

# Women's Inequality in Canada

SUBMISSION OF THE CANADIAN FEMINIST ALLIANCE  
FOR INTERNATIONAL ACTION  
TO THE UNITED NATIONS COMMITTEE ON THE  
ELIMINATION OF DISCRIMINATION AGAINST WOMEN  
on the Occasion of the Committee's Review of Canada's 6th & 7th Reports

**SEPTEMBER 2008**



**the POVERTY and  
HUMAN RIGHTS  
CENTRE**

## Acknowledgments

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# Table of contents TO COME

THE BC CEDAW GROUP ..... 4

INTRODUCTION ..... 5

    Background on the Canadian Federal System ..... 5

    A Wealthy Province with Growing Poverty ..... 6

    Fiscal Health ..... 6

    High Poverty Rates ..... 7

    Aboriginal Women in British Columbia ..... 8

    Repeated Calls for British Columbia’s Compliance with the Convention on the  
Elimination of All Forms of Discrimination against Women ..... 9



# I. The Feminist Alliance for International Action (FAFIA)

This Report on Canada's compliance with the *Convention on the Elimination of All Forms of Discrimination against Women* has been prepared by the Feminist Alliance for International Action (FAFIA).

Founded in February 1999, FAFIA is a national alliance of forty Canadian women's equality-seeking organizations. FAFIA's goals are to:

1. develop the capacity of women's organizations to work at the international level;
2. make links between international instruments and agreements and domestic policy-making;
3. hold Canadian governments accountable to the commitments to women that they have made under international human rights treaties and agreements, including the *Convention on the Elimination of All Forms of Discrimination against Women* and the *Beijing Platform For Action*.

## II. Introduction

### Canada's Non-compliance with the 2003 CEDAW Recommendations

Since 2003, FAFIA, with its many allies, has made many efforts to secure from Canadian governments open and practical responses to the 2003 CEDAW recommendations. However, FAFIA has encountered both political unwillingness and an institutional vacuum. There are no institutional spaces at federal, provincial, territorial, or intergovernmental levels where review, open public examination, and engagement with the CEDAW recommendations takes place.

Other treaty bodies have recently expressed clear impatience with Canada because of Canada's failure to take the substance of the treaty body process seriously. For example, the United Nations Human Rights Committee in the fall of 2005 after its fifth review of Canada under the *International Covenant on Civil and Political Rights* said this:

The Committee notes with concern that many of the recommendations it addressed to the State party in 1999 remain unimplemented. It also regrets that the Committee's previous concluding observations have not been distributed to members of Parliament and that no parliamentary committee has held hearings on issues arising from the Committee's observations, as anticipated by the delegation in 1999.

The Human Rights Committee recommended that:

The State party should establish procedures, by which oversight of the implementation of the Covenant is ensured, with a view, in particular, to reporting publicly on any deficiencies. Such procedures should operate in a transparent and

accountable manner, and guarantee the full participation of all levels of government and of civil society, including indigenous peoples.

The Committee on Social, Economic, and Cultural Rights made a similar observation on the occasion of its review of Canada in 2006. The Committee said:

The Committee regrets that most of its 1993 and 1998 recommendations have not been implemented, and that the State party has not addressed in an effective manner ...principal subjects of concern, which were stated in relation to the second and third periodic reports, and which are still relevant...

Review of 5th periodic report: Concluding Observations of the Human Rights Committee: Canada, UN CCPR, 2006 UN Doc. CCPR/C/CAN/CO/5, para. 6. Online: Office of the HCHR, [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/\\$FILE/G0641362.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/$FILE/G0641362.pdf) (date accessed: 7 July 2008).

Review of 4th and 5th periodic reports: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada, UN CESCR, 2006, UN Doc. E/C.12/CAN/CO/4, E/C.12/CAN/CO/5, para. 11. Online: Office of the High Commissioner for Human Rights, [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/87793634eae60c00c12571ca00371262/\\$FILE/G0642783.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/87793634eae60c00c12571ca00371262/$FILE/G0642783.pdf) (date accessed: 7 July 2008).

## **Government Action since 2006**

Canada's 6<sup>th</sup> and 7<sup>th</sup> reports cover the period from April 1999 to March 2006. This is a convenient time period for the current federal government, which was elected on January 23, 2006. Adhering to the cut-off date of March 2006 excludes from the ambit of the CEDAW review actions taken by the current minority government led by the Conservative Party and Prime Minister Stephen Harper.

During the 2006 federal election FAFIA asked all candidates, including all party leaders, to sign a pledge that, if elected, they would “support women’s human rights” and “take concrete and immediate measures, as recommended by the United Nations, to ensure that Canada fully upholds its commitments to women in Canada.” Stephen Harper, the current Prime Minister, and all other party leaders, signed this pledge.

However, since March 2006, a number of decisions have been made by the federal government that have had extremely negative consequences for the exercise and enjoyment of women’s human rights in Canada. Unless these recent changes to policy, services, and programs are considered during this review, such changes will not be reviewed by the CEDAW Committee until 2011. In order for treaty body reviews to be effective, it is imperative that these reviews address current conditions.

More specifically, as this Report documents in the page that follow, current conditions that necessitate immediate CEDAW attention include:

- The cancellation of federal-provincial /territorial agreements that had been put in place to develop a national child care system;
- The announcement that the federal government would not introduce a new pay equity law, despite strong and repeated recommendations from the government's own Pay Equity Task Force and the Parliamentary Committee on the Status of Women;
- The removal of funding for new equality rights challenges under the Court Challenges Program;
- The announcement that the Homelessness Partnering Strategy will expire in 2009, without the possibility of renewal. The federal government has indicated that it will retreat from providing any leadership (funding or other) in areas that are considered to fall within provincial jurisdiction, such as housing;
- Changes to the guidelines for funding women's organizations under the Status of Women Canada (SWC) Women's Program. Under 2007-2008 guidelines, women's organizations cannot receive funds for domestic advocacy activities, for lobbying of federal, provincial and municipal governments, or for research related to advocacy and lobbying activities;
- The elimination of SWC's policy research fund. SWC was the only government agency producing, and supporting, solid research specifically focused on issues pertaining to women's equality.

These recent actions of the federal government directly flout specific recommendations made by the CEDAW Committee in 2003 (as well as other UN treaty monitoring bodies).

The CEDAW recommended to Canada in its 2003 *Concluding Observations* from Canada's periodic review that Canada:

- expand affordable child care facilities under all governments (para. 380);
- accelerate efforts regarding equal pay for work of equal value at the federal level (para. 376);
- make funds available for equality test cases in all jurisdictions (paras. 355-356);
- redesign its efforts towards socially assisted housing after a gender based impact analysis for vulnerable groups of women (para. 384).

The Committee also encouraged Canada to enhance participation of women in government (paras. 371-372) and to make gender-based analysis mandatory for all governments (paras. 353-354). Changing the SWC guidelines and eliminating the SWC policy research fund are decisions which conflict with the thrust of these recommendations, which is to give women, and women's equality issues, a greater presence in the work of government.

# Women’s Inequality in Canada 1999 - 2008

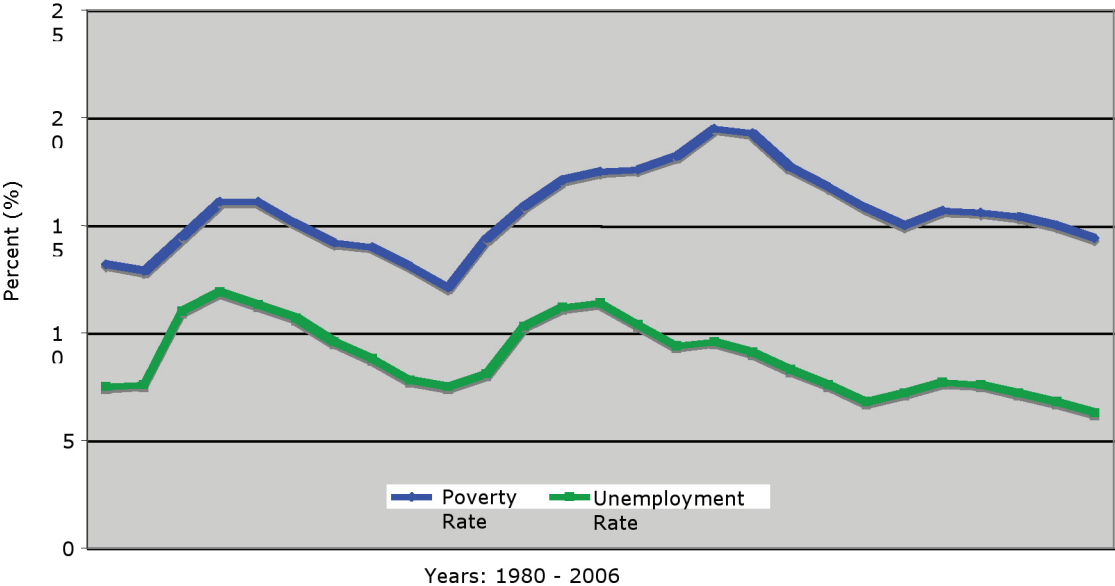
Canada has the resources, institutions and infrastructure to provide the social programs and services necessary to ensure women’s equal enjoyment of their human rights. Since the last reporting period, Canada has had a period of unparalleled economic growth and fiscal health, evidenced by continuous federal budget surpluses since 1998, amounting to billions of dollars. Canada’s employment rate is at a 33-year low (6.1% in 2007) and disposable income per capita (after taxes) increased by 15% between 1996 and 2004. The Minister of Finance reported in 2005 that “living standards have risen more in the past 8 years than they had in the previous 18 years.”

Despite this economic prosperity, spending on equality-enhancing programs since the last reporting period has fallen sharply at both the provincial and federal levels of government. Canadian governments have cut away services that women rely on, introduced punitive and restrictive eligibility rules to control access to benefits, and made women’s lives harsher. The poorest women, who are most likely to be single mothers, Aboriginal, women of colour, women with disabilities, and seniors, are the most harmed.

Since 1983, the poverty rate for women has fluctuated between 12% and 20% (it was 15.1% in 2006 for all women aged 19-64). While Canada boasts that poverty rates have dropped in recent years, this is attributable to a strong economy not to targeted government efforts at reducing women’s poverty. When the economy weakens, poverty rates for women are likely to rise.

The graph below shows the rise and fall of poverty rates and unemployment rates. The last two recessions in Canada, in 1981-1982 and 1990-1991, are illustrated on the graph by a rise in both poverty rates and unemployment rates. Likewise, the relatively strong current economy is marked by a gradual decline in both indicators.

**Table 1: Unemployment and Poverty among Working-Age People in Canada 1980 - 2006**





While the poverty rate undergoes cyclical fluctuations, the poverty rate for women is always higher than the rate for men. Even when women's poverty rate is at its lowest, one woman in eight is living below the poverty line in one of the wealthiest countries in the world.

Further, the overall poverty rates mask the high rates of poverty of particular groups of women. The most recent statistics available indicate that:

- Single mothers remain the poorest family type in Canada, with a poverty rate (based on before-tax LICOs<sup>1</sup>) of 38.1% compared to 11.9% for single fathers;
- Unattached senior women are also particularly vulnerable to poverty, with 37.2% falling below the poverty line compared to 28.9% of unattached men;
- Of all senior women, 16.6% are poor compared to just 8.3% of senior men;
- The poverty rate of Aboriginal women is 36%;
- 29% of women of colour are poor. African-Canadian women are the poorest racialized group in Canada, with a poverty rate of 57%;
- 26% of women with disabilities fall below the poverty line;
- The overall poverty rate for foreign-born women is 23%, rising to 35% for those who arrived between 1991 and 2000.

*The Economic and Fiscal Update* (November 2005), presentation by the Honourable Ralph Goodale, P.C., M.P., online: Department of Finance Canada, <http://www.fin.gc.ca/ec2005/speech/speche.pdf> (date accessed: 25 August 2008).

Statistics Canada, *Income Trends in Canada, 1976-2006*, online: StatsCan, <http://www.statcan.ca/english/freepub/13F0022XIE/2006000/series400-en.htm> (date accessed: 3 July 2008).

Statistics Canada, *Women in Canada 2005: A Gender-Based Statistical Report* (2005) at 190-199. Online: Statistics Canada, <http://www.statcan.ca/english/freepub/89-503-XIE/0010589-503-XIE.pdf> (date accessed: 30 June 2008).

The fact that women are economically unequal to men, and more likely to be poor, is not a coincidence. It is the result of women's work not being properly valued, of women being penalized because they are the principal care-givers for children, old people, and those who are ill or disabled, and of systemic discrimination in the workforce which devalues the work of women, and marginalizes women workers who are Aboriginal, of colour, immigrants, or disabled.

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1 Statistics Canada's Low Income Cut Offs (LICOs) define a low-income household as one which spends a disproportionate amount of its income on food, shelter, and clothing. LICOs vary by the size of the family unit and the population of the area of residence, and are updated annually by Statistics Canada using the Consumer Price Index. LICO is based on income after government transfer payments but before federal, provincial or territorial income taxes are deducted.

Women's poverty has gender-specific 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 and subordination in order to survive. They lose sexual autonomy in relationships. They are also stigmatized as sexually irresponsible women, and as bad mothers. 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. They have no political voice or influence. 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 subordination and violence.

### **Aboriginal Women**

Aboriginal women are among the poorest women in Canada. They are marginalized in the labour force, mainly working in lower paid and unstable jobs, with higher unemployment rates and lower incomes. They do not have the same level of educational attainment as non-Aboriginal women. Their life expectancy is lower. They experience more violence. More than 500 Aboriginal women in Canada have gone missing or been murdered over the last 15 years. There has been no recognition of these disappearances and murders as a massive human rights violation. The lack of protection of Aboriginal women's human rights and their economic and social marginalization permit the cycle of racialized and sexualized violence to continue.

Aboriginal women do not enjoy the same rights as Aboriginal men with respect to passing on their Indian status to their children and grandchildren. Nor do Aboriginal women living on reserve enjoy the same rights to the division of matrimonial property as their Aboriginal and non-Aboriginal counterparts who live off reserve. This discriminatory treatment of Aboriginal women at law affects their enjoyment - and the enjoyment of their children and grandchildren - of their right to culture, ancestral lands, the benefits of land claims, and other social and economic benefits provided to Indians.

All levels of government need to design and implement comprehensive and co-ordinated measures to address the inequality of Aboriginal women. These measures should be designed in consultation with Aboriginal women's organizations. Resources should be allocated specifically to support the advancement of Aboriginal women, including equal resources for Aboriginal women's organizations to participate in the negotiation of self-government and other agreements affecting their lives.

Statistics Canada, *Women in Canada 2005: A Gender-Based Statistical Report* (2005) at 190-199. Online: Statistics Canada, <http://www.statcan.ca/english/freepub/89-503-XIE/0010589-503-XIE.pdf> (date accessed: 30 June 2008).

## **Women of Colour, Immigrant Women, and Refugee Women**

Access to opportunities and income equality are limited for many Canadian women because of their race. Human rights laws have not, so far, been effective at addressing and eliminating systemic racism, which results in under-representation of women of colour in political office, academia, senior management positions, and media. Canada often seems unwilling to admit that there is a problem of racism, and has made no aggressive efforts to counteract it. Government employment equity programs, where they exist, have been weak. By default, responsibility for tackling racism and its effects is left to non-governmental organizations, which have too little power and too few resources for the job.

In addition to Canada's failure to address the multiple manifestations and multiple impacts of racism on Canadian women effectively, the treatment of particularly vulnerable groups of women who seek to enter Canada to live and work, many of whom are women of colour from developing countries, exemplifies entrenched sexist and racist attitudes on the part of Canadian authorities.

## **Women with Disabilities**

Women with disabilities are poorer than their male counterparts, and every barrier is higher for them. For women with disabilities, access to employment is tenuous. Consequently income support programs, such as social assistance, and services, such as home care, are vital to their survival and flourishing. Women with disabilities have been hit particularly hard by cuts to social programs that have been introduced since 1995.

Canada has not enacted strong legislation that requires buildings and services to be accessible. To obtain accessible services and facilities, women with disabilities must file human rights complaints, which often take years to resolve.

## **Girls and Young Women**

Girls and young women face different challenges than adult women, and than boys. Therefore girls and young women need gender and age specific analyses, interventions, and programming in order to ensure their equality within Canadian society.

Canadian girls face pressures regarding gender role conformity, overly sexualized images of girls in the media, financial dependence on family networks, and lack of independent mobility during a time of personal, psychological and physical development. Girls who are poor, of colour, and/or lesbian suffer from a "lack of fit". Racism and the disproportionate poverty of their mothers make Aboriginal girls, girls of colour, and immigrant girls more susceptible to being trapped in a "cycle of poverty", which includes higher drop-out rates and lower educational attainment, poor nutrition and health consequences, and over-incarceration.

The CEDAW recommendations to Canada in 2003 acknowledged the specific problems of girls when addressing the issues of trafficking and immigration in paras. 367 and 369. These

are important concerns, but girls in Canada face broader discrimination and need relevant and responsive policy development in order to secure their equality.

Candis Steenbergen and Christina Foisy, *Best Practices: Experience, Knowledge And Approaches For Working With And For Girls And Young Women* (2006), online: POWER Camp National/Filles d'Action, [http://www.powercampnational.ca/drupal47/files/BestPractice\\_complete.pdf](http://www.powercampnational.ca/drupal47/files/BestPractice_complete.pdf) (date accessed: 3 July 2008).

Yasmin Jiwani, *The Girl Child: Having to 'Fit'* (1998), online: FREDA Centre for Research on Violence Against Women and Children, <http://www.harbour.sfu.ca/freda/articles/fit.htm> (date accessed: 3 July 2008).

Canadian Women's Foundation, *Girls in Canada 2005*, (September 2005), online: CWF, <http://www.canadianwomen.org/PDFs/EN/CWF-GirlsCanada-Report05.pdf> (date accessed: 3 July 2008).

### **III. Violations of Article 2 : Discrimination Against Women**

#### **Federal Government Responsibility and the Spending Power**

2003 CEDAW Recommendations:

352. The Committee recommends that the federal Government reconsider those changes in the fiscal arrangements between the federal Government and the provinces and territories so that national standards of a sufficient level are re-established and women will no longer be negatively affected in a disproportionate way in different parts of the State party's territory.

While Canada's federal and provincial governments each have primary areas of legislative jurisdiction, the federal government can spend federal monies in areas of provincial jurisdiction. By attaching conditions to federal money, the federal government has been able to implement nation-wide standards in areas such as health, education, social assistance, and legal aid, areas that are understood to fall within the jurisdiction of the provincial governments. In this manner the federal government has supported programs that are delivered by the provinces and that implement services key to women's equality.

In 1995, Canada restructured fiscal arrangements between the federal government and the provinces and territories, and cut the amount of federal revenue transfers, without any consideration of the impact on women of these significant changes. In 1995, the federal government introduced the *Budget Implementation Act*, which repealed the *Canada Assistance Plan Act* (CAP) and introduced a new Canada Health and Social Transfer (CHST).

The *Budget Implementation Act* rolled funds for health, post-secondary education, social assistance and social services into one undifferentiated block transfer. The CHST has now been divided into the Canada Health Transfer (CHT) and the Canada Social Transfer (CST), thus separating monies for health from monies ostensibly designated for social assistance, civil legal aid and child care. The result of this fiscal rearrangement is that post-1995 federal monies transferred to the provinces have few conditions or designations attached, and there is no accountability system to track where the money is spent. The *Budget Implementation Act* has done lasting damage to social programs in Canada and has had lasting negative consequences for women.

The absence of nation-wide standards and designations of programs and services which qualify for federal funding has paved the way for drastic reductions in the provision of several key support programs for women, including adequate social assistance, civil legal aid, and funding for child care. Each of these areas and the particular impacts on women of their recent restrictions are discussed in more detail.

*Budget Implementation Act* 1995, S.C. 1995, c. 17;

*Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8, as amended.

Armine Yalnizyan, *Canada's Commitment to Equality: A Gender Analysis of the Last Ten Federal Budgets (1995-2004)* (2005), online: FAFIA, <http://www.fafia-afai.org/images/pdf/CanadaCommitmentsEquality.pdf> (date accessed 3 July 2008).

**RECOMMENDATION** The Government of Canada should redesign fiscal arrangements with the provinces and territories so that universal entitlements and nation-wide standards for social programs are re-attached to federal transfers. The Canada Social Transfer should include targeted funds, and provide for entitlements, and standards of adequacy for key social programs such as income assistance, civil legal aid, and child care.

## Women's Access to Justice

### Human Rights Legislation

Canada has human rights legislation in every jurisdiction that prohibits discrimination based on sex, race, disability, marital status, sexual orientation, and age, among other grounds, with respect to employment, housing, public services, contracts, union membership and membership in professional associations. These laws apply to public and private actors. Individual women, or groups of women, can file complaints when they believe that they have been discriminated against.

However, Canada's human rights regime remains flawed and efforts at reform in many jurisdictions are stalled. In 1999 an independent panel chaired by retired Supreme Court of Canada Justice Gerard La Forest was established to conduct a comprehensive review of the *Canadian Human Rights Act*. The Government of Canada has not implemented the Review Panel's recommendations though the problems identified in 1999 remain acute.

While the Review Panel's focus was on the federal *Canadian Human Rights Act*, the Panel identified three problems that are central in all jurisdictions.

### **Failure to address systemic discrimination**

The 1999 Review Panel was critical of the "limited effectiveness of systemic initiatives." It blamed the paucity of such cases on the large amount of effort and resources required, and the failure of the Human Rights Commission to initiate such cases despite its statutory power to do so. The Panel also noted the difficulty of monitoring and enforcing broad systemic remedies in the rare cases where such claims are successful.

No jurisdiction in Canada currently deals with systemic human rights issues adequately. Most human rights complaints are brought by individuals and are focussed on individual resolution, despite the fact that systemic claims are most important to bringing about meaningful change for women and other disadvantaged groups.

To date, Canadian governments have not encouraged systemic human rights claims or adapted Canada's human rights machinery to make it more effective in countering systemic discrimination.

### **Inadequate resourcing of Human Rights Commissions**

Human rights commissions are independent bodies charged with protecting the public interest in eliminating discrimination through public education, investigations, and other preventive strategies. British Columbia has no human rights commission, and other human rights commissions in Canada are chronically underfunded. Their ability to perform their important functions is limited.

Inadequate funding of human rights commissions is directly related to the lack of systemic discrimination claims, and to the failure of the human rights system to counter pervasive discriminatory attitudes and stereotypes. According to the Canadian Human Rights Act Review Panel: "the pressure to process individual cases and eliminate the backlog has tended to consume most of the Commission's resources and to deprive it of the capacity to choose where to direct its energies."

### **Lack of legal representation for complainants**

Legal aid schemes in Canada do not cover legal representation for human rights complainants. Instead, human rights commissions or human rights clinics provide limited representation for some complainants.



The Review Panel found that unrepresented complainants were rarely successful, and that “the practical result of no [legal] assistance would be to deny access.” The human rights complaint process is often complicated and requires expertise in order to argue a case successfully. The process can be impossible to navigate independently for complainants who do not speak an official language or have disabilities.

The Review Panel recommended that “all claimants who need assistance should receive it... and we strongly recommend that [clinics providing counsel] should have sufficient resources to represent all claimants.”

The situation almost ten years after those recommendations were made is one in which access to legal representation for human rights complainants is even more limited, and more and more unrepresented litigants are being forced to navigate the human rights system without assistance.

Canadian Human Rights Act Review, Promoting Equality: A New Vision (23 June 2000), online: Department of Justice Canada, <http://www.justice.gc.ca/chra/eng/index.html> (date accessed: 5 August 2008).

**RECOMMENDATIONS** The Government of Canada should ensure that the Canadian Human Rights Commission provides all human rights claimants with access to prompt and fair processing of their human rights complaints, including access to adjudicative hearings, and that all human rights complainants have access to effective legal representation.

The Government of Canada should ensure that the Canadian Human Rights Commission is sufficiently funded and independent to be able to investigate and pursue remedies for systemic violations of human rights, including complaints that are filed against government.

Provincial and territorial governments should take the necessary steps to ensure that their commissions and tribunals provide prompt and fair processing of all human rights complaints, including access to adjudicative hearings, and that all human rights complainants have access to legal representation.

Provincial and territorial governments should ensure that their human rights systems are sufficiently funded and independent to be able to investigate and pursue remedies for systemic violations of human rights, including complaints that are filed against governments.

## Civil Legal Aid

2003 CEDAW Recommendation:

**356. The Committee urges the State party to find ways for ensuring that sufficient legal aid is available to women under all jurisdictions when seeking redress in issues of civil and family law and in those relating to poverty issues.**

Legal aid is the basic means through which persons of low income can have access to legal representation and legal services to defend themselves in criminal cases and to exercise their rights under law in civil matters. Civil law legal aid is used disproportionately by women, specifically in family law and poverty law matters. The federal government provides targeted funds directly to the provinces and territories to support criminal law legal aid. But there is no federal funding similarly targeted for civil legal aid. Instead, the provinces, at their discretion, may fund civil law legal aid from the federal Canada Social Transfer.

Over the last decade, financial support for civil legal aid has diminished, and access to it has become increasingly restricted. For example, in British Columbia in 2002, funding for civil legal aid was cut by almost 40% over three years.

### Family Law

- In many jurisdictions, family law legal aid is now virtually unavailable.
- In British Columbia before the 2002 cuts to legal aid were made, women were twice as likely as men to use family law legal aid, while men were five times more likely than women to use criminal law legal aid.
- When denied counsel and faced with representing themselves, women often give up pursuing their share of family assets, or variations in custody or support orders.

### Poverty Law

- In some jurisdictions, poverty law legal aid has also been seriously eroded, or has been eliminated.
- This reduction or elimination of legal aid funding means that poor women cannot access legal services when they are denied benefits to which they are entitled, such as social assistance, employment insurance, disability benefits, and workers' compensation, or when they face eviction.
- Domestic workers, whose exploitative working conditions provide reasonable cause to leave their jobs, may be denied legal aid to appeal a denial of employment insurance benefits.
- Immigrant women, whose sponsorship is withdrawn by a spouse (often an abusive spouse), can be denied legal aid coverage for an application to vary the terms of their immigration status and can face deportation.



Governments at both the federal and provincial levels justify the preferred treatment of criminal legal aid on the grounds that there are liberty interests at stake in criminal cases. Unrecognized are the equally serious consequences attached to civil cases typically faced by women, which affect women's security and their enjoyment of their social and economic rights.

The Canadian Bar Association, the national lawyers professional association, has noted that "a decade of cuts has left Canada's legal aid system in crisis."

The CBA says:

- Legal aid should be recognized as an essential public service, like health care.
- Public funding for legal aid must be increased.
- National standards for civil legal aid coverage and eligibility criteria are required.
- The federal government must revitalize its commitment to legal aid.

The Association filed a constitutional suit against the Attorney General of Canada and the Attorney General of British Columbia claiming that the inadequate provision of civil legal aid violates the rule of law and sections 7 and 15 of the *Charter*, and discriminates in particular against poor women and other groups that are disadvantaged. The CBA claim was rejected by both the British Columbia Supreme Court and Court of Appeal on preliminary, technical grounds. Leave to appeal to the Supreme Court of Canada was denied. In essence, the courts have refused to deal with a systemic claim that inadequate provision of civil legal aid in British Columbia is a violation of rights to equality and security of the person.

Alison Brewin and Lindsay Stevens, *Legal Aid Denied: Women and Cuts to Legal Services in BC* (September 2004), online: CCPA, [http://www.policyalternatives.ca/documents/BC\\_Office\\_Pubs/legal\\_services.pdf](http://www.policyalternatives.ca/documents/BC_Office_Pubs/legal_services.pdf) (date accessed: 3 July 2008).

Canadian Bar Association, *CBA Position on Legal Aid*, online: CBA, <http://www.cba.org/CBA/Advocacy/legalAid> (date accessed: 1 July 2008).

Canadian Bar Association. 2005. *CBA Launches Test Case to Challenge Constitutional Right to Civil Legal Aid* (2005), online: CBA, [http://www.cba.org/CBA/News/2005\\_Releases/2005-06-20\\_backgrounder.aspx](http://www.cba.org/CBA/News/2005_Releases/2005-06-20_backgrounder.aspx) (date accessed: 1 July 2008).

**RECOMMENDATION** The Government of Canada should provide targeted funds to support civil legal aid and, in co-operation with provincial governments, ensure that there are effective nation-wide standards for coverage, eligibility and adequacy, which take women's particular needs into account.

## The Charter

The supreme law available to women to vindicate their human rights is the *Charter of Rights and Freedoms*, a part of Canada's Constitution. The *Charter* contains a constitutional equality rights guarantee that came into force in 1985. The *Charter* does not apply to private actors, but does apply to governments at all levels, as well as to agencies that have been delegated by governments to discharge a public duty.

Though the Government of Canada holds out the *Charter* as a key tool for Canadian women in their pursuit of equality, their arguments and conduct before the courts have worked to restrict rather than promote women's equality rights under the *Charter*.

Lawyer and human rights expert Gwen Brodsky documents the subversion of *Charter* rights by the Government of Canada, including their "hostile, rights-reducing argumentation" and "procedural maneuvers that can render litigation unaffordable."

Gwen Brodsky, "The Subversion of Human Rights by Governments in Canada" in Young, Boyd, Brodsky, and Day, eds., *Poverty: Rights, Social Citizenship, and Legal Activism* (Vancouver: UBC Press, 2007): 356, 363.

For example, Canadian governments have argued in *Charter* litigation that:

- The *Charter* merely restrains state action but does not compel it. Therefore, the right to equality does not impose any positive obligation on governments to redress social inequality.
- Government choices regarding issues such as social assistance are beyond the competence of courts, and claims relating to such choices are non-justiciable.

Cases in which these arguments have been used include the *Gosselin* case, which involved Louise Gosselin's right to social assistance, and the *N.A.P.E.* case, which concerned women's right to equal pay for work of equal value. In both of these cases, the *Charter* was ineffective as a vehicle for the advancement of women's substantive equality.

*Gosselin v. Québec (Procureur general)*, [2002] 4 S.C.R. 429. Online: Supreme Court of Canada, <http://scc.lexum.umontreal.ca/en/2002/2002scc84/2002scc84.html> (date accessed: 17 June 2008).

*Newfoundland (Treasury Board) v. N.A.P.E.*, [2004] 3 S.C.R. 381 [N.A.P.E.]. Online: Supreme Court of Canada, <http://scc.lexum.umontreal.ca/en/2004/2004scc66/2004scc66.html> (date accessed: 18 June 2008).

**RECOMMENDATION** The Government of Canada should uphold *Charter* values when involved in *Charter* litigation and conduct itself in a manner which promotes and protects women's *Charter* right to substantive equality.

## The Court Challenges Program

2003 CEDAW Recommendation:

**356. The Committee urges the State party to find ways for making funds available for equality test cases under all jurisdictions**

The Court Challenges Program (CCP) was established in 1985 to fund test cases initiated by individuals and groups to challenge federal laws and policies that violate the constitutional right to equality. The federal government has funded the programme. With the help of modest CCP funding, for about twenty years, individual women, women's organizations and other equality-seeking groups have been able to access the Canadian court system to challenge unconstitutional laws and to argue for substantive interpretations of Canada's new equality guarantee.

The Program was lauded by the Committee in its 2003 Concluding Comments, but concern was also expressed about the Program's applicability to only federal laws and programs. Canada was urged to expand the Program, making funds available for equality test cases under all jurisdictions.

However, rather than expanding the Program as the Committee recommended, the federal government announced in 2006 that it would immediately end funding for the CCP. The Minister Responsible for the Status of Women at the time, the Honourable Beverly Oda, in defense of the cancellation of the program and other federal funding initiatives, stated that women in Canada had already achieved equality.

The cancellation of funding to the Court Challenges Program was considered by the Parliamentary Standing Committees on the Status of Women, Heritage Canada, Justice and Human Rights, and Official Languages. Each one of these Committees recommended reinstatement of funding to the Court Challenges Program.

Women and the Court Challenges Program, Report of the Standing Committee on the Status of Women (February 2008), online: House of Commons Canada, [http://cmte.parl.gc.ca/Content/HOC/committee/392/fewo/reports/rp3274072/392\\_FEWO\\_Rpt02/392\\_FEWO\\_Rpt02-e.pdf](http://cmte.parl.gc.ca/Content/HOC/committee/392/fewo/reports/rp3274072/392_FEWO_Rpt02/392_FEWO_Rpt02-e.pdf) (date accessed: 5 September 2008).

Fifth Report of the Standing Committee on Justice and Human Rights (November 2006), online: House of Commons Canada, <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?SourceId=183948> (date accessed: 5 August 2008).

Eighth Report of the Standing Committee on Canadian Heritage (October 2006), online: House of Commons Canada, <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=10467&Lang=1&SourceId=173884> (date accessed: 5 August 2008).

Protection of Language Rights under the Court Challenges Program, Report of the Standing Committee on Official Languages (December 2007), online: House of Commons Canada, <http://cmte.parl.gc.ca/Content/HOC/committee/392/lang/reports/rp3204469/langrp02-e.html> (date accessed: 5 September 2008).

In 2008, the government announced it would reinstate funding for the official languages component of the CCP, under the Program to Support Linguistic Rights. It has also agreed to make funding available for appeals of equality cases that had already, prior to the funding cut, been funded by the CCP in lower courts. However, the government will provide no funding for new equality rights litigation.

In the absence of CCP funding, equality rights in Canada are useable only by the rich. There is little point in having a constitutional right to equality - which the Government of Canada claims is a key means of meeting its obligations under Article 2 of CEDAW - if, in fact, most women cannot use that right. That is the situation now.

Court Challenges Program of Canada, Annual Report 2006-2007, online: CCP, [http://www.ccppcj.ca/documents/CCPC-AR2007\(eng\).pdf](http://www.ccppcj.ca/documents/CCPC-AR2007(eng).pdf) (date accessed: 3 July 2008).

Richard Brennan, Deal to bring back court challenges program: NDP (17 June 2008), online: The Toronto Star, <http://www.thestar.com/News/Canada/article/444564> (date accessed: 3 July 2008).

**RECOMMENDATION** The Government of Canada should reinstate full funding to the Court Challenges Program immediately and ensure that funding is available for equality challenges to federal, provincial, and territorial laws and programs.

## International Treaty Obligations

Aside from domestic legislation, Canadian governments are obligated to uphold the international treaties that Canada has signed. Canadians take pride in Canada's international reputation as a defender and promoter of human rights.

However, as noted at the beginning of this report, Canada has no national machinery for monitoring or ensuring that Canadian governments comply with their treaty obligations. The federal government's position is that it has no authority to require provincial and territorial governments to comply. Federal, provincial, and territorial governments consult when Canada is considering ratifying a new treaty, and they collaborate on preparing reports to UN treaty bodies. However, there is no co-ordination with respect to implementation of treaty obligations, monitoring of compliance, or response to the treaty bodies' Concluding Observations.

Canadian governments cannot be held directly accountable for implementation of treaty rights in Canadian courts because international treaties are not directly applicable as domestic law. Rather they are interpretive aids to rights enacted in domestic law. In a recent case concerning collective bargaining rights, the Supreme Court of Canada stated that “the *Charter* should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified.” However, this approach has not been taken in other cases, particularly those involving social and economic rights, that are essential for women’s substantive equality in Canada.

Suresh v. Canada (Minister of Citizenship and Immigration), [2002] 1 S.C.R. 3 at para. 46. Online: Supreme Court of Canada, <http://scc.lexum.umontreal.ca/en/2002/2002scc1/2002scc1.html> (date accessed: 21 August 2008).

Health Services and Support-Facilities Subsector Bargaining Association v. British Columbia, 2007 SCC 27. Online: Supreme Court of Canada, <http://scc.lexum.umontreal.ca/en/2007/2007scc27/2007scc27.html> (date accessed: 17 June 2008).

Gosselin v. Quebec (Attorney General), [2002] 4 S.C.R. 429. Online: Supreme Court of Canada, <http://scc.lexum.umontreal.ca/en/2002/2002scc84/2002scc84.html> (date accessed: 21 August 2008).

Governments when they are litigants in court argue in ways that actively undermine this indirect domestic application of international treaties. For example, in the BC Government’s Statement of Defence to the Canadian Bar Association’s challenge to BC’s legal aid scheme (discussed above), the BC Government argued that international human rights “are not enforceable in Canadian law” and therefore irrelevant to the case.

*The Canadian Bar Association v. HMTQ et al.*, 2008 BCCA 92, online: BC Court of Appeal Reasons for Judgment, <http://www.courts/gov/bc/ca/Jdb-txt/CA/08/00/2008BCCA0092err4.htm> (date accessed: 17 June 2008).

British Columbia Ministry of Attorney General, *Canadian Bar Association v. HMTQ et al.*, Statement of Defence at paras. 51 and 55 (October 2005), online: Canadian Bar Association, [http://www.cba.org/CBA/Advocacy/pdf/statement\\_crown.pdf](http://www.cba.org/CBA/Advocacy/pdf/statement_crown.pdf) (date accessed: 12 July 2008).

**RECOMMENDATIONS** The Government of Canada, with the governments of the provinces and territories, should develop a coordinated and accountable process for monitoring implementation of Canada's international human rights obligations, that will involve Aboriginal peoples and civil society. As part of this process, there should be a high level focal point for implementation of Canada's international obligations that, at a minimum, meets the following criteria:

- a) regular public reporting and transparency;
- b) on-going engagement with civil society organizations, including women's organizations; and
- c) public response to concluding observations from UN treaty body reviews and other UN-level recommendations within a year of receipt.

The governments of Canada, when they are litigants, should argue in favour of interpretations of domestic law that will give full effect to Canada's obligations to women under international human rights law.

Canadian women, seeking the compliance of their governments with the terms of the *Convention on the Elimination of Discrimination against Women*, face enormous obstacles. The domestic machinery that has been established to give life to women's right to equality – human rights legislation and the *Charter* – is currently ineffective. Individual human rights complainants face long delay in obtaining remedies, and statutory human rights machinery has not shown itself to be capable of dealing with the major systemic problems that women face. *Charter* rights are inaccessible to disadvantaged women who wish to bring claims regarding the unequal impact of laws, policies, and practices. Finally, there is no machinery for overseeing and monitoring the implementation of international human rights treaties such as the *Convention on the Elimination of Discrimination against Women*.

**RECOMMENDATION** The governments of Canada should ensure that effective remedies for violations of women's civil, political, economic, social, and cultural rights can be obtained through the Canadian justice system, and that there are adequate mechanisms and funding available to ensure that women have access to the use of their rights.

## IV. Violations of Articles 2 and 3: Aboriginal Women

2003 CEDAW Recommendations:

362. The Committee urges the State party to accelerate its efforts to eliminate de jure and de facto discrimination against aboriginal women both in society at large and in their communities, particularly with respect to the remaining discriminatory legal provisions and the equal enjoyment of their human rights to education, employment and physical and psychological well-being.

It urges the State party to take effective and proactive measures, including awareness-raising programs, to sensitize aboriginal communities about women's human rights and to combat patriarchal attitudes, practices and stereotyping of roles.

It also recommends to the State party to ensure that aboriginal women receive sufficient funding in order to be able to participate in the necessary governance and legislative processes that address issues which impede their legal and substantive equality.

It also requests the State party to provide comprehensive information on the situation of aboriginal women in its next report.

### Discrimination in the Indian Act

The *Indian Act* continues to discriminate against Aboriginal women who lost their status prior to 1985 because of “marrying-out” provisions in the *Act*. Prior to 1985, section 12(1)(b) of the *Indian Act* stipulated that Aboriginal women lost their Indian status if they married non-Indians. By contrast, status Indian men who married non-Indian women retained their status and, additionally, were able to confer that status on their wives and children. Under this provision, many Aboriginal women lost their status, with consequent ineligibility to receive a number of benefits, such as residence on their reserve, that depend upon status.

In 1985, Bill C-31 was enacted to amend the *Indian Act* so that marriage has no effect on the Indian status of either spouse, and to provide for re-instatement of women who had lost their status because of s. 12(1)(b). However, the current *Indian Act* even as amended continues to discriminate against Aboriginal women:

- Women who have had their status reinstated under the new provisions are able to pass status on to their children, but status will only pass to their grandchildren if their children marry status Indians. In contrast, men who married non-status Indians prior to 1985 did not need to be reinstated, and nor did their children, who had status from birth. As a result, the status of these men's grandchildren is guaranteed and not dependent upon who



these children's parents marry. Thus, the government continues to favour descent through the male line;

- Seventy-five per cent of people who had their Indian status restored under the 1985 provisions were women. Most of these women continue to live off-reserve, though for some it is not by choice. Lack of access to resources, such as on-reserve housing, impede these women's full inclusion back into their communities. This ongoing legacy of discrimination and exclusion remains inadequately addressed by the Government of Canada;
- Those women who have had their Indian status reinstated but are not able to move back to their reserve are still being denied the right
  - to participate in the negotiation of self-government agreements,
  - to benefit monetarily and otherwise from settlements of land claims,
  - to access benefits, including education, health, child care, and housing.

The Government of Canada is currently appealing a British Columbia Supreme Court decision which requires the federal government to remove the sex discrimination from the determination of Indian status in the *Indian Act*.

The Court ruled in *McIvor v. Canada* that Bill C-31 contravened international conventions, including the CEDAW, as well as the Canadian *Charter*. By drawing a distinction between male and female ancestors in determining Indian status, and by continuing to discriminate against women who were reinstated after losing their status due to marrying-out, the Court held that the 1985 amendments offend the basic notion of human dignity and imply that "one's female ancestors are deficient or less Indian than their male counterparts."

*McIvor v. The Registrar, Indian and Northern Affairs Canada*, 2007 BCSC 827

**RECOMMENDATION** The Government of Canada should drop its appeal of the BC Supreme Court decision in the *McIvor* case and immediately amend the *Indian Act* to remove the continuing discrimination against Aboriginal women who married out and against those whose Indian status is derived from female ancestors.

## Section 67 of the Canadian Human Rights Act

Section 67 of the *Canadian Human Rights Act* provided that: "Nothing in this Act affects any provision of the *Indian Act* or any provision made under or pursuant to that Act." It had the effect of immunizing Band Councils from challenges when their decisions were discriminatory, such as denying services and access to housing to Indian women who lost their Indian status because they "married out" and who regained their Indian status under Bill C-31.



Section 67 was repealed effective June 18, 2008, which means that the CHRA will apply to all decisions made under the *Indian Act*.

However, the amending legislation provides for:

Women's Inequality in Canada A non-derogation clause, which ensures that the repeal of Section 67 will not abrogate or derogate from the protection of existing aboriginal and treaty rights recognized in section 35 of the *Constitution Act 1982*;

Women's Inequality in Canada An interpretive clause, indicating that when complaints are made under the *Canadian Human Rights Act* against First Nations governments, the *Act* should be applied in a manner that "gives due regard to First Nations legal traditions and customary laws, particularly the balancing of individual rights and interests against collective rights and interests, to the extent that they are consistent with the principle of gender equality";

Women's Inequality in Canada A three-year transition period before complaints can be accepted by the Canadian Human Rights Tribunal.

Canadian Human Rights Act, R.S. 1985, c. H-6, online: Department of Justice Canada, <http://laws.justice.gc.ca/en/ShowFullDoc/cs/H-6///en> (date accessed: 7 June 2008).

Bill C-21 An Act to Amend the Canadian Human Rights Act (29 May 2008), online: Library of Parliament, [http://www.parl.gc.ca/common/bills\\_ls.asp?lang=E&ls=c21&source=library\\_prb&Parl=39&Ses=2](http://www.parl.gc.ca/common/bills_ls.asp?lang=E&ls=c21&source=library_prb&Parl=39&Ses=2) (date accessed: 7 June 2008).

**RECOMMENDATION** The Canadian Human Rights Commission should establish a specialized working group to monitor the implementation of Section 67 of the *Canadian Human Rights Act* in order to ensure that Section 67 is interpreted and applied in a way that provides full protection for Aboriginal women against discrimination and full redress for human rights violations.

## Matrimonial Property on Reserve

Under the Canadian Constitution, provincial law governs the division of marriage assets upon marriage breakdown. However, the federal government has jurisdiction with respect to laws governing Aboriginals and Aboriginal land. Thus, the division of on-reserve property in matrimonial dispute settlements is governed by the federal *Indian Act*, which contains no provisions for distribution of matrimonial property upon marriage breakdown.

Provincial family relations statutes typically provide that, upon an order for dissolution of marriage, each spouse is entitled to an undivided half-interest in all family assets, regardless

of which spouse holds title to such assets. Property used for a family purpose, for example, the matrimonial home, is such a family asset.

In 1986, the Supreme Court of Canada held that these provincial laws do not apply to on-reserve properties. At best, a woman may receive an award of compensation to replace her half-interest in properties to which her husband holds the Certificate of Possession of reserve property. Since possession of on-reserve land is an important factor in individuals' abilities to live on reserve, denial of interest in family on-reserve properties upon dissolution of a marriage is a serious disadvantage to Aboriginal women.

Provincial legislation also provides for interim exclusive possession of the matrimonial home by one of the spouses upon marriage breakdown. The *Indian Act* provides no such protection, in spite of the fact that Aboriginal women are particularly vulnerable to the violence and abuse that would necessitate such an order. Land and housing are in short supply on reserves. Thus, if her husband holds the Certificate of Possession, an Aboriginal woman must choose between remaining in an abusive relationship or leaving her home and seeking off-reserve housing, removed from family, friends, and community support networks.

*Indian Act*, R.S.C. 1970, c. I-6, Section 20.

*Derrickson v. Derrickson*, [1986] 1 S.C.R. 285, online: Supreme Court of Canada Judgments, <http://scc.lexum.umontreal.ca/en/1986/1986rcs1-285/1986rcs1-285.html> (date accessed: 7 June 2008).

In 2006, the federal government initiated a nation-wide consultation process on the matrimonial real property issue. In 2008 the government introduced Bill C-47, legislation which sets out interim federal rules of matrimonial property division while recognizing First Nations' jurisdiction over the issue. Bill C-47 has completed Second Reading in the House of Commons but has not yet been examined by the Standing Committee.

While there is some disagreement among the Aboriginal women's community in Canada about how quickly the government should proceed on this issue, FAFIA submits that this is a straightforward issue requiring immediate action. The current discrimination suffered by Aboriginal women on reserve has been discussed and consistently criticized for many years, and further delay is not justified.

*Bill C-47: An Act respecting family homes situated on First nation reserves and matrimonial interests or rights in or to structures and lands situated on those reserves* (23 April 2008), online: Library of Parliament, [http://www.parl.gc.ca/common/bills\\_ls.asp?lang=E&ls=c47&source=library\\_prb&Parl=39&Ses=2](http://www.parl.gc.ca/common/bills_ls.asp?lang=E&ls=c47&source=library_prb&Parl=39&Ses=2) (date accessed: 7 June 2008).

Native Women's Association of Canada, *Consultative Partnership a Sham* News Release (4 March 2008), online: NWAC, <http://www.nwac-hq.org/en/documents/PressReleasereMRPlegislationMar4-08.pdf> (date accessed: 7 June 2008).

Native Women's Association of Canada, *Reclaiming Our Way of Being: Matrimonial Real Property Solutions* (2007), online: NWAC, [http://www.nwac-hq.org/en/documents/NWACMatrimonialReportDraft4\\_Eng\\_001.pdf](http://www.nwac-hq.org/en/documents/NWACMatrimonialReportDraft4_Eng_001.pdf) (date accessed: 7 June 2008).

**RECOMMENDATIONS** The Government of Canada should ensure that Aboriginal women enjoy the same rights to matrimonial property upon marriage breakdown as all other women in Canada.

## V. Violations of Article 3: Advancement of Women

### Violence Against Women

2003 CEDAW Recommendation:

370. The Committee urges the State party to step up its efforts to combat violence against women and girls and increase its funding for women's crisis centres and shelters in order to address the needs of women victims of violence under all governments.

### General Statistics and Trends

Violence against women in Canada remains a key problem. It limits the liberty of women in Canada and exploits women's unequal status, and results in devastating harm to women and girls. In 2006, Statistics Canada released a comprehensive summary about violence against women in Canada. In the report, it was found that:

- Rates of spousal violence against women have remained relatively unchanged in nearly all of the provinces during this reporting period;
- Women in the territories experience higher rates of spousal violence than women in the provinces;
- Each year, one out of every four female university or college students in Canada experiences some variation of sexual assault;
- Over 86% of all criminal assaults in Canada are against women;
- Five times more women than men are murdered by their partners; women who kill their partners often do so in self-defence or after years of abuse;

- Every second, a woman somewhere in Canada experiences some form of sexual violence.

Holly Johnson, Measuring Violence Against Women: Statistical Trends 2006, online: Statistics Canada, <http://www.statcan.ca/english/research/85-570-XIE/85-570-XIE2006001.htm> (date accessed: 16 July 2008).

Statistics Canada, The Daily: Violence Against Women: Statistical Trends (October 2006), online: Statistics Canada, <http://www.statcan.ca/Daily/English/061002/d061002a.htm> (date accessed: 16 July 2008).

Step It Up Ontario, End Violence Against Women, online: Step It Up Ontario, <http://www.stepitupontario.ca/10-steps/step-1.html> (date accessed: 16 July 2008).

## **Vulnerability to Violence**

Many social and economic factors make women particularly vulnerable to violence and unable to escape it. Women who are poor are at particularly high risk, as are young women and girls, women suffering from mental illnesses or addiction, women with disabilities and immigrant women.

### **Poverty:**

Minimum wage and social assistance are so low that women often have to choose between poverty and remaining in a violent relationship. A lack of economic independence can make it impossible for women to move, leave a job, or buy the security system that might keep them safe. Returning to school to upgrade and paying for child-care may be out of reach financially for economically vulnerable women. Inadequate provision of legal aid prevents poor women from seeking protection orders or altering custody or access agreements, putting them and their children at risk of further harm.

### **Young women and girls:**

Canadian police and child welfare services tend to send girls back into family homes where abusers remain or remove girls and place them in unsafe or inadequate government homes or youth shelters. The authorities rarely remove the abusive male from the family or pursue criminal prosecution against him. This has led to high rates of homelessness among girls.

- In a 2007 survey of 762 homeless youth aged 12 to 18, it was found that 57% of the girls has been sexually abused.
- Many girls who end up on the street are at high risk of sexual exploitation or abuse in prostitution. Justice for Girls reports that more than half of those involved in prostitution in Canada began as children; most girls involved in prostitution in Canada are fleeing sexual abuse that usually began at home.
- Many young women turn to drugs to numb the pain of their circumstances. As one young woman says, “when I was younger I got sexually abused...when I’m down and out I usually do drugs. I always thought drugs could heal the pain right, but they don’t....”

- There are few detoxification centers and housing services that are focused specifically on young women, and virtually no services for girls that promote and respect their equality.

Asia Czapska et al., *More Than Bricks and Mortar: A Rights-Based Strategy to Prevent Girl Homelessness in Canada* (May 2008), online: Justice For Girls, [http://www.justiceforgirls.org/publications/pdfs/jfg\\_housing\\_web.pdf](http://www.justiceforgirls.org/publications/pdfs/jfg_housing_web.pdf) (date accessed: 16 July 2008).

### **Mental illness and addiction:**

Mental illness and addictions are contributing factors in determining women's vulnerability to homelessness and to the resulting high risk of violence. According to YWCA Toronto, "For women, [mental illness and addiction]...are most frequently linked to a history of psychological trauma, such as childhood sexual abuse, violence in their intimate relationships, experience of gender persecution and rape in the context of emigration or civil war."

There are very few facilities across Canada that offer gender specific detoxification centers, mental health services and housing services, and even fewer services that exist for women with children.

Joan White and Amanda Dale, Letter to Elizabeth Harding, Director of the Ministry of Municipal Affairs and Housing Market Housing Branch (14 December 2004), online: YWCA Toronto, [http://www.ywca-toronto.org/assets/pdf/advocate\\_change/policy\\_papers\\_deputations/2004/041214\\_housing\\_letter.pdf](http://www.ywca-toronto.org/assets/pdf/advocate_change/policy_papers_deputations/2004/041214_housing_letter.pdf) (date accessed: 16 July 2008).

### **Immigrant and Trafficked women:**

Immigrant women, and trafficked women in particular, are unlikely to report abuse or reach out for help because of isolation, their insecure legal and economic status and lack of proficiency in one of Canada's official languages. Language barriers prevent many women from seeking help. Women who are new to Canada may not be familiar with their rights in Canada, or the way law enforcement and court systems work. They may be deliberately misinformed about their rights and status by their abusive partner.

### **Inadequate Justice System Response**

Most incidents of violence against women are not reported to the police and of those that are some are not responded to or even recorded. When reported, violence against women often does not lead to an adequate investigation, charges, or conviction, and rarely results in an appropriate sentence.

In a 5-year national survey of 100 women who were victims of male violence, completed in 2003, the Canadian Association of Sexual Assault Centres found that the system failed women at every level. There were failures in government oversight of 911 operators, police

failures to investigate and prepare charges, failures in decision making by Crown prosecutors, and failures in judicial reasoning regarding sentencing.

Following are some examples of justice system failures to address violence against women:

- Lori Dupont was murdered in 2005 by her ex-partner who was known to be abusive. In December 2007, the inquest into the Dupont murder recommended better coordination among law enforcement agents with respect to complaints regarding violence against women.
- In February 2000, Corinne McKeowant and Doreen Leclair were stabbed to death by William John Dunlop, the ex-partner of one of the women, while a 911 operator listened to their fifth call for assistance. An independent inquest reviewed the 911 tapes in 2004 and revealed a complete failure of 911 and the police to respond to the calls. The recommendations from the inquest again called for increased police communication with respect to violence against women.
- In 2004, the British Columbia Court of Appeal upheld a trial judge's finding that the police had failed in their duty of care when they did not examine complaints of domestic violence against Ronald Kruska filed by his former partner Bonnie Mooney. The police told Mooney they would not investigate the complaints despite a documented history of violence that included time in prison for assaulting her.
- The investigation by the police of the murder of 26 women in British Columbia by Willie Pickton was found in a subsequent civil suit to be characterized by "gross negligence." The lawsuit suggests that the failure of the police to fully investigate the events resulted in more murders before Pickton was arrested in 2002. Charges against Pickton had been stayed in 1997 because a witness against him was described as a "drug-addicted prostitute."
- In Ontario the Domestic Violence Death Review Committee has noted the gendered nature of domestic violence, with female victims comprising 100% of cases reviewed. In addition, in 2005, it noted that, "In eight out of nine cases, the homicide appeared to be both predictable and preventable." There has been no action taken by the federal or provincial government in response to the Death Committee's findings.

Lee Lakeman, *Canada's Promises to Keep: The Charter and Violence Against Women* (2003), online: CASAC, <http://www.casac.ca/english/canadas.promises.to.keep.htm> (date accessed: 16 July 2008).

Coroner's Jury Recommendations (Lori Dupont murder), online: <http://www.cavalluzzo.com/update/Documents/Recommendations.pdf> (date accessed: 16 July 2008).

CBC, *The Winnipeg 911 Murders* (2 July 2004), online: CBCnews.ca, <http://www.cbc.ca/news/background/aboriginals/winnipeg911.html> (date accessed: 16 July 2008).

Mooney v. British Columbia (Attorney General) 2004 BCCA 402, online: Rape Relief, [http://www.rapereliefshelter.bc.ca/issues/Bonnie\\_mooney\\_COURT\\_OF\\_APPEAL\\_FOR\\_%20BC\\_final.pdf](http://www.rapereliefshelter.bc.ca/issues/Bonnie_mooney_COURT_OF_APPEAL_FOR_%20BC_final.pdf) (date accessed: 16 July 2008).

Elizabeth Fry Society, Violence Against Women and Children (2006), online: Elizabeth Fry Society, <http://www.elizabethfry.ca/eweek06/pdf/violence.pdf> (date accessed: 16 July 2008).

Domestic Violence Death Review Committee, Annual Report to the Chief Coroner 2005, online: Ontario Ministry of Community Safety and Correctional Services, [http://www.mcscs.jus.gov.on.ca/english/publications/comm\\_safety/DVDRC\\_2005.pdf](http://www.mcscs.jus.gov.on.ca/english/publications/comm_safety/DVDRC_2005.pdf) (date accessed: 16 July 2008).

Instead of arresting and prosecuting men who are violent to women, a number of alternatives have emerged. Frequently, police and crown prosecutors divert to civil or criminal restraining orders including promises to keep the peace (for husbands and intimate partners) rather than immediate investigations and arrests and appropriate convictions.

- In 2000 the British Columbia Violence Against Women in Relationships (VAWIR) policy directed the justice system to emphasize the criminality of violence against women in intimate relationships; safety and security of the victims was of paramount importance. However, in 2003, after a change in government, the Criminal Justice Branch of the Ministry of the Attorney General withdrew from the VAWIR policy allowing Crown level discretion to divert abusive men to alternative programs rather than maintaining the rigorous prosecution stance the policy originally mandated.
- Across Canada, some provinces have begun to fund “domestic violence courts”, which are supposed to facilitate domestic assault cases and early intervention in abusive domestic situations, provide better support to victims, and increase offender accountability. But prosecutions and convictions for offences of violence against wives and children are not improving. Evaluation of the program in Ontario, the largest program in Canada, has revealed that there are longer delays and that the courts are not accessible to Aboriginal, ethnic or immigrant communities. Further, more than half the cases are not prosecuted by specialized Domestic Violence Crown Counsel, as promised.

According to Statistics Canada, judges handed down prison terms in 19% of convicted cases of spousal violence; in contrast, approximately 29% of offenders were incarcerated when convicted of other violent crimes.

BC Association of Specialized Victim Assistance and Counseling Programs, Critical Elements of an Effective Response to Violence Against Women (April 2007), online: BC Institute Against Family Violence, [http://www.bcysth.ca/BN\\_9\\_POLICIES.doc](http://www.bcysth.ca/BN_9_POLICIES.doc) (date accessed: 16 July 2008).



Step It Up Ontario, End Violence Against Women: Hold Abusers Accountable for their Actions, online: Step It Up Ontario, <http://www.stepitupontario.ca/10-steps/step-7.html> (date accessed: 16 July 2008).

Statistics Canada, The Daily, Family Violence: Demonstration study of sentencing outcomes (6 July 2004), online: <http://www.statcan.ca/Daily/English/040706/d040706a.htm> (date accessed: 16 July 2008).

**RECOMMENDATIONS** The governments of Canada should take steps to ensure that there is a rigorous and effective criminal justice system response to violence against women, that appropriate policies and training are in place, and that there is regular monitoring and assessment of 911 operators, police, Crown counsel, and sentencing practices.

### **Criminalizing Women Who Experience Violence**

In too many instances, the Canadian justice system criminalizes women and does not hold abusers accountable for their actions.

“Dual” charging has emerged as a common practice, resulting from a rise in aggressive “law and order” approaches to family violence. This means that both people involved in a family violence dispute are charged with committing a crime. Efforts to reduce dual charges has led to the rise of sole charging of women in Ontario. The sole charging of women occurs if, at the time of arrest, her partner has a visible injury, many times from an object used in defense and the police attending deem the abuser to be more “credible” than the woman.

Abused women are also criminalized in other ways. Recent research in Ontario revealed that women were charged with a “failure to protect” in almost one-quarter of reports of “domestic violence” to child welfare agencies. This occurs because a mother experiencing abuse from her partner is held responsible for the child witnessing the abuse or being affected by abuse in the home. Alternatively, women are being accused of neglect or “failure to provide” when a mother leaves her abuser and experiences greater poverty or homelessness as a result.

A further problem for mothers experiencing violence is a lack of coordination between the family and criminal justice systems. “Women facing violence in their relationships who seek safety for themselves and their children by leaving their abusive partners are then still required in family law to ensure the children’s access to the abusive ex-partner,” says Angela MacDougall of Battered Women’s Support Services. It is not mandatory under federal divorce law for judges to consider “domestic violence” in custody and access decisions upon separation. Even when domestic violence is clearly present, it is often not identified by lawyers, included in case materials, or considered in court orders. As a result women must



choose between breaching a court order or having continued contact with an abusive ex-partner.

Step It Up Ontario, End Violence Against Women: Stop Criminalizing and Psychiatrizing Women, online: Step It Up Ontario, <http://www.stepitupontario.ca/10-steps/step-8-stop-criminalizing-and-psychiatrizing-women..html> (date accessed: 16 July 2008).

West Coast LEAF, Press Release: Women and Children at Risk for Their Lives in Family Law Disputes (11 April 2008), online: LEAF, [http://www.westcoastleaf.org/userfiles/file/MediaReleaseMerritt\\_Apr08.pdf](http://www.westcoastleaf.org/userfiles/file/MediaReleaseMerritt_Apr08.pdf) (date accessed: 16 July 2008).

Step It Up Ontario, End Violence Against Women: Provide Fair Access to Justice for Women, online: Step It Up Ontario, <http://www.stepitupontario.ca/10-steps/step-6.html> (date accessed: 16 July 2008).

**RECOMMENDATIONS** The Canadian criminal justice system should not pursue dual charges, but adopt a “primary aggressor” analysis for determining charges in cases of domestic violence;

Resources should be provided to support mothers in violent relationships, including safe housing, counselling for herself and her children, and other necessary social services;

Federal divorce laws should be amended to include domestic violence as a factor that judges are required to consider when deciding custody and access cases, and women who have survived a violent relationship should not be required to facilitate access to her children.

### **Inadequate Shelters and Transition Houses**

Approximately one in ten abused women in Canada use a shelter. Approximately 100,000 women and children used women’s shelters in the 12 month period beginning April 12, 2005. Shelters play a critical role in keeping women safe from violence, but Canada’s 550 shelters for women fleeing violence are full and many have waiting lists. A YWCA study shows that an astonishing number of women who come to YWCA shelters are turned away because the system is bottlenecked. In addition, women currently staying in YWCA shelters cannot find housing to move to because their income is too low and rents are too high.

The Ontario Association of Interval and Transition Houses (OAITH) is a provincial coalition of primarily short-term emergency shelters for abused women and their children. OAITH reports that significant funding cuts for shelters, along with cuts to social assistance and

housing subsidies since 1995, have resulted in a critical shortage of resources to get abused women and children out of danger.

The shortages in transition beds for women fleeing violence are acute in Canada's northern and rural regions. The situation in these regions is documented in more detail under Article XIV.

Nguyen, M. "Real change needed at women's shelters in Canada". March 11, 2008, [www.uppingtheanti.org](http://www.uppingtheanti.org)

[http://www.ywcatoronto.org/assets/pdf/media/media\\_releases/2007/071004\\_mr\\_violence\\_against\\_women.pdf](http://www.ywcatoronto.org/assets/pdf/media/media_releases/2007/071004_mr_violence_against_women.pdf)

YWCA, *Effective Practices in Sheltering Women Leaving Violence in Intimate Relationships* (2006), online: YWCA, [http://www.ywca.ca/public\\_eng/advocacy/Shelter/YWCA\\_ShelterReport\\_EN.pdf](http://www.ywca.ca/public_eng/advocacy/Shelter/YWCA_ShelterReport_EN.pdf) (date accessed: 16 July 2008).

## **Sheltering Women with Disabilities:**

Women with disabilities experience more abuse than women without disabilities because they are often highly vulnerable to those on whom they depend for care. They experience physical, financial, caregiver, and sexual abuse, as well as neglect. Women and girls who need physical attendant care for daily living tasks are particularly vulnerable to exploitation and abuse.

Disabled Women's Network Canada (DAWN Canada), a group which advocates for women with disabilities, surveyed shelters in 1990 and found that simple physical access was lacking, but even more dire was the lack of acceptance of women with mental illnesses. Many shelters did not want to take them because they were perceived as making too much trouble for shelter workers. DAWN Canada is currently undertaking a new national survey of women's shelters across Canada to determine their accessibility to women with all types of disabilities—psychiatric, sensory, developmental, chronic illness and physical. The current survey also highlights the need for shelters to provide access to women with disabilities who have children, and to women who have children with disabilities.

Masuda, S., & Ridington, J. (1990). *Meeting our needs: Access manual for transition houses*. Vancouver: DisAbled Women's Network, Canada.

**RECOMMENDATION** The governments of Canada should, through a co-ordinated plan, increase and provide sustained funding for women's shelters, including in rural and northern regions. Women and their children in all parts of Canada who are fleeing violence should have access to safe, accessible shelters and to support services that are designed to assist them, in particular if they are Aboriginal women, women with disabilities, and/or immigrant, refugee, or trafficked women.

### **Funding Cuts and Reduced NGO Capacity to Track Violence**

Funding for anti-violence advocacy, crisis centres, and shelters remains inadequate. Because of the changes to Status of Women Canada funding, a number of organizations focused on violence against women have been forced to cut advocacy and interactions with governments. In some cases, organizations are only surviving by laying off most staff and scraping by on fundraising. The Canadian Association of Sexual Assault Centres (CASAC), the only pan-Canadian coalition of sexual assault centres, receives no federal funding at all.

In addition to severely limiting NGOs' ability to advocate on behalf of female survivors of violence, funding cuts have made it virtually impossible for NGOs to record and track statistics dealing with violence against women. This has created a situation where the Government of Canada is the only comprehensive source of statistics on violence against women in Canada. Government of Canada statistics do not adequately track violence against women, or disaggregate incidents of violence by race, disability and income levels.

"Unfounded cases" remain a problem at the level of policing, as do unreported incidents. In most cases of violence against women, prosecutorial decisions are unavailable for public scrutiny. Within the court system, most cases are not recorded nor is there a record of judicial decision-making. Court reporting has been privatized and transcripts are now priced beyond what most victims or their advocate NGOs can afford.

Statistics Canada, in spite of the international acclaim it received for its 1993 Violence Against Women Survey, has moved away from developing surveys based on equality rights principles. It is currently influenced by political forces with a vested interest in minimizing the extent and import of male-to-female abuse.

Though eliminating violence against women is one of Canada's policy priorities in its international development work with other countries, it has not been a priority at home. Some funding is assigned, but the funds are relatively small. Significant problems that exist in the justice system remain uncorrected; the social and economic conditions that make women vulnerable to male violence, and unable to escape it, have not been addressed.

Step It Up Ontario, End Violence Against Women: Demand secure funding for women's organizations, online: Step It Up Ontario, <http://www.stepitupontario.ca/10->

steps/step-9-demand-secure-funding-for-womens-organizations..html (date accessed: 16 July 2008).

Canadian Association of Sexual Assault Centres, Proposed Resolutions 2005: Funding, online: CASAC, <http://www.casac.ca/english/proposed.funding.htm> (date accessed: 16 July 2008).

DeKeseredy, W.S., Dragiewicz. M. (2007). "Understanding the Complexities of Feminist Perspective on Woman Abuse: A Commentary on Donald G. Dutton's Rethinking Domestic Violence", *Violence Against Women*, Vol. 13, No. 8, 874-884.

**RECOMMENDATIONS** The governments of Canada should maintain and provide appropriate public access to statistics on male violence against women, reasons for prosecutorial decisions not to proceed in cases of violence against women, and court transcripts in cases of violence against women;

That Canada's political parties include policies on the elimination of violence against women in their policy platforms, and work with women's organizations to develop informed and effective anti-violence strategies.

## Violence Against Aboriginal Women

Aboriginal women are more likely to experience violence than non-Aboriginal women in Canada.

- The Native Women's Association of Canada and Amnesty International estimate that over the past 20 years, 500 Aboriginal women in Canada may have been murdered or have gone missing in circumstances suggesting violence.
- In 2003 Aboriginal women were three times more likely to be victims of spousal violence than were those who are non-Aboriginal.
- Fifty-four percent of Aboriginal women have reported experiencing severe and potentially life threatening violence compared to 37% of non-Aboriginal women.
- Up to 75% of survivors of sexual assaults in Aboriginal communities are young women under 18 years old. 50% of those are under 14 years old, and almost 25% are younger than 7 years old.
- Eighty-two percent of all federally sentenced women report having been physically and/or sexually abused. This percentage rises to 90% for Aboriginal women.

Native Women's Association of Canada. Violence Against Aboriginal Women and Girls. An Issue Paper Prepared for the National Aboriginal Women's Summit (June

20-22, 2007), online: NWAC, <http://www.nwac-hq.org/en/documents/nwac-vaaw.pdf> (date accessed: 7 July 2008).

Understanding the true scale and nature of violence against Aboriginal women is greatly hampered by a persistent lack of comprehensive reporting and statistical analysis. For example, police do not consistently report whether missing persons and victims of violent assaults are Aboriginal.

Several high-profile situations have recently highlighted the extreme levels of violence against Aboriginal women in Canadian society:

- Since 1983, over 60 women, at least 16 of them Aboriginal, have gone missing from Vancouver's Downtown Eastside. The Vancouver Police and RCMP did not get involved until 1999, by which time 31 women had been reported missing. Police and city officials long denied that there was any pattern to the disappearances or that women in the area were in any particular danger;
- In 2002-2003, a Vancouver man, Robert Pickton, was charged with first-degree murder in the deaths of 26 of the women missing from Vancouver's Downtown Eastside. In December, 2007, Pickton was convicted of second-degree murder on six counts. All six murdered women were Aboriginal and some were identified as women in prostitution. At the time of writing, it has not been decided as to whether there will be a trial for the additional 20 counts;
- From 1969 to 2007, police believe that 18 girls and women, the vast majority of whom were Aboriginal, have been killed or gone missing along Highway 16 in Northern British Columbia, now known as the "Highway of Tears";
- In Edmonton, police are currently investigating the deaths and disappearances of dozens of missing women through Project Kare. In the Project Kare database there are currently over 40 homicide cases and approximately 30 missing person cases. Of these cases, only 3 are male, and a disproportionate number of the women are Aboriginal.

The situation in Canada can be compared to the mass abductions and murders of women in Ciudad Juarez, Mexico. In that case, a CEDAW inquiry was launched in response to reports of more than 230 women missing or murdered between 1993 and 2003. The 2003 inquiry was followed up in with a visit of the Special Rapporteur on Violence Against Women in 2005. Aboriginal women in Canada are currently experiencing similarly grave and systematic threats of violence, deserving of international attention and prompt action.

According to Native Women's Association of Canada (NWAC) former president Kukdookaa Terri Brown, "The problem is when young aboriginal marginalized women go missing... there's little attention paid to by police." Amnesty International, after reviewing nine case studies including those listed above, found that in every instance Canadian authorities should have done more to ensure the safety of these women and girls.

The shortage of adequate support services within Aboriginal communities is a critical factor leading to growing numbers of Aboriginal women and girls moving to Canadian urban centers. However, services available in urban settings are often unable to meet the specific needs of Aboriginal women. For example, despite the greatly disproportionate number of Aboriginal women in prostitution, there are few programs specifically designed to assist these Aboriginal women and girls. Culturally-specific programs run by Aboriginal peoples' organizations are typically under-funded and hampered by having to frequently reapply for funding.

Amnesty International, *Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada* (October 2004), online: AI, <http://www.amnesty.org/en/library/asset/AMR20/001/2004/en/dom-AMR200012004en.pdf> (date accessed: 7 July 2008).

CBC News, *Amnesty looking into cases of missing aboriginal women* (3 July 2004), online: CBCnews.ca, <http://www.cbc.ca/canada/story/2004/07/02/missing040702.html> (date accessed: 16 July 2008).

Amnesty International, *Mexico: Briefing to the Committee on the Elimination of Discrimination Against women* (1 June 2006), online: AI, <http://asiapacific.amnesty.org/library/Index/ENGAMR410312006?open&of=ENG-MEX> (date accessed: 20 July 2008).

Mexico: CEDAW Optional Protocol Article 8 Examinations Concerning Gender Discrimination, CEDAW A/59/38 part II (2004), online: Bayefsky.com, [http://www.bayefsky.com/html/mexico\\_cedaw\\_article8.php](http://www.bayefsky.com/html/mexico_cedaw_article8.php) (date accessed: 20 July 2008).

List of Women on "Highway of Tears" doubles (12 October 2007), online: CTV.ca, [http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20071012/highway\\_oftears\\_071012/20071012/](http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20071012/highway_oftears_071012/20071012/) (date accessed: 7 July 2008).

**RECOMMENDATIONS** The governments of Canada, with the full participation of Aboriginal women, should maintain a high level intergovernmental and interdepartmental forum to ensure proper coordination and information sharing on initiatives to address the safety and welfare of Aboriginal women and girls.

The governments of Canada should work urgently and closely with Aboriginal women's organizations and with Canadian women's anti-violence organizations to institute a plan of action to stop violence against Aboriginal women. This plan should include: acknowledging the seriousness of the problem, supporting research into the extent and causes of violence against Aboriginal women, and ensuring adequate, sustained, multi-year funding for the provision of culturally appropriate services such as shelters and counseling for Aboriginal women and girls.

The governments of Canada should ensure that social programs and services are designed and resourced adequately to protect and support Aboriginal women and their children, whether they are living on or off reserve. These programs and services include social assistance, housing, shelters, child care, and child welfare services.

