IN THE COURT OF APPEAL OF NEW ZEALAND CA 232/2012

UNDER **PART 1A HUMAN RIGHTS ACT 1993**

BETWEEN **CHILD POVERTY ACTION GROUP INC. (CPAG)**

Appellant

AND **THE ATTORNEY GENERAL**

Respondent

SUBMISSION OF THE HUMAN RIGHTS COMMISSION AS INTERVENER

16 MAY 2013

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1. INTRODUCTION

1.1 The Court of Appeal has granted the appellant special leave to appeal the judgment of the High Court in *Child Poverty Action Incorporated v Attorney-General* (CIV-2009-404-273, Dobson J and Lay Members Grant and Ineson).

1.2 The Human Rights Commission ("Commission") gave Notice of Intention to Appear and be Heard on the appeal under s. 92H of the Human Rights Act 1993 ("HRA").

1.3 Under section 92H, the Commission has the right to appear and be heard on a proceeding before this Court that:

(a) is in relation to proceedings that have been before the Human Rights Review Tribunal("HRRT") (s.92H(1)(b)); and

(b) the Commission considers will facilitate the performance of its functions under s.5(2)(a) of the HRA (s.92H(2)(b)).

1.4 The Commission considers that its appearance in this case will facilitate its function of advocating and promoting respect for, and an understanding and appreciation of, human rights in New Zealand as it will clarify some of the issues relating to the interpretation of Part 1A HRA which remain unresolved.

2. BACKGROUND

2.1 The appellant, Child Poverty Action Group Incorporated ("CPAG") is an incorporated society which advocates for better informed social policy to support New Zealand children living in poverty. Over the past decade a significant concern of CPAG has been the effect of aspects of state assistance to families with children which are not available to beneficiaries under the Working for Families ("WFF") scheme. CPAG considers that such policies amount to discrimination on the ground of employment status and seeks a declaration to that effect[1].

2.2 Before the High Court the Crown successfully argued that the policy was not discriminatory in relation to the majority of beneficiaries but if it was, it could be justified in terms of s.5 NZBORA. The Court held that, as the purpose of the policy is to incentivise beneficiaries to seek and retain work, there needs to be a gap between the income received from employment and receipt of a benefit.

[1] A more detailed outline of the background to the case is set out in the appellant's submission.

2.3 The HRRT found that the WFF package as a whole, and the eligibility rules for the In Work Tax Credit ("IWTC") in particular, treated families receiving an income-tested benefit less favourably than families in work and this constituted a real and substantive disadvantage, but that it could be justified under s.5 of the New Zealand Bill of Rights Act 1990 ("NZBoRA").

2.4 The HRRT did not, however, accept that s.MD9(4) Income Tax Act 2007 ("ITA") - which relates to recipients of ACC compensation for injury suffered prior to 2006 – amounted to discrimination but considered that if it did it could be justified in terms of s.5.

2.5 The HRRT's decision was not upheld on appeal, the High Court finding that for the vast majority of beneficiaries there was no discrimination (with the exception of the small subset of full–time earners for the purpose of s.MD8(a) of the ITA who remain on benefits) but even so the discrimination was justified.

2.6 The appellant challenges the High Court's decision that sections MD8(a) and MD9 of the ITA which govern eligibility for certain tax credits that are part of the "Working for Families" ("WFF") tax package, are inconsistent with the right to freedom from discrimination as affirmed by s.19 of the NZBoRA.

2.7 The respondent is cross appealing that part of the High Court's decision which found that individuals who are ineligible for the IWTC because they meet all the eligibility criteria except the off-benefit rule, are the subject of discrimination under s.19 NZBoRA.

3. QUESTIONS ON APPEAL

3.1 The approved questions for appeal are whether the High Court correctly stated and applied:

(i) the test for a breach of s.19 of the NZBoRA; and

(ii) the test for s.5 of the NZBoRA.

3.2 The first question is to include the issues raised by the respondent by way of cross-appeal, namely whether the High Court erred in applying section 19 in holding that:

(i) those who are ineligible for the in-work tax credit on the basis only of s.8(a) of the ITA are the subject of prima facie discrimination; and

(ii) those who are ineligible for the in-work tax credit on the basis of both s.MD8(a) and s.MD9 of the ITA are not the subject of prima facie discrimination.

3.3 In the Commission's submission, while the High Court adopted the correct test for deciding whether there was prima facie discrimination, it erred in applying it by:

(a) not accepting that the policy was discriminatory on the basis of s.MD8(a) because employment status was a material factor in excluding parents on benefits from the IWTC;

(b) adopting too stringent an approach to identifying disadvantage.

3.4 In relation to the s.5 test, while the High Court adopted the correct framework the Commission submits that the Court:

(a) failed to recognise that deference should be considered in the context of the objectives of the WFF package as a whole rather than simply in relation to the off-benefit rule; and

(b) as a result, taking too restrictive an approach to determining the extent of impairment by not recognising the close link between child poverty and the level of a family's income,

4. RELEVANT SUBSTANTIVE PROVISIONS

4.1 The key provisions of the NZBoRA and the HRA are set out below.

4.2 Section 19 of the NZBoRA provides:

Freedom from discrimination

(1) Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.

(2) Measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination that is unlawful by virtue of Part 2 of the Human Rights Act 1993 do not constitute discrimination.

4.3 Section 5 of the NZBoRA provides:

Justified limitations

Subject to section 4, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

4.4 The long title of the HRA notes that the HRA is:

An Act to consolidate and amend the Race Relations Act 1971 and the Human Rights Commission Act 1977 and to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants or Conventions on Human Rights.

4.5 Part 1A of the HRA provides:

Discrimination by Government, related persons and bodies, or persons or bodies acting with legal authority

20I Purpose of this Part

The purpose of this Part is to provide that, in general, an act or omission that is inconsistent with the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990 is in breach of this Part if the act or omission is that of a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990

20J Acts or omissions in relation to which this Part applies

(1) This Part applies only in relation to an act or omission of a person or body referred to in section 3 of the New Zealand Bill of Rights Act 1990, namely—

(a) the legislative, executive, or judicial branch of the Government of New Zealand; or

(b) a person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.

