

Canadian NGOs'
Submission to the
United Nations
Committee on Economic, Social and Cultural
Rights
Pre-Sessional Working Group

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[I] Collected Information, Concerns and Suggested Questions

Introduction

[i] Background on the Canadian Federal System

1. Canada is a federal state with separate legislative jurisdictions assigned to the federal government and to the provincial governments. Thus, the federal and provincial governments have constitutionally determined areas of separate lawmaking ability. Each level of government is supreme within its own sphere of legislative authority. The federal government has sole authority to make laws in those areas assigned to it by Canada's Constitution--for example, immigration law, criminal law, aboriginal peoples, and the geographic areas of Canada's three territories. Provincial governments have sole authority to make laws in relation to such things as health, education, and welfare. Municipal governments fall under provincial authority.
2. Some areas of lawmaking have both federal and provincial jurisdictional aspects. Human rights legislation, for example, has been passed by both federal and provincial governments. Federal legislation covers areas that fall within federal jurisdiction--most notably federal government employees. Provincial human rights legislation covers the bulk of employment contexts as well as a wider range of services and facilities. The content of criminal law is within federal jurisdiction while the administration of criminal justice and laws falls within provincial authority.
3. This formal division of powers between the federal and provincial governments can be legally circumvented to some extent by the federal government's ability to spend its revenues in areas otherwise formally within provincial jurisdiction and control. Thus a dominant feature of Canadian political history is the exercise of what is called the federal government's "spending power". By stipulating conditions for provincial access to federal money, the federal government has been able to implement national standards in provincial jurisdictional areas such as health, education, social assistance, and legal aid. This means that in some of the areas of provincial jurisdiction that are key to the implementation of economic, social and cultural rights, the federal government has, through the persuasive power of promising funding assistance to the provincial governments, considerable power to influence policy, programmes, and legislation. Consequently, the federal government, when transferring funds to the provinces, shares political responsibility for decisions about the character of state action so funded. It is essential, therefore, that both federal and provincial governments be questioned and be held accountable for social programs instituted at the provincial level.
4. Provincial governments, of course, retain direct responsibility for the legislation and programs they implement, and for government actions within the provincial sphere of legislative authority under the Canadian Constitution. It is critical that the

CESCR hold the provinces separately and independently accountable for compliance with the ICESCR.

5. Since provinces and territories have constitutional responsibility for many areas of ESC rights, have agreed to ensure compliance with the ICESCR in these areas, have submitted separate reports which are included in Canada's Periodic Report, and have been the subject of concerns and recommendations of concluding observations of the CESCR in previous reviews, it is critically important that provinces be requested, through the State Party, to provide information regarding the implementation of the ICESCR in areas of provincial jurisdiction.

[ii] Reporting, Review & Compliance Process

Time Period of Canada's 4th Periodic report

6. Canada has restricted its 4th Periodic Report to the years 1994-99 and in so doing is frustrating the capacity of the CESCR to conduct a meaningful and timely review of Canada's compliance with its obligations under the ICESCR. Not only is the information contained in the 4th Periodic Report drastically out-of-date, but also most of the events that occurred between 1994 and 1999 have already been reviewed by the CESCR. The 1994-99 period events were conveyed to the CESCR in an Update to the 3rd Periodic Report and almost all of CESCR's concerns and recommendations relating to that Report were focused on those events. While Canada is preparing to provide a similar Update to its 4th Periodic Report, this will not contain as great a depth or breadth of information as a complete Periodic Report. In order to ensure a meaningful and timely review, Canada ought to be providing more than a mere Update. Canada ought to have submitted a periodic report providing complete information for the period spanning the years from the conclusion of the last review process to a date no more than 6 months before the submission of the report, that is, from 1999 to December, 2003. The update could then cover the period from January, 2004 to April, 2005.
7. **In light of the fact that information provided in Canada's Fourth Periodic Report submitted in 2004, was largely restricted to the period of 1994-99, NGOS believe that a more extensive list of issues may be necessary with respect to Canada's Fourth Periodic Report than is normally required, in order to ensure that the most relevant and up to date information can be considered by the Committee.**

<p>In light of concerns expressed by the CEDAW Committee that Canada unnecessarily restricted its periodic Report to outdated information, why has Canada largely restricted its Fourth Periodic Report under the ICESCR to the</p>
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years 1994-99 when the CESCR has made it clear that it requests the most up to date information available on the implementation of the ICESCR?

Lack of Information on Specific CESCR Concerns & Recommendations

8. The 4th Periodic Report makes no systematic effort to provide information on how the federal and provincial governments have followed up on and addressed the specific concerns and recommendations emanating from the 1998 review. In part, this is the result of the restricted time frame discussed above. At the very least, any Update provided by Canada to its 4th Periodic Report ought to include up-to-date and focused information from relevant governments in response to **all** concerns and recommendations in the 1998 concluding observations on Canada. This would seem to us to be a prerequisite to Canada's engaging in the review process in good faith and in the spirit of constructive dialogue.

Why has the Periodic Report not ensured that it has addressed each concern and recommendation arising from the previous review of Canada? Please provide information with respect to follow-up of each concerns and recommendation in the last periodic review.

No Process for Domestic Review of ICESCR Compliance

9. In the 1998 review process, issues of federal-provincial mechanisms for addressing compliance with the ICESCR arose repeatedly. When the federal and provincial governments of Canada agreed to ratification of the ICESCR in 1975, they also agreed to hold federal/provincial/territorial minister's conferences (F/P/T conferences) twice a year in order to coordinate the implementation of the ICESCR.¹ The last F/P/T conference was held in the late 1980's. The governments of Canada also established the Continuing Committee on Human Rights Officials (CCOHRO) to oversee coordination between the different levels of government to ensure implementation of many U.N. conventions including the ICESCR. CCOHRO is responsible for coordinating and submitting reports to the Committee on Economic, Social and Cultural Rights. In 2001, the federal government's Standing Senate Committee on Human Rights noted that the CCOHRO was not intended to be open to public debate or to be responsible for follow up. In combination with the abeyance of the F/P/T conferences, this means that there is not even any closed-door, domestic mechanism for following-up on the CESCR's Concluding Observations or for ongoing monitoring of compliance with the ICESCR more generally, let alone any public mechanism.² The Senate Committee

¹ Canadian Heritage, Human Rights Program, "How Canada Works with the United Nations"
http://www.pch.gc.ca/progs/pdp-hrp/inter/un_e.cfm

² Standing Senate Committee on Human Rights <http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-E/huma-e/rep-e/rep02dec01-e.htm>

also made a variety of recommendations to improve the domestic implementation of and compliance with international human rights obligations, including that the Canadian Human Rights Act should make express reference to the ICESCR (recommendation #5) and that the practise of regular F/P/T conferences (#8) dealing with compliance with international human rights..

Do governments in Canada accept recommendations 5 and 8 of the Standing Senate Committee on Human Rights' report "Promises to Keep"? What further action is planned to ensure ongoing monitoring of compliance with the ICESCR and effective and open follow-up to concerns and recommendations from the CESCO and other treaty monitoring bodies?

[A] Effective Domestic Remedies

10. In its Concluding Observations following the review of Canada's Third Report, the Committee expressed concern and made corresponding recommendations that:

i. "Provincial governments have urged upon their courts in these cases an interpretation of the *Charter* which would deny any protection of Covenant rights and consequently leave the complainants without the basic necessities of life and without any legal remedy."

-and-

i. The Committee urges the federal, provincial and territorial governments to adopt positions in litigation which are consistent with their obligation to uphold the rights recognized in the Covenant.³

11. The Committee went on to observe that the submissions by the Attorneys-General had been made: "despite the fact that the Supreme Court of Canada has stated, as has the Government of Canada before this Committee, that the *Charter* can be interpreted so as to protect these rights."⁴

12. More recently, in the Supreme Court of Canada case of [Gosselin v. Quebec \(Attorney-General\)](#), [2002] 4 S.C.R. 429, which challenged the inadequacy of social assistance payments for people under aged 30, the Committee understands that the Attorneys-General of Quebec, British Columbia, Alberta⁵ and [Ontario](#) made submissions to the Supreme Court of Canada that the "right of everyone", in section 7 of the *Canadian Charter of Rights and Freedoms*, "to life, liberty and security of the person" does not include protection for the Covenant right to an adequate income. The case of [Auton \(Guardian ad litem of\) v. British Columbia \(Attorney General\)](#), [2004] 3 S.C.R. 657 raised the issue of whether sections 7 and 15 of the Charter ought to be interpreted as placing positive obligations on governments to provide adequate treatment for autistic children. While parties and interveners made extensive reference and reliance in these cases on the need to provide effective remedies to rights under the ICESCR through consistent interpretations of the Charter, the federal and provincial governments involved in these cases generally sought to oppose these interpretations of the Charter.

³ United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations on Canada*, E/C.12/1/Add.31 (10 December 1998), para 50.

⁴ United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations on Canada*, E/C.12/1/Add.31 (10 December 1998), paras 14-15.

⁵ In its submissions to the Supreme Court of Canada in the *Gosselin* case, the Attorney General of Alberta stated: "What is noted in these documents [i.e., the UDHR and the ICESCR] is a right of individuals to a standard of living and an obligation on the States to assist in that regard. There is no obligation on the States to provide that standard of living by handing money to all those who claim. Rather, the obligation on the States is to assist persons in recognizing their right to an adequate standard of living. This is an important distinction and one which Quebec, and Alberta, amply demonstrate."

13. The position that has been advanced by Canada before the CESCR and other treaty monitoring bodies⁶ that the right to life, liberty and security of the person in section 7 of the Charter provides protection from being deprived of basic necessities, was not advanced by most provincial governments in the *Gosselin* case, with the exception of the government of New Brunswick. The federal government did not intervene in the *Gosselin* case, despite its importance for the legal protection of the right to an adequate standard of living in Canada. The decisions in all of these cases have constituted serious set-backs in the struggle of affected groups to ensure that the Charter is interpreted consistently with the ICESCR.

Following up on the Committee's previous recommendations and concerns about government pleadings with respect to the scope of sections 7 and 15 of the Charter, and referring to General Comment No. 9 of the CESCR, please explain the positions taken by the federal and provincial governments, in the cases of [Gosselin v. Quebec \(Attorney-General\)](#), [2002] 4 S.C.R. 429 and [Auton \(Guardian ad litem of\) v. British Columbia \(Attorney General\)](#).

The Right to Equal Remuneration for Work of Equal Value

14. The case [Newfoundland \(Treasury Board\) v. N.A.P.E](#) [2004] 3 S.C.R.. 381 raised the issue of whether section 15 of the Charter requires governments to implement and not revoke protections of the right to equal remuneration for work of equal value, as guaranteed in article 7 of the ICESCR. The Government of Newfoundland and supporting provincial governments argued, without referring to the ICESCR, that there is no obligation under the Charter to ensure equal remuneration for work of equal value and alternatively that violating this right can be justified by fiscal restraint. The Supreme Court found that revoking a pay equity award was a violation of the right to non-discrimination on the ground of sex, but held that this violation was justified by the fiscal situation in Newfoundland. The disturbing implication of this decision is that the right to non-discrimination in remuneration may be limited by available resources, contrary to the CESCR's view that the right to non-discrimination in the Covenant is **not** subject to progressive realization or available resources.

Please explain the positions of provincial governments before the Supreme Court of Canada in [Newfoundland \(Treasury Board\) v. N.A.P.E](#) [2004] 3 S.C.R.. 381 with respect to fiscal justifications for over-riding the right to non-discrimination. Is it the position of the Government of Canada that limiting the right to equal

⁶United Nations Committee on Economic, Social and Cultural Rights, *Summary Record of the Fifth Meeting*, E/C.12/1993/SR.5 (25 May, 1993) at paras. 3, 21; Government of Canada, *Responses to the Supplementary Questions to Canada's Third Report on the International Covenant on Economic, Social and Cultural Rights*, HR/CESCR/NONE/98/8 (October, 1998) questions 16, 53. Canada also stated to the United Nations Human Rights Committee that the right to life in the ICCPR imposes obligations on governments to provide basic necessities. *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.

remuneration for work of equal value in this manner is consistent with articles 2 and 3 of the ICESCR?

15. [Section 36\(1\)\(c\) of the Constitution Act, 1982](#) contains a constitutional “commitment” by both levels of government in Canada (federal and provincial) to the provision of “essential public services of reasonable quality to all Canadians.” In its Core Document ([HRI/CORE/1/Add.91](#)) (1998) Canada stated that the provisions of s. 36: “are particularly relevant in regard to Canada’s international obligations for the protection of economic, social and cultural rights.” The Committee understands that in the *Gosselin* case, the Province of New Brunswick relied on s.36 to support the argument that the right to adequate social assistance is a justiciable right under section 7 of the Charter.

Please inform the Committee in what sense federal and provincial governments see s. 36 as “relevant” to the implementation of rights in the ICESCR, particularly with respect to the provision of effective legal remedies.

16. The case of *Chaoulli v. Quebec (Attorney-General)*, (Supreme Court of Canada File No. 29272⁷), as yet undecided, raises critical questions about whether and in what manner the right to health is protected under s.7 of the Charter. At issue in the case is whether a guarantee of the right to health as a component of the right to life, liberty and security of the person, can be used by the more affluent to challenge restrictions on two-tier healthcare. Evidence in the case showed that current restrictions on private health insurance that are challenged in the case are essential to the protection of the public healthcare system in Canada.
17. In defending the challenged prohibition on privatized health insurance, respondent and intervening governments had the opportunity to defend an interpretation of the right to health which ensures the equal enjoyment of the right without restrictions based on ability to pay. It was disappointing, therefore, that governments did not rely more extensively on Article 12 of the Covenant and on General Comment No. 14 in their arguments. As is often the case in Canadian courts, it was primarily the NGO interveners, in this case the [Charter Committee on Poverty Issues and the Canadian Health Coalition](#) who drew the court’s attention to the relevance of the ICESCR and the jurisprudence of the CESCR.

Please inform the Committee of the positions on the obligation to protect the right to health under section 7 of the Canadian Charter taken by respondent and intervening governments in the case of *Chaoulli v. Quebec (Attorney-General)*. Referring to General Comment No. 14 please explain how the governments’ positions advanced an interpretation of the Charter that is consistent with the protection of the right to health under the Covenant and the equal enjoyment of this right by disadvantaged and vulnerable groups.

⁷ The Supreme Court of Canada heard argument in this case on June 8, 2004 and the judgment is still on reserve by the Court.

18. In previous reviews the CESCR has expressed concern that judges in Canada often seem to lack awareness of the provisions of the ICESCR and their relevance to the interpretation and application of domestic law as clarified by the Supreme Court of Canada. In the 1998 concluding observations, the CESCR recommended that “the State Party request the Canadian Judicial Council to provide all judges with copies of the Committee's concluding observations and encourage training for judges on Canada's obligations under the Covenant.”⁸

Please outline any initiatives that have been undertaken since 1998 with respect to judicial education on the ICESCR and the dissemination of the concluding observations of the CESCR to judges.

19. In 2000, the government of Canada conducted a review of the *Canadian Human Rights Act* during which many NGOs urged the Canadian Human Rights Act Review Committee to recommend amending that legislation so as to include protection for substantive social and economic rights.⁹

Please indicate and comment on the extent to which Canada's national human rights institution and corresponding provincial/territorial human rights institutions have the authority and mandate to oversee compliance with substantive economic, social and cultural rights, in conformity with the Paris Principles (General Assembly resolution 48/134, annex) and with the principles outlined in General Comment No. 10.

20. In its Concluding Observations following the review of Canada's Third Report (1998), the CESCR recommended that:

“...the State Party consider re-establishing a national programme with specific cash transfers for social assistance and social services that includes universal entitlements and national standards and lays down a legally enforceable right to adequate assistance for all persons in need, a right to freely chosen work, a right to appeal and a right to move freely from one job to another.

⁸ 1998 Concluding Observations on Canada, para. 57. 1993 Concluding Observations on Canada, para. 29.

⁹ Among the organizations supporting the inclusion of social and economic rights are the Charter Committee on Poverty Issues (CCPI), the National Anti-Poverty Organization (NAPO), Equality for Gays and Lesbians Everywhere (EGALE), The African Canadian Legal Clinic, Action travail des femmes, La table féministe de concertation provinciale de L'Ontario, the National Association of Women and the Law (NAWL), the Council of Canadians with Disabilities (CCD), Coalition of Persons with Disabilities (Newfoundland and Labrador) and Independent Living Resource Centre (St. John's, Newfoundland), Metro Toronto Chinese & Southeast Asian Legal Clinic, Affiliation of Multicultural Societies & Service Agencies of B.C. (AMSSA) and the Canadian Council for Refugees (CCR). Submissions to the Canadian Human Rights Act Review Panel, on file with the Panel. See the Final Report of the Canadian Human Rights Act Review Committee: online at <http://canada.justice.gc.ca/chra/en/chra_review_report_2000.pdf> esp at pp. 106-112.

21. The [Social Union Framework Agreement \(1999\)](#)¹⁰ was signed by the federal government and the provinces and territories, with the exception of Quebec. SUFA is devoid of any reference to the ICESCR and consistently frames economic, social and cultural rights as mere principles to which governments are committed. Even the wording of the unenforceable commitments is weaker than the wording of the rights under the ICESCR. For example, rather than guaranteeing the right to an adequate standard of living, SUFA only ts governments to the principle of providing “appropriate assistance to those in need.” Dispute “avoidance and resolution” provides no recourse for affected individuals or groups. A three-year review of SUFA was conducted, but very few NGOs representing affected constituencies were involved. No assessment was conducted of the effect of downgrading enforceable standards such as had existed under the Canada Assistance Plan Act to unenforceable commitments to principles.

What is the position of the federal government and provincial territorial governments to strengthen the Social Union Framework Agreement to include a framework which ensures “universal entitlements and national standards and lays down a legally enforceable right to adequate assistance for all persons in need, a right to freely chosen work, a right to appeal and a right to move freely from one job to another” as recommended by the CESCRC in 1998?

22. The CESCRC understands that in 2003,¹¹ the federal legislation that created the *CHST*, (providing for Federal transfers to the provinces for health care, post-secondary education and social assistance and social services) was re-configured so that health care transfers and social assistance and social services transfers are now nominally separate. While the *Canada Health Transfer* continues to provide standards with which provinces must comply in order to receive full cash transfers from the federal government, the *Canada Social Transfer*¹² still contains none of the standards which the CESCRC recommended in 1998.

Please inform the Committee why the newly-created *Canada Social Transfer* (CST) contains no universal entitlements or national standards; does not need to be spent by provinces on social assistance or social services and does not require provinces to even have social assistance programs of any kind. What plans are being considered to ensure that the CST is linked to federal/provincial/territorial cost sharing agreements which provide enforceable protections of rights under the ICESCR?

¹⁰ Online at <http://socialunion.gc.ca/news/020499_e.html>

¹¹ This change was accomplished by: *Budget Implementation Act, 2003*, chapter 15, s. 8.

¹² The sole condition for receiving full federal funding in the area of social assistance is that provinces not impose residency qualifications as a condition for social assistance eligibility (s. 24.3(1)(b) of the *Federal-Provincial Fiscal Arrangements Act* as amended. Online at <<http://laws.justice.gc.ca/en/F-8/58812.html#section-24.3>>.)

23. As has been recognized in previous reviews of Canada by the CESCR, the Court Challenges Program of Canada is a critical means of ensuring access to the courts for legal remedies to violations of the ICESCR.¹³ However, the ability of the Court Challenges Program to ensure access to courts on important ESC rights cases is severely limited by the restriction of funding to cases in which the federal government is challenged, excluding any cases in which provincial legislation or policy is challenged. Since provinces have constitutional responsibility for social assistance, health, education, housing and many other areas covered by the ICESCR, this restriction on funding means that many violations of the ICESCR, particularly with respect to the right to the equal enjoyment of the rights without discrimination, cannot be funded. At both its 1993 and 1998 reviews, the CESCR has recommended that the mandate of the Court Challenges Program be extended to include provincial legislation and policy.

What action has been taken or is being contemplated to extend the mandate of the Court Challenges Program to include challenges to provincial legislation or policy?

24. Another critical barrier to access to effective remedies to violations of the rights under the ICESCR in Canada is the inadequate and inconsistent provision of civil legal aid by provincial legal aid programs. In most provinces, there is no entitlement to legal aid in cases involving even the most critical issues of rights under the ICESCR, such as eviction, disentanglement from social assistance, discrimination or family law. The Canadian Bar Association has noted that “a decade of cuts has left Canada’s legal aid system in crisis.” The CBA has five-point platform on legal aid reform:

- Legal aid should be recognized as an essential public service, like health care.
- Public funding should be confirmed as necessary to ensure access to justice for low-income people.
- Public funding for legal aid must be increased.
- National standards for criminal and civil legal aid coverage and eligibility criteria are required.
- The federal government should revitalize its commitment to legal aid.¹⁴

What is the response of the federal and provincial/territorial governments to the Canadian Bar Association’s five-point platform on legal aid reform?

25. A critical violation of the principle of the rule of law and of access to effective remedies to the right to non-discrimination in Canada is the continued “gatekeeper”

¹³ Concluding Observations on Canada, 1998, paras 8, 59; Concluding Observations on Canada, 1993, paras 6, 22 and 28.

¹⁴ Online at <<http://www.cba.org/CBA/Advocacy/legalAid/>>

authority of the federal and of most provincial human rights commissions. Federal and most provincial human rights legislation confers authority on a human rights commission to decide on administrative grounds not to refer a human rights complaint to a tribunal for adjudication. The CESCR recommended in its 1998 review of Canada that “enforcement mechanisms provided in human rights legislation need to be reinforced to ensure that all human rights claims not settled through mediation are promptly determined before a competent human rights tribunal, with the provision of legal aid to vulnerable groups.”¹⁵

26. The result of ‘gatekeeper’ or ‘screening’ provisions’ is that critical complaints of discrimination may never be adjudicated or be subject to legal remedy. Claimants are precluded from pursuing their complaints in court.¹⁶ The Canadian Human Rights Review Panel, appointed by the Minister of Justice to review the Canadian Human Rights Act, recommended that the “screening” provision of the Act be eliminated so that any complaint would be adjudicated before a competent tribunal.¹⁷ The panel emphasized, however, that adequate resources needed to be provided to ensure complainants have access to effective representation and assistance.¹⁸ Similar concerns about the denial of access to adjudication and to effective remedies and recommendations for the elimination of the ‘gatekeeper’ discretion have emerged from both the CESCR¹⁹ and the Human Rights Committee in reviews of Canada.