All police officers in Canada should receive adequate training to ensure an understanding of violence against Aboriginal women and police should be required to work closely with Aboriginal women's organizations and with women's anti-violence organizations to identify and implement appropriate and effective protocols for action on missing persons cases. The actions of police, including compliance with policies on the investigation of missing persons cases, should be subject to independent civilian oversight. Meetings with Aboriginal women leaders and other community members should be organized to establish and strengthen relationships of trust between police and Aboriginal communities. Clear police policies and practices should be established with respect to the timely provision of information, including autopsy results and coroners reports, to the families of missing and murdered persons.



## Criminalized and Imprisoned Women

### Current Statistics and Trends

Crime rates in Canada reached a 25-year low in 2006, yet the numbers of women being imprisoned are increasing. The escalating numbers of women in prison is plainly linked to the evisceration of health, education, and social services.

- Women account for less than 5% of all individuals serving sentences of 2 years or more in Canada and the vast majority of women prisoners are first time prisoners. In 2001, 82% of federally sentenced women were serving their first federal sentence.
- Aboriginal women and women of colour are disproportionately represented among federally sentenced women. Aboriginal women are 32% of female federal prisoners (compared to 3% of the total female population) Canadian population). African-Canadian women are 5% of prisoners but only 1% of the general population.
- In 2005 48% of 810 federally sentenced women were in prison and 52% were out on bail or under community supervision. For Aboriginal women, however, the majority were imprisoned with only about 40% in community.
- Two-thirds of federally sentenced women are mothers and they are more likely than men to have primary childcare responsibilities. There are about 25 000 children whose mothers are in either federal prisons or provincial jails in Canada each year. Separation from their children and the inability to deal with problems concerning them are major anxieties for women in prison.
- 80% of all federally sentenced women report having been physically and/or sexually abused. This percentage rises to 90% for Aboriginal women.
- 96% of girls in custody in B.C. report having experienced physical and/or sexual abuse; 63% report having experienced sexual abuse specifically.
- Federally incarcerated women and men tend to have lower educational attainment than the Canadian adult population as a whole. While more than 80% of women in Canada have progressed beyond Grade 9, for women prisoners the figure is closer to 50%.
- Imprisoned women have much lower employment rates than incarcerated men: in 1996, 80% of the women serving time in a federal facility were unemployed at the time of admission, compared to 54% of men.
- More than half of all charges for which federally sentenced women are convicted are non-violent, property and drug offences. Property offences account for around 32% of all court cases and 47% of all charges against women. Women only account for 5% of admissions to federal penitentiaries because they are far less likely than men to commit or to be convicted of serious crimes of violence which result in sentences in excess of two years.
- The recidivism rate for federally sentenced women is approximately 21%, as compared to 59% for men. Only 1-2% of federally sentenced women are returned to prison as the



result of the commission of new crimes; and less than 0.5% are for a violent offence. The overwhelming majority represent women who have their parole revoked as a result of administrative breaches of conditions of their community release. The recidivism rate of women released from the Okimaw Ohci Healing Lodge (a special prison for Aboriginal women) is even lower.

- 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. They pose little risk to the public.

Statistics Canada, *The Daily crime statistics 2006* (18 July 2007), online: Statistics Canada, <http://www.statcan.ca/Daily/English/070718/d070718b.htm> (date accessed: 4 August 2008).

Canadian Association of Elizabeth Fry Societies, *Submission of the Canadian Association of Elizabeth Fry Societies to the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness (39th Parliament) Regarding Bill c-10: An Act to Amend the Criminal Code (Minimum Penalties for Offences Involving Firearms)* (Ottawa: Canadian Association of Elizabeth Fry Societies, 2006) at 4.

Canadian Human Rights Commission, *Protecting Their Rights A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women*. (Ottawa: Canadian Human Rights Commission, 2003) at 5-6.

Voices for Children, *Invisible Victims: The Children of Women in Prison*. (2004) online: Voices for Children, <http://www.voicesforchildren.ca/report-Dec2004-1.htm>: 7.

Canadian Center for Justice Statistics, *Female Offenders in Canada*. (2008) online: Canadian Center for Justice Statistics <http://www.statcan.ca/english/freepub/85-002-XIE/85-002-XIE2008001.pdf> :3, 5, 32.

Richelle Dean, Amber, *Locking Them up to Keep Them "Safe": Criminalized Girls in British Columbia*. A systemic advocacy project conducted for Justice for Girls (2005), online: JFG, [http://www.justiceforgirls.org/publications/pdfs/jfg\\_complete\\_report.pdf](http://www.justiceforgirls.org/publications/pdfs/jfg_complete_report.pdf) (date accessed: 7 July 2008).

Correctional Services of Canada, *Ten-year Status Report on Women's Corrections 1996-2006* (2006), online: CSC, [www.csc-ccc.bc.ca/text/prgrm/fsw/wos24/tenyearstatusreport\\_e.pdf](http://www.csc-ccc.bc.ca/text/prgrm/fsw/wos24/tenyearstatusreport_e.pdf) (date accessed: 18 August 2008).

## **Risk Assessment and Treatment of Women Prisoners**

Although many reports, from the Task Force on Federally Sentenced Women, the Arbour Commission, the Auditor General, the Public Accounts Committee, the Correctional Investigator and the Canadian Human Rights Commission, have demonstrated that women prisoners pose a low security risk and are less likely to return to prison for new charges, the

Correctional Service of Canada continues, for the most part, to use the same risk and needs assessment tools for both male and female populations.

Because the custody ratings scale is designed for white, male prisoners, it results in skewed and discriminatory assessments of federally sentenced women, resulting in too many being deemed high security risks. Among the hardships imposed by this is the fact that maximum security prisoners are isolated in segregated living units and, unlike their minimum and medium security counterparts, are not eligible to participate in work-release programs, community release programs or other supportive programming designed to enhance their chances of reintegration.

Notwithstanding their relatively low risk to the community in comparison with men, federally sentenced women as a group are, and have historically been, subject to more disadvantaged treatment and more restrictive conditions of confinement than men.

- The 2006 Report of the Correctional Investigator states that there has been a decline in the number of women participating in unescorted temporary absences. This signifies the culture of restriction that is becoming increasingly pervasive throughout the prisons.
- In 2002-2003, for a population of 376 women in federal prisons, there were 265 admissions to administrative segregation (solitary confinement), of which 83 were for a period of more than 10 days. This high rate demonstrates that correctional authorities are not adhering to the law. Segregation can only be used where there is no other reasonable alternative to isolating a prisoner (pursuant to section 31 of the *Corrections and Conditional Release Act*). In one case, an Aboriginal woman was segregated for 587 days.
- Aboriginal federally sentenced women and other racialized women are singled out for segregation more often than other prisoners. Data from the Correctional Service of Canada show that although Aboriginal women comprised 32% of all federally incarcerated women in February 2003, they accounted for 35.5% of all involuntary admissions to administrative segregation.
- Three Aboriginal women who are subject to the unlawful super-maximum designation known as the “management protocol” have endured prolonged segregation and other punitive and inhumane conditions of confinement which the United Nations has defined as torturous. In addition, as a result of their reactions to their conditions of confinement these three and others have become convicted of additional charges while in prison. In one case a woman entered prison to serve a 3.5 year sentence and is now serving well in excess of 20 years.
- Women who are classified as maximum security tend to be so designated because they are labeled as having difficulty adapting to the prison (i.e. institutional adjustment) rather than because they pose a risk to public safety.

- In 2001-2002, more than 40% of priority complaints and grievances (those considered to have a significant impact on a prisoner's rights and freedoms) were NOT processed within established time frames.
- The use of violence by prisoners against themselves or against others is often interpreted as an expression of violent pathology of the individual prisoner and results in punishment. However, that approach omits the role of the prison regime in generating violence.
- Almost 50% of Aboriginal federally sentenced women are precluded from accessing the Okimaw Ohci Healing Lodge because they are classified as maximum security prisoners. Many are now confined in the new maximum security units in the regional women's prisons, while a small number remain confined in the segregated maximum security unit in the men's Regional Psychiatric Centre in Saskatoon. No maximum security women have ever been able to access the Healing Lodge.

Canadian Human Rights Commission, *Protecting Their Rights A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women*. (Ottawa: Canadian Human Rights Commission, 2003) at 28, 44-45.

Howard Sapers, *Correctional Investigator's Response to the Canadian Human Rights Commission's Consultation Paper for the Special Report on the Situation of Federally Sentenced Women*. (Ottawa: Correction Investigator, 2004) at 10.

Canadian Center for Justice Statistics, *Female Offenders in Canada*. (2008) online: Canadian Center for Justice Statistics <<http://www.statcan.ca/english/freepub/85-002-XIE/85-002-XIE2008001.pdf> >

*Adult Criminal Court Statistics 2002/2003*. (Ottawa: Statistics Canada, 2003). Auditor General Canada. *Report of the Auditor General of Canada to the House of Commons*. (Ottawa: Minister of Public Works and Government Services, 2003).

Cheryl Marie Webster & Anthony N. Doob. "Classification without Validity or Equity: An Empirical Examination of the Custody Rating Scale for Federally Sentenced Women Offenders (sic) in Canada". (July 2004). 46 (4) *Canadian Journal of Criminology and Criminal Justice*.

Dan Kane, *Task force on administrative segregation: Commitment to legal compliance, fair decisions and effective results*. (1997). Ottawa: Correctional Service of Canada.

## Accountability and Oversight

The more that the human rights and *Charter*-protected rights of women prisoners are violated, the more likely it is that the conditions of confinement to which women prisoners are subjected will create situations that interfere with the safety of women prisoners, as well as with the staff within the women's prisons.

Women prisoners in particular tend to be invisible to society, because of their relatively small numbers.

Approximately 20 reports, investigations, and commissions of inquiry have chronicled the urgent need for oversight and accountability mechanisms to address the violations of the rights of women prisoners in Canada.

In 1996, Louise Arbour, then a federally-appointed judge, in her report into the illegal stripping, shackling, transfer and segregation of women prisoners at the Prison for Women in Kingston found that culture of the Correctional Service of Canada was one of disrespect for the rule of law. Accordingly, she made recommendations for judicial oversight and external accountability mechanisms.

Eight years later, the Canadian Human Rights Commission (CHRC) found an ongoing need for oversight and accountability mechanisms to address the discriminatory treatment of women prisoners in Canada. They also focused on the need to address the discriminatory security classification and discussed the need to ensure that correctional practices be remedied so as to not violate the human rights of women prisoners. The CHRC found that the discriminatory impact is exacerbated by the ineffectiveness of current grievance mechanisms and the lack of external oversight of CSC.

In 2005, the United Nations Human Rights Committee (UNHRC) called on Canada to remedy the discriminatory treatment of women prisoners, and to implement the recommendations of the Canadian Human Rights Commission, especially those related to external redress and the need for adjudication processes for prisoners. They also instructed Canada to report within one year on their progress on this front. No such report has been submitted.

On April 27, 2006, Corrections Service Canada released its responses to 4 of the more recent reports critiquing its treatment of federally sentenced women. Despite sweeping claims of significant progress, the reality of continued human and *Charter* rights violations continue.

Louise Arbour. *Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston*. (Ottawa: Solicitor General, 1996).

Canadian Human Rights Commission, *Protecting Their Rights A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women*. (Ottawa: Canadian Human Rights Commission, 2003).

United Nations Human Rights Committee. *Concluding observations of the UNHRC in relation to the report submitted by Canada under Article 40 of the ICCPR*. (Geneva: UNHRC, 2005).

Native Women's Association of Canada. *Position on the Human Rights Complaint on Federally Sentenced Women*. (Ottawa: NWAC, 2003).

**RECOMMENDATIONS** Given that the number of federally sentenced women is small, and generally these women pose an extremely low risk to public safety, the Government of Canada should reduce the number of women who are incarcerated in federal prisons and pilot innovative programs and initiatives for those who remain inside. As Justice Arbour suggested, this would “free the resources necessary to ensure that those who are imprisoned are treated in accordance with the law.”

As Louise Arbour also recommended, the Government of Canada should provide judicial oversight to remedy correctional interference with the integrity of a sentence. A comprehensive, independent, accessible, and effective oversight mechanism and remedial framework should be established for prisoners whose rights are violated.

Louise Arbour. *Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston*. (Ottawa: Solicitor General, 1996).

## Women and Immigration/Refugee Status

2003 CEDAW Recommendations:

364. The Committee requests the State party to implement fully the gender-based impact analysis and the reporting requirements provided in the new Immigration and Refugee Protection Act with a view to eliminating remaining provisions and practices which still discriminate against immigrants.

### Discriminatory Classification of Immigrant Workers

In 2007 Canada announced plans to introduce a new “Canadian Experience Class” (CEC) of immigrants. Permanent residence will be offered to some highly skilled temporary workers, including those who have completed their education in Canada.

FAFIA has concerns about this new class because it privileges those temporary workers who are classified as “highly skilled” (“O” “A” or “B” classes). Women are predominantly in the “C” class, making them ineligible for this new program.

Approximately twice as many men as women entered Canada as temporary workers in 2006. 43% of the men were in the higher skill category, which would qualify them for acceptance under this program. Only 22% of the women are in the highly skilled categories, despite persistent and severe labour shortages in areas of work dominated by women.

Citizenship and Immigration Canada, Facts and Figures 2006, Immigration Overview: Temporary Residents (June 2007), online, CIC, <http://www.cic.gc.ca/english/resources/statistics/facts2006/temporary/07.asp> (date accessed: 8 August 2008).

**RECOMMENDATION** All workers on temporary permits should be eligible for the new Canadian Experience Class program to ensure women as well as men benefit without discrimination.

### **Inadequate Protection for Women Refugees Entering from the USA**

On December 5, 2002, Canada entered into an agreement with the United States under which refugee claimants who request protection at the U.S.-Canada land border are denied access to the refugee determination process in Canada and returned to the United States. The agreement took effect two years later on 29 December 2004. The “Safe Third Country Agreement” (STCA) has resulted in women being denied protection for their gender-based claims.

U.S. law is “uncertain” and “in a state of flux” with regard to its treatment of gender-based refugee claims. U.S. decision-makers often fail to recognize that harms unique to women, such as spousal violence, forced marriage or honour killings, can constitute persecution. For example, the U.S. Board of Immigration Appeals, the apex decision making body for refugee law in the U.S., has failed to accept that gender-based harms at the hands of private actors, such as spouses and partners, can constitute persecution. In the precedent case of *In Matter of R.A.*, the Board narrowly focused on the perpetrator’s immediate actions and statements to find no link between the intention to cause harm and the gender of the claimant, Rodi Alvarado-Pena. This led the Board to find that there was no nexus between the harm and the refugee definition.

Procedural barriers, such as the requirement to claim within one year of arrival in the United States, also have a disproportionate impact on gender and sexual orientation claims. Shame, embarrassment, lack of knowledge about the possibility of a gender-based claim, and barriers resulting from social and economic oppression mean that claimants who suffer these harms are less likely to make a claim on arrival. The result is that protection for these women is often not accessible.

Before the agreement was implemented the Canadian House of Commons Standing Committee on Citizenship and Immigration recommended that women claiming persecution from domestic violence be excluded from the agreement until U.S. regulations regarding gender-based refugee claims were consistent with Canadian practice. This was not done.

In 2005, the STCA agreement was challenged in the Federal Court of Canada by a group led by the Canadian Council for Refugees. In 2007 the Court struck down the agreement



because it found the United States was not safe for all refugee claimants. The Court found there is “clearly a serious concern that women with gender-based claims are not being sufficiently protected” because of the failure to fully recognize gender-based claims and the one year bar, leading to “a real risk of *refoulement*”.

*Canadian Council for Refugees v. Canada*, 2007 F.C.1262, paras 165, 206.<http://www.canlii.org/en/ca/fct/doc/2007/2007fc1262/2007fc1262.html>

On appeal to the Federal Court of Appeal in 2008, none of these factual findings were overturned, however the Court found that real protection is irrelevant, as long as the government acts in good faith and considers the appropriate factors in designating a safe third country.

FAFIA disagrees. This court ruling insulates the government from judicial oversight with respect to whether women’s fundamental rights are being violated. This is especially troubling because the women affected are particularly vulnerable, as non-citizen immigrant women.

*Canada v Canada (Canadian Council for Refugees)*, 2008 FCA 229:<http://www.canlii.org/en/ca/fca/doc/2008/2008fca229/2008fca229.html>

Background material on the Safe Third Country Agreement and U.S. treatment of gender based refugee claims:

<http://www.ccrweb.ca/S3C.htm> Canadian Council for Refugees

<http://cgrs.uchastings.edu/> Center for Gender and Refugee Studies

[http://www.swc-cfc.gc.ca/pubs/pubspr/0662435621/200607\\_0662435621\\_13\\_e.html](http://www.swc-cfc.gc.ca/pubs/pubspr/0662435621/200607_0662435621_13_e.html).  
Status of Women Canada

**RECOMMENDATIONS** The Government of Canada should repeal the designation of the United States as a safe third country under section 101(1)(e) of the *Immigration and Refugee Protection Act*, SC, 2001, c.27;  
**In the alternative, the Government of Canada should exempt women seeking refugee status arising from gender based persecution from the Safe Third Country Agreement**

### Immigrant Women of Colour

Immigrant women of colour face both racism and sexism in Canadian society, the combined results of which are high rates of economic marginalization and exploitation.



Too often, the foreign training and education which gains women access to Canada under the immigration point system are not recognized by Canadian employers due to racial or gender stereotypes and prejudice.

These women are therefore forced into service or manufacturing jobs, jobs characterized by poor working conditions or abusive treatment of the workers. Immigrant women with temporary or undocumented immigration status are often hesitant to report such exploitation due to fears of being deported.

African-Canadian women, in particular, additionally face pervasive stereotypes associating them with drugs and street crime, increasing the risk of deportation.

Canadian Council for Refugees, Gender-based analysis of Settlement (2006), online: CCR, [www.ccrweb.ca/GBAresearch.pdf](http://www.ccrweb.ca/GBAresearch.pdf) (date accessed: 18 August 2008): 58.

Lawrence, Sonia N and Toni Williams, "Swallowed up: Drug Couriers at the Borders of Canadian Sentencing" (2006) 56 Univ. of Toronto L.J. 285.

**RECOMMENDATION** The Government of Canada, working with the governments of the provinces and territories, should put in place a coherent system to appropriately assess the foreign credentials of immigrant and refugee women living and working in Canada, and provide funding for supports, counseling, and technical language training so that their skills and knowledge can be appropriately used .

## VI. Violations of Article 6: Exploitation of Women

### Human Trafficking

2003 CEDAW Recommendations:

368. The Committee encourages the State party to assist victims of trafficking through counseling and reintegration and to include detailed information on its victim assistance program in its next periodic report to the CEDAW.

Trafficking of women appears to be on the rise in Canada. Humans, mostly women and children, are the second most illegally trafficked "merchandise" in Canada after drugs. Canada is a source, transit and destination country for women trafficked for the purposes of commercial sex and forced labour. International victims are primarily from Asia and Eastern Europe, mainly ending up in Vancouver or Toronto.

Canada is also a source country and a destination country for sex tourists. Canada criminalizes sex tourism abroad and has begun to pursue charges.

Canadian women and girls are trafficked internally in a variety of ways, including through the use of force, illegal narcotics, and luring. These situations have not been fully recognized as instances of trafficking. In particular, the unique circumstances of Aboriginal women and girls both in First Nations communities and in urban centres, which make them targets for trafficking, have not been addressed.

Canada's Interdepartmental Working Group on Trafficking in Persons (IWG) has not been effective in addressing trafficking in Canada or in meeting the needs of trafficked women. It sits only at the federal level, and only in an advisory capacity. The IWG has no decision making power and all decisions must be cleared by seventeen federal ministers. This has resulted in significant time delays and very little being accomplished. The IWG has limited its interactions to government and law enforcement agencies, severely limiting its knowledge base and potential impact because of its failure to include non-governmental women's organizations and other service providers.

### **Anti-trafficking Legislation**

Currently the only provisions in Canadian law relating to trafficking criminalize trafficking and promote the detention of trafficked persons. No protection is provided for the human rights of trafficked persons.

Unfortunately, a great deal of confusion has been created by inconsistent definitions of trafficking within Canadian legislation, including the new amendments contained in the 2005 *Act to amend the Criminal Code*. The *Criminal Code* offense is written in overly-broad terms and does not reflect the requirements of the Palermo Protocol. It reads as follows:

#### **Trafficking in persons**

279.01 (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence...

This provision also differs significantly from the definition of "trafficking in persons" contained in the *Immigration and Refugee Protection Act*, which reads:

#### **Offence - trafficking in persons**

118. (1) No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.

The vast majority of NGOs use the Palermo Protocol definition for the purposes of assessing whether a person is trafficked, and for the purposes of training and referral. The lack of a consistent definition in Canadian law has compounded the problems associated with the

ability of NGOs and different government departments to coordinate the tracking human trafficking in Canada.

According to the United States *Trafficking in Persons Report* for 2008: “The Government of Canada fully complies with the minimum standards for the elimination of trafficking...but demonstrated limited progress on law enforcement efforts against trafficking offenders.”

According to the above-mentioned report, which is compiled on a yearly basis, during the reporting period the provincial governments laid only 17 trafficking charges under the *Criminal Code*; 13 were for trafficking and four were for withholding or destroying documents under sections 279.01 and 279.03 of the *Criminal Code* respectively. During the reporting period, provincial governments secured three trafficking related convictions.

Criminal Code of Canada, R.S. 1985, c. C-46, s.279.01(1), online: Department of Justice Canada, [http://laws.justice.gc.ca/en/showdoc/cs/C-46/bo-ga:l\\_VIII-gb:s\\_279//en#anchorbo-ga:l\\_VIII-gb:s\\_279](http://laws.justice.gc.ca/en/showdoc/cs/C-46/bo-ga:l_VIII-gb:s_279//en#anchorbo-ga:l_VIII-gb:s_279) (date accessed: 21 August 2008).

Immigration and Refugee Protection Act, 2001, c. 27, s.118(1), online: Department of Justice Canada, [http://laws.justice.gc.ca/en/showdoc/cs/I-2.5/bo-ga:l\\_3-gb:s\\_117//en#anchorbo-ga:l\\_3-gb:s\\_117](http://laws.justice.gc.ca/en/showdoc/cs/I-2.5/bo-ga:l_3-gb:s_117//en#anchorbo-ga:l_3-gb:s_117) (date accessed: 21 August 2008).

Trafficking in Persons: Country Narratives at 86 (2008), online: United States Department of State, <http://www.state.gov/documents/organization/105656.pdf> (date accessed: 17 July 2008).

Canadian Council for Refugees, Rights for trafficked persons in Canada, online: CCR, <http://www.ccrweb.ca/trafficking/home.htm> (date accessed: 17 July 2008).

**RECOMMENDATIONS** The definition of trafficking in Canadian law should be the internationally agreed-upon definition in the *UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children* (Palermo Protocol);

The *Immigration and Refugee Protection Act* (section 3) should be amended to include the objective of protecting the human rights of trafficked persons.

## Protection and Support for Trafficked Women

The Interdepartmental Working Group on Trafficking in Persons has so far failed to produce a national strategy to improve the treatment of victims of human trafficking and, with the exception of British Columbia, there is no integrated coordinated strategy in place in Canada. Protection for trafficked women in Canada fails to meet the standards to which Canada has committed itself in the Palermo Accord and other international agreements.

While the Government of Canada has provided approximately \$5 million in service funding during the reporting period for victims of crime, including trafficking victims, NGOs report that the NGOs are currently providing many victims, especially foreign trafficked victims, with shelter and services without government assistance. A 2007 report of the Standing Committee on the Status of Women in Canada documented many inadequacies in community supports for trafficked women. While services aimed at immigrants and refugees help as best they can, they lack the specific legal expertise and the gendered violence advocacy required by trafficked women.

Trafficked persons, when apprehended, are often treated as criminals, as opposed to victims of a crime. As a result, some trafficked women are reluctant to contact government service providers as such contact may trigger deportation. Consequently, trafficked women tend to have only informal routes to non- government assistance.

Standing Committee for the Status of Women, *Turning Outrage Into Action to Address Trafficking for the Purpose of Sexual Exploitation* (2007)

Proceedings of the Standing Senate Committee on Human Rights Issue 4 – Evidence, April 14, 2008, online: Parliament of Canada, [http://www.parl.gc.ca/39/2/parlbus/commbus/senate/Com-e/huma-e/04eva-e.htm?Language=E&Parl=39&Ses=1&comm\\_id=77](http://www.parl.gc.ca/39/2/parlbus/commbus/senate/Com-e/huma-e/04eva-e.htm?Language=E&Parl=39&Ses=1&comm_id=77) (date accessed: 17 July 2008) these lines should be taken out

**RECOMMENDATION** The Government of Canada should develop a national strategy to improve the treatment of victims of human trafficking and to ensure access to medical services, counseling, legal aid, translation and employment services.

### Temporary Residence Permits

The Temporary Resident Permit (TRP) guidelines announced by the Minister of Citizenship and Immigration in May 2006 do not adequately protect trafficked persons. In particular, the guidelines impose an unreasonable burden of proof on the person who must convince an immigration officer that she is indeed a victim of trafficking in persons. Furthermore, the mandatory involvement of law enforcement agencies deters trafficked persons from applying because of concerns about the potential consequences of such involvement. The guidelines also fail to provide protection to those who have been trafficked who already have some other form of temporary immigration status, such as a visitor, live-in caregiver or worker.

While Citizenship and Immigration Canada (CIC) has failed to release figures on the number of TRPs issued, anecdotal evidence suggests that the very high threshold for the permits has meant that only a few have been issued, despite the magnitude of the problem. Research also indicates that where women were found not to qualify for the TRP, they were not offered access to needed social services or alternative mechanisms under the *Immigration*

*and Refugee Protection Act* to remain in Canada, including access to humanitarian and compassionate applications under section 25, regular temporary residence permits under section 24 or access to the Refugee Protection process. Immigration and CBSA enforcement officers have had little training in the guidelines.

Proceedings of the Standing Senate Committee on Human Rights, Issue 4 – Evidence (14 April 2008), online: Senate of Canada, [http://www.parl.gc.ca/39/2/parlbus/commbus/senate/Com-e/huma-e/04eva-e.htm?Language=E&Parl=39&Ses=1&comm\\_id=77](http://www.parl.gc.ca/39/2/parlbus/commbus/senate/Com-e/huma-e/04eva-e.htm?Language=E&Parl=39&Ses=1&comm_id=77) (date accessed: 21 August 2008):31.

Canadian Council for Refugees, Proposal for Legislative Amendment to Protect Trafficked Persons, online: CCR, <http://www.ccrweb.ca/traffickingproposal.html> (date accessed: 21 August 2008).

**Recommendations** Temporary protection should be immediately available if there are reasonable grounds to believe a person has been trafficked. Assessment by credible NGOs, statements by the victim and an assessment of the surrounding circumstances should be given weight. Full opportunities to work and study should be available, in addition to counseling and medical benefits. Special training and care needs to be afforded to child victims;

Permanent protection should be available to trafficked persons through the grant of permanent residence. A special class should be created which recognizes the gendered nature of trafficking, has an emphasis on protection and is not contingent on enforcement cooperation.

## **VII. Violations of Article 7: Political and Public Life**

### **Introduction to Canadian Politics**

Canada has had two minority governments since 2004, the first Liberal, the second Conservative. The two major parties have courted the “women’s vote” at election times, but the current policy and program environment within government is marked by a failure to attend to women’s equality needs and concerns. This may be a function of both the relative absence of women as political actors in the Canadian political scene and the diminishing presence and capacity of women’s equality-seeking NGOs due to government funding cuts.

## Under-representation of Women in Politics

2003 CEDAW Recommendations:

372. The Committee urges the State party to take additional measures to increase the representation of women in political and public life. It recommends the introduction of temporary special measures with numerical goals and timetables to increase the representation of women in decision-making positions at all levels.

Women continue to be under-represented in Canadian politics.

- Women are 52% of the Canadian population and currently hold 21.1% of elected seats nationally.
- At the federal level, women hold 20.8% of seats in Parliament (64 of 308).
- At the provincial level, women hold 21.3% of seats in the various legislative assemblies (156 of 734).
- The number of women candidates running for Parliament dropped from 476 candidates in 1993 to just 373 in the 2006 election.
- Ranking 51st, Canada now has fewer women in Parliament than most developed countries and than many developing countries such as Mauritania, Rwanda, Lesotho, and Afghanistan.
- The federal Liberal Party has committed to running 33% women candidates in the next federal election. The federal New Democratic Party has also committed to running more women candidates and has had an affirmative action program on candidate nominations since 1992. The Conservative Party, which currently forms the government, has no programs and has made no commitments.

Canada has a single member plurality voting system (the candidate or party with the most votes in a given constituency wins). Women for Fair Voting has identified this system as a primary barrier to equal participation of women in Canadian politics. For example, in 2004 the percentages of women members across 24 national legislatures were 18.2% for countries with single member plurality systems and 27.5% for countries with proportional representation or multi-member systems.

A 2004 Federal Law Commission of Canada report, among other reports, recommended a mixed member proportional system for Canada. In such a system the number of votes for each party results in a corresponding proportion of seats. A proportional system would likely increase the number of women elected. However, because of a lack of public education on the issue and political commitment from governments, these recommendations have been defeated in referenda or shelved.

According to Equal Voice, a non-profit organization promoting the election of more women in Canada, further barriers to women in politics include: stereotyping, a lack of role models, negative media treatment, difficulties balancing family commitments, the failure of political parties to support women candidates, finances, and exclusion from informal party networks.

The Facts, Ma'am: Facts about women in politics in Canada, online: Equal Voice, <http://www.equalvoice.ca/idx.php?rl=212> (date accessed: 7 June 2008).

Women for Fair Voting, Political under representation of women (June 2008).

R. Matland, Explaining Women's Representation: The Role of Legislative Recruitment & Electoral Systems (2005), online: UN, [www.un.org/womenwatch/daw/egm/eql-men/docs/EP.4\\_Matland.pdf](http://www.un.org/womenwatch/daw/egm/eql-men/docs/EP.4_Matland.pdf) (date accessed: 7 July 2008).

**Recommendations** Canada's political parties and governments should adopt action plans to break down barriers to women's involvements in politics; to set targets, actively recruit and support women candidates; to offer family-friendly work conditions; and to introduce proportional representation, electoral financing reform, and public awareness campaigns that will ensure equal representation for women in political office;

Political parties in Canada should commit themselves to increasing their number of women candidates, and put in place affirmative action programs to help realize those commitments.

## **Gender Machinery in Government (Federal)**

### **House of Commons Standing Committee on the Status of Women**

An all-party Standing Committee on the Status of Women was created in the House of Commons in 2004. Convened in response to intense lobbying by Canadian women's organizations it has provided a parliamentary forum for the consideration of the impact of federal policies and programs on women's equality. Members of Parliament from all political parties sit on the Committee. The Committee holds hearings with expert witnesses to study particular issues. The Committee has tabled twenty reports in Parliament, sometimes requesting a government response. It recommended that the government adopt new federal pay equity legislation, reinstate the Court Challenges Program, increase funding for Status of Women Canada, and reverse the changes made to Status of Women Canada's guidelines for the Women's Program. Unfortunately, this Committee, despite its excellent reports, is not sufficiently influential. The current government has refused to implement these recommendations.



### Gender Budgeting and Gender Analysis

Most recently, the Status of Women Committee studied gender budgeting practices in the federal government and looked at the efficacy of gender-based policy analyses at the departmental level. As a result, the Committee has called upon the Auditor General to conduct an audit of gender-based analysis practices.

A focus on gender budgeting is of particular relevance because the current Conservative government has accelerated an already aggressive tax cut agenda, thus limiting fiscal capacity for spending, without taking into account the disproportionately negative effects this political agenda has on women. Thirty-eight percent of women in Canada do not earn enough income to be on the tax rolls, thus these tax cuts will not reach them. There has been a growing trend towards helping the rich lower their tax burden and not investing in programs and policies such as a national public childcare program, affordable housing, post-secondary education, and improved social assistance to lift Canadians in need out of poverty.

**Table 2: Budgetary Measures Announced Per Budget**

(Over 2 year Horizon)	Budget 2006	Budget 2007	Budget 2008
Tax: Spend Ratio	2: 1	1: 1	4.4: 1
New Tax Cuts	\$20 billion	\$12 billion	\$24 billion
New Spending	\$10 billion	\$12 billion	\$5.4 billion
Budgetary Debt Payment Commitment	\$3 billion a year	\$3 billion a year	\$13.8 billion by 2009–10
Actual Debt Payment (minimum amount already stated for 2007–8)	\$13.2 billion	\$13.8 billion	At least \$10.2 billion

The motion, passed unanimously by the Status of Women Committee reads as follows:

That the Auditor General, taking into account all of the elements of Canada’s framework for equality including the *Convention on the Elimination of all Forms of Discrimination Against Women* and Optional Protocol and the *Canadian Charter of Rights and Freedoms*, conduct an audit to review Canada’s implementation of gender-based analysis using “Setting the Stage for the Next Century: The Federal Plan for Gender Equality (1995)” as a guide, and review from the period of April 1, 2000 to March 31, 2008, and report the adoption of this motion to the House of Commons without delay.

Armine Yalnizyan, Budget 2008: What’s in it for Women? (March 2008), online: Canadian Centre for Policy Alternatives, <http://www.policyalternatives.ca/documents/>

National\_Office\_Pubs/2008/Budget\_2008\_Whats\_in\_it\_for\_women.pdf (date accessed: 25 August 2008).

House of Commons Standing Committee on the Status of Women, Reports and Responses, 39th Parliament, online: [http://cmte.parl.gc.ca/cmte/CommitteeList.aspx?Lang=1&PARLSES=392&JNT=0&SELID=e24\\_&COM=13186](http://cmte.parl.gc.ca/cmte/CommitteeList.aspx?Lang=1&PARLSES=392&JNT=0&SELID=e24_&COM=13186) (date accessed: 25 August 2008).

House of Commons Standing Committee on the Status of Women, Meeting Minutes (17 April 2008), online: <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?SourceId=235658&Lang=1&PARLSES=392&JNT=0&COM=13186> (date accessed: 25 August 2008).

## Funding for Women's Organizations

### Status of Women Canada's Women's Program

For more than thirty years, the Status of Women Canada (SWC) Women's Program has provided modest funds to women's organizations so that these organizations can analyze government policies, develop proposals that reflect the needs of women in their communities, and advocate for change. The total budget of this program is 23 million.

However, in 2006 the federal government closed local SWC offices and revised the funding guidelines for the SWC Women's Program. The new 2007-2008 guidelines for the Women's Program state that:

- women's organizations cannot receive funds for domestic advocacy activities, for lobbying of federal, provincial and municipal governments, or for research related to advocacy and lobbying activities;
- only incorporated non-profit societies are now eligible for these funds. This requirement means that SWC can no longer be a resource for new or *ad hoc* women's organizations that do not have the capacity to incorporate legally;
- for the first time, for-profit organizations are eligible to receive funds from the Women's Program.

While the guidelines are relatively new, a survey of FAFIA's member groups has revealed that women's groups that do not provide direct services to individual women are already having difficulty securing funding through the Women's Program for their core activities. Other problematic impacts of the funding changes on women's organizations include:

- project-based grants are unable to sustain long term advocacy work;
- women's groups' capacity to do research has been severely strained;
- women's organizations which receive SWC funding cannot use these funds to educate policy-makers;

- women's organizations have had to change their focus from systemic issues to individualized service issues;
- the new funding criteria are confusing and fewer SWC offices are available to help with time-consuming applications. The process is particularly difficult for de-funded groups;
- the closure of local SWC offices has had a particular impact on immigrant and rural women. Their replacement with toll-free telephone numbers and online services is inadequate for women who have no computer access or do not speak an official language;
- the National Association of Women and the Law, one of Canada's foremost women's organizations, founded in 1974, closed its doors in September 2007 because its core functions of law reform, advocacy and research cannot be funded under the new guidelines;
- FAFIA, which since the late 1990s has been the leading Canadian women's organization working to ensure that Canada fulfills its international human rights obligations, has SWC funding to the end of September 2008. However, by the time the 6<sup>th</sup> and 7<sup>th</sup> reports of Canada are reviewed in October 2008, FAFIA will not be permitted to receive or use federal funds to carry out its core function of advocacy.

**RECOMMENDATION** The Government of Canada should immediately amend the guidelines for the SWC Women's Program, and include domestic advocacy, lobbying and research as fundable activities for women's organizations.

### Status of Women Canada Policy Research Fund

In 2006, the Government of Canada also eliminated SWC's Policy Research Fund. This Fund supported the production and publishing of cutting-edge policy research on issues of concern to women in Canada by academics and community researchers. SWC was the only government agency producing, and supporting, the production of solid research specifically focused on issues pertaining to women's equality. This research provided incentive and support for gender-based analysis inside government.

Because of the research articles and studies produced with the support of SWC's policy research fund, SWC has an international reputation for producing quality, timely research on women, in English and French, that is relied upon by many women's organizations, human rights organizations, academics and government officials in countries around the world. Women in other countries who have learned of the elimination of SWC's policy research fund consider this a loss to the global movement for women's equality.

Status of Women Canada, Women's Program Funding Guidelines 2008-2009, online: SWC, [http://www.swc-cfc.gc.ca/funding/wp/wpguide\\_e.html](http://www.swc-cfc.gc.ca/funding/wp/wpguide_e.html) (date accessed: 7 July 2008).

Canadian Federation of University Women (July 2008), Submission to FAFIA.

National Organization of Immigrant and Visible Minority Women of Canada, *Submission to the Standing Committee on the Status of Women* (2006), online: NOIVMWC, <http://www.noivmwc.org/noivmwcn/briefs/fewodec06.pdf> (date accessed: 20 July 2008).

**RECOMMENDATION** The Government of Canada should immediately re-instate the independent SWC Policy Research Fund.

## VIII. Violations of Article 10: Education

### Access to Post-Secondary Education

The cost of obtaining a post-secondary education has risen dramatically. In the early 1990s, average undergraduate tuition fees in Canada were \$1,464. Today, average fees are \$4,524. This increase is approximately four times the rate of inflation. Fees range from \$1,768 for Quebec residents attending university in Quebec to \$5,878 in Nova Scotia.

Other compulsory fees such as student union fees and access fees for facilities and services have also increased rapidly, to an average of \$663 in 2007, up 10% from 2006.

These dramatic increases were the result of federal budget cuts and the replacement of Established Program Financing and the *Canada Assistance Plan* with the Canada Health and Social Transfer (now the Canada Health Transfer and the Canada Social Transfer) (see “Federal Government Responsibility and the Spending Power”, above). Federal transfers to the provinces for post-secondary education has never been restored to the levels of the early 1990s. Canadian Social Transfer levels have barely kept pace with inflation between 2004 and 2007.

In the 2007 federal budget, federal transfers for post-secondary education were increased by \$800 million. However, the federal government did not attach any conditions to receipt of these funds that will ensure that the monies are spent by the provinces to increase accessibility to post-secondary education.

Canadian Federation of Students, *Tuition Fees in Canada: A pan-Canadian perspective on paying more and getting less* (2007), online: CFS, <http://www.cfs-fcee.ca/html/english/research/factsheets/factsheet-tuitionfees-8x11.pdf> (date accessed: 7 July 2008).

CBC, Tuition Fees: The higher cost of higher education (16 June 2008), online: CBCnews.ca, <http://www.cbc.ca/money/story/2008/05/15/f-highereducation-tuitionfees.html> (date accessed: 8 August 2008).

Canadian Federation of Students, Strategy for Change: Money Does Matter (October 2007), online: CFS, [http://www.cfsadmin.org/quickftp/Strategy\\_for\\_Change\\_2007.pdf](http://www.cfsadmin.org/quickftp/Strategy_for_Change_2007.pdf) (date accessed: 7 July 2008).

Education has long been recognized as a key means of preventing poverty for women. For example, women university graduates working full-time in 2003 earned an average income of \$53,400, whereas no other group of women earned more than \$35,000 that year. Indeed, women with less than a Grade 9 education earned only \$21,700 that year.

The dramatic rise in tuition and fees in recent years has led to a vast increase in student debt. In 2006, 59% of undergraduate university students graduated with debt, averaging \$24,047. The average amount of debt ranged from \$12,992 in Quebec to \$29,747 in Atlantic Canada. Increases in student debt loads has a disproportionate impact on women graduates because of their lower earning power before, during, and after their program of study.

Statistics Canada, Women in Canada 2005: A Gender-Based Statistical Report (2005) at 139. Online: Statistics Canada, <http://www.statcan.ca/english/freepub/89-503-XIE/0010589-503-XIE.pdf> (date accessed: 30 June 2008).

Canada Millennium Scholarship Foundation, The Price of Knowledge: Access and Student Finance in Canada, 3rd ed. (2007), online: CMSF, [http://www.millenniumscholarships.ca/images/Publications/POK07\\_e.pdf](http://www.millenniumscholarships.ca/images/Publications/POK07_e.pdf) (date accessed: 8 August 2008).

In addition, provinces such as British Columbia (since 2002) and Nova Scotia (since 2000) no longer provide social assistance to recipients who are attending trade schools, college, or university. This has made it financially impossible for many poor women and lone mothers to pursue a higher education, even though higher education is the best route out of poverty for lone mothers.

Katherine Reed, Fairness in Education for Single Parents in Nova Scotia (December 2005), online: Canadian Centre for Policy Alternatives, [http://www.policyalternatives.ca/documents/Nova\\_Scotia\\_Pubs/2005/Fairness\\_in\\_Education.pdf](http://www.policyalternatives.ca/documents/Nova_Scotia_Pubs/2005/Fairness_in_Education.pdf) (date accessed: 7 July 2008).

Shauna Butterwick and Caroline White, A Path Out of Poverty: Helping BC Income Assistance Recipients Upgrade Their Education (February 2006), online: Canadian Centre for Policy Alternatives, [http://www.policyalternatives.ca/documents/BC\\_Office\\_Pubs/bc\\_2006/path\\_out\\_of\\_poverty.pdf](http://www.policyalternatives.ca/documents/BC_Office_Pubs/bc_2006/path_out_of_poverty.pdf) (date accessed: 7 July 2008).

**RECOMMENDATIONS** The governments of Canada should set tuition fees at a level that ensures equality of access, particularly for low income women, and ensures that debt loads combined with lower earnings do not act as a barrier to women entering and completing post-secondary education;

The Government of Canada should attach conditions to all monies transferred for post-secondary education to ensure that funds are directed to facilitating access to post-secondary education for all women, particularly the most disadvantaged;

The governments of Canada should ensure that social assistance is available to women attending post-secondary education; the Government of Canada should attach conditions to monies transferred to the provinces and territories for income assistance to ensure that social assistance is made available to post-secondary students.

## **IX. Violations of Article 11: Employment**

### **Paid Labour Force Involvement – Current Statistics and Trends**

The number of women joining the workforce continues to rise in Canada. In 2004, 7.5 million women, or 58% of all women over 15 years of age, did paid work. However, women still enter, and work in, a sex-segregated labour force where they do not enjoy equality with men in access to jobs, remuneration, or benefits. In addition, while women are doing paid work in increasing numbers, they also still do most of the unpaid domestic and childcare work in their homes, and most of the volunteer work in their communities.

### **Sex Segregation**

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 streamed into ‘women’s work’.

- In 2004, 67% of women doing paid work were teaching, nursing or doing clerical or administrative work, compared to only 30% of men. This number has remained virtually unchanged for over a decade.
- Women continue to occupy only 37% of managerial positions, and are highly concentrated in lower management.
- In 2004 women made up only 21% of professionals in the natural sciences, engineering, and mathematics, a number that has not changed significantly since 1987.

- Over the past three decades women have taken on more managerial positions. However, only 22% of senior management positions are held by women, a decrease from 27% since 1996.

### **Mothers in the Paid Labour Force**

Women with children have shown a particularly sharp increase in employment rates. In 2006, 64% of women with children under three and 69% with children between three and five were engaged in paid work. In 1976, the employment rates for such women were 28% and 37% respectively. The vast majority of these working mothers hold fulltime jobs.

Many women have breaks in their work history, largely due to child bearing and caring. One-half of these women return to work when their youngest child is 12 to 47 months; one-third return when the child is between 6 and 12 months. By comparison, 67% of fathers return to work when their child is less than one month old.

### **Non-standard Work**

Women in Canada are more likely than men to be in part-time, temporary, or multiple jobs, which are less likely to have pensions and other benefits. This is not necessarily by choice, but because of childcare responsibilities or because they are unable to find full-time work. This is particularly true for Aboriginal women, immigrant women, and women of colour.

- Approximately 40% of women, compared with less than 30% of men, are in part-time, contract, or other non-standard work arrangements.
- In 2007, 21.2% of Canadian women worked part-time, compared to 6.4% of men.
- In 2004, 26% of women part-time workers indicated that they wanted full time employment, but could only find part-time work.

### **Aboriginal Women**

Aboriginal women have higher unemployment rates and lower earnings than white women and their male counterparts. They are disproportionately employed in Canada's low-paid work sectors and are more likely to be engaged in non-standard employment.

- In 2001, unemployment rates among Aboriginal women in the labour force (17%) were twice those of non-Aboriginal women (7%).

In 2001, 47% of Aboriginal women were employed, compared with 56% of non-Aboriginal women. 57% of Aboriginal women workers worked part-time.

### **Immigrant Women**

While foreign-born women are generally better educated than Canadian-born women, they are less likely to be employed. Those who are employed are more likely to be engaged in non-standard or part-time work and to work in low-wage sectors.



- In 2001, 64% of foreign-born women in Canada were part of the paid workforce, compared with 70% of non-immigrant women and 80% of immigrant men.
- Recent arrivals in Canada are the least likely to be employed.
- In 2001, 47% of employed immigrant women worked primarily on a non-standard schedule.
- Immigrant women work disproportionately in the manufacturing sector (11% compared with 4% of Canadian-born women).

## Women with Disabilities

The unemployment rate for women with disabilities is higher than for their non-disabled counterparts, due to both personal and societal barriers to their employment.

- In 2001, 10% of women with disabilities in the labour force between the ages of 15 and 64 years were unemployed, compared with 5% of non-disabled women.

Access to employment for women with disabilities is often barred, or made complicated, by negative attitudes of employers towards making accommodations for a woman's disability. Many women have invisible disabilities, such as chronic fatigue syndrome, arthritis, asthma, cancer, and multiple sclerosis, which involve fatigue and pain. Resistance from employers to working out flexible employment arrangements, such as working at home or working flexible hours, diminish the ability of women with disabilities to participate in paid employment and to support themselves and their families.

A Commitment to Training and Employment for Women, Employment Facts: Women in the Canadian Labour Market (December 2007), online: [http://www.actew.org/projects/pwpsite/snapshots/canadian\\_women.html](http://www.actew.org/projects/pwpsite/snapshots/canadian_women.html) (date accessed: 11 July 2008).

Statistics Canada, Women in Canada 2005: A Gender-Based Statistical Report (2005) at 103, 113, 139, 140, 133, 109, 110, 105, 116. Online: Statistics Canada, <http://www.statcan.ca/english/freepub/89-503-XIE/0010589-503-XIE.pdf> (date accessed: 30 June 2008).

Hansen, N. E. "A delicate balance: Chronic conditions and workspace". In D. Driedger and M. Owen, Eds. *Dissonant disabilities: Women with chronic illnesses explore their lives*, 2008: 131-145.

**RECOMMENDATION** The governments of Canada should introduce proactive employment equity laws that require public and private employers to ensure that women gain equal representation in their workplaces, and in all job categories, and that workplace rules and practices include and accommodate women, in particular racialized and disabled women, so that they can work and earn as equals.

## Wage Inequality

Canadian women are paid less than their male counterparts across all age groups and education levels. Women earn less than men working in the same sectors, or even in the same jobs.

- Comparing men and women who have full-year, full time employment, women earn 71% of the income of men. This number drops significantly when we compare income from all sources. Women have just 62% of the income of men.
- African-Canadian women earn an average income that is 88% that of non-racialized Canadian women, 79% that of African-Canadian men, and almost half of the income of non-racialized Canadian men.
- This wage gap is not the result of lower educational levels. Women with university degrees earn 74% of the income of their university-educated male counterparts.
- According to the World Economic Forum's Global Gender Gap Report of 2007, Canada's wage equality ranks in 38th place behind countries such as the Philippines (7th) and New Zealand (33<sup>rd</sup>).

Most workers in Canada earning minimum wage are women. Minimum wages in Canada range from \$7.75 per hour (PEI and New Brunswick) to \$10 per hour (Nunavut). In all jurisdictions except Nunavut, a full-time minimum wage income falls below the Statistics Canada's Low-Income Cut-Off.

Ricardo Hausmann et al., Global Gender Gap Report 2007, online: World Economic Forum, <http://www.weforum.org/pdf/gendergap/report2007.pdf> (date accessed: 8 August 2008).

## Unionization

Unionization plays an important role in reducing the pay gap between women and men. In 2006, unionized women in Canada earned 93% of the wage of unionized men, while non-union women earned only 75.4% of the wage of non-union men.

This role needs to be strengthened by increasing union representation for women, especially lower-paid women in the private services sector.

The unionization rate for Canadian women in 2006 was about the same as men - 31.7%. In the public sector, the unionization rate for women is high and stable at 76%. However, in the private sector (in which one third of women work) the rate is just 14.0% and declining, well below the 23.0% rate for men in the private sector. Unionization is especially low for women working in low paid private service industries such as retail trade (12.9%) and accommodation and food services (7.1%).

According to the Canadian Labour Congress, the most important benefit of unionization for any worker is a formal contract of employment that can be enforced through the grievance

and arbitration process. Collective agreements specify wages in a formal system of pay-by-position, usually provide for promotion and job security on the basis of seniority and other objective criteria, as well as for non-wage benefits such as pensions, holidays and health plans. Formalized union contracts work against gender discrimination, in addition to the active work undertaken by many unions to equalize the wages of workers in male and female dominated job classifications. In addition, through the bargaining process, unions in Canada have supported issues of key importance to working women, such as employer-supported caring leaves and the ability to modify work schedules.

In the private sector, unionization does not close the gender wage gap as much as in the public sector. However, unionization does have a major impact on the wages of women in the lowest paid occupational category, sales and service workers.

The unionization rate of women must be significantly increased in low paid private services jobs if the union advantage is to be enjoyed by more working women.

Canadian Labour Congress, *Women in the Workforce: Still A Long Way from Equality* (2008), online: CLC, <http://canadianlabour.ca/sites/clc/files/womensequalityreportEn.pdf> (date accessed: 18 August 2008).

**RECOMMENDATIONS** The governments of Canada should raise minimum wages in every jurisdiction to a level that puts all persons earning minimum wages above the poverty line.

The governments of Canada should take concerted and coordinated action to reduce and eliminate wage inequality for women in Canada, by raising minimum wages, instituting proactive pay equity legislation in all jurisdictions, and facilitating unionization for low wage women workers.

## **Pay Equity: Equal Pay for Work of Equal Value**

2003 CEDAW Recommendations:

376. The Committee urges the State party to accelerate its implementation efforts as regards equal pay for work of equal value at the federal level and utilize the respective federal-provincial-territorial Continuing Committees of Officials to ensure that that principle is implemented under all governments.

A significant factor contributing to women's wage inequality in Canada is that in most jurisdictions there is no pay equity legislation that applies to both public and private sector employers. In some provinces and territories there is no pay equity legislation at all, even for the public sector – that is, for government itself.

Canada has provided a chart regarding equal pay provisions in all jurisdictions as an appendix to its 6th and 7th reports. Attached to FAFIA's document is an alternative chart (see Appendix II). In summary, FAFIA's chart shows that:

- There is pay equity legislation (requiring equal pay for work of equal value) applying to both public and private sector employers only in 3 jurisdictions in Canada: federal, Ontario and Quebec;
- Newfoundland, Saskatchewan, Alberta, British Columbia, and Nunavut have no pay equity legislation;
- Prince Edward Island, Nova Scotia, New Brunswick, Manitoba, Northwest Territories, and Yukon have pay equity legislation applying to public sector employers only, (government itself, Crown corporations, etc.) or to some segment of public sector employers;
- 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.

In 2001 the federal government established a Pay Equity Task Force. While there are federal pay equity provisions contained in section 11 of the *Canadian Human Rights Act*, they are not working effectively. The federal law is only activated if there is a complaint. The process of complaint investigation and hearing is too long and too costly, especially for non-unionized women. Some complaints have taken 20 years to be resolved. After extensive consultation and research the Task Force recommended in May 2004 that:

- 1) a new pro-active pay equity law be introduced that requires employers to review pay practices, identify gender-based and race-based wage discrimination gaps, and develop a plan to eliminate pay inequities within a specific time frame; and
- 2) a Pay Equity Commission and a Pay Equity Tribunal be established to administer new pay equity legislation.

No action has been taken on these Task Force recommendations, despite the fact that over 200 local, provincial and national organizations have requested the immediate implementation of these recommendations. Employers, unions and women's groups all agreed that a new effective, accessible law, which requires positive employer action, provides clear standards, and allows access to an expert independent adjudicative body is needed.

In September 2006, the Government of Canada refused to improve the federal pay equity law, despite strong and repeated recommendations from the government's own Pay Equity Task Force and from the Parliamentary Committee on the Status of Women.

The federal government's message is that women should rely on education, more mediation and wage rate inspections, although these methods of closing the wage gap have failed.

Statistics Canada, *Women in Canada 2005: A Gender-Based Statistical Report* (2005) at 133, 138. Online: Statistics Canada, <http://www.statcan.ca/english/freepub/89-503-XIE/0010589-503-XIE.pdf> (date accessed: 30 June 2008).

Pay Equity Task Force, *Pay Equity: A New Approach to a Fundamental Right* (2004), online: Ministry of Justice, <http://canada.justice.gc.ca/eng/payeq-eqsal/6000.html> (date accessed: 30 June 2008).

**RECOMMENDATIONS** The governments of Canada should establish pro-active pay equity laws guaranteeing equal pay for work of equal value to women, whether they work in the public or private sectors, in all jurisdictions;

The Government of Canada should implement the 2004 recommendations of the Pay Equity Task Force and the Parliamentary Committee on the Status of Women regarding improvements to the federal law on pay equity.

## Employment Insurance

2003 CEDAW Recommendations:

374. The Committee recommends that the State party monitor closely the situation of women's non-standard jobs and to introduce employment-related measures which will bring more women into standard employment arrangements with adequate social benefits.

382. The Committee recommends to the State party to reconsider the eligibility rules of the Employment Insurance Act based on a gender-based impact analysis in order to compensate for women's current inequalities in accessing those benefits owing to their non-standard employment patterns. It also encourages the State party to consider raising the benefit level for parental leave.

378. The Committee recommends that the State party ensure that income-generating activities for aboriginal women provide for a sustained and adequate income, including all necessary social benefits.

### Access to Standard Benefits

Since 2003, no changes have been made that assist women, particularly those engaged in non-standard work, in gaining better access to Employment Insurance (EI) Benefits under the *Employment Insurance Act* (EI Act). The difference between men's and women's EI coverage remains significant.

Because Aboriginal women, women of colour, and immigrant women do more non-standard work, the failure of the Employment Insurance scheme to take into account the effect of non-standard employment patterns on access to benefits affects them disproportionately.

Presently, the eligibility requirements for EI standard benefits vary between regions (420 – 700 hours). The maximum number of weeks of benefits also varies from one region to another (36 – 45 weeks).

- Two in every three working women who pay into EI do not receive any benefits if they lose their jobs. Women's access to EI benefits decreased 6% in the five years following the introduction of the EI Act in 1996; in comparison, men's access decreased 1%.
- Women account for about 7 out of 10 part-time employees and less than half (42.8%) of unemployed part-time workers qualified for EI in 2004.
- The population least likely to qualify for EI is most likely to have young children, women aged 25-44. Close to 75% of employed women have children under 16. Many of these are single mothers who have difficulty accessing EI.

## Maternity/Parental Benefits

### THE CANADA LABOUR CODE

Maternity leave and mothers' return to work are covered by provincial employment standards legislation or, for mothers working in sectors under federal jurisdiction, by the *Canada Labour Code*.

Currently, the *Canada Labour Code*:

- requires six months of continuous service in order for employees in federally-regulated workplaces to be eligible for maternity and parental leave;
- no leave is available for fathers or same-sex co-parents, nor is leave (paid or unpaid) available for family or parental responsibilities;
- leave without pay is only available for pregnant or nursing mothers whose working conditions pose a danger to her or her child.

### THE EMPLOYMENT INSURANCE ACT

With the exception of Québec, maternity and parental benefits are granted through the federal *Employment Insurance Act*. Women who have given birth are eligible for maternity benefits, while either parent, including adoptive parents, is eligible for parental benefits.

As of 2001, in order to be eligible for these maternity and parental benefits, a person must have accumulated 600 hours of insurable employment during the last year. At para. 103 of Canada's current report to CEDAW, Canada reports on changes made to maternity and parental benefits in 2000. The Committee had this information before it in 2003, and noted then that the central problem regarding employment insurance was that fewer women than

men were eligible for employment insurance benefits because of their non-standard employment patterns. This remains true, and many women in the paid labour force remain ineligible for maternity benefits. Those who qualify for maternity benefits tend to be better paid women workers, with standard employment patterns, not lower paid, more vulnerable women workers.

- In 2003, more than one out of three women with newborns did not qualify for maternity or parental benefits. Most of these were self-employed or had not worked for two years or longer.
- With the exception of Quebec, self-employed women do not qualify for maternity or parental benefits in Canada.

Maternity benefits represent only 55% of insurable income and are taxable. The maximum insurable earnings are \$40,000 per year, for a maximum weekly benefit of \$423, rates lower than those available in 1995. Benefits are calculated on the basis of income over the last 14 to 26 weeks, a method which penalizes seasonal, on-call, and part-time workers. A further barrier to qualification is a waiting period of two weeks, imposed on the first parent to draw benefits (usually the mother). Low benefit levels and this waiting period make maternity leave unaffordable for many poor women in the paid labour force.

There is a Family Supplement available for low-income recipients of EI. However, while two-thirds of all recipients of the Family Supplement are women, only 14% of women on EI are eligible for Family Supplement claims.

In contrast to the EI scheme in other regions of Canada, since 2006 the Quebec Parental Insurance Plan has offered much more generous benefits to a much broader group of new parents, including self-employed parents and the second parent in same-sex families. There is no waiting period for benefits in Quebec, and benefits are set at a 70-75% income replacement rate for at least half of the weeks benefits are received.

In addition, the Quebec regime reserves five weeks of benefits for a second parent, usually the father but sometimes the co-mother or co-father in same-sex families. These designated benefits (that will be lost if not taken by the second parent) encourage both parents to participate in caring for children. Outside of Quebec, there are no such designated benefits and, predictably, very few second parents choose to receive parental benefits.

Rachel Cox and Ruth Rose, *Improving Maternity and Parental Benefits for Women Outside of Quebec: Proposals for Law Reform* (August 2007), online: National Association of Women and the Law, <http://www.nawl.ca/ns/en/publications.html> (date accessed: 19 August 2008).

## SICK LEAVE

Women disproportionately suffer from chronic illnesses. For these women, the current EI allowance of 15 weeks for sick leave is insufficient. DAWN Canada recommends that 40



weeks would enable such an individual to return to work and resume earning an income, rather than having to leave their job.

A Commitment to Training and Employment for Women, *Employment Insurance: Employment Facts from ACTEW* (January 2007), online: ACTEW, [http://www.theconstellation.ca/img\\_upload/0354dceb942b6ce6abdb2535de03bf3f/women\\_EI\\_ACTEW\\_Jan07.pdf](http://www.theconstellation.ca/img_upload/0354dceb942b6ce6abdb2535de03bf3f/women_EI_ACTEW_Jan07.pdf) (date accessed: 11 July 2008).

Monica Townson and Kevin Hayes, Women and the Employment Insurance Program, (November 2007), online: Canadian Centre for Policy Alternatives, [http://www.policyalternatives.ca/documents/National\\_Office\\_Pubs/2007/Women\\_and\\_the\\_EI\\_Program.pdf](http://www.policyalternatives.ca/documents/National_Office_Pubs/2007/Women_and_the_EI_Program.pdf) (date accessed: 7 July 2008).

**RECOMMENDATIONS** The Government of Canada should put in place measures to bring more women, and racialized women in particular, into standard employment with adequate social benefits;

The Government of Canada should amend the eligibility rules in the Employment Insurance Act to improve access to benefits for women with non-standard work patterns;

The Government of Canada should amend the Canada Labour Code by removing the service requirement and allowing for paid parental leave for fathers, co-parents, and mothers working in conditions unsafe for her or her child;

The Government of Canada should ensure maternity leave with pay is made available to women who do not qualify for Employment Insurance maternity benefits, such as self-employed women;

The Government of Canada should amend the EI regime by: lowering the eligibility requirement for maternity leave to 360 hours; eliminating the two-week waiting period; allowing a 3 to 5 year reach-back period for women to qualify for maternity benefits; and increasing the \$423 maximum weekly benefit to 70% of insurable income calculated on the basis of the best 12 weeks of income in the last year;

The Government of Canada should designate parental benefits for second parents in the EI regime. Lone mothers should also be able to use these designated benefits;

The Government of Canada should increase the current EI allowance for sick leave from 15 to 40 weeks.

## The Live-In Caregiver Program

2003 CEDAW Recommendations:

The Committee urges the State party to take further measures to improve the current live-in caregiver programme by reconsidering the live-in requirement, ensuring adequate social security protection and accelerating the process by which such domestic workers may receive permanent residency.

The Live-In Caregiver Program provides that after working in Canada as live-in caregivers for two years, individuals can obtain permanent residence in Canada. In 2007, Canada admitted 6,895 workers in the program. The women are predominantly women of colour, many of whom come to Canada from the Philippines.

Several aspects of the Program are particularly problematic and deepen the inequality of this already vulnerable group of women workers:

- Caregivers in the Program are admitted as temporary workers rather than as permanent residents. Despite the chronic and persistent demands for child care and home care workers, the immigration system fails to accord sufficient recognition to the skills, experience, and training required to perform these jobs, thus preventing these workers from coming under the regular admission system. The need for a special program is symptomatic of the longstanding problem of the gendered nature of the immigration selection process, which fails to appropriately value the skills and experiences of women.
- The requirement that the caregiver live in her employer's home has been widely criticized since the first special program for caregivers was introduced in the 1970s. In 2000, Status of Women Canada reported that "this situation can lead to abuses such as unpaid or excessive working hours, violations of privacy, greater dependence on employers, sexual harassment and sexual assault," noting that even "the Department of Citizenship and Immigration Canada itself acknowledges this possibility in the information brochure it distributes to women who participate in the program."
- In order to be granted permanent residence, the women must complete 24 months of live-in caregiving within 36 months of arrival. This requirement is in contrast to other categories of workers, dominated by men, who are granted permanent residence on arrival. Further, this requirement can be difficult to meet due to breaks in service because of employers' abuse, lay-off, sick leaves or maternity leave. If an employee wishes to change employers, it can take between three to five months to obtain the necessary permission – making it more difficult to meet the 24 month requirement. It is illegal for caregivers to start work with a new employer without the new employment authorization and violation is grounds for deportation.

The essentially temporary nature of the live-in caregivers status leads to problems with their entitlement to other services and benefits that workers with full status take for granted:

- If she has left a partner or children back home, she cannot effect family reunification until she has acquired permanent residence. Only then can she apply to sponsor her children and/or spouse;
- She is not fully covered by all provincial labour standards legislation, making enforcement of her contractual rights difficult and inaccessible because she may have no access to Labour Boards;
- If she becomes sick while in Canada (all live-in caregivers must pass medical exams before entering the Program) she will not have access to medicare. For example, caregivers who have caught TB from elderly employers or been diagnosed with cancer or another major illness after working in Canada for some time are not eligible for government health care despite contributing to these programs through their taxes. Serious medical problems are grounds for denial of landed status and for deportation;
- She is not eligible for the Child Tax Benefit or any of the Energy Credits because of her temporary status, notwithstanding that her wages are fully taxed;
- Further, if she obtains permanent residence, her overseas educational credentials, which may in areas different from caregiving, are rarely recognized in Canada, resulting in the eventual loss of other occupational skills.

Status of Women Canada, *Trafficking in Women in Canada: A Critical Analysis of the Legal Framework Governing Immigrant Live-in Caregivers and Mail-Order Brides* (2000), online: Status of Women Canada, [http://www.swc-cfc.gc.ca/pubs/pubspr/066231252X/index\\_e.html](http://www.swc-cfc.gc.ca/pubs/pubspr/066231252X/index_e.html) (date accessed: 7 July 2008)

**RECOMMENDATIONS** The Government of Canada should grant permanent residence to caregivers on arrival;

The Government of Canada should remove the 'live-in' requirement for live-in caregivers;

The Government of Canada should take steps to ensure that live-in caregivers who obtain permanent residence can obtain appropriate recognition for their foreign training.

## Lack of Adequate Child Care

2003 CEDAW Recommendations:

380. The Committee recommends that the State party further expand affordable childcare facilities under all governments and that it report, with nationwide figures, on demand, availability and affordability of childcare in its next report.

The lack of substantial and equitable improvements to child care services across most of Canada (outside of Québec) remains a serious concern for women and their children, their families and their communities. The federal government's current policies cannot ensure that access to quality, affordable child care services will consistently improve in the future.

While the progress on child care was painfully slow prior to 2006, since that time the federal government has cut dedicated federal child care transfers to the provinces and territories and weakened accountability requirements. It is therefore not surprising to see that in 2007 the number of regulated child care spaces in Canada grew by only 3%, the smallest annual increase to date in this decade.

Child Care Resource and Research Unit, *Child Care Space Statistics 2007 - Summary* (March 2007), online: CRRU, <http://www.childcarecanada.org/pubs/other/spaces/index.html> (date accessed: 8 August 2008).

The overall lack of progress on child care services in Canada has not gone unnoticed, particularly when viewed in relation to Canada's economic performance. A 2006 report by the Organization for Economic Cooperation and Development (OECD) ranked Canada last out of 14 countries in terms of public investment in early childhood education and care services and last out of 20 countries in terms of access. Yet, OECD data also confirms that "Canada's fiscal position is stronger than that of the other G7 countries (United States, United Kingdom, France, Germany, Japan and Italy)." Canada is expected "to record the largest budgetary surplus as a share of GDP in the G7 in 2007, 2008 and 2009." Finally, Canada's debt, already low relative to other G7 countries, "will continue to decline in future years".

Martha Friendly et al., *Early learning and child care: How does Canada measure up? International comparisons using data from Starting Strong II* (Organisation for Economic Co-operation and Development, 2006) (October 2006), online: Childcare Resource and Research Unit, <http://www.childcarecanada.org/ECEC2006/index.html> (date accessed: 8 August 2008).

Government of Canada, *Budget 2008 – Annex 1: Canada's Fiscal Performance in an International Context* (February 2008), online: Department of Finance Canada, <http://www.budget.gc.ca/2008/plan/ann1-eng.asp> (date accessed: 8 August 2008).

Given that Canadian governments have the evidence needed to move forward, and the financial capacity to do so, there is no excuse for Canada's weak performance on child care. Canada's failure to address the child care service needs of women, children and communities is directly related to the current federal government's abdication of its leadership role in establishing equitable access to services across the country.

In 1999, the federal government and most provinces and territories (with the exception of Quebec) signed the Social Union Framework Agreement (SUFA). SUFA allows the federal

government to establish new programs in areas of provincial/territorial jurisdiction providing a majority of provinces/territories agree. SUFA also promotes broad citizen engagement in establishing comparable services across Canada.

Building on SUFA and starting in 2001, federal, provincial and territorial (FPT) governments agreed to work together specifically to improve services, including child care, for young children and families. Under three separate FPT agreements (briefly described below), the federal government has transferred annual funding to the provinces and territories. These jurisdictions are responsible for planning and delivering child care services. The agreements are as follows.

1. 2000 Early Childhood Development (ECD) Agreement - supports investments in four areas: healthy pregnancy, infancy, and birth; parenting and family supports; early childhood development, learning and care (a category that typically includes child care services); and community supports.
2. 2003 Multilateral Agreement on Early Learning and Child Care (Multilateral) - specifically directs federal transfers to improving access to affordable, quality, provincially and territorially regulated early learning and child care programs and services.
3. 2005 (Bilateral) Agreements-in-Principle on Early Learning and Child Care - committed \$5 billion over 5 years towards a national child care system, working in cooperation with provinces and territories and building on the Multilateral Framework requirement to invest in regulated child care. This FPT agreement was cancelled in 2006.

A Framework to Improve the Social Union for Canadians: An Agreement between the Government of Canada and the Governments of the Provinces and Territories (February 4, 1999), online: [http://socialunion.gc.ca/news/020499\\_e.html](http://socialunion.gc.ca/news/020499_e.html) (date accessed: 8 August 2008).

However, these agreements did not lead to substantial improvements. Between 2001 and 2006 parent fees increased while access to regulated child care spaces grew slowly. Although wages for trained staff – predominantly women - increased slightly, child care remains one of the lowest paid occupations in Canada.

Furthermore, the minimal progress achieved during this time period was not equitably distributed across the country. While Québec was not a signatory to the FPT agreements, it has received its per capita share of federal transfers and remains the frontrunner in child care services. With less than one-quarter (22%) of the child population, Quebec has almost one-half (45%) of the regulated child care spaces for children under 12 in Canada. By 2005/2006:

- In total in Canada, provincial and territorial public funding for child care grew to over \$2.6 billion – but only \$965 million of those funds were invested outside of Quebec.

- On average in Canada, public funding per regulated space was \$3,259 per year – but it was only \$2,146 per year outside of Quebec.
- Overall in Canada, 17% of children under 12 had access to a regulated child care space –but outside of Quebec only 12% did.

Further analysis of the progress across provinces outside of Quebec indicates that:

- Parent fees, the key indicator of affordability, increased by over \$500/year in 4 of the provinces that publicly report on this information;
- Inequity in child care affordability also increased: the province of Manitoba had the lowest fees for preschool-aged children, capped at \$4,512/year, while British Columbia had the highest reported provincial average fees of \$6,600/year. To date, only Manitoba and Quebec have set limits for maximum child care fees;
- Inequity in wages for trained staff, a key indicator of quality, also increased: minimum average wages reported for trained/certified child care staff in centres ranged from \$9.25/hour in PEI to \$14.23/hour in Manitoba.

Childcare Resource and Research Unit, Early Education and Care in Canada 2006 (June, 2007), online: CRRU, <http://www.childcarecanada.org/ECEC2006/index.html> (date accessed: 8 August 2008). This data was summarized in Child Care Report Cards published by the Canadian Labour Congress (June 2008), online: CLC, <http://canadianlabour.ca/en/report-cards> (date accessed: 8 August 2008).

Multiple analyses also confirm that the lack of significant progress in child care services prior to 2006 stemmed from inadequate funding levels and accountability mechanisms under the FPT agreements:

- Regarding funding levels - dedicated federal child care transfers peaked in 2006 at \$950 million (Table 3), yet the estimated annual cost of quality, affordable child care services for all children in Canada aged three to five is approximately \$5 billion. Adding children under 3 brings the estimated total annual cost to \$10 billion;
- Regarding accountability mechanisms - the transfer agreements between FPT governments represent political rather than legal commitments and there are no spending conditions. Public reporting is the sole accountability mechanism. Governments' commitment statement on annual reporting notes that "clear public reporting will enhance accountability and will allow the public to track progress in improving the well-being of Canada's young children." However, findings from a recent analysis indicate that government's public reports on child care services are not living up to the promises of accountability and transparency. Few governments had clear public reporting that allowed the public to easily track progress through 2005/06 and none met all of the performance and reporting requirements outlined in the FPT Child Care Agreements. Furthermore, governments committed to reporting on indicators for service quality, affordability and



accessibility, but most public reports do not include information on the key indicators of staff wages, parent fees and per cent of children with access to a regulated child care space.

The latter indicator is particularly important. Governments generally describe the number of new spaces being created, but the evidence suggests that child care services struggle from unusually high closure rates, so the total number of regulated spaces available is important to track. And, given that most provinces do not provide an entitlement to child care, it is equally important to relate the number of spaces available to the number of children.

Paul Kershaw et al., *Hidden Fragility: Closure Among Child Care Services in BC* (June 2004), online: Consortium for Healthy, Intervention, Learning & Development (CHILD), <http://www.earlylearning.ubc.ca/documents/Hidden%20Fragility%20paper%202004-08-041%20Kershaw%20et%20al.pdf> (date accessed: 8 August 2008).

Child Care Advocacy Association of Canada, *Priority for Prosperity: Replace Patchwork and Wishful Thinking with Focused Public Investment in Child Care* (August 2007), online: CCAAC, [http://www.ccaac.ca/pdf/resources/briefs/CCAAC\\_PBC\\_Sept\\_11\\_07.pdf](http://www.ccaac.ca/pdf/resources/briefs/CCAAC_PBC_Sept_11_07.pdf) (date accessed: 8 August 2008).

First Ministers' Meeting Communiqué on Early Childhood Development, (11 September 2000), online: [http://www.ecd-elcc.ca/en/ecd/ecd\\_communique.shtml](http://www.ecd-elcc.ca/en/ecd/ecd_communique.shtml) (date accessed: 8 August 2008).

*Child Care Advocacy Association of Canada, Making the Connections: Using Public Reporting to Track the Progress on Child Care Services in Canada* (October 2007), online: CCAAC, [http://www.ccaac.ca/mtc/en/pdf/mtc\\_execsumm\\_en.pdf](http://www.ccaac.ca/mtc/en/pdf/mtc_execsumm_en.pdf) (date accessed: 8 August 2008).

Despite the compelling evidence highlighting the need to further increase federal transfers and strengthen accountability for results, shortly after coming to power in 2006 the current federal government terminated the most significant of the 3 FPT agreements, the 2005 Agreement on Early Learning and Child Care. Funding commitments scheduled to reach \$1.2 billion annually for regulated child care services were eliminated effective April 2007 (see Table 3).

Those agreements were replaced with the federal government's Child Care Spaces Initiative which planned instead to allot up to \$250 million in incentives to entice businesses and other groups to build new child care spaces. This endeavor has been tried by other governments in the past and failed, partly because new spaces are only one aspect of child care services – businesses, parents and community groups know that operating funding is also required to ensure services are accessible and affordable for parents and of high quality for children. In the end, the federal government turned this \$250 million allotment into the Child Care Space Transfer to provinces and territories. Despite its promising title, this



transfer represents an 80% annual reduction in funding from the commitment it replaces, and does not even have the minimal accountability requirements of the earlier FPT agreements outlining governments' intentions regarding how the funds will be spent.

Along with the Spaces Initiative, the current federal government introduced the "Universal Child Care Benefit" (UCCB), a taxable family allowance of \$1,200 per year, per child under the age of 6, for a total annual cost of \$2.4 billion.

Government of Canada, What is the Universal Child Care Benefit? (2008), online: <http://www.universalchildcare.ca/en/home.shtml> (date accessed: 8 August 2008).

By including this taxable allowance in its funding envelope, the federal government says it is now spending \$5.6 billion annually to support early learning and child care in Canada - more than ever before. This claim raises an obvious question, and one that FAFIA recommends the Committee ask of the federal government: if that is the case, why are parent fees rising, waitlists growing and staff wages stagnant?

Government of Canada Media Release: Government of Canada provides: choice, flexibility and opportunities for families (12 June 2008), online: Human Resources and Social Development Canada, <http://news.gc.ca/web/view/en/index.jsp?articleid=404809> (date accessed: 8 August 2008).

The technical answer is straightforward. Very little of this funding is directed, in a publicly accountable way, to improving access to quality, affordable child care services.

Of the \$5.6 billion that the federal government is currently spending, 80% or \$4.5 billion goes directly to parents via taxable allowances (UCCB), tax credits and tax deductions. While families need adequate incomes, they also need publicly-funded services. Yet, income transfers to parents provide no accountability for the quality and affordability of child care services that families can access with these funds, if in fact the monies are used for child care at all.

Just under 10% of the federal government's current spending – or \$500 million – is transferred to provinces and territories for a broad range of family supports as outlined in the first FPT Agreement, the 2000 Early Childhood Development Agreement. There is no requirement for these funds to be invested in child care services.

In fact, only about 10% of the \$5.6 billion – or \$600 million (see Table 3) – is transferred to the provinces and territories specifically for child care spaces and services. Even then, the federal government is not enforcing public accountability for these funds. As previously noted, FPT governments are supposed to provide clear annual reporting so the public can track progress on service improvements, but most public reports are late, including the federal government's, and many are unclear.

Furthermore, without legislation or national standards (or, in the case of the 2007 Child Care Space Transfer, without even an FPT agreement in place) Canada lacks benchmarks against which progress can be measured. All federal opposition parties (Liberals, New Democrats and Bloc Quebecois) support proposed national legislation (Bill C303) that would require the provinces and territories to develop child care plans, with timelines and targets for service improvements.

As explained by the FPT Advisory Committee on Population Health and Health Security, governments can adopt a range of different strategies to support families and children's healthy development. Two of the most common strategies are (1) providing programs and services (like child care) and (2) providing income transfers to parents (like the taxable family allowance or UCCB). Both strategies are important, but should not be confused - providing public funds directly to families is different from providing public funds directly to child care services. Only through the latter approach can governments ensure that their CEDAW commitment on child care services is achieved.

Building An Early Childhood Development System Utilizing a Population Health Perspective: A Tool for Reviewing Current Approaches, Report of the Federal/Provincial/Territorial Advisory Committee on Population Health and Health Security (March 2003), online: Depository Services Program, <http://dsp-psd.pwgsc.gc.ca/Collection/H39-667-2003E.pdf> (date accessed: 8 August 2008).

The framework for improving child care services has already been established by governments – what is missing is the will to implement the commitments made. For example, the 1999 Social Union Framework Agreement promised that programs would be guided by the principles of universality, accessibility, public administration and citizen engagement. However, the federal government's unwillingness to invest substantially and accountably in child care services in Canada leaves women and their families without access to universal services.

Furthermore, the federal government's silence as four provinces recently introduced capital grants for commercial child care providers leaves existing community-based services vulnerable to takeover by multinational corporate child care chains. The largest child care corporation in the world has already purchased centres in Alberta and made enquiries in British Columbia. This approach stands in direct contradiction to the principle of public administration and, rather than supporting citizen engagement, discourages women from having "meaningful input into social policies and programs" that affect their lives.

*A Framework to Improve the Social Union for Canadians: An Agreement between the Government of Canada and the Governments of the Provinces and Territories* (February 4, 1999), online: [http://socialunion.gc.ca/news/020499\\_e.html](http://socialunion.gc.ca/news/020499_e.html) (date accessed: 8 August 2008).

For these and other reasons, Canada risks repeating the Australian experience, where corporate child care dominates and where increased public funding has not translated into more quality, affordable child care programs. Instead, high fees, service gaps, and public concerns about quality characterize the Australian experience. Meanwhile, corporate profits have escalated. Canadian child care advocates recommend that the Australian experience serve as a lesson to Canada: now, more than ever, child care service expansion must be publicly or community owned and operated.

Related research is available from the Childcare Resource and Research Unit, “Early Childhood Education and Care – Private Commodity or Public Good?”, online: CRRU, <http://privatization.crru.ca/> (date accessed: 8 August 2008).

Canada’s current child care policies do not reflect the views of most Canadians, 77% of whom consider the lack of affordable child care to be a serious problem. A 2006 poll shows that three-quarters of Canadians support a national child care program. The Code Blue for Child Care Campaign was initiated early in the same year, promptly gathering more than 100,000 signatures on petitions unveiled in St. John’s Newfoundland and an open letter urging governments to honour the 2005 FPT Agreement on Early Learning and Child Care. In 2007, the Province of BC announced a series of child care service funding cuts attributed to the termination of this agreement, generating public protests across the province. More recently, a caravan of concerned parents and workers in Ontario highlighted their concern about child care center closures.

Code Blue for Child Care Campaign Press Release: Build Child Care Open Letter Hits 50,000 Signatures, (June 2006), online: [http://www.buildchildcare.ca/www/News/Build\\_Child\\_Care\\_ope](http://www.buildchildcare.ca/www/News/Build_Child_Care_ope) (date accessed: 8 August 2008).

First Call: BC Child and Youth Advocacy Coalition, Cuts to Child Care: Impacts and Actions (January 2007), online: First Call, <http://www.firstcallbc.org/pdfs/EarlyChildhood/1-cuts%20to%20child%20care.pdf> (date accessed: 8 August 2008).

Ontario Coalition for Better Child Care, July 16 Kingston Caravan for Child Care a Big Success (23 July 2008), online: OCBC, <http://www.childcareontario.org/news/?p=118> (date accessed: 8 August 2008).

Canadians are clear. Affordable, accessible child care services identified as “the ramp to women’s equality” by current Supreme Court of Canada judge Rosalie Abella in the 1984 Royal Commission on Equality in Employment are still desperately needed.

**Table 3: Dedicated Federal Child Care Transfers to Provinces and Territories**

\$ millions	2003/ 04	2004/ 05	2005/ 06	2006/ 07	2007/ 08	2008/ 09
2003 Agreement on Early Learning and Child Care (ELCC)	25	150	225	300	350	350
2005 Agreement on Early Learning and Child Care (ELCC)*	0	200	500	650	1,200	1,200
<b>Total Committed, Dedicated Child Care Transfers/Funding, 2005</b>	<b>25</b>	<b>350</b>	<b>725</b>	<b>950</b>	<b>1,550</b>	<b>1,550</b>
Less: 2005 ELCC Agreement terminated effective April 2007					-1,200	-1,200
Add: 2007 Federal Child Care Space Transfer					250	250
<b>Total Actual, Dedicated Child Care Transfers/Funding, 2007</b>	<b>25</b>	<b>350</b>	<b>725</b>	<b>950</b>	<b>600</b>	<b>600</b>

For details by province and territory, see Federal Support for Children at <http://www.fin.gc.ca/FEDPROV/fsce.html> .

**RECOMMENDATIONS** The Government of Canada should ensure that all children, women and families have equitable access to quality, affordable child care services. This requires:

- adequate and sustained transfers to provinces and territories;
- accountability mechanisms requiring provinces and territories to develop plans with timelines and targets for lowering parent fees and adding public or community-owned spaces. In addition, federal transfers should raise wages for trained staff, alleviating the current recruitment and retention crisis in Canada and raising service quality accordingly;
- clear and timely public reporting on actual results achieved.

## X. Violations of Article 12: Health

### Abortion

Though abortion has been legal in Canada for 20 years, women's access to abortion remains uncertain and uneven across the country. Less than 20% of general hospitals perform abortions, none of which are in Prince Edward Island or Nunavut. Many women, particularly those who live in rural areas, have to travel significant distances to obtain abortion services. Such travel is expensive, time consuming, and create conflicts with work and child care. Access can be difficult even at hospitals that provide abortions due to restrictive gestational limits, long wait times, and inadequate information or referrals to anti-choice agencies.

The right for women to receive a full range of reproductive healthcare options, services, and information is constantly under attack and has been opposed by seven anti-choice bills since 2003 alone. The most disconcerting of these include three Acts to Amend the Criminal Code:

- Bill C-484, "The Unborn Victims of Crime Act," which passed Second Reading in Parliament on 5 March 2008 and is now under review by the Standing Committee on Justice and Human Rights, seeks to grant fetuses (which are non-persons under the law) a type of legal personhood, posing a serious danger to abortion rights;
- Bill C-537, "Protection of Conscience Rights in the Health Care Profession," would contravene women's rights to abortion by allowing healthcare professionals to refuse treatment to patients if that treatment violates the tenets of their moral or religious beliefs;

Bill C-338, "Procuring a miscarriage after 20 weeks of gestation," would restrict abortions performed after twenty weeks. While the Bill would allow exceptions to save the woman's life in order "to prevent severe pathological physical morbidity of the woman," it would impose a prison term of up to five years, and/or a fine of up to \$100,000 on anyone who "uses any means or permits any means to be used" to perform an abortion past 20 weeks. This bill is misguided and unnecessary – 90% of abortions are done by 12 weeks in Canada, and 97% by 16 weeks. Only 0.3% of abortions occur after 20 weeks, almost all because of serious fetal or maternal health problems.

Taken together, these private member's bills would seek to separate women from their fetuses, result in harms against pregnant women, and criminalize women's healthcare. This constitutes the biggest threat to reproductive choice in Canada over the last 20 years.

House of Commons Canada, Bill C-484 An Act to Amend the Criminal Code (injuring or causing the death of an unborn child while committing an offence) Second Session, Thirty-ninth Parliament (21 November 2007), online: <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3127600&file=4> (date accessed: 26 August 2008).

House of Commons Canada, Bill C-537 An Act to Amend the Criminal Code (protection of conscience rights in the health care profession) Second Session, Thirty-ninth Parliament (16 April 2008), online: <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3429427&file=4> (date accessed: 26 August 2008).

House of Commons Canada, Bill C-338 An Act to Amend the Criminal Code (procuring a miscarriage after twenty weeks of gestation) Second Session, Thirty-ninth Parliament (21 June 2006), online: <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=2494993&file=4%20> (date accessed: 26 August 2008).

Joyce Arthur, A Direct Attack on Abortion Rights (25 June 2006), online: Abortion Rights Coalition of Canada, [http://www.arcc-cdac.ca/action/bill\\_c338.html](http://www.arcc-cdac.ca/action/bill_c338.html) (date accessed: 26 August 2008).

Abortion Rights Coalition of Canada, Abortion is a “Medically Required” Service and Cannot be Delisted, (2008), online: ARCC, <http://www.arcc-cdac.ca/postionpapers/01-Abortion-Medically-Required.pdf> (date accessed: 26 August 2008).

**RECOMMENDATIONS** Federal, provincial and territorial governments should promote rather than inhibit women’s reproductive choice in Canada. Specifically, all abortions (including those performed in clinics) should be considered “medically required” services, fully funded by the provinces under the *Canada Health Act*, and included in provincial reciprocal billing agreements;

The Government of Canada should increase funding for subsidized contraception, comprehensive sexual health education, and medical and surgical abortion.

## Women, Girls, and HIV/AIDS

HIV/AIDS remains relatively rare in Canada, affecting less than 0.3% of the population. It has remained largely invisible, often overshadowed by more common chronic diseases, and assumed to be confined to specific “high risk” groups, such as homosexual men and intravenous drug users. While the majority of people living with HIV/AIDS in Canada do belong to these two groups, growing numbers of people are becoming infected through heterosexual contact (from 13% in 1993 to 43.8% in 2003).

These changes have had a disproportionate impact on women, and particularly young women (75% of women are infected through heterosexual contact). As a result, the proportion of all people living with HIV/AIDS in Canada who are women grew from 6.1% in 1994 to 16.5% in 2002. Among people 15 to 29 years old, young women make up almost half of all new HIV infections.

A large and increasing portion of HIV infections are occurring in young Aboriginal women between 15-29 years old. In 2001, 45% of HIV-positive Aboriginal women were between 15 and 29 years old.

Other groups are also at disproportionate risk of becoming infected with HIV. Women who are most disadvantaged and marginalized are also most vulnerable to HIV. The in-Canada rate of HIV infection is at least 20 times greater in the African-Canadian community than among non-injection drug-using heterosexual people in Ontario.

According to the Women's Health Bureau, women in Canada are not only experiencing growing vulnerability to infection, they tend to have lower survival rates than men. This is the result of: "late diagnosis and delayed treatment due to misdiagnosis of early symptoms; exclusion from drug trials and lack of access to antiviral treatment; lack of research into the natural history of HIV in women; higher rates of poverty among women and lack of access to adequate health care; and the tendency of many women to make self-care a lower priority than the care of children and family."

Despite the alarming patterns of HIV infection among women in Canada, research, policies, and programs remain largely gender neutral. Issues specific to women and girls are under-represented in research.

Women's Health Bureau, Health Canada, *Women and HIV/AIDS Factsheet* (1999), Ottawa, Queen's Printer.

Barbara Clow, "An Invisible Epidemic: The Implications of Gender Neutrality for Managing HIV/AIDS in Low-incidence Countries" in the *Centres of Excellence for Women's Health Research Bulletin*, Volume 5, Number 2 (Fall 2006), online: CEWH, <http://www.cewh-cesf.ca/PDF/RB/bulletin-vol5no2EN.pdf> (date accessed: 26 August 2008): 4.

The Women's Health Contribution Program, Health Canada, *Women's Health Policy Brief: Why is HIV/AIDS a Women's Issue?* (5 April 2005), online: CEWH, <http://www.cewh-cesf.ca/PDF/acewh/policyACEWH.pdf> (date accessed: 26 August 2008).

Canadian Aboriginal AIDS Network. *HIV/AIDS and Aboriginal Women, Children and Families: A Position Statement* (March 2004), online: CAAN, [www.caan.ca/english/grfx/resources/publications/Women\\_and\\_HIV.pdf](http://www.caan.ca/english/grfx/resources/publications/Women_and_HIV.pdf) (date accessed: 7 July 2008).

Health Canada, *Certain Circumstances: Issues in Equity and Responsiveness in Access to Health Care in Canada- A Collection of Papers and Reports Prepared for Health Canada: Health Promotion and Population in the Black and Caribbean Canadian Community* (2001), online: Health Canada, [http://www.hc-sc.gc.ca/hcs-sss/alt\\_formats/hpb-dgps/pdf/pubs/2001-certain-equit-acces/2001-certain-equit-acces-eng.pdf](http://www.hc-sc.gc.ca/hcs-sss/alt_formats/hpb-dgps/pdf/pubs/2001-certain-equit-acces/2001-certain-equit-acces-eng.pdf) (date accessed: 18 August 2008): 189-191.



**RECOMMENDATIONS** The Government of Canada should promote further gender-based analysis of the Canadian Strategy on HIV/AIDS, demand that gender be incorporated into all policies and programs pertaining to HIV/AIDS prevention, care, treatment and support and encourage the development of gender-appropriate HIV/AIDS strategies in all regions of the country;

The Government of Canada should maintain existing resources and provide new funding to support programs for women affected by HIV/AIDS, and should target specific prevention efforts towards Aboriginal women, young women and girls, and African-Canadian women.

## **XI. Violations of Article 13: Economic and Social Life**

### **Women's Poverty**

2003 CEDAW Recommendations:

357. ...the Committee is concerned about the high percentage of women living in poverty, in particular elderly women living alone, female lone parents, aboriginal women, older women, women of colour, immigrant women and women with disabilities, for whom poverty persists or even deepens, aggravated by the budgetary adjustments made since 1995 and the resulting cuts in social services. The Committee is also concerned that [anti-poverty] strategies are mostly directed towards children and not towards these groups of women.

358. The Committee urges the State party to assess the gender impact of anti-poverty measures and increase its efforts to combat poverty among women in general and the vulnerable groups of women in particular.

As noted in the introduction to this report, women in Canada continue to experience high poverty rates, particularly single mothers, senior women, Aboriginal, women of colour, disabled women, and recent immigrants. As a result, these women also face unacceptably high risks of violence and homelessness.

While current Canadian governments have the financial capacity to eliminate poverty among women, fiscal restructuring has resulted in reduced spending and tightened restrictions on social assistance and other programs essential to the safety and well-being of poor women in Canada.

## Social Assistance

Social assistance (welfare) is Canada's "social safety net of last resort" for adults in need who have no other means of financial support. Social assistance (SA) programs are administered by the provinces and territories but funded jointly with the federal government, which supplies funds through the Canada Social Transfer.

Today, approximately 1.7 million women, men and children receive welfare. The number receiving assistance today is down dramatically from the early-to-mid 1990s (3.7 million in 1994).

Women make up more than half of SA recipients (55% in 1997, the most recent available figure), as members of a couple household, as lone parents, or as unattached individuals. Particular groups of women are especially vulnerable economically and socially and are more likely to need to turn to welfare for income support. These include younger women (under 25 years of age), older women (aged 55-64), lone mothers, women of colour, and Aboriginal women, especially Aboriginal women who live on reserves.

- In 2003, 29% of working age lone mothers received SA.
- 40% of Aboriginal adult women living on reserves receive SA.

Although a relatively small proportion (approximately 5.5%) of the general population is in receipt of SA at any given time, families who receive SA make up a sizeable proportion (between one-quarter and one-third) of all families who live in poverty in Canada.

Since the last reporting period, the most basic income security program for the poorest women has been eroded further. Welfare incomes have declined; fewer women can qualify; new rules that have discriminatory impacts on women have been put in place; and, old rules with discriminatory effects have been difficult, if not impossible, to disturb.

Lacking the means of subsistence has well-documented gendered consequences:

- Women lose autonomy in their relations with men. Low welfare rates and rules that make women ineligible coerce women into "survival sex" or prostitution in order to survive.
- They exchange sex for food or shelter;
- They live in unsafe housing and are more vulnerable to rape and sexual harassment;
- They are more likely to have their children apprehended because they cannot provide adequate housing and food;
- They cannot leave abusive relationships because welfare rates are not sufficient to support them and their children. And, if they do leave, they often return to abusive relationships, even when they are dangerous, for economic reasons;

Roughly 50% of women receiving social assistance have experienced domestic violence involving physical or sexual abuse.

Katherine Scott. 1998. Women and the CHST: A Profile of Women Receiving Social Assistance in 1994. Ottawa: Status of Women Canada. [http://www.swc-cfc.gc.ca/pubs/pubspr/0662266250/199803\\_0662266250\\_1\\_e.pdf](http://www.swc-cfc.gc.ca/pubs/pubspr/0662266250/199803_0662266250_1_e.pdf); at xvi & 5.

National Council of Welfare, "First Nations, Metis and Inuit Children and Youth: Time to Act" (2007) National Council of Welfare Reports. Fall 2007 vol. #127. Ottawa: Government of Canada, at 27-29.

Bruce Wallace, Seth Klein, and Marge Reitsma-Street, Denied Assistance: Closing the Front Door on Welfare in BC, (2006), online: CCPA, <http://www.policyalternatives.ca/Reports/2006/03/ReportsStudies1321/index.cfm?pa=BB736455> (date accessed: 30 June 2008).

Janet Mosher, Walking on Eggshells: Abused Women's Experiences of Ontario's Welfare System (2004), online: DAWN, <http://dawn.thot.net/walking-on-eggshells.htm> (date accessed: 9 July 2008).

Seth Klein et al., Living on Welfare in BC: Experiences of Longer-term "Expected to Work" Recipients (April 2008), online: Canadian Centre for Policy Alternatives, <http://www.policyalternatives.ca/Reports/2008/04/ReportsStudies1869/index.cfm?pa=A2286B2A> (date accessed: 9 August 2008).

## Reduced Welfare Rates

Over the last decade, virtually every province cut welfare benefits. Together Alberta, B.C. and Ontario have 60% of Canada's population, and these are the provinces that have pursued the most aggressive welfare reforms.

The magnitude of the cuts to SA benefits is dramatic and harsh for the women who are in need and receive SA benefits. The cuts mean that women, including those who are more likely to have to turn to SA (lone mothers and Aboriginal women), rely on increasingly penurious welfare incomes, incomes that have declined systematically over the past twenty years.

- Between 1989 and 2005, when the cost of living rose by 43 percent, SA benefit rates declined in both absolute and relative terms in most provinces.
- Payments to lone parent households (the vast majority of whom are women) declined significantly (see table below).
- Single employable people were also targeted for cuts, in many cases their benefits dropping by over one-third.
- The bulk of the erosion of welfare incomes took place between 2000 and 2005, with five provinces (Alberta, British Columbia, Ontario, Manitoba, and Saskatchewan) recording the lowest levels of welfare incomes for all household types during these years.

Lone mothers are the group that has the highest poverty rate of any group in Canada. The table below shows, for each province and territory, the year that welfare incomes “peaked” for lone parents with one child compared to the 2005 rates. All figures are in 2005 constant dollars and take into account the effects of inflation.

**Welfare Rates for Lone Parents With One Child (81% women)**

Province	Peak Year	Peak Amount	2005 Amount	% Change
Newfoundland and Labrador	1999	\$16 894	\$16 181	-4.2%
PEI	1992	\$16 064	\$13 707	-14.7%
Nova Scotia	1991	\$15 458	\$12 917	-16.4%
New Brunswick	1999	\$14 191	\$13 656	-3.8%
Quebec	1994	\$16 345	\$15 395	-5.8%
Ontario	1992	\$21 039	\$14 451	-31.3%
Manitoba	1992	\$15 630	\$13 282	-15.0%
Saskatchewan	1986	\$15 980	\$13 235	-17.2%
Alberta	1986	\$16 071	\$12 326	-23.3%
BC	1994	\$17 050	\$13 948	-18.2%
Yukon	2001	\$21 562	\$19 830	-8.0%
NWT	1993	\$26 127	\$22 648	-13.3%
Nunavut	1999	\$32 421	\$22 154	-31.7%

As a result of cuts to benefits, welfare incomes are grossly inadequate and now stand at their lowest level since the mid-1980s. None of the provinces have welfare incomes that come anywhere close to Canada’s to the Statistic Canada’s Low Income Cut-offs (LICOs).

- Measured as a percentage of Statistics Canada’s LICOs, in 2005, more than one-half of all households receiving welfare had incomes that were 50% of the poverty line or less.
- In 2006, welfare incomes of single women averaged 40% of the poverty line, 61% for single women with a disability.
- In 2006, welfare incomes of families with children averaged 70% of the poverty line. In Manitoba, the welfare income of a lone mother with one child was 67% of the poverty line. In BC, the welfare income of a couple with two children is 58% of the poverty line.
- International comparison of the post tax, post transfer poverty rate for lone mothers with young children places Canada (49.8%) behind both the US (42%) and the UK (40%).

Ross Finnie & Ian Irvine, *The Welfare Enigma: Explaining The Dramatic Decline in Canadian’s Use of Social Assistance*, 1993-2005. Toronto: C.D. Howe Institute. ISBN 0-88806-748-8; ISSN 0824-8001 (print); ISSN 1703-0765 (online).

National Council on Welfare, Welfare Incomes 2005, online: NCW, [http://www.ncwcnbes.net/documents/researchpublications/ResearchProjects/WelfareIncomes/2005Report\\_Summer2006/Factsheets/Factsheet01ENG.pdf](http://www.ncwcnbes.net/documents/researchpublications/ResearchProjects/WelfareIncomes/2005Report_Summer2006/Factsheets/Factsheet01ENG.pdf) (date accessed: 9 July 2008): 29-43.

Joya Misra, Stephanie Moller and Michelle J. Budig, "Work-family policies and poverty for partnered and single women in Europe and North America" (2007), *Gender & Society* 21(6): 804-827.

## Restricted Eligibility

In addition to lower rates, SA program changes have reduced women's, especially lone mothers', ability to enter SA as new recipients. As a result, they are being turned away at the threshold. Lone mothers, while remaining the most likely (of all employable SA recipients) to enter SA, experienced the biggest drop in SA participation of all recipient groups between 1993 and 2005, primarily because of a dramatic decline in new recipients.

Welfare policy changes other than reduced benefit levels have been put into place during this reporting period to deter participation in SA. These include tightened eligibility criteria, reduced asset thresholds, waiting periods and workfare requirements. These changes are the cause of more than two-thirds of the decline in lone mothers' welfare entries over the period examined.

Once in receipt of SA, lone mothers face additional barriers to remaining eligible for SA. For example, government regulations in Ontario impose a legal presumption of spousal status when an SA recipient shares a residence with another adult. Regardless of whether they are financially interdependent, both adults' income will be considered in either adult's SA application. This rule disproportionately disentitles lone mothers to SA, and forces them into economic dependence on men who have no legal obligations to support them. This is particularly harmful for women who have already experienced abusive relationships.

In 2002, the Ontario Court of Appeal ruled in *Falkiner v. Director, Income Maintenance Branch* that the "spouse-in-the-house" violated the equality guarantee of the *Canadian Charter of Rights and Freedoms*. However, the Ontario government has not abolished the rule, but rather qualified its application to adults who have cohabited for at least three months and whose financial interdependence is consistent with cohabitation. These amendments do not remedy the discriminatory effect of this rule on lone mothers. Other provinces and territories also still have variations of this rule in place despite the ruling.

Recent immigrant women, who disproportionately experience poverty, are another vulnerable group who are particularly affected by tightened welfare eligibility rules. Despite this, recent immigrants are less likely to turn to social assistance than other Canadians: in 2004, only 16% of recent immigrant families in poverty received social assistance compared

to 33% of other Canadian families who lived in poverty. SA eligibility restrictions (together with immigration rules) play an important role in limiting recent immigrant's access to SA.

National Council on Welfare, Welfare Incomes 2006: Fact Sheet #1, online: NCW, <http://www.ncwcnbes.net/documents/researchpublications/ResearchProjects/WelfareIncomes/2006WebOnlyData/factsheet1ENG.pdf> (date accessed: 7 July 2008).

Statistics Canada, Women in Canada 2005: A Gender-Based Statistical Report (2005) at 49. Online: Statistics Canada, <http://www.statcan.ca/english/freepub/89-503-XIE/0010589-503-XIE.pdf> (date accessed: 30 June 2008).

Ontario Regulations 134/98 s.1(1) amended by Ontario Regulation 231/04, online: Government of Ontario, <http://www.canlii.org/on/laws/regu/1998r.134/20041008/whole.html> (date accessed: 20 August 2008).

Falkiner v. Director, Income Maintenance Branch, [2005], online: Ontario Court of Appeal, <http://www.ontariocourts.on.ca/decisions/2002/may/falkinerC35052.pdf> (date accessed: 20 August 2008).

Human Resources and Development Canada. A Study of Poverty and Working Poverty Among Recent Immigrants to Canada (2007), online: HRDC, [http://www.hrsdc.gc.ca/en/publications\\_resources/research/categories/inclusion/2007/sp\\_680\\_05\\_07\\_e/page10.shtml](http://www.hrsdc.gc.ca/en/publications_resources/research/categories/inclusion/2007/sp_680_05_07_e/page10.shtml) (date accessed: 14 July 2008).

## **National Child Benefit Clawback**

The principal element of the federal government's anti-poverty strategy in this decade is the Child Tax Benefit and National Child Benefit Supplement (NCTB). This tax benefit and supplement are intended to provide additional monthly benefits to low-income families with children. However, this strategy provides little help to the poorest families, those on SA.

The federal government permits the provinces and territories to claw the Supplement back from welfare recipients. While not all provinces and territories claw back the Supplement from welfare recipients, the majority do. Thus, the NCTB is effectively denied to most families on SA. Indeed, the clawback has meant that "welfare incomes for families on welfare remained low – and actually decreased in most cases – in the years following the federal government's introduction of the NCTB."

The result, as summarized by the National Council on Welfare, is that the clawback to the NCTB "discriminates against families on welfare." As lone parent families are the majority of families from whom the supplement is clawed back and women head most lone-parent families, the Council concludes that the clawback discriminates against women.

National Council of Welfare, Maximum National Child Benefit Payments, 1998-2002 (Spring 2003), online: NCW, <http://www.ncwcnbes.net/documents/>

**RECOMMENDATIONS** That the Government of Canada should attach common standards of eligibility for social assistance to the Canada Social Transfer to ensure that women in need are not deprived of social assistance in any jurisdiction;

The Government of Canada should attach common standards of adequacy for social assistance to the Canada Social Transfer to ensure that social assistance rates in all jurisdictions are adequate to meet current real costs of food, clothing and housing, so that single mothers can support themselves and their children, and women are not coerced into remaining in violent relationships or engaging in prostitution because they lack adequate means to survive.

The Government of Canada should bar the provinces and territories from clawing back the National Child Benefit Supplement from families receiving social assistance.

## Women and Housing

2003 CEDAW Recommendations:

384. The Committee recommends that the State party reconsider and, if necessary, redesign its efforts towards socially assisted housing after a gender- based impact analysis for vulnerable groups of women.

Homelessness and the housing conditions for low income people in Canada have been recognized as a “national crisis” by the mayors of major cities across the country. Despite this, the Government of Canada has failed to adequately address this problem through concrete action. Average rents continue to escalate, social assistance rates continue to fall, there continues to be a severe shortage of social housing, and private sector landlords continue to discriminate against the most disadvantaged groups in Canada. All of this leads to housing insecurity for the most vulnerable populations, particularly low income women – Aboriginal women, immigrant women, disabled women, single-mothers, older women and girls. According to the Canada Mortgage and Housing Corporation, 200,000 Canadians are homeless and 1.7 million households were living in inadequate housing or paying an unreasonable amount for shelter in 2005. This compares to 1.3 million households in 1990.

Low income women cannot afford housing in Canada. Income support programs such as social assistance and employment insurance are set at inadequate levels and average rents



are very high. According to Statistics Canada, many women experience housing affordability problems<sup>2</sup>, especially unattached women and female lone parents who rent their homes. Indeed, in 2003, 72% of unattached women aged 65 and over who rented were considered to have housing affordability problems. Similarly, 42% of renter families headed by female lone parents had housing affordability problems, as did 38% of unattached female renters under the age of 65. Females are more likely than their respective male counterparts to experience housing affordability problems. Among unattached seniors who rented in 2003, for example, 72% of women, versus 58% of men, were considered to have housing affordability problems. Similarly, among unattached homeowners under age 65, 24% of women, compared with 11% of males, had housing affordability problems.

Housing affordability is particularly problematic for women in receipt of social assistance. The reduction in social assistance rates across the country coupled with an inadequate supply of affordable housing stock, and increasing rents in the private market, has meant that available housing is unaffordable for most low-income women. In 2005 women in receipt of social assistance, in cities across the country, were barely able to make ends meet. The following chart illustrates the problem.

**Table 4: 2005 Welfare Incomes and Average Rents: National Snapshot**

CITY	Monthly Welfare Income Single Mother + 1 child	Average Monthly Rent 2 Bedroom Apt.	Remaining income after rent (to cover other costs such as food, transportation, school fees, incidentals, etc.)	Percentage of Income on Rent
Toronto, Ontario	1,204	1,052	164	87%
Halifax, Nova Scotia	1,076	762	314	71%
Edmonton, Alberta	1,027	732	295	71%
Vancouver, BC	1,162	1,004	158	86%

Women do not have access to subsidized housing. Within the private market, they are discriminated against. The most direct role of the federal government with respect to housing and homelessness has traditionally been through the provision of assisted rental housing. Since the majority of low-income women are tenants, access to affordable rental

2 Statistics Canada and Canada Mortgage and Housing Corporation consider an affordability problem to potentially arise if more than 30% of household income is spent on rent or mortgage payments

housing is central to addressing women's homelessness. In 1993 the federal government announced a freeze on federal funding contributions to social housing, and the cancellation of funding for any new social housing (except for a few limited exceptions). The federal government has downloaded responsibility for social housing programs to the provinces/territories without ensuring that women receive the equal benefit of federal spending in this area. Women are more likely than men to meet income qualifications for assisted housing and therefore more adversely affected by cuts to assisted housing.

In 2007 the government announced an allocation of \$1.4 billion on partnerships with the provinces and territories for housing – monies that had been authorized to be spent on housing by Parliament in 2005. This money was assigned to housing projects in a patchwork fashion by the provinces and territories. But by 2008, investment has dropped by 5% from 2006 – a cut equal to the biggest cuts during the mid 1990s. As a result, per capita federal housing spending is at its lowest level in two decades as is federal housing investment as a percentage of the GDP. According to the Organization for Economic Co-operation and Development, Canada ranked second among 18 developed countries in terms of public housing investment in 1980. By 2003, we were ranked seventh, below: Ireland, Sweden, New Zealand, Denmark, France and the United Kingdom (which that year invested more than 2.5 times as much as Canada).

Because the supply of subsidized housing is not increasing in relation to need, waiting lists for this type of housing in Canada's largest cities now exceed 5 years. In some cities, like Toronto, the waiting list can be as long as 10 years. This precludes both young people and newcomers to the country from ever accessing subsidized housing.

Without subsidized housing, women increasingly rely on the private rental market to meet their housing needs. Within the private market, women commonly confront discrimination: landlords do not want to rent to them because they are lone parents, because they are Aboriginal and/or non-white, because they have children or large/extended families, because they are in receipt of social assistance, or because they are newcomers.

Homeless women and girls experience violence. A recent study released by Street Health in Toronto (2007) found that being homeless puts women at extreme risk of violence. 1 in 5 homeless women interviewed in that study reported having been sexually assaulted while on the streets or homeless. Sexual abuse is a major cause and consequence of homelessness among young women. A 2001 survey of 523 homeless youth aged 12 to 19 found that 87% of the homeless girls had been physically or sexually abused.

Women are forced to stay in abusive relationships because they have few housing options. The lack of housing options for women forces many women to stay in abusive relationships and leads to the apprehension of children by the State. Women across Canada report that the two biggest systemic barriers to women and children escaping violence are inadequate income assistance and the lack of affordable housing. In the Northwest Territories women

trying to leave abusive situations are not given priority status for subsidized housing. In many Indigenous communities the lack of shelters or spaces within existing shelters means women cannot leave abusive relationships. With few housing options women are compelled to return to abusive situations and then risk the apprehension of their children by child protection agents.

The Government of Canada has done little to address this crisis. Overall, the Government of Canada has refused to take a leadership role to address the crisis. For example, despite the fact that UN treaty monitoring bodies (eg: CESCR (1998, 2006), HRC (1999)) have repeatedly expressed concern about the housing and homelessness crisis in Canada, the Government of Canada has failed to implement the recommendations of treaty monitoring bodies, such as the adoption of a national housing strategy.

In December 2006, after much uncertainty and only in the face of mounting pressure, the current government extended the National Homelessness Initiative (NHI) (now the Homelessness Partnering Strategy (HPS) for two years with an expenditure of \$270 million. The HPS, though itself an inadequate program in relation to the national need, is the only national housing program in Canada. However, the government has made it clear that this program among others will not survive beyond March 2008.

The Government has now indicated that the HPS, as well as the “Residential Rehabilitation Program” (a federal housing repair scheme), and the federal affordable housing funding will expire at the end of the fiscal year 2008. The government has shown no interest in replacing these programs nor has it shown any inclination to adopt a comprehensive housing strategy. On the contrary, the government has indicated publically that it intends to retreat from providing any leadership (funding or other) in areas that constitutionally fall within provincial jurisdiction, such as housing.

Without a national housing strategy, and without federal government leadership, there is no coherent policy of national standards to ensure that the right to adequate housing is enjoyed by all and particularly by low-income women who are disproportionately disadvantaged with respect to access to adequate and affordable housing.

Centre for Equality Rights in Accommodation, Women and Housing in Canada: Barriers to Equality, March 2003. Available on: [www.equalityrights.org/cera](http://www.equalityrights.org/cera)

Advocacy Centre for Tenants Ontario, Background: Shelter Allowance (2003), online: <http://action.web.ca/home/housing/alerts.shtml?x=30065> (date accessed: 9 July 2008).

Khandor, E., & Mason, K. (2007). The street health report 2007. Toronto: Street Health, retrieved June 24, 2008 from [www.streethealth.ca/Downloads/SHReport2007.pdf](http://www.streethealth.ca/Downloads/SHReport2007.pdf)

Justice For Girls. Girl Homelessness in Canada. Prepared for Parity Magazine Australia (February 2007), online: JFG, <http://www.justiceforgirls.org/publications/pdfs/ParityArticle.pdf> (date accessed: 7 July 2008).

Ontario Association of Interval and Transition Houses, *Response to the Affordable Housing Strategy Stakeholders Consultation*, December 2004.

Native Women's Association of Canada, Participant Briefing for the Canada-Aboriginal Peoples Roundtable Sectoral Follow-Up Session on Housing (24 – 25 November 2004).

Mosher et al., *Walking on Eggshells: Abused Women's Experiences of Ontario's Welfare System*, April 2004.

Statistics Canada, *Women in Canada, 5th Edition, A Gender-Based Statistical Report*, (2006).

Wellesley Institute, *Reverse the housing cuts: New federal affordable housing investment required*, August 2008.

**RECOMMENDATIONS** The Government of Canada must play a central leadership role to address the housing and homelessness crisis in Canada. It cannot exempt itself from meeting its international human rights obligations in this regard on the basis of constitutional jurisdiction;

The Government of Canada must adopt a National Housing Strategy, in consultation with housing and women's organizations, that uses an equality rights framework and concretely addresses women's housing needs. This strategy must be integrated with programs and policies aimed at addressing women's poverty;

The Government of Canada must ensure its expenditures in the areas of housing and homelessness are at requisite levels to ensure the most disadvantaged groups of women in Canada are adequately housed;

The Government of Canada must implement the recommendations of all UN Treaty Monitoring bodies.

### **Housing for Women with Disabilities**

There is a lack of safe, affordable and accessible housing for women and girls with disabilities. The 2007 Street Health in Toronto study mentioned above discovered that the majority of people living on the streets of Toronto have chronic illnesses: three quarters have

at least one mental or physical chronic illness. Women with disabilities are particularly vulnerable to homelessness, violence and exploitation and require accessible housing that is safe and affordable.

Women with disabilities have various needs in terms of accessibility. They need to have access to enter the premises if they are mobility impaired, and also be able to use the bathroom and kitchen facilities independently.

Recent studies have highlighted the housing needs of women with disabilities in Canada:

- Stienstra and Wiebe (2004) interviewed 8 women with disabilities in Winnipeg about their experience of housing at the end of their lives, and found that they felt unsafe and did not venture much outside, leading to a sense of isolation. Even in their homes they were unsafe due to poor maintenance, a lack of temperature control, or poor air quality;
- Alcorn et al. interviewed women with disabilities in British Columbia in 2004 and found that they faced significant problems in finding affordable, safe and suitable housing. Factors that influenced these women's anxiety about housing were whether they would lose money, health or assistance that would enable them to live independently: "They struggle with a keen sense that their entitlement to their housing requirements are increasingly tenuous in times of cuts to public services, pressures for everyone to find gainful employment, and expectations that housing markets be profitable."

Stienstra, D., & Wiebe, R. (2004). *Finding our way home: Housing options in inner-city Winnipeg for people with disabilities who are dying*. Winnipeg: Canadian Centre on Disability Studies and Winnipeg Inner

City Research Alliance. Alcorn, P., Gropp, H., Neubauer, J., & Reitsma-Street, M. (2004). *Housing realities and requirements for women living with disabilities in the Capital Region of British Columbia*. Women Housing Action Team, Victoria, BC, Retrieved June 19, 2008 from <http://web.uvic.ca/spp/documents/realitiesreq.pdf>.

**RECOMMENDATION** The governments of Canada should build affordable and safe housing that is accessible to women with disabilities. In addition, existing homeless shelters and subsidized housing require funds to do renovations to attain better accessibility.

## XII. Violations of Article 14: Rural Women

### Housing and Women's Shelters

One of the biggest issues for women in rural Canada is housing. For low-income rural and northern women, and particularly for Aboriginal women living on reserves, the lack of

affordable, safe housing is worsening. In the north, urban housing prices have sky-rocketed, making adequate housing out of reach for low and moderate income women and families. In rural northern communities, the situation is worse.

On reserves, housing is controlled by First Nations governments and is very limited. Water quality and black mould are additional barriers to women gaining adequate and safe housing on reserves, and there is a serious lack of temporary housing for women leaving violence relationships.

According to Ellen Gabriel, president of the Quebec Native Women's Association, women shelters in aboriginal communities receive less than one-third of the funding that the other shelters in the province of Quebec receive. She states, "This situation can be described only as discriminatory, unjust and unacceptable." Non-Aboriginal shelters in Quebec receive close to \$487,000 per year from the provincial government; shelters in aboriginal communities receive just \$150,000 per year from the federal Department of Indian and Northern Affairs.

Aboriginal women who leave their communities for safety, employment, medical, or educational opportunities have a difficult time finding accommodation in the city as no housing is provided off settlement lands. Off reserve Aboriginal communities cannot access federal funding allocated to shelter programming because most federal funding is for shelters that are on reserves. This restriction is particularly problematic in the Northwest Territories where more than 50% of the population is Aboriginal and there are many small communities with populations that are over 80% Aboriginal, but there are only two small reserves across a landmass of 1,171,918 square kilometers.

There are only five shelters for women fleeing violence in whole of the Northwest Territories, and three (plus three transition housing units) in the Yukon. These are habitually full to capacity. All other women leaving violent relationships must also leave their communities. This, coupled with the lack of trauma treatment programs and other supports required to leave an abusive relationship permanently, creates a situation where many women end up returning to their home community and to abusive relationships.

Besides shelters designated for women experiencing violence, there is only one emergency homeless shelter in the Yukon, with 10 beds for men and women. Women consider it unsafe and it is always over capacity. Children are not accepted there.

Public housing has waiting lists years long, though Yukon Housing now has a policy to give women fleeing abuse priority on the housing list. However, if there are no available units, the new policy makes little difference in the lives of women. No new units have been built in years, though one building of 30 units for women who are on the Yukon Housing waiting list is in the planning stages. In 2007 athletes housing from the Canada Winter Games was developed into seniors' housing. However, senior women must have private transportation to live there as public transportation is not available.

With this paucity of social housing, many women are forced to live in substandard, unsafe places in the private rental market. The Yukon *Landlord and Tenant Act* is out-dated and provides for few protections for tenants. Eviction without cause is permitted and there are no minimum rental standards.

Yukon Status of Women Council, *A Little Kindness Would Go a Long Way: A Study of Women's Homelessness in the Yukon* (2007).

Quebec Native Women Inc., Press Release: Quebec groups join their voices to denounce the chronic under-funding of Aboriginal women's shelters (14 May 2007), online: QNW, <http://www.faq-qnw.org/documents/comeng.pdf> (date accessed: 20 August 2008).

*Violence Against Women in the NWT: A Way Forward* (June 2007), online: Government of Northwest Territories, <http://www.laa.gov.nl.ca/laa/naws/pdf/nwt-violence.pdf> (date accessed: 20 August 2008).

**RECOMMENDATION** The Government of Canada, working with the provinces and territories, should develop a housing strategy to meet the specific housing needs of women in rural and northern areas, and particularly Aboriginal women living both on and off reserves. This strategy should include funding for women's emergency and transitional housing as well as long-term subsidized housing, which would enable rural women to remain in their communities while receiving the support and services they require.

## XIII. Violations of Article 16: Equal Rights in Marriage and the Family

### Discrimination against immigrant women through denial of family reunification

Changes introduced in June 2002 under the *Immigration and Refugee Protection Act*, have permanently denied family reunification to many recent immigrants. At that time, the definition of a member of the family class was amended to exclude certain family members. Under 117(9)(d) of the Regulations, a person is not a member of the family class, and hence cannot be sponsored, if they were not examined by a visa officer when the sponsor immigrated to Canada.

Specifically, R. 117(9)(d) excludes a person if:



the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.

The innocent failure to include a person on an application and deliberate misrepresentations intended to circumvent immigration rules are treated in the same way; both lead to permanent exclusion. When someone is excluded under this section, the sponsor has no avenue of appeal. Even an appeal to the Immigration Appeal Division on humanitarian and compassionate grounds, where extenuating circumstances could be considered, is denied.

As a party to the Convention on the Rights of the Child, Canada has an obligation to facilitate family reunification and to give a primary consideration to the best interests of the child:

“[...] applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner” Convention on the Rights of the Child, Art. 10

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Convention on the Rights of the Child, Art 3(1)117(9)(d), which keeps children separated from their parents and fails to give primary consideration to their best interests, puts Canada in violation of its international obligations towards children.

117(9)(d) also results in Canada’s failure to promote and protect the family unit of new immigrants, obligations which Canada has under Article 16 of the *Universal Declaration of Human Rights* and Article 10 of the *Covenant on Economic, Social and Cultural Rights*.

The consequences will also be visited more harshly on women immigrants seeking to be reunited with their children and spouses. A variety of social and cultural factors can lead women not to reveal the existence of children or even spouses. Women often face shame and social exclusion when they have children born out of wedlock, as a result of rape, or with a partner deemed unsuitable. The denial of family reunification under these circumstances visits further harm upon these already vulnerable women and children.

During the immigration process, women and girls are often told by other family members what to put in immigration forms. They may never see the forms or speak directly to immigration officials, yet they will suffer the lifelong consequences of the failure to include a spouse or a child. Profiles of women affected in this way can be found at: <http://www.ccrweb.ca/documents/famexcluprofilesEN.pdf>

Canada recommends that excluded members make separate applications for humanitarian and compassionate consideration under section 25 of the *Immigration and Refugee Protection Act*. There are many problems with this approach including:

- No notification that these applications are available
- Significant delays amounting to many years
- No useful guidance to visa officers on how to treat these applications
- No opportunity to be heard on the issues (in contrast to an Immigration Appeal Division hearing)
- Proposed amendments contained in Bill C-50 would eliminate the right to make a section 25 application, leaving those excluded by 117(9)(d) with no remedial course of action.  
<http://www.ccrweb.ca/documents/c50faq.htm>

More details on 117(9)(d) excluded family members can be found at  
<http://www.ccrweb.ca/documents/excludedfam.pdf>

**RECOMMENDATIONS** The Government of Canada should eliminate regulation 117(9)(d). In the interim, pending elimination, the Government of Canada should:

issue guidelines and procedures which provide for positive processing where the failure to include someone was unintentional or beyond the control of the person.

Provide clear guidelines to visa officers on their international human rights obligations when considering applications for exemptions

Proactively give applicants an opportunity to make section 25 submissions, if an application is to be refused.

Ensure all refused applicants continue to have the right to make a section 25 application.

## **XIV. Conclusion**

FAFIA submits that, in the many ways described in this Report, Canada is in violation of the rights set out in the *International Covenant for the Elimination of All Forms of Discrimination against Women*.