(2) Despite subsection (1), this Part does not apply in relation to an act or omission that is unlawful under any of sections 22, 23, 61 to 63, and 66.

(3) If this Part applies in relation to an act or omission, Part 2 does not apply to that act or omission

(4) Nothing in this Part affects the New Zealand Bill of Rights Act 1990.

20K Purposes for which section 20L applies

Section 20L applies only for the purposes of—

(a) any inquiry undertaken by the Commission under section 5(2)(h):

(b) the assessment, consideration, mediation, or determination of a complaint under Part 3:

(c) any determination made by the Director under Part 3 concerning the provision of representation in proceedings before the Human Rights Review Tribunal:

(d) made in proceedings before the Human Rights Review Tribunal or in any proceedings in any court on an appeal from a decision of that Tribunal:

(e) any determination made by any court or tribunal in proceedings brought under this Act by the Commission:

(f) any other process or proceedings commenced or conducted under Part 3:

(g) any related matter

20L Acts or omissions in breach of this Part

An act or omission in relation to which this Part applies (including an enactment) is in breach of this Part if it is inconsistent with section 19 of the New Zealand Bill of Rights Act 1990.

For the purposes of subsection (1), an act or omission is inconsistent with section 19 of the New Zealand Bill of Rights Act 1990 if the act or omission—

(a) limits the right to freedom from discrimination affirmed by that section; and
(b) is not, under section 5 of the New Zealand Bill of Rights Act 1990, a justified limitation on that right.

To avoid doubt, subsections (1) and (2) apply in relation to an act or omission even if it is authorised or required by an enactment.

4.6 Section 21(1)(k) of the HRA defines **employment status** as meaning —

(i) being unemployed; or
(ii) being a recipient of a benefit under the Social Security Act 1964 or an entitlement under the Accident Compensation Act 2001.

4.7 Income Tax Act 2007

Section MD8(a): person not receiving benefit

The fourth requirement for an entitlement to an in-work tax credit is that the person referred to in section MD 4 and their spouse, civil union partner, or de facto partner, do not receive—

(a) an income-tested benefit

Section MD 9: full-time earner

The fifth requirement for an entitlement to an in-work tax credit is that either or both the person referred to in section MD 4 and their spouse, civil union partner, or de facto partner, is normally a full-time earner.

4.8 Section 19 of the NZBoRA has its antecedents in international human rights law, specifically articles 2.1 and 26 of the International Covenant on Civil and Political Rights ("ICCPR") and article 2.2 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). Clearly, both treaties envisage the rights they protect being provided in a non-discriminatory manner. This would include ensuring that benefits such as the IWTC are not denied to people on a ground which prohibits discrimination domestically. Certain other articles are also relevant, however. They are:

ICCPR

Article 2.1: Each State Party to the present covenant undertakes to respect and to ensure at all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind such as race,

colour, sex, language, religion, political of other opinion, national or social origin, property, birth or other status.

Article 3: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 24.1: Every child shall have without discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as required by his status as a minor, on the part of his family, society and the State.

Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICESCR

Although the ICESCR complements the ICCPR, it relates principally to economic, social and cultural rights, and as a result has particular applicability to the present situation. More specifically, the following articles are relevant:

Article 2.2: The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin property, birth or other status.

Article 10.1: The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly its establishment and while it is responsible for the care and education of dependent children.

Article 11.1: The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living

conditions. The States Parties will take appropriate steps to ensure the realisation of this right...

United Nations Convention on the Rights of the Child ("UNCROC")

4.9 UNCROC is also relevant. **Article 3.1** of UNCROC states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the interests of the child shall be a primary consideration.

4.10 **Article 27** relates to the right of every child to an adequate standard of living. **Article 27.3** requires States Parties, in accordance with national conditions and within their means, to take appropriate measures to assist parents and others responsible for the child to implement this right and in the case of need to provide material assistance and support programmes...

5. ROLE OF INTERNATIONAL HUMAN RIGHTS TREATIES

5.1 While the High Court noted [at para 52] that the international human rights instruments do not create obligations that are enforceable in judicial proceedings unless specifically incorporated in domestic legislation, it also recognised that "they operate as an influence on the approach to interpretation of human rights provisions in New Zealand statutes"[2].

5.2 The Court went on to note that ,while it was mindful of the international commitments in the various covenants, it did not feel it necessary to rely on any of the material cited to determine the appropriate interpretation of the relevant human rights provisions in New Zealand's domestic legislation.

5.3 The Commission is concerned that the Court set aside consideration of the international materials in determining the appropriate interpretation of the relevant human rights provisions in domestic legislation. While the Commission accepts that this is correct in theory, it submits that when a State chooses to ratify a treaty and

[2] *Ye v Minister of Immigration* [2012] 1 NZLR 104 **BOA 2:27** at para [24]

accept the responsibility to perform the resulting obligations in good faith, a State may not use domestic law as an excuse for not doing so[3].

5.4 A useful indication of the appropriate interpretation and application of treaty rights can be found in the general comments which are issued by the treaty bodies that have oversight of particular covenants and conventions and which are considered highly influential[4].

5.5 In relation to UNCROC, the Committee on the Rights of the Child issued a General Comment in 2005 out of concern with their experience of reviewing States parties' reports[5]. One of the objectives of the exercise was to emphasise the vulnerability of young children to poverty "... and other adversities that violate their rights and undermine their well being"[6].

5.6 Under the section on *Parental Responsibilities and Assistance from States Parties*, the Committee noted that "States parties are required to render appropriate assistance to parents, legal guardians and extended families in the performance of their child rearing responsibilities including assisting parents in providing living conditions necessary for the child's development"[7].

5.7 The Committee expanded further on this, noting that realising children's rights is in large measure dependent on the well being and resources available to those with responsibility for their care. Recognising these interdependencies is a sound starting point for planning assistance and services to parents, legal guardians and other caregivers. The Committee gives as an example of such interdependencies, ... interventions that impact indirectly on parents' ability to promote the best interests of children, e.g taxation and benefits[8].

5.8 The Commission submits that New Zealand's commitments to its international obligations could be expected to be reflected in the design of the IWTC as part of the

[3] Evatt, E. Citing Vienna Convention Arts. 26,27 in *The Impact of International Human Rights on Domestic Law* in **Litigating Rights,** Huscroft & Rishworth (eds) Hart Publishing 2002 **BOA 7:71** at 286
[4] Evatt, ibid
[5] Committee on the Rights of the Child, *General Comment No.7 (2005): Implementing child rights in early childhood*, CRC/C/GC/7/Rev.1 **BOA 6:67**
[6] Ibid. para 2(g)
[7] Ibid. para 20
[8] Ibid. at (a)

WFF policy and the impact it is likely to have on children living in poverty. It expands on this further in relation to the second question on appeal.

6. FIRST QUESTION ON APPEAL: CORRECT APPROACH TO S.19 NZBORA

6.1 The Court accepted that identifying prima facie discrimination for the purposes of s.19 of the NZBoRA was a two stage process – a view since endorsed by the Court of Appeal in *Atkinson*[9].

6.2 A two stage approach involves first deciding whether the act in question treats two comparable groups differently by reason of one of the prohibited grounds of discrimination and then, whether the different treatment results in disadvantage. Only when both issues are resolved does the question arise as to whether the treatment is justified under section 5.

6.3 The Commission submits that while the High Court identified the correct comparator, it confused aspects of the first limb of the test for discrimination by conflating the concept of causation and the determination of disadvantage.

7. COMPARATOR

7.1 The purpose in identifying a comparator is to establish whether different treatment can be attributed to a prohibited ground of discrimination. Essentially, the comparator concept is used to restrict discrimination law to a judgment as to whether it is justifiable to treat people or groups in comparable situations differently. If people or groups are not in comparable situations, then discrimination law does not come into play.

7.2 While it is well established that comparison is an essential element in identifying discrimination[10], almost inevitably there are different approaches on how to identify an appropriate comparator. Here, the alleged discriminatory factor is being on a benefit.

7.3 In the Crown's view, it was necessary to compare two groups who were both in full-time employment (that being one of the qualifying criteria for the IWTC) where one is

[9] At para[55]
[10] *Air New Zealand v McAlister* [2009] NZSC 78, [2010] 1 NZLR 153 **BOA 1:9**; *Smith v Air New Zealand Ltd* [2011] NZCA 290, [2011] 2 NZLR 171 **BOA 2:21**; *Ministry of Health v Atkinson* [2012] NZCA 184 **BOA 1:16**

also on a benefit and therefore does not qualify for the IWTC and the other who is not on a benefit, so they do qualify[11]. As the High Court observed, this effectively redefined the group of complainants rather than identifying the comparator.

7.4 The Supreme Court in *Air New Zealand v McAlister*[12]when faced with the need to identify a comparator in the employment context noted that the comparator should reflect the context in which it is applied so as to fit the relevant statutory scheme[13]. It should also not rule out discrimination at an early stage of the enquiry[14].

7.5 The High Court commented[15]:

> *If this was a dispute over the comparator, then our analysis would begin with the context of the complaint. It is of discrimination on the ground of employment status, the definition of which, in s.21(1)(k) of the HRA, extends to being a recipient of a benefit under the Social Security Act 1963. Therefore the relevant context is that discrimination is claimed to be occurring on behalf of recipients of such benefits, by virtue of that status. Within this context they are contrasted with those who are employed. The essence of the difference is that those on the other side of the line receive their income from earned wages.*

7.6 The comparator suggested by CPAG and adopted by the High Court - namely, the comparison is between those who are on a benefit and not working, and those who are working and not on a benefit - was simpler and more logical than that suggested by the Crown and, the Commission submits, more consistent with the comments of the Supreme Court in *McAlister*.

8. CAUSATION

8.1 The link between the prohibited ground and the resulting disadvantage is central to any determination of discrimination but the ground does not need to be the sole, or even the principle reason, for the discrimination**.** The Commission submits that the High Court's assumption that it was necessary for the disadvantage to be directly attributable to beneficiary status - absent any other factors - before discrimination could be established is incorrect[16].

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[11] HC at para [86]
[12] *McAlister* supra at [51]
[13] Ibid. at para [34]
[14] Ibid. at para [39]
[15] HC para [101]
[16] HC paras [116 & 117]

8.2 In *Human Rights Commission v Eric Sides Motor Company Ltd* [17] the Equal Opportunities Tribunal (as it then was) suggested that for treatment to be "by reason of" a prohibited ground, the ground had to be a substantive and operative factor. However, in *Air New Zealand Ltd v McAlister* [18]Tipping J (endorsing the position of the majority) went on to note that requiring a matter to be a substantive and operative factor required "too strong a link between the outcome and the prohibited ground" stating that[19]:

> *The correct question raised by the phrase "by reason of" is whether the prohibited ground was a material ingredient in the making of the decision to treat the complainant in the way he or she was treated*.

8.3 The Supreme Court's approach has subsequently been followed by the HRRT in *Winther v Housing New Zealand Corporation*[20]and the Court of Appeal in *Atkinson.*

8.4 At para 117, the High Court seems to be saying that because the fulltime earner requirement operates to exclude the substantial number of beneficiaries from qualifying for the IWTC, the fact that they are on a benefit (and therefore at least on the face of it, fall within the definition of "employment status") is irrelevant to the determination of discrimination.

8.5 The Commission considers that "employment status" is clearly engaged since being a beneficiary is a, if not the, determinative factor in the complainant's situation. Employment status is therefore a "material ingredient" in deciding whether there is discrimination. It follows on this reasoning alone that the necessary link with a prohibited ground of discrimination is arguably satisfied in relation to *both* classes of complainant.

9. DISADVANTAGE

9.1 The Crown has repeatedly urged the Court to adopt a substantive approach in deciding whether there is disadvantage[21], arguing that if significant disadvantage were not required, the Crown would constantly be put to considerable expense in justifying relatively innocuous breaches. By contrast, CPAG advocated for a straightforward test

[17] (1981) 2 NZAR 447 (EOT) **BOA 1:15**
[18] *McAlister* supra at para[48] **BOA 1:9**
[19] ibid at para [49]
[20] [2011] 1 NZLR 828 **BOA 1:16**
[21] See, for example, *Ministry of Health v Atkinson* [2012] 3 NZLR 456 (CA) **BOA 1:16**;*The Attorney-General on behalf of the Ministry of Health v IDEA Services Ltd (in statutory management)* [2012] NZHC329 **BOA 1:11**

that involved a distinction resulting from a prohibited ground plus disadvantage that was more than trivial[22].

9.2 The Commission recognises that while the Court did not endorse the Crown's approach, it none the less considered that the concept of disadvantage could not be entirely unqualified, as it would raise the prospect of theoretical, innocuous or *de minimus* disadvantage qualifying as prohibited discrimination and trivialising the right protected by s.19[23].

9.3 While the Commission accepts that there must be some disadvantage, it disagrees with the view promoted by the Crown that some grounds are more invidious than others. This approach runs counter to the purpose of the NZBoRA and the HRA – as this Court recognised in *Atkinson*[24].

9.4 The Crown's argument (that some grounds are more "suspect" than others)[25] would effectively mean that despite the fact that the New Zealand Parliament identified "employment status" as type of discrimination that should be prima facie unlawful, a Court could undermine that legislative choice by treating such discrimination as largely unobjectionable.

9.5 In its submission in support of the cross appeal the Crown states that "employment status as a ground of discrimination is different to other characteristics that are typically protected by discrimination legislation"[26]. This is because employment status is mutable and the government's role should be aimed at making it easier for beneficiaries to change their status. It would follow, therefore, that polices in which employment status is the relevant ground of discrimination can be more easily justified[27].

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[22] HC para [56]
[23] *Atkinson* at para [110] **BOA 1:16**; HC at para [83]
[24] The Commission notes that the High Court's comments in relation to *R v Hansen* [2007] NZSC 7, [2007] 3 NZLR 1 **BOA 1:20** at para [131] lend some credence to the argument that there is a hierarchy of grounds but notes that this is in the context of s.5 justification rather than in relation to defining discrimination for the purposes of s.19. A more straightforward approach to deciding whether there is prima facie discrimination is consistent with government's intention to create a publicly funded accessible complaints process which was seen as integral to a robust human rights culture: Cabinet Policy Committee: *Anti-Discrimination Standard for Government Activities*, POL (01) 99 at para [31], **BOA 7**:82 at p.9
[25] HC para [66]
[26] Respondent's submission in support of cross-appeal at para [81]
[27] See also Respondents' submissions on appeal at para [46]

9.6 The Commission respectfully submits that the High Court was correct when it observed that[28]:

> *We are not persuaded that there should be any ranking by reference to the inherent importance of various of the enumerated grounds of discrimination. The notion of a hierarchy of grounds reflects the approach in other jurisdictions where any list of potential grounds of discrimination is open ended, leading to the prospect of an evaluation on relative significance of a ground of discrimination in a particular case. In contrast, the enumerated grounds in s.21 of the HRA are all to be taken as creating the jurisdiction for claims of prohibited discrimination and the status of a claim invoking any of the grounds to be assessed on its own merits.*

10. IMPACT – EFFECTS BASED

10.1 As the High Court observed, in deciding whether there is disadvantage, "context is everything"[29]. A case-specific inquiry is necessary to determine the materiality or sufficiency of the disadvantageous treatment[30]. Accordingly, a determining factor in whether treatment amounts to discrimination for the purposes of s.19 will be the actual effect of what is complained of.

10.2 One way of deciding whether different treatment is disadvantageous is whether, as a result of that treatment, the complainant has been denied a benefit or protection available to others. This approach (which is advanced in a critique of the Canadian Supreme Court's s.15 jurisprudence by Hart Schwartz[31]) was received favourably by this Court in *Atkinson* [at para 132], the Court noting that:

> *... [it] found Schwartz's analysis helpful ... He suggests that a definition focused on disadvantage has a number of benefits. First, it allows examination of a "neutral" rule or law that nevertheless has an adverse impact. Second, it ensures that the "good reason" for the law is kept separate from the determination of prima facie discrimination. By contrast, he suggests a focus on the Kapp and Withler factors of prejudice and stereotyping means a focus only on the intent of the legislation or policy. Measures may of course be introduced with the best of intentions but nonetheless, on analysis, comprise prima facie discrimination.*

10.3 The Commission submits that a focus on exclusion is a better way of identifying discrimination as it more accurately reflects the actual state of persons who feel they

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[28] HC para [67]
[29] At para [61]
[30] At para [81]
[31] Hart Schwartz "Making Sense of Section 15 of the Charter" (2011) 29 NJCL 201 **BOA 7:12** at 217

have been discriminated against. The Court in *Atkinson* noted that adopting such a test avoids "justification creep" whereby matters which should be considered in the context of s.5 are shifted to the s.19 analysis.

10.4 Schwartz's test consists of asking whether:

(1) the complainant has been excluded from the benefit or protection based on one or more of the enumerated grounds; and if
(2) the challenged law (or conduct) caused or contributed to prejudice, stereotyping or *disadvantage*.

10.5 By adding "disadvantage" to the prejudice and stereotyping traditionally relied on in the Canadian *Charter* cases, the Court is able to examine laws that may appear to be neutral but can nonetheless have an adverse impact. It also serves to keep justificatory factors separate for subsequent analysis[32]. In reasoning reminiscent of the Supreme Court's in *McAlister*, the author observed that, "The "good reason" for a law, its justification, ought not to invade the determination of whether discrimination exists in the first place."

10.6 Applying this test to the present circumstances, the Commission respectfully submits that it would be irrelevant that the reason people on a benefit cannot access the IWTC is because they are not in fulltime work. The *effect* of the law is to exclude beneficiaries from claiming the benefit of the tax credit. This should, without more, be enough to satisfy the first step in Shwartz's test.

10.7 In relation to the second limb and the requirement of disadvantage for all beneficiary parents, the Commission submits that the inability to claim the IWTC amounts to a disadvantage for a not inconsiderable number of beneficiaries.

11. COMMISSION'S VIEW ON SS. MD8(a) & MD9 ITA

11.1 The approach to prima facie discrimination was to include consideration of whether those who are ineligible for the IWTC on the basis of s.MD 8(a) ITA (that is, work the relevant number of hours and receive an income-tested benefit) are the subject of prima facie discrimination; and whether those who are ineligible for the IWTC

[32] Schwartz at p. 213

because of both ss.MD 8(a) & MD 9, that is, in receipt of a income related benefit but not in full time employment, are not the subject of prima facie discrimination.

11.2 The Commission submits that the High Court was correct to conclude that the first requirement of prima facie discrimination in relation to s.MD 8(a) ITA was satisfied. Quite simply, the reason for people in this situation being unable to access the IWTC was because they are in receipt of a benefit under the Social Security Act 1964. They therefore fall within the definition of "employment status".

11.3 In relation to the group that is ineligible for the IWTC because of ss.MD 8(a) and MD9 the Commission considers that they, too, are the subject of discrimination in terms of s.19 NZBoRA. The reason the High Court gave for disqualifying people in receipt of an income tested benefit from accessing the IWTC was that they were not full time earners[33]. In other words the fact they were not in full time work was sufficient to negate the effect of their employment status as a contributory factor in a claim of discrimination.

11.4 The Commission submits that the High Court's conclusion overlooks the test for causation developed by the Supreme Court in *McAlister*. The prohibited ground of employment status is clearly a material ingredient in the treatment complained of. It follows that the initial step in identifying prima facie discrimination is also made out in relation to the group of beneficiaries who are not able to claim the IWTC because of ss.MD8(a) and MD9 ITA.

11.5 As for disadvantage, while the Commission accepts that it must be more than just different treatment. Not being able to access the IWTC means that those families affected are living in more difficult conditions and have fewer resources available to care adequately for their families. While the goal of incentivising people into work is laudable, the effect in real terms is to exclude a group of people who, by their very definition, are supporting children on a low income.

11.6 The Commission submits that the inability to access the IWTC amounts to sufficient disadvantage to satisfy the second step of the test, leaving the question of justification to be dealt with as part of the subsequent analysis.

[33] At para [117]

11.7 The Commission submits that applying Schwartz's approach to identifying discrimination in relation to ss.MD8(a) and MD9 ITA would result in both groups being the subject of prima facie discrimination.

12. SECOND QUESTION ON APPEAL: APPLICATION OF SECTION 5 OF THE NZBoRA

12.1 It is generally accepted that the approach adopted by the Supreme Court in *R v Hansen*[34]and applied here by the High Court is the correct framework in which to carry out an analysis under s.5.

12.2 In deciding whether an intrusion into a right is justified, the following criteria are relevant:

(a) Does the limiting measure serve a purpose sufficiently important to justify curtailment of the right or freedom?

(b) (i) is the limiting measure rationally connected with its purpose?
(ii) does the limiting measure impair the right or freedom no more than is reasonably necessary for sufficient achievement of its purpose?

(c) Is the limit in due proportion to the importance of the objective?

12.3 In analysing the policy for the purposes of s.5 there is some common ground between the parties. Namely, the limitation on the right is the imposition of the off-benefit rule[35]; the objective of the measure – to provide an incentive for people to pursue work rather than remain on a benefit – is sufficiently important to justify curtailing the right to be free of discrimination[36]; and there is a rational connection between the objective and the off-benefit rule[37].

ONUS OF PROOF

12.4 As a preliminary issue, the Commission considers it necessary to address the standard of proof which drives in part the Crown's suggestion that a more stringent approach

[34] [2007] NZSC 7,[2007] 3 NZLR 1 **BOA 1:20**
[35] HC at para [164]
[36] HC at para [192]
[37]HC at para [198]

should be adopted in identifying preliminary discrimination[38]as it is inextricably linked to the issue of deference.

12.5 The onus of proving that an act or omission is a justified limit on the right to freedom from discrimination rests with the defendant[39]. The Crown considers that the burden on the government in this regard is an onerous one.

12.6 The Commission submits that the required standard of proof is not unreasonable as it reflects Parliament's message to those public sector actors who are subject to Part 1A that discrimination will not be taken lightly. In the Commission's view it is appropriate that government should be required to justify each decision that treats people differently in a way that disadvantages them on a prohibited ground of discrimination.

12.7 As was recognised at the time that the proposals that led to the enactment of Part1A were being considered, case by case justification demonstrates to New Zealanders the government's commitment to meeting human rights obligations[40].

12.8 The role of the burden of proof in establishing a culture of justification was endorsed by the HRRT in the present case. While recognising that justification can be a time consuming and expensive exercise, the Tribunal noted that,

> *... it was a burden which, in our view, Parliament must be taken to have understood and accepted as appropriate for the assessment of human rights problems in cases of this kind when Part 1A was enacted, and the anti-discrimination standard of NZBoRA was extended to activities of government*.[41]

13. DEFERENCE

13.1 The Commission acknowledges that Courts must show caution when considering matters of policy, and that some degree of discretion and judgment needs to be reserved for the decision maker.

13.2 Whether limiting a right or freedom in the policy context can be justified involves a fine balance. It is the job of Parliament to strike the balance in the first instance but

[38] HC at para [130]
[39] s.92F HRA
[40] Cabinet Policy Committee 17 May 2001 POL(01) 99, **BOA 7:82** p.21
[41] CPAG HRRT at para [125]

that does not mean that the Courts cannot exercise their review function - particularly where a fundamental right such as freedom from discrimination is involved. As Lord Steyn observed:[42]

> *...Most legislation is passed to advance a policy. And frequently it involves in one way or another the allocation of resources ...what I am saying is that there cannot be a legal principle requiring the court to desist from making a judgment on the issues in such cases...There is in my view no justification for a court to adopt an a priori view in favour of economic conservatism ... In common law adjudication, it is an everyday occurrence for courts to consider, together with principled arguments, the balance sheet of policy advantaged and disadvantages. It would be a matter of public disquiet if the courts did not do so.*

13.3 While there is general consensus that greater deference should be accorded to complex issues of social or economic policy - particularly where resource allocation is involved[43]- this does not mean that the Courts should not go there.

13.4 The role that deference can play in a justification inquiry will depend very much on the particular facts in a given case, even where matters of social policy are in issue. As Tipping J noted in *Hansen*, there is a spectrum which attracts varying degrees of deference with the level differing from case to case. The spectrum extends from:

> *... matters which involve major political, social or economic decisions at one end to matters which have a substantial legal content at the other. The closer to the legal end of the spectrum, the greater the intensity of the court's review is likely to be.*[44]

13.5 While the Commission recognises that the present case involves matters of social policy that impacts on the welfare of children, the right to be free from discrimination (which is a non-derogable right under international human rights law) and which is also engaged requires stringent legal scrutiny.

13.6 The importance of discrimination where social and economic policy is involved has been recognised by the House of Lords[45]:

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[42] *Deference: a Tangled Story* [2005] Public Law at 346 at 357 **BOA 7:73**

[43] *R (Carson) v Secretary of State for Work and Pensions* [2005] UKHL37, [2006] 1 AC 173. HC **BOA 3:37** at para [138]

[44] *Hansen* at para [116]

[45] *In Re P and others* [2008] UKHL 38 at para [48] See also the case of *Ghaidin v Godin-Mendoza* [2004] 2 AC 557 **BOA 2:31**at para [19] where the setting was social housing, but the right to be free from discrimination was strictly applied.

> *Cases about discrimination in an area of social policy ... will always be appropriate for judicial scrutiny. The constitutional responsibility in this area of our law resides with the courts. The more contentious the issue the greater the risk is that some people will be discriminated against ...It is for the courts to see that this does not happen. It is with them that the ultimate safeguard against discrimination rests*.

13.7 The Commission notes that the High Court acknowledged that it was necessary to consider the extent of deference differently taking into account the importance of the right to freedom from discrimination[46]but that the extent of deference would depend on the level of abstraction at which the analysis was undertaken. The result was that the eventual decision would depend on whether deference was measured narrowly, against the objective of the off-benefit rule, or more broadly against the objectives of the whole WFF package[47].

13.8 The High Court chose to measure the extent of deference against the objectives of the off-benefit rule rather than the WWF package. It followed that applying the s.5 criteria to the rule that excluded beneficiaries from claiming the IWTC attracted greater deference than would have been the case had the objectives of the whole WWF package been taken into account.

13.9 Given Parliament's decision to ensure that all policies and practices of the government should be capable of being justified to a stringent standard[48], the Commission submits that the requisite level of deference in cases such as this should be assessed on a more refined basis as the outcome might have been different if the Court had adopted a less restrictive approach or given more weight to certain factors.

13.10 The Commission submits that for the reasons that follow the High Court should have considered the question of justification in the context of the WWF package as a whole rather than simply in relation to the off-benefit rule.

13.11 The Commission submits that the requirement that the recipient had dependent children must be relevant. A person or couple who are childless cannot access the IWTC. It seems anomalous therefore that a policy which includes a specific goal of

[46] HC at para [145]
[47] HC at para [146]
[48] Cabinet Policy Committee, *Anti-Discrimination Standard for Government Activities*: POL(01) (17 May 2001) **BOA 7:82** at para 22

supporting families and children[49]should be measured only against a criterion such as being in receipt of an income related benefit, disregarding the overall policy objective.

14. INTERNATIONAL OBLIGATIONS

14.1 The Commission submits that New Zealand's international commitments are a relevant consideration in deciding whether the objective of the policy should be measured against the WWF package as a whole.

14.2 As noted already, the Commission accepts that it is not possible to enforce international obligations through the domestic courts unless they are specifically incorporated into legislation but also that this does not absolve the State of responsibility for compliance. The relevant treaties cited by CPAG in support of its position on the WFF package related to UNCROC (Art.27) and ICESCR (Art.10). The Crown's response (that appears to have been accepted by the High Court) was that the arguments were advanced on an "unjustifiably, generic basis".[50]

14.3 The UN treaty bodies responsible for monitoring New Zealand's performance in implementing the relevant conventions have repeatedly expressed concern about the persistence of poverty and the impact of economic reforms on children, in particular those belonging to economically disadvantaged groups[51].

14.4 In response, the New Zealand government in its most recent report under UNCROC specifically referred to the impact of the WWF package as a measure introduced to alleviate child poverty, claiming:

> *Since 2004, Working for Families has significantly increased incomes for low and middle income New Zealanders, especially families with children. When the full impact of the Working for Families package is more completely captured, further reductions in child poverty rates are expected... reduction in the child poverty rate has been achieved because of three things:*
> *... extra help to families with children through the WFF package;*

[49] Cabinet Social Equity Committee, *Pathways to Opportunity: Social Assistance Reform* SEQ (01)42 (18 June 2001) COA Vol.6 CPG.028.0005
[50] HC at para [179]
[51] Committee on the Rights of the Child, *Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations: New Zealand* CRC/C/15/Add.216 (2003) **BOA 6:66** paras [14 & 15]

> *... the fall in numbers of children in families whose main source of income is a benefit.*[52]

14.5 The same claim about the WWF package was made in response to questions by the ICESCR Committee about measures to combat child poverty.[53]

14.6 The government report to the Committee on the Elimination of All Forms of Discrimination against Women also specifically referred to the WFF package, describing it as[54]:

> *... enhancing a number of existing social assistance measures to provide higher rates of assistance and extend eligibility, to help ensure that all families have enough income to raise their children and have a decent standard of living and that low income families are financially better off than on state support.*

14.7 The Commission submits that it is inappropriate for the Government to claim in international fora that measures such as the WFF are alleviating child poverty, while at the same time the Crown is interpreting those measures restrictively in the domestic context to avoid allegations that a particular policy is discriminatory.

