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**The Cancellation of the Basic Income Pilot in Ontario: A Discussion from the Perspective of Participant Vulnerability(ies)[[1]](#footnote-1)**

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# Introduction

On July 31, 2018, the Government of Ontario (“the provincial government”) announced the cancellation of its basic income pilot research study (“the basic income pilot”), indicating that the basic income pilot did not “help people to become ‘independent contributors to the economy,’” and that it was a “disincentive to get people back on track.”[[2]](#footnote-2) In so doing, the Government begged questions with regard to the efficacy of the basic income pilot, but also implicitly with regard to the ethics of its cancellation. The ethical concerns raised in the wake of the cancellation ranged from those that would be obvious to even the casual observer, such as the government’s admission that it had backtracked on its election campaign promise to keep the basic income pilot in place,[[3]](#footnote-3) to less obvious questions regarding research ethics. With regard to the latter, various policy instruments identify the group of basic income pilot participants as being members of a vulnerable group, and thus in need of special protections, but it is unclear how their vulnerability(ies) should be identified and then applied to the ethical questions around the basic income pilot and its cancellation.

In this paper, I will argue that a formalistic claims-based approach to vulnerability in research ethics, as exemplified by expert opinions offered in support of the provincial government decision to cancel the basic income pilot, fails to capture all of the relevant ethical considerations with regard to harms experienced by vulnerable participants. I will suggest that a better approach -- one which would also capture some of these excluded ethical considerations -- is based on the layered conception of ‘vulnerability’ as developed by Florencia Luna.[[4]](#footnote-4)

The paper will begin with a description of the judicial review decision regarding the cancellation of the basic income pilot, as well as the expert ethical evidence proffered by the parties regarding the cancellation. In the second section, I will describe the claims-based approach to special protection regarding vulnerability as developed by Samia A. Hurst and suggest that such an approach, as followed by the provincial government’s expert affiants, brackets[[5]](#footnote-5) relevant ethical considerations. [[6]](#footnote-6) I will also discuss the concept of clinical equipoise and show how a formalistic application of that concept is also used to foreclose ethical inquiry with regard to the basic income pilot. In the third section, I will show the ways in which Luna’s layered approach to vulnerability, while not addressing every ethical consideration, goes much further than a taxonomic or claims-based approach in addressing the ethical concerns of basic income pilot participants, also showing how that approach might have been applied to address predictable vulnerabilities of the participants. I will then revisit the objections to these ethical considerations from a Hurstian claim-based perspective.

# Bowman et al. v. Her Majesty the Queen (“*Bowman*”)

## The Legal Decision

In the wake of the cancellation of the basic income pilot a number of participants sought judicial review of that provincial government decision,[[7]](#footnote-7) arguing that they had relied on the basic income pilot to their detriment, and also that the decision was an irrational one, made in bad faith, that affected their financial interests and their well-being. They further argued that the provincial government had breached their agreement with the Independent Review Board (“IRB”) which required them to consult with the IRB “and adhere to the terms of the agreement.”[[8]](#footnote-8) The Respondent provincial government argued that the decision with regard to the cancellation was “not justiciable” because it involved a policy decision on government spending, and that a decision to quash would require a continuation of funding which the Court would not have authority to do. In the alternative, the Respondent argued that the decision was not irrational nor made in bad faith, that statements made by members of the legislature are not “reasons for the decision”, that the government “had no obligation to consult with [the IRB] prior to cancelling the funding for the Pilot Project”, and that “the opinions of research ethicists cannot fetter Cabinet’s policy-making authority.”[[9]](#footnote-9)

Although the Court dismissed the application on the basis that the matter, described as a “policy decision”, is not justiciable,[[10]](#footnote-10) it also went on to decide: that the decision to cancel the basic income pilot did not alter the applicants’ “rights, obligations or legitimate expectations”;[[11]](#footnote-11) that the decision was neither irrational nor made in bad faith;[[12]](#footnote-12)and that the Court did not have the authority to quash the government order since to do so would also “inevitably result in a further allocation of funds to the Pilot Program” and “an order for judicial review cannot compel a particular result.”[[13]](#footnote-13)