What action has been taken or is contemplated in each jurisdiction to ensure that any complaint of discrimination is subject to adjudication and remedy before a competent tribunal? Where the ‘gatekeeper’ function of human rights commissions has been abolished, have there been adequate measures taken to ensure adequate representation and resources for complainants, as recommended by the Canadian Human Rights Act Review Panel?

27. A number of social assistance recipients in Ontario filed human rights complaints under Ontario’s Human Rights Code in February, 2003, alleging that grossly inadequate shelter allowance provided in social assistance rates prevented them from accessing adequate housing, violating the obligation under the Human Rights Code to accommodate needs of identified groups, including those in receipt of public assistance.²⁰ The complainants relied extensively on the requirement that human rights legislation be interpreted in conformity with the ICESCR, and noted the CESCR’s grave concern about the effects of cuts to social assistance rates in Ontario,

¹⁵ Concluding Observations, Canada, 1998 para. 51.

¹⁶ For a discussion of the problems of the ‘gatekeeper’ or ‘screening’ provision in the Canadian Human Rights Act, see the Canadian Human Rights Act Review Panel, *Promoting Equality*, Chapter 9, online at <<http://canada.justice.gc.ca/chra/en/chrareview_report_2000.pdf>.

¹⁷ *Ibid*, at p. 53.

¹⁸ *Ibid*.

¹⁹ Human Rights Committee, *Concluding Observations, Canada*, (CCPR/C/79/Add.105 (7 April, 1999) para. 9.

²⁰ Advocacy Centre for Tenants in Ontario *Challenges to Inadequacy of Ontario Works Shelter Allowance* [Online] Available: <www.acto.ca/english/acto_content.php?topic=2&sub=34>

rendering appropriate housing unaffordable. The Ontario Human Rights Commission dismissed the complaints on March 17, 2004, thereby denying them any access to adjudication or remedy before the Ontario Human Rights Tribunal. The complainants have asked the Human Rights Commission to reconsider its decision.²¹

Please explain the status of complaints filed under Ontario's *Human Rights Code*, in February, 2003 alleging that shelter allowances in the calculation of social assistance in Ontario are grossly inadequate and violate the right to equality and non-discrimination in housing of people on welfare.

[B] International Trade and Foreign Investment

ESCR and Mining Operations

28. The **World Bank** recently undertook an exhaustive critical study of its work on extractive industries and released a report which contained several key recommendations on human rights.²² Canada has a wealth of natural resources and the largest concentration of mining capital in the world. Canadian mining companies are increasingly active on the international scene and there have been many credible allegations of cases of Canadian mining companies' direct or indirect involvement in abuses of human rights²³. To cite only two of the more recent cases, there is Glamis Gold and their contested operations in Guatemala as well as TVI, a Canadian mining company that has been charged with abuses of indigenous

²¹ Unreported, Ontario Human Rights Commission, File No JWIS-5JUR3L, 17 March 2004). Cited in Bruce Porter, "Homelessness, Human Rights, Litigation and Law Reform: A View from Canada" in P. Lynch and D. Otto, (eds) *Homelessness and Human Rights* (2004) *Australian Journal for Human Rights* 10.2 (2) 133 at 139.

²² See World Bank, *Striking a Better Balance: The Final Report of the Extractive Industries Review*, December 2003.

²³ See for example the website of Miningwatch Canada (www.miningwatch.ca) and of the Groupe de recherche sur les activités minières en Afrique (GRAMA) <http://www.unites.uqam.ca/grama>; Madelaine Drohan, *Making a Killing: How and Why Corporations Use Armed Force to do Business*, Random House Canada; Rights & Democracy, Report of Think Tank on Foreign Direct Investment and Human Rights (2003) available at

<http://www.ddrd.ca/english/commdoc/publications/globalization/thinkTank2003/reportTTeng2003.pdf>;

Kairos and Third World Network Africa, *Africa's Blessing, Africa's Curse, the Legacy of Resource Extraction in the Africa*; Georgette Gagnon, Audrey Macklin and Penelope Simons, *Deconstructing Engagement: Corporate Self-Regulations in Conflict Zones – Implications for Human Rights and Canadian Foreign Policy*, January 2003.

<http://www.rightsaction.org/Reports/Report.Chixoy.Cohre.pdf>

For a Canadian-based mining corporation receiving IFI funds and allegedly engaging in ESC violations, see: [http://www.brettonwoodsproject.org/article.shtml?cmd\[126\]=i-126-5da6c81619209021d2dabe5a253ce808](http://www.brettonwoodsproject.org/article.shtml?cmd[126]=i-126-5da6c81619209021d2dabe5a253ce808)

For a briefing note on Canadian government reporting on IFI activity, see:

<http://www.halifaxinitiative.org/index.php/Home/614>

peoples' rights in the Philippines. Both these cases have been the subject of discussions between NGOs, Canadian embassies, government officials and Parliamentarians. Among other considerations, people's right to water, to sustainable livelihoods and to health have been cited as pre-occupations, as well as indigenous people's rights to free, prior and informed consent.

Has the Government of Canada sought to ensure an increased consideration of human rights in World Bank projects in resource extraction as proposed in the Extractive Industries Review Final report of 2003?

What specific procedures are in place to ensure that economic, social and cultural rights are actively considered when the Canadian Government offers public support to mining exploration, exploitation or legislation in developing countries? How have concerns about particular Canadian corporations such as Glamis Gold in Guatemala and TVI in the Philippines been investigated and addressed?

Export Development Canada (EDC)

29. The Export Development Corporation (EDC) is a Crown corporation which facilitates Canadian exports through the provision of financial services. It guarantees loans and issues insurance to Canadian exporters where in many cases the risk is extreme. As a result EDC makes otherwise uneconomic investments proceed. In addition, EDC is the largest holder of debts owed to Canadian firms or government by developing countries: as of March 1999, export credit related debt formed 95 percent of the \$2.5 billion debt owed Canada by the 55 countries that are worst off in terms of human development.
30. It has become clear that a number of the larger EDC-supported projects are socially and environmentally destructive, and the activities of the funded entities have violated economic, social and cultural rights. Particular concern has been voiced about EDC's role in financing extractive industries. However, it is been difficult to clearly establish the extent of the role EDC has played in a number of projects, because EDC has reduced the scope and quality of information it makes public, on the basis that it must respect privacy rights of the firms it finances.
31. The EDC has also been solicited by Canadian civil society groups to better integrate human rights considerations into its policies. The EDC convened a consultation on this topic in March 2004.²⁴ In addition, a two-day expert meeting on human rights and project finance was convened by the EDC Working Group of the Halifax Initiative in May 2004²⁵. At these two meetings, a number of strategies were discussed for increasing awareness of human rights in the export credit agency and

²⁴ Papers available at http://www.edc.ca/corpinfo/csr/elements_protectinghuman_e.htm

²⁵ Papers available at <http://www.halifaxinitiative.org>

leveraging project finance for positive impacts on human rights. A policy avenue repeatedly invoked by participants was the idea of undertaking human rights impact assessments, much in the same way that environmental impact assessments are required for projects with significant environmental impacts. Many NGOs feel that while lip service is paid to human rights under the heading of Corporate Social Responsibility, there is no systematic effort or methodology in place that would alert the EDC to problems and provide mechanisms to ensure there is no complicity with human rights violations.

Outline ways in which Export Development Canada intends to modify its policies to take economic, social and cultural rights into account throughout its decision-making processes, place conditions on projects to ensure that economic social and cultural rights are not violated, and address concerns raised by civil society groups about the impact of funded projects on economic, social and cultural rights in a thorough and transparent manner.

WTO & Agriculture

32. **World Trade Organization (WTO)** members, including Canada, have promised to address livelihood (adequate standard of living) including food security (right to food) concerns by establishing flexibilities for developing countries within new rules for agricultural trade currently being negotiated. In 2001, the WTO's Doha Declaration affirmed that "non-trade concerns will be taken into account in the negotiations" and that special and differential treatment would become an "integral part of all elements of the negotiations" (paragraph 13). Yet progress has been slow and millions of small farmers continue to suffer economically from dumped products from wealthy countries.

Considering that the majority of poor people in the world are farmers in developing countries, how have Canada's negotiation positions in the area of agriculture been specifically designed to promote and protect the economic, social and cultural rights of these vulnerable groups? What specific flexibilities for developing countries is Canada promoting within the WTO negotiations on agriculture in order to protect and encourage domestic policies and programs aimed at complying with the right to food and other obligations under the ICESCR?

Development Assistance

33. Most of the world's poor people are farmers in developing countries. The majority are food insecure. Two years ago, the Government of Canada through its international development agency (CIDA) committed to a special focus on agricultural development in order to help alleviate hunger and build sustainable livelihoods in developing countries. Other major aid donors praised Canada's decision and some later adopted the same emphasis. Yet Canada's recent

International Policy Statement drops agriculture from its list of priorities. Furthermore, Canadian food aid continues to be tied to Canadian agricultural sourcing, compounding the problem of food insecurity and disruption of local markets.

Why did Canada change its decision to prioritize agriculture for its development assistance to poor countries? Will Canada continue to tie its food aid to Canadian production? What steps has Canada taken to ensure that food aid does not disrupt local markets and therefore the living standards and food security of vulnerable groups?

[C] The Right to Just and Favourable Conditions of Work (Article 7)

Women and Work

34. The type of work available in Canada has changed as globalization has intensified. Canada is now a low-wage economy with 25.3% of workers earning wages below \$10 an hour. Women are overrepresented in low-wage, minimum wage, part time, contract positions, which puts them at greater risk of falling into poverty. The percentage of female lone-parent families who are poor rose to 56% in 2005 from 44.9% in 2001. Women make up 70% of minimum wage workers.

What percentage of minimum wage earners are women? What measures are planned to create more just and favourable conditions of work for women?

Wages & Income Security

35. No group of minimum wage workers in Canada had an income over the poverty line (LICO) and only one (a couple with two children) made it over the Market Basket Measure cutoff in 2000, the latest year for statistics. Low-wage workers made it over the poverty line but remained in precarious circumstances where any new expenditure could cause a serious crisis. The National Council of Welfare states, “Even people with full time work were at terrible risk of poverty. In almost every case, a person with a full time, full-year job at minimum wage could not live above the LICO poverty line.” On low-wage workers the Council says, “Using the LICO poverty line, every low wage family in this study lived in “near poverty”.⁶
36. Minimum wages are set by provinces and territories and therefore vary from region to region. The federal government rescinded its minimum wage in the mid-90s and instead pegged minimum wages to regional standards. Since minimum wage in all regions is no longer a wage that people can live on, groups have been requesting governments to raise their respective wage to at least \$10 an hour. This rate would allow a single person working fulltime for a full year to earn above the poverty line.

Provide data on the income earned at the minimum wage in each province and territory in 1998 and 2004, and compare this income with the poverty line for a single parent with two children. Explain any situations in which the gap between the poverty line and the income on minimum wage has increased.

Please report on changes in the extent of poverty among female single parents. Explain what further measures are contemplated.

⁶ “*Income for Living?*” Spring 2004, Volume #120. National Council of Welfare.

[D] The Right to Social Security (Article 9)

Employment Insurance

37. Despite the CESCR's recommendation, in 1998, that Canada's Employment Insurance (EI) Programme be reformed to provide broader and more substantial coverage, the tightening of eligibility requirements continues to reduce the proportion of the workforce entitled to this form of social security. The number of workers who qualify for EI has dropped from approximately 74% to 39% from 1990 to 2001. Thirty percent of unemployed women received benefits in 2001 (down from 33% in 2000) while forty-four percent of men had coverage (down from 46% the previous year).¹ Youth, seasonal, part time and contract workers are often denied access to benefits despite paying into the program.
38. The tightening of eligibility requirements has impacted disproportionately on youth, immigrant and visible minority workers, and women as they often occupy part time minimum and low wage jobs that make it extremely hard to accumulate the number of hours needed to file a claim. The current number of hours needed for benefits eligibility is 910. Unions and other groups (NGO's) have called on the government to lower this rate to 360. Ineligibility pushes unemployed workers onto social assistance where benefits are far below poverty levels, and social assistance becomes the first line of income security rather than the last resort it was intended to be.
39. Equally disturbing is the fact that the EI program has regularly had a "surplus" of billions of dollars, which the federal government has used to pay down the deficit/debt instead of providing much-needed benefits to jobless workers. Every year unemployed workers do without income support while money from the EI program is used to pay government debt.
40. Finally, despite the fact that the unemployment rate for youth continues to rise (it has been over 14% for most of 2005), the number of youth receiving income assistance through EI continues to drop. Youth under age 20 who benefited from EI decreased from 67,000 in 1995 to 32,000 in 2001. The number of recipients aged 20-24 that receive EI benefits has declined from 449,000 in 1980 to 230,000 in 2001. This trend continues.

What measures have been taken to address concerns expressed by the CESCR in 1998 about the number of unemployed women, youth and other groups disqualified from receiving Employment Insurance benefits by tightened eligibility rules? Please provide updated information on the percentage of unemployed women, young people, immigrants, visible minority, seasonal, part-time and contract workers who receive Employment Insurance benefits. Provide any available data on the risk of homelessness among these groups in the event of job loss.

¹ Falling Unemployment Insurance Protection for Canada's Unemployed, Canadian Labour Congress, March 2003, p. 5

41. For further details see the Quebec Report, paragraphs 27 to 29.

Please also provide information on the ability of youth, women, immigrants, visible minority, seasonal, part-time and contract workers to obtain Employment Insurance. Please also provide information on any changes to the rules for eligibility for Employment Insurance and on the impact of any such changes these types of workers.

[E] The Right to Protection of Family, Mother and Child (Article 10)

Child Protection System and ESCR²⁶

42. In 1993 the CESCR expressed concern that families were being forced to relinquish their children to foster care because of inability to provide adequate housing or other necessities. The economic and social marginalization of low-income and homeless/marginally housed women continues to detrimentally affect them when dealing with the child protection system in Ontario. These key concerns and demands have been identified as:

- **Child apprehension is a costly response to situations of child endangerment that often have social and economic determinants.** Mothers must be given adequate legal, economic and social support to maintain healthy and loving home environments for their children.
- **Poor women formerly involved with child protection are targeted for investigation and apprehension when they have another baby.** Instead, women at risk of child protection involvement need parenting support and adequate income to reduce the risk of apprehension.
- **The child protection system focuses on the child in isolation from the family.** The child protection system should focus on maximizing mothers' capacity for healthy parenting, instead of focusing on the child in opposition to the mother.
- **Child apprehension threatens poor women's access to income and housing, jeopardizing ability to be reunited.** Inadequate housing is a

²⁶ Chau, S., Fitzpatrick, A., Hulchanski, J.D., Leslie, B. & Schiata, D. (2001). One in five...Housing as a factor in the admission of children to care. Centre for Urban and Community Studies Research Bulletin, 5, 1-6. <http://www.urbancentre.utoronto.ca/pdfs/researchbulletins/05.pdf>. This study found that the family's housing situation was a factor in 20.7% of admissions into child protection care in Ontario in 2000. This represented a significant increase from 1992. Kellington, S. (2000, May 2002). *"Missing voices": mothers at risk or experiencing apprehension in the child welfare system in BC*. The National Action Committee on the Status of Women - BC Region. <http://www.nac-cca.ca/about/regions/bc/events.htm>. These reports look at the experiences of Aboriginal and non-Aboriginal mothers involved in or at risk of the child welfare system in British Columbia. They recommend that support should be directed at parents through the child welfare system, and that a broad-ranging system to prevent child maltreatment replace the current system which is based upon responding to abuse and neglect.

factor in a significant number of admissions of children to care. However, loss of children also threatens women's access to housing and income. Women lose social assistance and National Child Benefit Supplement payments associated with the apprehended child, and may lose access to their subsidized housing if that housing is tied to their family status. These losses then compound the difficulty of demonstrating to the child protection agency that the mother is capable of providing an adequately safe and healthy environment for the child. The National Child Benefit Supplement scheme, social assistance programs, and subsidized housing must be structured to enable women to maintain their income and housing as they work to regain custody of their children.

- **Women with psychiatric disabilities are stereotyped as unfit mothers.** Women with mental health problems must receive equal treatment within the child protection system.

43. In accordance with the importance that the Supreme Court of Canada attached to the interests at stake in child protection proceedings in *New Brunswick Minister of Social Services v. G (J)*;²⁷ Legal Aid now covers family court matters involving apprehension of a child by a provincial child protection agency. But this has yet to manifest in a recognition of the need to address the broader causes of the economic and social deprivation of families and mothers. The sections of the 4th Periodic Report (paras 1461 & 1462) devoted to Ontario's child protection programs reveal little detail about the impact of these programs for mothers or children.

Can the provincial and territorial governments please provide the Committee with the number of low-income families, single-mother-led families, Aboriginal families and other disadvantaged families as a proportion of all families whose children are apprehended?

What measures have been undertaken by federal and provincial/territorial governments to ensure that disadvantaged families at risk of child apprehension have adequate income, housing, and other supports to care for their children?

[F] The Right to an Adequate Standard of Living (Article 11)

The Inadequacy of Poverty Measurement

44. In its 1998 *Concluding Observations*, the CESCR criticized the Government of Canada's ambivalence with respect to Statistics Canada's Low-Income Cut-Offs ("LICOs").²⁷ Under LICOs, a low-income household is one that spends

²⁷ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at para. 13, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Concluding Observations*].

significantly more (20%) of its income on the necessities of life (food, shelter, and clothing) than an average equivalent household. On one hand, LICOs are widely used by experts and the Government itself to measure the extent and depth of poverty in Canada. On the other hand, the Government has refused to accept LICOs as a poverty line. “The absence of an official poverty line makes it difficult to hold the federal, provincial and territorial governments accountable with respect to their obligations under the Covenant.”²⁸ The CESCR urged Canada to establish an official poverty line.²⁹

45. In the 2001 *Reply to List of Issues*, the Government of Canada could not answer the CESCR’s question regarding how income from a full-time, minimum wage job compared with the poverty line because the Government still had not established an official poverty line.³⁰ In *Canada’s Fourth Report*, the federal government introduced a new tool to measure low income – the Market Basket Measure (“MBM”).³¹ Under the MBM, the low-income threshold is based on the income needed to buy a basket of goods and services (food, clothing, shelter, transportation, and other necessary expenditures). One of the important benefits of the MBM is that it takes into consideration the varying costs of living across Canada. The MBM was intended to complement existing measures in tracking low income.
46. In spite of the introduction of the MBM, poverty measurement in Canada continues to suffer from various inadequacies, which hinder the CESCR’s ability to hold federal, provincial, and territorial governments to account:
 - (a) Contrary to the recommendation of the CESCR in 1998, the Government of Canada still has not established an official poverty line. The introduction of the MBM did not change the situation. The Government considers the MBM as yet another measure of low income, not an official poverty line.³² The ongoing refusal to establish an official poverty line may reflect the Government’s unwillingness to “give official recognition to poverty.”³³

²⁸ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at para. 13, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Concluding Observations*].

²⁹ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at para. 41, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Concluding Observations*].

³⁰ *Reply to List of Issues: Review of Canada’s Third Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN CESCR, 2001, UN Doc. E/C.12/Q/CAN/1 at para. 28, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Reply to List of Issues*].

³¹ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 276, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Canada’s Fourth Report*].

³² *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 276, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Canada’s Fourth Report*].

³³ Canada, National Council of Welfare, *National Council of Welfare Reports, Income for Living?*, vol. 120 (Ottawa: Minister of Public Works and Government Services Canada, 2004) at 3.

- (b) In May 2003, Human Resources Development Canada (as it then was) released MBM details for the year 2000 only. The lack of data from multiple years prevents the analysis of change over time in the MBM. There have been no indications as to how and when the MBM will be updated.³⁴
- (c) MBM data were not calculated for the territories, home to a sizeable Aboriginal population for whom poverty is a pressing concern.³⁵

47. As stated by the National Council of Welfare, “the solutions to poverty do not lie in poverty measures.”³⁶ For example, regardless of which poverty standard is applied, full-time, minimum wage earners still fall under the category of poor or low-income.³⁷ In fact, the MBM from 2001 revealed a higher prevalence of poverty or low-income than did LICOs (13.1% versus 10.9%).³⁸

Using the newly developed Market Basket Measure of low income and/or other reliable measures of poverty, what is the present (disaggregated) incidence of low-income in Canada and how has that incidence changed over the period since 1998?

Why is the federal government continuing to refuse to designate an official poverty line, and how, in the absence of such a measure, can it ensure compliance with article 11 of the Covenant?

Overall Poverty Deepening

48. Despite strong economic growth from 1998 to 2005, poverty in Canada has deepened and more groups are vulnerable to low income. Female lone-parent families have had a significant increase in poverty from 45% in 2001 to 56% in 2005. Poverty for households with children has increased after a few years of decline and now rests at 15% - the second highest rate of any wealthy industrialized country according to a 2005 UNICEF report. By comparison, Denmark has a rate of 2.4%. Immigrant, visible minority and other racialized groups also continue to suffer high rates of income insecurity.

Identify groups which are particularly vulnerable to poverty in Canada and provide data on how the extent and depth of poverty among these groups may have changed

³⁴ Canada, National Council of Welfare, *National Council of Welfare Reports, Income for Living?*, vol. 120 (Ottawa: Minister of Public Works and Government Services Canada, 2004) at 6.

³⁵ National Anti-Poverty Organization, “Market Basket Measure Overview” at 5, online: National Anti-Poverty Organization <<http://www.napo-onap.ca/en/issues/Market%20Basket%20Measure.pdf>>.

³⁶ Canada, National Council of Welfare, *National Council of Welfare Reports, Income for Living?*, vol. 120 (Ottawa: Minister of Public Works and Government Services Canada, 2004) at 60.

³⁷ Canada, National Council of Welfare, *National Council of Welfare Reports, Income for Living?*, vol. 120 (Ottawa: Minister of Public Works and Government Services Canada, 2004) at 60.

³⁸ National Anti-Poverty Organization, “Market Basket Measure Overview” at 3, online: National Anti-Poverty Organization <<http://www.napo-onap.ca/en/issues/Market%20Basket%20Measure.pdf>>.

since 1998. Compare progress in poverty alleviation with reliable measures of average household income.

Adequacy of Social Assistance Rates

49. The value of social assistance benefits has fallen by 23% since 1991.² None of the current provincial and territorial rates allow recipients to live above the poverty line. The National Council of Welfare (NCW) has repeatedly called for provincial and territorial governments to raise rates to at least the poverty line.³ This would help fulfill the Committee's 1998 recommendation that benefits be raised to ensure recipients can afford adequate housing, food, clothing and other basic necessities.
50. In Ontario, one of the countries wealthiest provinces, the poverty line for a single person is \$19, 795. A single person receiving welfare receives \$6,200 creating a poverty gap of -\$13, 595. For a two-parent family in Ontario the poverty line is \$37, 253. Welfare income is \$18, 471 leaving a poverty gap of -\$18, 782. Social justice groups and NAPO have been calling for provincial and territorial governments to raise benefits so they are above the poverty line. Few provinces have actually done this despite the poverty it would alleviate. As a result, the depth of poverty in Canada continues to grow. Social assistance benefits have dropped by 51.1% for a two couple family living in Ontario and 46.1% for a single parent with one child from 1989-2003.

Please provide a comparison of the level of social assistance with the cost of living and/or the poverty line in 1994, when the Canada Assistance Plan was in place, with 2004, in each province, for various categories of households. Provide an explanation for any situations in which recipients are receiving a lower benefit, in real terms in 2004 compared to a decade earlier.

Canada Social Transfer

51. Funding arrangements between federal and provincial/territorial governments no longer set enforceable standards for social programs nor do they protect the rights of social assistance recipients. In 1998, the Committee recommended universal entitlement for social assistance, national standards and legally enforceable rights to social welfare. After removing the legislation that guaranteed national standards for

² "A Historic Day for Child Care," February 18, 2003. Canadian Council on Social Development, www.ccsd.ca/pr/2003/postbudget.html p. 1

³ "Welfare incomes in all provinces were grossly inadequate and in most cases were far less adequate (in 2003) than they were in 1986 or 1989. The NCW is extremely concerned by this trend. The poorest of the poor have fallen behind and the gap between the haves and have nots widened in a country often regarded as the best place to live in the world.": National Council on Welfare, *Welfare Incomes 2003*" Spring 2004, volume #121, Page 59.

social assistance programs (the Canada Assistance Plan) the Federal government put in place a form of funding called the Canada Health and Social Transfer (CHST). This was replaced by the Canada Social Transfer in 2004, which did little to ensure rights formerly contained in CAP. With no social rights standards attached to the this new funding mechanism, provinces are free to force recipients to work for welfare, impose time limits on receiving benefits, allow governments to cut people off benefits and set benefit rates at a level that does not ensure an adequate standard of living.

How does the federal government ensure that provincial programs funded by the Canada Social Transfer comply with the ICESCR. What consideration was given to recommendations for enforceable standards for social assistance programs made by the Committee in its 1998 concluding observations, and will they be implemented with respect to the CST?

National Child Benefit Supplement for Low-Income Families

52. Provinces and territories still take back the money social assistance recipients receive through the National Child Benefit Supplement (NCBS) despite the CESCR's 1998 recommendation that this practice be ended. Only poor families on social assistance cannot keep this child benefit payment. Poor working families are allowed to keep it. This means families who are often most in need do not get this financial help. It is a discriminatory practice that penalizes people for being poor, unemployed and receiving social assistance. Only three provinces, Manitoba, New Brunswick, and Quebec, do not reduce social assistance cheques by the amount of the NCBS. The rest of the provinces and territories clawback the monies either fully or in part. This situation has not changed since Canada's last review.

What has been done by the federal government and the provinces and territories to follow up on the recommendation of the CESCR and other treaty monitoring bodies to eliminate the clawback of the National Child Benefit Supplement from households relying on social assistance.

Canada's Housing Crisis

53. In 1998, the CESCR's described Canada's housing problems as a "national crisis". Despite this, limited concrete action has been taken to address the problem. Canada is still without a national housing strategy, there is a lack of affordable housing in cities across the country and low-income Canadians continue to pay unacceptably high proportions of their income on rent (over 30% of income and higher). Waiting lists for subsidized housing in Canada's largest cities now exceed 5 years. The waiting list for subsidized housing in Toronto, Canada's largest city is 66,000 households. Almost 40% of those households have been on the list from 3-10

years.⁴ According to the Canada Mortgage and Housing Corporation 200,000 Canadians are homeless and 1.7 million households are living in inadequate housing or are paying an unreasonable amount for shelter in 2005. This compares to 1.3 million households in 1990.

54. The Government of Canada has still not adopted or implemented a national housing strategy or policy aimed at reducing homelessness and poverty, despite the fact that in 1998 the Committee on Economic, Social and Cultural Rights (hereinafter ‘the Committee’’) recommended that it do so.³⁹ As a result, within Canada there is no coherent policy of national standards to ensure that the right to adequate housing is enjoyed by all and particularly by poor and disadvantaged groups, such as low-income women.⁴⁰

Please provide current data on the extent of homelessness in Canada and explain any failures on the part of governments to adequately address this national crisis.

Has the Government of Canada adopted a National Housing Strategy or Policy? If it has or if it intends to, what explicit provisions does it include to ensure that it is based on principles of non-discrimination and equality between men and women and meets the needs of the most disadvantaged groups in Canada?

Funding Cuts, Downloading and Ad Hoc Policy Initiatives and Shortcomings

55. Starting in 1984, the Government of Canada began significant cuts to national housing programs, amounting by one estimate to almost \$2 billion over a ten-year period to 1993. In 1993, the Government of Canada cancelled all new spending on affordable housing and ended its comprehensive national housing program.
56. In its 1996 federal budget, the Government of Canada announced a plan to transfer the administration of all federal housing programs to sub-national entities (provinces and territories). Several provinces (including Ontario) have announced further plans to download housing programs to municipalities.
57. In 1998, as part of a government-wide commercialization initiative, the Government of Canada made significant changes to the National Housing Act to limit the role of Canada Mortgage and Housing Corporation in creating programs to support the development of new affordable and social housing.

⁴ <http://action.web.ca/home/housing/alerts.shtml?x=30065>

³⁹ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at par. 46, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>>.

⁴⁰ The lowest income women in Canada are: Aboriginal, single-mothers, in receipt of social assistance, disabled, older, young, newcomers, immigrants and visible minority.

After downloading housing programs to sub-national governments in the 1990s, how does the Government of Canada monitor and report on the actions of sub-national governments to make sure that Canadians have access to good housing at a reasonable cost?

58. In the absence of a national housing strategy, the Government of Canada relies upon a collection of ad hoc housing and homelessness policies and agreements. After almost a decade with no national housing program and no national housing spending, the governing Liberal Party announced plans for a new Affordable Housing Program (AHP) during the 2000 federal election campaign. This included a promise of \$680 million over four years for new affordable housing. While the AHP has funded more than 10,500 affordable homes across Canada, this falls far short of what is needed nationally and in some provinces, particularly Ontario, virtually no new affordable housing units have been created.
59. This promise was incorporated into the Affordable Housing Framework Agreement, a new housing agreement signed by the federal government and all the provinces and territories in November of 2001. Each province and territory then signed a bilateral housing deal with the Government of Canada. While these agreements required the provinces and territories to match the federal dollars, a clause allowed provinces and territories to count contributions from municipalities and third parties as their own contributions. This allowed jurisdictions such as Ontario to download the cost of the provincial matching share to cash-strapped municipalities. These municipalities, in turn, said that they had no money for new housing, so the program became stalled.
60. The bilateral housing deals include an accountability framework and communications protocol that require an annual audited financial report and performance report containing specific details on the amount of money committed, number of new homes created, the rents or ownership costs and other critical information. The Government of Canada has consistently refused to release any of these detailed reports. Only one sub-national government – the Province of Ontario – has released its audited financial reports. They show that there were 24 new affordable units created in 2002, 23 new units in 2003 and 18 new units in 2004.

Please provide data from performance reports under the Affordable Housing Framework Agreement and bilateral housing agreements on the number of housing units created in recent years under these agreements.

61. In February of 2003, the Government of Canada topped up its housing promise by adding an additional \$320 million for a total of \$1 billion (the time period was changed to five years after the initial promise of a four-year program). On December 5, 2003, the then-federal housing minister, Steve Mahoney, sent a letter to the National Housing Homelessness Network indicating that only \$88.48 million out of the total of \$1 billion had been committed to November of 2003. In other

words, in the first two years of the Affordable Housing Program, less than 9% of the dollars had been committed.

62. In January of 2005, the federal housing minister, Joe Fontana, reported that approximately \$200 million of the \$1 billion had been committed. This meant that, after more than three years in a five-year program, only one-fifth of the funding had been committed to new housing.

How much funding of the original \$1 billion promised for housing has actually been committed? How many new homes have been created? What are the rents or ownership costs?

What are the Government of Canada's plans to meet the housing needs of Aboriginal people, especially those living off-reserve in urban, rural, remote and Northern communities?

63. Most NGOs in Canada support the One Percent Solution, which calls for the Government of Canada to commit \$2 billion annually for new social housing, with matching funding from the provinces and territories. The One Percent Solution (based on a calculation that the federal, provincial, territorial and municipal governments used to spend about one percent of their overall budgets on housing – so this amount should be doubled by adding an additional one per cent). The current funding promises (not including a recent \$1.6 billion promised in an NDP-Liberal budget deal) amount to \$200 million per year – or one-fifth of the One Percent Solution.

Why has the Government of Canada not increased federal funding commitments to meet the goal of the One Percent Solution, which calls for \$2 billion in new spending annually?

64. The definition of “affordable” in the Affordable Housing Program is set very high. It uses Canada Mortgage and Housing Corporation average market rents (AMR) in the private sector as a benchmark. But private rents in all parts of Canada are much higher than the actual rents that low income tenant households can afford to pay.
65. For instance, in Toronto – the largest city in Canada – the AMR for Toronto for the typical two-bedroom apartment in 2004 was \$1,052. Based on the standard affordability calculation (30% of annual household income to shelter), a renter household would need an annual income of \$42,000 to actually afford the so-called “affordable” rent. Statistics Canada reports that there are about 100,000 households in Toronto paying more than 50% of their income on rent – pushing them to the brink of homelessness. The average income for these households is about \$16,600 – about 40% of the amount needed to cover the so-called “affordable” rent. For these households, a truly affordable rent would be about \$415. Fully two-thirds of Toronto's tenant households earn less than \$42,000 annually and cannot afford the so-called affordable rents.

Is the Government of Canada's definition of affordable housing truly affordable to low-income renter households?

Homelessness

66. As homelessness has grown worse in Canada in the 1990s, the Government of Canada responded to strong political pressure from national and sub-national non-governmental groups and introduced its National Homelessness Initiative in December of 1999. Initially, about \$753 million was targeted to only ten municipalities. When NGOs (and research studies) noted that homelessness is not simply a big city phenomenon, but is also present in smaller communities, towns, villages, rural, remote and Northern communities, the Government of Canada extended the program to the entire country, without adding any additional funding. So, the original funding was simply allocated more sparingly.

Does the Government of Canada agree that the current allocation of \$753 million to address homelessness is inadequate to meet the real scale of the need for temporary shelter, transitional housing and services for the homeless?

67. The National Homelessness Initiative was initially funded for three years, then renewed in 2003 for an additional three years. It is due to expire in 2006. There was no specific commitment in the 2005 federal budget for additional funding for the homelessness initiative beyond 2006. In the transition period between program renewals, there have been significant administrative issues. For instance, in the transition from the first to the second phase in 2003, a delay in negotiating federal-provincial and federal-territorial protocols meant that services had to be suspended and staff laid-off until the issues could be resolved. This disruption in service has a serious and negative impact on homeless people.

In light of the ongoing need, does the Government of Canada plan to move the National Homelessness Initiative from a temporary program that must be renewed periodically to a permanent program?

68. In the roll-out of the program, there were significant problems encountered in many communities, especially among off-reserve and Aboriginal homelessness and service agencies. The rules make it difficult for Aboriginal groups to access and maintain the funding and services, even though Aboriginal people make up a disproportionately large share of the homeless population in Canada.

Has the Government of Canada worked directly with Aboriginal homelessness and service agencies to make sure that the unique needs of off-reserve Aboriginal homeless people are adequately addressed?

Women, Housing & Homelessness

69. In 1995 the Government of Canada adopted the *Federal Plan for Gender Equality*.⁴¹ Included in this plan is a commitment to ensure that all legislation and policies (post 1995) include an analysis of the potential for different impacts on women and men. This is to be accomplished, in part, by undertaking gender based analyses (GBA) of all policies and legislation. Despite this commitment in writing, the Government of Canada has failed to include GBA in its subsequent housing and homelessness initiatives such as: the Supporting Communities Partnership Initiative (SCPI) (paras. 339 - 340), the Residential Rehabilitation Assistance Program (RRAP) (paras. 331- 332), and the First Home Loan Insurance Program (par. 334). As a result, it is impossible to assess whether any of these programs are actually benefiting those most in housing need such as low-income women.

Could the Government of Canada please provide the Committee with disaggregated statistics to demonstrate the numbers of low-income women and other disadvantaged groups reached by these programs and how each of these programs is actually benefiting low-income women, particularly women in receipt of social assistance?

70. The housing situation of low-income women has only gotten worse since 1998. Low-income women in Canada continue to encounter the most severe housing disadvantage. This is because of several inter-related factors: women's disproportionate levels of poverty; discrimination against particular groups of women; a shortage of adequate and affordable housing; and women are over-represented as sole support parents.⁴²

71. Low-income women's housing in Canada can be characterized as follows:

- (a) **Unaffordable:** Changes to transfer payments between the federal and provincial/territorial governments and reductions to income support programs in 1995 and following, 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.⁴³ In its 1998 review of Canada, the Committee noted the particularly harsh impact that the repeal of CAP and cuts in social assistance rates and social services had on women, particularly single mothers.⁴⁴

⁴¹ Status of Women Canada, available on: http://www.swc-cfc.gc.ca/pubs/066261951X/199508_066261951X_2_e.html

⁴² See for example: Centre for Equality Rights in Accommodation (CERA), *Women and Housing in Canada: Barriers to Equality*, (March 2002); and National Anti-Poverty Organization (NAPO), *Voices: Women, Poverty and Homelessness in Canada*, (May 2004).

⁴³ CERA, *Ibid.*, at pp. 8 – 15, 47 – 54 and NAPO, *Ibid.*, at pp.27- 29.

⁴⁴ *Supra* note 1, at paras. 19, 21, 23.

Please provide data on the affordability of housing for low income households, and particularly for low income women. Outline the extent of measures such as rent supplements or shelter allowances designed to address the affordability gap.

- (b) *Unstable*: Women who experience unemployment, long-term disability or who are pregnant or parenting infants and young children, often do not have a secure income and/or adequate childcare which increases their risk of homelessness.⁴⁵

Please outline concerns about unstable income among low income women arising from unemployment, disability or pregnancy and parenting, and measures that can better protect women in these situations from homelessness.

- (c) *Unavailable and Inaccessible*: In 1993 the federal government withdrew funding for new social housing (except in a few limited circumstances) and froze contributions to existing social housing. This had a particularly adverse impact on low-income women who are most likely to be in need of housing subsidies. As a result, low-income women are even more vulnerable to systemic discrimination in the private market. 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.⁴⁶

Outline measures that have been undertaken to eliminate discriminatory barriers facing low income women, young people, newcomers and other groups in private and social housing. What measures have been undertaken, in particular, to address discriminatory barriers to housing based on income level and on credit and reference requirements which many women, young people and newcomers are unable to meet?

- (d) *Insecure*: In 1998 and 1993 the Committee expressed concern that the lack of housing options for women was forcing many women to stay in abusive relationships and was leading to the apprehension of children by the State.⁴⁷ This remains the case today. The National Working Group on Women and Housing in Canada⁴⁸ has received reports from across the country of the

⁴⁵ CERA, *supra* note 3 at pp. 61 – 67.

⁴⁶ *Ibid.*, at pp. 18 – 21.

⁴⁷ CESCR (1998), *supra*, note 1, at par. 28 and *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1993, UN Doc. E/C.12/1/1993/5 at par. 14 online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>>.

⁴⁸ The National Working Group on Women and Housing in Canada (NWG) is a non-governmental body comprised of a woman representative from every province and territory with expertise in the areas of low-income women's housing and poverty. It is coordinated by CERA – the Centre for Equality Rights in Accommodation. See: www.equalityrights.org/NWG.

difficulties facing women trying to leave abusive relationships. In Indigenous women's communities, for example, (especially those with air access only), the lack of shelters or places within existing shelters means women cannot leave abusive relationships.⁴⁹ Even if these women are lucky enough to access a shelter, it is often a short-term solution. With no long-term housing options women are compelled to return to the abusive situation and then risk the apprehension of their children by child protection agents.

Provide information on the extent to which lack of access to housing limits the ability of women to escape abusive relationships. What measures are contemplated to address this crisis?

72. In 1998 the Committee made a series of recommendations to the Government of Canada with respect to housing and anti-poverty measures that, if acted upon in a meaningful way, could have dramatically improved the housing conditions of low-income women. For example, the Committee recommended that the Government: consider re-establishing a national program with specific cash transfers for social assistance⁵⁰; reinstate or increase social housing programs for those in need⁵¹; improve and properly enforce anti-discrimination legislation in the field of housing⁵²; increase shelter allowances to realistic levels⁵³; amend the National Child Benefit Scheme to prohibit provinces from deducting the benefit from social assistance entitlements⁵⁴; and direct a greater proportion of government budgets to address women's poverty, the poverty of their children, affordable day care, and to provide adequate support for shelters for battered women⁵⁵.

Can the Government of Canada and the provincial and territorial governments please indicate by how much they have increased shelter allowance rates within social assistance programs, as recommended by the CESCR in 1998, and how do shelter allowance rates across the country now compare with average rents as defined by the Canada Mortgage and Housing Corporation?

73. In its Fourth Periodic Report, the Government of Canada proudly reports on the Supporting Communities Partnership Initiative (SCPI, paras. 339 – 340), a \$CDN 305 million initiative to address homelessness. The Government states, “[t]he primary focus of the SCPI is the absolute homeless (those individuals living in emergency shelters, on the streets and/or in places not meant for human habitation),

⁴⁹ Native Women's Association of Canada, *Participant Briefing for the Canada-Aboriginal Peoples Roundtable Sectoral Follow-Up Session on Housing* (24 – 25 November 2004).

⁵⁰ CESCR (1998), *supra*, note 1 at par. 40.

⁵¹ *Ibid.*, at par. 46. (This was also recommended in the Committee's 1993 Concluding Observations on Canada, *supra* note 8, at par. 20).

⁵² CESCR (1998), *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*, at par. 44.

⁵⁵ *Ibid.*, at par. 54.

as they are in the most need.”⁵⁶ Though there are increasing numbers of women living on the streets in Canada, and women and children are the fastest growing group using shelters, street homelessness is not representative of most women’s experiences of homelessness. For women with children, living on the street is an impossible option that is almost certain to mean losing their children. For single women, increased vulnerability to violence and sexual assault make street life something to be avoided at all costs.⁵⁷ And so, while the SCPI is important in addressing the emergency housing needs of women, it does not adequately address the systemic causes of homelessness and on women’s actual lived experiences of homelessness.

74. In its Fourth Periodic Report the Government of Canada indicates it has developed a method for counting the numbers of people using shelters and that it intends to undertake a national street count of homeless persons to “enhance the knowledge base on homelessness” (par. 341). As noted above, counting the numbers of women in shelters and on the street is not a useful insight into women’s homelessness. Shelters and the street are the last resort for women. More useful statistics might include a national picture of the numbers of low-income women waiting for social housing and the numbers of low-income women evicted from their housing, as was recommended by the Committee in its 1993 review of Canada.⁵⁸

Can the Government of Canada and provincial and territorial governments please furnish the Committee with disaggregated statistics regarding: i) the numbers of low income women, including women in receipt of social assistance, currently waiting for social housing in every province and territory and the average length of time these women will wait before receiving social housing; ii) the numbers of other disadvantaged group members currently waiting for social housing in every province and territory and the average length of time they will wait before receiving social housing; and iii) the numbers of low-income women, including women in receipt of social assistance, who have been evicted from their housing across the country in the last 5 years, and the housing conditions of these women at the present time.

75. The Affordable Housing Program, established under the Affordable Housing Framework Agreement, has not applied a Gender-Based Analysis to assess the effectiveness of the program. Noticeably absent from the initiative is the precondition that a minimum proportion of units will be allocated to core need households. Also, the AHP does not include provisions to address widespread discrimination that may prevent women from accessing the more affordable units. Important regulatory legislation such as rent control and rental housing stock

⁵⁶ Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant, UN CESCR, 2004, E/C.12/4/Add.15 at par. 339. Online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>>.

⁵⁷ CERA, *supra* note 3, at pp. 1, 31-32.

⁵⁸ CESCR, *supra* note 8 at par. 19.

protection is being rolled back in many provinces, so there is little assurance that new rental supply will remain affordable or will even remain as rental accommodation. Under the AHP, all that is stipulated is that funded units should be “modest in size and amenities”. In turn, at this time, it cannot be determined whether these new “affordable” units have in fact been allocated to those most in need of affordable housing, such as low-income women.

76. Women are also concerned that the unit size of new rental supply will in fact be too small in terms of the number of bedrooms. Within both the private and social housing sectors, there is an acute shortage of two and three bedroom units for women with children. Under the AHP, a flat amount (\$CDN 25,000) is granted to the developer per unit, regardless of unit size. In turn, developers will likely be inclined to build small units.⁵⁹

Can the Government of Canada and relevant provincial and territorial governments please indicate the accountability mechanisms that have been established under the Affordable Housing Agreements being negotiated between the provinces/territories and the federal government to ensure that any new housing being built under this program is in fact being allocated to those in core housing need, particularly Indigenous women living in urban centres, women in receipt of social assistance and other women living in poverty?

Can the Government of Canada and relevant provincial and territorial governments please indicate the mechanisms they have established to ensure that the units being built under the Affordable Housing Program are actually meeting the housing needs of low income women, in terms, for example of size, and accessibility to services?

77. In its most recent report to the Committee, the Government of Canada states that “while there is no legislation or institution to prevent homeownership in Canada; however, there may be socio-economic impediments to such ownership.” (par. 351). In fact, a key barrier to women’s homeownership is due to a discriminatory policy maintained by the federal government itself, through the Canada Mortgage and Housing Corporation (CMHC), a Crown Corporation. The policy which remains in tact today, disqualifies the majority of single mothers and low-income women from homeownership on the basis of a 32% “gross debt service to income ratio”. Under this policy women are denied access to homeownership on the basis of their income, even if they have been paying more in rent than would be required by mortgage and property tax payments. In this way, the CMHC’s underwriting system about which the Government of Canada boasts (par. 328) is discriminatory.

Housing the Homeless Through Rental Assistance

⁵⁹ CERA, *supra* note 3 at p. 22.

78. Since social housing providers ceased, in the mid-1990s allocating subsidized units on the basis of need, it has become increasingly difficult for homeless people to get access to housing subsidy. Lengthy waiting lists for income mixed social housing tend to favour more stable households who can be contacted many years after applying. Newcomers, young people and most low income renters must rely on private market housing.
79. Under an Emergency Homelessness Pilot Project (EHPP) in Toronto, individuals and families who had been homeless for a considerable length of time, living in a tent city in Toronto, were provided with rent supplements and successfully housed in private market housing. 89% remained housed after 18 months, and the cost of the permanent housing was less than the cost of placing the individuals and families in emergency shelters.⁶⁰ This program made it clear that there are short term, as well as long term solutions to homelessness.

In light of the successful outcomes of the Emergency Homeless Pilot Project in Toronto, what plans do the federal and provincial governments have to expand rent supplement programs targeted to those who are homeless or who are in the greatest need of assistance with paying the rent.

Forced Evictions

80. Most of the evictions leading to homelessness in Canada occur in individual households, and no attention is paid to whether the evictions will lead to homelessness. In Ontario, there are approximately 60,000 evictions a year, but because these evictions are carried out on dispersed households, through legally sanctioned processes, and within a culture in which poor people are made to feel that their inability to pay the rent is a mark of inferior character, they attract little attention.
81. Tenants are routinely evicted with no alternative accommodation, for minimal arrears of rent. In Toronto, 80 per cent of applications to evict for arrears are for less than \$1000, equivalent to an average month's rent.⁶¹ Thousands of adults and children are thus unnecessarily forced into homelessness every year, children displaced from their schools and their physical and emotional health put at risk, because a temporary set-back has left them a little short on their rent. Such actions would certainly appear to be in violation of obligations under ICESCR, enunciated by General Comment No 7 of the CESCR to ensure that evictions should not result in individuals being rendered homeless; but rental tribunals have shown no willingness to consider the ICESCR in exercising their discretion.

⁶⁰ Gloria Gallant, Joyce Brown and Jacques Tremblay, From Tent City to Housing: An Evaluation of the City of Toronto's Emergency Homelessness Pilot Project (June, 2004) online at <<http://www.tdrc.net/tentcity5.pdf>>

⁶¹ Ontario Rental Housing Tribunal (2000), Ontario Rental Housing Tribunal Records Secured from the Ontario Rental Housing Tribunal by the Centre for Equality Rights in Accommodation.

Please explain to what extent tribunals or courts in each province must consider whether a household facing eviction has access to alternative accommodation and whether the eviction may lead to homelessness. What changes are necessary to ensure that evictions are not permitted where they will lead to homelessness?

82. Increasing numbers of households in Canada do not enjoy even these inadequate statutory protections of security of tenure because of the nature of their housing situation. Lower rent accommodation that is not self-contained is usually exempt from both landlord and tenant and human rights legislation. Astonishingly, it is legal in such situations for landlords to evict tenants at whim, or to deny accommodation because of race or any other discriminatory ground. Small motel units that are rented by the week, often relied on by families in winter months, are also usually exempt from security of tenure provisions.

Please outline the extent to which security of tenure is guaranteed in each province to tenants in non-self contained units, motel units and other accommodation that tends to be relied upon by low income or disadvantaged households. What measures are planned to ensure that legal security of tenure is universally enjoyed?

Pay Equity

83. Canada's last review included a recommendation by the Committee that governments ensure the right to equal pay for work of equal value. Pay equity has not been achieved although a federal task force was struck in 2001 to review federal pay equity legislation. The Task Force released a report in 2004 recognizing pay equity as a human right. It also recommended a "proactive" pay equity law but this has yet to be enacted. The report also recognized that wage gaps persist. Women still make only 71% of what men make. The gap is greater for immigrant and visible minority women and women with disabilities while Aboriginal women only make an average income of \$13,300 compared to non-Aboriginal women's average wage of \$19,350 and \$18,200 for Aboriginal men. (CRIA) Progress has taken place but it has been slow.

What percentage of Canadian workers are protected by pay equity legislation? How much has this increased in the last decade? Outline any recommendations made by the federal task force on pay equity which have not been implemented, and explain why.

Childcare

84. Although there have been promising signs of federal interest in a national childcare program such as the allocation of funds, little has been done to put a system in place. One bilateral agreement has been signed between the federal government and the provincial government of Manitoba, and another agreement in principle has been signed between the federal government and the province of Saskatchewan. While this movement is encouraging, bilateral agreements make establishing

national standards for care difficult to put in place and enforce. There are strong concerns that private providers will predominate and national standards for quality and access will be absent. Families and, in particular, women, require access to quality, public and affordable childcare in order to enter the workforce. There are 16,000 families on the waiting list in Canada's largest city, Toronto. Five thousand of those families could begin work immediately if they had childcare.

The Right to Food

85. In previous reviews, the CESCR has emphasized that the right to food is incompatible with a growing reliance of Canadians on foodbanks, recommending that the need for foodbanks must be eliminated. Food bank dependence in Canada, however, has continued to grow. Over 840,000 people on an annual basis seek emergency food assistance (Canadian Association of Food Banks, 2004).
86. Almost 15% of Canadians, or an estimated 3.7 million people, were considered to be living in what is known as a "food-insecure" household" at some point during 2000/01 (Health Reports, Vol. 16, no. 3, May 2005 as reported in the The Daily, Statistics Canada, Tuesday, May 3, 2005).
87. There are serious weaknesses and disconnects between the existence of the right to food in Canada and its full implementation regarding vulnerable peoples and the justiciability of that right (Right to Food Case Study: Canada, Riches, G., Buckingham, D., MacRae, R., Ostry, A., UNFAO, 2004).
88. the Government of Canada (including all provincial and territorial administrations) is requested to ensure that Canada's Action Plan for Food Security ensures full domestic compliance with Canada's obligations to 'respect, protect and fulfill the right to food' (ICESR, 1976), and to support and implement the progressive realization of the right to adequate food in the context of national food security as set out in the Voluntary Guidelines respecting the right to food, newly approved by the UN (2004).
89. What steps has Canada taken domestically to discipline the causes of overproduction and facilitate the adoption of adequate defence mechanisms for use by developing countries to meet their human rights obligations including the human right to adequate food?

[G] The Right to Health

The Rise of Privatization and the Lack of Enforcement

90. In paragraph 54 of the 2001 *Reply to List of Issues*, the Government of Canada assured the CESCR that under the universal medicare system, health care services are rationed according to need, not financial means.⁶² The Government also highlighted a second principle of the medicare system, public administration, which requires that health insurance plans of provinces be administered and operated on a non-profit basis by a public authority accountable to the provincial government. However, in the last few years, privatization has been creeping into the system. Many provinces, most notably BC, Alberta, and Quebec, have expanded the role of private, for-profit companies in the public health system. Contrary to the principle of universality, provincial governments have allowed private companies to provide medical services for a fee, thereby creating a two-tier medical system in which the wealthy can jump the queue and buy faster access to health care. For example, in BC, there are ongoing claims that private surgical clinics are charging clients user fees.⁶³ Private MRI clinics, which are growing in number across Canada, have also been linked to user fees and queue jumping.⁶⁴ Privatization in this form may undermine the right to physical and mental health of the poor, the elderly, the chronically ill, and the disabled by creating a ‘two tier’ system with those who cannot afford to pay being disadvantaged in terms of timeliness and quality of care, especially if the public system becomes unable to maintain adequate staffing and other resources.⁶⁵
91. Provincial governments have also defied the principle of public administration by increasingly contracting out services in the health care system to private companies.⁶⁶ There is a danger that contracting out services in such areas as cleaning, laundry, food, and dietary services will result in lower hygiene and health standards, among other costs to the public. For example, a joint union report in British Columbia revealed heightened concerns over poor cleaning and inadequate infection control in three hospitals which contract out cleaning services. In this way, privatization undermines the right to the highest attainable standard of physical and mental health.

⁶² *Reply to List of Issues: Review of Canada’s Third Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN CESCR, 2001, UN Doc. E/C.12/Q/CAN/1 at para. 54, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Reply to List of Issues*].

⁶³ British Columbia Nurses’ Union, News Release, “Illegal billing: Nurses take BC government to court over private clinics” (21 April 2005), online: British Columbia Nurses’ Union <http://www.bcnu.org/Newsreleases_2005/NR_015_2005.htm>.

⁶⁴ CUPE, “‘Innovation’ exposed: An ongoing inventory of major privatization initiatives in Canada’s health care system, 2003-2005” *CUPE* (12 April 2005) at 4, online: CUPE <http://www.cupe.ca/updir/Revised_Apr_12_2005.pdf>.

⁶⁵ Tammy Horne and Susan Abells, “Public Remedies, Not Private Payments: Quality Health Care in Alberta” (November 2004) at 2-3, online: Parkland Institute <<http://www.ualberta.ca/~parkland/>>.

⁶⁶ CUPE, “‘Innovation’ exposed: An ongoing inventory of major privatization initiatives in Canada’s health care system, 2003-2005” *CUPE* (12 April 2005) at 4, online: CUPE <http://www.cupe.ca/updir/Revised_Apr_12_2005.pdf>.

Please provide data for each province and territory on the number of private, for-profit healthcare facilities receiving public healthcare funding, the nature of the service provided, and the amount of money transferred to those facilities and whether any fees are charged for the services.

What impact is the maintenance or growth in private healthcare having upon the timeliness and quality of care available in the public system, particularly for members of disadvantaged groups?

What steps are being taken to ensure that the contracting-out of health and hospital services does not have a detrimental impact upon the quality of healthcare?

92. In spite of these privatization measures, no province has ever been penalized for contravening one of the five principles of the *Canada Health Act*.⁶⁷ Pursuant to sections 14-15, the federal government has the right to withhold transfer payments for non-compliance with the five principles.⁶⁸ With respect to the rise of privatization measures, the federal government's failure to hold provinces to account stems from its refusal to enforce the reporting obligation of provinces. But more generally, "the federal government tries to resolve issues of non-compliance through political negotiation rather than penalizing the provinces through financial sanctions", as is statutorily mandated.⁶⁹ In April 2002, the provinces and territories (except Quebec) agreed to a Dispute Avoidance and Resolution process, whereby discussions and clarification of issues pertaining to violations of the five principles would take place in ad-hoc, intergovernmental meetings.⁷⁰ Essentially, the process takes non-compliance issues "out of the legislative and public realm and into the backrooms."⁷¹ Clearly, "there is a lack of transparency here, making it extremely difficult to draw a definitive conclusion regarding the extent of federal enforcement activity."⁷²

To what extent does the Dispute Avoidance and Resolution Process implemented in April 2002 ensure compliance of provincial health care programs with the right to health as outlined in General Comment No. 14? What is the mechanism for affected

⁶⁷ Paul Moist "Full of holes: Parliament's annual reports on the Canada Health Act" *CUPE* (7 February 2005), online: CUPE <http://www.cupe.ca/www/57/Full_of_holes_Parliaments>.

⁶⁸ *Canada Health Act*, R.S.C. 1984, c. 6, s. 14-15.

⁶⁹ Colleen M. Flood and Sujit Choudhry, "Commission on the Future of Health Care in Canada, Discussion Paper No. 13, Strengthening the Foundations, Modernizing the Canada Health Act" (August 2002) at 18, online: University of Toronto, Faculty of Law <http://www.law.utoronto.ca/healthlaw/docs/romanow_report.pdf>.

⁷⁰ Health Canada, "Canada Health Act: Overview," online: Health Canada <<http://www.hc-sc.gc.ca/medicare/chaover.htm>>.

⁷¹ Paul Moist "Full of holes: Parliament's annual reports on the Canada Health Act" *CUPE* (7 February 2005), online: CUPE <http://www.cupe.ca/www/57/Full_of_holes_Parliaments>.

⁷² Colleen M. Flood and Sujit Choudhry, "Commission on the Future of Health Care in Canada, Discussion Paper No. 13, Strengthening the Foundations, Modernizing the Canada Health Act" (August 2002) at 18, online: University of Toronto, Faculty of Law <http://www.law.utoronto.ca/healthlaw/docs/romanow_report.pdf>.

individuals or groups to seek remedies to any violations of the right to health under these processes?

The Erosion of Public Health Protection

93. Public health protection in Canada is currently undergoing significant reform that threatens to increase the risk of exposure to unsafe food, drugs, and other health hazards. On May 24, 2005, the Government of Canada launched “Smart Regulation”, a sweeping initiative that proposes to revamp the rules governing the labelling of foods, the approval of drugs, the growth of crops, and the assessment of industrial projects.⁷³ The clear objective of “Smart Regulation is to “ease or reduce the regulatory burden” on corporations to facilitate economic growth.⁷⁴ However, in seeking to harmonize Canadian regulations with those of the U.S., Canada’s largest trading partner, the government appears to be prioritizing corporate profits ahead of its statutory obligation to protect the public health of its citizens.⁷⁵ One example of “Smart Regulation” is Bill C-28, an *Act to Amend the Food and Drugs Act*. The proposed legislation facilitates the adulteration of foods through chemicals, food additives, pesticides, and veterinary drugs, which would otherwise be prohibited under the existing legislation.⁷⁶ As an example of Canada’s shift against the Precautionary Principle toward a more narrow, risk-benefit approach, Health Canada approved the use of six hormones in beef production, in spite of the fact that they are banned in the E.U. and have been linked to cancer.
94. Recent developments, such as the delay in withdrawal of the widely-prescribed arthritis drug Vioxx, suggest that rather than dismantling regulatory safeguards, more stringent safety standards are needed, particularly in the area of drug approval.⁷⁷ The Canadian Medical Association Journal (“CMAJ”) has summarized the weakness of Canada’s drug regulation system as follows: “The built-in bias toward approving drugs without adequate assurance of their safety and with only a fragmentary and underfunded mechanism for postapproval surveillance...is a fundamental and (often literally) fatal flaw.”⁷⁸ Referring to Health Canada and its counterpart in the U.S., CMAJ added: “Their current emphasis on partnerships with

⁷³ Dennis Bueckert “‘Smart Regulation’ seen as weakening food, drug and environmental standards” *Canadian Press* (27 March 2005), online: Canadian Health Coalition <<http://www.healthcoalition.ca/smart-cp.pdf>>.

⁷⁴ Treasury Board of Canada Secretariat, News Release, “Treasury Board President Announces Plan To Renew Federal Regulatory System” (24 March 2005), online: Treasury Board of Canada Secretariat <http://www.tbs-sct.gc.ca/media/nr-cp/2005/0324_e.asp>.

⁷⁵ Canadian Health Coalition, Media Release, “‘Smart Regulation’ puts profits before health” (29 March 2005), online: Canadian Health Coalition <<http://www.healthcoalition.ca/march29.pdf>>.

⁷⁶ Michael McBane “Food Adulteration Bill, a very nasty piece of legislation” *The Hill Times* (25 April 2005), online: Canadian Health Coalition <<http://www.healthcoalition.ca/c-28ht.pdf>>.

⁷⁷ Editorial, “Vioxx: lessons for Health Canada and the FDA” (2005) 172(1) CMAJ, online: Canadian Medical Association Journal <<http://www.cmaj.ca/cgi/content/full/172/1/5>>.

⁷⁸ Editorial, “Vioxx: lessons for Health Canada and the FDA” (2005) 172(1) CMAJ, online: Canadian Medical Association Journal <<http://www.cmaj.ca/cgi/content/full/172/1/5>>.

industry and rapid drug approval conflicts with the public's expectation that these agencies exist to protect them”.⁷⁹

How does the federal government intend to address the concerns of the Canadian Medical Association Journal and others that the current emphasis on partnerships with industry and rapid drug approval conflicts with the public's expectation that these agencies exist to protect them”?

The Lack of Pharmaceutical Coverage

95. In paragraph 57 of the 2001 *Reply to List of Issues*, the CESCR inquired about the degree to which increased reliance on expensive drug therapy was eroding universal access to health care.⁸⁰ In reply, the Government of Canada admitted that “for the working poor without a drug plan, access to these drugs is limited.” The problem stems from the fact that provincial governments are not required to cover medically necessary drugs prescribed outside a hospital. As a result, there are significant disparities across Canada as to who is covered, what drugs are covered, and what deductibles are required.⁸¹ For example, in 2002, the public sector financed only 33.5% of prescribed drugs in New Brunswick, whereas in British Columbia, the public sector covered 50.6% of prescribed drugs.⁸² As the *Romanow Report* observed: “To a very large extent, people’s income, the kind of job they have, and where they live determine what type of access they have to prescription drugs.”⁸³ Such a “fragmented system” belies the principles of universality, accessibility, comprehensiveness, and portability to which Canada’s health care system must adhere. The problem is aggravated by shorter hospital stays, the increasing role of drug therapy in health care, and increased spending on drugs.⁸⁴

⁷⁹ Editorial, “Vioxx: lessons for Health Canada and the FDA” (2005) 172(1) CMAJ, online: Canadian Medical Association Journal <<http://www.cmaj.ca/cgi/content/full/172/1/5>>.

⁸⁰ *Reply to List of Issues: Review of Canada’s Third Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN CESCR, 2001, UN Doc. E/C.12/Q/CAN/1 at para. 57, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Reply to List of Issues*].

⁸¹ Canada, Commission on the Future of Health Care in Canada, *Building on Values: The Future of Health Care in Canada – Final Report* (Ottawa: Health Canada, 2002) at 194 (Commissioner: Roy J. Romanow), online: Health Canada <http://www.hc-sc.gc.ca/english/pdf/romanow/pdfs/HCC_Final_Report.pdf> [*Romanow Report*].

⁸² Canadian Institute for Health Information, *Drug Expenditure in Canada, 1985-2004* (Ottawa: Canadian Institute for Health Information, 2005) at ii, online: Canadian Institute for Health Information <http://secure.cihi.ca/cihiweb/dispPage.jsp?cw_page=AR_80_E&cw_topic=80>.

⁸³ Canada, Commission on the Future of Health Care in Canada, *Building on Values: The Future of Health Care in Canada – Final Report* (Ottawa: Health Canada, 2002) at 194 (Commissioner: Roy J. Romanow), online: Health Canada <http://www.hc-sc.gc.ca/english/pdf/romanow/pdfs/HCC_Final_Report.pdf> [*Romanow Report*].

⁸⁴ *Reply to List of Issues: Review of Canada’s Third Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN CESCR, 2001, UN Doc. E/C.12/Q/CAN/1 at para. 57, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Reply to List of Issues*].

96. The *Romanow Report* recommended a new Catastrophic Drug Transfer, whereby the federal government would reimburse 50% of provincial and territorial drug insurance plans above a threshold of \$1,500 per person per year.⁸⁵ Provincial and territorial governments would then be expected to expand access to prescription drugs or extend coverage. The total cost of the proposed program was estimated at \$1.01 billion a year. The federal government pledged funding for the proposed Catastrophic Drug Transfer in support of the 10-Year Plan to Strengthen Health Care.⁸⁶ In contrast, “none of the provinces has embraced this proposal.”⁸⁷ The 2003 First Ministers’ Health Care Accord made no mention of adopting Romanow’s recommendation.⁸⁸ Rather than discussing or debating the merits of the proposed Catastrophic Drug Transfer, the provincial premiers have pushed their own agenda, calling for the establishment of a national pharmaceutical plan, fully funded and managed by the federal government.⁸⁹ In the midst of this “current climate of distrust and continuous financial haggling between the levels of government”, access to medically necessary drugs remains elusive for some of the most vulnerable groups in Canada.⁹⁰ “It is only when our federal and provincial politicians stop exchanging offers...and counter offers...that Canadians will no longer be forced to substitute hospital care for outpatient prescription drugs or to be denied appropriate care altogether.”⁹¹

Why has no action been taken to implement the recommendation for a Catastrophic Drug Transfer? What groups are most affected by the lack of a pharmaceutical drug plan in Canada and how?

The Lack of Protection of Right to Health from International Trade Agreements

97. International trade agreements have the potential to limit the health care policy choices of federal, provincial, and territorial governments.⁹² The *Romanow Report*

⁸⁵ Canada, Commission on the Future of Health Care in Canada, *Building on Values: The Future of Health Care in Canada – Final Report* (Ottawa: Health Canada, 2002) at 197-198 (Commissioner: Roy J. Romanow), online: Health Canada <http://www.hc-sc.gc.ca/english/pdf/romanow/pdfs/HCC_Final_Report.pdf> [*Romanow Report*].

⁸⁶ Department of Finance Canada, “Budget 2005 – Budget Plan,” online: Department of Finance Canada <<http://www.fin.gc.ca/budget05/bp/bpc3e.htm>>.

⁸⁷ Aslam H. Anis, “National pharmacare: a dog’s tale” (2004) 171(6) CMAJ, online: Canadian Medical Association Journal <<http://www.cmaj.ca/cgi/content/full/171/6/565>>.

⁸⁸ Health Canada, “2003 First Ministers’ Accord on Health Care Renewal,” online: Health Canada <<http://www.hc-sc.gc.ca/english/hca2003/accord.html>>.

⁸⁹ Aslam H. Anis, “National pharmacare: a dog’s tale” (2004) 171(6) CMAJ, online: Canadian Medical Association Journal <<http://www.cmaj.ca/cgi/content/full/171/6/565>>.

⁹⁰ Aslam H. Anis, “National pharmacare: a dog’s tale” (2004) 171(6) CMAJ, online: Canadian Medical Association Journal <<http://www.cmaj.ca/cgi/content/full/171/6/565>>.

⁹¹ Aslam H. Anis, “National pharmacare: a dog’s tale” (2004) 171(6) CMAJ, online: Canadian Medical Association Journal <<http://www.cmaj.ca/cgi/content/full/171/6/565>>.

⁹² Canada, Commission on the Future of Health Care in Canada, *Building on Values: The Future of Health Care in Canada – Final Report* (Ottawa: Health Canada, 2002) at 235 (Commissioner: Roy J. Romanow), online: Health Canada <http://www.hc-sc.gc.ca/english/pdf/romanow/pdfs/HCC_Final_Report.pdf> [*Romanow Report*].

made two recommendations to ensure that “Canada’s health care system will continue to be designed, financed, and organized in a way that reflects Canadians’ values.”⁹³ First, to avoid potential challenges under NAFTA or GATS, federal and provincial governments should ensure that any future health care reforms fall under the definition of “public services” and reinforce the position that Canada’s right to regulate health policy is not subject to claims for compensation from foreign-based companies. