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Feminist Alliance for
International Action

L'Alliance Féministe pour
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CANADA

Canada: Women's Civil and Political Rights

**Report to the Human Rights Committee on the Occasion of the
Committee's consideration of the Sixth Periodic Report of Canada**

Submitted June 2015 by
Canadian Feminist Alliance for International Action (FAFIA)

Contact Information

Shelagh Day, Human Rights Committee Chair, FAFIA
251 Bank Street, 2nd Floor
Ottawa, ON K1P 1X3
Tel: +1 (604) 872-0750
Email: shelagh.day@gmail.com

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- **Executive Summary**

This report on Canada's compliance with the *International Covenant on Civil and Political Rights (ICCPR)* has been prepared by the Canadian Feminist Alliance for International Action (FAFIA). (www.fafia-afai.org). FAFIA is an alliance of more than sixty women's equality-seeking organisations dedicated to making international human rights commitments a reality in women's everyday lives in Canada. FAFIA has also submitted a report, jointly with the Native Women's Association of Canada, on the murders and disappearances of Aboriginal women and girls.

The period under review has been a time of drastic setbacks for women. While Canada was once rated #1 on UN global ratings of sex equality, Canada's rating now is between 18th and 23rd. There have been overt attacks on women's human rights in the form of defunding women's organizations, cancelling the beginnings of a national child care program, and defunding the Court Challenges Program, which provided women with access to the use of constitutional equality rights guarantees. Services and programs that are the foundations of equality for women, such as income security programs and civil legal aid, have also been cut and weakened.

During past reviews, the Human Rights Committee has expressed serious concerns about Canada's compliance with civil and political rights and has issued recommendations for better observation of those rights. Canada has largely disregarded these recommendations. This submission draws the Committee's attention to the consequences for the women of Canada.

- **I. Canada's Compliance with International Human Rights Law**

In recent years Canada has shown a weakened commitment to upholding international human rights standards at home. While FAFIA's submission highlights particular failures to fulfill the rights in the *ICCPR*, we are concerned that the overall approach of the Government of Canada towards its international human rights commitments is to ignore them, downplay their significance, and impugn the professionalism of the expert bodies that are critical of Canada.

- **II. Tax, Poverty, Income and Employment (Articles 2, 3, and 26)**

- **A. Tax Policy and Women's Human Rights**

Canada's current tax policy violates Articles 2, 3 and 26 of the *ICCPR* because it discriminates against women and constrains the ability of governments in Canada to fulfill women's human rights. The Government of Canada, since 1995, and particularly since 2006, has used its tax legislation and policy to shrink resources that would support women's equality, such as adequate social assistance, adequate housing, a national child care

program and accessible civil legal aid. The primary beneficiaries of Canada's tax policy are corporations, and, disproportionately, better-off Canadians and men.

Recommendations

Canada should:

- **Execute the federal national plan to implement CEDAW and the *Platform for Action* that has been in place since 1995 so that tax policy supports and enhances women's equality.**
- **Reverse the tax policies and laws in place for the past ten years that have followed a systematic program of continuous tax cuts, tax expenditures, and attendant program cuts that benefit better off Canadians and men.**
- **Restore full progressivity to the graduated income tax rates in both federal and provincial/territorial tax laws, together with realistic low-income exemptions.**
- **Restore full progressivity to corporate income tax rates and tax corporations as separate entities.**
- **Reduce reliance on flat-rated consumption and commodity taxes, including GST/HST and ad hoc taxes.**
- **Restore the integrity of all Canadian tax bases by eliminating tax expenditures, special credits, and 'boutique' tax items that largely benefit the wealthy, and reduce revenue.**

○ **B. Poverty and Income**

Women are poorer than men in Canada, are more likely to be poor, and more likely to live in deeper poverty. Marginalised women experience much higher rates of poverty than women as a group overall. For women poverty and economic inequality have gendered, harmful consequences including vulnerability to violence, loss of sexual autonomy, high risk of having their children apprehended, homelessness and under-housing, over-policing and incarceration. Women's poverty and economic inequality directly affect their enjoyment of their civil and political rights, in particular their rights to life, liberty, security of the person and equality.

Welfare is the program of last resort for women, men and children who have no other source of income. Welfare incomes - for all households in all jurisdictions - fall well below the poverty line, as measured by Statistics Canada's after tax low income cut-offs (or LICOs). Although some provinces have introduced poverty reduction strategies, Canada has no national, coordinated anti-poverty plan.

Recommendations

The Government of Canada should:

- **Design and implement a lasting and meaningful national plan to combat poverty that uses a human rights framework, includes a national housing strategy, and takes the particular realities of diverse women's lives into account.**
- **Ensure that welfare incomes for all household types in all jurisdictions provide at least poverty level incomes, and assist recipients to get out of poverty.**

○ C. Women and Employment

The markers of women's structural inequality in the workforce are unchanged. While about 70% of adult women are now in the paid labour force, women continue to be concentrated in kinds of work that are traditionally female – teaching, nursing, sales, service, administration. Women's work is lower paid, and women are more likely to be in part-time, temporary and precarious work. Women's median employment incomes are 34% lower than men's and the wage gap between women and men who work full-year full-time stands at about 20%. The wage gap is not due to a difference in education. According to the World Economic Forum's Global Gender Gap Report of 2014, Canada's ranks in 27th place on wage equality.

Racialized, immigrant, and Aboriginal women, and women with disabilities have higher unemployment rates, lower earnings, and are more likely to be a part of the 'precariat,' even though racialized women and immigrant women tend to be more highly educated than other women.

Recommendation

Governments in Canada should:

- **Design and implement strategies that will address the structural inequality of women, and marginalized women, in employment in all jurisdictions, including employment equity programs, higher minimum wages and 'living wage' strategies, increased access to unionization, and enhanced resources and legal capacities for human rights institutions and law to address systemic discrimination in employment.**

Pay Equity

In 2009, the Government of Canada introduced the *Public Service Equitable Compensation Act (PSECA)*, which restricts the ability of women who are employees of the federal government to claim and obtain pay equity. *PSECA* also, contrary to Article 22, restricts the right of trade unions to represent women who have pay equity claims.

Only Ontario and Quebec have pay equity laws that apply to both the private and public sectors.

Recommendations

The Government of Canada should:

- **Repeal the *Public Service Equitable Compensation Act* and replace it with a proactive federal pay equity law.**

The governments of all provinces and territories should:

- **Ensure that there is effective, proactive pay equity legislation in place in their jurisdiction that will address and correct the lower pay assigned to 'women's work.'**

Trade Union Women (Articles 2, 3, 22 and 26)

Unionization reduces women's wage inequality, and improves working conditions in ways that enhance their equality. Unions have been under attack in Canada recently by all levels of government. Since 1982, provincial and federal governments in Canada have passed over 200 pieces of legislation that have restricted, suspended or denied collective bargaining rights for Canadian workers. Many of these have direct and disproportionate impacts on women workers.

Recommendation

Governments in Canada, as employers and as legislators, should:

- **Ensure that women fully enjoy their right to freedom of association, including the right to strike and to bargain collectively without constraints or interference. Restrictions on the right of teachers to bargain class size and composition, and on the right of domestic workers, and other temporary migrant workers, to unionize should be removed.**

Temporary foreign workers and immigrant women

Canada relies heavily on temporary foreign workers to meet shortages in areas such as caregiving, agriculture, food services, and construction. The Live-in Caregiver program (LCP) is a regulated aspect of Canada's immigration scheme that brings predominantly highly skilled women from the Philippines to Canada to perform child and elder care. Until recently these workers were required to live in the home of their employer. Routine exploitation, including unpaid overtime and sexual and physical abuse, are common in the LCP. In 2014 the Government of Canada made changes to the LCP which place a cap on the number of workers who can apply to stay in Canada permanently. This changed the LCP from a difficult but possible route for skilled workers into permanent residency in Canada to a low wage, exploitative temporary foreign worker program. The uncertainty of their status now makes LCP workers more vulnerable to abusive employers, and reduces their capacity to report abuse.

Immigration policy in Canada allows for immigrants to sponsor a spouse as a dependant, and allows for the sponsoring spouse to withdraw sponsorship during a probationary period. Women are more likely than men to enter Canada as a dependent spouse. A woman who is sponsored by her spouse is vulnerable to abuse because of the economic and social power imbalances inherent in this type of relationship. Her fear of deportation leaves her highly dependent on the sponsoring spouse and fuels gender inequalities that have been shown to contribute to violence against women. Women in this situation are reluctant to seek medical or social assistance for fear of losing their immigration status if the abuse is investigated.

Recommendations

Canada should:

- **Stop the 'revolving door' of deportations of temporary workers and implement an effective and transparent procedure that will allow temporary workers to obtain permanent residency status.**

- **Eliminate the Live-In caregiver Program, and replace it with an immigration scheme that allows workers who are engaged in vital employment such a caregiving to come to and remain in Canada as regular, skilled immigrants.**
- **Eliminate the two-year conditional waiting period for women who do not have a child with their spouse, or who have been in a relationship of less than two years.**
- **Once they have been admitted under the spouse category, detach a woman's immigration status completely from her spouse.**

Childcare

Universal access to quality, affordable child care is essential to the fulfillment of women's equality rights. In 2006 the Government of Canada cancelled plans for a national childcare program. This has resulted in an insufficient number of public, affordable childcares spaces. Only about 20% of Canadian children under 12 have access to regulated childcare. Low income and Aboriginal women are disproportionately affected. Childcare staff are predominantly women and earn poverty-level wages.

Recommendations

The Government of Canada should:

- **Provide leadership and necessary funding support to provinces/territories and Indigenous communities to build public child care systems that will ensure universal access to high quality programs. An over-arching federal policy framework should be established to guide collaboration between the federal government and Quebec, other provinces and territories, and indigenous peoples.**
- **Provide funds to develop and maintain publicly managed child care systems that meet the care and early education needs of both children and parents, and provide high quality, accessible services with predictable, sustained funding.**

• III. Other Forms of Discrimination (Articles 2, 3 and 26)

The Government of Canada has failed to ensure substantive equality between men and women in key areas. The failure to implement recommendations of United Nations human rights bodies has resulted in human rights deficits for women.

○ A. Refugee Women

Health Care

For decades the Government of Canada provided comprehensive health insurance coverage for refugee claimants. In 2012, the Government of Canada significantly reduced this health coverage. Thousands of refugees and refugee claimants were left with no access to basic, emergency, and life-saving health care. These cuts were successfully challenged in the courts in 2014. However, the Attorney General of Canada is currently appealing the decision.

Refugee women have unique needs related to pregnancy and reproductive health, violence, and other health issues. Refugee women are also usually responsible for managing the health care of their children.

Safe Third Country Agreement

In December 2004, the *Safe Third Country Agreement* came into effect. Under this Agreement, Canada and the United States bar asylum seekers from making refugee claims at the land border between the two countries, with a few exceptions. The potential refugee must make their claim in whichever country they first arrive.

This agreement is problematic for women because of the different approaches to refugee eligibility in the two countries. Where Canada recognizes gender-based persecution as a basis for granting asylum, the United States does not. Since the implementation of this Agreement the number of refugee claims lodged at the United States and Canada border has sharply declined.

Recommendations

Canada should:

- **Amend the Interim Federal Health Program to immediately provide pre-2012 coverage to all refugee claimants.**
- **Drop its appeal of the *Canada (Attorney General) v Canadian Doctors for Refugee Care*, 2014 FCA decision.**
- **Rescind its adherence to the *Safe Third Country Agreement*, and accept claimants at the U.S. border who are intending to make a refugee claim in Canada.**

○ **B. Access to Abortion**

Safe and timely access to abortion in Canada is a recognized part of a woman's constitutional guarantee of security of the person. However, for many Canadians living outside of large urban centres, there can be substantial barriers to obtaining an abortion. This is particularly true in Canada's eastern provinces. Due to legislative and policy measures put in place by provincial governments, abortions in these jurisdictions are either extremely limited, or in the case of Prince Edward Island, completely unavailable.

Recommendation

Canada should:

- **Ensure that every province and territory funds and provides easy access to self-referral abortion services covered by Medicare in both private clinics and hospital settings.**

○ **C. Northern and Rural Women**

Due to the special characteristics of northern and rural communities in Canada, such as the isolated geography and small population base, women in rural and northern communities face particular constraints on their enjoyment of their civil and political rights. In particular

women in these regions experience higher rates of gendered violence, and police and justice responses are extremely poor. There is a crisis in homelessness and underhousing, sexual and reproductive healthcare. Women from these regions are disproportionately incarcerated compared to women in other regions of the country.

Recommendation

The Government of Canada should:

- **Provide leadership and significant funding support to provinces and territories and to indigenous communities located in remote parts of Canada to increase access to services, and culturally appropriate services, in relation to: sexual and reproductive health care, general health care, violence against women, adequate housing and food, and other social programs.**

○ **D. Sex Discrimination in the *Indian Act* (Articles 2, 3, 24, 26 and 27)**

In response to successive court decisions finding that the 1985 *Indian Act* is inconsistent with the sex equality guarantees of the Canadian *Charter of Rights and Freedoms*, in 2010 Parliament passed legislation. However, this law which came into force in January 2011 has not eliminated the sex discrimination in the *Indian Act*.

Recommendations

Canada should:

- **Immediately ensure that s. 6(1)(a) of the status registration regime, introduced by the 1985 *Indian Act*, and re-enacted by the *Gender Equity in Indian Registration Act* (Bill C-3), is interpreted or amended so as to entitle to registration under s. 6(1)(a) those persons who were previously not entitled to be registered under s. 6(1)(a) solely as a result of the preferential treatment accorded to Indian men over Indian women born prior to April 17, 1985, and to patrilineal descendants over matrilineal descendants, born prior to April 17, 1985.**
- **Work with First Nation's women's organizations to eliminate any other sex discrimination in access to recognition of status under the *Indian Act*.**

○ **E. Discrimination against Women on the Ground of Religion**

Muslim Women

In recent years, the freedom of Muslim women to wear veils, headscarves, and other forms of religious dress has become an issue of public policy. The wearing of this religious dress is perceived by some governments as a threat to the 'Canadian values' of secularism and women's equality. Provincial and federal governments have recently taken legal and policy actions that institutionalize the marginalization of Muslim women.

Recommendation

Canada should:

- **Ensure that there are no legal prohibitions against women wearing religious articles of clothing whether they are in public or in private, and in particular**

women should be permitted to wear religious articles of clothing when testifying in court, and during citizenship ceremonies.

- ***IV. Right to an Effective Remedy (Article 2)***

There is a chronic lack of legal aid across Canada. The Canadian Bar Association considers the situation to be a crisis. The lack of access to civil law legal aid disproportionately affects women, people with disabilities, recent immigrants, members of racialized communities and Aboriginal peoples. Women are the primary users of civil legal aid, particularly for family law matters. Their lack of adequate access to legal aid affects their security, equality and family life.

In 2006 the Government of Canada defunded the Court Challenges Program which provided women with access to the use of their constitutional equality rights, by providing funds for test cases of national importance. The defunding of the Court Challenge Program means, in effect, that constitutional equality rights are inaccessible to most women; they are rights on paper.

The judiciary in Canada is not representative of the population. In particular since 2006, appointees do not mirror the representation of women and minorities. Of 1137 federally appointed judges in Canada, 392 are women (29%).

Recommendations

The Government of Canada should:

- **Make new agreements with the provinces and territories to fund civil legal aid at a level that is adequate to provide access to justice for women, and in particular marginalized women, such as women experiencing domestic violence, Aboriginal women and women with disabilities.**
- **Re-fund the Court Challenges Program.**
- **Devise new appointments systems that will ensure that judges and adjudicators are representative of the population in gender, ethnicity, indigeneity, and race, as well as other key characteristics.**

- ***V. Freedom of Expression and Right of Peaceful Assembly (Articles 19 and 21)***

Since 2006 the Government of Canada has suppressed the political speech of organizations and individuals who are human rights defenders through defunding, personal attacks and other forms of silencing. The groups affected include many women's advocacy organisations, women's health organisations, and anti-poverty organisations. At the same time the Government of Canada has taken unprecedented steps to curb data-driven social policy. The Government of Canada cancelled the long form census, which has been a key instrument for Canadians to gather information about ourselves. The National Council on Welfare was also

eliminated, which for years, collected and published information on social assistance rates across the country.

In 2014 Canada repealed section 13 of the *Canadian Human Rights Act* whose purpose and effect was to protect the equality rights of those affected by hate speech and ensure their freedom of expression and full participation in Canadian society.

In recent protests in Toronto and Montreal peaceful, legal protestors and bystanders were rounded up in mass arrests. The police used excessive and sexualized violence against female, lesbian and gender non-conforming protestors.

In 2015 the Government of Canada introduced Bill C-51 the *Anti-Terrorism Act, 2015*. While it ostensibly prevents acts of terrorism against Canada from outside the country, experts in Canada advise that the legislation can be used to justify increased surveillance of Aboriginal, environmental and women's rights activists within Canada, and it risks criminalizing lawful conduct.

Recommendations

Canada should:

- **Reinstate the long form census.**
- **Reinstate the National Council on Welfare.**
- **Re-enact section 13 of the *Canadian Human Rights Act*.**
- **Remove the *Anti-Terrorism Act, 2015* from the legislative agenda for the Parliament of Canada.**
- **Establish a national mechanism for investigations into allegations of misconduct and discrimination within the criminal justice system and police forces in federal, provincial or territorial jurisdiction that can undertake audits of agencies and institutions and hold accountable those entities that commit acts of misconduct or discrimination.**

• ***VI. Violence against Women (Articles 2, 3, 6, 7 and 26)***

Since Canada's last report to the Human Rights Committee there has been no substantive reduction in the rates of male spousal femicide, domestic violence and sexual assault against Canadian women. Inadequate social assistance, lack of affordable housing, too few women's shelters, and poor police and justice system responses intensify women's vulnerability to male violence, and create impunity for violators.

Human Rights Watch documented direct physical and sexual violence against indigenous women in Northern British Columbia by officers of Canada's national police force, the Royal Canadian Mounted Police (RCMP).

As of 2015, hundreds of female RCMP officers have reported sexual harassment and gender-based discrimination by male officers within the RCMP, and a civil class action suit has been launched. Women in Canada, and particularly indigenous women, have little reason to trust their national police force to protect them.

A recent external review, conducted by former Supreme Court Justice Marie Deschamps, reports “an underlying sexualized culture in the [Canadian Armed Forces] CAF that is hostile to women and LGTBQ members, and conducive to more serious incidents of sexual harassment and assault.” The 2015 report found that on the extreme side of this culture, sexual violence was used to enforce power relationships and to punish members of the unit, while less extreme forms of sexual violence and sexism are rampant within the organisation.

Recommendations

The Government of Canada should:

- **Develop a coherent, coordinated, well-resourced National Action Plan on Violence against Women that meets international human rights standards, incorporates recommendations by treaty bodies, and women’s non-governmental organizations and takes into account the experiences and needs of diverse Canadian women.**
- **Ensure that procedures for addressing sexual harassment complaints within the RCMP are effective and provide protections, assistance and appropriate remedies to complainants; provide regular public reports on measures taken, including disciplinary measures, to eliminate sexism and racism from police culture and to address complaints of discrimination from members of the force and the public.**
- **Fully implement the Deschamps report within the Canadian Armed Forces.**

• ***VII. Liberty and Security of the Person (Articles 2, 6, 7, 9, 14 and 26)***

The number of women imprisoned in Canada is increasing at an alarming rate. This is happening at a time when Canada’s national crime rate is at its lowest since 1969. Aboriginal and racialized women as well as women suffering from mental illness are disproportionately incarcerated. Most women who are incarcerated pose no public safety risk, or can be managed in the community. There are serious problems with the treatment of women in prison including the use of segregation (solitary confinement), lack of services, and the use of male staff in women-only prisons.

Recommendations

Canada should:

- **Restrict the imprisonment of women, and develop new protocols to de-carcerate women who do not pose a risk to public safety and/or whose risk may be managed in the community.**
- **Increase income security, health and educational measures such as income assistance, adequate housing, and community supports for women with mental health issues to address the reality that women are being criminalized and incarcerated because of poverty, previous abuse, social disadvantage, racialization and disabling mental health conditions.**

- **Put an end to the practice of employing male staff working in front-line contact with women in women's institutions.**
- **Establish an independent external redress body for federally sentenced prisoners.**
- **Put an end to the practice of placing women prisoners in segregation or solitary confinement.**

• I. Introduction: Canada's Compliance with International Human Rights Law

In recent years Canada has shown a weakened commitment to upholding international human rights standards at home. While FAFIA's submission highlights particular failures to fulfill the rights in the *International Covenant on Civil and Political Rights*,¹ we are concerned that the overall approach of the Government of Canada towards its international human rights commitments is to ignore them, obfuscate or downplay their significance, and impugn the professionalism of the expert bodies that are critical of Canada.

In several recent interactions with international human rights bodies and mandate holders, the Government of Canada has made statements which imply that implementing international human rights norms in Canada is a matter of policy choice. We are concerned about this stance, which shows disdain for international human rights law and the institutions which uphold it.

Canada's Stance

In 2015, in a response to a report from the Inter-American Commission on Human Rights addressing Canada's violations of the human rights of indigenous women, the Government of Canada attempted to downplay the significance of the report and its findings by stating that the views and recommendations of the Inter-American Commission are "non-legally binding."²

The Inter-American Commission on Human Rights repudiated Canada's position, finding that Canada is bound by the *Charter of the Organization of American States* and by the rights set out in the *Declaration on the Rights and Duties of Man*, which the Commission interprets in light of similar rights that are set out in international human rights treaties and accepted as a part of international customary law.³ But Canada also rejected the ruling of the Committee on the Elimination of Discrimination against Women that Canada is committing grave violations of the human rights of Aboriginal women and girls by failing to respond adequately to their murders and disappearances.⁴

FAFIA is concerned that Canada's response to these reports marks a serious deterioration in Canada's commitment to fulfilling the human rights of women.

There are other examples. In 2012 the United Nations Special Rapporteur on Food Security,

1 *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, arts 9-14 (entered into force 23 March 1976, accession by Canada 19 May 1976) [ICCPR].

2 *Missing and Murdered Indigenous Women in British Columbia*, Canada, Inter-Am Ct HR OEA/Ser.L/V/II. Doc.30/14, (21 December 2014), at para 106, online: OAS <<http://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf>> [IACHR, *Missing and Murdered Indigenous Women in British Columbia*].

3 *Ibid* at paras 107-10.

4 Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc CEDAW/C/OP.8/CAN/1, 6 March 2015, online: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15656&LangID=E>> [CEDAW, *Article 8 Inquiry*].

Mr. Olivier De Schutter, undertook a formal country mission to Canada.⁵ The federal government agreed to his visit, but declined to set up any meetings between cabinet ministers and Mr. De Schutter—which is highly unusual for UN special rapporteur missions—and publicly attacked his preliminary findings.⁶ Special Rapporteur De Shutter noted the federal government’s unwillingness to seriously examine the problem of food security in Canada, particularly amongst our poorest citizens.⁷

Also FAFIA, along with Aboriginal and human rights organizations in Canada, have been disturbed by Canada’s repeated assertions, after finally endorsing the *United Nations Declaration on the Rights of Indigenous Peoples* in 2010, that the UNDRIP is “...an aspirational ...non-legally binding document that does not reflect customary international law nor change Canadian laws.”⁸ We note that the Truth and Reconciliation Commission, which issued its final report on 2 June 2015, has called on Canada to implement the UNDRIP as part of the project of reconciliation.⁹

Canada’s Failure to Act

FAFIA is frankly alarmed by the long-term, entrenched refusal to consider and implement the recommendations of international treaty bodies, and to establish an inter-governmental mechanism for doing this.

While Canada participates in periodic reporting at the United Nations, it fails again and again to respond to the direction provided by these bodies on improving our human rights record.

FAFIA has made direct requests to the Governments of Canada and British Columbia to develop a process for implementing the Concluding Observations of the Committee on the Elimination of Discrimination against Women. Our requests have been met with silence, *pro forma* letters, or outright refusal.¹⁰

5 Human Rights Council, *Report of the Special Rapporteur on the right to food, Olivier de Schutter Mission to Canada*, UN Doc A/HRC/22/50/Add.1, 24 December 2012, online: SRFood.org <http://www.srfood.org/images/stories/pdf/officialreports/20121224_canadafinal_en.pdf> [Human Rights Council, *Report of the Special Rapporteur on the right to food*].

6 Shelagh Day, “Reflections on Government Hostility, Systemic Discrimination and Human Rights Institutions” in Shelagh Day, Lucie Lamarche & Ken Norman, eds, *14 Arguments in Favour of Human Rights Institutions* (Toronto: Irwin Law, 2014) at 21-2; see also Sarah Schmidt, “UN envoy blasts Canada for 'self-righteous attitude' over hunger, poverty”, *The National Post* (12 May 2012), online: <<http://news.nationalpost.com/news/canada/un-envoy-blasts-canada-for-self-righteous-attitude-over-hunger-poverty>>.

7 Human Rights Council, *Report of the Special Rapporteur on the right to food supra* note 4 (see especially paras 6-8, 51).

8 Aboriginal Affairs and Northern Development, Media Release, “Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples” (12 November 2010), online: AANDC <<http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142>> [emphasis added].

9 Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg, MB: TRC, 2015), Recommendation 42 at 4, online: TRC <http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf>.

10 Shelagh Day, “Minding the Gap: Human Rights Commitments and Compliance” in Margot Young, Susan Boyd, Gwen Browdsy & Shelagh Day, eds, *Poverty: Rights, Social Citizenship and Legal Activism* (Vancouver: UBC Press, 2007), at 209-16.

• II. Tax, Poverty, Income and Employment (Articles 2, 3 and 26)

○ A. Tax Policy and Women's Human Rights¹¹

Canada's Tax Cut Agenda, 1995-present

Tax policy is a central tool for implementing women's human rights. Human rights experts and expert bodies are increasingly aware of the necessity to bring tax policy and human rights discourses together.¹² As UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, said recently: "Tax policy is human rights policy." The decisions of governments about how to collect and distribute resources, from whom and to whom, either facilitate or deny women's enjoyment of their human rights. For this reason, since its inception, FAFIA has focused on Canada's tax policy and budgets; they are central to the implementation of women's human rights.

Canada's current tax policy violates Articles 2 and 26 of the *ICCPR* because it discriminates against women and impairs women's ability to fully enjoy their human rights. Canada's compliance with its human rights obligations must be seen inside this larger frame of the decisions being made by Canada about resources and their distribution.

The connection between tax policy and the realization of women's human rights is articulated specifically in the *Convention on the Elimination of Discrimination against Women*,¹³ and in the *Beijing Platform for Action*.¹⁴ The preamble to the CEDAW as well as numerous general and specific provisions prohibit discrimination on the basis of sex in relation to tax, spending, and other fiscal policies: Articles 1, 2(d) and (f), 3, 4, and 5(a) and (b) (general articles); Articles 7 (political and public life, policy formation); 11(1)(d), (e) (employment, remuneration, benefits, and social security); 11(2)(b), (c), (d) (public life, paid work, maternity leave, job protection rights, and child care resources); 13(a), (b), (c) (economic and social benefits); and 15(1), (2) (women in unpaid or subsistence areas).

Since 1988, CEDAW General Recommendations 6, 16, 17, 21, and 23 have all provided increasingly detailed guidance on the importance of ensuring that all fiscal issues and

11 FAFIA thanks Professor Kathleen A. Lahey for this analysis of the gender implications of Canada's tax policy. Further information on Professor Lahey's work is online at <http://law.queensu.ca/faculty-research/faculty-directory/lahey>.

12 CESCR video, "Philip Alston: Tax as a fundamental human rights issue" (29 April 2015), online: YouTube <<https://www.youtube.com/watch?v=YdRGFp7D66A>>.

13 *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981, accession by Canada 10 December 1981) [CEDAW].

14 *Beijing Declaration and Platform for Action*, Fourth World Conference on Women, UN Doc A/CONF.177/20, UN Doc A/CONF.177/20/Add.1, 15 September 1995 (see paras 58(a)-(d) (fiscal and economic priorities regarding women and poverty); 150, 155, 165(f), (i), 179(f) (women and economic relations); 205(c) (adequate funding for gender mainstreaming institutional machinery); and 345-9 (diverse aspects of implementing fiscal equality analysis) [*Beijing Declaration and Platform*]).

policies are resolved in ways that promote sex equality, not undercut it. Extensive guidance is provided in numerous provisions in the Beijing *Platform for Action*.

Canada has had a federal national plan to implement CEDAW and the *Platform for Action* since 1995.¹⁵ Nonetheless, and notwithstanding the CEDAW decision in 2014 in *Blok v. Netherlands* finding violation of CEDAW in maternity leave regulations,¹⁶ and the subsequent decision in *Inquiry Report concerning Canada*, finding structural and systemic discrimination against Aboriginal women in Canada including failure to adequately fund gender equality machinery and basic programs,¹⁷ Canada has for two decades followed a systematic program of continuous tax cuts and attendant program cuts that have severely impaired Canada's financial and governance capacity as one of the richest and most advanced economies of the world in meeting its domestic and international obligations to women.

Literally since agreeing to and implementing the *Platform* in 1995, Canada had already begun to accelerate tax cuts aimed at 'taxing for economic growth' to the exclusion of all other policy objectives. By 2011, Canada had cut its tax ratio – total revenues expressed as a percentage of GDP – by 5.5%.¹⁸

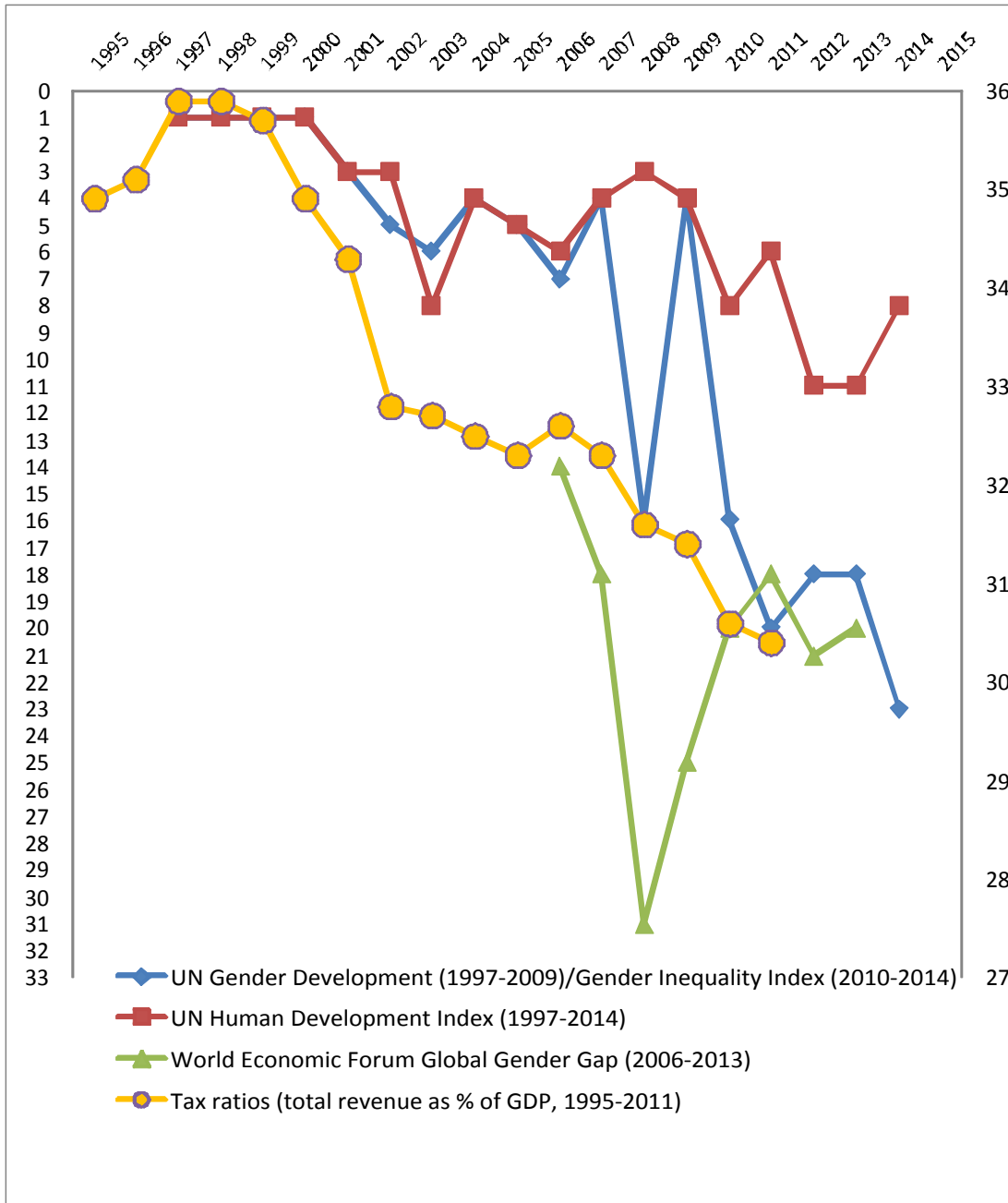
These tax cuts represented a total reduction in annual revenues of 15%, which, as of 2011, meant a reduction in Canadian dollar terms of at least \$100 billion in that year alone. As Figure 1 demonstrates, within a few short years of embarking upon this tax reduction program, Canada was no longer rated #1 globally on sex equality by the UN. In recent years, its rankings have vacillated between 18th and 23rd.

15 Canada, Status of Women Canada, *Setting the Stage for the Next Century: The Federal Plan for Gender Equality* (Ottawa: SWC, 1995), online: <<http://publications.gc.ca/collections/Collection/SW21-15-1995E.pdf>> (for text of Canada's commitment at the Fourth World Conference on Women in Beijing, see Sheila Finestone, "Statement by the Secretary of State (Status of Women and Multiculturalism)" (Address delivered at the Fourth United Nations World Conference on Women, Beijing, 6 September 1995), online: <<http://www.un.org/esa/gopher-data/conf/fwcw/conf/gov/950906204201.txt>>; and for other archived country statements see this online parent directory: <<http://www.un.org/esa/gopher-data/conf/fwcw/natrep/NatActPlans/Canada/>>>).

16 Committee on the Elimination of Discrimination against Women, *Communication No. 36/2012, Elisabeth de Blok et al v The Netherlands*, Un Doc CEDAW/C/57/D/36/2012, 24 March 2014, at para 8.9, online: OHCHR <<http://www.ohchr.org>>.

17 CEDAW, *Article 8 Inquiry supra* note 4.

18 OECD, *Revenue Statistics 2013*, ISBN 978-92-64-20421-8 (PDF), (2013), at 94-5, Table 2, online: OECD <http://www.oecd-ilibrary.org/taxation/revenue-statistics-2013_rev_stats-2013-en-fr> (updated September 2014; Canada's tax ratio was 35.9% in 1997-98, 30.4% in 2011).



Canada's Tax Cut Agenda has Significantly Impaired Women's Economic Status

Internationally, Canada has been singled out for particular criticism for its tax cut agenda. These cuts have accelerated since 2005, and the OECD has repeatedly criticized Canada for embarking upon this two-decade program of detaxation and spending cuts as being

unnecessary and unjustified on any economic or fiscal grounds.

Canada's tax cuts discriminate against women in five distinctive ways:

- Deliberate **detaxation**—systemic permanent reduction in tax revenues—has cut revenues in ways that have given the largest share of tax cuts to men.
- At the same time, these tax cuts have been used to justify huge **budgetary austerities** that have de-funded governmental sex equality institutional mechanisms as well as sex equality, social spending, income security, and anti-poverty programs—most of which negatively affect women more than men.
- While structural detaxation has been accelerating, the use of highly selective tax cuts—'**tax expenditures**' built into specific provisions of tax legislation—have funneled additional tax cut benefits disproportionately to men, hollowing out the already-impaired revenue systems Canada relies on for its government revenues and expanding another major channel by which tax cuts benefit men far more than they benefit women.
- Tax and other fiscal policies increasingly presume, support, and reward discriminatory and stereotyped breadwinner roles for men and caregiver/marginal paid worker roles for women. This is done by increased use of **joint tax and benefit laws**—a category of fiscal instruments that disproportionately benefit men and disadvantage women as well as all those rendered more vulnerable by Aboriginal status, racialization, disability, poverty, immigration, and economic class.
- Tax cuts and benefits as well as direct benefits and penalties have disproportionately benefitted **private capital, investment, and business owners**—another major channel through which substantially greater tax benefit go to men than to women both in terms of the distribution of actual tax cuts and in terms of justifying cuts to social provisioning and reproduction, education, public employment, and human development programs that themselves have disproportionate negative effects on women.

Following is a more extensive description of (1) structural or detaxation cuts; (2) expanded use of tax expenditures; (3) increased use of joint tax-benefit measures to provide fiscal incentives to women to shift work effort away from paid work and toward unpaid or privatized work; (4) disproportionate support for capital, investment, and business sectors; and (5) spending cuts.

(1) Detaxation Cuts

Structural detaxation was initiated in the late 1990s with Canada's federal 'Tax Advantage' program, which was designed to attract companies and investment to Canada through tax competition. After 2005, the conservative government intensified this competition with large sequential cuts to the three basic sources of federal revenue—personal income taxes, corporate income taxes, and the goods and services tax (VAT).

Unlike 'tax expenditures,' discussed in the next section, detaxation cuts take the form of large tax cuts or increased tax exemptions across the board for everyone, do not require any specific behaviours to qualify for such benefits, and are justified in general political terms that

can change depending on the circumstances.¹⁹ Because they are too general to incentivize specific behaviours, 'detaxation' cuts have been referred to as 'virtual manna' in the sense that they fall to anyone who is already in a position to receive them, but may not be easy to access because they are not particularly linked to identifiable or easily-changed behaviours.²⁰ Table 1 shows how much federal revenue alone was turned over to the private sector over the first five years of accelerated cuts in Canada. The annual lost revenues accounted for almost 2% of Canada's GDP.

| Type of tax | Total amounts of detaxation | Women's shares of detaxation cuts |
|--|-----------------------------|-----------------------------------|
| GST rate cuts | \$48.4 billion | 38% |
| Corporate income tax cuts | \$30.4 billion | 10-37% |
| Personal income tax cuts | \$51.6 billion | 40% |
| Total revenue losses | \$130.4 billion | 32-38.6% |
| Total annual budgetary deficits, 2008-2012 | \$115.8 billion | |

Table 1: Cumulative federal detaxation cuts by gender, 2008-2012

Source: The cumulative and annual personal and corporate detaxation figures are taken from the Economic Action Plan prepared by the Government of Canada in 2009, 254, adjusted to remove estimated tax expenditures reported for those years.

The 2006 Conservative government had announced its major tax cut plans long before the 2008 recession began, claiming that they would help increase Canada's economic growth and productivity. Once the recession began, these same tax cuts were quickly repackaged as 'crisis stimulus' policies designed to help soften the effects of the recession on workers and businesses.

Between 2007/8 and 2012, these tax cuts removed at least \$130.5 billion from total annual federal revenues that could have been collected in those years. They quickly wiped out existing annual surpluses and ran up total operating deficits of \$115.8 billion.²¹ It was this huge deficit—induced unnecessarily by these permanent detaxation cuts—that were then used to justify massive government spending cuts beginning in 2011 and 2012.

It is important to note that this privatized fiscal space was not allocated equally to each person in Canada, on a *per capita* basis. Nor was it allocated on the basis of need or even

19 Kathleen A. Lahey, *Canada's Gendered Budget 2012: Impact of Bills C-38 and C-45 on Women* (Kingston: FLSQ, 2012) at 125-6, online: FLSQ <<http://femlaw.queensu.ca/workingPapers/KLCanGenderedBudgetDc312012submitToPDF.pdf>>.

20 Pierre Cahuc and Stéphanie Carcillo, "The Detaxation of Overtime Hours: Lessons from the French Experiment," Discussion Paper No 5439 (Bonn: Institute for the Study of Labor (IZA), 2011) at 8.

21 Canada, Minister of Finance, *Canada's Economic Action Plan: Budget 2009* (Ottawa: Public Works Canada, 2009), at 255, Table A2.2 [Canada, *Budget 2009*].

with regard to the needs of members of vulnerable groups during the recession.

Instead, these tax cut benefits are distributed in proportion to the amount each individual would otherwise (before cuts) have contributed monetarily to public revenues. Because Canada has a graduated rate structure, this means that although individuals are taxed at higher rates only when they have the financial ability to pay higher tax rates, 'giving back' fiscal space on the same basis insures that the largest detaxation cuts will always go to those who need them the least—and the smallest or no detaxation benefits to those who need them the most. In other words, detaxation turns the basic tax policy principles of 'ability to pay' and no 'taxing people into poverty' upside down. Unless changed by a subsequent government, these detaxation cuts will remain in place permanently.

These massive detaxation benefits go predominantly to men for three reasons:

- First, women have much smaller incomes than men, on average, and own fewer capital or investment assets. Thus detaxation cuts that reduce income tax rates for individuals or for corporations will give those with the biggest incomes the biggest tax cut benefits.
- Second, these tax cuts will be regressive in incidence to the extent that the rates being cut were originally progressive in incidence. The more progressive or sharply graduated the rates being cut are, the larger these 'upside down' detaxation benefits going to those with the highest incomes will be.
- Third, 40% of all women in Canada have such low incomes that they do not have any income tax liability in the first place. Thus they will never get any financial benefits from any income tax cuts. Men own nearly twice as much income and wealth as women, and so they hold more 'entry cards' that qualify them to receive the benefits of detaxation. Giving a personal income tax cut to someone who has little or no income tax liability gives them nothing at all, just as giving tax cuts to corporations leaves out all those who do not own corporate shares.

(2) Tax Expenditures

'Tax expenditures' are special tax rules that are designed to forego tax revenues under carefully defined circumstances. They are used to give government benefits to qualifying individuals through fine print hidden in tax laws instead of through direct spending programs. They are called tax 'expenditures' to emphasize that by foregoing tax revenue for special purposes, the fiscal effect is the same as direct budgetary expenditures.²² But they are difficult to identify and measure—they include tax deductions, exemptions from taxation, tax credits, special tax rates, deferral provisions, and refundable tax credits that are paid even if there is no tax liability being 'credited.'²³

Canada's tax systems have all been 'hollowed out' by the many tax expenditures enacted over the decades. In 2010, total federal revenues came to \$191.5 billion. In that same year, total federal tax expenditures came to \$172.0 billion—almost as much as the total amount of

²² Stanley S. Surrey, *Pathways to Tax Reform: The Concept of Tax Expenditures* (Cambridge, MA: Harvard University Press, 1973).

²³ Tax Policy Center, *The Tax Policy Briefing Book* (Washington, DC, and Boston, MA: Urban-Brookings Institute, 2012), at I-8-1, online: <<http://www.taxpolicycenter.org/briefing-book/>>.

federal revenue collected. When added to annual revenue losses from detaxation, as Table 2 indicates, the two types of tax cuts cut a huge hole in Canada's revenue bases—equal to more than 11% of Canada's GDP in 2011. The cost of a universal national childcare program has been estimated at just 1% of GDP per year.

| Type of federal tax cuts | Total revenue lost | Men's shares of lost revenue | Women's shares of lost revenue |
|--|----------------------|------------------------------|--------------------------------|
| Detaxation cuts (cumulative annual effect in 2012) | | | |
| Personal income tax | \$13.0 bill. | 60% | 40% |
| GST | \$13.8 bill. | 62% | 38% |
| Corporate and business tax | \$13.3 bill. | 66% | 33% |
| Subtotal | \$40.1 bill. | 62% | 38% |
| Tax expenditures (2010) | | | |
| Personal income tax | \$128.6 bill. | 60% | 40% |
| GST | \$17.4 bill. | 70% | 30% |
| Corporate income tax | \$26.0 bill. | 62% | 38% |
| Subtotal (2010) | \$172.0 bill. | 62% | 38% |
| Total all revenue losses from both detaxation and tax expenditures | \$212.1 bill. | 62% | 38% |
| Total all revenue losses as % of 2012 GDP | 11.6% | 7.2% | 3.4% |

Table 2: Revenues lost from detaxation and tax expenditures, by sex, Canada, 2012

Source: SPSD/M v. 20.1; Statistics Canada, 'Expenditures based GDP, 2012,' CANSIM, table 380-0064 (*Gender shares are based on SPSD/M simulations (ver. 20), estimated for 2012. The assumptions and calculations underlying the simulation results based on Statistics Canada's Social Policy Simulation Database and Model (SPSD/M) were prepared by Kathleen Lahey, Andrew Mitchell, and Val Kulkov, and the responsibility for the use and interpretation of these data is entirely theirs.*)

Despite the large amounts of potential revenue left in private hands as the result of tax expenditures, it is arithmetically impossible for tax expenditures as they are presently structured to help close the gender gap between men's 60% shares of after-tax incomes and women's 40% shares.

Like detaxation benefits, tax expenditures are distributed on an 'upside down' basis – the overwhelming majority of specific tax expenditures provide much larger financial benefits for taxpayers with high incomes than they will for those with low incomes. Some technical variations produce more extreme maldistributions than others.

(3) Joint Tax and Benefit Measures

Canadian federal tax law alone contains over a hundred different tax provisions that treat spouses/common-law couples as presumed interdependent and financially integrated tax

units. These provisions are then replicated in most provincial/territorial tax laws.

Joint tax and benefit laws are generally used for different purposes at different income levels. High-income joint tax laws tend to give high-income breadwinners large tax benefits for supporting spouses or cohabitants who themselves have no incomes. These types of provisions give tax reductions to high-income breadwinners while increasing their spouses' incomes, or simply give the tax benefit to the breadwinner.

Low-income joint tax or benefit laws tend to take public benefits away from low-income individuals, such as single mothers when they are considered to be in a permanent relationship of a year or more with another adult—these joint provisions reduce public and spending benefits and control government costs.

Both high-income and low-income types of joint tax and benefit provisions violate principles of ability to pay, equality, and need. They also create powerful fiscal incentives to the spouse/cohabitant who has the lower income—or no income—to remain in or even increase unpaid work hours in the home rather than enter or remain in paid work. Thus they subsidize women's unpaid work, induce them to enter into longterm relations of economic dependency, and provide significant social provisioning and unpaid work supporting all the other members of their households. In 2014-2015 alone, the total costs of these types of tax and benefit laws came to at least \$25 billion—nearly 1.5% of Canada's GDP for the year.

Table 3 illustrates how extreme the maldistributions on the basis of both income and gender can be with this type of joint tax law. This is not the worst example by any means; the distribution of pension income splitting benefits is even more skewed in favour of high-income men.

| Range of total family incomes in each decile | Single parent families (\$) | Two-parent families (\$) | Share of \$2 bill. per decile (%) | Share of \$2 bill. to women main earners in each decile (%) | Share of \$2 bill. to men main earners in each decile (%) |
|--|-----------------------------|--------------------------|-----------------------------------|---|---|
| 1 Up to \$19,200 | \$ 0 | \$ 0 mill. | 0 % | 0 % | 0 % |
| 2 \$19,201-\$27,400 | \$ 0 | \$ 0 mill. | 0 % | 0 % | 0 % |
| 3 \$27,401-\$37,700 | \$ 0 | \$ 1 mill. | 0.1% | 0 % | 0.1% |
| 4 \$37,701-\$47,700 | \$ 0 | \$ 18 mill. | 0.9% | 0.2% | 0.7% |
| 5 \$47,701-\$59,600 | \$ 0 | \$ 64 mill. | 3.3% | 0.7% | 2.6% |
| 6 \$59,601-\$74,100 | \$ 0 | \$147 mill. | 7.6% | 0.8% | 6.8% |
| 7 \$74,101-\$92,200 | \$ 0 | \$291 mill. | 15.0% | 1.6% | 13.4% |

| | | | | | | |
|----|-----------------------|------|-------------|-------|-------|-------|
| 8 | \$92,201-\$116,200 | \$ 0 | \$475 mill. | 24.6% | 4.0% | 20.6% |
| 9 | \$116,201-\$157,400 | \$ 0 | \$435 mill. | 22.5% | 3.4% | 19.1% |
| 10 | \$157,401 and up | \$ 0 | \$502 mill. | 26.0% | 4.0% | 22.0% |
| | All | \$ 0 | \$ 2 bill. | 100% | 14.7% | 85.3% |
| | Top 5%: >\$202,900 | | \$271 mill. | 14.1% | | |
| | Top 1%: >\$385,600 | | \$ 61 mill. | 3.2% | | |

Table 3: Distribution of \$2 billion income splitting credit by family type, gender, and decile, Canada, 2014

Source: Statistics Canada SPSD/M v. 21; deciles and results have been rounded.

(4) Corporate, Investment and International Tax Cuts

Corporate and investment tax cuts as a category disproportionately rewards those who own capital. The largest majority of capital owners are men. Roughly 67% of all shareholders are men, and the percentage of women holding CEO or top managerial positions in companies in Canada is extremely low—less than 10% across all corporations. Pension funds theoretically open corporate share ownership up more widely, but the reality is that men also have the largest pension entitlements as compared with women. These are all channels that are markedly discriminatory against women who do not get equal benefit of the myriad tax expenditures for employee stock options, capital gains, corporations, corporate dividends, and other forms of capital incomes.

In addition, the reluctance of Canadian governments to prevent 'offshoring' of capital investments and business operations to avoid paying even preferentially low levels of corporate and investment taxes has resulted in the loss of large amounts of annual revenue. Indeed, since the Auditor General began in the 1980s to attempt to get accurate figures on just how much revenue Canada does lose through these methods, the amounts of income lost through offshore, developing country, and tax competition benefits have actually increased.

In 2005, the Canadian Revenue Agency reported to the Auditor General of Canada that over 16,000 Canadian corporations had reported transactions with foreign affiliates valued at over \$1.5 trillion in that year alone.²⁴

Despite Canada's treaty obligations to cooperate in bringing such international transactions into compliance with domestic tax laws, the federal government has repeatedly backed away from enforcing anti-tax haven measures in favour of limited 'co-compliance' projects that involve closed door negotiations with large companies and those with large offshore investments. The reality is that without a full suite of anti-avoidance initiatives, only a tiny

²⁴ Auditor General, "International Taxation – Canada Revenue Agency" in *Report of the Auditor General of Canada* (Ottawa: Minister of Public Works and Government Services Canada, 2007) at Chapter 7, Introduction.

amount of tax will ever be collected on the massive overseas financial flows initiated by growing numbers of Canadian businesses and individuals.

Given the claim that Canada cannot even afford to maintain its already-diminished social welfare and income security programs with any stability, recovering some of the trillions located in offshore tax havens could transform Canada's domestic economy. While those who would be negatively affected by the recovery of these monies would be predominantly men, low-income women, Aboriginal communities, and all those rendered most vulnerable by decades of tax- and spending-cut regimes could at least benefit from the infusion of such tax revenues into the federal treasury.

(5) 'Austerity' Spending Cuts

As the 2008-9 recession began, the government went ahead with its detaxation cuts even though the amount of those lost revenues came to be only slightly more than the operating deficits recorded during the recession. The government resisted all calls to reverse those tax cuts and to stop running up deficits.

As the recession appeared to recede into history but the detaxation-induced deficits did not the federal government embarked upon huge spending cuts in every dimension of government. Invariably these cuts negatively impact women more than men simply because of women's small shares of money incomes in the first place. Nonetheless, these cuts touched on everything from enforcement of pay equity laws to reductions in income security benefits.

The full impact of all those cuts has not yet been tabulated definitively. However, some types of cuts can be quantified more easily than others—such as the decision to raise the age of eligibility for the General Income Supplement (GIS) and Old Age Security (OAS) from 65 to 67. These are benefits that were put into place to protect those living on retirement incomes and benefits from poverty.

The substantial majority of these cuts will be borne by women. Women who are currently age 51 or younger will face the loss of the full income safety net when they reach age 65. Regardless of their health, care responsibilities, or incomes, social assistance—which generally provides lower benefits—will be their only income security until they reach age 67. These are the same women who will be least likely to have earned enough to save enough to replace those two years of benefits, which have a combined value at the present time of nearly \$20,000 per year—not above all poverty lines, but above some.

The spending cuts carried out in successive waves of 'austerity' budgets have replicated these types of gender effects in countless programs. They have been made so fast and with so little impact analysis of any sort, let alone gender impact analysis, that their full impact on women's human rights is not yet known. What is clear is that Canada's tax policies do not reflect the human rights that it has agreed to implement in ICCPR or CEDAW. Instead they are entrenching and deepening women's inequality. What is also clear is that Canada does not lack resources to fulfill its commitments to advancing equality for women. It has chosen, deliberately to forego collecting and redistributing resources in ways that will give effect to equality guarantees for women.

Recommendations

Canada should:

- Execute the federal national plan to implement CEDAW and the *Platform for Action* that has been in place since 1995 so that tax policy supports and enhances women's equality.
- Reverse the tax policies and laws in place for the past ten years that have followed a systematic program of continuous tax cuts, tax expenditures, and attendant program cuts that benefits better off Canadians and men.
- Restore full progressivity to the graduated income tax rates in both federal and provincial/territorial tax laws, together with realistic low-income exemptions.
- Restore full progressivity to corporate income tax rates and tax corporations as separate entities.
- Reduce reliance on flat-rated consumption and commodity taxes, including GST/HST and ad hoc taxes.
- Restore the integrity of all Canadian tax bases by eliminating tax expenditures, special credits, and 'boutique' tax items that largely benefit the wealthy, and reduce revenue.

○ B. Poverty and Income

Women, Poverty and Income

About 8.9% of women in Canada live in poverty according to Statistics Canada's 2011 figures.²⁵ Particular groups of women have much higher rates of poverty:

- 37% of First Nations women (off reserve);²⁶
- 23% of Metis and Inuit women;²⁷
- 20% of immigrant women;²⁸
- 28% of women of colour;²⁹
- 27.5% of women with severe disabilities;³⁰
- 28.3% of single women;³¹

25 Statistics Canada, "Persons in low income after tax, (In percent 2007 to 2011)," *Statistics Canada* (27 June 2013), online: <<http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/famil41a-eng.htm>> [Statistics Canada, Persons in low income].

26 Statistics Canada, *Women in Canada: A Gender Based Statistical Report First Nations, Métis and Inuit Women*, by Vivian O'Donnell & Susan Wallace, Catalogue No 89-503-X (Ottawa: Statistics Canada, July 2011), online: <<http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.pdf>> [Statistics Canada, *First Nations, Métis and Inuit Women*].

27 *Ibid.*

28 Statistics Canada, *Women in Canada: A Gender-based Report Immigrant Women*, by Tina Chui, Catalogue No 89-503-X (Ottawa: Statistics Canada, July 2011), online: <<http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11528-eng.pdf>> [Statistics Canada, *Immigrant Women*].

29 Statistics Canada, *Women in Canada: A Gender Based Statistical Report Visible Minority Women*, by Tina Chu & Hélène Maheux, Catalogue No 89-503-X (Ottawa: Statistics Canada, July 2011), online: <<http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11527-eng.pdf>> [Statistics Canada, *Visible Minority Women*].

30 DAWN Canada, "Women with Disabilities and Poverty", *DAWN-RAFH Canada* (2015), online: <<http://www.dawncanada.net/issues/issues/fact-sheets-2/poverty/>>.

- 23% of single mothers;³² and
- 34% of single women over 65.³³

Women's average incomes are about two-thirds of men's in Canada.³⁴ The gender income gap has narrowed a bit over twenty years, but Canada is ranked 11th among 17 comparable countries by the Conference Board of Canada.³⁵

Women are poorer than men in Canada, are more likely to be poor, and more likely to live in deeper poverty.³⁶ As the data shows, particular groups of women are more likely to be poor, and to have lower incomes.

This inequality has deep structural roots. Women are poorer than men because they have been assigned the role of unpaid caregiver and nurturer for children, men and old people; because in the paid labour force they perform caregiving and support work which is devalued and lower paid; because there is a lack of safe affordable child care and this constrains women's participation in the paid labour force; because women, particularly racialized, immigrant and disabled women, are devalued workers, and more likely to be in precarious work; and because women incur economic penalties when they are not attached to men and when they have children alone.³⁷

For women poverty and economic inequality have gendered, harmful consequences. For women, poverty enlarges every dimension of inequality, not just the economic dimension. Poor women are less able to protect themselves from being treated as sexual commodities and nothing more, and more likely to accept sexual commodification, prostitution and subordination in order to survive. They lose sexual autonomy in relationships. Their vulnerability to rape and assault is magnified. Their ability to care for their children is compromised, and they are more likely to have their children taken away in the name of "protection," often because they do not have adequate housing and cannot supply proper food or ensure safe conditions. Without adequate incomes, women cannot secure stable housing and become homeless, increasing their exposure to violence. They have no political voice or influence. They are over-policed and under-protected by police. Without access to adequate social programs, including adequate social assistance and social services, such as shelters and transitional housing, women are much less able to resist or escape

31 Statistics Canada, "Persons in low income" *supra* note 25.

32 *Ibid.*

33 Statistics Canada, "Persons in low income" *supra* note 25.

34 Statistics Canada, "Average total income of women and men, 1976 – 2008", *Statistics Canada* (13 May 2013), online: <<http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11388/c-g/c-g001-eng.htm>>.

35 Conference Board of Canada, "Gender Income Gap", *Conference Board of Canada* (January 2013), online: <<http://www.conferenceboard.ca/hcp/details/society/gender-income-gap.aspx>>.

36 Monica Townson, *Women's Poverty and the Recession* (Ottawa: Canadian Centre for Policy Alternatives, September 2009), online: <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National_Office_Pubs/2009/Womens_Poverty_in_the_Recession.pdf> (also see Monica Townson, "Canadian women on their own are the poorest of the poor", *Canadian Centre for Policy Alternatives* (commentary), 8 September 2009, online: <<https://www.policyalternatives.ca/publications/commentary/canadian-women-their-own-are-poorest-poor>> [Townson, "Canadian women on their own"].

37 Shelagh Day, "The Indivisibility of Women's Human Rights" (2003) 20:3 *Canadian Woman Studies* 11 at 12.

subordination and violence.³⁸

Women's poverty and economic inequality affects their enjoyment of their civil and political rights. Their rights to life, liberty, security of the person, to take part in the conduct of public affairs, and to equality are all violated, diminished, interfered with or constrained when they do not enjoy adequate social and economic conditions and economic equality with men.

Welfare Rates in Canada

Welfare in Canada is a program of last resort. It is only available to persons who have no other income to rely on. Unfortunately, welfare rates in Canada are set so low that women who are reliant on social assistance are stuck in poverty rather than being helped out of it.

The Caledon Institute's report on welfare rates for 2013, shows that welfare incomes for all households in all jurisdictions fall well below the poverty line, as measured by Statistics Canada's after tax low income cut-offs (or LICOs).³⁹ The one exception is single-parent families with one child in Newfoundland and Labrador, who receive welfare incomes just slightly above the poverty line.⁴⁰ The effect of below poverty line welfare rates is that recipients cannot afford adequate food and shelter.

Canada has no national anti-poverty plan, in spite of the fact that it has been called for by a Parliamentary Committee,⁴¹ many anti-poverty organizations, social policy experts and many Canadians. Canada Without Poverty and Citizens for Public Justice have developed a detailed national anti-poverty plan for Canada, outlining the measures and steps that must be taken, including the design and implementation of a national housing strategy.⁴²

The Government of Canada must take the lead in efforts to eliminate poverty in Canada, as it controls and provides funds through the Canada Social Transfer that the provinces and territories rely on to support social programs, and only through federal government leadership can co-ordination and standards be established. But the Government of Canada refuses to do so.

In 2006, the Human Rights Committee expressed concern about cuts in welfare programs

38 Canadian Women's Foundation, "The Facts About Women and Poverty", *Canadian Women's Foundation* (26 March 2013), online: <<http://www.canadianwomen.org/sites/canadianwomen.org/files/FactSheet-EndPoverty-ACTIVE%20-%20May%2030.pdf>>; Shelagh Day & Gwen Browdsky, *Women and the Equality Deficit: The Impact of Restructuring Canada's Social Programs*, March 1998, online: Canada Without Poverty <http://www.cwp-csp.ca/wp-content/uploads/2011/07/WomenandtheEqualityDeficit_Shelagh-Day-Module-4.pdf>.

39 Caledon Institute of Social Policy, *Welfare in Canada 2013*, prepared by Ann Tweddle, Ken Battle & Sherri Torjman (Ottawa, Caledon Institute, 2014), at 48, online: <<http://www.caledoninst.org/Publications/PDF/I057ENG.pdf>>.

40 See *ibid*, Table 3, for welfare rates for each household type by jurisdiction compared to the poverty line, at 49-52.

41 House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, *Federal Poverty Reduction Plan: Working in Partnership Towards Reducing Poverty in Canada* (November 2010), online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=4770921&Language=E&Mode=1&Parl=40&Ses=3>>.

42 Canada Without Poverty & Citizens for Public Justice, *A National Anti-Poverty Plan for Canada*, 2015, online: CWP <http://www.cwp-csp.ca/wp-content/uploads/2015/02/DignityForAll_Report-English-FINAL_compressed.pdf>.

and urged Canada to “adopt remedial measures to ensure that cuts in social programmes do not have a detrimental impact on vulnerable groups.”⁴³ This recommendation has not been implemented.

However, there is a more general issue. Adequate income security and adequate housing are building blocks for women’s equality. Without them, women do not have liberty, security, or equality. Welfare recipients as a whole are a vulnerable group, and women who are welfare recipients are a particularly vulnerable group for reasons set out above. FAFIA believes that Canada’s failure to provide welfare at rates at or above the poverty line, so that recipients can secure adequate shelter and food, violates ICCPR rights to security of the person under Article 9 and to equality under Article 26.

Recommendations

The Government of Canada should:

- **Design and implement a lasting and meaningful national plan to combat poverty that uses a human rights framework, includes a national housing strategy, and takes the particular realities of diverse women’s lives into account.**
- **Ensure that welfare incomes for all household types in all jurisdictions provide at least poverty level incomes, and assist recipients to get out of poverty.**

○ C. Women and Employment

In 2013, 69.6 percent of women over 15 years of age were in the paid labour force.⁴⁴ Women with children have shown a sharp increase in employment rates over the last twenty years. In 2014, 68.7% of women in the paid labour force had children under 6.⁴⁵ This puts pressure on women to deal with both family and paid work responsibilities. But federal government policies on the family – with respect to income-splitting, child care, leaves and flexibility to accommodate caregiving – fall short of what women need.⁴⁶

Structural Inequality in Employment

Sex Segregation

43 Human Rights Committee, “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant.

Concluding observations of the Human Rights Committee Canada,” UN Doc CCPR/C/CAN/CO/5, 20 April 2006, at para 24, online: OHCHR

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCAN%2fCO%2f5&Lang=en> [Human Rights Committee, 2006 Concluding observations].

44 Statistics Canada, “CANSIM Table: 282-0002, Labour force survey estimates, by sex and detailed age group”, *Statistics Canada* (28 January 2015), online: <<http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2820002>> [Statistics Canada, “CANSIM Table: 282-0002”].

45 Statistics Canada, “CANSIM Table: 282-0211, Labour force survey estimates by family and type and family composition”, *Statistics Canada* (30 January 2015), online: <<http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2820211>>.

46 Kate McInturff & David MacDonald, *Time to Grow Up: Family Policies for the Way We Live Now, 2015* (Ottawa: Centre for Canadian Policy Alternatives, 2015), online: <<https://www.policyalternatives.ca/publications/reports/time-grow>>.

The Canadian labour force is still divided along gender lines. Canadian women are not equally represented in the most lucrative and powerful paid employment, and they continue to be principally employed in 'women's work'.