## The Basic Income Pilot

The contours of the basic income pilot are set out by the Court as involving a randomized controlled trial “conducted in Hamilton and Thunder Bay with 1,000 participants assigned to a control group and 1,000 participants receiving payments”, while a “saturation site” in Lindsay had 2,000 participants who were all receiving payments.[[14]](#footnote-14) Those participants enrolled in a the intervention group received “up to $16,989 per year for single person or $24,027 for a couple, plus an additional amount of up to $6,000 per ear for each person with a disability.” The benefit was clawed back at a rate of 50% for employment income and 100% for other income support programs, while those in receipt of Ontario Disability Support Program or Ontario Works benefits[[15]](#footnote-15) continued “to receive drug and dental benefits.”[[16]](#footnote-16) Given that the basic income pilot “was essentially a social science experiment with human participants,” the provincial government engaged the previously-mentioned IRB for “’ongoing ethical review of the research study with the Research Participants’ rights and welfare in mind.’” The IRB made a finding of “Serious Non-Compliance” regarding the provincial government’s cancellation of the basic income pilot, claiming, *inter alia*, that “the situation will have profound adverse effects on the rights and welfare of Research Participants.”[[17]](#footnote-17)

## The Expert Ethical Evidence

The parties in *Bowman* had submitted affidavits from ethicists to support their legal positions.[[18]](#footnote-18) The Applicants submitted an affidavit from Professor Arthur Schafer who affirms his opinion that the “manner of the cancellation” of the basic income pilot “violated the Tri-Council Policy Statement insofar as the cancellation was not transparent,”[[19]](#footnote-19) as the participants “were neither consulted about the abrupt termination of the research nor were they part of the decision-making process,” noting also that the information booklet describes the basic income pilot as “’a three-year project to study whether a basic income can better support vulnerable workers and give people the security and opportunity they need to achieve their potential.’” [emphasis in the Schafer affidavit]

The Respondent provincial government submitted two expert affidavits from ethicists whose opinions stand in stark contrast to those of Professor Schafer. Professor Eike-Henner W. Kluge opines that participants had no claim to be consulted on the termination of the basic income pilot since that termination “lies within the timeframe set out in the description of the project” and that any harms occasioned by the termination of the pilot therefore are “a result of the participants making life plans on the assumption that the project would run for up to three years.”[[20]](#footnote-20) In a relatively lengthy affidavit, Professor Heather A. Sampson opines, *inter alia*, that the communication of the basic income pilot termination was “public, direct and supportive” and that “neither the intervention arm nor the control arm experienced research ethics based harms caused by stopping this study before three years.”[[21]](#footnote-21) Both opinions seem to largely turn on reasoning by the expert affiants that the provincial government had clearly communicated to participants that their participation in the basic income pilot was to be “up to 3 years” and thus the pilot was not actually terminated prematurely from the perspective of the participants.[[22]](#footnote-22)

Much of Professor Sampson’s opinion regarding whether any harm flowed from the cancellation is based on her opinion that the basic income pilot must have met the requirements of ‘clinical equipoise’ as a precondition for ethical approval, [[23]](#footnote-23) noting it is a requirement of the TCPS2 (2014),[[24]](#footnote-24) and that it provides “a link between the duty of care of a clinician with the need to do research to ensure that the therapies or interventions offered are demonstrably safe and effective.”[[25]](#footnote-25) She thus affirms her opinion that, because “[c]linical equipoise was demonstrated in the Pilot study design”, therefore the termination of the study “would not harm the experimental/interventional arm more or less than the control arm.”[[26]](#footnote-26)

Professor Kluge indicates that the basic income pilot was meant to determine whether the basic income “can better support vulnerable workers and give people the security and opportunity they need to achieve their potential” and also whether it can be “a simpler and more effective was to provide income security…”.[[27]](#footnote-27) Interestingly, Professor Sampson instead identifies the “protocol research question” as follows:

Does providing a Basic Income improve mental health outcomes? Does it also affect housing and food security, education, labour force participation and health care use.[[28]](#footnote-28)