15. GOVERNMENT COMMITMENT TO A ROBUST HUMAN RIGHTS CULTURE

15.1 One of the aims of the 2001 Amendment to the HRA and the introduction of Part 1A was to create a "robust human rights culture"[55].

15.2 The enactment of Part 1A followed an independent ministerial re-evaluation of human rights protections in New Zealand[56]. The report found that:

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[52] Committee on the Rights of the Child, *Consideration of reports submitted by States Parties under article 44 of the Convention, Third and Fourth reports of States parties due in 2008: New Zealand* CRC /C/NZL/3-4 **BOA 6:66** at paras [309] [312]

[53] ICESCR, Third Periodic Report of New Zealand 17 January 2011 at para [334] The Commission notes in this regard that in its introductory remarks to the ICESCR Committee in 2012, the Government reiterated its commitment to strengthening its implementation of the Covenant, including responsibility for children ... and its continuing commitment to its international human rights obligations: *UN Committee on Economic Social and Cultural Rights, Presentation of New Zealand's 3rd periodic report: Introductory Remarks* (4th May 2012) **BOA 6:63**

[54] Committee on the Elimination of Discrimination against Women, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Sixth periodic report of States Parties – New Zealand* CEDAW/C/NZL/6 **BOA 6:69** at para [391]

[55] Human Rights Amendment Bill 2001 (152-1)(explanatory note) at 1

[56] Ministry of Justice, *Re-evaluation of the Human Rights Protections in New Zealand* (October 2000) part 6 **BOA 7:74**

(a) Human rights make good policy. In particular, human rights tend to generate policies that ensure reasonable social objectives are realised by fair means that respect the dignity and worth of all individuals. Policies which respect and reflect human rights are more likely to be inclusive, equitable, robust, durable and of good value.

(b) New Zealand has committed itself to certain binding international human rights obligations that arise as a result of ratification which it is required to implement in good faith.

(c) Human rights obligations should therefore inform or animate all relevant policy. This requires that human rights are taken into account early in the policy making process.

(d) Integration of domestic and international human rights obligations in the policy making process was "patchy, uneven and unsystematic".

15.3 The enactment of Part 1A HRA clearly envisaged that future policy would subject to rigorous scrutiny about its human rights compliance. It is, therefore, somewhat concerning that the High Court found that "any inadequacy in the terms in which ... policy objectives were recorded at the time is not appropriately held against the Government"[57]and that "the nature of an objective and its relative importance should be evaluated on a substantive basis, and not be determined by the form in which the government either publicly explained policy objectives or recorded them at the time"[58].

15.4 The inadequacies in the way in which the government developed the policy suggest that the level of deference should not be as great as the High Court accepted. For example:

i. the Bills which gave effect to the WFF package were not referred to a Select Committee;

ii. the vet by the Attorney-General pursuant to s.7 of the NZBoRA did not pick up the issue of employment status discrimination – matters that caused both the Tribunal and the High Court concern[59]; and

iii. there was no evidence that human rights considerations had been taken in to account during the policy process as required by the Cabinet Manual[60].

[57] HC at para [158]
[58] Ibid.
[59] HC at para [25]

15.5 To be clear, the Commission does not contend that a higher level of deference will not be appropriate at times in the sphere of social and economic policy but rather that a careful assessment of the policy or policies involved is necessary in a case such as this to avoid unjustified breaches.

16. MINIMAL IMPAIRMENT

16.1 While the Commission recognises that the appropriate test is set out in *Hansen*, the judges adopted slightly different tests in deciding whether the limiting measure impaired the right or freedom no more than is reasonably necessary to achieve its objective.

16.2 Blanchard J noted that "a choice could be made from a range of means which impaired the right as little as was reasonably necessary"[61].

16.3 Tipping J on the other hand considered that the option chosen does not have to be the least infringing but simply "no greater than reasonably necessary to achieve Parliament's objective"[62]. His Honour commented:

> *I prefer that formulation to one which says that the limit must impair the right as little as possible. The former builds in appropriate latitude to Parliament; the latter would unreasonably circumscribe Parliament's discretion. In practical terms this inquiry involves the Court in considering whether Parliament might have sufficiently achieved its objective by another method involving less cost to the presumption of innocence.*

16.4 McGrath J put it slightly differently again noting that:

> *The second question concerning proportionality is whether the measure intrudes ... as little as possible ... The inquiry here is into whether there was an alternative but less intrusive means of addressing the legislature's objectiveness which would have a similar level of effectiveness ...*[63]

16.5 McGrath J's approach is similar to that in Canada where McLachlin J[64], for example, described the requirement for minimal impairment as requiring that:

> *...the law must be carefully tailored so that rights are impaired no more than necessary. The tailoring process seldom admits of perfection and the courts must accord some leeway to the legislator. If the law falls within a range of reasonable alternatives, the courts will not find it overbroad*

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[60] Cross-examination of John Yeabsley: COA Vol. 4, pg 1008 onwards
[61] *R v Hansen* at para [79] **BOA 1:20**
[62] Ibid. at para [126]
[63] Ibid. at para [217]
[64] *RJR-MacDonald Inc v Canada* [1995] 3 SCR 199 **BOA 5:54**

> *merely because they can conceive of an alternative which might better tailor objective to infringement... On the other hand, if the government fails to explain why a significantly less intrusive and equally effective measure was not chosen, the law must fail.*

16.6 While this suggests that the measure adopted must not necessarily be the least intrusive option, it must fall within a range of reasonable alternatives. It is the Commission's submission that the Court is required to engage with this issue in a substantive way. It is required to consider whether there were alternatives which were less intrusive but equally effective. In the matter under appeal, the High Court did not appear to do so.

16. 7 The High Court only took into consideration the income disparity resulting from the off-benefit rule in deciding the issue of minimal impairment even though a number of other options – such as more effective case management, training, a low income tax rebate, or raising the level of the minimum wage[65]- could have achieved the desired result of incentivising people into work without infringing the right to be free of discrimination.

16.8 The Commission notes, too, that the High Court in applying the minimal impairment test appears to have measured it against the exclusion of beneficiaries. This omits to address the question of the (relatively small) group of full time earners who remain on benefits. This concerns the Commission. A complaint of discrimination should not be dismissed because a relatively small group of people is affected. Human rights are about individuals – all individuals matter and matter equally[66].

