transfer allocations and budget, cash and tax points (constant 2003 \$), 1989/90 and 2004/05, Canada

Federal allocations	1989/90 (billion \$)	2004/05*	% change
Health care	17.98	26.25†	+46%
Post-secondary education	8.5	14.5‡	+3.3%
Welfare/social services	6.49		
Total	32.97	40.8	+24%

* 2003 Budget announcement.

† New *Canada Health Transfer* (includes Canada Health and Social Transfer supplement and new Health Reform Fund).

‡ New *Canada Social Transfer* – post-secondary education and social assistance and social services.

Source: Department of Finance, Canada, 1989 and The Budget Plan Finance, 2003.

at much greater risk of food insecurity compared with other income groups²⁷. Many such vulnerable families have had to turn to food banks to fill the gap where government programmes have failed them. According to the Canadian Association of Food Banks (CAFB), 59.9% of food bank users in 2004 were receiving government assistance while 13.3% held jobs²³.

Canada's income support programmes thus lack domestic compliance with its international obligations to 'respect, protect and fulfil' the right to food of vulnerable peoples as outlined in the ICESCR, and arguably do not fulfil *Charter* rights relating to the right to 'life, liberty, and security of the person' (s. 7) and the right to equality and protection from discrimination (s. 15). Existing social assistance benefits are thousands of dollars below low income cut-offs and do not permit the purchase of a sufficient quality and quantity of nutritious food. (Low income cut-offs (LICOs), commonly referred to as 'poverty lines', are used by Statistics Canada as a threshold below which families are considered to be living with low income. The LICO varies by family size and city. See Statistics Canada website for more information (<http://www.cic.gc.ca/english/monitor/issue07/06-feature.html>)). In order to realise the right to adequate food, particularly for vulnerable people in Canada, it is essential that the erosion of Canada's welfare state be reversed and federal monitoring of social programmes reintroduced.

Institutionalisation of food banks

The growth and institutionalisation of food banks and other charity-based approaches to food security offer an important commentary on Canada's right to food performance. Non-governmental organisations and civil society organisations have, in a paradoxical way, become part of the problem because the proliferation of charitable 'solutions' has shifted the policy debate from one of rights to one of benevolence. Rights-based approaches to food policy are based on principles of entitlement, participation and empowerment rather than charity. Violations of rights are justiciable in that they carry legal protection. Benevolence, often delivered by private or other non-governmental charity groups, occurs when governments do not meet their legal obligations (international or domestic), even though the ultimate moral and legal responsibility for ensuring human rights should fall on the state¹⁸.

A prime example of this institutionalisation of charitable responses to food insecurity can be illustrated by the proliferation of food banks in Canada over the past 25 years. In the period 1989–2001, while the poverty rate rose by 18.2% and those receiving welfare assistance increased by 2.5%, the number of food bank recipients grew by 97.8%. More tellingly, between 1997 and 2001, while poverty rates fell by 20.4% and the numbers receiving social assistance dropped by 31.1%, food banks usage increased by 12.5%¹⁴. Since 2001, food bank usage

has continued to increase. Data on food bank usage tell the story of their growth. The 2004 annual *HungerCount Survey* of the CAFB reports that 841 640 people living in Canada used a charitable food bank in March of that year, an 8.5% increase over the previous year.

The CAFB estimates that over half of households accessing food banks in recent years were families with children and nearly 30% were lone parent families, which suggests that women as mothers are significantly impacted by food insecurity. Roughly 40% of food bank users were children under the age of 18 years^{23,28}. Bearing in mind that food bank usage is regarded as an underestimate of food poverty, this is a telling indictment of welfare reform whereby federal and provincial governments tightened welfare and eligibility, cut income support and reduced welfare rolls. As a consequence, the burden of support has fallen on charity; for more than 20 years food banks have provided concrete evidence of the breakdown of the social safety net^{29,30}. A latent function of food banks has thus been to permit the state to deny the human right to adequate food.

Lack of 'joined-up' food and nutrition policy

Canada also lacks a comprehensive, or 'joined-up,' food and nutrition policy directed at the optimal nourishment of the population. Joined-up food policy requires integration across jurisdictions, such as health, agriculture, environment and social policy, and can offer more sustainable and equitable food policy options. Norway has attempted a more comprehensive food policy framework, with some success regarding regional agricultural development and food self-sufficiency³¹. Canada's fragmented approach hinders rational analysis of problems and the development of effective policy. The World Health Organization–Europe proposed to upgrade European food policies so that nutrition, food safety and sustainability (including social issues such as addressing inequalities) would be accorded equal importance. Others have proposed a model of ecological public health, which considers additional factors such as consumption, distribution, and culture to link social and environmental policies related to food^{32–34}.