# The Formalistic Claims-Based Approach

## Claims, Duties and Ethical Bracketing

There exists a tendency in research ethics to set aside larger ethical questions, a tendency which is exemplified by Samia Hurst in an influential paper in which she defines “vulnerability” as “an identifiably increased likelihood of incurring additional or greater wrong,” [emphasis added][[29]](#footnote-29) and where she further clarifies the practical scope of research ethics by adding, somewhat tautologically, that participants only have a claim to special protection against those having “a share in the duty to avoid identifiable wrongs.”[[30]](#footnote-30) The limitation of the conceptual scope of ‘vulnerability’ in research ethics to only those likely to experience wrongs that are new or increased, coupled with a practical exercise of determining the research-related share in the duty to protect against those wrongs, effectively means that existing wrongs will remain untouched unless an increase to the total wrongs can be specifically attributed to the research, and unless some duty can be shown to flow from an increased or additional wrong. There is considerable debate about whether and how duties to alleviate poverty can be allocated and perfected,[[31]](#footnote-31) meaning that the duty to alleviate economic disadvantage will often arguably be interpreted as not attributable to any specific actor, whether institutional or individual. Hurst also notes that the issue of fault may affect the legitimacy of claims to special protection (as well as presumably claims for normal protection).[[32]](#footnote-32) In practice where there is an attribution of fault to those who experience economic deprivation, that deprivation may not even be seen as unjust.[[33]](#footnote-33) One can see just such a phenomenon at play with regard to Professor Kluge’s argument that participants should have been aware that the basic income pilot itself might last less than 3 years, and thus any harm that flows from their assumption of a 3 year study raises no relevant ethical issues for the cancellation of the basic income pilot.[[34]](#footnote-34) Putting aside the issues with regard to whether informed consent was ever obtained on this point,[[35]](#footnote-35) Professor Kluge expressly does not see any duty as being attributable to the provincial government as sponsors of the basic income pilot to address these harms, despite it having been predictable at the outset of the basic income pilot that participants might make financial commitments relating to their education and/or housing for example (whether or not those decisions were rational ones), and despite the fact that the participants were acknowledged as being vulnerable.

## Clinical Equipoise and ‘Income as Treatment’

Although much of the language employed in research ethics discourse is focused on clinical healthcare interventions which seemingly have little relation to basic income research, it is widely acknowledged that income and income inequality are significant determinants of health outcomes.[[36]](#footnote-36) Some physicians have also adopted a clinical approach that considers income and other social determinants of health. One of these physicians, Dr. Gary Bloch, argues that “the evidence is irrefutable: poverty deserves to be treated like a disease.”[[37]](#footnote-37) This position, if accepted, appears to refute the assumption of clinical equipoise in the basic income pilot, since it seems obvious that an increased income must improve health if poverty is the disease under treatment. While there is debate regarding the various effects of a Basic Income[[38]](#footnote-38) for low income individuals and families and the larger society, It should be noted that there is already some compelling evidence that a basic income is linked to improvements in health and other areas,[[39]](#footnote-39) and also that the basic income pilot would have shown positive results in the relevant areas had it continued.[[40]](#footnote-40) I suggest that the ethical arguments of Professor Sampson with regard to clinical equipoise being presupposed are another example of an approach to research ethics where broader ethical questions are bracketed in favour of ethical matters clearly attributable to the research itself, in this case due to a questionable and formalistic assumption regarding the research design.

The basic income pilot is remarkable as an example of vulnerability in that the treatment being evaluated is also the metric of the participants’ vulnerability. This is not the same as a study on a particular medical treatment that treats a category of vulnerability, such as those who are pregnant or suffer from an incurable disease, and where the treatment may alleviate the vulnerability or its symptoms. In the case of the basic income pilot, the treatment is not only alleviating a significant vulnerability,[[41]](#footnote-41) the treatment is literally the currency that is the metric of the vulnerability, while the effects being measured relate to the individual and societal symptoms of that vulnerability, such as aforementioned outcomes relating mental health, housing, education, health care use, and government efficiency. Analogous examples might include a treatment for the vulnerability of being elderly by making the participants younger, or one treating those who lack capacity to consent by adding capacity to them like funds to a bank account. This point further elucidates the absurdity of the conclusion, based on the assumption of clinical equipoise, that the jury is still out on whether increased incomes will have positive effects on measured outcomes such as housing insecurity.

