United Nations

Human Rights Committee

Submission by the **Charter Committee on Poverty Issues** to the Human Rights Committee on the Occasion of the Review of Canada's Fifth Periodic Report Under the ICCPR

(October 17 & 18, 2005)

Charter Committee on Poverty Issues

CCPI is a national committee which brings together low-income individuals, anti-poverty organizations, researchers, lawyers and advocates for the purpose of assisting poor people in Canada to secure and assert their rights under international law, the *Canadian Charter of Rights and Freedoms* ("the *Charter*"), human rights legislation and other law in Canada.

CCPI has been granted leave to intervene in eleven cases at the Supreme Court of Canada and in a number of other cases before lower courts and tribunals raising issues of importance to poor people under the *Charter* or other law. CCPI appeared before the CESCR in relation to Canada's second and third periodic reviews in 1993 and 1998 respectively and before the HRC regarding Canada's fourth review in 1999.

Introduction: The Need for Follow-up to the Committee's Unprecedented Concerns and Recommendations from the Previous Review

In light of our previous involvement in the reviews of Canada, CCPI strongly emphasizes the need for more effective follow-up to the concerns and recommendations in response to the Concluding Observations following the fourth periodic review in 1999, particularly in regard to the crisis of poverty and homelessness in so affluent a country as Canada.

Other than the United States, which has not submitted a report to this Committee for many years, Canada is somewhat unique among states parties to the ICCPR in presenting an irreconcilable contradiction of a strong economy and a high average income, and at the same time a growing failure to ensure access to the basic necessities of life such as food and housing. When Canada first ratified the Covenant, homelessness was virtually unknown in Canada, and no one would have known what a "food bank" was. The Canada Assistance Plan Act had been in place for a decade, requiring the provision of financial assistance to cover basic requirements to anyone in need and a procedure for judicial remedy in the event of non-compliance. All of this has changed. Homelessness

has now been declared a "national disaster" by the mayors of the ten largest cities in Canada and food banks providing emergency food are relied on by three quarters of a million people every month, including over 300,000 children, though they do not come close to meeting the needs of an estimated 2.4 million hungry adults and children in Canada. The Canada Assistance Plan has been revoked, and there is no legal remedy for those who are denied access to the basic necessities of life.

In 1999 this Committee issued Concluding Observations which directly challenged the government of Canada to address the results of unacceptable program cuts and the extensive problems of homelessness as violations of the right to life under article 6, the right to non-discrimination under articles 2, 3 and 26 and the rights of children under article 24. These concluding observations have been described by international human rights scholars as "pathbreaking" in advancing an understanding of the interdependence of all human rights, yet, as pointed out by Professor Craig Scott, the governmental reaction has generally been one of "'a mix of disingenuous complacency, inconsistency and hypocrisy'[1]

At its last review, Canada promised improved follow-up to the review process. It promised to distribute the Concluding Observations to parliamentarians. This was not done. Canada committed to hold parliamentary hearings to review the concerns and observations of this Committee. This was not done. There has been no attempt to convene federal provincial meetings to address the crisis of poverty in Canada. The situation has continued to deteriorate, despite unprecedented budgetary surpluses and higher average standard of living. In the submission of CCPI, there is a serious crisis in Canada's compliance with its obligations under the ICCPR which needs to be addressed by a request for more serious follow-up procedures.

CCPI endorses and relies on the submissions of other NGOs on many other serious issues of non-compliance with the ICCPR. Specifically, we rely on the submissions of the

[1] Craig Scott, "Canada's International Human Rights Obligations and Disadvantaged Members of Society: Finally into the Spotlight?" (1999) 10:4 *Constitutional Forum* 97 at page 99.

Advocacy Centre for Tenants and the Centre for Equality Rights in Accommodation on the failure to follow up on the Committee's concerns about the absence of positive measures to address homelessness, and the failure to provide adequate protection of the right to a hearing and considerations of the risk of homelessness in the case of evictions.

Additionally, CCPI endorses and relies on the submissions of the Canadian Feminist Alliance for International Action on the discriminatory consequences for women of social program cuts, on equal pay for work of equal value and on the Supreme Court of Canada decision in *N.A.P.E* v. *Newfoundland*.

We are focusing our submissions on four critical issues:

1) The right to access to adjudication before a competent tribunal and access to a legal remedy to discrimination under human rights legislation; (page 4)

2) The obligation to provide supportive community based housing for persons with disabilities, in particular where the result is unnecessary detention and loss of liberty rights; (page 6)

3) The failure to provide necessary legal remedies through interpretations of the right to life and to non-discrimination under the *Canadian Charter of Rights and Freedoms* that are consistent with the Covenant, resulting from the Supreme Court of Canada decisions in:

i) *Chaoulli v. Quebec*, in which the Court did not ensure the non-discriminatory enjoyment of the right to life in healthcare services (page 8)

ii) *Auton v. B.C.*, in which the Court found that the guarantee of equality does not ensure the provision of benefits or programs to address the unique needs of children with autism, (page 9) and

iii) *Gosselin v. Quebec*, in which the Court failed to ensure adequate protection of the right to non-discrimination and the right to life in social assistance programs; (page 11)

4) The failure to take positive measures to address violations of the right to life and to non-discrimination resulting from poverty, particularly from inadequate social assistance, inadequate minimum wage and the continued discrimination in the National Child Benefit Supplement. (page 13)

1. Article 2: Right to an Effective Remedy & The Commission's Gatekeeper Role in the Human Rights System in Canada

At the time of its last review of Canada, the Committee's Concluding Observations addressed the chronic problem that almost all human rights adjudication in Canada involves a screening process by Human Rights Commissions which decide whether discrimination complaints will go to a hearing.[2] Human rights legislation, which prohibits discrimination and which, in Canada, enjoys quasi-constitutional status, continues to accord a discretionary power to Commissions to decide which complaints will proceed to a hearing for adjudication. This power continues unabated.[3]

During the last review, the Canadian delegation indicated to the Committee that a full review of the *Canadian Human Rights Act*—including the Commission's complaint screening or 'gatekeeper' role and a proposed 'direct access' alternative would take place.[4]

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[2] Para. 9 of the Concluding Observations in 1999 stated: "The Committee is concerned with the inadequacy of remedies for violations of articles 2, 3 and 26 of the Covenant. The Committee recommends that the relevant human rights legislation be amended so as to guarantee access to a competent tribunal and to an effective remedy in all cases of discrimination." Online at: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e656258ac70f9bbb802567630046f2f2?Opendocument

[3] The only exception is in British Columbia where the Human Rights Commission has been abolished and all claimants now have the right to proceed to a hearing—albeit with no provision for legal counsel to assist in the prosecution of their case.

[4] The delegation's comments are found in paragraph 19 of the Committee's Summary Record of its 1738th meeting. Online at: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ec6cd11696c500a8c1256bb90034dd47?Opendocument

In the event, the Canadian Human Rights Act Review Panel produced a lengthy report[5] and recommended, *inter alia*; the inclusion of "social condition" as a prohibited ground of discrimination, **and** the abolition of the gatekeeper or screening role and a change to direct access to an adjudicative tribunal.[6] The Review Panel went to great lengths to stress that under a direct access model, claimants must have access to the assistance of a specialized, publicly funded, advocacy clinic and/or legal aid.[7]

The Review panel filed its final report in June 2000. The government of Canada has failed to formally respond to the report in any way and, five years hence, the human rights gatekeeper *status quo* continues without change.

It is submitted that this is an eminently suitable case for the Committee to exercise its supervisory role, to 'follow-up' on its earlier Concluding Observations. It is respectfully proposed that the Committee make very clear to the State Party that its failure to ensure that human rights claimants in all jurisdictions in Canada have a right to an effective remedy amounts to a violation of article 2 of the Covenant.

Proposed Observation: The Committee is deeply concerned that the State Party has failed to take action to implement the Committee's earlier Concluding Observation regarding the requirement to ensure that human rights claimants are guaranteed access to an adjudicative hearing. This failure amounts to a violation of its obligations under article 2 of the Covenant.

Proposed Recommendation: The Committee recommends that the State party take the necessary action to ensure that all human rights claimants have access to an adjudicative hearing along with access to effective legal representation as well as that human rights commissions are mandated and resourced to perform all of the functions identified in the Paris Principles.

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[5] The Panel's report: *Promoting Equality: A New Vision* Online at: http://canada.justice.gc.ca/chra/en/chrareview_report_2000.pdf

[6] See recommandations 28 *et seq*. See Chapter 10 of the report. It is interesting that in coming to its ultimate recommendation to abolish the Commission's gatekeeper role and ensure direct claimant access, the Review Panel actually quoted the full text of the UN Human Rights Committee's Concluding Observation, which had recommended that claimant's be guaranteed access to an adjudicative hearing.

[7] Review Panel Recommendations # 80 & 85. Online at: http://canada.justice.gc.ca/chra/en/chrareview_report_2000.pdf

2. Articles 2, 9 & 26: Illegal detentions as a result of failure to provide supportive housing for persons with disabilities

In many provinces and territories, there is a well-documented crisis in the area of government support for community-based supportive housing for people with mental disabilities. A startling dimension to this problem is the fact that many people remain under detention—either in forensic hospitals as a result of earlier criminal justice involvement or under civil commitment—even though there is no longer a medical or legal reason for their continued detention.[8]

This desperate situation has arisen because governments have simply failed to provide adequate funding for appropriate community-based housing. The problem is so severe that many provincial government reports and court cases have drawn attention to this flagrant abuse of liberty and called upon governments to create additional housing so that people with mental disabilities will no longer be needlessly detained in forensic facilities or under civil commitment in psychiatric hospitals, not because they need to be detained for legal or medical reasons but solely for the reason that there is a lack of suitable, supportive housing in the community.[9]

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[8] In one province, Nova Scotia, statistics from government officials reveal that, at any given time, there are about a dozen people detained at the province's main forensic hospital whose sole reason for being there is because they have no suitable housing. See Canadian Broadcasting Corporation coverage of this issue at: http://novascotia.cbc.ca/regional/servlet/View?filename=ns-forensic-hospital20050601

[9] A sample of these reports include: "Transitions in Care: Nova Scotia Dep't. of Health Facilities Review" (March 2000) Online at: http://www.gov.ns.ca/health/facilities/Acute_Care.pdf ; *Psychiatric Facilities Review Board Annual Report*, 1998-1999 as well as those for 1999-2000, 2000-2001 and 2001-2002. A very similar situation was examined by the Court in a *habeas corpus* case in Yukon Territory; see *D.J.* v. *Yukon (Review Board)*, [2000] Y.J. No. 80. Other courts in Yukon have also dealt with the same problem: *R.* v. *Rathburn* (2004), 119 C.R.R. (2d) 44 (Y.T.T.C.) [Online at: http://www.canlii.org/yk/cas/yktc/2004/2004yktc24.html]. In the province of Prince Edward Island, the same problem of a lack of supportive housing—resulting in unnecessary detention—is discussed in: *R.* v. *Lewis* (1999), 132 C.C.C. (3d) 163 (Prince Edward Island Supreme Court, Appeal Division) [Online at: http://www.gov.pe.ca/courts/supreme/reasons/ad0782.pdf . In Ontario, ensuring the availability of adequate supports for people with mental disabilities—especially adequate supportive housing—was central to the plan of the Ontario Ministry of Health and Long Term Care. *Making It Happen* (1999) is the template for the implementation of mental health reform—including the provision of appropriate housing—across the Province of Ontario. Online at: http://www.health.gov.on.ca/english/public/pub/mental/pdf/MOH-imp.pdf

In the province of Nova Scotia, a quasi-judicial tribunal with jurisdiction over civil commitment of people with mental disabilities stated in its annual report to the provincial legislature that the failure to make adequate provision for community-based housing was:

> A matter of serious concern in terms of fundamental human rights, including one's basic entitlement within parameters to the least restrictive living situation…It is also not likely the most cost effective arrangement for government to be utilizing costly hospital beds when many of these individuals could be living in the community if proper supervised facilities were available.
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> - and, in the Board's conclusion -
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> We call upon the government to provide effective community resources for mental health consumers to stem this extremely problematic and disturbing tide.[10]

Proposed Observation: The Committee is deeply concerned that the failure by some governments in Canada to provide adequate funding for community-based supportive housing for people with mental disabilities and, in particular, for people who remain under detention solely for lack of appropriate housing represents a clear violation of their rights under articles 2, 9 and 26 of the Covenant.

Proposed Recommendation: The Committee calls upon all governments in Canada to ensure that people with mental disabilities, and in particular, to those who remain under detention because of lack of access to appropriate, community-based housing be provided with such housing in their communities without delay.

3. Supreme Court of Canada Judgments at Odds with Canada's Obligations Under the ICCPR

Since the last review of Canada by this Committee, there have been disturbing developments with respect to the interpretation of the *Canadian Charter of Rights and Freedoms* which have created a serious problem with respect to access to effective legal

[10] *Psychiatric Facilities Review Board Annual Report*, 1999-2000, at pp. 5 and 6.

remedies to violations of the Covenant. Four judgments of the Supreme Court of Canada raise particular concerns in this respect.

i) *Chaoulli* v. *Québec* (*Attorney General*): Unequal Enjoyment and Derogation from the Right to Life in Healthcare Permitted under the Quebec Charter

In June 2005, the Supreme Court of Canada released a judgment[11] which held that excessively long waiting lists for medical treatment in Canada's public health care program (*Medicare*) violated the right to "life" in Quebec's human rights legislation. The Supreme Court found that waiting times for procedures not only endangered people's health but also their lives. The Court declared that legislated prohibitions on the purchase of private health care insurance—in a context of what it found were excessive wait times in the public health system—violated the claimants' right to life and, by way of remedy, declared a right to purchase health care privately.

However, apart from the bald statement that buying private health insurance ought to be within reach of "ordinary" Canadians,[12] the Court gave no consideration whatsoever and made no remedial provision for people living in poverty whose social condition prevents them from being able to purchase health-care insurance privately nor for people whose health and/or disability would render them ineligible for private health insurance.

In a case where the Supreme Court identified inadequacies in the public health care system—ones which rise to the level of violations of the 'right to life'—the remedy which the Court grants must itself be one which alleviates the rights violation for all people, not just those who are either wealthy or healthy enough to be able to acquire private health insurance.

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[11] The judgment came in the case of *Chaoulli* v. *Québec* (*Attorney General*), 2005 SCC 35 Online at: http://www.lexum.umontreal.ca/csc-scc/en/rec/html/2005scc035.wpd.html The judgment has been met with relentless scholarly criticism. See, for example, the commentary at: http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/5/0/0/0&contentId=1109

[12] *Chaoulli* at para. 124 online at: http://www.lexum.umontreal.ca/csc-scc/en/rec/html/2005scc035.wpd.html

Proposed Observation: The Committee is deeply concerned that, in light of the *Chaoulli* judgment of the Supreme Court of Canada, poor people and people with disabilities in Canada may not be ensured equal enjoyment of the right to life with respect to access to timely healthcare, as protected by articles 6 and 26 of the Covenant.

Proposed Recommendation: The Committee recommends that all governments in Canada take steps to ensure that public healthcare provision is in compliance with article 6 and that those who are or would be either ineligible for or unable to purchase private health care enjoy equal access to adequate health care services.

***ii) Auton (Guardian ad litem of) v. British Columbia (Attorney General)*: Obligation to Meet the Unique Needs of Children with Autism**

In the *Auton* case, the Supreme Court dealt for the first time with the question of whether the right to non-discrimination under s.15 of the *Charter* imposes positive obligations to provide necessary benefits to disadvantaged groups where no existing program recognizes those needs. The parents of children with autism in the *Auton*[13] case argued that section 15 imposes an obligation on provincial governments to fund treatment for autistic children irrespective of any particular statutory framework or under-inclusive benefit scheme. Though there were questions raised in the case about whether the precise treatment sought by the parents was the most appropriate one, the important question addressed in this case from the standpoint of compliance with the Covenant was whether governments have an obligation to meet the unique needs of a clearly disadvantaged group.

The Chief Justice, writing for a unanimous Court, adopted the kind of non-discrimination analysis that had been rejected by this Committee as failing to ensure equality for people with disabilities and other groups with unique needs. McLachlin, C.J. declared that "the legislature is under no obligation to create a particular benefit. It is free to target the social programs it wishes to fund as a matter of public policy, provided the benefit itself

[13] *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, [2004] 3 S.C.R. 657.

is not conferred in a discriminatory manner."[14] The Chief Justice simply declared that "there can be no administrative duty to distribute non-existent benefits equally."[15]

The Chief Justice stated that the petitioners in *Auton*, to establish that discrimination has occurred, must show differential treatment in comparison to a "a non-disabled person or a person suffering a disability other than a mental disability (here autism) seeking or receiving funding for a non-core therapy important for his or her present and future health, which is emergent and only recently becoming recognized as medically required." Since no such comparator exists, the Chief Justice found that an allegation of discrimination could not be sustained.

No consideration was given by the Chief Justice to Canada's obligations under the ICCPR or to the jurisprudence of this Committee on the right to non-discrimination.

Clearly, the test set by the Supreme Court of Canada for a finding of discrimination in this case is far more restrictive than has been adopted by this Committee under articles 2, 3 & 26. Many disadvantaged groups are denied access to effective remedies by the application of such a test.

Proposed Observation: The Committee is deeply concerned that, in light of the *Auton* judgment of the Supreme Court of Canada, children with autism and other groups with unique needs may not be ensured equal enjoyment of medical, educational and other programs, in contravention of articles 2, 3 and 26 of the Covenant.

Proposed Recommendation: All governments in Canada should ensure that necessary services and benefits are provided to children with autism and other disadvantaged groups, as required for the enjoyment of equality and the right to non-discrimination under articles 2, 3 and 26.

[14] The Chief Justice cites *Granovsky v. Canada (Minister of Employment and Immigration)*, [2000] 1 S.C.R. 703, 2000 SCC 28 at para. 61; *Nova Scotia (Attorney General) v. Walsh*, [2002] 4 S.C.R. 325, 2002 SCC 83 at para. 55 and *Hodge v. Canada (Minister of Human Resources Development)*, [2004] 3 S.C.R. 357, 2004 SCC 65 at para. 16 in support of this statement.

[15] *Auton, supra* note 138 at para. 46.

iii) *Gosselin* v. *Québec*: Right to Non-discrimination and Right to Life in Social Assistance Programs

In *Gosselin* v. *Quebec,*[16] the Supreme Court of Canada dealt with a challenge to (now repealed) social assistance legislation in Quebec which had imposed dramatically insufficient welfare rates for people aged under 30 who were not participating in 'workfare' programs.

The challenge to the impugned legislation was one of age discrimination, i.e., the legislation imposed a facial distinction based on age. Also, the claimants argued that the provision violated their right to 'life, liberty and security of the person', as there was no dispute that the amount provided ($170/month) would not cover adequate food, clothing and housing.

The Supreme Court rejected the claim, holding that since government's intention was to encourage younger people to enter employment or training programs 'for their own good', this could not be seen as discriminatory. Second, while Justice Arbour, supported by Justice L'Heureux-Dubé, found that the failure to provide adequate social assistance for basic necessities violated the right to 'life, liberty and security of the person', the majority found that while it did not rule out such an interpretation in a future case, it ought not to be applied in this case.

It is to be noted that the derogation from the right to life at issue in this case, such that those under thirty could be denied basic necessities if they were not enrolled in workfare programs, cannot be argued and was not found to be 'necessary'. The impugned regulation had been revoked by Quebec shortly after it was challenged, without any noticeable consequences. Further, there was extensive evidence, cited by the four dissenting judges in the case, that many of those who were not participating in workfare programs (about 80% of recipients under 30) were simply unable, as opposed to

[16] *Gosselin* v. *Quebec*, [2002] 4 S.C.R. 429 online at: http://www.lexum.umontreal.ca/csc-scc/en/pub/2002/vol4/html/2002scr4_0429.html.

unwilling, to participate. Thus, the implications of this case for the use of violations of the right to life as a form of control of those in poverty are significant, and worthy of serious concern.

The Supreme Court's decision in *Gosselin*, the first in the twenty years of the *Charter* to consider issues of poverty and inadequate social assistance, creates two obvious problems for Covenant compliance:

1. A legislative provision which is plainly discriminatory on its face – and thus in violation of articles 2, 3 and 26 – is seen as justified if the law-maker itself considers it well-intentioned. Such an analysis completely ignores the effects – based approach which the Human Rights Committee had taken to non-discrimination provisions in the Covenant;

2. In addition, when the State Party and the Court itself recognizes that the 'right to life' may include an obligation on the state to provide the necessities of life to those in need, such provision cannot be conditional on being above a particular age or on enrolment in workfare programs.

Proposed Observation: The Committee is deeply concerned that, in light of the *Gosselin* judgment of the Supreme Court of Canada, those relying on social assistance for the basic necessities of life may have no effective remedy to discrimination or to violations of the right to life as required by articles 2, 6 and 26.

Proposed Recommendation: All governments in Canada should ensure that all social assistance programs provide assistance at a level to ensure access to basic requirements and the equal enjoyment of the right to life. Courts in Canada are urged to strive for interpretations of the Canadian Charter which would not place the State Party in violation of its obligations under article 2 to provide effective domestic remedies to violations of the Covenant.

4. Articles 2, 3, 6, 24 and 26: Failure to Take Required Measures to Address Poverty

The Inadequacy of Social Assistance in Canada

In its Concluding Observations issued after the review of Canada's Fourth Periodic Report, the Human Rights Committee was critical of the plight of women and children living in poverty and, in particular, how the burden of changes to social programmes was experienced disproportionately by women and children.[17] The Committee also referred to the crisis of homelessness and of Canada's responsibility under the Covenant to take positive measures required by article 6 to address this serious problem.

For people living in poverty in Canada and for those without adequate employment, social assistance is the primary means by which they are able to obtain basic requirements for food, clothing and shelter.[18] However, since Canada's last review, income levels for people reliant on social assistance have decreased steadily.

This raises the issue of the positive obligations on governments created by article 6 of the Covenant and Canada's compliance with those obligations.

In 1983, in response to questions from the Human Rights Committee regarding the nature and scope of a States Party's obligations under article 6, the government of Canada stated that the right to life in Article 6 of the Covenant imposes obligations on governments to provide basic health and social necessities to sustain life.[19]

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[17] *Concluding Observations of the Human Rights Committee: Canada*, UN HRC, 65th Sess., UN Doc. CCPR/C/79/Add.105 (1999) para. 20 Online at: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e656258ac70f9bbb802567630046f2f2?Opendocument

[18] This, perhaps self-evident statement, is adopted by the State Party. For its position to this effect, see Canada's Fifth Periodic Report under the ICESCR at para. 60, Online at: http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/ad12caad0d6d18abc1256f5e004b4915/$FILE/G0444188.pdf

[19] *Supplementary Report of Canada in Response to Questions Posed by the United Nations Human Rights Committee*, CCPR/C/1/Add.62 (March, 1983) at p. 23.

In its 5th Report under the ICCPR, the State Party continues its understanding of the obligations imposed on it by the Covenant by providing an extended description of its efforts to create housing for disadvantaged groups. Many of the provincial and territorial reports also refer to their initiatives in either the fields of health care or social assistance in the fulfillment of their obligations under article 6.

However, since the period covered by Canada's 4th Report under the ICCPR,[20] the incomes of social assistance recipients have either been cut outright or eroded through inflation. The ten-year period (between December 1994 to the present) witnessed a profoundly disturbing decrease in the standard of living among the poorest of the poor in Canada.

By way of background, it is recognized that the incomes of people on welfare in Canada have never been adequate. They almost never reach the poverty line[21]—regardless of family type. In **1987**, the State Party's *own* advisory body—after a comprehensive survey of social assistance regimes in Canada—made the following comments:

> The income levels of all the welfare recipients shown fall thousands of dollars below the poverty line. The welfare incomes range from a low of 23 percent of the poverty line to a high of 85 percent of the poverty line.[22]
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> - and -
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> It is impossible to describe in words alone the devastating impact of abysmally low rates of social assistance. No written account can even come close to portraying the damage to physical health and the scars to psychological well-being that can come from living at standards below those deemed absolutely minimal for basic subsistence. What can be said of a life which consists of a daily struggle merely to survive?[23]

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[20] Canada's Fourth Report under the ICCPR was submitted to the UN on April 1, 1977 and covered the period January 1990 to December 1994. Online at: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/918edc45e3760371802566a5003e655c?Opendocument

[21] See the National Council of Welfare, *Welfare Incomes 2004* (Minister of Public Works and Government services Canada, Spring, 2005) at p. 27 Online at: http://www.ncwcnbes.net/htmdocument/reportWelfareIncomes2004/WI2004EngREVISED.pdf

[22] National Council of Welfare, *Welfare in Canada: The Tangled Safety Net*, (Minister of Supply and Services Canada, 1987) at page 63

[23] *Ibid*, at p. 82.

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> The impact of low rates of assistance upon psychological well-being is equally devastating. Welfare recipients often see their world as one of hopelessness and despair; they typically feel trapped in a system which reinforces their dependence and which stifles any initiative to break out of a life of impoverishment. It is clear there is a desperate need not only for higher social assistance rates but also for the introduction of a systematic method of setting these rates based on a realistic assessment of human needs.[24]

That was the situation in 1987. Against this background, it is illuminating to see what has happened to the incomes of people reliant on social assistance since this disturbing 1987 report and, indeed, since Canada's 4th Report under the ICCPR. The following are a few representative examples:

For single people who are reliant on welfare, their total incomes, expressed as a percentage of the poverty line, have **decreased** by between 15% (Quebec) to 51% (Alberta) from their peak levels in the late 1980's or early 1990's.[25]

Through the same period, single mothers in receipt of social assistance have seen their total incomes, expressed as a percentage of the poverty line, drop by between 10% (Quebec) to a shocking 31% (Ontario).[26]

The total income of a single person with a disability decreased by between 8% (Quebec) and 38% (New Brunswick), with most jurisdictions decreasing incomes by about 25-30%.[27]

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[24] *Ibid*, at p. 84.
[25] See *Welfare Incomes 2004*, table 5.2 on pages 69-70. Online at: http://www.ncwcnbes.net/htmdocument/reportWelfareIncomes2004/WI2004EngREVISED.pdf
[26] *Ibid*, table 5.2 on pages 69-70.
[27] *Ibid*, table 5.2 on pages 69-70.

The State Party's own advisory body (The National Council of Welfare) recently published a comparative survey of 'total welfare incomes'[28] dating back to 1986 and followed through to the present.