- In 2009, 67% of all employed women were working in teaching, nursing and related health occupations, clerical or other administrative positions, or sales and service occupations. This compared with 31% of employed men. This number has remained virtually unchanged for two decades.⁴⁷
- In 2009, just 22.3% of professionals in the natural sciences, engineering and mathematics were women. Again this percentage has barely changed in twenty years.⁴⁸

Non-Standard and Precarious Work

Women in Canada are also more likely than men to be in part-time, temporary, or multiple jobs, which are less likely to have pensions and other benefits. Approximately 26% of women, compared to less than 11% of men are in part-time jobs.⁴⁹ Working part-time is not necessarily women's choice, but rather is due to childcare responsibilities or an inability to find full-time work. The growth of precarious, unstable work in Canada affects those workers who are already vulnerable - women, and particularly immigrant, racialized, and Aboriginal women and women with disabilities.⁵⁰

Sex, Race and Disability Discrimination

The effects of sex, race and disability discrimination are evident in the employment data about Aboriginal women, racialized women, immigrant women and women with disabilities. Aboriginal women and other racialized women are more likely to have higher unemployment rates, even when they have comparable educational qualifications, or better ones.⁵¹

Aboriginal women are disproportionately represented in low-paying occupations traditionally held by women. In 2006, 60% of employed Aboriginal women worked in sales, service or administration jobs.⁵²

While immigrant women are highly educated compared to other Canadian women, their educational attainment does not provide them with higher incomes and better employment.⁵³ Immigrant women are more likely than their native-born counterparts to have completed university,⁵⁴ but have difficulty getting their credentials recognized and working in the fields in which they are trained. Canada has not yet effectively addressed: lack of

47 Statistics Canada, *Women in Canada: A Gender-Based Statistical Report Paid Work*, by Vincent Ferrao, Catalogue No 89-503-X (Ottawa: Statistics Canada, December 2010), online: <<http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11387-eng.pdf>>

48 *Ibid.*

49 Statistics Canada, "CANSIM Table: 282-0002" *supra* note 44.

50 Law Commission of Ontario, *Vulnerable Workers and Precarious Work: Final Report* (Toronto: Law Commission of Ontario, 2012), online: <<http://www.lco-cdo.org/en/vulnerable-workers-final-report>> (see section II. Identifying Vulnerable Workers and Precarious Work).

51 Statistics Canada, *First Nations, Métis and Inuit Women* *supra* note 26; and Statistics Canada, *Visible Minority Women* *supra* note 29.

52 Statistics Canada, *First Nations, Métis and Inuit Women* *ibid* at 26.

53 Statistics Canada, *Immigrant Women* *supra* note 28.

54 *Ibid.*

procedures for assessing training gained in other countries: bias in favour of training in Western countries; and the lack of any consistency across provinces in requirements made by regulatory bodies in the same profession.

Despite the fact that many have post-secondary education, immigrant women are less likely to be employed than native-born women,⁵⁵ and they are mainly employed in the low-paid traditionally female occupations in sales, service and administrative sectors.⁵⁶

Women of colour in Canada are also a well-educated population. In 2006, 26% of women of colour had a university degree, compared to 23% of non-racialized women.⁵⁷ Nonetheless, women of colour are employed mainly in administrative, clerical, sales, and service jobs.⁵⁸

Immigrant, disabled and racialized women are disproportionately employed in the 'precarious' 'non-standard' work sector, working in part-time, temporary, and casual jobs. Their access to unionization, benefits, job security, and pensions is poor.⁵⁹

13.7% of Canadian women live with a disability.⁶⁰ Access to employment for women with disabilities is often barred, or made difficult, by physical barriers, as well as by negative attitudes of employers towards making accommodations for disabilities, such as altered duties or flexible hours. Just getting into the workforce remains a problem for many women with disabilities. Because of this, people with disabilities overall, and women with disabilities, have higher unemployment rates.⁶¹

No Effective Remedy

In every jurisdiction in Canada statutory human rights legislation has been in place since the 1970s. These laws prohibit discrimination in employment based on sex, race, disability, ethnicity and sexual orientation. However, these laws have not provided an effective counter to the structural and systemic discrimination that women, and particular groups of women, face in the paid work force.

Employment equity programs designed to address systemic barriers in the workplace and to increase the representation of women, Aboriginal people, racialized people, and people with disabilities in jobs and at levels where they are under-represented were introduced in some

55 *Ibid.*

56 *Ibid.*

57 Statistics Canada, *Visible Minority Women supra* note 29 at 18.

58 *Ibid.*

59 Richard P. Chaykowski, *Non-standard and Economic Vulnerability* (Ottawa: Canadian Policy Research Network, March 2005), online: CPRN <http://www.cprn.org/documents/35591_en.pdf>; Leah Vosko, "Rethinking Feminization: Gendered Precariousness in the Canadian Labour Market and the Crisis in Social Reproduction" (Robarts Lecture delivered at York University, 11 April 2002), online: <http://robarts.info.yorku.ca/files/lectures-pdf/rl_vosko.pdf>.

60 Statistics Canada, *Canadian Survey on Disability*, Catalogue No 89-654-X – No 1 (Ottawa: Statistics Canada, 2013), at Table 1.10.

61 Council of Canadians with Disabilities, "Low Household Income and Disability: Income Sources, Employment and Employment Discrimination", online: <<http://www.ccdonline.ca/en/socialpolicy/poverty-citizenship/demographic-profile/low-household-income-and-disability>>; Statistics Canada, *Women in Canada: A Gender-based Statistical Report Women with activity limitations*, by Susan Crompton, Catalogue No 89-503-X (Ottawa: Statistics Canada, 2011), online: <<http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11545-eng.pdf>>.

jurisdictions after Justice Rosalie Abella issued her ground-breaking Royal Commission report in the mid 1980s.⁶² This report encouraged Canadian governments to actively and concertedly address sex, race and disability discrimination in Canadian workforces through establishing employment equity programs, and addressing discrimination in workplaces as a whole.

However, although there were employment equity programs in some jurisdictions during the 1990s, most are now gone. In federal jurisdiction, there is employment equity legislation. The federal *Employment Equity Act* makes some employment equity requirements of federal sector employers with over 100 employees, and the Federal Contractors Program makes some requirements of federal contractors.⁶³ In 2012, however, in the Government of Canada's Budget Bill⁶⁴ changes were made so that the Minister responsible for the Federal Contractors Program is no longer obliged to apply the employment equity standards set out in the *Employment Equity Act*.⁶⁵ This is likely to weaken the effect of the Federal Contractors Program.

In sum, there is no requirement on most employers in Canada to take conscious and proactive steps to identify and correct discrimination and under-representation of women and minorities in occupations, job groups, and job levels in their workplaces, or to actively scrutinize and change their policies if they have discriminatory effects. The burden for correcting discrimination lies on those who experience it, and women are stuck with trying to end deeply entrenched discrimination in the labour force through individual, one-by-one complaints.

Wage Inequality

Canadian women are paid less than their male counterparts in nearly all sectors of the economy.⁶⁶ This occurs regardless of women's level of education.⁶⁷ Even those women with comparable education, experience, and responsibility to men are usually paid less.⁶⁸

62 Canada, *Equality in Employment: A Royal Commission Report* (Ottawa: Public Works and Government Services Canada, 1984) (see the General Summary of the Commission undertaken by Justice Rosalie Silberman Abella, online: <<http://cws.journals.yorku.ca/index.php/cws/article/viewFile/12792/11875>>).

63 *Employment Equity Act*, SC 1995, c 4 (also see the Federal Contractors Program, online: <http://www.labour.gc.ca/eng/standards_equality/eq/emp/fcp/index.shtml>).

64 Canada, Bill C-38, An Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures, 1st Sess, 41st Parl, 2012, at s 602, Division 42 (as passed by the House of Commons 29 June 2012).

65 Marjorie Griffin Cohen, "Budget Bill and the Federal Contractors Program" (31 May 2012) *The Progressive Economics Forum* (blog), online: <<http://www.progressive-economics.ca/2012/05/31/budget-bill-and-the-federal-contractors-program/>>.

66 Canadian Centre for Policy Alternatives, *Progress on Women's Rights: Missing in Action* (Ottawa: CCPA, 2014), at 9, 11, online: CCPA <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2014/11/Progress_Women_Beijing20.pdf> [CCPA, *Progress on Women's Rights*]; Government of Canada, *Twentieth Anniversary of the Fourth World Conference on Women and the Adoption of the Beijing Declaration and Platform for Action Canada's National Review* (June 2014), at 11, online: <http://www.unece.org/fileadmin/DAM/Gender/publication/Canada_National_Review_Beijing_20.pdf>.

67 Statistics Canada, "Study: Cumulative earnings by major field of study, 1991 to 20" (28 October 2014), online: <<http://www.statcan.gc.ca/pub/11-626-x/11-626-x2014040-eng.htm>> [Statistics Canada, "Study: Cumulative earnings"].

68 *Ibid.*

Women who work in female dominated occupations typically have lower rates of pay than those who work in male dominated occupations.⁶⁹ For racialized women,⁷⁰ disabled women,⁷¹ and Aboriginal women,⁷² the gender pay gap is even wider.⁷³

- Women's median employment incomes are 34% lower than men's.⁷⁴ Comparing women and men who work full-time, full-year jobs women take home 20% less than men.⁷⁵
- The pay gap on average between men and women in Canada is double that of the global average.⁷⁶
- The wage gap is not due to a difference in education. In a study that looked at women's and men's earnings over a 20 year period women with a bachelor degree earned 36% less than men with the same education, women with a college certificate earn approximately 43% less, and women with high school diplomas earn approximately 48% less.⁷⁷
- Women are also more likely to work for minimum wage (between \$10-\$11 across Canada),⁷⁸ and to hold multiple, part time jobs.⁷⁹ Some provinces have specified minimum hourly wages for gendered work sectors. For example in British Columbia, employees who serve liquor – who are predominantly women – can be paid \$1.25 less than minimum wage. Where in New Brunswick construction labourers – who are predominately men – have a required minimum wage that is \$2.33 higher than the standard minimum wage.⁸⁰
- According to the World Economic Forum's Global Gender Gap Report of 2014, Canada's wage equality ranks in 27th place behind countries such as the Philippines (9th) and Finland (16th).⁸¹

69 Kate McInturff & Paul Tulloch, *Narrowing the Gap: The Difference That Public Sector Wages Make* (Ottawa: Canadian Centre for Policy Alternatives, 2014), at 7, online: CCPA <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2014/10/Narrowing_the_Gap.pdf> [McInturff et al, *Narrowing the Gap*].

70 Statistic Canada, *Visible Minority Women supra* note 27.

71 National Union of Public and General Employees, "Facts about Women and Economic Wellbeing" (2011), at 2, online: <http://alltogethernow.nupge.ca/sites/alltogethernow.nupge.ca/files/documents/Facts_About_Women_Economic_Well-Being.pdf> [NUPGE, "Facts"].

72 McInturff et al, *Narrowing the Gap supra* note 69 at 4.

73 NUPGE, "Facts" *supra* note 71 at 2.

74 Statistics Canada, "CANSIM Table 202-0102, Average male and female earnings", *Statistics Canada* (27 June 2013), online: <<http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2020102>>.

75 CCPA, *Progress on Women's Rights supra* note 66 at 9.

76 "Gender pay gap in Canada more than twice global average, study shows", *The Globe and Mail* (5 May 2015), online: <<http://www.theglobeandmail.com/news/british-columbia/gender-pay-gap-in-canada-more-than-twice-global-average-study-shows/article24274586/>>.

77 Statistics Canada, "Study: Cumulative earnings" *supra* note 67.

78 Government of Canada Labour Program, "Current and Forthcoming Minimum Hourly Wage Rates for Experienced Adult Workers in Canada" (27 January 2015), online: <<http://srv116.services.gc.ca/dimt-wid/smw/rpt1.aspx?lang=eng>> [Government of Canada Labour Program, "Current and Forthcoming"].

79 CCPA, *Progress on Women's Rights supra* note 66 at 8.

80 Government of Canada Labour Program, "Current and Forthcoming" *supra* note 70; Statistics Canada, "Employment by Industry and Sex", *Statistics Canada* (28 January 2015), online <<http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/labor10a-eng.htm>>.

81 Ricardo Husmann et al, *The Global Gender Gap Report 2014* (Geneva: World Economic Forum, 2014), at 65, online:

- Women with disabilities earn 32% less than women overall, and 57% less than men.⁸²
- Racialized women earn 70.5% as much as racialized men.⁸³ Aboriginal women who live off-reserve earn 68.5% as much as First Nations men living off-reserve.⁸⁴ All women earn less than non-racialized men.⁸⁵

Recommendation

Governments in Canada should:

- **Design and implement strategies that will address the structural inequality of women, and groups of marginalized women, in employment in all jurisdictions, including employment equity programs, higher minimum wages and ‘living wage’ strategies, increased access to unionization, and enhanced resources and legal capacities for human rights institutions and law to address systemic discrimination in employment.**

Pay Equity

1) Federal Jurisdiction

In 2009, the Government of Canada introduced the *Public Service Equitable Compensation Act (PSECA)*⁸⁶ as part of an omnibus budget bill. PSECA drastically alters the manner in which pay equity disputes are settled for employees of the Government of Canada. However, while the bill has been enacted, the bulk of it is not in force yet.⁸⁷

Pay equity is an important human rights issue for women. It differs from wage inequality because it seeks not solely equal pay for equal work, but equal pay for work of equal value. This is essential because women who work in female dominated industries are often undervalued and under-compensated. Work of equal value that requires comparable skills, responsibility and working conditions should be compensated equally regardless of the gender of the worker.⁸⁸

Prior to 2009, federal public sector employees could make pay equity complaints under the *Canadian Human Rights Act (CHRA)* based on discriminatory practices.⁸⁹ This process was expensive and long.⁹⁰ In some instances it took over a decade for a complaint to be

http://www3.weforum.org/docs/GGGR14/GGGR_CompleteReport_2014.pdf.

82 NUPGE, “Facts” *supra* 71 at 2; also see CCPA, *Progress on Women’s Rights supra* note 66 at 9, 19.

83 NUPGE, “Facts” *supra* 71 at 2.

84 *Ibid.*

85 *Ibid.*

86 *Public Sector Equitable Compensation Act*, SC 2009, c 2, s 394 [PSECA].

87 *Ibid* (all the shaded sections, as they appeared on 1 May 2015, are not in force, online: <http://laws-lois.justice.gc.ca/PDF/P-31.65.pdf>).

88 House of Commons, Standing Committee on the Status of Women, *An Analysis of the Effects of the Public Sector Equitable Compensation Act* (June 2009), at 2 (Chair: Hedy Fry), online: http://www.parl.gc.ca/content/hoc/Committee/402/FEWO/Reports/RP4007440/402_FEWO_Rpt07/402_FEWO_Rpt07-e.pdf [Standing Committee on the Status of Women, *An Analysis*].

89 *Ibid* at 4.

90 *Ibid.*

resolved.⁹¹ However, these complaints did force recognition that pay equity is a human rights issue.

Rather than enacting proactive federal pay equity legislation to improve the effectiveness of pay equity law, as was recommended by the federal Pay Equity Task Force in 2004,⁹² in 2009 the federal government passed regressive legislation that limits the ability of its own women employees to seek pay equity. Though this legislation has not come fully into force, the proposed changes are drastic for women employees of the Government of Canada.

Under the new regime, pay equity issues are addressed through the *Public Service Labour Relations Board*⁹³ rather than through the Canadian Human Rights Commission and Canadian Human Rights Tribunal. Pay equity is to be dealt with through collective bargaining.⁹⁴ This makes pay equity for women a bargaining chip - putting women union members in contest with male members over benefits that will form part of a bargaining package - rather than a human right.

The definition of “predominantly female” groups who are entitled to seek a remedy is altered by *PSECA*.⁹⁵ A group is required to be comprised of at least 70% women, where under the previous *Canadian Human Rights Act* guidelines, groups consisting of 55% women were able to seek a remedy.⁹⁶

Once *PSECA* is fully in force, women will be compelled to file complaints alone,⁹⁷ an extraordinary, perhaps impossible, task for one individual without support. Under the *PSECA*, unions that support their female members in filing a pay equity complaint can be fined \$50,000.⁹⁸ This is a violation of the right of women and their unions to freedom of association under Article 22.

The Public Service Alliance of Canada (PSAC), which represents employees of the federal government, has challenged the constitutional validity of the *PSECA*, arguing that the Act actually restricts the capacity of women to claim and to obtain pay equity, and is thus in violation of the constitutional equality rights of working women that are guaranteed in section

⁹¹ *Ibid* at 4, 15.

⁹² Pay Equity Task Force, *Pay Equity: A New Approach to a Fundamental Right* (Ottawa: Pay Equity Task Force, Minister of Justice and Attorney General of Canada, 2004), at 503, online: <http://www.collectionscanada.gc.ca/webarchives/20071121055449/http://www.justice.gc.ca/en/payeqsal/docs/petf_final_report.pdf> (also see the archived Pay Equity Task Force review website, online: <<http://www.collectionscanada.gc.ca/webarchives/20071115062515/http://www.justice.gc.ca/en/payeqsal/index.html>>; and a government summary of the Task Force's history, Treasury Board of Canada Secretariat, “The Public Sector Equitable Compensation Act and the Reform of Pay Equity” (5 February 2013), online: <<http://www.tbs-sct.gc.ca/lrco-rtor/relations/consult/psecarpe-lerspres04-eng.asp>>).

⁹³ Public Service Labour Relations Board, “Public Service Labour Relations and Employment Board” (6 November 2014), online: <http://pslreb-crtefp.gc.ca/index_e.asp> (the Public Service Labour Relations and Employment Board is provided for in the *Public Services Labour Relations and Employment Board Act*, SC 2013, c 40, s 365).

⁹⁴ Standing Committee on the Status of Women, *An Analysis supra* 80 at 5.

⁹⁵ *PSECA supra* note 17 at s 2(1) “female predominant”.

⁹⁶ Standing Committee on the Status of Women, *An Analysis supra* 80 at 6.

⁹⁷ *Ibid* at 5, 6.

⁹⁸ *PSECA supra* note 17 at s 41.

15 of the *Canadian Charter of Rights and Freedoms*.

In addition, PSAC alleges that the provisions in the Act that prohibit union assistance in filing pay equity complaints constitute a violation of the right to freedom of association that is guaranteed in section 2 of the *Charter*, and Article 22 of the ICCPR. This prohibition completely restricts the ability of unions and their members to take collective action, and it violates the right of women to be represented by their unions in important matters that relate to their working conditions. It precludes the union from accomplishing its most basic duties, that is: fully representing its members on issues relating to working conditions, such as wage discrimination. The prohibition also prevents the unions from expressing any views and advising the workers on anything that might assist or encourage them to file complaints regarding pay equity. This undermines the constitutional right of unions to express opinions and give advice to their members on matters that bear on their members' rights as workers.

In 2009, the Parliamentary Standing Committee on the Status of Women recommended that the *PSECA* be repealed and be replaced with a proactive federal pay equity law.⁹⁹

2) Provinces and Territories

In most jurisdictions in Canada, there is no pay equity legislation that applies to both public and private sector employers. Only the Ontario, Quebec and federal jurisdictions have legislation requiring equal pay for work of equal value that applies to both public and private sector employers. Some provinces and territories have pay equity policies or legislation that applies to public employers only. Private sector employers in most jurisdictions in Canada are not covered by pay equity legislation. They are required by law to provide women with equal pay when they are performing the same work, or substantially similar work, as male co-workers, but not when they are performing work of equal value.

Recommendations

The Government of Canada should:

- **Repeal the *Public Service Equitable Compensation Act* and replace it with a proactive federal pay equity law.**

The governments of all provinces and territories should:

- **Ensure that there is effective, proactive pay equity legislation in place in their jurisdiction that will address and correct the lower pay assigned to 'women's work.'**

Trade Union Women: Attacks on Unions Harm Women in Canada

Unions have been under attack in Canada recently.¹⁰⁰ Since 1982, provincial and federal governments in Canada have passed over 200 pieces of legislation that have restricted, suspended or denied collective bargaining rights for Canadian workers.¹⁰¹ This has included

⁹⁹ Standing Committee on the Status of Women, *An Analysis supra* 80 at 8.

¹⁰⁰ Andrew Jackson, "Up against the Wall: The Political Economy of the New Attack on the Canadian Labour Movement" (2013) 20 *Just Labour* 51, online: <http://www.justlabour.yorku.ca/volume20/pdfs/04_jackson_press.pdf>.

¹⁰¹ *Ibid* at 70; Canadian Foundation for Labour Rights, "Restrictive labour laws in Canada" (2015), online: CFLR

back-to-work legislation, the suspension of bargaining rights, and restrictions on the right to organize and collectively bargain.¹⁰² Many of these changes have direct and disproportionate impacts on women workers.

Unionization Enhances Equality for Women

Unionization is crucially important to women. Unionization reduces women's wage inequality, and improves working conditions in ways that enhance their equality. Restrictions that governments place on union organizing, the right to strike and collective bargaining constrain women's enjoyment of the right to freedom of association under Article 22, but also their right to equality and non-discrimination under Article 26.

- Unionization is consistently associated with higher wages for women.¹⁰³ Unionized women in Canada earn on average \$6.89 an hour more than non-unionized workers.¹⁰⁴
- In sectors that have high unionization, such as the public sector in Canada, the gender wage gap is significantly narrowed. For example, in the private sector, university educated women between the ages of 40 and 45 are paid 27% less than men.¹⁰⁵ That gap closes to 17% in the highly unionized public sector.¹⁰⁶ Unions are especially strong as a wage equalizer for women in the lowest paid occupations.
- In 2008, non-unionized women earned 21% less than their male counterparts, whereas unionized women earned about 6% less than unionized men.¹⁰⁷
- Unionized women benefit from clauses in collective agreements that prohibit sexual harassment and discrimination, provide for maternity leave, and for accommodation of caregiving responsibilities.¹⁰⁸ Unionized women are also entitled to holiday, scheduling, sick leave, maternity leave, leaves for family responsibilities, health and pension benefits, job security, training and other benefits and entitlements that are significantly better than the minimums provided by law.
- Unionized women can file grievances¹⁰⁹ and act collectively in other ways, with the support of their union. This is an effective method to solve gender-based work place problems, including workplace health and safety issues that affect women, with the protections afforded by a collective agreement-based process. Unionized women can also use the grievance and arbitration system to enforce human rights laws, which are

<<http://labourrights.ca/issues/restrictive-labour-laws-canada>> [CFLR, "Restrictive"].

102 *Ibid.*

103 Parliamentary Information and Research Service, *Wage Gap Between Men and Women*, by Julie Cool, Publication No 2010-30-E (Ottawa: Library of Parliament, 2010) at 3 (for commentary on wage inequality and collective bargaining see Dirk Antonczyk, Bernd Fitzenberger & Katrin Sommerfeld, "Rising Wage Inequality, the Decline of Collective Bargaining, and the Gender Wage Gap" (2010), Discussion Paper No. 4911, Institute for the Study of Labor (IZA), online: <<http://ftp.iza.org/dp4911.pdf>>) [Parliamentary Information, *Wage Gap*].

104 PressProgress, "These numbers will blow your mind and make you want to join a union" (18 August 2014), online: <<http://www.pressprogress.ca/en/post/these-numbers-will-blow-your-mind-and-make-you-want-join-union>>.

105 McInturff et al, *Narrowing the Gap* *supra* note 69.

106 *Ibid.*

107 Parliamentary Information, *Wage Gap* *supra* note 103 at 3.

108 Hans Rollmann, "Disproportionately disenfranchised: Gendered impacts of interference in collective bargaining in Canada" (2011) 17 & 18 *Just Labour: A Canadian Journal of Work and Society* 70 at 73 [Rollmann, "Disproportionately disenfranchised"].

109 Public Service Alliance of Canada, *PSAC works for women*, September 2014, online: <<http://psacunion.ca/sites/psac/files/attachments/pdfs/psac-works-for-women.pdf>> [PSAC, *PSAC works*].

understood to be “written into” the collective agreement and grievable, and unions represent members at human rights commissions/tribunals, providing legal expertise and other resources that generally unavailable to individual workers acting on their own.

- Unions offer a democratic institution where women gain a stronger “voice”, advance their rights, and secure better working conditions.¹¹⁰
- When unions’ rights to bargain are suspended or constrained, so too are women’s rights. Women lose their right to bargain for pay equity, and for benefits and working conditions that are of special significance to them. Back-to-work legislation, and other legislatively imposed constraints on collective bargaining and striking often roll back benefits and protections that women have fought for.¹¹¹
- Privatization, funding cuts and restructuring in the public sector are worsening the quality of jobs and work environments, triggering structural violence, harassment and mental injuries.¹¹² Women, especially marginalized women, suffer the brunt of these changes, and unions are a vital counter-balance to the growing power of employers in this context.
- Unions play a key role in advancing women’s equality society-wide, by joining with civil society organizations to support advocacy for women’s rights. This makes constraints on unionization a concern beyond the workplace.

Attacks on Unions and Bars to Unionization in Canada

In 2007, when the Supreme Court of Canada handed down its decision in *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*¹¹³ it held that the right to freedom of association in section 2(d) of the *Charter of Rights and Freedoms* protects the right to bargain collectively over workplace issues. This decision overturned twenty years of jurisprudence in which the Court had denied that section 2(d) protected union rights.¹¹⁴

Notably in recent months, the Supreme Court has made two ground-breaking rulings in which it has found that public employers have breached the right to freedom of association by denying or constraining the right to bargain collectively and the right to strike.

Although the Supreme Court of Canada is providing new and welcome responses, unions are engaged in a long, repetitive and expensive battle with governments over the right to strike and to bargain collectively, and victories come at a cost to the unions and individual workers, because often before a court victory finally arrives, ground is lost that is difficult to regain.

Below are some recent examples of legislation which has restricted the rights of unionized

110 Christopher Schenk, *Unions and Democracy* (Ottawa: Canadian Centre for Policy Alternatives, 2014), online: <https://www.policyalternatives.ca/sites/default/files/uploads/publications/2014/04/unions_and_democracy.pdf>.

111 Rollmann, “Disproportionately disenfranchised” *supra* note 108 at 70, 73.

112 Canadian Union of Public Employees, *Workplace harassment and mental injuries: Examining root causes* (Ottawa: CUPE, 2014), online: CUPE <<http://cupe.ca/workplace-harassment-and-mental-injuries-examining-root-causes>>.

113 2007 SCC 27, online: <<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2366/index.do>>.

114 Judy Fudge, “The Supreme Court of Canada and the Right to Bargain Collectively: The Implications of the Health Services and Support case in Canada and Beyond” (2008) 37:1 *Industrial Law Journal* 25.

employees, or barred them from exercising those rights:

- Pursuant to the *Public Service Labour Relations Act*¹¹⁵ and accompanying regulations¹¹⁶ the Royal Canadian Mounted Police were not permitted to organize or engage in collective bargaining. In 2015, the Supreme Court of Canada struck down the law.¹¹⁷ This has important implications for women members of the RCMP because they will be able to advance their rights as a collective, including enforce their right to non-discrimination through the grievance and arbitration system. Female RCMP officers recently filed a civil suit¹¹⁸ against the RCMP for systemic gender-based harassment that their employer has failed to address.¹¹⁹ A union would have provided these female employees with a structure and process that are democratic and a grievance system that is independent and transparent, in contrast to the RCMP internal complaint procedures, which, demonstrably, failed.
- In 2015, the Supreme Court of Canada also struck down a Saskatchewan statute, *The Public Service Essential Services Act*, S.S. 2008, c. P-42.2 (*PSESA*) that limited the ability of public sector employees, who perform essential services, to strike.¹²⁰ Under the Act, an employer had the unilateral power to designate which employees were essential, and thus unable to strike.¹²¹ The Supreme Court of Canada's decision relies on Canada's obligations under international human rights instruments, including Article 22 of the ICCPR, to support its conclusion that the guarantee of freedom of association in section 2 of the *Canadian Charter of Rights and Freedoms* includes the right to strike.¹²² In its decision, the Court clearly articulated the importance of protecting strike action:

The right to strike is essential to realizing these values [[h]uman dignity, equality, liberty, respect for the autonomy of the person and the enhancement of democracy] and objectives through a collective bargaining process because it permits workers to withdraw their labour in concert when collective bargaining reaches an impasse. Through a

115 *Public Service Labour Relations Act*, SC 2003, c 22, s 2 (see para (d) of s 2(1) where members of the RCMP are prevented from collective bargaining due to their exclusion from the *Act's* definition of an "employee").

116 *Royal Canada Mounted Police Regulations, 1988*, SOR/88-361, s 96 (since the appeal, the regulations were repealed and replaced; they similarly provide for the Staff Relations Representative Program in dispute, see *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-81, s 56).

117 *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1 at para 5, 380 DLR (4th) 321, online: CanLII
<<https://www.canlii.org/en/ca/scc/doc/2015/2015scc1/2015scc1.html?autocompleteStr=2015%20scc%201&autocompletePos=1>> [*Mounted Police Association*].

118 *Merlo v Canada (Attorney General)*, 2013 BCSC 1136, online: CanLII
<<http://www.canlii.org/en/bc/bcsc/doc/2013/2013bcsc1136/2013bcsc1136.html>> (this decision sets dates for the process of certifying the class of plaintiffs).

119 "Sexual-harassment claims against RCMP reach 336", *The Globe and Mail* (18 July 2014), online:
<<http://www.theglobeandmail.com/news/british-columbia/sexual-harassment-claims-against-rcmp-reach-336/article19669218/>>; also see Jason Proctor, "RCMP officer Shelley Whitelaw claims harassment on force", *CBC News* (12 January 2015), online: <<http://www.cbc.ca/news/canada/british-columbia/rcmp-officer-shelley-whitelaw-claims-harassment-on-force-1.2896034>>.

120 *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4 at paras 96-7, 380, DLR (4th) 577, online:
<<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14610/index.do>>.

121 *Ibid* at para 87.

122 *Ibid* at paras 33-75.

strike, workers come together to participate directly in the process of determining their wages, working conditions and the rules that will govern their working lives.... The ability to strike thereby allows workers, through collective action, to refuse to work under imposed terms and conditions. This collective action at the moment of impasse is an affirmation of the dignity and autonomy of employees in their working lives.¹²³

In Canada, the majority of workers in the public sector are women, and some vital service jobs - such as health care workers - tend to be held by predominantly racialized and immigrant women. Consequently, restrictions on the right to strike for public sector workers is a key restriction on women's human rights.

- The *Employees' Voting Rights Act* makes it more difficult for workers in the federal sector – workers in the federal public service, and in banks, transportation, shipping, rail, pipelines, canals, telephone and telecommunications, and on reserves - to unionize. The *Act* removes the automatic certification of a union when the majority of workers sign union cards.¹²⁴ A certification vote is now required even if all of the workers sign union cards. Workers who claim to represent 40 percent of the bargaining union can trigger a decertification vote.¹²⁵ The federal sector includes workplaces, like the federal public service, where women are a majority, and other workplaces, like transportation which are male-dominated. In both types of workplaces, strong unions are needed to provide protections for women.
- In 2011, after a decade of litigation, the B.C. Supreme Court ruled that restrictions on collective bargaining and the right to strike introduced by the Government of British Columbia in 2002 were unconstitutional. Specifically, the BC Court ruled that provisions in the *Public Education Flexibility and Choice Act*, S.B.C. 2002, c. 3 [PEFCA] (Bill 28) and the *Education Services Collective Agreement Amendment Act*, 2004, S.B.C. 2004, c. 16 [Amendment Act] violated section 2(d) of the *Charter* because it was enacted without consultation with the employees, invalidated collective agreement terms with respect to class size and class composition and prohibited future collective bargaining on these subjects, even though they had previously been the subject of bargaining.¹²⁶ Despite this ruling by the Court, and without appealing, the Government of British Columbia enacted the *Education Improvement Act*¹²⁷ in

123*Ibid* at 54.

124Canada, Bill C-525, *An Act to Amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act and the Public Service Labour Relations Act (Employee's Voting Rights Act)*, 2nd Sess, 41st Parl, 2014, online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6836511&File=4>> [Bill C-525].

125*Ibid* at s 28 (also see Public Service Alliance of Canada, "Backgrounder on Bill C-525" (3 December 2013), PSAC, online: <<http://psacunion.ca/backgrounder-bill-c-525>>).

126*British Columbia Teachers' Federation v British Columbia*, at 2011 BCSC 469 at paras 28-9, 381-3, 234 CRR (2d) 220, online: CanLII <<https://www.canlii.org/en/bc/bcsc/doc/2011/2011bcsc469/2011bcsc469.html?autocompleteStr=2011%20BCSC%20469&autocompletePos=1>> [BCTF 2011 SC].

127Bill 22, *Education Improvement Act*, 4th Sess, 39th Leg, British Columbia, 2012, online: <http://leg.bc.ca/39th4th/3rd_read/gov22-3.htm>.

2012, which removed school teachers' right to strike between the coming into force of section 3 of the *Act* and 31 August 2012;¹²⁸ imposed a wage freeze during mediation;¹²⁹ and re-introduced¹³⁰ into law provisions that had already been declared unconstitutional by the BC Supreme Court.¹³¹ In 2014, the B.C. Supreme Court issued a second decision, finding parts of the *Education Improvement Act* - the ones that reintroduced the same restrictions on teachers' collective bargaining rights - to be in violation of section 2 of the *Charter*.

The Government of British Columbia appealed this decision, and was successful in the B.C. Court of Appeal. That Court overturned the decision of the B.C. Supreme Court on April 29, 2015, finding in a 4-1 decision that the Government of British Columbia's legislation did not infringe s. 2 of the *Charter*.¹³² The B.C. Teachers' Federation says that it will appeal this decision, and leading experts believe that it is likely now to be reviewed by the Supreme Court of Canada.¹³³

This more than decade-long history illustrates the stubborn refusal of the BC government to respect teachers' collective bargaining rights. The majority of teachers in BC, and Canada, at both the elementary and secondary school levels, are women.¹³⁴ Such attacks on teachers' collective bargaining rights disproportionately impact women, their working conditions, and their income security.

- The Nova Scotia *Health Authorities Act, 2014*,¹³⁵ would have restricted the right of health care workers, the majority of whom are women, to choose the union they want to represent them by allowing for only four bargaining units—nursing, clerical, health care and support bargaining units – and assigning one union to represent each unit.¹³⁶ After unions protested that the legislation was unconstitutional, and unions joined together in calling for reform, the Government of Nova Scotia agreed to modify the

128 *Ibid* at s 3(1).

129 *Ibid* at s 6(2)(b).

130 *Ibid* at s 13. *British Columbia Teachers' Federation v British Columbia*, 2014 BCSC 121 at paras 440-1, 447-50, 456, 54 BCLR(5th)286, online: CanLII
<<https://www.canlii.org/en/bc/bcsc/doc/2014/bcsc/2014/bcsc121.html?autocompleteStr=2014%20BCSC%2021&autocompletePos=1>>.

131 *BCTF 2011 SC supra* note 126 at paras 28-9, 381-3, 234.

132 *British Columbia Teachers' Federation v British Columbia*, 2015 BCCA 75, online: <<http://www.courts.gov.bc.ca/jdb-txt/CA/15/01/2015BCCA0184.htm>>.

133 Andrea Woo "B.C. Teachers' Federation case will likely reach Supreme Court of Canada: expert", *The Globe and Mail* (7 May 2015), online: <<http://www.theglobeandmail.com/news/british-columbia/bc-teachers-federation-case-likely-headed-to-supreme-court-says-expert/article24323744/>>.

134 Statistics Canada, *Women in Canada: A Gender-based Statistical Report Women and Education*, by Martin Turcotte, Catalogue No 89-503-X (Ottawa: Statistics Canada, December 2011), online: <<http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11542-eng.pdf>>.

135 Bill No 1, *Health Authorities Act (An Act to Provide for Health Authorities and Community Health Boards)*, 2nd Sess, 62nd Leg, Nova Scotia, 2014, online: <<http://nslegislature.ca/legc/PDFs/annual%20statutes/2014%20Fall/c032.pdf>>.

136 "Nova Scotia bill to ban health-care strikes until 2015", *CBC News* (29 September 2014), online: <<http://www.cbc.ca/news/canada/nova-scotia/nova-scotia-bill-to-ban-health-care-strikes-until-2015-1.2781341>>; and Michael Gorman, "Nova Scotia passes controversial health bill amid protests", *The Chronicle Herald* (3 October 2014), online: <<http://thechronicleherald.ca/novascotia/1241046-nova-scotia-passes-controversial-health-bill-amid-protests>>.

legislation to allow for four councils of unions, with each council composed of the different unions that represent employees in the four bargaining units.¹³⁷

- Domestic workers, who are predominantly female, are barred from forming unions in several provinces including Ontario¹³⁸ and Alberta.¹³⁹ Domestic workers are a particularly vulnerable group who could benefit from a union as many live in the same home as their employer and have precarious status as migrant workers and, in the majority, racialized workers.

Recommendation

Governments in Canada, as employers and as legislators, should:

- **Ensure that women fully enjoy their right to freedom of association, including the right to strike and to bargain collectively without constraints or interference. Restrictions on the right of teachers to bargain class size and composition, and on the right of domestic workers, and other temporary migrant workers, to unionize should be removed.**

Temporary Foreign Workers and Immigrant Women

Temporary foreign work is highly gendered and racialized. Canada relies heavily on temporary foreign workers to meet shortages in areas such as caregiving, agriculture, food services, and construction. Temporary workers are attached to the employers who apply to have them come to Canada for defined periods of time. Temporary workers fear complaining about conditions because, if their work is seasonal, their employer may not request them to come to Canada to work again, or, if their employer does not wish to continue their employment, they will be deported.

Two recent human rights complaints reveal the realities of working conditions for women who are temporary foreign workers. The British Columbia Human Rights Tribunal found that PN, a Filipino woman who came to Canada on a temporary work visa, was a 'virtual slave.' She was sexually harassed, assaulted repeatedly by her employer, mistreated, and humiliated. PN finally walked away from her employer, without money, passport, or eyeglasses. She received assistance from a women's shelter, but her employer continued to threaten her and denied any discrimination or harassment.¹⁴⁰ In *O.P.T. v. Presteve Foods Ltd. (No. 9)*,¹⁴¹ the Ontario Human Rights Tribunal found that the respondents sexually harassed and abused two women from Mexico who were temporary workers in their fish packing plant. In both

137 Bill No 69, *An Act to Amend Chapter 32 of the Acts of 2014, the Health Authorities Act*, 2nd Sess, 62nd Leg, Nova Scotia, 2014, online: <<http://nslegislature.ca/legc/PDFs/annual%20statutes/2015%20Spring/c001.pdf>>.

138 *Labour Relations Act*, SO 1995, c 1, Schedule A, s 3(a), online: CanLII <<https://www.canlii.org/en/on/laws/stat/so-1995-c-1-sch-a/latest/so-1995-c-1-sch-a.html?autocompleteStr=labour%20relations%20act%20&autocompletePos=1>>.

139 *Labour Relations Code*, RSA 2000, c L-1, at s 4(2)(f), online: CanLII <<https://www.canlii.org/en/ab/laws/stat/rsa-2000-c-l-1/latest/rsa-2000-c-l-1.html?autocompleteStr=labour%20relations%20code&autocompletePos=2>>.

140 *P.N. v. F.R. (No. 2)* 2015 BCHRT 60; Canadian Human Rights Reporter, "A Virtual Slave in Canada" *Canadian Human Rights Reporter* (Commentary) (12 May 2015), online: <<http://www.cdn-hr-reporter.ca/content/virtual-slave-canada>>.

141 2015 HRTO 675.

these cases, the sexual exploitation and abusive treatment were extreme. The fact that these three women actually managed to make human rights complaints is unusual, since the status of migrant workers is so precarious, and claiming rights is difficult. In the case of the workers in Ontario, they were assisted by the Canadian Auto Workers of Canada (now UNIFOR) and would not have been able to make the complaints or carry them through to completion without that support.

The Live-in Caregiver Program

Women account for 95% of the temporary foreign workers entering Canada through the Live-in Caregiver Program.¹⁴² They are predominantly women from the Philippines.¹⁴³

The Live-in Caregiver program is a regulated¹⁴⁴ aspect of Canada's immigration scheme.¹⁴⁵ It has been highly criticized since its inception. Routine exploitation, including unpaid overtime and restrictive living conditions, is common in the Program.¹⁴⁶

Between 1992 and 2014 all caregivers who had completed two years of domestic service within a four-year period were given universal access to apply for permanent residency in Canada.¹⁴⁷ They were the only group of low-wage temporary foreign workers who had universal access to permanent residency.¹⁴⁸ In 2014,¹⁴⁹ the Canadian Government placed a cap on the number of caregivers who could apply for permanent residency and added new requirements for qualification.¹⁵⁰ These changes increased the instability of this already vulnerable group.

Though recent changes to the Live-in Caregiver Program removed the “live-in” requirement, caregivers continue to experience exploitation. They also face new vulnerabilities.

- Though the “live-in” requirement has been removed,¹⁵¹ caregivers are still tied to their employers. Requirements of the program make it difficult—if not impossible—to switch employers. Caregivers are still expected to work as caregivers for two years within a

142Fay Faraday, *Made in Canada How the Law Constructs Migrant Workers' Insecurity* (Toronto: Metcalf Foundation, 2012), at 36, online: <<http://metcalffoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf>> [Faraday, *Made in Canada*].

143□ *Ibid.*

144□ *Immigration and Refugee Protection Regulations*, SOR/002-227, ss 110-5.

145*Immigration and Refugee Protection Act*, SC 2001, c 27.

146Faraday, *Made in Canada supra* note 142 at 89.

147Amrita Hari, “Temporariness, Rights, Citizenship: The Latest Chapter in Canada's Exclusionary Migration and Refugee History” (2014) 30:2 *Refuge: Canadian Journal on Refugees* 35 at 38, online: <<http://pi.library.yorku.ca/ojs/index.php/refuge/article/viewFile/39617/35896>> [Hari, “Temporariness”].

148Faraday, *Made in Canada supra* note 142 at 25.

149Citizenship and Immigration Canada, *Ministerial Instructions Establishing the Caring for Children Class*, 24 November 2014, online: Archived Content Canadian Gazette <<http://www.gazette.gc.ca/rp-pr/p1/2014/2014-11-29/html/notice-avis-eng.php#footnote.47973>>.

150Citizenship and Immigration Canada, “Backgrounder Improving Canada's Caregiver Program” (31 October 2014), online: <<http://news.gc.ca/web/article-en.do?nid=898719>> [CIC, “Backgrounder”]; also see Debra Black, “New rules for federal live-in caregivers program,” *The Toronto Star* (21 February 2015), online: <http://www.thestar.com/news/canada/2014/11/28/new_rules_for_federal_livein_caregivers_program.html> [Black, “New rules”].

151CIC, “Backgrounder” *ibid.*

four-year period¹⁵² and are only allowed to work for the employer listed on their work permit.¹⁵³ It takes a significant amount of paper work and time to switch employers. The caregiver must apply for a new work permit and the employer will need a Labour Market Impact Assessment, which can take months.¹⁵⁴

- High living expenses in Canada combined with low wages¹⁵⁵ that are inadequate to support a household encourage caregivers to continue to choose the live-in option where working conditions are most exploitative, even though it is no longer mandatory. Live-in workers have reported being perpetually on-call, working extended over-time that they were not compensated for, and some have experienced sexual harassment and assault.¹⁵⁶
- For those caregivers who do not live in independent accommodations their family reunification process is delayed.¹⁵⁷ Living in the home of the employer also increases social isolation and decreases the likelihood of workplace inspections that may identify abusive behaviour of employers.¹⁵⁸
- Low-wage workers, like caregivers, face greater challenges in bringing their families to Canada; unlike high-wage workers, whose spouses are eligible for open work permits and whose children can get study permits.¹⁵⁹ The spouses of low wage workers must obtain an individual Labour Market Opinion, which is time consuming and can be difficult to obtain.¹⁶⁰ Caregivers' dependents are not allowed to apply to migrate under Humanitarian and Compassionate grounds and if their dependents are inadmissible, the caregiver will also be inadmissible.¹⁶¹
- Caregivers in the Program continue to be admitted as temporary workers rather than as permanent residents. Prior to 2014, caregivers had a high likelihood of gaining permanent residency. In 2009, 90% applied for permanent residency and 98% of those were successful.¹⁶² Current caps significantly reduce this likelihood of success. Caregivers who are not granted permanent residency after four years are required to return to their country of origin.
- 2,750 lower skilled caregivers who care for children can apply for permanent residency each year.¹⁶³ These applicants must complete two years of caregiving in the four-year time period and pass a Level 5 English or French proficiency test.¹⁶⁴ All caregivers who apply for permanent residency now must have at least one year of

152Black, "New rules" *supra* note 71.

153Citizenship and Immigration Canada, "Extend Your Work Permit-Live-in Caregivers" (5 November 2014), online: <<http://www.cic.gc.ca/english/work/caregiver/extend-stay.asp#change>>.

154Citizenship and Immigration Canada, "Labour Market Impact Assessment Basics" (23 March 2015), online: <<http://www.cic.gc.ca/english/work/employers/lmo-basics.asp>>.

155□Faraday, *Made in Canada supra* note 63 at 88.

156□Melissa Cederqvist & Eudoxie Sallaz, "Live-in Caregivers and Intimidation in the Workplace", November 2014, at 7, online: <<https://www.mfa.gouv.qc.ca/fr/publication/Documents/2014-11-30.8-Memoire.pdf>>.

157Hari, "Temporariness" *supra* note 147 at 42.

158Faraday, *Made in Canada supra* note 142 at 97.

159□Hari, "Temporariness" *supra* note 127 at 42.

160□*Ibid*; Faraday, *Made in Canada supra* note 142 at 99.

161Black, "New rules" *supra* note 150.

162Faraday, *Made in Canada supra* note 142 at 36.

163CIC, "Backgrounder" *supra* note 150.

164□*Ibid*.

- post-secondary education.¹⁶⁵
- 2,750 higher skilled caregivers who care for people with high medical needs (i.e. Registered Nurses, Licensed Practical Nurses, Personal Support Workers, or Registered Psychiatric nurses) can apply for permanent residency each year.¹⁶⁶ These applicants must complete two years of caregiving in the four-year period and pass a Level 7 English or French proficiency test.¹⁶⁷
 - The total number of caregivers permitted in both streams, 5,500, is well below the annual average of 8,000 caregivers coming into Canada.¹⁶⁸ The restrictive caps combined with the stringent language and educational requirements will make the most marginalized caregivers less likely to be granted permanent residency and the benefits that come along with it.

Linguistic and cultural barriers make it difficult for caregivers to understand and assert their rights. In Ontario, employers and recruiters are required by law to provide new caregivers to Canada with information on the *Employment Standards Act*,¹⁶⁹ but caregivers are not provided information about community-based organizations, labour organizations, and workers advocates who could provide them with individual and collective support.¹⁷⁰ Connection with these types of organizations is particularly important because caregivers are not entitled to services and benefits that permanent residents are, such as extended medical care and certain tax benefits.¹⁷¹

Despite continuing demands for caregivers, the immigration system fails to accord sufficient recognition to the skills of these workers, thus preventing them from coming in under the regular admission system. The need for a special program is symptomatic of the longstanding problem of the sexist and classist nature of the immigration selection process, which fails to appropriately value the skills and experiences of women and caregivers.

Vulnerable Immigrant Spouses

Policies at Citizen and Immigration Canada make women entering as a sponsored spouse vulnerable to violence. Women are more likely than men to enter Canada as a dependent spouse.¹⁷² A woman who is sponsored by her spouse is vulnerable to abuse because of the economic and social power imbalances inherent in this type of relationship.¹⁷³ Her fear of deportation leaves her highly dependent on the sponsoring spouse and fuels gender inequalities that have been shown to contribute to violence against women.¹⁷⁴

¹⁶⁵*Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷*Ibid.*

¹⁶⁸Black, “New rules” *supra* note 150.

¹⁶⁹*Employment Standards Act*, SO 2000, c 41.

¹⁷⁰Faraday, *Made in Canada* *supra* note 142 at 84.

¹⁷¹Rupalem Bhuyan et al, *Unprotected, Unrecognized Canadian Immigration Policy and Violence Against Women, 2008-2013*, (Toronto: Migrant Mothers Project and University of Toronto, 2014), at 23, online:

<http://www.migrantmothersproject.com/wp-content/uploads/2012/10/MMP-Policy-Report-Final-Nov-14-2014.pdf>

[Bhuyan et al, *Unprotected*].

¹⁷² *Ibid* at 10.

¹⁷³ *Ibid* at 34.

¹⁷⁴*Ibid* at 32.

If she has applied under the “Spouse of Common-law Partner in Canada class”, her spouse can withdraw sponsorship for any reason and she can be forced to leave the country.¹⁷⁵ Her spouse may threaten¹⁷⁶ to have her deported if she reports the abuse. Women in this situation have been shown to be reluctant to seek medical or social assistance for fear of losing their immigration status if the abuse is investigated.¹⁷⁷

Once a woman has permanent residence status she cannot be deported for leaving an abusive relationship, however, this is not absolute. If her spouse reports that the relationship was not genuine or was fraudulent, she may be investigated and is at risk of having her permanent resident status taken away.¹⁷⁸

In October 2012, Citizen and Immigration Canada introduced a conditional status for certain spouses.¹⁷⁹ CIC claimed that this was to protect the state from the threat of marriage fraud, though there is little empirical evidence that this is a problem in Canada.¹⁸⁰

For a woman who does not have a child with her spouse, or if the relationship has existed for two years or less, her permanent resident status will be considered conditional for the first two years.¹⁸¹ If she separates from her spouse during this conditional period she will risk losing her status. She can ask for an exception if she is leaving because of abuse or neglect, but her immigration status is not guaranteed. She has to supply proof that this is the reason the relationship broke down, which is difficult to produce in cases of intimate partner violence, particularly if she is isolated and lacks a support system.¹⁸² Many women are unaware that this exemption exists.

These policies increase inequality in relationships between opposite sex spouses and put women at a heightened risk of violence. The sponsoring spouse can use his position to manipulate his spouse by threatening to have her deported. This can trap women in violent relationships while they wait for the two-year conditional period to lapse.

Recommendations

Canada should:

- **Stop the ‘revolving door’ of deportations of temporary workers and implement an effective and transparent procedure that will allow temporary workers to obtain permanent residency status.**

175Community Legal Education Ontario, “Women, family violence, and immigration: Family violence when a woman is sponsored by a spouse or partner” (January 2014), at 2, online:

<http://www.cleo.on.ca/sites/default/files/book_pdfs/famvio.pdf> [CLEO, “Women, family violence”].

176Bhuyan et al, *Unprotected supra* note 92 at 10, 33-4.

177□ *Ibid* at 34, 41, 44.

178□ CLEO, “Women, family violence” *supra* note 96 at 1.

179Citizenship and Immigration Canada, “Backgrounder – Conditional Permanent Resident Status” (26 October 2012), online: <<http://www.cic.gc.ca/english/departement/media/backgrounders/2012/2012-10-26a.asp>>.

180□ Bhuyan et al, *Unprotected supra* note 171 at 32.

181CLEO, “Women, family violence” *supra* note 175 at 2.

182□ *Ibid* at 3-5.

- **Eliminate the Live-In Caregiver Program, and replace it with an immigration scheme that allows workers who are engaged in vital employment such as caregiving to come to Canada and remain as regular, skilled immigrants.**
- **Eliminate the two-year conditional waiting period for women who do not have a child with their spouse, or who have been in a relationship of less than two years.**
- **Once they have been admitted under the spouse category, detach a woman's immigration status completely from her spouse.**

Child Care

Universal access to quality, affordable child care¹⁸³ is essential to the fulfillment of Canada's commitment to equality for women under Article 26 of the *ICCPR*. The *Convention on the Elimination of Discrimination against Women*¹⁸⁴ recognizes the "link between discrimination and women's reproductive role" and demands "fully shared responsibility for child-rearing by both sexes", as well as requiring State parties to ensure that there are child care facilities that allow women to combine family responsibilities with participation in employment and public life.¹⁸⁵

Despite Canada's ratification of the *ICCPR* and the *CEDAW*, when the current federal government came into power in 2006, it cancelled the beginnings of a long-awaited national child care program, which was in the process of being developed through agreements between the federal, provincial and territorial governments.¹⁸⁶

In its 2008 review of Canada's progress under the *Convention*, the *CEDAW* Committee expressed concern about access to child care in the context of women's rights in Canada. The Committee urged Canada "to step up its efforts to provide a sufficient number of affordable childcare spaces",¹⁸⁷ linking this recommendation with the necessity to increase efforts to provide "affordable and adequate housing options."¹⁸⁸ The Human Rights Council similarly highlighted the lack of affordable child care spaces in Canada during the 2013 Universal Periodic Review, noting the Committee on the Rights of the Child's concern "at the

183There are various terms used to describe childcare, including, but not limited to, daycare, early care and learning, early childhood education and care (ECEC), and early childhood development and care (ECDC). Within this report, these terms generally refer to educator-led programs that focus on young children's healthy development in partnership with parents.

184*CEDAW* supra note 13.

185UN Women, "Convention on the Elimination of All Forms of Discrimination against Women Full Text of the Convention" (2009), online: UN Women <<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>> (see the Introduction section).

186Morna Ballantyne, "Harper and Child Care" in Teresa Healy, ed, *The Harper Record* (Ottawa: Canadian Centre for Policy Alternatives, 2008), online: CCPA <http://www.policyalternatives.ca/sites/default/files/uploads/publications/National_Office_Pubs/2008/HarperRecord/Harper_and_Child_Care.pdf>.

187Committee on the Elimination of All Forms of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women*, Canada, UN Doc CEDAW/C/CAN/CO/7, 7 November 2008, at para 40, online: OHCHR <<http://www.ohchr.org>> [CEDAW Committee, 2008 *Concluding Observations*].

188*Ibid.*

high cost of child care, lack of available places for children in such care, [and] absence of uniform training requirements for all child-care staff.”¹⁸⁹ Canada did not address the issue of child care in its most report to the Human Rights Committee.¹⁹⁰

Continued Federal Government Failure to Invest in National Childcare

The concerns expressed by the CEDAW Committee in 2008 are consistent with the findings in a broad range of reports – from local community consultations to international comparative analyses – that assess Canada poorly on child care¹⁹¹ (outside of Quebec).

- At 0.25% of GDP, Canada’s public investment is about one-half of the OECD average and one-third of the minimum recommended level.¹⁹² As a result, Canada has among the lowest levels of access to child care and the highest parent fees in the OECD.
- Canada’s weak international ranking on child care is actually bolstered by Quebec, which has only 22% of Canada’s child population (under age 12) yet provides 41% of the country’s regulated spaces and invests 60% of Canada’s total public spending on child care.¹⁹³

Seven years after the CEDAW report – and forty-five years after the Royal Commission on the Status of Women called for a national childcare program, describing it as the ‘ramp’ to women’s equality—regulated childcare is available for only 20.5% of Canadian children under age 12.¹⁹⁴ Federal and provincial governments have not made substantive progress on any of the 2008 CEDAW recommendations regarding child care, specifically:

- **Comprehensive cost/benefit analysis** – while the Canadian government **has** not carried out this analysis, academics and economists have published child care studies which consistently find that the benefits of quality, affordable child care outweigh the costs.¹⁹⁵ For example, research from the University of Sherbrooke shows that the

189 Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16.21 Canada*, UN Doc A/HRC/WG.6/16/CAN/2, 7 February 2013, at para 67, online: OHCHR <<http://www.ohchr.org>> [Human Rights Council, *Compilation*].

190 Human Rights Committee, *Consideration of reports submitted by States parties under Article 40 of the Covenant Sixth periodic reports of States parties due in October 2010, Canada*, UN Doc CCPR/C/CAN/6, 28 October 2013, online: OHCHR <<http://www.ohchr.org>> [Human Rights Committee, *Canada's 2013 State report*].

191 See Child Care Advocacy Association of Canada (CCAC) & Coalition of Child Care Advocates of BC (CCCABC), *A Tale of Two Canadas: Implementing rights in early childhood*, February 2011, online: CCCABC <http://www.cccabc.bc.ca/res/rights/ccright_tale2can_brief.pdf> [CCAC et al, *A Tale of Two Canadas*].

192 OECD, Directorate for Education, *Starting Strong II: Early Childhood Education and Care* (Paris: OECD, 2006), online OECD <<http://www.oecd.org/edu/school/startingstrongiiearlychildhoodeducationandcare.htm>> (note that this is the most current complete data on Canadian ECEC available from the OECD; based on available information in Canada, ECEC funding has undoubtedly increased since 2006, as several provinces have added full day kindergarten, while childcare funding has continued to grow slowly. No comparative data, however, are available as Canada's entries in the OECD Family Database (2009) and other international sources are incomplete).

193 M. Friendly et al, *Early childhood education and care in Canada 2012* (Toronto: Childcare Resource and Research Unit, 2013), at 61, Table 7, 64, Table 10, 65, Table 11, online: <http://childcarecanada.org/sites/default/files/CRRU_ECEC_2012_revised_dec2013.pdf> [Friendly et al, *Early childhood education*].

194 *Ibid* at 67, Table 13.

195 P. Fortin et al, *Impact of Quebec's universal low-fee childcare program on female labour participation, domestic income, and government budgets* (Sherbrooke: University of Sherbrooke, 2012), online:

\$7/day system in Quebec more than pays for itself. In 2008, “each \$100 of daycare subsidy paid out by the Quebec government generated a return of \$104 for itself and a windfall of \$43 for the federal government.” Also, 70,000 more women hold jobs as a result,¹⁹⁶ and analyses show that lower-income mothers have greatly benefited from this system with poverty rates dropping by approximately 50%.¹⁹⁷

- **Increase number of affordable spaces** – in recent years, some provinces have expanded their kindergarten (school entry) programs, generally to serve younger children and/or to move to full school-day programming. However, these changes have not addressed the needs of the majority of mothers, who work or go to school and need before and after school care.

Between 2008 and 2012, the most recent year for which data is available, the percentage of children under age 12 with access to a regulated child care space in Canada grew only slightly, from 18.6% to 20.5%.¹⁹⁸

Moreover, even this limited access is unattainable for many due to high parent fees. West Coast LEAF found “because women’s incomes tend to be lower than men’s, it is often the woman in a heterosexual couple who will leave the workforce.”¹⁹⁹ The strong link between child care availability and affordability, and women’s workforce participation, informed a recent study²⁰⁰ of child care parent fees in large Canadian cities. The study found that outside of Quebec and Manitoba, where parent fees are capped,²⁰¹ median child care fees range from 23% to 36% of median pre-tax market income for women aged 25 to 34. In other words, mothers in most of Canada pay three to four months of their annual salary in child care costs.

- **Prioritize Aboriginal communities and low-income women** – while child care affordability is a serious issue for most families, it is of particular concern to women in lower income families. In fact, West Coast LEAF found child care is “a key defence against poverty, as it can assist women in finding and holding employment.”²⁰² Yet, according to the Canadian Centre for Policy Alternatives, “fee subsidies for lower

<http://www.usherbrooke.ca/chaire-fiscalite/fileadmin/sites/chaire-fiscalite/documents/Cahiers-de-recherche/Etude_femmes_ANGLAIS.pdf> [Fortin et al, *Impact of Quebec's universal low-fee childcare program*]; and The Centre for Spatial Economics, *Estimates of Workforce Shortages: Understanding and addressing workforce shortages in early childhood education and care (ECEC) project* (Ottawa: Child Care Human Resources Sector Council, 2009), online: <http://www.ccsc-cssge.ca/sites/default/files/uploads/Projects-Pubs-Docs/2.4-WFSEstimatesMain_Eng.pdf>.

196Fortin et al, *Impact of Quebec's universal low-fee childcare program* *ibid* at 27.

197*Ibid* at 7.

198Friendly et al, *Early childhood education* *supra* note 193 at 67, Table 13.

199Laura Track, CEDAW 2014 Report Card: How BC is measuring up in women's rights (Vancouver: West Coast LEAF, 2014), at 10, online: West Coast LEAF <<http://www.westcoastleaf.org/wp-content/uploads/2014/10/2014-CEDAW-Report-Card.pdf>> [Track, *CEDAW 2014 Report Card*].

200M. Friendly et al, *The Parent Trap: Child care fees in Canada's big cities* (Ottawa: Canadian Centre for Policy Alternatives, 2014), online: CCPA

<https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2014/11/Parent_Trap.pdf>.

201Parent fees are also capped in Prince Edward Island (PEI), but PEI cities were not included in the study because they did not fall within the study's definition of big cities.

202Track, *CEDAW 2014 Report Card* *supra* note 199 at 10.

income families are inadequate [and] the proportion of subsidized children has essentially remained static since 2001.”²⁰³ In Ontario, a study by the Childcare Resource and Research Unit found:

there are many fewer available subsidies than there are eligible parents. In other provinces/territories, the fee subsidy provided often does not cover the fee charged by the centre/provider, so fully subsidized parents may still be required to pay out-of-pocket.²⁰⁴

Furthermore, there is no evidence that child care in Aboriginal communities has been a policy priority, and some evidence to indicate just the opposite. Although the federal government has direct responsibility for Aboriginal child care, program funding has been static since 2006, and dropped in 2008/2009.²⁰⁵ BC research on Aboriginal ECDC “indicates that the current federal government is uninterested in expanding access to Aboriginal ECDC programs or in ensuring the level of quality that leads to successful outcomes.”²⁰⁶

Canada’s Current Child Care Policies Do Not Help Women

The lack of federal government leadership on child care is clear. While the federal government may claim it is addressing the issue, actions to date amount to small increases in cash payments to families, increased tax deductions, and a regressive income splitting program. None of these policies do anything to create a child care system that addresses the needs of Canadian women, families and children. And many of them disproportionately benefit higher income families, standing in direct contradiction to CEDAW’s recommendation to prioritize Aboriginal communities and low-income women.

At the provincial level, the patchwork continues and services vary from province to province. Quebec’s early leadership on child care has been followed – albeit on a much smaller scale – by some recent progress in two provinces, Manitoba and Prince Edward Island. On the other hand, inflation-adjusted public investment in child care has actually dropped in recent years in two provinces, Newfoundland and Labrador and British Columbia, and in the Yukon Territory.²⁰⁷

203 Canadian Centre for Policy Alternatives, *Delivering the Good: Alternative Federal budget 2015* (Ottawa: Canadian Centre for Policy Alternatives, 2015), at 41, online: CCPA

<https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2015/03/AFB2015_MainDocument.pdf>.

204 C. Ferns et al, *The state of early childhood education and care in Canada 2012* (Toronto: Moving Childcare Forward Project, 2014), at 4, online: <<http://childcarecanada.org/sites/default/files/StateofECEC2012.pdf>> (the Project is a joint initiative of the Childcare Resource and Research Unit, Centre for Work, Families and Well-Being at the University of Guelph, and the Department of Sociology at the University of Manitoba) [Ferns et al, *The state of early childhood education and care*].

205 J. Beach et al, *The state of early childhood education and care in Canada 2010: Trends and analysis* (Toronto: Childcare Resource and Research Unit, 2013) at 2, 14, Table 14, online: <http://www.childcarecanada.org/sites/default/files/state_ecec_canada_2010_CRRU.pdf>.

206 □ K. Jamieson et al, *An environmental scan of public policy and programs for young Aboriginal children in BC: A cold wind blows* (West Vancouver: BC Aboriginal Child Care Society, 2014), at ii, online: <https://www.acc-society.bc.ca/files_2/documents/BCACCSEnglobalscanFINAL.pdf> [Jamieson et al, *An environmental scan*].

207 □ Ferns et al, *The state of early childhood education and care supra* note 204 at 2.

Childcare staff – predominantly women and frequently college-educated – continue to earn poverty-level wages. According to the Moving Childcare Forward Project, “[i]n 2012 the median wage for child care program staff was only 69% of the average wage in Canada.”²⁰⁸

Across Canada, a broad range of civil society groups²⁰⁹ are united in their call for a different approach – one that:

- Substantially increases access to quality, affordable child care for all who want or need it;
- Prioritizes social, physical and cultural inclusion of children and their families, ensuring that the needs of the most vulnerable are prioritized; and
- Values and respects the early childhood work force with fair compensation, decent working conditions and professional development opportunities.

With federal leadership and funding in place, Aboriginal peoples and provincial and territorial governments can develop “high quality programs, which have a strong focus on early learning and development” knowing they “are most effective in combatting inequality in early childhood.”²¹⁰

The recognition that child care quality is not a static or singular idea is of paramount importance in any policy response. While appropriate staff training and compensation are essential elements, the BC Aboriginal Child Care Society clarifies that “[h]igh quality in an Aboriginal ECDC context means that programs for Aboriginal children must be culturally appropriate, reinforce pride in identity, be grounded in an Aboriginal world view and spirituality, and include Aboriginal knowledge, values, and ways of being and ways of caring for young children.”²¹¹ These vital understandings and different needs must be accommodated within federal funding parameters.

Finally, building an effective child care system promotes equality for women and children. Done well, child care advances social and income equality, reduces poverty and improves health. Child care that is developed by and for Aboriginal communities helps to close the gaps in outcomes for Aboriginal peoples. Child care helps mothers achieve their education and career goals. It helps families stay together by supporting them during times of crisis. And, child care builds communities.

Recommendations

The Government of Canada should:

- **Provide leadership and necessary funding support to provinces/territories and Indigenous communities to build public child care systems that will ensure universal access to high quality programs. An over-arching federal policy framework should be established to guide collaboration between the federal**

208 *Ibid* at 3.

209 CCAC et al, *A Tale of Two Canadas supra* note 191.

210 Jamieson et al, *An environmental scan supra* note 206 at ii.

211 *Ibid* at 10.

government and Quebec, other provinces and territories, and indigenous peoples.