16.9 The Commission does not agree that addressing the issue by reference to the wider objectives of the WFF package, leads to the same conclusion[67].The WFF package has been singularly unsuccessful in achieving the objective of making work pay[68]. Had the High Court considered the minimal impairment test in the context of the wider WFF policy and the options for incentivising people to seek employment in greater detail, the Commission considers that it might have come to a different conclusion.

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[65] Evidence of Dr St. John: CPG.1610566 at p.28 et seq.
[66] See, for example, Art.2.1 ICCPR refers to ensuring rights to all individuals within its jurisdiction; Art.26 states that ...all persons are equal before the law.
[67] HC at para [210]
[68] Dwyer, *Dissecting the Working for Families Package*, COA Vol.8 p 3112

17. PROPORTIONALITY

17.1 The final limb of the justification analysis involves considering whether the limit is in due proportion to the objective sought.

17.2 This is, in effect, a balancing exercise which requires the positive impacts of the policy to be weighed against the negative to see if they are proportionate to one another. As Justice McLachlin put it in *RJR-MacDonald Inc v Canada,* balancing the negative effects of the infringement of rights against the positive benefits associated with the legislative goal. It followed that "a finding that the policy impairs the right more than required contradicts the assertion that the infringement is proportionate."[69]

17.3 The Court simply did not engage in the exercise as it did not take into consideration those affected by the exclusion. Given that the Commission considers that the policy did not satisfy the minimal impairment test as the objective of incentivising people to seek employment and/or alleviation of poverty could have been achieved in a less rights infringing way, it is unnecessary to comment further on the balancing exercise.

18. CONCLUSION

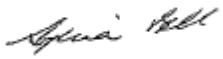
18.1 To conclude, the Commission submits that while the High Court applied the right test for discrimination, it erred in not recognising the implications of a prohibited ground as a material factor in determining whether there was prima facie discrimination, and concluding that any disadvantage was not significant enough to justify such a finding for the majority of beneficiaries subject to the "off-benefit" rule.

18.2 The Commission also submits that the small group of beneficiaries who could meet the required number of hours for employment purposes but remained on the benefit were subject to discrimination.

18.3 In relation to the test for justification under s.5 NZBoRA, the Commission considers that the High Court erred in deferring to too great an extent to Parliament. While the Commission recognises that the level of deference may be greater in the context of social and economic policy, in this case the right infringed is the right to freedom from discrimination – a right which is central to the human rights framework and which requires more stringent scrutiny of claimed justification.

[69] Supra fn 67 at para [175]

18.4 The Court did not take into account the fact that the measure was directed to a large extent at the alleviation of child poverty – which must have been a significant aspect of the policy in the first place or the relief would not be available only to people with dependent children. Had this been factored into the Court's analysis it might have found differently in relation to the s.5 test.



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13 May 2013

INTERVENER'S LIST OF AUTHORITIES

Statutes

- Human Rights Act 1993 – long title, ss.5(2)(a), 20I, 20J, 20K, 20L, 21(1)(k)(l), 92F, 92H
- Human Rights Amendment Bill 2001 (152-1)(explanatory note)
- New Zealand Bill of Rights Act 1990 – ss.5 & 19
- Income Tax Act 2007 – ss.MD8(a), 9

Caselaw

- *Ye v Minister of Immigration* [2012] 1 NZLR 104
- *Air New Zealand v McAlister* [2009] NZSC 78, [2010] 1 NZLR 153;
- *Smith v Air New Zealand Ltd* [2011] NZCA 290, [2011] 2 NZLR 171;
- *Ministry of Health v Atkinson* [2012] NZCA 184
- *Human Rights Commission v Eric Sides Motor Company Ltd* (1981) 2 NZAR 447(EOT)
- *The Attorney-General on behalf of the Ministry of Health v IDEA Services Ltd (in statutory management)* [2012] NZHC329
- *Winther v Housing New Zealand Corporation* [2011] 1 NZLR 828
- *R v Hansen*[2007] NZSC 7,[2007] 3 NZLR 1
- *R (Carson) v Secretary of State for Work and Pensions* [2005] UKHL37, [2006] 1 AC 173
- *In Re P and others* [2008] UKHL 38
- *RJR-MacDonald Inc v Canada* [1995] 3 SCR 199
- *Ghaidin v Godin-Mendoza* [2004] 2 AC 557

International material

- International Covenant Civil and Political Rights - Arts.2.1,3,24,26
- International Covenant on Economic, Social and Cultural Rights – Art.2.2,10.1,11.1
- United Nations, Convention on the Rights of the Child – Art.3.1
- Committee on the Rights of the Child, *General Comment No.7(2005): implementing child rights in early childhood*, CRC/C/GC/7/Rev.1
- Committee on the Rights of the Child, *Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations: New Zealand*, CRC/C/15/Add.216 (2003)
- Committee on the Rights of the Child, *Consideration of reports submitted by States Parties under article 44 of the Convention, Third and Fourth reports of States parties due in 2008: New Zealand* CRC /C/NZL/3-4
- Committee on the Elimination of Discrimination against Women, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Sixth periodic report of States Parties – New Zealand* CEDAW/C/NZL/6
- International Covenant on Economic Social and Cultural Rights, *Third Periodic Report of New Zealand* 17 January 2011

Other material

- Evatt, E. *The Impact of International Human Rights on Domestic Law* in **Litigating Rights,** Huscroft & Rishworth (eds) Hart Publishing 2002

- Cabinet Policy Committee: *Anti-Discrimination Standard for Government Activities*, POL (01) 99
- Schwartz, H. "Making Sense of Section 15 of the Charter" (2011) 29 NJCL 201
- Lord Steyn. "Deference: a Tangled Story" [2005] Public Law at 346
- Ministry of Justice, *Re-evaluation of the Human Rights Protections in New Zealand* (October 2000)
- Cabinet Policy Committee, *Anti-Discrimination Standard for Government Activities*: POL(01) (17 May 2001)