# Layered Vulnerabilities in Basic Income Research

## The Layered Approach to Vulnerability

The “economically disadvantaged” have historically been marked out as a vulnerable group that may require special protection,[[42]](#footnote-42)as well as other overlapping subgroups such as the “unemployed” or “impoverished”, “homeless persons”, and “people receiving welfare benefits or social assistance and other poor people”.[[43]](#footnote-43) As Florencia Luna notes, the practice of focusing on the characteristics of the participants has historically led to a “subpopulation approach” in research ethics, an approach which she describes by employing the “metaphor of labels.”[[44]](#footnote-44) Luna sets out the standard criticisms of the subpopulation approach, ranging from the charge that such an approach results in overinclusive stereotyping and exclusion from research studies, to the eliminativist critique that the proliferation of vulnerable groups has caused the concept to become “too nebulous to be meaningful.”[[45]](#footnote-45) Luna argues for an approach to vulnerability that instead employs the metaphor of layers, whereby layers of vulnerability are “multiple and different”, “and “may be removed layer by layer”.[[46]](#footnote-46) For Luna’s layered conception of vulnerability, there are multiple factors or sources of vulnerability ranging from issues of capacity, to human rights, to social circumstances. Further, the layers of vulnerability are “deeply related to the context” and so an individual may be vulnerable in certain contexts and not in others, thus their vulnerability “is not an essential property of the research subject or groups *per se*.”[[47]](#footnote-47) As opposed to the standard approaches to vulnerability that seek to identify the necessary and sufficient conditions, Luna argues that “the concept should be understood dynamically and relationally.”[[48]](#footnote-48) Luna’s layered conception of vulnerability also “challenges idealized views of the agent, human agency, and even justice that are so common in contemporary ethics”,[[49]](#footnote-49) offering instead the concept of a non-idealized, fallible and sometimes irrational agent, a point that is particularly apposite to this argument.

## Possible Interventions in the Basic Income Pilot

We can begin to see how a layered approach to vulnerability highlights some of the ethically relevant issues missed by a more formalistic approach. For example, as opposed to an approach that focuses on whether participants should have understood that the basic income pilot might last less than three years, a layered approach might instead have asked how one might address the fact that the increase in income might cause participants in the treatment group, many of whom will experience vulnerabilities due to housing insecurity and/or lack of education, to further their education or improve their housing (two outcomes actually being measured as part of the basic income pilot), but that they might not be able to pay for those expenses at the end of the basic income pilot. A layered approach helps us to see that the resultant housing and educational insecurity are layers of vulnerability in and of themselves, and could be addressed through targeted interventions such a time-limited direct-payment bursaries and housing subsidies coupled with transitional housing assistance.

## Objections

As we have seen, those who ascribe to the Hurstian claims-based approach to vulnerability might object to such interventions being required on the basis that the harms are not related to the research, or on the basis that even if there exist wrongs that are related to the research, then the sponsors have no share in a duty to address those wrongs since they arise out of the poor choices of the participants, and besides their already-existing poverty is not caused in any way by the research.[[50]](#footnote-50) Recall that the Hurstian approach requires that the person be under an “increased likelihood of incurring additional or greater wrong”,[[51]](#footnote-51) as well as a valid claim for protection before there will arise any duty to protect even where vulnerability has not been established, i.e. the approach is premised on valid claims.[[52]](#footnote-52) I would suggest that the former condition is untenable as leading to absurd consequence if one consider particularly oppressive contexts; it could hardly be considered ethical for example to participate in collaborative research on torture victims currently enduring torture even if there was no danger that the research could in any way exacerbate the wrongs occasioned by that torture nor add to them. Thus, an ethical conception of “vulnerability” cannot simply take the research participant as we find them, without considering their context. Rather, there will at least be some examples where the ethics of the situation dictate that the context cannot be ignored, despite the research not posing an “increased likelihood of additional or greater wrong.” With regard to the valid-claim condition, I would suggest that Hurst’s claims-based approach at best obscures the distinction between ethical duties corresponding to the individual claims of research participants and any broader ethical duties such as those owed to society, and at worst commits a category error by conflating the two; it does this by noting that a share in the duty is required, while not specifying whether that duty must be specifically owed to participant.[[53]](#footnote-53) The predictable housing insecurity of former basic income pilot participants is illustrative of this point since there arguably exist broad ethical duties to address the phenomenon, even if valid participant claims cannot be established due to it arising from their own poor choices.

#  Conclusion

The tendency in research ethics to take a formalistic approach to the concept of vulnerability, and to the establishment of valid claims for protection, can lead to the bracketing of relevant ethical considerations. For vulnerable participants such as participants in the basic income pilot, it is particularly unfortunate that the formalistic application and assumption of the concept of clinical equipoise can mean that an intervention being studied is seen as effect-neutral, despite considerable evidence to the contrary. The requirement in the Hurstian claims-based approach that the research lead to additional or increased wrongs means that those suffering under already-existing wrongs will not be considered vulnerable and worthy of special protection absent some increase in, or addition to, those wrongs. Thus, those wrongs will be bracketed and will not be addressed by the researcher, even if they are particularly heinous and/or easily remedied. The precondition requiring some share in the duty to protect the participant similarly brackets ethical considerations where that duty is not clear, such as with regard to duties to alleviate economic disadvantage, and may also do so if an ethical duty is owed but is not owed to the participants (such as a duty to Society for example). Florencia Luna’s layered approach to the concept of vulnerability is better able to capture at least some of the excluded ethical considerations given that it does not assume an idealized rational research participant, is dynamic and relational, and is focused on possible vulnerabilities rather than on a static stereotype of vulnerable participant groups. Thus, I suggest that such an approach is less concerned with the fault of the participants for their own misfortune, or with the formal assumptions made about the area of research, but is rather concerned with actually identifiable layers of vulnerability such as housing insecurity or lack of education.