A joined-up food policy was considered for a brief period in the late 1970s after Canada ratified the ICESCR. This multidepartmental initiative failed due to opposition from the Department of Agriculture, which was highly influenced by the food industry³⁵. The continued absence of joined-up policy explains in part the peculiar situation in Canada with an abundance of cheap food that does not well serve domestic food security needs. There are recent signs that the federal government has recognised this problem, with a new food policy integration effort just underway, the National Food Policy Framework (NFPF). Preliminary information suggests, however, that this framework will not intersect with social policy, focusing

primarily on production, export and market access, nutrition, and some additional health dimensions.

Discussion and conclusions

The separation of food, nutrition, agriculture and trade policies has threatened food security in terms of the sustainability of the food supply, the availability of fresh nutritious foods and the balance of power over the food supply and access to food by vulnerable groups. With cuts to social assistance and employment programmes, the social safety net has been unable to bridge the gap between reality and need. This has created a new role for an emergency food system, which has gradually become institutionalised over the past 25 years as it has shifted some of the burden of food insecurity away from the federal and provincial governments.

Lack of political will and judicial enforcement remains a significant impediment to the recognition and concrete implementation of the right to food, particularly in terms of implementing the legal structures necessary to make food a justiciable right. This could be achieved through a number of routes.

This article shows that food security should be a justiciable right in Canada. Canada has many of the legal structures and policy frameworks in place to protect the right to adequate food for all Canadians. Disconnections between domestic and international commitments, federal and provincial responsibilities, policy jurisdictions, and policy discourse and real action have prevented food security from becoming a reality for many vulnerable people. A lack of political will combined with the absence of joined-up food policies have allowed for the deterioration of the social safety net and subsequent institutionalisation of charitable responses to food insecurity, further threatening people's right to adequate food.

Recommendations

The Canadian judiciary needs to re-examine its precedent in the *Gosselin* case and use the *Charter of Rights and Freedoms* to protect the right to food. When the *Charter* was first adopted, the federal government provided funding for cases to establish *Charter* rights for groups or individuals who could not afford to pay. Because the court is not able to choose the cases it will hear, funding will be required to improve access of social assistance beneficiaries to the judicial system. This programme should be re-established for individuals or groups seeking legal protection of their food rights.

Lacking judicial support, legislation explicitly protecting the right to adequate food could be enacted at the provincial and federal levels. Rather than waiting for the courts to set legal precedent, the federal and provincial governments should negotiate food security and right to

food provisions in ongoing legislative changes to Canadian agriculture and food policy. Quebec has begun this process. The Québec solidarity movement, Québec Collectif pour une loi sur élimination de la pauvreté, played a key role in the 2002 passing of a new *Act to Combat Poverty and Social Exclusion* in the province of Quebec. Part of the *Act* is focused on actions to strengthen the social and economic safety net, including 'facilitating dignified access, for persons living in poverty, to a food supply that is both sufficient and nutritious, at reasonable costs, and simple and reliable information enabling those persons to make enlightened dietary choices' (2002, c. 61, s. 9).

We recommend that Canada expand on the emerging NFPF by developing an action plan for a joined-up food and nutrition policy with the goal of the optimal nourishment of the population, as recommended in General Comment 12³. Canada needs a new action plan for food security with full participation of the relevant ministries including federal and provincial justice, social services, health, agriculture and human resources, and with representatives of civil society and the food industry. The plan should set benchmarks, targets and time frames, and should include measures for monitoring and accountability, as well as legal instruments to ensure rights. It should include policies for education and training of civil servants to accommodate the policies and commitments related to the right to food; food studies and basic human rights education in primary and secondary school curricula and in relevant higher education curricula (e.g. professional education, agricultural, health, nutritional and environmental sciences, business, education, law, social work and social policy); and the establishment and full funding of federal, provincial and municipal food policy councils and of bi-annual national conference and networks. It should also form the basis for social assistance policies that ensure adequate minimal food access for people vulnerable to food poverty.

Canada needs a joined-up food and nutrition policy as a framework for the federal, provincial and territorial governments to manage issues of justiciability regarding the right to food, the effectiveness of the social safety net and accessibility of food particularly for vulnerable groups. Such coordination between jurisdictions is essential to deal effectively with the multiplicity of factors that contribute to food security in this country.

While historically absent from the right to food debate, professionals, activists and academics working in public health nutrition can play a key role in promoting food rights in Canada. A public health nutrition lobby could influence policy makers and contribute to increasing political will to act on progressive food policy measures. More specifically, nutrition professionals should be educated and empowered to assist vulnerable people whose rights are in jeopardy by reporting rights

violations, referring groups or individuals to court to challenge programmes, lobbying for better social assistance, and to recognise the limitations of charitable responses and work toward more effective solutions. Within a comprehensive policy framework such as recommended here, public health nutrition can play a key role by linking the many factors needed to respect, protect and fulfil the right to food in Canada.

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