- Provide funds to develop and maintain publicly managed child care systems that meet the care and early education needs of both children and parents, and provide high quality, accessible services with predictable, sustained funding.

• III. Other Forms of Discrimination (Articles 2, 3, and 26)

○ A. Refugee Women

In its 2006 Concluding Observations, after reviewing Canada's fifth report, the United Nations Human Rights Committee recommended that:

The State party should adopt remedial measures to ensure that cuts in social programmes do not have a detrimental impact on vulnerable groups.²¹²

Refugees are a particularly vulnerable group of people suffering from dislocation, language barriers, and trauma. Health services are critical as many refugees are fleeing from violence and have had little access to care in their country of origin.

Health Care

Since 1957 the Government of Canada provided comprehensive health insurance coverage for refugee claimants under the Interim Federal Health Program (IFHP).²¹³ However, in 2012, the Governor-in-Council passed two orders in council that significantly reduced the level of health coverage available for refugees.²¹⁴ Thousands of refugees and refugee claimants were left with no access to basic, emergency, and life saving health care. These cuts were successfully challenged as unconstitutional in 2014.²¹⁵ The judgement remains in effect,²¹⁶ but the Attorney General of Canada is currently appealing the decision.²¹⁷

212 Human Rights Committee, 2006 *Concluding observations supra* note 43 at para 24.

213 *Canadian Doctors for Refugee Care v Canada (Attorney General)*, 2014 FC 651 at paras 36-48, [2014] F.C.J. No. 679, online: CanLII <<http://www.canlii.org/en/ca/fct/doc/2014/2014fc651/2014fc651.html>> [*Canadian Doctors for Refugee Care* 2014 FC].

214 2012 Orders in Council, P.C.2012-433 and P.C.2012-945, triggered the IFHP changes (*Order Respecting the Interim Federal Health Program*, P.C.2012-433, SI/2012-6 (CanLII), online: CanLII <<https://www.canlii.org/en/ca/laws/regu/si-2012-26/latest/si-2012-26.html?autocompleteStr=SI%2F2012-26&autocompletePos=1>>; *Order Amending the Order Respecting the Interim Federal Health Program*, 2012, PC 2012-945, online: Archived Content Canada Gazette <<http://canadagazette.gc.ca/rp-pr/p2/2012/2012-07-18/html/si-tr49-eng.html>>).

215 *Canadian Doctors for Refugee Care* 2014 FC *supra* note 213 at paras 10-6.

216 *Canada (Attorney General) v Canadian Doctors for Refugee Care*, 2014 FCA 252 at paras 26-7, online: CFPC <http://www.cfpc.ca/uploadedFiles/Publications/_PDFs/FedCourt_of_Appeal_Docket_A-407-14_Reasons_20141031-1.pdf>.

217 *Canadian Doctors for Refugee Care v Canada (Attorney General)*, 2015 FC 149 at para 3, [2015] F.C.J. No. 104, online: CanLII

The changes, the successful court case, and the current appeal caused great confusion in the health care system. Some refugee women who were and are eligible for health care have been denied care due to confusion around changes to the program.²¹⁸

Until the court case addressing their rights to health care is finally resolved, the ability of refugee women to access health care in Canada remains unstable. They have needs related to pregnancy and reproductive health, violence, and other health issues that are unique to women.

- Women experience high levels of sexual and domestic violence.
- Women who are fleeing war and violence are known to have higher need for health care services related to trauma, depression and chronic health conditions.
- Refugee women are doubly burdened with managing the health care of their children as well as their own.

The changes to the IFHP left many refugees without access to life saving medication²¹⁹ and care (see chart below for classification changes).²²⁰ The impact on women was devastating. Women who were seeking refuge from “Designated Countries of Origin” (DCOs), such as Mexico and Hungary, were denied funding for basic pre-natal, obstetrical and paediatric care.²²¹

Refugees under the DCO category were denied funding for all types of medical treatment unless it concerned public safety.²²² Women who needed health care in relation to reproductive health, domestic violence or sexual abuse were not covered.²²³

Services offered to refugees from 2012-2014:²²⁴

| Refugee Class | Eligible Care |
|--|---|
| Government Sponsored | Basic and supplemental care |
| Privately sponsored | Urgent and essential care |
| Designated Countries of Origin and refused claimants | Treatment only if it concerns public safety |
| Rejected, ineligible or late to claim | No coverage |

The changes to the program left medical care providers confused²²⁵ about which services

<<https://www.canlii.org/en/ca/fct/doc/2015/2015fc149/2015fc149.html?autocompleteStr=2015%20FC%20149&autocompletePos=1>>.

218 *Canadian Doctors for Refugee Care* 2014 FC *supra* note 134 at para 213; Adrienne Silnicki, “Refugee Health Care in Federal Court,” *The Council for Canadians* (27 January 2014), online: <<http://canadians.org/blog/refugee-health-care-federal-court#http://canadians.org/blog/refugee-health-care-federal-court>> [Silnicki, “Refugee Health Care”].

219 *Canadian Doctors for Refugee Care* 2014 FC *supra* note 213 at para 2.

220 Silnicki, “Refugee Health Care” *supra* note 218.

221 *Canadian Doctors for Refugee Care* 2014 FC *supra* note 213 at para 3.

222 *Ibid* at paras 4, 64 (also see paras 628, 648).

223 *Ibid* at paras 628, 652, 670.

224 Silnicki, “Refugee Health Care” *supra* note 218.

225 *Canadian Doctors for Refugee Care* 2014 FC *supra* note 213 at paras 133-41.

the IFHP covered and many simply refused treatment to refugees regardless of their classification.²²⁶ Pregnant women were particularly vulnerable. The new system was a multi-tiered system where a refugee's eligibility for funded medical care could change as she moved through the system. Obstetricians were reluctant to take on women on IFHP because of the precarious and changing status of refugees.²²⁷

Manavi Handa, a midwife working with refugee claimants in Ontario, reported that some refugee women were asked to pay for their hospital delivery fees up front, regardless of their classification and coverage.²²⁸ In the case challenging the changes to the IFHP, Handa submitted affidavits from two of her clients who were asked to pay for their health care costs up front, even though they were eligible for care.²²⁹ One of her pregnant clients was asked to pay \$2,600 per day.²³⁰ She did not seek medical care at the hospital and later learned she was, in fact, covered under the program.²³¹ Most pregnant refugees cannot afford to pay thousands of dollars up front, leaving them without critical medical care.

Canadian Doctors for Refugee Care have documented cases of refugee women whose care was either delayed due to confusion about the IFHP or denied altogether. Below is a sampling of verified cases:

- A refugee claimant, 36 weeks pregnant, was told to bring \$3,000 to her next appointment to pay for her care because of changes to her insurance with the program. After an investigation, taking weeks, the IFHP admitted they made a mistake and that the woman would be covered.²³²
- A young refugee woman was pregnant as a result of a sexual assault while being used as a sexual slave. She had no coverage to address the pregnancy.²³³
- A pregnant refugee woman in her third trimester of pregnancy developed pre-eclampsia, a potentially lethal disease, but had no coverage for her condition.²³⁴
- A refugee woman in labour was asked to pay for the cost of her epidural because the anesthetist did not understand her IFHP insurance. She delivered the baby without pain control.²³⁵
- A woman requiring treatment of fibroids and heavy vaginal bleeding was denied

²²⁶*Ibid* at para 136.

²²⁷*Ibid* at paras 146-7.

²²⁸*Ibid* at paras 137, 248 (also see Canadian Council for Refugees, *Refugee health survey by province and by category*, February 2015, at 6, online: CCR <<http://ccrweb.ca/sites/ccrweb.ca/files/ccr-refugee-health-survey-public.pdf>>) [Canadian Council for Refugees, *Refugee health survey*].

²²⁹*Ibid* at paras 137, 247-9.

²³⁰*Ibid* at para 248.

²³¹*Ibid*.

²³²Canadian Doctors for Refugee Care, News Release, "Canadian Doctors for Refugee Care releases update on impact of federal cuts to health services" (27 September 2012), online: <<http://www.doctorsforrefugeecare.ca/further-reading-survey.html>>.

²³³*Ibid*.

²³⁴Canadian Doctors for Refugee Care, News Release, "Canadian Doctors for Refugee Care warns of more chaos, serious health risks to come" (4 December 2012), online: <<http://www.doctorsforrefugeecare.ca/further-reading-survey.html>>.

²³⁵Canadian Doctors for Refugee Care, News Release, "Canadian Doctors for Refugee Care says Interim Federal Health Program in crisis on Refugee Rights Day" (4 April 2013), online: <<http://www.doctorsforrefugeecare.ca/further-reading-survey.html>>.

coverage for a necessary pelvic ultrasound.²³⁶

The changes to the IFHP were opposed by at least 21 national medical organizations.²³⁷ The changes were later found to be unconstitutional by the Federal Court in 2014.²³⁸ The Government was admonished by the court for targeting “an admittedly poor, vulnerable and disadvantaged group for adverse treatment.”²³⁹ The Honourable Madam Justice Mactavish stated:

With the 2012 changes to the Interim Federal Health Program, the executive branch of the Canadian government has intentionally set out to make the lives of these disadvantaged individuals even more difficult than they already are in an effort to force those who have sought the protection of this country to leave Canada more quickly, and to deter others from coming here.²⁴⁰

Since this decision some of the medical services to refugees were to be temporarily restored as of 4 November 2014,²⁴¹ including care for pregnant women. However, the Government of Canada has not uniformly restore services to the pre-2012 levels, an act in blatant violation of the law.²⁴²

Safe Third Country Agreement

In December 2004, the *Safe Third Country Agreement*²⁴³ came into effect.²⁴⁴ Under this Agreement, Canada and the United States bar asylum seekers from making refugee claims at the land border between the two countries, with a few exceptions. The potential refugee must make her claim in whichever country she first arrives.

This agreement is problematic for women because of the different approaches to refugee eligibility in the two countries. Where Canada follows its Gender Guidelines²⁴⁵ to protect

236Ibid.

237Canadian Doctors for Refugee Care 2014 FC *supra* note 213 at para 625.

238*Supra* note 3.

239Canadian Doctors for Refugee Care 2014 FC *supra* note 213 at para 689.

240Ibid at para 690.

241See *ibid* (point one at the end of the judgement declares the Orders in Council that triggered the IFHP changes are of no force and effect; also see Audra Ranalli, “Cuts to Refugee Health Care Found Unconstitutional: Canadian Doctors for Refugee Care v Canada,” *The Court* (18 August 2014), online: <<http://www.thecourt.ca/2014/08/18/cuts-to-refugee-health-care-found-unconstitutional-canadian-doctors-for-refugee-care-v-canada/>>).

242Jennifer Bond, “Ottawa ignores rule of law in refugee health cuts case,” *The Toronto Star* (11 November 2014), online: <http://www.thestar.com/opinion/commentary/2014/11/11/ottawa_ignores_rule_of_law_in_refugee_health_cuts_case.html>; and The Canadian Press, “Refugee health advocates return to court, pushing feds to comply,” *CBCnews* (27 January 2015), online: <<http://www.cbc.ca/news/politics/refugee-health-advocates-return-to-court-pushing-feds-to-comply-1.2933071>>.

243Citizenship and Immigration Canada, “Final Text of the Safe Third Country Agreement” (5 December 2002), online: CIC <<http://www.cic.gc.ca/english/department/laws-policy/safe-third.asp>>.

244Citizenship and Immigration Canada, “Canada-U.S.Safe Third Country Agreement” (25 February 2015), online: CIC <<http://www.cic.gc.ca/ENGLISH/department/laws-policy/menu-safethird.asp>>.

245Immigration and Refugee Board of Canada, “Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution” (3 October 2014), online: IRB <<http://www.irb->

female refugee claimants, the United States does not recognize gender-based persecution in a way that adequately protects asylum claimants.²⁴⁶ Refugee women with well-founded fears of gender-based persecution could be protected by Canada's rules, but are at risk of refoulement if their claim was made in the United States. Because of this, the Federal Court found the Agreement unconstitutional,²⁴⁷ but the Federal Court of Appeal overturned this decision in 2008.²⁴⁸

Since the implementation of this Agreement the number of refugee claims lodged at the United States and Canada border has sharply declined.²⁴⁹

Recommendations

Canada should:

- **Amend the Interim Federal Health Program to immediately provide pre-2012 coverage to all refugee claimants.**
- **Drop its appeal of the *Canada (Attorney General) v Canadian Doctors for Refugee Care*, 2014 FCA decision.**
- **Rescind its adherence to the *Safe Third Country Agreement*, and accept claimants at the U.S. border who are intending to make a refugee claim in Canada.**

○ B. Access to Abortion

Canadian jurisprudence and law has viewed women's access to abortion as protected by section 7 of the *Canadian Charter of Rights and Freedoms*, which guarantees the rights to life, liberty and the security of the person.²⁵⁰ Access to abortion is a key factor in establishing equality between men and women. A woman's right to decide when and with whom she will bear children is essential to her enjoying an equal place in employment, in political life, in the economy, and other public spheres, as well as in her private relationships with men.

Safe and timely access to abortion in Canada is a recognized part of a woman's *Charter* guarantee of security of the person.²⁵¹ There are active pro-life advocates in Canada, however, who have increasingly made use of "women-protective anti-abortion" (WPA) claims to challenge access to abortion.²⁵² WPA claims assert that women are physically and mentally harmed by abortion or coerced into having abortions.²⁵³ While there are currently no criminal laws regulating abortion, since the last Human Rights Committee review of Canada, two anti-abortion bills²⁵⁴ have been tabled in Parliament that advance WPA arguments.²⁵⁵

cistr.gc.ca/Eng/BoaCom/references/pol/GuiDir/Pages/GuideDir04.aspx.

246Efrat Arbel, "Gendered Border Crossings" in *Gender in Refugee Law: From the Margins to the Centre*, ed by Efrat Arbel et al (New York: Routledge, 2014) at 244.

247*Ibid* at 245.

248*Ibid*.

249*Ibid* at 256.

250*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11, s 7. and see: *R v Morgentaler*, [1988] 1 SCR 30 at para 64, [1988] SCJ No 1 [*Charter*].

251*R v Morgentaler*, [1988] 1 SCR 30 at para 64, [1988] SCJ No 1.

252Cara E. Davies, "Protecting Women or Peddling Stereotypes? Bill C-510 and the Influence of the Women-protective Anti-abortion Movement" (2011) 8 *JL & Equality* 26 [Davies, "Protecting Women"].

253*Ibid*.

254Bill C-484, *An Act to amend the Criminal Code (injuring or causing the death of an unborn child while committing an*

Both failed to become law.

Lack of Access to Abortion in the Maritime Provinces

The restrictions on access to abortion that were previously in Canada's *Criminal Code* were struck down by the Supreme Court of Canada in 1988. However, many women living outside of large urban centres are facing restrictions on access to abortions, through referral rules and policies about where abortions can be performed that are very similar to those that were struck down.²⁵⁶ This is particularly true in the Maritime provinces,²⁵⁷ where abortions have been less accessible than in the rest of Canada for many years.

Currently, only four of 30 hospitals in the province of Nova Scotia (NS) provide abortions.²⁵⁸ There are no free-standing abortion clinics anywhere in the province. Access to abortion is difficult for anyone living outside of the Halifax area.

There are no abortion services provided anywhere within the province of Prince Edward Island (PEI).²⁵⁹ The Province has entered into a reciprocal billing agreement with the Queen Elizabeth II Hospital in Halifax in NS, so PEI women can travel to Halifax to access an abortion in a hospital and have the abortion cost covered by PEI Medicare. However, in order to access an abortion under this agreement, within fifteen weeks of the start of a pregnancy, a woman must receive a referral from a doctor licensed in PEI, as well as a second referral from a licensed doctor in PEI or NS, as well as complete tests and an ultrasound.²⁶⁰ Timely referrals and ultrasounds within fifteen weeks are not guaranteed.²⁶¹

Because the regulations for hospital-based procedures are so onerous and difficult to meet, about 50 percent of abortions for PEI residents have historically been performed at the Morgentaler Clinic in Fredericton, New Brunswick (NB), which closed in July 2014.²⁶² The clinic space has reopened as Clinic 554 and provides private abortion services at a cost of 700 to 850 dollars.²⁶³ PEI Premier Ghiz has failed to address the access crisis on PEI.²⁶⁴

offense), 2nd Sess 39th Parl, 2007 (second reading, 5 March 2008; Bill C-484 did not pass parliamentary committee review before the dissolution of the parliamentary session); and Bill C-510, *An Act to amend the Criminal Code (coercion)*, 3rd Sess, 40th Parl, 2010 (defeated at second reading, 15 December 2010).

255Davies, "Protecting Women" *supra* note 252.

256Chris Kaposy, "Improving Abortion Access in Canada" (2010) 18:1 *Health Care Anal* 17 at 20.

257*Ibid.*

258Michelle Siobhan Reid, "Access by Province" (2013), *The Morgentaler Decision* (commentary), online:

<<http://www.morgentaler25years.ca/the-struggle-for-abortion-rights/access-by-province/>>.

259Colleen McQuarrie, Jo-Ann MacDonald and Catherine Chambers, *Trials and Trails of Accessign Abortion in PEI: Reporting on the Impact of PEI's Abortion Policies on Women*, (Charlottetown, PEI: UPEI, 2014), at 4, online at:

<http://projects.upei.ca/cmacquarrie/files/2014/01/trials_and_trails_final.pdf>.

260*Ibid* at 5.

261*Ibid.*

262"Abortions require anonymity, says PEI group", *CBC News* (6 December 2010), online:

<<http://www.cbc.ca/news/canada/prince-edward-island/abortions-require-anonymity-says-p-e-i-group-1.912265>>;

"Morgentaler Clinic in Fredricton performs last abortions before closure", *CBC News* (8 July 2014), online:

<<http://www.cbc.ca/news/canada/new-brunswick/morgentaler-clinic-in-fredericton-performs-last-abortions-before-closure-1.2710909>>.

263"Morgentaler's old Fredericton clinic to reopen as private abortion facility", *CBC News* (6 January 2015), online:

<<http://www.cbc.ca/news/canada/new-brunswick/morgentaler-s-old-fredericton-clinic-to-reopen-as-private-abortion>>.

Both the Queen Elizabeth II hospital in NS and Clinic 554 in NB are a considerable distance from PEI, and travel costs and logistics present a significant barriers for women.

Until July 2014, abortions in New Brunswick were available at the Fredericton Morgentaler Clinic, and in a hospital setting at only two hospitals. The Morgentaler Clinic offered abortions on a self-referral basis, and made up close to 60% of the 1,000 abortions provided annually in New Brunswick,²⁶⁵ as well as serving many women from PEI.

The closure of the clinic led to changes in the New Brunswick regulations, but there is still a lack of accessible abortions in the province. Effective January 2015, the New Brunswick government repealed the two-doctor certification rule and the specialist requirement,²⁶⁶ but maintained the requirement that the procedure be provided in a hospital setting to qualify for Medicare funding²⁶⁷ - even though abortions cost considerably less in private clinics than in hospitals and there is an avid demand to access abortions in private clinics.²⁶⁸

A crowd-funding initiative resulted in the reopening of the Morgentaler clinic as Clinic 554 in Fredericton. There are no statistics available on how many procedures are provided in the new clinic, but it should be noted that any procedures provided there are not covered by Medicare and so women who access the clinic's services will pay out of pocket. Without the ability to bill its services to Medicare, and notwithstanding patient service fees, it is likely that Clinic 554 will face the same financial difficulties that led to the closing of the Morgentaler clinic in 2014.

Recommendation

Canada should:

- **Ensure that every province and territory funds and provides easy access to self-referral abortion services covered by Medicare in both private clinics and hospital settings.**

[facility-1.2912283](#)> [“Morgentaler's old Fredericton clinic”]; and “Reproductive Health” (2015), *Clinic 554*, online: <http://clinic554.ca/Reproductive_Health.html>.

264 Kevin Bissett, “Debate over access to abortion in Prince Edward Island intensifies”, *The Globe and Mail* (27 May 2014), online: <<http://www.theglobeandmail.com/news/national/debate-over-access-to-abortion-in-prince-edward-island-intensifies/article18877480/>>.

265 Canadian Institute for Health Information, “Number of Induced Abortions Reported in Canada in 2012, by Province/Territory of Hospital of Clinic”, online: <http://www.cihi.ca/cihi-ext-portal/pdf/internet/ta_11_all/datatables/20140221_en>.

266 NB Reg 84-20, online: CanLII <<https://www.canlii.org/en/nb/laws/regu/nb-reg-84-20/latest/nb-reg-84-20.html?autocompleteStr=regulation%2084-20&autocompletePos=1>>; New Brunswick, Office of the Premier, “Provincial government removes barriers to a woman's right to choose”, (Fredericton: GNB, November 2014), online: <http://www2.gnb.ca/content/gnb/en/news/news_release.2014.11.1334.html>; “New Brunswick abortion restriction lifted by Premier Brian Gallant”, *CBC News* (27 November 2014), online: <<http://www.cbc.ca/news/canada/new-brunswick/new-brunswick-abortion-restriction-lifted-by-premier-brian-gallant-1.2850474>>.

267 *Ibid* at Sched 2 (a.1); “Abortions won't be in clinics: Victor Boudreau”, *CBC News* (28 November 2014), online: <<http://www.cbc.ca/news/canada/new-brunswick/abortions-won-t-be-performed-in-clinics-victor-boudreau-1.2853291>>.

268 “Morgentaler's old Fredericton clinic” *supra* note 263.

○ C. Northern and Rural Women

Due to the special characteristics of northern and rural communities in Canada, such as the isolated geography and small population base, women in rural and northern communities face particular challenges, including those outlined below, that impact their civil and political rights.

Violence against Women

Women in Canada's three territories consistently experience rates of violence that are significantly higher than the provincial average:

- In 2011, the rate of police-reported violent crime against women in the Yukon was four times higher than the national average, in the Northwest Territories the rate was nine times higher and the rate in Nunavut was nearly 13 times higher.²⁶⁹
- Aboriginal women suffer higher rates of violence in the territories than non-Aboriginal women. In particular, from 2008 to 2013, Aboriginal women were more than three times as likely to report spousal victimization (18%), than non-Aboriginal women (5%).²⁷⁰
- Rates of sexual violence against women are also significantly higher in the territories than in Canada's provinces. The rate of sexual offences against women in Yukon is 3.5 times higher than the provincial average, in the Northwest Territories the rate is 9 times higher, and in Nunavut the rate of sexual violence against women is 12 times greater than the provincial average.²⁷¹

There are multiple, intersecting reasons to explain the higher rates of violence against women in the territories, including the impacts of systemic discrimination against Aboriginal people through residential schools and colonization, as well as demographic characteristics, such as a younger average population and a large population identifying as Aboriginal.²⁷²

Police failure to respond to and protect Aboriginal women and girls who have experienced violence is a concern.²⁷³ A case trial in 2010 in Yukon, acquitting two RCMP officers of the sexual assault of a woman,²⁷⁴ exacerbated a lack of trust between the RCMP and women in the North who experience sexual assault or who report male violence in intimate relationships. This case, as well as a public inquest into the preventable and degrading death of an Aboriginal man while in police custody, triggered public outcry and the Government of Yukon's decision to conduct a review of policing in the Yukon. This included a review of the

269 Statistics Canada, *Measuring Violence against Women: Statistical trends*, by Maire Sinha, ed, Catalogue No 85-002-X (Ottawa: Statistics Canada, February 2013), online: <<http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766-eng.pdf>> [Statistics Canada, *Measuring Violence against Women*].

270 *Ibid* at 64.

271 *Ibid* at 30.

272 Yukon, Women's Directorate, "Violence against Women in Canada's Territories" (2013), online:

<http://www.womensdirectorate.gov.yk.ca/pdf/violence_territories_eng.pdf>.

273 Canadian Association of Elizabeth Fry Societies, "Indigenous Women" (2014), at 6, online: CAEFS

<<http://www.caefts.ca/wp-content/uploads/2013/05/FINAL-2015-Fact-Sheet-Indigenous-Women.pdf>>.

274 *R v McLaughlin and Belak*, 2010 YKSC 9.

services provided by police to victims of domestic violence and sexual assault.²⁷⁵

Homelessness and Lack of Safe and Affordable Housing

While there are no statistics kept on women and homelessness in the North, a pan-territorial study on women and homelessness found that women's homelessness in the North is a pervasive problem and that all women in Canada's North are at risk of homelessness through a small change in their circumstances that could result in women no longer being able to afford their basic needs.²⁷⁶

The special characteristics of living in the North contribute to and exacerbate the crisis for women who are homeless, such as the remote geography, a harsh climate, a small population base, the lack of accessible and affordable transportation systems, underdeveloped infrastructure, a lack of specialized services for women, a lack of housing options, a high cost of living and limited employment opportunities, inadequate access to appropriate social services, the high cost of labour and materials needed to build housing and high rates of addictions, domestic violence and intergenerational dependency on income support, which keep women trapped in situations of homelessness.²⁷⁷

Homelessness has a severe impact on women's physical and mental health, the wellbeing of her children, women's self-esteem and capacity to participate in the workforce. As a result of homelessness, a woman may lose any resources she has accumulated and may be forced to engage in sexual relationships in exchange for accommodation.²⁷⁸

Lack of Access to Sexual and Reproductive Health Care

In Canada, women who experience the poorest sexual health are concentrated in provinces and territories with greater concentrations of rural and Aboriginal populations.²⁷⁹ The Canadian Guidelines for Sexual Health Education suggest that comprehensive and non-judgmental sexual health education should be available to everyone, including individuals who live in geographically isolated areas.²⁸⁰ However, there is a lack of anonymity for women

275 Simone Arnold, Peter Clark & Dennis Cooley, *Sharing Common Ground: Review of Yukon's Police Force* (Whitehorse, YK: Government of Yukon, 2011), online:

<http://www.policereview2010.gov.yk.ca/pdf/Sharing_Common_Ground_Final_Report.pdf>.

276 Yukon, Status of Women Council, *A Little Kindness Would go a Long Way: A Study of Women's Homelessness in the Yukon* (Whitehorse, YK: Government of Yukon, March 2007), at 7, online:

<<http://ywcacanada.ca/data/publications/00000012.pdf>> [Yukon Status, *A Little Kindness*].

277 Qullitt Nunavut Status of Women Council, *The Little Voices of Nunavut: A Study of Women's Homelessness North of 60* (Iqaluit: Government of Nunavut, January 2007), at 6-7, 33, online: <http://www.qnsw.ca/wp-content/uploads/2010/09/Nunavut-Final_Report.pdf> (also see *ibid* at 2-3, 20) [Qullitt Nunavut, *The Little Voices of Nunavut*].

278 *Ibid* at 5-6; Yukon Status, *A Little Kindness* supra note 276 at 2.

279 Girls Action Foundation, *A Compilation of Research on Rural Girls' and Young Women's Issues* (Montreal: Girls Action Foundation, February 2012), at 35, online:

<http://girlsactionfoundation.ca/files/rural_research_review_online.pdf> [Girls Action, *Rural Girls' and Young Women's Issues*].

280 Public Health Agency of Canada, *Canadian Guidelines for Sexual Health Education* (Ottawa: Minister of Health, 2008), at 18-9, online: <http://www.phac-aspc.gc.ca/publicat/cgshe-ldnemss/cgshe_toc-eng.php>.

in rural and northern communities and a lack of information regarding sexual and reproductive health.²⁸¹ A recent study, for example, concluded that a lack of access to contraception—which inhibits a woman's enjoyment of her sexual and reproductive rights—is perpetuated in the Yukon by barriers to accessing a prescription for contraception; a lack of counselling regarding different contraceptive methods and how to use them effectively; and cost burden of contraception.²⁸²

Women living in rural and northern communities have limited access to reproductive care and abortion services. The lack of universal access to abortion services is a serious problem for women living in rural areas, as it places undue physical and financial stress on women who are forced to travel long distances, find accommodation, take time away from work and, in some cases, pay for the abortion themselves.²⁸³

Women living in the far north and remote communities are generally required to travel to a larger centre to give birth. There are numerous detrimental consequences of maternal evacuation including women feeling isolated and a loss of control, as well as impacts on the children and family left behind, including increased rates of illness and school problems for other children of evacuated women and the loss of understanding of the birth process among men.²⁸⁴

Incarcerated Women

Across Canada, the over-incarceration of Aboriginal women is a form of systemic discrimination within Canada's justice system.²⁸⁵ The over representation of Aboriginal women within the justice system in the North is an increasing problem, and is due in part to a lack of support and treatment services, such as mental health services, available to women in the North.²⁸⁶

Further, there are no federal corrections facilities in Canada's territories. Therefore, offenders who are sentenced to custody of more than two years must move away from their families and communities to serve their sentence in a federal prison in another province.²⁸⁷

Recommendation

281 Girls Action, *Rural Girls' and Young Women's Issues* supra note 279 at 40 (see also Linnea Ruachyk, Women's Stories of Access: Sexual Health Education and Services in Yukon (MA Thesis, Carleton University, 2013), at 24, 91, 100-1, online: <https://docs.google.com/file/d/0Bxh1qFHrsF_McGNFa2FnaGRra3c/edit?pli=1> [unpublished]).

282 See Taryn Leah Ann Turner, *Mitigating (Mis)Conceptions: Expanding Contraceptive Choice and Access in the Yukon* (Capstone Submitted in Partial Fulfilment of the Requirements for the Degree of Master of Public Policy, Simon Fraser University, 2014), online: SFU <<http://summit.sfu.ca/item/14086>>.

283 Girls Action, *Rural Girls' and Young Women's Issues* supra note 279 at 39.

284 Jude Kornelsen & Stefan Grzybowski, "The Costs of Separation: The Birth Experiences of Women in Isolated and Remote Communities in British Columbia" (2005) 24:1 *Canadian Women's Studies Journal* at 75-6.

285 Office of the Correctional Investigator, *Spirit Matters: Aboriginal People and the Corrections and Conditions Release Act*, Catalogue No PS104-6/2013E-PDF (Ottawa, Office of the Correctional Investigator, October 2012) at para 79.

286 Jesse Winter, "Talking prisons and human rights", Yukon News (7 October 2013), online: <<http://www.yukon-news.com/news/talking-prisons-and-human-rights/>>.

287 Yukon, Department of Justice, "Sentencing" *Yukon Government* (6 March 2014), online: <<http://www.justice.gov.yk.ca/prog/cor/sentencing.html>>.

The Government of Canada should:

- Provide leadership and significant funding support to provinces and territories and to indigenous communities located in remote parts of Canada to increase access to services, and culturally appropriate services, in relation to: sexual and reproductive health care, general health care, violence against women, adequate housing and food, and other social programs.

○ D. Continuing Sex Discrimination in the *Indian Act* (Articles 2, 24, 6 and 27)

In response to successive court decisions in the case of *McIvor v. Canada*,²⁸⁸ finding that the 1985 *Indian Act*²⁸⁹ is inconsistent with the sex equality guarantees of the Canadian *Charter of Rights and Freedoms*,²⁹⁰ in 2010 Parliament passed Bill C-3: *An Act to promote gender equity in Indian registration*.²⁹¹

However, Bill C-3 which came into force in January 2011,²⁹² has not eliminated the sex discrimination in the *Indian Act*.

Specifically, despite many years of protest by indigenous women, and the 1981 decision of the UNHRC in *Lovelace v. Canada*,²⁹³ under Bill C-3 the following groups are still excluded, based on the ground of sex:²⁹⁴

- Aboriginal grandchildren born prior to September 4, 1951, who are descendants of status women who married non-status men, which is commonly referred to as “marrying out” (in contrast, comparable grandchildren of status men are eligible for status);
- Aboriginal grandchildren, born prior to April 17, 1985, to status women who parented in common-law unions with non-status men (in contrast, comparable grandchildren of status men are eligible for status); and
- Aboriginal female children of male Indians, born prior to April 17, 1985, referred to in

288 *McIvor v Canada*, 2009 BCCA 153, 91 BCLR (4th) 1, online: CanLII

<<http://www.canlii.org/en/bc/bcca/doc/2009/2009bcca153/2009bcca153.html?autocompleteStr=mcivor%20v%20&autocompletePos=3>> [*McIvor*].

289 *Indian Act*, RSC 1985, c-15, online: <<http://laws-lois.justice.gc.ca/eng/acts/i-5/>> (see s 6).

290 *Charter supra* note 250.

291 Bill C-3, *An Act to promote gender equity in Indian registration by responding to the Court of Appeal for British Columbia decision McIvor v Canada (Registrar of Indian and Northern Affairs)*, 3rd Sess, 40th Parl, 2010, online: <http://www.parl.gc.ca/content/hoc/Bills/403/Government/C-3/C-3_4/C-3_4.PDF>.

292 Parliament of Canada, “House Government Bill” (1 May 2015), LEGISinfo, online:

<<http://www.parl.gc.ca/LEGISINFO/BillDetails.aspx?Language=E&Mode=1&billId=4336828&View=6>> (the Bill received Royal Assent on 15 December 2010, and came into force on 1 January 2011).

293 *Lovelace v Canada*, Communication No R6/24, UNHRC, 1981, Supp No 40, UN Doc A/36/40, online:

<<http://www1.umn.edu/humanrts/undocs/session36/6-24.htm>>.

294 *Sharon McIvor and Jacob Grismer v Canada, Petitioner Comments in response to State Party's Submission on the Admissibility and Merits of the Applicant's Petition to the Human Rights Committee*, Communication No 2020/2010, UNHCR, 2011, at ii, iii, online: Poverty and Human Rights Centre <<http://povertyandhumanrights.org/wp-content/uploads/2011/08/Mcivor-v.-Canada-Petitioner-Comments-December-5-2011.pdf>> [*Sharon McIvor, Petitioner Comments*].

the legislation as “illegitimate” (in contrast, male “illegitimate” children of status men are eligible for status).

In addition, Bill C-3 carries forward sex discrimination by continuing to assign people to different categories of status based on their sex or the sex of their forebear. Bill C-3 relegates Aboriginal women, who were victims of sex discrimination under former versions of the *Indian Act*, and their descendants to inferior categories of status. Women like Sharon Mclvor, who was penalized by the infamous “marrying out” rule, which was at issue in *Lovelace*, can never have full Indian status.²⁹⁵ Consigning the women to the inferior “s. 6(1)(c)” status category devalues them, and it reduces the quality of the status they are able to transmit to their descendants.²⁹⁶

The current scheme newly grants non-transmissible s. 6(2) status to the grandchildren born prior to April 17, 1985, whose grandmothers are Aboriginal women who married non-status men and bore children who married non-status partners.²⁹⁷ In contrast, grandchildren born prior to April 17, 1985, to status men who married non-status women and whose children married out are eligible for full 6(1)(a) status.²⁹⁸ This consigning of the grandchildren of women who married non-status men to the non-transmissible s. 6(2) status category will have exclusionary, discriminatory effects on generation after generation, because of the sex of their Aboriginal ancestor.

As a result of Bill C-3’s deficiencies, there is a petition pending before the UNHRC (*Mclvor v. Canada* (Communication No. 2020/2010), which relies on Articles 26, 2(1), 3 and 27, and 2(3)(a), of the *ICCPR*.²⁹⁹

An additional manifestation of *Indian Act* sex discrimination is that there are children of indigenous women who have recovered status as a result of amendments to the 1985 *Indian Act*, who still have not been able to secure band membership.³⁰⁰ That remaining sex discrimination was not addressed by Bill C-3.

Also, in order for the children of an indigenous woman to be recognized as having full status, the administrative policy is that the identity of the father must be declared and the signatures of both parents must be presented, otherwise it will automatically be assumed that the father is non-Indian.³⁰¹ That remaining sex discrimination was not addressed by Bill C-3.

295 *Ibid* at iii.

296 *Ibid*.

297 *Ibid*.

298 *Ibid*.

299 *Ibid*.

300 *Ibid* at 35, para 97.

301 Native Women’s Association of Canada, *Aboriginal Women and Unstated Paternity An Issue Paper Prepared for the National Aboriginal Women’s Summit, 20-22 June 2007* (Ottawa: NWAC, 2007), at 1, online: <<http://www.lynngehl.com/uploads/5/0/0/4/5004954/nwac-paternity.pdf>> (also see Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, The situation of indigenous peoples in Canada*, UN Doc A/HRC/27/52/Add.2, 7 May 2014, at para 55, online: <<http://unsr.jamesanaya.org/docs/countries/2014-report-canada-a-hrc-27-52-add-2-en.pdf>> [Human Rights Council, *Report of the Special Rapporteur*]; and Aboriginal Affairs and Northern Development Canada, “Unstated Paternity on Birth Certificate: Quick Facts on documentation required,” 12 April 2012, online: AANDC <<http://www.aadnc->

A recent decision of the Inter-American Commission on Human Rights: *Missing and Murdered Indigenous Women in British Columbia*, finds that:

- in addressing only particular subsets of indigenous women who face discrimination, the *Indian Act* as amended by Bill C-3 fails to fully address remaining concerns about gender equality;³⁰² and
- indigenous women face multiple challenges with respect to securing status for themselves and their children, and in some cases the presence of a second, intermediate status classification can rise to the level of cultural and spiritual violence against indigenous women, since it creates a perception that certain subsets of indigenous women are less purely indigenous than those with “full” status. This can have severe negative social and psychological effects on the women in question, even aside from the consequences for a woman’s descendants.³⁰³

In addition, the decision of the IACHR decision links *Indian Act* sex discrimination to the murders and disappearances of Indigenous women, finding:

- with regard to the causes of high levels of violence against Indigenous women, that historical *Indian Act* sex discrimination is a root cause of high levels of violence against indigenous women and the existing vulnerabilities that make indigenous women more susceptible to violence;³⁰⁴ and
- with regard to the State’s international obligations, that addressing violence against women is not sufficient unless the underlying factors of discrimination that originate and exacerbate the violence are also comprehensively addressed.³⁰⁵

Most recently, on March 6, 2015, the UN Committee on the Elimination of Discrimination Against Women issued a decision in an Article 8 Inquiry with regard to missing and murdered Aboriginal women in Canada: *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*.

This decision of the CEDAW echoes the analysis of the IACHR and recommends that:

Canada amend the *Indian Act* to eliminate discrimination against women with respect to the transmission of Indian status and in particular to ensure that Aboriginal women enjoy the same rights as men to transmit status to children and grandchildren, regardless of whether their Aboriginal ancestor is a woman, and remove administrative impediments to ensure effective registration as a Status Indian for Aboriginal women and their children, regardless

aandc.gc.ca/eng/1334234251919/1334234281533>).

302IACHR, *Missing and Murdered Indigenous Women in British Columbia* supra note 2 at para 68.

303Ibid at para 69.

304Ibid at paras 93, 129.

305Ibid at para 306.

whether or not the father has recognized the child.³⁰⁶

Recommendations

Canada should:

- Immediately ensure that s. 6(1)(a) of the status registration regime, introduced by the 1985 *Indian Act*, and re-enacted by the *Gender Equity in Indian Registration Act* (Bill C-3), is interpreted or amended so as to entitle to registration under s. 6(1)(a) those persons who were previously not entitled to be registered under s. 6(1)(a) solely as a result of the preferential treatment accorded to Indian men over Indian women born prior to April 17, 1985, and to patrilineal descendants over matrilineal descendants, born prior to April 17, 1985.
- Implement the CEDAW recommendation.
- Work with First Nation's women's organizations to eliminate any other sex discrimination in access to recognition of status under the *Indian Act*.

○ E. Discrimination against Women on the Ground of Religion (Articles 2 and 26)

In recent years, the religious freedom of Muslim women has become a significant issue in Canada. In particular, women who wear veils, headscarves, and other forms of religious dress are perceived as a threat to the 'Canadian values' of secularism and women's equality. While these discussions arguably indicate the increasing prevalence of Islamophobia in Canada,³⁰⁷ the secularism debate is disproportionately directed at the role of Muslim women in public space.

Political and judicial developments in recent years show a troubling trend towards further institutionalizing the alienation and marginalization of Muslim women. Three developments are illustrative: (1) the test developed in *R v N.S.* in 2012 to determine when a woman may wear a niqab when testifying in court, (2) the Québec Charter of Values proposed in 2013, and (3) the 2011 federal government ban on niqab-wearing women from citizenship ceremonies. In practice, these developments curtail key fundamental rights of Muslim women, including:

- The right to testify and/or bring forward claims in court, including those of sexual assault or domestic violence;
- The right to employment and/or economic independence;
- The right to access government services for themselves and their families; and
- The right to attain Canadian citizenship and exercise those rights.

³⁰⁶Committee on the Elimination of Discrimination against Women, *Article 8 Inquiry supra* note 4 at 51, para X(C)(v).

³⁰⁷Uzma Jamil, "Discrimination Experienced by Muslims in Ontario" (2013) 9:3 *Special Issue of Diversity Magazine* 64, online: <<http://www.ohrc.on.ca/en/creed-freedom-religion-and-human-rights-special-issue-diversity-magazine-volume-93-summer-2012/discrimination-experienced-muslims-ontario>>.

The government has defended these policy and judicial decisions by claiming that they are advocating for Muslim women on the basis of secularism and gender equality.³⁰⁸ However, these policies ultimately create a significant distinction on the basis of religion that undermines the political, social, and economic agency of Muslim women contrary to the ICCPR.

R v N.S.

On December 20, 2012, the Supreme Court of Canada (SCC) released its decision in *R v. N.S.*, regarding whether a witness could wear a niqab when testifying during a criminal proceeding.³⁰⁹ *N.S.* concerned a Muslim woman complainant in a sexual assault trial of her uncle and cousin. The Court considered whether wearing the face-covering niqab during the proceeding would compromise the right of the defendants to a fair trial since the judge and jury could not assess the complainant's credibility by looking at her face.

As an intervener in that case, the Women's Legal Education and Action Fund (LEAF) argued that "whatever one's personal views are on the niqab, effectively disenfranchising sexual assault complainants who wear the niqab from the criminal justice system is inconsistent with promoting their substantive equality and respecting and protecting their s.7 *Charter* rights to life, liberty and security of the person."³¹⁰ Ultimately, however, the SCC developed a four-part test to balance the religious rights of the niqab-wearer and the right of the defendant to a fair trial.³¹¹

While the majority of the Court acknowledged that it would be problematic to never permit women to wear niqabs during legal proceedings, the balancing test may require Muslim women to choose between their religion and testifying in court in some circumstances. In contrast, Muslim men (or other religious groups) would not face the same level of scrutiny in the court system as Muslim women. The dissenting judge noted that such a "choice" was not a choice at all, with the result that niqab-wearing women could be dissuaded from testifying in court, or from bringing forward these types of legal claims entirely. The implications are extremely problematic for women's equality, and could have the effect of increasing the risk of gender-based discrimination and violence against Muslim women.

The Proposed Québec Charter of Values (Bill 60)

In 2013, Québec proposed Bill 60 as a "Charter affirming the values of State secularism and religious neutrality and the equality between women and men, and providing a framework for

308Gloria Galloway & Jane Taber, "Tories, Liberals back Quebec's veil ban" *The Globe and Mail* (26 March 2010), online: <<http://www.theglobeandmail.com/news/politics/tories-liberals-back-quebecs-veil-ban/article4190090/>>.

309*R v N.S.*, 2012 SCC 72, [2012] 3 SCR 726 [*R v NS*].

310Women's Legal and Education Action Fund, "N.S. v R (SCC) (Judgment December 20, 2012)" (20 December 2012), *Women's Legal and Education Action Fund*, online: <<http://www.leaf.ca/r-v-n-s-scc/>>.

311The four-part balancing test assesses the following: (1) would removing the niqab interfere with the wearer's religious beliefs; (2) would wearing the niqab while testifying threaten trial fairness; (3) is there a way to accommodate both rights (*R v NS supra* note 284 at 9); (4) if there is no accommodation to be made, does the positive effect of the wearer removing the niqab outweigh the negative effects of doing so.

accommodation requests.”³¹² The proposal contained key provisions to: (1) amend the Québec Charter of Human Rights and Freedoms by entrenching state neutrality and secularism for public institutions; (2) establish a duty of neutrality for all state personnel; (3) limit the wearing of conspicuous religious symbols; (4) make it mandatory to have one’s face uncovered when providing or receiving a state service; (5) establish an implementation policy for state organizations.³¹³

Among these provisions, some of the more troubling included banning public sector employees from wearing “ostentatious” religious symbols while on the job, and requiring that those receiving or providing government services uncover their faces. These provisions would have disproportionately impacted Muslim women who wear religious clothing, with the potential effect of forcing them to choose between their religion and their jobs, or excluding them from receiving public services.³¹⁴

Despite the fact that the Bill was proposed as a way to achieve gender equality, these provisions would have the effect of further alienating and marginalizing Muslim women vis-à-vis the state. Moreover, the women’s rights coalition L’R des Centres de Femmes du Québec noted that the Charter proposal led to “women’s centers in Québec witnessing an increase in intolerance, violence and racism, especially [for] Muslim women who wear the veil.”³¹⁵

Although the Bill was dropped in 2014 due to a change in Quebec’s government, a revised proposal is currently on the table.³¹⁶ More broadly, the Bill is indicative of the ongoing public policy discourse that prioritizes legislating on how women – particularly Muslim women – should dress and behave in public space.

Muslim Women and Citizenship (*Ishaq v Canada*)

The federal government’s 2011 Operational Bulletin 359 required face coverings to be removed when completing a citizenship oath.³¹⁷ While not explicitly directed at any particular group, this policy disproportionately affects Muslim women for obvious reasons. The policy was successfully challenged at the Federal Court in *Ishaq v Canada* on administrative law grounds, but the government has appealed the ruling and obtained a stay of the Federal Court’s order striking the ban.³¹⁸ Although reasonable accommodations can easily be made

312 Bill 60, *Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests*, 1st Sess, 40th Leg, Quebec, 2013.

313 Women’s Legal and Education Action Fund, “The Québec Charter of Values Detracts from the Fight for Women’s Equality” (18 October 2013), *Women’s Legal and Education Action Fund*, online: <<http://www.leaf.ca/the-quebec-charter-of-values-detracts-from-the-fight-for-womens-equality/>>.

314 *Ibid.*

315 L’R des Centres de Femmes du Québec, “Intolerance, violence, and racism on the rise following the Charter of Values”, *L’R des Centres de Femmes du Québec* (2 October 2013), online <<http://www.rcentres.qc.ca/public/2013/10/intolerance-violence-et-racisme-en-augmentation-suite-a-la-charte-des-valeurs.html>>.

316 Philip Authier, “Québec Values Charter 2.0: Ban against crosses, hijabs, would only apply to new public employees”, *The National Post* (16 January 2015), online: <<http://news.nationalpost.com/news/canada/quebec-values-charter-2-0-ban-against-crosses-hijabs-would-only-apply-to-new-public-employees>>.

317 *Ishaq v Canada (Citizenship and Immigration)*, 2015 FC 156.

318 *Ibid.*

to allow women to take the citizenship oath and still have their face seen (for instance, niqab-wearing women could swear the oath privately in front of female officers), the government is adamantly pursuing this policy. It is difficult to comprehend how a policy that prevents women from pursuing or attaining citizenship will assist in promoting women's equality.³¹⁹

Recommendation

Canada should:

- **Ensure that there are no legal prohibitions against women wearing religious articles of clothing whether they are in public or in private, and in particular women should be permitted to wear religious articles of clothing when testifying in court, and during citizenship ceremonies.**

• IV. Right to an Effective Remedy (Article 2)

Legal Aid

In its 2006 report, the Human Rights Committee noted a lack of legal aid for access to courts across Canada.³²⁰ The chronic lack of access to justice in Canada has not been ameliorated in the last decade. Chief Justice Beverley McLachlin of the Supreme Court of Canada has stated her belief that “lack of access to civil justice represents the most significant challenge to our justice system”.³²¹ Indeed, the Canadian Bar Association (CBA) considers the situation to be a “crisis”, noting that: “Unfortunately, government funding for criminal legal aid services has been frozen for 10 years, civil legal aid services are almost non-existent in some provinces, and, from all reports, access to justice in Canada is declining.”³²²

The CBA asserts that the lack of access to legal aid disproportionately affects women, people with disabilities, recent immigrants, members of racialized communities and Aboriginal peoples.³²³ In Ontario, women comprise 62% of Ontarians who earn less than \$20,000 per year, and persons with disabilities comprise 42% of that same group – a strikingly higher representation than in the overall group. Women were among the groups more likely to identify experiencing a civil legal problem in the last three years – and, in particular, they were among the groups more likely to identify a need for family law assistance.³²⁴

319A 2007 Bill which would have required that voters' faces be visible in order to cast their ballot was dropped when the minority government failed to obtain enough support to pass it in Parliament: “Government drops plan to ban veiled voting”, *CBC News* (26 June 2009), online: <<http://www.cbc.ca/news/canada/government-drops-plans-to-ban-veiled-voting-1.787964>>.

320Human Rights Committee, *2006 Concluding observations supra* note 43 at para 11.

321Beverley McLachlin, “Foreword” in M. Trebilcock, A. Duggan & L. Sossin, eds. *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012).

322Canadian Bar Association, “Legal Aid in Canada”, *Canadian Bar Association* (2015), online: <<http://www.cba.org/CBA/Advocacy/legalaid/default.aspx>>.

323*Ibid.*

324The Ontario Civil Legal Needs Project Steering Committee, *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project*, prepared by Lorne Sossin (Toronto: Ontario Civil Legal Needs Project Steering Committee, May 2010) at 12, online: LSUC <http://www.lsuc.on.ca/media/may3110_oclreport_final.pdf>.

Access to legal aid is critical for the poorest women, particularly in family law matters. In the 1999 landmark case *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, the Supreme Court of Canada recognized the right to publicly-funded counsel in civil law cases.³²⁵

In *G.(J.)*, the province's community services were asking the court to extend a temporary Crown wardship order which had removed a mother's three children from their home. The mother was a recipient of social assistance but, in spite of being at the lowest income level, was not eligible for legal aid because the province's legal aid plan only covered cases involving the permanent – not the temporary - removal of a child from a parent's care.³²⁶

The Court was unanimous in finding that the trial judge should have ordered the province to provide the mother with publicly-funded counsel. The majority judgment found that the mother's and children's section 7 rights to security of the person were in jeopardy

Although there is no automatic entitlement to publicly-funded counsel as a result of *G.(J.)*, even in child protection cases, the case does set an important precedent, opening the door to a right to counsel in civil matters³²⁷ and a government obligation to provide it. Unfortunately, the case has not resulted in a policy change to ensure provision of right to counsel in civil matters. On the contrary, access to civil legal aid has shrunk further since the case was decided.

Legal aid in Canada has never fully recovered from the cuts that occurred in the 1990s. Levels of expenditure and service are much lower in per capita terms than they were in the mid 1990s. Between 1995 and 2012, there was a 21.2% drop in the level of per capita direct service expenditure on civil legal aid.³²⁸

Similarly, between 1993 and 2012, the rate of approved applications for civil legal aid fell by 65.7%.³²⁹

Because of the constraints on women's access to effective legal remedies, it is not surprising that access to legal aid was a key issue when the CEDAW Committee considered Canada's report in 2008,³³⁰ and when it considered the communication of Cecilia Kell.³³¹

Ms. Kell, an Aboriginal woman and victim of domestic violence, lost her home, and did not receive adequate legal aid to secure an effective remedy. When Ms. Kell fled to a battered

³²⁵Vicki Schmolka, *The Right to Publicly-Funded Legal Representation in Canada: Making the Case* (Ottawa: CBA, February 2002) at 7E-8E, online: CBA <https://www.cba.org/cba/pdf/2002-02-15_case.pdf>.

³²⁶*Ibid.*

³²⁷*Ibid.*

³²⁸Ab Currie, "The State of Civil Legal Aid in Canada: By the Numbers in 2011-2012", *Canadian Forum on Civil Justice* (A2J Blog), 13 May 2013, online: CFCJ <<http://www.cfcj-fcjc.org/a2jblog>>.

³²⁹*Ibid.*

³³⁰CEDAW Committee, *2008 Concluding Observations supra* note 187 at paras 21-2.

³³¹Committee on the Elimination of Discrimination against Women, *Communication No 19/2008 Views adopted by the Committee at its fifty-first session, 13 February to 2 March 2012, Kell v Canada*, UN Doc CEDAW/C/51/D/19/2008, 27 April 2012, online: OHCHR <<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/JurisprudenceSession51.aspx>>.

women's shelter, her partner, who was a sitting Board member of the local housing association, persuaded the NT Housing Corporation to remove her name from homeownership documents without her knowledge or consent. This rendered Ms. Kell and her three children homeless. The Northwest Territories legal system did not provide Ms. Kell with an appropriate remedy, and in particular, legal aid was not adequate.

The CEDAW Committee observed that Kell was forced to change lawyers numerous times due to the pressures to settle for monetary compensation instead of restitution of the property; and that Kell suffered severe prejudice in relation to both her domestic violence complaint and her property-related lawsuits, by the actions of legal aid lawyers assigned to her case. The CEDAW Committee ruled in Ms Kell's favour, finding that her rights under articles 1, 2 (d) and (e), and 16 of CEDAW were violated.³³²

Cecilia Kell's case exemplifies the experience of many Aboriginal women in Canada today, who face spousal violence, lose their housing as a result, and then cannot obtain adequate legal aid to obtain an effective remedy. To date, Canada has not provided the remedies to Ms. Kell that were recommended by the Committee.

Access to *Charter* Rights – Court Challenges Program

The 2006 defunding of the Court Challenges Program (CCP) dealt a severe blow to the ability of women and minorities to challenge violations of their constitutional rights in Canadian courts. The CCP provided limited funds for test cases of national importance that sought to ensure government compliance with constitutional equality and language rights guarantees.³³³ Close to 400 cases had already been approved and were at various stages of the court system when the Government of Canada cancelled the program.³³⁴ Without the modest assistance available through the CCP, the ability of women to claim their equality rights has been severely curtailed. The *Charter's* equality guarantees are now, in essence, notional rights for women, since only women with substantial private means can exercise them.

The importance of the CCP to women's enjoyment of the right to equality was recognized by the CEDAW Committee in 2008,³³⁵ and its importance to Aboriginal peoples and African-Canadians was recognized by the UN Committee for the Elimination of Racial Discrimination (CERD Committee) in 2012.³³⁶

³³²*Ibid* at para 11.

³³³Voices-Voix, "The Court Challenges Program What Happened", *voices-voix*, online: <<http://voices-voix.ca/en/facts/profile/court-challenges-program>> (the cancellation of the CCP was also accompanied by the dismantling of the Law Commission of Canada: Canadian Bar Association, News Release, "CBA Decries Cuts to Court Challenges Program and Law Commission of Canada" (26 Sept 2006), online: <http://www.cba.org/cba/news/2006_Releases/2006-09-26_cuts.aspx>).

³³⁴Steve Rennie, "Scrapped court challenges program still 5-7 years from winding down, A small number of cases are still working their way through the court: document", *CBC News* (4 March 2015), online: <<http://www.cbc.ca/news/politics/scrapped-court-challenges-program-still-5-7-years-from-winding-down-1.2981837>>.

³³⁵CEDAW Committee, *2008 Concluding Observations supra* note 187 at paras 21-2.

³³⁶Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article of the Convention, Concluding observations of the CERD Committee Canada*, UN Doc CERD/C/CAN/CO/19-20, 9 March 2012, at para 21, online: OHCHR <www.ohchr.org>.

Access to Effective Remedies for Violations of Social and Economic Rights

Statutory human rights laws in Canada do not empower human rights institutions with the broad mandate that is expected by the Paris Principles. In particular, neither statutory human rights law nor the *Charter* has provided women in Canada with effective legal remedies for violations of social and economic rights—which are crucial rights for women, affecting their enjoyment of civil and political rights.

Women and Minority Judges

Even if disadvantaged litigants, like Cecilia Kell, manage to make it into the courtroom, they are unlikely to be heard by a judge who shares their social or cultural background. Despite a steady number of appointments to courts and tribunals across Canada each year, unfortunately, since 2006 these appointments have not been representative of the population in either gender, ethnicity or other important factors.³³⁷

Since 2012, the Government of Canada has appointed 46 judges to the Ontario Superior Court of Justice and Court of Appeal. Just over three quarters (78%) of the appointments have been men (36/46). Only one judge appears to be a person from a racial minority, although an exact number cannot be discerned because of the government's refusal to collect this necessary information. Things are not much better in the other provinces, or in the elevation of judges from the provincial to federal courts.³³⁸

Globally, Canada was rated 32 out of 100 in a scorecard published by Global Integrity, a human rights watchdog group. On whether “there is a transparent procedure for selecting national-level judges”, Canada received the flat response “no”. Canada's rating on whether “judges are appointed fairly” received a shocking 17, especially when compared to scores such as 25 for Angola and 83 for Bangladesh.³³⁹ The Global Integrity scorecard illustrated a reality Canadians are taught to ignore: a political system in which senior judges are appointed solely by the Prime Minister, with no effort exerted to make the appointment process transparent or accountable.³⁴⁰ Despite repeated calls by organizations such as the

337See Krystle Gill & Alycia Shaw, “Representing Canada on the bench: On gender balance, equality and judicial appointments”, *The Common Room – CBA Women Lawyers Forum Newsletter* (March 2013), online: <http://www.cba.org/CBA/conf_women/Women_Newsletters2013/bench.aspx>; Kirk Makin, “Appointments of female judges slump under Harper's Tories”, *The Globe and Mail* (11 November 2011), online: <<http://www.theglobeandmail.com/news/politics/appointments-of-female-judges-slump-under-harpers-tories/article4183464/>>.

338David Tanovich, “White, male lawyers should say ‘no’ to judicial appointments”, *The Globe and Mail* (18 February 2015), online: <<http://www.theglobeandmail.com/globe-debate/white-male-lawyers-should-say-no-to-judicial-appointments/article23044838/>> [Tanovich, “White, male lawyers”].

339Global Integrity, “The Global Integrity Report, Scorecard: Canada 2010”, *Global Integrity*, online: <<https://www.globalintegrity.org/global/the-global-integrity-report-2010/canada/>> (see Category III Government Conflicts of Interest Safeguards & Checks and Balances, Category III-3 Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch).

340J. J. McCullough, “Canada Is Corrupt When It Comes to Choosing Judges”, *The Huffington Post* (blog), (5 May 2014), online: <http://www.huffingtonpost.ca/jj-mccullough/canada-judicial-appointments_b_5264567.html>.

Canadian Bar Association, Indigenous Bar Association, Canadian Association of Black Lawyers, South Asian Bar Association and the Federation of Asian Canadian Lawyers, academics and lawyers for more representativeness in appointments, and thoughtful recommendations to accomplish that end, the Government of Canada refuses to act.³⁴¹

Recommendations

The Government of Canada should:

- **Make new agreements with the provinces and territories to fund civil legal aid at a level that is adequate to provide access to justice for women, and in particular marginalized women, such as women experiencing domestic violence, Aboriginal women and women with disabilities.**
 - **Re-fund the Court Challenges Program.**
 - **Devise new appointments systems that will ensure that judges and adjudicators are representative of the population in gender, ethnicity, indigeneity, and race, as well as other key characteristics.**
-
- **V. Freedom of Expression and Right of Peaceful Assembly (Articles 19 and 21)**

Since 2006, a coalition of civil society organizations called Voices-Voix has documented the attacks on non-governmental organizations, watchdogs, scientists and individual activists. Voices states:

in recent years, the voices of numerous civil society organizations that have acted in the public interest, and contributed to the diversity of Canadian perspectives, have not been respected. Instead, they have been ordered or pressured into silence, sabotaged by dubious political appointments, defunded, gutted, or effectively transformed into tools for the government's partisan agenda.³⁴²

These attacks have had a profound effect on the ability of women's organizations, and individual women, to participate in political life.

Cuts and Changes to Funding for Women's Organizations

Status of Women Canada

In 2006, the Government of Canada made dramatic cuts and changes to Status of Women Canada (SWC). SWC is the federal Department responsible for encouraging and overseeing the internal development of programs and policies that enhance the status of women, and for providing funding to non-governmental women's organizations. Prior to 2006, SWC was an important source of funds for research and advocacy to ensure women's participation in

³⁴¹Tanovich, "White, male lawyers" *supra* note 338.

³⁴²See Voices-voix, "Silencing Civil Society", *voices-voix*, online: <<http://voices-voix.ca/en/facts/attacks-on-organizations>> (Voices' Documentation Project documents the many attacks on individual activists, NGOs, scientists, watchdogs, and Parliamentary procedures since 2006).

policy development. Canada does not have large private foundations that support the work of civil society organizations, as the United States does. In their absence, public funding – always in modest amounts – has been crucial to supporting women’s participation in public life through their organizations.

The change to the mandate and funding guidelines of SWC is part of a broader change in governmental attitude towards civil society organizations – a change from viewing them as enhancers of democracy and worthy of public support to viewing them as obstructive to the agenda of the Government of Canada.³⁴³

In 2006, the federal government closed 12 of 16 SWC offices across the country and drastically changed the mandate and operation of SWC, refusing to fund women’s groups engaged in advocacy, lobbying or general research.³⁴⁴ Women’s non-governmental organizations can receive public funding if they are involved in providing services or training. The change in mandate and funding guidelines has dramatically altered the political environment for women.

As Voix/Voices has documented, many key women’s organizations have been denied funding. As a result some have closed their doors; others have been left scrambling. Organizations critically harmed by the change to SWC funding guidelines include the National Association of Women and the Law, the Canadian Research Institute for the Advancement of Women, the Canadian Feminist Alliance for International Action, the Childcare Advocacy Association of Canada, Match International, the New Brunswick Coalition for Pay Equity, the South Asian Women’s Centre, the UN Platform for Action Committee, and the Women’s Legal Education and Action Fund (LEAF). Most recently, the Government of Canada has cut funding for the Quebec Native Women’s Association.³⁴⁵

Women’s organizations that do not have charitable status are unable to receive money from foundations or provide charitable tax receipts—an incentive for many private individual donors. Now, if they do not have charitable tax status, women’s organizations that are focused on advocacy and research have extremely limited funding opportunities.

Women’s Health Contribution Program

In 2012, nearly \$3 million in cuts to the Women’s Health Contribution Program affected six women’s health agencies,³⁴⁶ which gathered and promoted essential research on women’s

343Environmental activists, for example, have been categorized as “terrorists” under security legislation (see Shawn McCarthy, “Ottawa’s new anti-terrorism strategy lists eco-extremists as threats”, *The Globe and Mail* (10 February 2012), online: <<http://www.theglobeandmail.com/news/politics/ottawas-new-anti-terrorism-strategy-lists-eco-extremists-as-threats/article533522/>>).

344“Tories shutting Status of Women offices”, CBC News (29 November 2006), online: <<http://www.cbc.ca/news/canada/tories-shutting-status-of-women-offices-1.590706>>; “Tories to cut off funding for women’s lobby groups” *CBC News* (4 October 2006), online: <<http://www.cbc.ca/news/canada/tories-to-cut-off-funding-for-women-s-lobby-groups-1.594392>>.

345“Quebec Native Women’s Association faces closure after \$175k in cuts”, *CBC News* (15 May 2015), online: <<http://www.cbc.ca/news/canada/montreal/quebec-native-women-association-faces-closure-after-175k-in-cuts-1.3075467>>.

346Mary Agnes Welch, “Doors Close at Health Network,” *Winnipeg Free Press* (22 November 2014), online: <<http://www.winnipegfreepress.com/local/doors-close-at-health-network-283574091.html>>.

unique health needs. The cuts removed funding from the Canadian Women's Health Network, the National Network on Environments and Women's Health, the Réseau québécois d'action pour la santé des femmes, the Atlantic Centre of Excellence for Women's Health, the Prairie Women's Health Centre of Excellence, and the British Columbia Centre of Excellence for Women's Health. Some of the programs have closed their doors, while others are struggling to survive.³⁴⁷

Anti-Poverty Organizations

Between 2006 and 2012, the federal government cut funding for anti-poverty organizations such as Canada Without Poverty³⁴⁸ and the National Council of Welfare.³⁴⁹ Anti-poverty advocates are essential to women's well being, as women are the poorest of the poor in Canada.³⁵⁰

Social justice and human rights organizations have also recently been targeted by the Canada Revenue Agency (CRA), on the grounds that they are involved in political rather than charitable activities. This means that women's organizations that are still operating and have charitable tax status, now fear losing it. For example, the CRA is auditing Canada Without Poverty, Canada's leading anti-poverty organization, and the CRA has issued an opinion that ameliorating poverty is a charitable purpose, but preventing poverty is not.³⁵¹

Attacks on Knowledge and Information

During the same period there have been attacks on knowledge and information. For example, the Government of Canada cancelled the long form census.³⁵² This has been a key instrument for Canadians to gather information about ourselves, every five years, and to have a stable, consistent stream of information. For women it has been essential to understanding the status of women in Canadian society and shifts in women's income, family life, and labour force participation, which are relevant to social policy development.

Among other vital information, through the long-form census Canada collected ground-breaking information on unpaid caregiving. This information has been essential to understanding the tensions between women's family and work lives. With the cancellation of the long form census, this information is no longer collected, and a dimension of women's

347Voices-voix, "National Health Network on Environments and Women's Health What Happened", *voices-voix*, online: <<http://voices-voix.ca/en/facts/profile/national-network-environments-and-womens-health>>.

348Voices-voix, "Canada Without Poverty What Happened," *voices-voix*, online: <<http://voices-voix.ca/en/facts/profile/canada-without-poverty>>.

349Laurie Monsebraaten, "Federal budget 2012: Ottawa axes National Council on Welfare," *The Toronto Star* (30 March 2012), online: <http://www.thestar.com/news/canada/2012/03/30/federal_budget_2012_ottawa_axes_national_council_on_welfare.html>.

350Townson, "Canadian women on their own" *supra* note 36.

351"Preventing poverty' not a valid goal for tax purposes, CRA tells Oxfam Canada", *CBC News* (25 July 2014), online: <<http://www.cbc.ca/news/politics/preventing-poverty-not-a-valid-goal-for-tax-purposes-cra-tells-oxfam-canada-1.2717774>>.

352Voices-voix, "Statistics Canada (mandatory long form census)", *voices-voix*, online at: <<http://voices-voix.ca/en/facts/profile/statistics-canada-mandatory-long-form-census>>.

work has become obscured.³⁵³

Women are similarly affected by the loss of the National Council on Welfare (NCW), which for years, collected and published information on social assistance rates across the country. NCW was a vital institution for monitoring benefits available to the poorest women and men.³⁵⁴

The many attacks by the Government of Canada on non-governmental organizations, activists, scientists, and watchdogs, which have been documented by Voices, has put a chill on free speech and on women's political participation.

Repeal of Section 13 of the *Canadian Human Rights Act* – Hate Speech

FAFIA notes with dismay that in 2014 Canada repealed section 13 of the *Canadian Human Rights Act* (CHRA).³⁵⁵ The purpose and effect of section 13 of the CHRA was to protect the equality rights of those affected by hate speech and ensure their freedom of expression and full participation in Canadian society. The targets of hate speech are often the most vulnerable and marginalized groups in society. The prohibition of extreme hate speech under the CHRA was an important component of human rights protections in Canada and was consistent with various sections of the *Canadian Charter of Rights and Freedoms*, including sections 2(b), 7, 15, 25, 27 and 28, as well as Canada's obligations under international law.³⁵⁶

Ironically, the repeal of section 13 has been undertaken in the name of freedom of expression. The Conservative government supported a private member's bill introduced by Conservative Member of Parliament Bill Storseth. The Canadian Human Rights Reporter, assessing the government's claim that section 13 must be repealed because it was an attack on freedom of speech, noted that "while white supremacists are winning a new freedom to speak in Canada, those who believe in human rights, knowledge, and accountability are losing theirs."³⁵⁷

The Right to Peaceful Assembly and Violence against Female Protestors

In its 2006 report, the Human Rights Committee noted that Canada should ensure the rights

353"Voluntary census deletes questions about unpaid work", *The Globe and Mail* (28 July 2010), online: <<http://www.theglobeandmail.com/news/politics/voluntary-census-deletes-questions-about-unpaid-work/article1389740/>>.

354Voices-voix, "National Council of Welfare" *voices-voix*, online: <<http://voices-voix.ca/en/facts/profile/national-council-welfare>>.

355See Canadian Human Rights Reporter (CHRR), "Freedom of Expression Harper-Style", *CHRR* (31 October 2013), online: <<http://cdn-hr-reporter.ca/content/freedom-expression-harper-style>> and CHRR, "Freedom of Expression Harper-Style Continued", *CHRR* (31 October 2013), online: <<http://cdn-hr-reporter.ca/content/freedom-expression-harper-style-continued>> [CHRR, "Freedom of Expression Continued"].

356See Women's Legal Education and Action Fund (LEAF), "Women's Legal Education and Action Fund (LEAF) Submission to the Standing Senate Committee on Human Rights Respecting the Committee's Review of Bill C-304", *LEAF* (25 June 2013), online: <<http://www.leaf.ca/wp-content/uploads/2013/06/2013-06-25-LEAF-Submission-to-the-Standing-Senate-Committee-on-Human-Rights-EN.pdf>>.

357CHRR, "Freedom of Expression Continued" supra note 355.

of persons to peacefully participate in social protests and only arrest those committing criminal offences.

However, in recent protests in Toronto and Montreal peaceful, legal protestors and bystanders were rounded up in mass arrests. The police used excessive and sexualized violence against female, lesbian and gender non-conforming protestors. Even those participating in protests in legally sanctioned areas were detained and later released with no charges.

- During the 2010 protests against the G20 meetings in Toronto women reported being strip searched by male officers, sexually assaulted, and subjected to misogynistic and homophobic treatment by the police.³⁵⁸ Many protestors and observers were detained in over-crowded cages where they were insulted by police officers and filmed while officers strip-searched them.³⁵⁹ A class action has been filed against the Toronto and Peel Police services, the RCMP and the Ontario Provincial Police.³⁶⁰
- In 2015, Naomi Tremblay-Trudeau, an 18-year-old student, was shot in the face with tear-gas canister during anti-austerity protests in front of the National Assembly in Quebec.³⁶¹

More recently, the federal government introduced legislation that has the potential to restrict peaceful assembly and freedom of expression. Bill C-51 the *Anti-Terrorism Act, 2015*, amends the *Criminal Code*, the *Canadian Security Intelligence Service Act*, the *Immigration and Refugee Protection Act*, and several other pieces of legislation. Ostensibly to prevent acts of terrorism against Canada from external threats, many experts and human rights organizations anticipate increased surveillance of Aboriginal, environmental and women's rights activists within Canada, and the criminalizing of lawful conduct.³⁶²

Recommendations

Canada should:

- **Reinstate the long form census.**
- **Reinstate the National Council on Welfare.**
- **Re-enact section 13 of the *Canadian Human Rights Act*.**

358 Tamara Cherry, "Claims of abuse by G20 cops", *Toronto Sun* (22 July 2010), online:

<<http://www.torontosun.com/news/torontoandgta/2010/07/22/14795671.htm>> [Cherry, "Claims of abuse"].

359 Rachel Browne, "New footage from Toronto G20 detention centre released", *Maclean's* (24 July 2014), online:

<<http://www.macleans.ca/news/canada/new-toronto-g20-footage-from-inside-detention-centre-released/>>.

360 "G20 class-action suits against police get go ahead", *The Toronto Sun* (7 August 2014), online:

<<http://www.torontosun.com/2014/08/07/g20-class-action-suits-against-police-get-go-ahead>>.

361 Amanda Kelly, "Police Confront Austerity Protestors in Quebec City", *Global News* (27 March 2015), online:

<<http://globalnews.ca/news/1908357/gallery-police-confront-austerity-protesters-in-quebec-city/>>.

362 Voices-voix, "Bill C-51: Anti-Terrorism Act, 2015", *voices-voix*, online: <<http://voices-voix.ca/en/facts/profile/bill-c-51-anti-terrorism-act-2015>> (in addition to the many links to expressions of concern raised by academics, civil society, and other Canadians itemized by voices-voix, see the submission to the Parliamentary committee reviewing the Bill by the National Chief of the Assembly of First Nations outlining significant concerns about Bill C-51: Assembly of First Nations, "Presentation to the Standing Committee on Public Safety and National Security – Bill C-51" (Presentation delivered at the House of Commons Standing Committee on Public Safety and National Security, Parliament, Ottawa, 12 March 2015), online: AFN <<http://www.afn.ca/index.php/en/national-chief/highlights-from-the-national-chief/presentation-to-the-standing-committee-on-public-safety-and-national-s>>).

- Remove the *Anti-Terrorism Act, 2015* from the legislative agenda for the Parliament of Canada.
- Establish a national mechanism for investigations into allegations of misconduct and discrimination within the criminal justice system and police forces in federal, provincial or territorial jurisdiction that can undertake audits of agencies and institutions and hold accountable those entities that commit acts of misconduct or discrimination.

• VI. Violence against Women (Articles 2, 3, 6, 7 and 26)

General Statistics and Trends

While Statistics Canada data is a valuable tool for measuring some trends in gendered violence, there are a few contextual elements worth noting. Nation-wide statistics give us generalities; however provincial and regional differences are important in a country as geographically large and diverse as Canada. In some cases significant regional differences indicate egregious deficiencies in human rights protections for Canadian women living in those areas, or for particular groups of marginalised women. Secondly, Statistics Canada collects both police and self-reported incidents of violence against women, and there are important differences in those numbers; self-reported numbers are higher. This is due, in part, to stigma, shame and fear associated with reporting male violence to the police.³⁶³

In 2013, Statistics Canada released a comprehensive summary about violence against women in Canada, including data up until 2011. Below are some highlights of this report, alongside more specific or regional data from other sources.

- National rates of spousal femicide have remained unchanged over the last decade.³⁶⁴
- In British Columbia, in 2014, spousal femicide rates hit a five year high, with 14 women murdered by male intimate partners in a single year.³⁶⁵

Spousal femicide represents the most serious form of violence on the spectrum of gendered violence, and often represents an escalation from other, less life-threatening forms of violence. Women’s anti-violence groups have long called for better coordination between service providers and police as the best way to prevent femicide.³⁶⁶ These numbers indicate that coordination strategies are failing women survivors of violence, interventions have failed to reduce the number of women being killed by male intimates, and in some areas of the country these rates are going up.

- There has been no significant change in the rate of women’s self-reported violent

363 Brennan, S., “Self-reported Spousal violence, 2009” in *Family Violence in Canada: A Statistical Profile*, at 8 – 19, (Ottawa ON: Minister of Industry, 2011), online: <<http://www.statcan.gc.ca/pub/85-224-x/85-224-x2010000-eng.pdf>>. [Statistics Canada, *Family Violence in Canada*].

364 Statistics Canada, *Measuring violence against women supra* note 269.

365 Cheryl Chan, “14 Dead: 2014’s grim toll for domestic violence as spousal homicides hit five year high”, *The Province* (19 December 2014), online: <<http://endingviolence.org/wp-content/uploads/2015/01/10-14-dead-2014s-grim-toll-for-domestic-violence-as-spousal-homicides-hit-five-year-high-The-Province-Dec-19-2014.pdf>>.

366 Ending Violence, “Safety Planning across Culture and Community: A guide for Front-Line Violence against Women Responders” (Vancouver: Ending Violence, 2014) at 16.

victimisation between 1999 and 2009.³⁶⁷

- Male intimate partners are the most commonly reported perpetrators of violence against women reported to the police.³⁶⁸
- Rates of intimate partner violence, sexual offences, and other violent crimes, against women are higher in the territories than the provinces.³⁶⁹
- Some groups of women – indigenous women³⁷⁰ and women with disabilities - experience higher rates of violence than other women. Women with disabilities are twice as likely as non-disabled women to experience intimate partner violence, and twice as likely to experience severe forms of violence.³⁷¹

Measures taken by police and governments since 1999 have not reduced rates of violence against women. Despite consistently troubling rates of violence against women, federal, provincial and territorial governments have made cuts to support services, anti-violence resources for police, and women's shelters.³⁷²

According to police-reported trend data, the rate of sexual assaults against women increased from 2009 to 2010 and remained unchanged in 2011.³⁷³

However, data on self-reported sexual assault show a different trend: across Canada, sexual assaults within intimate relationships increased by 13% between 2009 and 2011.³⁷⁴ It is conservatively estimated that only 10% of women who have been sexually assaulted report to police.³⁷⁵ Since 1993 there has been a decrease in reporting spousal violence against women to police.³⁷⁶ In 2011 less than one-third (30%) of female victims indicated that the incident of spousal violence was reported to police;³⁷⁷ Non-spousal violence against women is reported to police in only 28% of cases.³⁷⁸

While the reasons for not reporting male violence to the police are many and complex, research shows that fear, shame and stigma play an important role.³⁷⁹ A recent study conducted in British Columbia also reveals that response times by police to domestic violence calls over the past 30 years have increased 1000%, from less than one hour to an

367Statistics Canada, *Measuring violence against women supra* note 269 at 2.

368*Ibid* at 8, 14.

369*Ibid* at 22, 30.

370See the Canadian Feminist Alliance for International Action's and Native Women's Association of Canada's report on Missing and Murdered Aboriginal Women and Girls, submitted to the Human Rights Committee on the occasion of Canada's sixth periodic review.

371Vecova Centre for Disability Services and Research, *Violence against Women with Disabilities: Violence Prevention Review*, 2011, at 6, online: <http://www.canadianwomen.org/sites/canadianwomen.org/files/PDF%20-%20VP%20Resources%20-%20Vecova_CWF_%20Women%20with%20Disabilities_%202011.pdf>.

372K. Rossiter, S. Yercich & M. Jackson, *Assessing the complexities of anti-violence service delivery in British Columbia*, 2014, at 5, online: <http://endingviolence.org/wp-content/uploads/2014/10/Complexities-of-AV-service-delivery-FREDA_lowres.pdf> [Rossiter, *Assessing the complexities of anti-violence service delivery in British Columbia*].

373Statistics Canada, *Measuring violence against women supra* note 269 at 8.

374Statistics Canada, *Family violence in Canada supra* note 363.

375*Ibid*.

376Statistics Canada, *Measuring violence against women supra* note 269 at 94-5.

377*Ibid* at 10.

378*Ibid*.

379Statistics Canada, *Family violence in Canada supra* note 363.

average of 10- 12 hours,³⁸⁰ making calling the police an ineffective route to safety.

Domestic Violence Legislation

Both the CEDAW Committee in its 2008 recommendations³⁸¹ and the Human Rights Committee in its list of issues for the sixth review of Canada's compliance,³⁸² asked for information regarding specialised domestic violence legislation.

With respect, women in Canada do not identify their problem as an absence of legislation. Women in Canada identify the problem as failures to enforce existing law, failures of police to respond to women appropriately, failures to prosecute and provide appropriate remedies and penalties, and failures to provide adequate social programs and services that will prevent and remedy the violence. Violence against women in intimate relationships is an on-going and serious problem. However, Canadian women do not seek specialised legislation. Instead, they seek efficient and prompt enforcement of existing criminal law, and adequate social and economic supports that will decrease their susceptibility to male partner violence and increase their ability to escape it.

National Action Plan against Gendered Violence

A national coalition of women's groups have outlined a national action plan against gendered violence that is well funded and coordinated, and that includes adequate means of addressing women's disadvantaged social and economic conditions.³⁸³ The Canadian Network of Women's Shelters and Transition Houses has drafted a blueprint outlining the kinds of legal and social steps required to end gendered violence in Canada. The blueprint highlights key issues and approaches which are outlined below. The blueprint does not call for new, specialized legislation.

On 27 May 2015, the Conservative majority in Parliament voted down M-444, a Private Member's Motion to establish a coordinated National Action Plan to Address Violence Against Women.³⁸⁴

380A. Malm, N. Pollard, P. Brantingham, P. Tinsley, D. Plecas, I. Cohen & B Kinney, *A 30 Year Analysis of Police Service Delivery and Costing* (Vancouver: School of Criminology and Criminal Justice University College of the Fraser Valley & Centre for Criminal Justice Research, 2005), online: <https://www.ufv.ca/media/assets/ccjr/ccjr-resources/ccjr-publications/30_Year_Analysis_%28English%29.pdf>.

381 Committee on the Elimination of Discrimination against Women, *2008 Concluding observations supra* note 187 at para. 30.

382 Human Rights Committee, *List of issues in relation to the sixth periodic report of Canada*, UN Doc CCPR/C/CAN/Q/6, 21 November 2014, at 12, online: OHCHR <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCAN%2fQ%2f6&Lang=en>.

383 Canadian Network of Women's Shelters and Transition Houses, *A Blueprint for Canada's National Action Plan on Violence Against Women* (2015), at 3, 9, online: <http://endvaw.ca/sites/endvaw.ca/files/blueprint_for_canadas_nap_on_vaw.pdf> [Canadian Network of Women's Shelters and Transition Houses, *A Blueprint*].

384 Parliament of Canada, "Niki Ashton – Private Members' Motions – Current Session (Filtered Results), *House of Commons* (2015), online: <<http://www.parl.gc.ca/Parliamentarians/en/members/Niki-Ashton%2836037%29/Motions?sessionId=151&documentId=6253304>>.

The 'Law and Order' Approach

Canada now relies heavily on a “tough on crime” approach,³⁸⁵ and the rhetoric of ‘law and order’, as its primary tool to combat violence against women. There have been major retreats from supporting other services that assist women when they experience violence. For instance in 2002-2003 in British Columbia all funding was cut to Sexual Assault and Women’s Centres in the province, leaving a massive community-level service delivery vacuum, and leaving the police as the only group with resources to respond to violence against women.³⁸⁶

The need for coordination between police, front-line anti-violence workers, the family courts and prosecutors has long been acknowledged as key to reducing violence against women.³⁸⁷ Numerous studies have documented the absence of a coordinated approach, and its negative consequences for women experiencing gendered violence and their children.³⁸⁸

Inadequately coordinated responses to violence against women result in a lack of adequate police and justice system response. Existing criminal laws are being under-enforced at every stage. Fewer men are being charged with crimes of gendered violence, in part because fewer women are reporting the violence to police.³⁸⁹ When the police are called, women’s advocates report having to pressure the police to press charges.³⁹⁰ Advocates report that police across jurisdictions use ‘dual charging’, that is, charging both the woman and the man, without distinguishing the primary aggressor, and they apply this policy inconsistently.³⁹¹

Even where police attend and charges are laid, conviction rates are incredibly low with fewer than 1% of all sexual assaults resulting in a conviction.³⁹² A 2005 study showed that while 92% of gendered violence cases in one British Columbia jurisdiction warranted conviction, only 34% of men were convicted.³⁹³ This is in part due to a lack of proper investigation by police who fail to photograph crime scenes, to interview third party witnesses, or to properly

385Canadian Network of Women’s Shelters and Transition Houses, *A Blueprint supra* note 383 at 3.

386Rossiter, *Assessing the complexities of anti-violence service delivery in British Columbia supra* note 372 at 32.

387Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing, *Spousal Abuse Policies and Legislation*, 2003, at 39, online: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/pol/spo_e-con_a.pdf>; and Canadian Network of Women’s Shelters and Transition Houses, *A Blueprint supra* note 383.

388See YWCA, “Life beyond Shelter: Towards Coordinated Public Policies for Women’s Safety and Violence Prevention” (YWCA, OTTAWA, October 2009), online: <http://www.oaith.ca/assets/files/Publications/Systemic%20Policy%20on%20VAW/LifeBeyondShelter_YWCA.pdf> [YWCA, “Life beyond Shelter”]; Rossiter, *Assessing the complexities of anti-violence service delivery in British Columbia supra* note 372; Louisa Russell, “What women need now from Police and Prosecutors: 35 years of working to Improve Police Response to Violence against Women” (2010) 28:1 *Canadian Women Studies* [Russell, “What women need now”]; Mary Ellen Turpel-Lafond, “Honouring Christian Lee: No Private Matter: Protecting Children Living with Domestic Violence” (Victoria, BC: British Columbia Representative for Children and Youth, 2009), at 2, online: <http://www.rcybc.ca/sites/default/files/documents/pdf/reports_publications/honouring_christian_lee.pdf>.

389Statistics Canada, *Measuring violence against women supra* note 269 at 10.

390Russell, “What women need now” *supra* note 388 at 28.

391YWCA, “Life beyond Shelter” *supra* note 388.

392Holly Johnson, “Limits of a criminal justice response: Trends in police and court processing of sexual assault” in E Sheehy, ed, *Sexual assault in Canada: Law, legal practice and women’s activism* (Ottawa: University of Ottawa Press, 2012) at 613.

393Russell, “What women need now” *supra* note 388 at 28.

document women's injuries, making it difficult to prosecute.³⁹⁴

Women attempting to leave abusive relationships require a lawyer's help to navigate separation or divorce, and custody and access. In the case of family law disputes, legal aid is woefully inadequate.³⁹⁵ For instance, in 2003 British Columbia cut legal aid by 50%.³⁹⁶ Legal aid lawyers who accept family law clients report being unable to provide adequate services for the minimal fees offered by legal aid programs.³⁹⁷ Family law cases are rendered much more complex by the presence of an abuser and potentially dangerous for women leaving an abusive relationship.³⁹⁸

For the past two decades rates of violence against women and girls in Canada have remained steady and unacceptably high.³⁹⁹ Canada is relying on the rhetoric of 'law and order' while failing to address inadequate police and prosecutorial response, and failing to provide adequate services and supports, including shelters, family law legal aid, housing, and adequate social assistance.

Vulnerabilities to Violence: Women's Social and Economic Conditions

Women's social and economic inequality makes them vulnerable to male violence.⁴⁰⁰ Women from all income groups experience violence in Canada,⁴⁰¹ but being poor, under or unemployed, racialized, or disabled makes it more difficult for women to leave an abusive situation,⁴⁰² or to protect their children from violence.⁴⁰³

Lack of Adequate Income Assistance

Alongside inadequate police and justice system response, a second key problem is inadequate social programs and services for women facing violence.⁴⁰⁴ Far from working to prevent vulnerability to violence and remediating its effects, social programs and services are often inadequate to protect women, and in fact have the effect of punishing women for being subjects of violence.

Simply put, inadequate welfare rates are massive barriers to women attempting to leave

394 *Ibid* at 31.

395 YWCA, "Life beyond Shelter" *supra* note 388 at 25.

396 Rossiter, *Assessing the complexities of anti-violence service delivery in British Columbia*, at 35.

397 YWCA, "Life beyond Shelter" *supra* note 388 at 25.

398 Pamela Cross "It shouldn't be this hard: A Gender-Based Analysis of Family Law, Family Court and Violence Against Women" (Oshawa, ON: Luke's Place Support and Resource Centre for Women and Children, 2012) at 15, online: <http://www.lukesplace.ca/pdf/It_Shouldnt_Be_This_Hard.pdf> [Cross, "It shouldn't be this hard"].

399 Statistics Canada, *Measuring violence against women* *supra* note 269 at 2.

400 Canadian Network of Women's Shelters and Transition Houses, *A Blueprint* *supra* note 383.

401 See *ibid*.

402 Step it Up Ontario, "4. End Poverty NOW," (2014), online: <<http://stepitupontario.ca/the-10-steps/step-4-end-poverty-now/>>.

403 Mary Ellen Turpel-Lafond, *Not Fully Invested: A Follow-Up Report on the Representative's Past Recommendations to Help Vulnerable Children in British Columbia* (Victoria: Representative for Children and Youth, 2014) at 25.

404 Janet Mosher, Margaret Little, Eileen Morrow, Jo-Anne Boulding & Nancy VanderPlaats, *Walking on Eggshells: Abused women's experiences of Ontario's Welfare System* (Toronto: Women Abuse and Welfare Research Project, 2004) at 13 [Mosher et al, *Walking on Eggshells*].

abusive relationships.⁴⁰⁵ Without adequate social assistance and supports, poor or underemployed women cannot feed or house themselves and their children. Any woman who cannot afford to forego the economic support of her abuser is at risk of continued violence.⁴⁰⁶ Women stay trapped in abusive relationships, or return to abusers because they cannot look after themselves and their children on the amount of income that social assistance provides.⁴⁰⁷

Lack of Affordable Housing

Coupled with lack of adequate social assistance, homelessness and under housing contribute to women's vulnerability to violence,⁴⁰⁸ forcing many women to accept accommodation and economic support from abusive male partners in order to sustain themselves and their children.⁴⁰⁹ The specific needs of homeless women escaping violence is not addressed in the current Homelessness Partnering Strategy of the federal government.⁴¹⁰

The Vicious Circle

Social programs and services are not only inadequate to protect women facing violence, but sometimes penalize women for being subjects of violence by placing them at risk of having their children removed from their care due to the violence of their male partners.

Child protection legislation can put women survivors of violence at risk if they are unable to escape or stop violence by their male partners.⁴¹¹ When violence against women occurs in families with children, it is often considered abuse or neglect by child welfare agencies.⁴¹² Authorities will remove children who witness violence in their mothers' care.⁴¹³ For women on social assistance, losing their children can mean that they also lose their housing because they no longer qualify for a family housing allowance.⁴¹⁴ Child protection services will not return children to their mothers unless they have safe and adequate housing to receive them.⁴¹⁵

A recent study by the Poverty and Human Rights Centre in British Columbia concluded that "...male violence, inadequate welfare, lack of adequate housing, lack of legal aid, and child apprehension are all integrally connected in the experiences of poor women, and... effective intervention requires dealing with these events and conditions simultaneously and

405 *Ibid* at 16.

406 Mary Ellen Turpel-Lafond, *Not Fully Invested: A Follow-Up Report on the Representative's Past Recommendations to Help Vulnerable Children in British Columbia* (Victoria: Representative for Children and Youth, 2014) at 25.

407 Mosher et al, *Walking on Eggshells* *supra* note 404 at 16.

408 *Ibid*; Gwen Brodsky et al, *Advancing the Rights of Poor Women the Vicious Circle* (Vancouver: Poverty and Human Rights Centre, 2010), at 17, online: <<http://povertyandhumanrights.org/wp-content/uploads/2012/11/The-Vicious-Circle-Report.pdf>> [Brodsky et al, *Advancing the Rights*].

409 Cross, "It shouldn't be this hard" *supra* note 398 at 54.

410 Stephen Gaetz, Tanya Gulliver & Tim Richter, *The State of Homelessness in Canada 2014* (Toronto: The Homeless Hub Press, 2014), at 15, online: <<http://www.homelesshub.ca/sites/default/files/SOHC2014.pdf>>.

411 Cross, "It shouldn't be this hard" *supra* note 398 at 28; Mosher et al, *Walking on Eggshells* *supra* note 404 at 66.

412 Brodsky et al, *Advancing the Rights* *supra* note 408 at 22.

413 *Ibid* at 22; Mosher et al, *Walking on Eggshells* *supra* note 404 at 66.

414 Brodsky et al, *Advancing the Rights* *supra* note 408 at 26.

415 *Ibid*.

holistically.”⁴¹⁶

Women’s Shelters

The number of shelters in Canada has increased slightly since 2008,⁴¹⁷ and there are 601 shelters as of April 2012.⁴¹⁸ But there is a serious shortage of women’s shelters across Canada, with particular needs in rural and Northern and rural areas.⁴¹⁹ A recent snapshot study showed that 4600 women and 3600 children use shelters every night in Canada to escape violence. However, in 2015, in one day, due to lack of resources, shelters were forced to turn away 302 women and 221 children seeking shelter.⁴²⁰

Shelters for women and children who are experiencing violence are a crucial life-saving, emergency resource. Every province and territory needs more. Shelters are, however, an after-violence stop gap measure and should not be understood to replace systemic, coordinated reforms designed to improve police and justice system response, and to address women’s disadvantaged social and economic conditions.

The Canadian Network of Women’s Shelters and Transition Houses recently released their 2015 report on the state of shelters in Canada. They called for better funding for basic in-shelter resources such as food, counselling, service providers and schooling services for children,⁴²¹ but they also noted an urgent need for post-shelter resources for women such as decent affordable housing, adequate income assistance and second-stage houses.⁴²²

RCMP Violence and Exploitation of Women and Girls

Women experience violence, exploitation, and discrimination not only from male partners and strangers, but also at the hands of Canadian police officers. Canada has about two hundred police forces, with the RCMP providing policing under contract to some provinces and municipalities. Across Canada, by members of different police forces, women have reported being beaten by the police, strip searched by male officers and sexually exploited while in custody.

Human Rights Watch documented excessive or illegal violence against women in Northern British Columbia at the hands of members of Canada’s national police force, the Royal Canadian Mounted Police (RCMP).⁴²³

⁴¹⁶*Ibid* at 4.

⁴¹⁷Statistics Canada, *Measuring violence against women* *supra* note 269 at 104.

⁴¹⁸Statistics Canada, *Shelters for abused women in Canada, 2012*, by Benjamin Mazowita & Marta Burczycka, (Ottawa: Statistics Canada, 2014), online: <<http://www.statcan.gc.ca/pub/85-002-x/2014001/article/11906-eng.htm>> [Statistics Canada, *Shelters for abused women*].

⁴¹⁹*Ibid*.

⁴²⁰The Canadian Network of Women’s Shelters and Transition House, “Shelter Voices 2015”, April 2015, online: <http://endvaw.ca/sites/endvaw.ca/files/shelter_voices_2015-eng_0.pdf>.

⁴²¹*Ibid*.

⁴²²*Ibid*.

⁴²³Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (New York: Human Rights Watch, 2013), online: HRW <http://www.hrw.org/sites/default/files/reports/canada0213webwcover_0.pdf> [HRW, *Those Who Take Us Away*].

Over five weeks in 2012, Human Rights Watch documented stories of excessive police force against girls as young as 12, as well as forcible confinement and sexual assaults.⁴²⁴

- Girls between 12 and 17 years old reported police used police dogs,⁴²⁵ pepper spray⁴²⁶ and/or a Taser⁴²⁷ during arrests. One officer was reported to have punched a 17-year-old girl in the face multiple times while the girl was detained in a police car.⁴²⁸
- In 2004, a provincial court judge, David Ramsay, pleaded guilty to sexually assaulting teenage girls involved in the justice system.⁴²⁹ It was alleged that as many as ten RCMP officers were also involved in the sexual exploitation of these girls.
- Human Rights Watch heard stories of rape and sexual assault by police officers, including forcible confinement and death threats if the victim complained.
- Women reported being beaten, or treated in a rough, insensitive manner, during their arrests and while in custody.⁴³⁰
- Women detainees were released in the middle of the night, sometimes into extremely cold temperatures without adequate clothing.⁴³¹
- Officers have failed to protect women reporting domestic violence and rape. Women told Human Rights Watch that they were accused of lying when they reported their abuse to the police, or threatened by police not to report.⁴³² One woman's report of domestic abuse led to her daughter suffering from a broken arm. The daughter's arm was broken when the police roughly handcuffed her.⁴³³

Discrimination and violence at the hands of the police is so common in some racialized and marginalized communities that women from those communities view the police as a threat and are reluctant to report violence to the police.⁴³⁴

Police violence against women is not unique to northern British Columbia, or to the RCMP. Following are two examples of egregious police mistreatment of women:

- Stacey Bonds, a 27-year-old African-Canadian woman, was unlawfully arrested in 2008 after questioning two officers who stopped her in the street in Ottawa. While in custody, four male officers and one female officer held her down with a riot shield and violently strip-searched her. They used scissors to cut off her shirt and bra and left her half naked for hours in her cell. Both the arrest and strip search were found to be unlawful.⁴³⁵ Bonds later charged one of the officers with sexual assault for his conduct during the strip search, but he was acquitted of the charges.

⁴²⁴*Ibid.*

⁴²⁵ *Ibid* at 53-4.

⁴²⁶*Ibid* at 54.

⁴²⁷*Ibid* at 55-6.

⁴²⁸ *Ibid* at 50-1.

⁴²⁹*Ibid* at 31-3.

⁴³⁰*Ibid* at 46, section II. Abusive Policing of Indigenous Women and Girls.

⁴³¹*Ibid* at 57-8.

⁴³²*Ibid* at 71-2, 74.

⁴³³*Ibid* at 52.

⁴³⁴*Ibid.*

⁴³⁵*R v Bonds*, 2010 ONCJ 561, at 27, 79 CR (6th) 119, online: CanLII

<<http://www.canlii.org/en/on/oncj/doc/2010/2010oncj561/2010oncj561.html>>.

- In 2013, the Ontario Court of Justice held that although Bonds had not been strip-searched in a way that amounted to sexual assault,⁴³⁶ the judge commented on the indignity of leaving Bonds in a cell, topless and in soiled pants for three hours and twenty minutes before being provided with clothes,⁴³⁷ noting that the treatment was “unnecessary and demeaning” and resulted from either “unacceptable indifference on the part of the cellblock officers” or as a form of retaliatory punishment.⁴³⁸
- In 2011, RCMP Constable Kevin Theriault arrested an intoxicated Aboriginal woman in Manitoba. In a gross abuse of power, he later took her out of her cell and drove her to his home to pursue sexual relations. A senior officer at the detachment said it was not right for Theriault to do it, but later conceded and said: “You arrested her, you can do whatever the f—k you want to do.”⁴³⁹ An internal RCMP adjudication process punished his act by docking Theriault's pay for seven days.

It can be difficult to track police mistreatment and violence against women and girls because it is under-reported and data is not centralized in a publicly accessible way. For the RCMP, for example, if mistreatment is reported, and the situation is handled by an internal RCMP adjudication process, there is no mechanism that allows for the public to easily access internal RCMP disciplinary decisions—leaving the public to rely on the media for reports.

Many women distrust the police complaint processes because in most provinces and territories, police investigate themselves.⁴⁴⁰ Women who complain are often concerned that the investigators are more committed to protecting “their own” than securing justice for them.⁴⁴¹ The RCMP, for example, dismisses between about 90% of formal complaints against its officers.⁴⁴² This leaves women with little faith that their complaints will be fairly addressed.

RCMP Sexual Harassment of Female Officers

As of 2015, hundreds of female RCMP officers have reported sexual harassment and gender-based discrimination within the RCMP.⁴⁴³ Reports include discriminatory promotional practices, inappropriate sexual comments, sexual assault, and repercussions for reporting male officer misconduct.

Policies are in place to prevent this type of behavior and complaints processes do exist.⁴⁴⁴

436 *R v Desjourdy*, 2013 ONCJ 170 at para 108, 1 CR (7th) 261, online: Can LII <<http://www.canlii.org/en/on/oncj/doc/2013/2013oncj170/2013oncj170.html>>.

437 *Ibid* at para 92.

438 *Ibid* at para 94.

439 Holly Moore, “Mountie Takes Aboriginal Woman Home From Jail Cell to Pursue Relationship”, *CBC News* (8 Jan 2015), online: <<http://www.cbc.ca/news/canada/manitoba/mountie-takes-woman-home-from-jail-to-pursue-a-personal-relationship-1.2893487>>.

440 Human Rights Watch, *Those Who Take Us Away supra* note 423 at 73-4.

441 □ *Ibid*.

442 □ Guiseppe Valiante, “RCMP Rejects 90% of Formal Complaints”, *IF Press* (24 October 2014), online: <<http://www.ifpress.com/2014/10/27/rcmp-rejects-90-of-formal-complaints/>>.

443 Nancy Macdonald, “Inside the RCMP's biggest crisis”, *Maclean's* (27 February 2015), online: <<http://www.macleans.ca/society/inside-the-rcmps-biggest-crisis/>>. [Macdonald, “Inside the RCMP”].

444 Civilian Review and Complaints Commission for the RCMP, “Jurisdiction of the Commission”, *CCR*, 16 December

However, female officers are reluctant to report abuse because the policies and procedures that are in place to protect them are not enforced in an accountable way.⁴⁴⁵ Often, reporting women were told to withstand the abuses by their senior officers who did not view the harassment as problematic.

The RCMP has thus far failed to adequately address the abuse of female officers by male officers. While there have been previous reviews of police culture,⁴⁴⁶ only recently, in 2011, after female officers reported abuse to the media and filed multiple civil suits against the RCMP, did the organization's handling of sexual harassment become the subject of internal and independent review.

In 2012, the RCMP released a gender-based harassment report.⁴⁴⁷ The study included 426 officer participants. They reported a culture of complacency and normalization towards the sexual harassment of female officers. Women found that when they reported sexual harassment, they were more likely to be transferred to a different jurisdiction or be demoted to a less desirable job than have their complaint dealt with directly. Issues that were consistently raised amongst study participants include: fear of retribution if one comes forward with a complaint;⁴⁴⁸ an “Old Boys Club” culture that awards certain types of behaviour and bestows preferential treatment on those who conform;⁴⁴⁹ a lack of institutional capacity to respond to harassment complaints;⁴⁵⁰ a lack of accountability and credibility in the complaint process, including investigations into complaints;⁴⁵¹ a lack of access to reliable information and guidance about the complaints process;⁴⁵² a lack of adequate member training on harassment;⁴⁵³ and loss of confidence in the RCMP.⁴⁵⁴

In response to increasing public concern about the handling of sexual harassment complaints in the RCMP, the Commission for Public Complaints Against the RCMP (now the Civilian Review and Complaints Commission for the RCMP) launched a public interest investigation

2014, online: <<https://www.crcc-ccetp.gc.ca/en/public-interest-investigation-report-issues-workplace-harassment-within-royal-canadian-mounted>>.

445 Human Rights Watch, *Those Who Take Us Away* *supra* note 423; Royal Canadian Mounted Police, *Summary Report on Gender Based Harassment and Respectful Workplace Consultations “E” Division*, 17 April 2012, online: <<http://www.cbc.ca/bc/news/bc-121107-rcmp-survey.pdf>> [RCMP, *Summary Report on Gender Based Harassment*]; Commission for Public Complaints Against the Royal Canadian Mounted Police, *Public Interest Investigation into RCMP Workplace Harassment* (Ottawa: CPC, 2013), online: <<https://www.crcc-ccetp.gc.ca/en/public-interest-investigation-report-issues-workplace-harassment-within-royal-canadian-mounted>> [CPC, *Public Interest Investigation*].

446 Government of Canada, *Task Force on Governance and Cultural Change in the RCMP, Rebuilding the Trust* (14 December 2007), online: <<http://www.publicsafety.gc.ca/cnt/cntrng-crm/tsk-frc-rcmp-grc/fl/archive-tsk-frc-rpt-eng.pdf>>; also see Christopher Murphy et al, *Rethinking Police Governance, Culture & Management* (3 December 2007), at 6-7, online: <<http://www.publicsafety.gc.ca/cnt/cntrng-crm/tsk-frc-rcmp-grc/index-eng.aspx>> (this review does not provide a gendered analysis of police culture).

447 RCMP, *Summary Report on Gender Based Harassment* *supra* note 445.

448 *Ibid* at 8.

449 *Ibid* at 8-9.

450 *Ibid* at 9.

451 *Ibid* at 10.

452 *Ibid*.

453 *Ibid*.

454 *Ibid* at 11.

into the issue in November 2011.⁴⁵⁵ The final report made numerous recommendations, such as: the need for improved data collection of workplace conflict;⁴⁵⁶ centralization of RCMP harassment complaint process oversight;⁴⁵⁷ an external accountability mechanism to review harassment decisions;⁴⁵⁸ specialized training on investigating harassment allegations;⁴⁵⁹ and the development of clear investigative standards for harassment investigations.⁴⁶⁰ However, among those who are knowledgeable about RCMP culture, there is scepticism about whether implementing these recommendations will make the change that is necessary.⁴⁶¹

Former RCMP officers Catherine Galliford, Atoya Montague, Anitra Singh, Karen Katz, Susan Gastaldo, and Janet Merlo have each filed civil suits against the RCMP for gender-based harassment and sexual assault. Janet Merlo's application to determine a schedule for certification of a class action was approved in 2013.⁴⁶² So far, Merlo's class action includes 380 female officers from across the country.⁴⁶³ The number of plaintiffs could go as high as 1,500.⁴⁶⁴

Sexual Harassment in the Canadian Armed Forces

A recent external review, conducted by former Supreme Court Justice Marie Deschamps, reports "an underlying sexualized culture in the [Canadian Armed Forces] CAF that is hostile to women and LGTBQ members, and conducive to more serious incidents of sexual harassment and assault."⁴⁶⁵

The 2015 report found that on the extreme side of this culture, sexual violence was used to enforce power relationships and to punish members of the unit.⁴⁶⁶ In less explicit ways, the culture of the CAF normalized and desensitized its members to sexual harassment. Both inadequate policies and a failure of senior members to deter this behavior contributed to this harmful culture that targets female CAF members.⁴⁶⁷

Interviewees reported that this culture is maintained at all levels of the CAF. Lower-ranking members frequently—and without consequence—use highly degrading language in reference to women's bodies, sexual jokes, rape jokes, and discriminatory language that

455CPC, *Public Interest Investigation supra* note 445.

456 *Ibid* at 9.

457 *Ibid* at 22.

458 *Ibid* at 23.

459 *Ibid* at 27.

460 *Ibid*.

461 Macdonald, "Inside the RCMP" *supra* note 443.

462 *Merlo v Canada* (Attorney General), 2013 BCSC 1136, online: CanLII

<<http://www.canlii.org/en/bc/bcsc/doc/2013/2013bcsc1136/2013bcsc1136.html>>.

463 Macdonald, "Inside the RCMP" *supra* note 443.

464 *Ibid*.

465 Marie Deschamps, *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*, External Review Authority, National Defence and the Canadian Armed Forces, 27 March 2015, at p i, online: CAF

<<http://www.forces.gc.ca/en/caf-community-support-services/external-review-sexual-mh-2015/summary.page>>.

466 *Ibid* at ii.

467 *Ibid* at 46.

questioned the abilities of female members.⁴⁶⁸ Higher-ranking members are often desensitized to the culture and have been complicit in deterring complaints about sexual harassment and assault.⁴⁶⁹

In most cases, military women do not report sexual harassment or assault to their senior officers because of fears of professional repercussions; a lack of faith that those higher in the chain of command will adequately deal with their complaints; and pressure to accept the sexual environment or risk social exclusion.⁴⁷⁰

Of the ten recommendations from the report, only the first two⁴⁷¹ were accepted outright by the CAF.⁴⁷² Military leadership was uneasy with some of the recommendations, including the recommendation to create an independent centre where victims can seek support and advice.⁴⁷³

In the fall of 2014, Julie Lalonde, an expert on sexual assault with the Ontario Coalition of Rape Crisis Centres, was contracted to provide training to cadets on sexual assault law. When she spoke at the Royal Military College, she was confronted with sexist catcalls and open contempt by RMC cadets.⁴⁷⁴ It took five months for Ms. Lalonde to secure what amounted to an ambivalent apology from officials at the College.⁴⁷⁵ Officials at the college initially demanded that Ms. Lalonde apologise for using social media to discuss her experience.⁴⁷⁶

Conclusion

In sum, women in Canada experience a level of male violence that has not changed in twenty years. Indigenous women and women with disabilities experience very high levels of violence. Neither police response to the violence, nor government measures to prevent and remedy it are adequate. Further, Canada has not effectively addressed rampant sex discrimination within its own police and military services. This affects not only the women who are members of these institutions, but the civilian women who should be able to rely on them for protection.

Recommendations

⁴⁶⁸*Ibid* at 13, 15.

⁴⁶⁹*Ibid* at 17.

⁴⁷⁰*Ibid* at 15, 29, 31.

⁴⁷¹*Ibid* at 27.

⁴⁷²Stephanie Levitz, "Military's sexualized culture hostile to women, inquiry says", *Global News* (30 April 2015), online: <<http://globalnews.ca/news/1971501/militarys-sexualized-culture-hostile-to-women-inquiry-says/>>.

⁴⁷³Lee Berthiaume, "Military culture 'hostile' to women, gays, says damning Canadian Armed Forces Report", *National Post* (30 April 2015), online: <<http://news.nationalpost.com/news/canada/military-culture-hostile-to-women-gays-says-explosive-canadian-armed-forces-report/>>.

⁴⁷⁴Gloria Galloway, "Court martial hears from victim of alleged sexual misconduct at RMC", *The Globe and Mail* (22 May 2015), online: <<http://www.theglobeandmail.com/news/politics/court-martial-hears-from-victim-of-alleged-sexual-misconduct-at-rmc/article24578934/>>.

⁴⁷⁵James Cudmore, "Royal Military College cadets struggled with questions of sexual consent: Educator", *CBC News* (22 May 2015), online: <<http://www.cbc.ca/news/politics/royal-military-college-cadets-struggled-with-questions-of-sexual-consent-educator-1.3083831>>.

⁴⁷⁶*Ibid*.

The Government of Canada should:

- **Develop a coherent, coordinated, well-resourced National Action Plan on Violence against Women that meets international human rights standards, incorporates recommendations by treaty bodies and women’s non-governmental organizations, and takes into account the experiences and needs of diverse Canadian women.**
 - **Ensure that procedures for addressing sexual harassment complaints within the RCMP are effective and provide protections, assistance and appropriate remedies to complainants; provide regular public reports on measures taken, including disciplinary measures, to eliminate sexism and racism from police culture and to address complaints of discrimination from members and the public.**
 - **Fully implement the Deschamps report within the Canadian Armed Forces.**
-
- **VI. Liberty and Security of the Person (Articles 2, 6, 7, 9, 14 and 26)**

Over-incarceration

The number of women imprisoned in Canada is increasing at an alarming rate. This is happening at a time when Canada’s national crime rate is at its lowest since 1969.⁴⁷⁷ The prevalence of mandatory minimum sentences, the federal government’s “tough on crime” agenda, and the shrinking of health, education, and social services is plainly linked to this increase.

- The overall population of women in prison increased 60% since 2003.⁴⁷⁸ Between 2003 and 2013 the number of federally imprisoned women increased by 13.9%.⁴⁷⁹
- Women are most commonly criminalized for activities related to poverty and economic survival such as theft under \$5,000, fraud, and common assault.⁴⁸⁰
- Imprisoned women are more likely to be impoverished, under-educated⁴⁸¹ and unemployed⁴⁸² than the general public. 64.2% of federally incarcerated women are

477Statistics Canada, *Police-reported crime statistics, 2013* (23 July 2014), at 1, online: StatsCan <<http://www.statcan.gc.ca/daily-quotidien/140723/dq140723b-eng.pdf>> [Statistics Canada, *Police-reported crime*].

478Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2012-2013*, prepared by Howard Sapers, 28 June 2013, online: <<http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx>> [Office of the Correctional Investigator, *2013 Annual Report*].

479Public Safety Canada, *2013 Annual Report Corrections and Conditional Release Statistical Overview* (Ottawa: Public Safety Canada, 2013), at 39, online <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/crrctns-cndtntl-rls-2013/index-eng.aspx>> [Public Safety Canada, *2013 Annual Report*].

480Margaret Beare, *Women and Organized Crime*, Catalogue No PS4-106/2010EPDF (Ottawa: Department of Public Safety, 2010), at 10, 24, 29, online: Public Safety Canada <http://publications.gc.ca/collections/collection_2012/sp-ps/PS4-106-2010-eng.pdf> [Beare, *Women and Organized Crime*].

481Correctional Service Canada, *Twenty Years Later: Revisiting the Task Force on Federally Sentenced Women*, prepared by Meredith Robeson Barrett et al, July 2010, at 49, online: <<http://www.csc-scc.gc.ca/research/005008-0222-eng.shtm>> [CSC, *Twenty Years Later*].

482*Ibid* at 51.

single mothers⁴⁸³ and 57.1% had primary responsibility for their children before they were imprisoned,⁴⁸⁴ and the majority of their children therefore end up in the care of the state.

- The overwhelming majority of women in prison have histories of abuse and suffer from post traumatic stress.⁴⁸⁵ 85.7% of all and 91% of Indigenous women in prison have experienced physical and/or sexual abuse.⁴⁸⁶ Many have never received therapeutic support of interventions other than medication
- In many cases in which federally sentenced women are charged with causing death, their actions were defensive or otherwise reactive to violence directed at them, their children, or another third party.⁴⁸⁷ They pose little, if any, risk to the public.

Over-incarceration of Racialized Women

A recent report commissioned by Public Safety Canada⁴⁸⁸ revealed that the over-incarceration of Aboriginal women is nothing short of a crisis. Increases in marginalization, victimization, criminalization and imprisonment are directly related to the systemic discrimination, poverty, violence and isolation faced by racialized women.

- Aboriginal women prisoners represent the fastest growing prison populations in Canada. Between 2003 and 2013, their numbers increased by over 83.7%.⁴⁸⁹
- In September 2007, Aboriginal women were 45% of women classified as “maximum security”;⁴⁹⁰ they also account for 75% of reported incidents of self-injury.⁴⁹¹
- The classification system used by Corrections Services Canada (CSC), which administers federal prisons, was designed for a predominantly white male population. Although CSC claims it has adjusted the classification system, it still fails to take into account cultural or gender specific issues.⁴⁹² Aboriginal women are more likely to be classified as medium (63%) or maximum (11.1%) security than non-Aboriginal women (45% and 6.1% respectively).⁴⁹³
- The classification of Aboriginal women as higher risk also results in them being subject to more frequent strip searches and less access to rehabilitative programs.

483Ibid at 39.

484Ibid at 41.

485Elizabeth Fry Society of Ottawa, “Women in Prison Up 50%”, Elizabeth Fry Society Resources, online: <<http://www.efryottawa.com/resources.html>> [Elizabeth Fry Society of Ottawa, “Women in Prison”].

486Ibid.

487Canadian Feminist Alliance for International Action, *Women's Inequality in Canada* (Ottawa: FAFIA, 2008), at 42, online: <<http://socialrightscura.ca/documents/CEDAW/FAFIACanadaCEDAW2008.pdf>>.

488Public Safety Canada, *Marginalized: The Aboriginal Women's experience in Federal Corrections* (Ottawa: Public Safety Canada Aboriginal Corrections Policy Unit, 2012), online:

<<http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgnlzd/mrgnlzd-eng.pdf>> [Public Safety Canada, *Marginalized: The Aboriginal Women's experience*].

489Office of the Correctional Investigator, 2013 *Annual Report supra* note 475 (also see “Aboriginal women now make up one-third of Canadian female prison population”, *CBC News* (27 May 2015), online:

<<http://www.cbc.ca/news/canada/thunder-bay/aboriginal-women-now-make-up-one-third-of-canadian-female-prison-population-1.3089050>>).

490Public Safety Canada, *Marginalized: The Aboriginal Women's experience supra* note 485 at 24.

491Office of the Correctional Investigator, 2013 *Annual Report supra* note 475.

492Public Safety Canada, *Marginalized: The Aboriginal Women's experience supra* note 485 at 23-4.

493CSC, *Twenty Years Later supra* note 478 at 10.

- Almost 50% of federally sentenced Aboriginal women are precluded from accessing the Okimaw Ohci Healing Lodge, which was designed specifically for Aboriginal women prisoners, because they are classified as higher security prisoners.⁴⁹⁴ Instead, most are confined in the segregated maximum security units in the regional prisons for women, while a small number remain confined in the segregated maximum security unit in the men's Springhill Institution, the Regional Psychiatric Centre in Saskatoon, among others.⁴⁹⁵
- Prisoners of African Canadian heritage represented 2.9% of the Canadian population in 2011, yet Black women represented 9.12% of federal prisoners in 2011-2012.⁴⁹⁶ In 2010 and 2012, the number of Black women increased by 54% and 28% respectively.⁴⁹⁷
- The majority of African Canadian women in federal penitentiaries are incarcerated for drug trafficking. Many of these prisoners were caught carrying drugs across international borders. All were poor, and most had been forced into trafficking under threats of violence.⁴⁹⁸

Treatment of Women Prisoners

Although the Task Force on Federally Sentenced Women,⁴⁹⁹ the Arbour Commission,⁵⁰⁰ the Auditor General, the Public Accounts Committee, the Correctional Investigator and the Canadian Human Rights Commission⁵⁰¹ have consistently concluded⁵⁰² that women prisoners pose a low risk to public safety and that they are less likely than men to return to prison on new charges, the Correctional Service of Canada continues, for the most part, to use the same risk and needs assessment tools for both men and women.⁵⁰³

The cost of imprisoning a woman is significantly higher than the cost of jailing a man,⁵⁰⁴ and women prisoners have less diverse programming, fewer choices for employment related training, and less access to services overall.⁵⁰⁵

494 *Ibid* at 14 (the Okimaw Ohci Healing Lodge is a correctional services facility that offers culturally sensitive programming for approximately 30 federally sentenced Aboriginal women at a time; however, it does not accept maximum security prisoners).

495 CSC, *Twenty Years Later supra* note 478 at 72.

496 Office of the Correctional Investigator, *2013 Annual Report supra* note 475.

497 *Ibid*.

498 *Ibid*.

499 Correctional Services Canada, "Creating Choices: The Report of the Task Force on Federally Sentenced Women", April 1990, online: CSC <<http://www.csc-scc.gc.ca/women/toce-eng.shtml>>.

500 Solicitor General of Canada, *Commission of Inquiry into certain events at the Prison for Women in Kingston* (Ottawa: Public Works and Government Services Canada, 1996), online: <http://www.justicebehindthewalls.net/resources/arbour_report/arbour_rpt.htm>.

501 Canadian Human Rights Commission, *Protecting Their Rights A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women* (December 2003), at 31, online: <<http://www.chrc-ccdp.ca/sites/default/files/fswen.pdf>>.

502 The Société Elizabeth Fry du Québec, "Fact Sheets About Criminal Justice Criminalized & Imprisoned Women", online: <http://www.elizabethfry.qc.ca/en/fact_sheets/>.

503 *Supra* note 489.

504 Public Safety Canada, *2013 Annual Report supra* note 476 at 25.

505 Office of the Correctional Investigator, *2013 Annual Report supra* note 475; Public Safety Canada, *Marginalized: The Aboriginal Women's experience supra* note 485.

Sections 77 and 80 of the *Corrections and Conditional Release Act*⁵⁰⁶ stipulate that the CSC must provide gender specific and culturally appropriate programming. However, women continue to be provided with programs and services designed for a predominantly white, male prison population.⁵⁰⁷

Male Prison Staff

In its 2006 Concluding Observations, after reviewing Canada's fifth report, the United Nations Human Rights Committee recommended:

The State party should put an end to the practice of employing male staff working in direct contact with women in women's institutions.⁵⁰⁸

The Government of Canada continues to employ male front line staff in its prisons.⁵⁰⁹ Despite the reality that 91% of federally imprisoned Indigenous women and the overwhelming majority of all federally sentenced women have histories of physical and/or sexual abuse,⁵¹⁰ since 1995, CSC has employed men as front line workers. In addition, many of the men are inadequately trained and have not been screened to work with women.⁵¹¹

Segregation

In 2006, the Human Rights Committee also recommended that Canada provide information "regarding the establishment of an independent external redress body for federally sentenced offenders and independent adjudication for decisions related to involuntary segregation, or alternative models."⁵¹²

The Government of Canada has not developed an external redress body or an independent adjudication process for decisions related to involuntary segregation.⁵¹³

Women in Canadian prisons are disproportionately segregated. The 1996 Arbour Report documented how women are affected by the isolation of segregation.⁵¹⁴ Prolonged

506 *Corrections and Conditional Release Act*, SC 1992, c 20, online: <<http://laws-lois.justice.gc.ca/eng/acts/C-44.6/>>.

507 Public Safety Canada, *Marginalized: The Aboriginal Women's experience supra* note 485 at 23, 49-50.

508 Human Rights Committee, *2006 Concluding observations supra* note 43 at para 18.

509 CSC, *Twenty Years Later supra* note 478 at 20, see fn 12 (the Cross Gender Monitoring Project recommended that only female frontline staff engage with female inmates; CSC and the Union of Canadian Correctional Officers then conducted consultations finding that the majority of those consulted disagreed with the recommendation; the Canadian Human Rights Commission noted that the CSC must not discriminate against right of men to fill these roles).

510 Elizabeth Fry Society of Ottawa, "Women in Prison" *supra* note 482.

511 See CSC, *Twenty Years Later supra* note 478 at 60-1; Correctional Services Canada, *The Cross Gender Monitoring Project 3rd and Final Annual Report*, 2013, online: CSC <<http://www.csc-scc.gc.ca/publications/fsw/gender3/cg-22-eng.shtml>>.

512 Human Rights Committee, *2006 Concluding observations supra* note 43 at para 18.

513 Correctional Services Canada, "Response to the Coroner's Inquest Touching the Death of Ashley Smith", December 2014, at 3.2-3, online: CSC <<http://www.csc-scc.gc.ca/publications/005007-9011-eng.shtml#5.1>> (where the Government affirms its current law and policy surrounding segregation) [CSC, "Response to the Coroner's Inquest"].

514 *Supra* note 497; Jena McGill, "An Institutional Suicide Machine" *Discrimination Against Federally Sentenced Aboriginal Women by the Correctional Service of Canada in Violation of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women* (2008) 2:1 *Race/Ethnicity: Multidisciplinary Global Contexts* 89.

segregation aggravates and/or creates mental health issues,⁵¹⁵ reduces motivation and opportunities to participate in reintegration activities,⁵¹⁶ and has been defined as an act that could amount to torture by the United Nations.⁵¹⁷

In 2006, the Human Rights Committee expressed concerns about the treatment of female prisoners, particularly those who were held in solitary confinement with no independent adjudication of involuntary segregation.⁵¹⁸

- Women placed in segregation are isolated for 23 hours a day and usually have no human interaction other than when they are physically restrained, or food or medication is passed through a slot in the door.⁵¹⁹
- In 2012-2013, there were 390 women in involuntary segregation.⁵²⁰ 18.2% of the women stayed in segregation for longer than 30 days.⁵²¹
- Aboriginal women are more likely to be involuntarily segregated and are held in segregation for longer periods than non-Aboriginal women.⁵²²
- In 2007, Ashley Smith, a 19 year old woman was left to die with a ligature around her neck, in her segregation cell. Ashley had been transferred 17 times in 11.5 months to a number of segregation units in prisons throughout Canada. She was tasered, pepper sprayed, forcibly strapped to confinement chairs and strapped to gurneys, had her clothes taken away and was often left naked, cold and alone. At the time of her death she was segregated, on constant observation suicide watch, with no mattress and naked under an oversized security gown. Several guards witnessed her death by self-strangulation and did not intervene. Ashley was originally jailed for breach of probation. She was on probation for throwing crab apples at a postal worker.⁵²³
- Even in the wake of coronial inquest recommendations for an end to indefinite or long-term segregation for women prisoners, the federal government rejected the imposition of any time limitations on segregation.⁵²⁴ The jury at the inquest into the death of

515Public Safety Canada, *Marginalized: The Aboriginal Women's experience supra* note 485 at 33-4.

516*Ibid.*

517“Solitary confinement should be banned in most cases, UN expert says”, *UN News Centre* (18 October 2011), online: <<http://www.un.org/apps/news/story.asp?NewsID=40097#.VwdnYuchxpk>>.

518Human Rights Committee, *2006 Concluding observations supra* note 43 at paras 18.

519Kim Pate, “Why are women and girls Canada's fastest growing prison population; and, why should you care?” (Grant Lowery Lecture delivered at the Annual Defence for Children International – Canada Grant Lowery Lecture, 26 April 2011), at 5, online: CAEFS <http://www.caefs.ca/wp-content/uploads/2013/05/Women_are_the_fastest_growing_prison_population_and_why_should_you_care.pdf> [Kim Pate, “Why are women and girls Canada's”]; British Columbia Civil Liberties Association, “Solitary Confinement Backgrounder”, January 2015, online: BCCLA <<https://bccla.org/wp-content/uploads/2015/01/Solitary-Confinement-Backgrounder-FINAL1.pdf>>.

520Public Safety Canada, *2013 Annual Report supra* note 476 at 65.

521*Ibid.*

522Office of the Correctional Investigator, *2013 Annual Report supra* note 475; Correctional Services Canada, *Profile of Women in Segregation*, December 2013, online: CSC <<http://www.csc-scc.gc.ca/research/005008-r320-eng.shtml>>.

523See CSC, “Response to the Coroner's Inquest” *supra* note 510; Kim Pate, “Why are women and girls Canada's” *supra* note 516; Marion Botsford Fraser, “Life on the Instalment Plan”, *The Walrus* (March 2010, online: <<http://thewalrus.ca/life-on-the-instalment-plan/>>.

524Douglas Quan, “Federal government rejects limit on prison segregation time, in its response to Ashley Smith inquest”, *The National Post* (11 December 2014), online: <<http://news.nationalpost.com/news/canada/mental-health-care-for-inmates-will-be-improved-federal-government-says-in-response-to-ashley-smith-inquest>>.

Ashley Smith recommended that prisoners should not be placed in isolation for more than 15 consecutive days and for no more than 60 days a year.⁵²⁵

- It is typical for the reactions of women who are held in segregation to result in additional criminal charges and therefore longer sentences. Transgendered women are often housed in prisons for men, where they are kept in segregation for prolonged periods.⁵²⁶

Self-Injury

Women prisoners are more likely than men to self-injure, as a way of coping with the stresses of imprisonment.⁵²⁷ In a non-carceral environment, self-injury is considered indicative of a strong need for mental health services. In prison, however, self injurious behaviour is treated as symptomatic of the 'criminal' label and is consequently treated as a security issue requiring punitive correction.⁵²⁸

- The number of incidents of self-injury has significantly increased amongst women prisoners. In 2007/2008 the number of reported incidents was just over 50, but by 2012/2013, that number had risen to over 300 for federally sentenced women inmates.⁵²⁹
- In 2008-2009, 78.2% of the incidents of self-harm involved Aboriginal women.⁵³⁰ Only 33% had self-harmed prior to imprisonment.⁵³¹

Mental Health

Correctional institutions in Canada have become the dumping grounds for those with disabling mental health issues. Cuts to social services, including social housing increases the number of women incarcerated.

In its 2006 Concluding Observations, after reviewing Canada's fifth report, the United Nations Human Rights Committee recommended that:

The State party, including all governments at the provincial and territorial level, should increase its efforts to ensure that sufficient and adequate community based housing is provided to people with mental disabilities, and ensure that the latter are not under continued detention when there is no longer a legally based medical reason for such detention.⁵³²

525CSC, "Response to the Coroner's Inquest" *supra* note 510.

526Egale, News Release, "Gender Segregation of Trans People in Canadian Correctional Facilities" (3 July 2014), online: Egale <<http://egale.ca/all/trans-correctional-placements/>>.

527CSC, *Twenty Years Later* *supra* note 478 at 21.

528Public Safety Canada, *Marginalized: The Aboriginal Women's experience* *supra* note 485 at 30, 32.

529Office of the Correctional Investigator, *Risky Business: An Investigation into the Treatment and Management of Chronic Self-Injury Among Federally Sentenced Women*, Catalogue No PS104-7/2013E-PDFD, 30 September 2013, at 3, online: <<http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20130930-eng.pdf>>.

530Public Safety Canada, *Marginalized: The Aboriginal Women's experience* *supra* note 485 at 51.

531*Ibid* at 31.

532Human Rights Committee, *2006 Concluding observations* *supra* note 43 at para 17.

The lack of services for women prisoners with mental health issues has created a “revolving door”⁵³³ syndrome, where homeless women with mental health issues are more likely to be imprisoned, and once they are released they find it impossible to find housing and are incarcerated again.⁵³⁴

- Federally sentenced women are twice as likely to have a mental health disorder upon being admitted to prison than men;⁵³⁵ and in 2012/2013 approximately 75% of women prisoners received a CSC mental health service.⁵³⁶
- The Office of the Correctional Investigator (OCI) has assessed that CSC cannot adequately deal with mental health issues, especially when it comes to federally sentenced women. The OCI found that CSC has an over reliance on force, physical restraints, restriction on movement, limitations on interaction with other prisoners, and limitations on access to transfers to appropriate psychiatric or mental health resources.⁵³⁷
- There are significantly fewer transition homes for discharged female prisoners.⁵³⁸ Many of the services available are not specialized to work with women with mental health issues.

Recommendations

Canada should:

- **Restrict the imprisonment of women, and develop new protocols to de-carcerate women who do not pose a risk to public safety and/or whose risk may be managed in the community.**
- **Increase income security, health and educational measures such as income assistance, adequate housing, and community supports for women with mental health issues to address the reality that women are being criminalized and incarcerated because of poverty, previous abuse, social disadvantage, racialization and disabling mental health issues.**
- **Put an end to the practice of employing male staff working in front-line contact with women in women’s institutions.**
- **Establish an independent external redress body for federally sentenced prisoners.**
- **Put an end to the practice of placing women prisoners in segregation or solitary confinement.**

533 Stephen Gaetz & Bill O’Grady, “Homelessness, Incarceration, and the Challenge of Effective Discharge Planning: A Canadian Case” in J. David Hulchani et al, eds, *Finding Home Policy Option for Addressing Homelessness in Canada* (e-book, Toronto: Cities Centre University of Toronto 2009), at 2, online: <<http://homeless.samhsa.gov/ResourceFiles/Documents/7.3%20Gaetz%20and%20O%27Grady%20-%20Homelessness%20%20and%20Discharge%20Planning.pdf>> [Gaetz et al, “Homelessness, Incarceration”].

534 See Elizabeth Fry Toronto, *Housing Needs Assessment Facilitating Access to Housing for Criminalized Women in Toronto*, April 2014, online: <http://www.efrytoronto.org/userfiles/files/efry_Housing%20Needs%20Assessment_WEB.pdf>.

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