1. This paper was originally written as a final term paper in PHILOSOPHY 759, a graduate seminar in “Applied Ethics”, for Professor Ariella Binik, McMaster University, and submitted in April 2020. I apologize to the reader in advance that I have not yet addressed Professor Binik’s helpful and insightful comments and suggestions (which I will do this summer as I work to incorporate some of these arguments in a related chapter in my M.A. thesis), and nor have I re-drafted the paper for the NABIG reader. Thus, the paper will read as overly formal and specialized to some readers, and I suspect most readers will note that the paper can clearly be improved. I thank you for reading and I welcome further comments. [↑](#footnote-ref-1)
2. Paola Loriggio, “Ontario government defends move to axe basic income pilot,” *The Globe & Mail*, August 1, 2018, <https://www.theglobeandmail.com/canada/article-ontario-government-defends-move-to-axe-basic-income-pilot-project-2/>. [↑](#footnote-ref-2)
3. Rob Ferguson, “Ontario minister admits she broke election promise when she axed basic income project,” *The Toronto Star*, August 1, 2018, <https://www.thestar.com/news/queenspark/2018/08/01/ontario-minister-admits-she-broke-election-promise-when-she-axed-basic-income-project.html>. [↑](#footnote-ref-3)
4. See Florencia Luna, “Elucidating the Concept of Vulnerability: Layers not Labels,” *International Journal of Feminist Approaches to Bioethics*, 2, no. 1 (Spring 2009): 121-139., as well as Florencia Luna and Sheryl Vanderpoel, “Not the Usual Suspects: Addressing Layers of Vulnerability,” *Bioethics*, 27, no. 6 (2013): 325-332, and Florencia Luna, “Identifyig and Evaluating layers of Vulnerability-A Way Forward,” *Bioethics*, 19 (2019): 86-95. [↑](#footnote-ref-4)
5. In this paper I will use the term “bracket” to mean “to set aside as an object of inquiry and evaluation”, rather than for example the specific usage employed with regard to phenomenological bracketing by Edmund Husserl; see Edmund Husserl, *Cartesian Meditations: An Introduction to Phenomenology*. (Dordrecht: Springer Netherlands, 1977). [↑](#footnote-ref-5)
6. See Samia A. Hurst, “vulnerability in research and in health care: Describing the Elephant in the Room?” *Bioethics*, 22, no. 4 (2008): 191-202. [↑](#footnote-ref-6)
7. See Bowman et al. v. Her Majesty the Queen, 2019 ONSC 1064 (CanLII), <<http://canlii.ca/t/hxj31>>, retrieved on 2020-04-07 [↑](#footnote-ref-7)
8. *Ibid.* at para. 7-9. [↑](#footnote-ref-8)
9. *Ibid.* at para. 10-14 [↑](#footnote-ref-9)
10. *Ibid.* at para. 41 [↑](#footnote-ref-10)
11. *Ibid.* at para. 42-49 [↑](#footnote-ref-11)
12. *Ibid.* at para. 50-53 [↑](#footnote-ref-12)
13. *Ibid.* at para. 54-55. [↑](#footnote-ref-13)
14. *Ibid* at para. 17. [↑](#footnote-ref-14)
15. These income security programs would commonly be understood as general welfare programs, with the former aimed at supporting those with disabilities. The basic income pilot in Ontario provided benefits set at 75% of the Low-Income Measure, which was a significant increase on the rates offered under these programs. For example, the rate for a single person in the intervention group of the basic income pilot represented more than a 100% increase on the rate for a single person on Ontario Works benefits. See <http://incomesecurity.org/publications/basic_income/Basic-Income-pilot-What-will-it-mean-for-people-on-social-assistance-April-27-2017.docx> [↑](#footnote-ref-15)
16. *Bowman,* *supra* note 6 at para. 18. [↑](#footnote-ref-16)
17. *Ibid.* at para. 33-34 [↑](#footnote-ref-17)
18. Thanks are owed to Mike Perry, Counsel for the Applicants, for providing copies of the affidavits along with the facta. It should be noted that the affidavits of course do not focus on elucidating the affiants particular conceptions of vulnerability, but rather on the question of whether the decision to cancel the basic income pilot was an ethical one in terms of applicable guidelines and policies. [↑](#footnote-ref-18)
19. Social Sciences and Humanities Research Council, *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*, 2014. <https://ethics.gc.ca/eng/policy-politique_tcps2-eptc2_initiatives.html> [the policy statement has since been updated in December 2018] [↑](#footnote-ref-19)
20. Eike-Henner W. Kluge, “Affidavit of Eike-Henner Kluge”, 28Nov2018, as submitted by the Respondents in Bowman et al. v. Her Majesty the Queen, 2019 ONSC 1064 (CanLII), Court File No. 102/18,(unpublished, provided to the author by Mike Perry, Counsel for the Applicants) at pp. 1-3 [↑](#footnote-ref-20)
21. Heather A. Sampson, “Affidavit of Heather A. Sampson”, 3Dec2018, as submitted by the Respondents in Bowman et al. v. Her Majesty the Queen, 2019 ONSC 1064 (CanLII), Court File No. 102/18,(unpublished, provided to the author by Mike Perry, Counsel for the Applicants) at p. 3 [↑](#footnote-ref-21)
22. Professor Sampson does note however that the study was “defined publicly” as lasting three years, while participants were informed in the information booklet and the consent forms that the enrollment term was “up to 3 years”, which she attributes as being due to staggered enrolment. Professor Sampson also notes that “[i] is unusual for a research sponsor to declare a definitive length of s study in the protocol or information and consent documents.”. See Sampson, *supra* note 20 at p. 2. [↑](#footnote-ref-22)
23. Professor Sampson quotes the definition of the “clinical equipoise” as a “Key Concept” in the TCPS2(2014), and also offers the definition of clinical equipoise as set out by Professor Benjamin Freeman (which prefigures the TCPS2 definition):

*According to this concept of “clinical equipoise,” the requirement is satisfied if there is genuine uncertainty within the expert medical community – not necessarily on the part of the individual investigator – about the preferred treatment.*