Measured in terms of how closely social assistance rates reach the poverty line, the report found that:

> Over the long term, cuts rather than increases in welfare benefits have been the order of the day in most provinces and territories. Deliberate cuts from time to time, combined with the lack of annual cost-of-living adjustments in welfare rates, have resulted in falling incomes year after year. Many of the provincial and territorial benefits shown in the previous table for 2004 were all-time lows since the National Council of Welfare started doing calculations in 1986 and 1989.[29]

- and -

> In most provinces, single employable persons were consistently the most impoverished, followed closely by single persons with a disability. Single parents and couples with children tended to do better, but none of the welfare incomes in any of the figures could be considered adequate or reasonable.[30]

The report's conclusion is stark:

> Canadian welfare policy over the past 15 years has been an utter disaster, and *Welfare Incomes 2004* offers the latest proof of that sad assessment.
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> Welfare incomes have never been adequate anywhere in Canada, but many of the provincial and territorial benefits reported in 2004 were modern-day lows. Even when federal benefits such as the GST Credit and the National Child Benefit are added to the equation, welfare incomes remained far below the poverty line and far below what most Canadians would consider reasonable.
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> Welfare incomes were further below the poverty line in most provinces in 2004 than they were in the late 1980s or early 1990s. The differences

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[28] People in receipt of social assistance receive the bulk of their income from provincial/territorial social assistance but the federal government also provides some benefits to low-income people. "Total welfare incomes" means income from all sources, whether provincial or federal. See page 63 of *Welfare Incomes 2004*

[29] *Welfare Incomes 2004*, at p. 44. Online at: http://www.ncwcnbes.net/htmdocument/reportWelfareIncomes2004/WI2004EngREVISED.pdf

[30] *Ibid*, at p. 71.

> between the peak years and 2004 tended to be particularly harsh in the case of single employable persons. Losses of 25 percent or more were reported in seven provinces.
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> The National Council of Welfare has repeatedly lamented the shabby treatment both levels of government have given welfare recipients and has repeatedly called for major improvements in welfare and related programs.
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> Welfare has long been the neglected stepchild of governments in Canada, and *Welfare Incomes 2004* shows that the neglect is continuing. Perhaps this year's dismal report will finally make people in public life sit up, take notice and do something to remedy the situation.[31]

National Standards for Social Programs

At its last review of Canada, the Canadian delegation stated in relation to article 6 *and* in relation to the article 23 protection of the family through social programs that "there was a need for minimum national standards and they were under consideration."[32]

However, since 1996, when the State Party repealed the Canada Assistance Plan (CAP) which was a national regime which imposed legislated national standards for provincial and territorial social assistance programs and which Canada referred to as "one of the major cornerstones of the social security system in Canada,"[33] there has been no restoration of national standards ensuring either eligibility for or adequacy of social assistance or for a legal remedy in the event of a denial of access to basic necessities.

It is also important to note that the standards in the Canada Assistance Plan not only created important rights for social assistance recipients but CAP **also** enabled persons to go to court themselves to seek to enforce the standards—including the right to assistance when in need and the right to an amount of assistance which took into account a person's basic requirements. In other words, the right of people to domestically enforce the conditions or 'rights' in the CAP legislation had become a profoundly important feature of

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[31] *Welfare Incomes 2004* at p. 87. Online at: http://www.ncwcnbes.net/htmdocument/reportWelfareIncomes2004/WI2004EngREVISED.pdf

[32] Summary Record of the Human Rights Committee's 1738th meeting, March 26th, 1999, para. 70 [Online at: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ec6cd11696c500a8c1256bb90034dd47?Opendocument]

[33] *CAP Annual Report for 1986-87, 1987-88, 1988-89* (tabled in the Parliament of Canada, 1990), at page 7

Canada's social security system and thereby, the realization of the requirements of the Covenant for effective domestic remedies for violations of the right to life.[34]

Since the 1996 repeal of CAP, in no jurisdiction in Canada is the amount of social assistance provided to households in need of basic requirements subject to any national requirement that such assistance take into account a person's basic requirements. Equally, in no province or territory is the amount of social assistance set at a level to cover the estimated cost of basic requirements.[35]

Despite the delegation's statement at the time of the last review concerning a renewed need for a national approach to social assistance policy, under the recently re-named federal-provincial transfer arrangement, known as the Canada Social Transfer, **no** minimum national standards for social programs have been implemented. This means that the State Party has deliberately chosen not to require that provinces/territories need to comply with nationally set standards for welfare income adequacy in return for the very substantial sums of money it transfers for social assistance and services.

In the absence of national standards created by the Canadian government, provinces and territories have been and remain free to set welfare rates that are manifestly inadequate to maintain family integrity. As a result, since the repeal of the Canada Assistance Plan (in 1996), "what is clear is that welfare incomes are [now] far lower in most provinces and territories than they were a decade ago."[36]

Therefore, during the period covered by the review, all governments in Canada have:

- significantly decreased the incomes of Canada's poorest people; and

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[34] In the Supreme Court of Canada case of *Finlay* v. *Canada (Minister of Finance),* [1986] S.C.R. 607, it was determined that the standards or conditions in CAP were legally enforceable by individual social assistance recipients themselves. Online at: http://www.lexum.umontreal.ca/csc-scc/en/pub/1986/vol2/html/1986scr2_0607.html

[35] See the National Council of Welfare, *Welfare Incomes 2004* at page 63. Online at: http://www.ncwcnbes.net/htmdocument/reportWelfareIncomes2004/WI2004EngREVISED.pdf

[36] See the National Council of Welfare, *Welfare Incomes 2004* at page 63. Online at: http://www.ncwcnbes.net/htmdocument/reportWelfareIncomes2004/WI2004EngREVISED.pdf

- failed to follow through on the commitment to restore legally enforceable national standards.

Minimum Wages

Just as governments legislatively prescribe the state of poverty in which the poorest of the poor will live through their setting of social assistance rates, governments also legislate minimum wage levels which determine whether the poor will have access to basic requirements. Approximately five percent of all employees in Canada, (over 621,000), almost two-thirds of whom are women, are paid the legal minimum wage.[37]

An exhaustive 2003 survey looked at minimum wages in Canada—both historical and current—and adjusted them for inflation. The results were startling. It found that, when adjusted for inflation, "minimum wages in Canada lost considerably in value after their peak in the mid-1970s…[38] [and] …minimum wages fall far short of the poverty line…"[39]

National Child Benefit Supplement

At its last review, the Committee expressed concern about the fact that the National Child Benefit Supplement, Canada's primary initiative to address child poverty, is "clawed back" from people on social assistance in a number of provinces. This 'claw back' was part of the federal – provincial agreement that was reached to launch the program, and has been condemned not only by the Human Rights Committee, but also by the Committee on the Rights of the Child, The CEDAW Committee and the Committee on Economic, Social and Cultural Rights. Many domestic organizations have condemned the continued exclusion of families on social assistance from this critical benefit, including the National Council on Welfare.

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[37] *Fact Sheet on Minimum Wage* (Statistics Canada, September 2005) The report explains that: "A sizable proportion (28%) of minimum wage workers were aged 25-54, many of them women. For these individuals in their core working and peak earning years, minimum wage work is likely not a transitional phase." (at page 20). Online at: http://www.statscan.ca/english/studies/75-001/comm/2005_09.pdf

[38] *Minimum Wages in Canada: A Statistical Portrait with Policy Implications* (Caledon Institute, 2003) at page 252.

[39] *Ibid*, at page 253

Despite all of the concerns that have been raised about this discrimination, nothing has been done by the Federal government to revise the terms of the agreement with the participating provinces. The result is that families on social assistance, primarily single women with children, are denied basic necessities for themselves and their children, often leading to homelessness and hunger.

Conclusion: Implications for Articles 2,3, 6, 26

The protection accorded to the poorest of the poor of the right to life has been degraded and rendered to an "abysmal" and "shabby" level and the discriminatory consequences of inadequate social assistance, minimum wage and other social programs on women, aboriginal people, people with disabilities, newcomers, racialized minorities and other groups have not been adequately addressed in Canada.

At the time of the last review, the Committee expressed its concern that "many of the programme cuts in recent years have exacerbated these inequalities and harmed women and other disadvantaged groups."

Since the last review, the situation—as documented above—has gotten steadily worse. Canadian welfare policy is characterized by the State party's own advisory body as "an utter disaster."[40]

In these circumstances, the State Party has allowed its obligations under the ICCPR with respect to the most vulnerable groups in society to slide. The Committee would be acting fully within its mandate to comment on this in its Concluding Observations and to recommend that Canada undertake a concerted plan to bring itself into compliance with the Covenant.

[40] *Welfare Incomes 2004* at p. 87 Online at: http://www.ncwcnbes.net/htmdocument/reportWelfareIncomes2004/WI2004EngREVISED.pdf

Proposed Observation: The Committee is deeply concerned that, in light of its Observations made at the conclusion of the last review, governments in Canada have allowed total incomes of people reliant on social assistance and minimum wage to deteriorate once more and have failed to remedy the discriminatory provision of the National Child Benefit Supplement. This puts its compliance with articles 2, 3, 6, 24 and 26 of the Covenant into serious question.

Proposed Recommendation: The Committee recommends that the State Party restore enforceable national standards—especially standards regarding income adequacy—for all social assistance programs in Canada.

The Committee recommends that the State Party act on the Committee's previous recommendations to ensure that the National Child Benefit is redesigned so as to provide equal benefit to all families, based on need, without any discrimination because of reliance on social assistance.

DATED this 14th day of October 2005

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VINCENT CALDERHEAD

On behalf of the Charter
Committee on Poverty Issues