



# Women's Inequality in Canada

Report to the Human Rights Council on Canada's Third Universal Periodic Review

Submitted in October 2017 by the Canadian Feminist Alliance for International Action (FAFIA)

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### Introduction

The Canadian Feminist Alliance for International Action (FAFIA) is an alliance of more than sixty Canadian women's organizations that was founded in February 1999. One of the central goals of FAFIA is to ensure that Canadian governments respect, protect, and fulfill 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 Racial Discrimination*.

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## Women's Persistent Inequality in Canada: the Need for a National Gender Equality Plan

FAFIA submits that at the Third UPR of Canada a recommendation should be made that Canada develop a comprehensive gender equality plan. This is a key recommendation for Canada that has been made recently by both the CEDAW<sup>1</sup> and the CESCR Committees.<sup>2</sup> These Committees when reviewing Canada recognized the need for a comprehensive national gender strategy, policy and action plan that addresses the structural factors causing persistent inequality. Rather than dealing with the manifestations of deeply rooted systemic discrimination as disconnected factors that can be addressed in isolation from each other, CEDAW and CESCR Committees found that women's poverty and income inequality, inadequate social programs (social assistance, housing, childcare, and legal aid), employment discrimination, male violence against women, failures to address women's health, and barriers to education interact with each other to create a structure of inequality for women that is embedded in society and the economy. Women with disabilities, Indigenous and racialized women, single mothers, and refugee and immigrant women are often most disadvantaged by this structural inequality. Because of this, the CEDAW and CESCR Committees have also called on Canada to ensure that a national gender equality plan addresses intersecting forms of discrimination, and takes into account the realities of the lives of Indigenous, racialized, disabled, migrant, refugee, single mother, and LGBTQ2S women and girls.

The need for a comprehensive plan is underscored by the fact that Canada has no national machinery for the advancement of women. Federal, provincial and territorial governments have different mechanisms; British Columbia has none, and some have assigned little authority or resources to this portfolio.<sup>3</sup> Discussion among governments on women's equality issues takes place at meetings of Status of Women Ministers, but there is no formal co-ordination, and consequently no national strategy or plan.

### RECOMMENDATION

- **That Canada develop a comprehensive national gender strategy, policy and action plan that is designed for co-ordinated implementation by federal, provincial and**

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<sup>1</sup> Committee on the Elimination of Discrimination against Women (CEDAW), Concluding observations of the combined eighth and ninth periodic reports of Canada, 18 November 2016, UN Doc CEDAW/C/CAN/CO/8-9 at para 21(b) [2016 CEDAW Concluding Observations].

<sup>2</sup> Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations on the sixth periodic report of Canada, 23 March 2016, UN Doc E/C.12/CAN/CO/6 at para 22 [2016 CESCR Concluding Observations].

<sup>3</sup> For example, the Province of British Columbia has no Minister or Ministry responsible for the Status of Women. Province of British Columbia, Executive Council, online: <<http://www2.gov.bc.ca/gov/content/governments/organizational-structure/cabinet/cabinet-ministers>>.

territorial governments, that is designed in consultation with women's non-governmental organizations, and that addresses structural factors causing persistent inequalities, as recommended by the CEDAW and CESCR Committees;

- That Canada ensure that a national gender equality strategy, policy and action plan takes fully into account the intersecting forms of discrimination experienced by women with disabilities, Indigenous and racialized women, single mothers, refugee and immigrant women, and LGBTQ2S women and girls in the development and monitoring of the national gender equality plan;
- That a national gender equality plan take into account the "twin-track" approach to ensuring equality for women with disabilities that is set out in CRPD General Comment No. 3 (2016).<sup>4</sup>

## Federal Machinery

### I. Lack of effective domestic implementation mechanism to implement treaty body mechanisms: Recommendation 80

There are widespread concerns that Canada lacks an effective mechanism to monitor and follow-up on UN treaty body concluding observations. FAFIA submits that Canada has not acted on Recommendation 80 from its Second UPR to ensure effective implementation of CEDAW at the federal, provincial and territorial levels with attention to Aboriginal women and girls.<sup>5</sup> In addition, Canada has taken no action to implement Recommendations 28<sup>6</sup> and 29<sup>7</sup> that call on Canada to consult with relevant civil society groups when implementing treaty body recommendations. FAFIA submits that Recommendations 80, 28, and 29 to Canada should be reiterated and emphasized.