See Benjamin Freedman, “Equipoise and the Ethics of Clinical Research,” *New England Journal of Medicine* 317 (1987): 141 [↑](#footnote-ref-23)
24. Social Sciences and Humanities Research Council, *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*, 2014. <https://ethics.gc.ca/eng/policy-politique_tcps2-eptc2_initiatives.html> [↑](#footnote-ref-24)
25. Sampson, *supra* note 20 at p. 15 [↑](#footnote-ref-25)
26. *Ibid.* at p. 18 [↑](#footnote-ref-26)
27. Kluge, *supra* note 19 at p. 1 [↑](#footnote-ref-27)
28. Sampson, *supra* note 20 at p. 13 [↑](#footnote-ref-28)
29. See Hurst, *supra* note 5 at p. 195. Thanks are owed to Professor Ariella Binik for pointed out the influential reach of this paper and specifically that it been largely adopted by the Council of International Organizations of Medical Sciences: see *International Ethical Guidelines for Health-related Research Involving Humans*, Fourth Edition. Geneva. Council for International Organizations of Medical Sciences (CIOMS); 2016. [↑](#footnote-ref-29)
30. Hurst, *supra* note 5 at p.197 [↑](#footnote-ref-30)
31. For an excellent discussion of the debates and an argument for collective duties to give effect to the international hum right to subsistence see Igneski, Violetta. “The Human Right to Subsistence and the Collective Duty to Aid”. *The Journal of Value Inquiry*, 51. (2017) 33-50. [↑](#footnote-ref-31)
32. Hurst, *supra* note 5 at p. 202 [↑](#footnote-ref-32)
33. For a “claim-based” account of vulnerability suggesting a list of possible moral claims that may be made by the vulnerable, developed employing Cass Sunstein’s concept of “incompletely theorized agreement,” and based in equality and justice, see Nicholas Tavaglione, Angela K. Martin, Nathalie Mezger, Sophie Durieux‐Paillard, Anne François, Yves Jackson, and Samia A. Hurst, “Fleshing Out Vulnerability,” *Bioethics*, 29(2015): 98-107 [↑](#footnote-ref-33)
34. See Kluge, *supra* note 19 at pp. 2-3 [↑](#footnote-ref-34)
35. The Court noted that the Information Booklet given to participants described the basic income pilot “as ‘a three-year study’ and later as lasting ‘up to three years’”, and that “[t]wo of the four Applicants say they were told by Pilot Project staff that the Pilot Project would last three years.” See *Bowman, supra* note 6 at para. 20 and 22. [↑](#footnote-ref-35)
36. See for example Ernie S. Lightman, Andrew Mitchell, and Beth Wilson. *Poverty Is Making Us Sick: A Comprehensive Survey of Income and Health in Canada*. Wellesley Institute, 2008: https://books.scholarsportal.info/en/read?id=/ ebooks/ebooks1/ gibson\_chrc/2010-08-06/4/10270392 [↑](#footnote-ref-36)
37. See Sarah de Leeuw, “Physician activism and prescribing against poverty,” *Canadian Family Physician*, Vol. 26 (April 2016): 332, at p. 333 [↑](#footnote-ref-37)
38. It should be noted that a basic income program essentially describes the delivery of income support and is not necessarily related to the adequacy of that support. The Basic Income Earth Network (formerly the Basic Income European Network” defines a basic income as “a periodic cash payment unconditionally delivered to all on an individual basis, without means-test or work requirement.” There are however various disputes about such a benefit, including whether the benefit should be universal or means tested. The Basic Income Canada Network defines a “Basic Income Guarantee” as one that “ensures everyone an income sufficient to meet basic needs and live with dignity, regardless of work status.” See <https://basicincome.org/basic-income/>, and <https://www.basicincomecanada.org/about_basic_income>. [↑](#footnote-ref-38)
39. With regard to the positive health effects of the Manitoba Basic Annual Income Experiment conducted in Dauphin, Manitoba from 1974-1979 see Forget, Evelyn L. "The Town with No Poverty: The Health Effects of a Canadian Guaranteed Annual Income Field Experiment." *Canadian Public Policy / Analyse De Politiques* 37, no. 3 (2011): 283-305. [↑](#footnote-ref-39)
40. See Mohammad Ferdosi, Tom McDowell, Wayne Lewchuk and Stephanie Ross, “Southern Ontario’s Basic Income Experience,” (Hamilton RoundTable for Poverty Reduction, McMaster University Labour Studies, and Hamilton Community Foundation, Hamilton, March 2020.) <https://labourstudies.mcmaster.ca/documents/southern-ontarios-basic-income-experience.pdf> [↑](#footnote-ref-40)
41. The United Nations Committee on Economic, Social and Cultural Rights has commented with regard to Canada that “[t]he Committee is concerned at the inadequate social assistance rates in all provinces and for all households.” See Committee on Economic, Social and Cultural Rights (CESCR), *Concluding Observations on the Sixth Periodic Report of Canada: Geneva*, 23 March 2016 E/C.12/CAN/CO/6, available at: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fCAN%2fCO%2f6&Lang=en> [↑](#footnote-ref-41)
42. See Christine Grady, “Vulnerability in Research: Individuals with Limited Financial and/or Social Resources,” *Journal of Law, Medicine & Ethics*, (2009): 19-12 at p. 19, and also [↑](#footnote-ref-42)
43. See Hurst, *supra* note 5, Table 1, at p. 193. In Canada, “poverty” is currently mentioned with regard to irresistible inducements; see Social Sciences and Humanities Research Council, *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*, December 2018, Article 4.7 at p. 54.. <http://www.pre.ethics.gc.ca/eng/documents/tcps2-2018-en-interactive-final.pdf> [↑](#footnote-ref-43)
44. See Florencia Luna, “Elucidating the Concept of Vulnerability: Layers not Labels,” *International Journal of Feminist Approaches to Bioethics*, 2, no. 1 (Spring 2009): 121-139 at pp. 121-128 [↑](#footnote-ref-44)
45. See *Ibid.* at pp. 127-128 as well as Carol Levine, Ruth Faden, Christine Grady, Dale Hammerschmidt, Lisa Eckenwiler & Jeremy Sugarman, “The Limitations of ‘Vulnerability’ as a Protection for Human Research Participants,” *The American Journal of Bioethics*, 4:3, (2004): 44-49, at p. 45 [↑](#footnote-ref-45)
46. Luna, *supra* note 43 at p. 128 [↑](#footnote-ref-46)
47. See Florencia Luna, “Identifying and evaluating layers of vulnerability – a way forward,” *Developing World Bioethics*, 19(2), (2019): 86-95 at p. 88. [↑](#footnote-ref-47)
48. Luna, *supra* note 43 at p. 128 [↑](#footnote-ref-48)
49. See Luna, *supra* note 43 at pp. 134-135 [↑](#footnote-ref-49)
50. Those who take a Hurstian approach to vulnerability might however see the harms incurred by participants as wrongs which they have some duty to address, perhaps based on my arguments that these harms were predictable. Hurst point out that vulnerability is hard to define given that “it is as multiple as possible wrongs and as sources of greater likelihood of suffering them.” (see p. 197), and she also notes that there may in some instances be a duty to rescue (see p. 201). But as I hope the potential objections that I attribute to the imaginary Hurstian illustrate, there are multiple hurdle for the Hurstian to get over before they would conclude that they owe a duty of special protection to the participants. [↑](#footnote-ref-50)
51. See Hurst, *supra* note 5 at p. 195 [↑](#footnote-ref-51)
52. As Hurst notes:

*The obligation to avoid wronging is not derived directly from a principle of vulnerability but from another source: specifically, from a valid claim that some wrong should be avoided, including the wrong we incur when a good to which we have a valid claim is denied us.*

See Hurst, *supra* note 5 at p. 201 [↑](#footnote-ref-52)
53. It should also be noted, as Hurst points out, that her requirement to inquire whether one has a share in the duty was already an expansion of the IRB responsibilities current at that time which were based on consulting a taxonomy. SeeHurst*, supra* note 5 at pp. 197-198. [↑](#footnote-ref-53)