Canada has no mechanism for overseeing, evaluating or ensuring domestic implementation of treaty body recommendations. In 2008, the CEDAW Committee reiterated its 2003 recommendation that the Government of Canada use its leadership and spending power to set standards and establish an effective mechanism aimed at ensuring accountability and the transparent, coherent and consistent implementation of the *Convention* throughout its territory.<sup>8</sup>

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<sup>4</sup> Ibid.

<sup>5</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review Canada, UN Doc A/HRC/24/11 (2013) at Rec 128.80 [2013 UPR Working Group Report]; Human Rights Council, Report of the Working Group on the Universal Periodic Review Canada Addendum, UN Doc A/HRC/24/11/Add.1 (2013) at para 20 [2013 Canada's Reply].

<sup>6</sup> 2013 UPR Working Group Report at Rec 128.28; 2013 Canada's Reply at para 7.

<sup>7</sup> 2013 UPR Working Group Report at Rec 128.29; 2013 Canada's Reply at para 8.

<sup>8</sup> CEDAW, Concluding Observations of the Committee on the Elimination of Discrimination against Women, Canada, 7 November 2008, UN Doc CEDAW/C/CAN/CO/7 at paras 9-12 [2008 CEDAW Concluding Observations].

Other treaty bodies, including the Committee on the Rights of Persons with Disabilities,<sup>9</sup> and the Committee on Economic, Social and Cultural Rights, have urged the Government of Canada to use funding and other agreements with the provinces and territories to “establish responsibilities for the implementation of [treaty] rights at the different levels”.<sup>10</sup> But there is no move to act on such recommendations and no domestic inter-governmental mechanism to monitor the status of Canada’s implementation of its international human rights commitments.

FAFIA has made direct requests to the Governments of Canada and British Columbia to develop a process for implementing the Concluding Observations of the Committee on the Elimination of Discrimination against Women. Our requests have been met with silence, *pro forma* letters, or outright refusal.<sup>11</sup>

FAFIA is frankly dismayed by Canada’s long-term, entrenched refusal to consider and implement the recommendations of international treaty bodies, in consultation with civil society organizations, and to establish an inter-governmental mechanism for doing this.

## II. Federal Government Leadership and Use of Spending Power

The CESCR Committee urged the Government of Canada to take the lead on treaty implementation by using funding and other agreements with the provinces and territories to “establish responsibilities for the implementation of [treaty] rights at the different [government] levels”.<sup>12</sup> The CEDAW Committee called on Canada to consistently use conditional and targeted federal funding to ensure that transfer payments promote compliance with the human rights of women.<sup>13</sup>

FAFIA requests that at Canada’s Third UPR Canada should be called on to play a leadership role in domestic treaty implementation and to use its spending power and other capacities to ensure that rights are implemented in all jurisdictions.

### RECOMMENDATIONS

**That the Government of Canada, in collaboration with the governments of the provinces and territories:**

- **Bring together federal, provincial and territorial Ministers with civil society**

<sup>9</sup> CRPD, Concluding observations on the initial report of Canada, 8 May 2017, UN Doc CRPD/C/CAN/CO/1 at para 10(a) [2017 CRPD Concluding Observations].

<sup>10</sup> 2016 CESCR Concluding Observations at para 7.

<sup>11</sup> Shelagh Day, “Minding the Gap: Human Rights Commitments and Compliance” in Margot Young, Susan Boyd, Gwen Brodsky & Shelagh Day, eds, *Poverty: Rights, Social Citizenship and Legal Activism* (Vancouver: UBC Press, 2007), at 209-16; FAFIA Letter to Prime Minister, January 25, 2017, online: <<http://fafia-afai.org/wp-content/uploads/2017/01/CEDAWletterENGFINAL.pdf>>.

<sup>12</sup> 2016 CESCR Concluding Observations at para 7.

<sup>13</sup> 2016 CEDAW Concluding Observations at para 11.

**representatives to design a new national mechanism for monitoring and implementing treaty rights and treaty body recommendations in a coordinated, effective and transparent way.**

- **Attach conditions to the transfer of federal funding to provinces and territories that requires a minimum standard of domestic implementation of international human rights standards and compliance with treaty body recommendations.**
- **Review all recommendations of the CEDAW Committee as well as recommendations from other treaty bodies regarding women's human rights, to identify outstanding and priority recommendations, and, with women's organizations, and sub-national governments, devise a plan for implementation.**

## Access to Justice and Effective Remedies for Women

### I. Chronic Underfunding of Legal Aid

The Chief Justice of the Supreme Court of Canada, The Honourable Beverley McLachlin, has stated her belief that “lack of access to civil justice represents the most significant challenge to our justice system”.<sup>14</sup>

There is a marked gender difference in legal aid usage: men are the primary users of criminal law legal aid, while women are the primary users of civil legal aid, especially for family law matters.<sup>15</sup> While the Government of Canada provides a direct transfer to the provinces and territories for criminal legal aid, civil legal aid is included in the basket of programs to be paid for by provinces and territories under the Canada Social Transfer (CST).<sup>16</sup>

As requirements on provinces and territories to spend CST money on civil legal aid were removed in 1995, expenditures have fallen drastically. Between 1995 and 2012, with a 21.2% drop in the level of per capita direct service expenditure on civil legal aid.<sup>17</sup> Similarly, between 1993 and 2012, the rate of approved applications for civil legal aid fell by 65.7%.<sup>18</sup>

The Canadian Bar Association asserts that the lack of access to legal aid disproportionately affects women, people with disabilities, recent immigrants, members of racialized communities

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<sup>14</sup>Beverley McLachlin, “Foreward”, in M. Trebilcock, A. Duggan, L. Sossin, eds. *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012).

<sup>15</sup> Alison Brewin, *Legal Aid Denied: Women and the Cuts to Legal Services in BC*, Canadian Centre for Policy Alternatives, (September 2004) at 9, online: <[http://www.policyalternatives.ca/sites/default/files/uploads/publications/BC\\_Office\\_Pubs/legal\\_services.pdf](http://www.policyalternatives.ca/sites/default/files/uploads/publications/BC_Office_Pubs/legal_services.pdf)>.

<sup>16</sup> *Ibid.*

<sup>17</sup> Currie A, *The State of Civil Legal Aid in Canada: By the Numbers in 2011-2012*, Canadian Forum on Civil Justice (May 13, 2013), online: <<http://www.cfcj-fcjc.org/a2jblog/the-state-of-civil-legal-aid-in-canada-by-the-numbers-in-2011-2012-sthash.a29I51Pw.dpuf>>.

<sup>18</sup> *Ibid.*

and Indigenous people.<sup>19</sup> The shrinking funding for civil legal aid restricts access to legal protections for women.

### II. Access to Justice for Indigenous and Racialized Women, Victims of Male Violence, Women with Disabilities

In 2012, the Committee on the Elimination of Racial Discrimination (CERD Committee) recommended that Canada facilitate access to justice for Indigenous women who are victims of gender-based violence, and investigate, prosecute and punish those responsible.<sup>20</sup> It also recommended that Canada strengthen its efforts to promote and facilitate access to justice at all levels by persons belonging to minority groups, by Aboriginal peoples and African Canadians.<sup>21</sup> No steps have been taken to implement these recommendations, and Indigenous and racialized women are under-protected and over-policed in Canada, resulting in high incarceration rates, and inadequate protection from male violence.

In light of Canada's record of inadequate access to justice for women, the CEDAW Committee recommended in 2016, that Canada increase funding for civil legal aid, specially earmark funds in the Canada Social Transfer for civil legal aid, and ensure that women who are victims of violence, Indigenous and racialized women and women with disabilities have access to representation and legal supports that they need.<sup>22</sup> These recommendations have not been acted on.

In 2013, no recommendation was made to Canada on improving access to justice for women. FAFIA submits that this is a fundamental issue and that at Canada's Third UPR, a recommendation should be made to Canada to improve access to justice for women by increasing funding specifically for civil legal aid, and by ensuring that women, including Indigenous and racialized women and women with disabilities, have adequate access to legal services and representation in family law and other civil matters.

### III. Lack of domestic redress for violations of social and economic rights

The CESCR Committee has highlighted in its recommendations to Canada the lack of judicial redress available to Canadians, who suffer from individual and systemic economic, social and cultural (ESC) rights violations. In 2006, the CESCR Committee called on Canada to "take immediate steps, including legislative measures, to create and ensure effective domestic

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<sup>19</sup> *Ibid.*

<sup>20</sup> CERD, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada, UN Doc CERD/C/CAN/CO/19-20 (2012) at para 17.

<sup>21</sup> *Ibid* at para 21.

<sup>22</sup> 2016 CEDAW Concluding Observations at para 15.

remedies for all Covenant rights in all relevant jurisdictions”<sup>23</sup> The Committee also called on courts to “take account of Covenant rights where this is necessary to ensure that the State party's conduct is consistent with its obligations under the Covenant, in line with the Committee's general comment No. 9 (1998)”,<sup>24</sup> and reiterated “its recommendation that the federal, provincial and territorial governments promote interpretations of the Canadian Charter of Rights and Freedoms and other domestic law in a way consistent with the Covenant”.<sup>25</sup>

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

### **The Government of Canada should**

- **Increase funding for civil legal aid.**
- **Attach conditions to the Canada Social Transfer to ensure that all provinces and territories provide adequate civil legal aid services that ensure women can use legal protections and rights when necessary, and obtain effective remedies when their rights are violated, including women experiencing male violence, Indigenous women, racialized women and women with disabilities.**
- **Recognize the justiciability of ESC rights in domestic courts and tribunals, and act to uphold and fulfill these rights when litigating under the *Charter*; and**
- **Ensure that its domestic legal system can provide effective remedies for violations of economic, social and cultural rights.**

## **Ratification of International and Regional Human Rights Instruments**

### **I. Failure to ratify the Optional Protocol to the *Convention on the Rights of Persons with Disabilities***

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<sup>23</sup> CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights, Canada, 22 May 2006, UN Doc E/C.12/CAN/CO/4-5 at para 40.

<sup>24</sup> Ibid at para 36.

<sup>25</sup> Ibid at para 41.

Canada accepted Recommendation 5 in Principle to ratify the Optional Protocol to the *Convention on the Rights of Persons with Disabilities*.<sup>26</sup> However, Canada has yet to ratify.

Canada committed itself in December 2016, to consulting on Canada's accession to the Optional Protocol.<sup>27</sup> This is a welcome announcement. Women with disabilities need the Optional Protocol's individual complaint and inquiry mechanisms, which provide a necessary legal avenue for women with disabilities to assert their rights under the *Convention on the Rights of Disabled Persons* in the case of rights violations, which cannot be remedied effectively through Canadian domestic laws and mechanisms.

### RECOMMENDATION

**That the Committee urge Canada to ratify the Optional Protocol to the *Convention on the Rights of Disabled Persons* without delay.**

## II. Failure to Ratify the Optional Protocol to the International *Covenant on Economic Social and Cultural Rights (ICESCR)*

The Government of Canada has not ratified the Optional Protocol to the ICESCR. The State party rejected Recommendation 6 in 2013, and has taken no steps to implement the OP-ICESCR.<sup>28</sup> Protocol complaint and inquiry mechanisms, as provided in the Optional Protocols to the *International Covenant on Civil and Political Rights* and CEDAW, have proven crucial for the realization of women's rights in Canada.<sup>29</sup>

Like other rights, to be meaningful, economic, social and cultural rights require mechanisms and procedures that can provide effective remedies when rights are violated.

### RECOMMENDATION

**That Canada ratify the Optional Protocol to the International *Covenant on Economic, Social and Cultural Rights* without delay.**

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<sup>26</sup> *Optional Protocol to the Convention on the Rights of Persons with Disabilities*, UN Doc A/RES/61/106, 13 December 2006, Annex II; 2013 UPR Working Group Report at Rec 128.5; 2013 Canada's Reply at para 5.

<sup>27</sup> Government of Canada, "Canada makes further commitment to support rights of persons with disabilities" (1 December 2016), online: <<http://news.gc.ca/web/article-en.do?nid=1163849>>.

<sup>28</sup> 2013 UPR Working Group Report at Rec 128.6; 2013 Canada's Reply at para 5.

<sup>29</sup> *Mclvor v Canada*, Communication No. 2020/2010 (November 2010), online: <<http://povertyandhumanrights.org/2011/08/mclvor-v-canada/>>; *Lovelace v Canada*, Communication No. R.6/24, UN Doc. Supp. No. 40 (A/36/40) (1981); Committee on the Elimination of Discrimination against Women, Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the *Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc CEDAW/C/OP.8/CAN/1 (6 March 2015), online: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15656&LangID=E>>.

### III. Failure to Ratify the American Convention on Human Rights

Canada did not accept Recommendation 14 to ratify the *American Convention on Human Rights* at its Second UPR.<sup>30</sup> Canada has yet to take steps to sign or ratify the *American Convention on Human Rights*.

In 2015, in a response to a report from the Inter-American Commission on Human Rights (IACHR) addressing Canada's violations of the human rights of indigenous women, the Government of Canada attempted to diminish the significance of the report and its findings by stating that the views and recommendations of the Inter-American Commission are "non-legally binding."<sup>31</sup>

The Inter-American Commission on Human Rights repudiated Canada's position, finding that Canada is bound by the *Charter of the Organization of American States* and by the rights set out in the *Declaration on the Rights and Duties of Man*, which the Commission interprets in light of similar rights that are set out in international human rights treaties and accepted as a part of international customary law.<sup>32</sup>

FAFIA is concerned that Canada's response to the IACHR report on murders and disappearances of Indigenous women and girls marks a serious deterioration in Canada's commitment to fulfilling the human rights of women.

#### RECOMMENDATION

**That Canada ratify the American Convention on Human Rights immediately.**

## Women in the Workplace

### I. The Gender Wage Gap and Pay Equity Legislation

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<sup>30</sup> 2013 UPR Working Group Report at Rec 128.14; 2013 Canada's Reply at para 6.

<sup>31</sup> *Missing and Murdered Indigenous Women in British Columbia*, Canada, Inter-Am Ct HR OEA/Ser.L/V/II. Doc.30/14, (21 December 2014), at para 106, online: OAS <<http://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf>> [IACHR, *Missing and Murdered Indigenous Women in British Columbia*].

<sup>32</sup> *Ibid* at paras 107-10.

The gender wage gap in Canada is not closing. Women who work full-time full-year earn 74 cents for every dollar earned by a man. Canada's legislation governing working conditions for women is not showing any results in closing this gap.<sup>33</sup>

The CEDAW Committee recommended the following in its 2016 concluding observations that Canada take all measures necessary to narrow the wage gap, including adopting legislation in all jurisdictions that requires equal pay for work of equal value, and increasing the minimum wage, which more women than men are reliant on.<sup>34</sup>

Laws requiring employers to pay equal pay for work of equal value (pay equity) are a key workforce protection for women. Pay equity laws require not solely that employers pay the same pay for men and women performing the same work, but that they pay equal pay for work of equal value. This is essential because women who work in female dominated industries are often undervalued and under-compensated. Work that requires comparable skills, responsibility and working conditions should be compensated equally regardless of the gender of the worker.<sup>35</sup>

At the federal level, women have been seeking improved pay equity protection for many years. Making complaints under the pay equity provisions of the *Canadian Human Rights Act* has proven to be slow and cumbersome. A 2004 Pay Equity Task Force<sup>36</sup> recommended a proactive pay equity system that could also address pay inequities that are widened by race and disability. But, instead of moving forward, the federal government in 2009 passed regressive legislation for its own employees, the *Public Service Equitable Compensation Act (PSECA)*<sup>37</sup> and failed to adopt new pro-active pay equity legislation for the federal sector. The Special Committee on Pay Equity recommended in June 2016 that the *PSECA* be repealed and be replaced with a proactive federal pay equity law.<sup>38</sup> The Government of Canada has

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<sup>33</sup> The Globe and Mail, "Gender pay gap a persistent problem," March 6, 2017, online: <<https://beta.theglobeandmail.com/news/national/gender-pay-gap-a-persistent-issue-in-canada/article34210790/?ref=http://www.theglobeandmail.com&>>.

<sup>34</sup> 2016 CEDAW Concluding Observations at para 39.

<sup>35</sup> House of Commons, Standing Committee on the Status of Women, *An Analysis of the Effects of the Public Sector Equitable Compensation Act* (June 2009) at 2 (Chair: Hedy Fry), online: <[http://www.parl.gc.ca/content/hoc/Committee/402/FEWO/Reports/RP4007440/402\\_FEWO\\_Rpt07/402\\_FEWO\\_Rpt07-e.pdf](http://www.parl.gc.ca/content/hoc/Committee/402/FEWO/Reports/RP4007440/402_FEWO_Rpt07/402_FEWO_Rpt07-e.pdf)>.

<sup>36</sup> Pay Equity Task Force, *Pay Equity: A New Approach to a Fundamental Right* (Ottawa: Pay Equity Task Force, Minister of Justice and Attorney General of Canada, 2004) at 503, online: <[http://www.collectionscanada.gc.ca/webarchives/20071121055449/http://www.justice.gc.ca/en/payeqsal/docs/petf\\_final\\_report.pdf](http://www.collectionscanada.gc.ca/webarchives/20071121055449/http://www.justice.gc.ca/en/payeqsal/docs/petf_final_report.pdf)> (also see the archived Pay Equity Task Force review website, online: <<http://www.collectionscanada.gc.ca/webarchives/20071115062515/http://www.justice.gc.ca/en/payeqsal/index.html>>); and a government summary of the Task Force's history, Treasury Board of Canada Secretariat, "The Public Sector Equitable Compensation Act and the Reform of Pay Equity" (5 February 2013), online: <<http://www.tbs-sct.gc.ca/lrco-rtor/relations/consult/psecarpe-lerspres04-eng.asp>>.

<sup>37</sup> *PSECA, Public Service Equitable Compensation Act*, SC 2009, c 2.

<sup>38</sup> Special Committee on Pay Equity, "It's Time to Act" Report of the Special Committee on Pay Equity (Ju8ne 2016) 42<sup>nd</sup> Parliament, 1<sup>st</sup> session, online <[http://ywcacanada.ca/data/research\\_docs/00000393.pdf](http://ywcacanada.ca/data/research_docs/00000393.pdf)>

promised to table new federal pay equity legislation in 2018.<sup>39</sup> Women have been waiting for many years for effective pay equity legislation in the federal sector and are still waiting.

At the provincial and territorial levels of government, pay equity legislation exists only in some jurisdictions, not in others, and enforcement is weak.

There is no effective, co-ordinated push in Canada to bring basic fairness in compensation to working women.

**All levels of government in Canada should:**

- **Implement co-ordinated strategies that will address the structural inequality of women in employment in all jurisdictions, including employment equity programs, higher minimum wages and 'living wage' strategies, increased access to unionization, and enhanced resources and legal capacities for human rights institutions and laws to address systemic discrimination in employment, taking into account the particular disadvantages experienced by Indigenous, racialized, disabled, and immigrant women, and foreign workers.**
- **Enact proactive pay equity laws in every jurisdiction that address and correct the lower pay assigned to 'women's work' and apply to both public and private sector employers.**

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<sup>39</sup> Kathryn May, "Liberals promise 'proactive' pay equity legislation to close wage gaps" Ottawa Citizen (5 October 2016) online: <<http://ottawacitizen.com/news/national/liberals-promise-proactive-pay-equity-legislation-to-close-wage-gaps>>.

## Appendix A: A National Gender Equality Plan

### i. Time to act

FAFIA submits that, almost 50 years after the Royal Commission on the Status of Women issued its report on steps necessary to advance women's equality,<sup>40</sup> it is time for a new and serious conversation between Canadian governments and Canadian women about mechanisms and measures needed to bring women to equality. Real engagement about women's equality matters is long overdue.

### ii. Women with disabilities

FAFIA notes that the Committee on the Rights of Disabled Persons considers the obligation to act to enhance the equality of women "an ongoing and dynamic duty" that necessitates a "twin-track approach" for women with disabilities by:

(a) systematically mainstreaming the interests and rights of women and girls with disabilities in all national action plans, strategies and policies concerning women, childhood and disability, as well as in sectoral plans concerning, for example, gender equality, health, violence, education, political participation, employment, access to justice and social protection; and (b) taking targeted and monitored action aimed specifically at women with disabilities.<sup>41</sup>

This "twin-track" approach should be integrated into a comprehensive National Gender Equality Plan so that it will be fully inclusive of and effective for women and girls with disabilities. Women and girls with disabilities must be also be assigned a public participatory role in the development of the Plan pursuant to the Committee's guidance in its General Comment No. 3 (2016).<sup>42</sup>

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<sup>40</sup> Privy Council Office, Report of the Royal Commission on the Status of Women in Canada (1970), online: <<http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/bird1970-eng/bird1970-eng.htm>>.

<sup>41</sup> Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) on women and girls with disabilities, 25 November 2016, UN Doc CRPD/C/GC/3 at para 27.

<sup>42</sup> Ibid.

## Appendix B: Legal Aid

### a. Chronic Underfunding

An egregious example of the effect of underfunding on the most marginalized women is the June 2017 decision of the British Columbia Legal Services Society to suspend immigration and refugee services due to lack of funding, gravely affecting immigrant women who are victims of violence. Angela MacDougall, Executive Director of Battered Women's Support Services in Vancouver, notes that 40% of their clients are immigrant women<sup>43</sup>.

The 2017 Federal Budget allocated \$62.9 million over five years, starting in 2017–18, and \$11.5 million per year thereafter, to enhance the delivery of immigration and refugee legal aid services. However, the budget fails to recognize the need for increased funding in civil legal aid, making no mention of it, or of the need to provide such aid to racialized and minority women, and to Indigenous women. Rather, the budget focuses its access to justice initiatives on “innovative and technology solutions” rather than on direct services and legal representation.<sup>44</sup>

### b. Eligibility Requirements

In 2008 and in 2016, the CEDAW Committee recommended that there be standardized minimum criteria for eligibility for legal aid.<sup>45</sup> But there continues to be uneven access to legal aid services across provinces and territories, as well as narrow eligibility requirements, which severely curtail women's access to assistance and representation.

Only low-income applicants receive legal aid funding. Yet, the income criterion for legal aid is often below the poverty line.<sup>46</sup> This denies many women access to legal aid, restricting access to only those who live in deep poverty.

Even where a woman meets the narrow poverty requirement, eligibility for family law legal aid is further restricted: in some jurisdictions family law cases will only be funded if there has been violence; in others, only cases involving children.

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<sup>43</sup> “B.C. Legal Aid Suspends Immigration and Refugee Services Due to Lack of Funding”, *CBC News* (28 June 2017), online: <<http://www.cbc.ca/news/canada/british-columbia/b-c-legal-aid-suspends-immigration-and-refugee-services-due-to-lack-of-funding-1.4181352>>.

<sup>44</sup> Government of Canada, *Budget 2017: Chapter 3 – A Strong Canada at Home and in the World*, online: <<http://www.budget.gc.ca/2017/docs/plan/chap-03-en.html#Toc477707441>>.

<sup>45</sup> Currie A, *The State of Civil Legal Aid in Canada: By the Numbers in 2011-2012*, Canadian Forum on Civil Justice (May 13, 2013), online: <<http://www.cfcj-fcj.org/a2jblog/the-state-of-civil-legal-aid-in-canada-by-the-numbers-in-2011-2012-sthash.a29I51Pw.dpuf>>.

<sup>46</sup> *Ibid.*

**c. Lack of protection in cases of domestic violence where Indigenous women are affected**

As noted above, multiple times, the Royal Canadian Mounted Police have failed to protect Indigenous women in situations of domestic violence, with dual charges becoming a regular practice in such cases. Indigenous women in both British Columbia and Saskatchewan have reported to Human Rights Watch that when calls are made to the police by Indigenous women and girls seeking help with violence, these are frequently met with skepticism and victim-blaming, and that police often arrest victims of abuse for actions taken in self-defense<sup>47</sup>. The shortcomings by police in adequately dealing with cases of domestic violence and reporting them to justice aggregated to the lack of legal aid available to racialized women, deters them from pursuing a case and diminishes their access to justice and right to a due process.

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<sup>47</sup> Human Rights Watch, "Submission to the Government of Canada on Police Abuse of Indigenous Women in Saskatchewan and Failures to Protect Indigenous Women from Violence" (2017), online: <<https://www.hrw.org/news/2017/06/19/submission-government-canada-police-abuse-indigenous-women-saskatchewan-and-failures>>.

## Appendix C: Justiciability of ESC Rights

Canada has consistently taken the position that economic, social and cultural rights should not be justiciable under domestic or international law. The recent litigation of *Tanudjaja v Canada (Attorney General)*<sup>48</sup> about the right to adequate housing underscores this point. *Tanudjaja* argued that the governments of Ontario and Canada violated the rights of homeless people under section 7 of the *Canadian Charter of Rights and Freedoms* by failing to develop a housing strategy. In December 2014, the Ontario Court of Appeal dismissed this landmark case, finding that the right to housing was non-justiciable under the Charter and the section Charter jurisprudence on the right to life, liberty and security of person does not confer a “general freestanding right to adequate housing”.<sup>49</sup> This expands upon the non-justiciability of ESC rights set out in the Supreme Court of Canada's ruling in *Chaoulli v Quebec (Attorney General)*, which held that the “Charter does not confer a freestanding right to health care”.<sup>50</sup> The Supreme Court of Canada denied *Tanudjaja*'s leave to appeal.<sup>51</sup> The Supreme Court's refusal to hear the case affirms the Ontario Court of Appeal's ruling as the current, precedent setting common law regarding the justiciability of the right to adequate housing.

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<sup>48</sup> 2014 ONCA 852.

<sup>49</sup> *Ibid* at para 30.

<sup>50</sup> *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35 at para 104.

<sup>51</sup> Laurie Monsebraaten, “Homeless denied day in Court”, *The Toronto Star* (25 June 2015), online: <<http://www.thestar.com/news/canada/2015/06/25/homeless-denied-day-in-court.html>>.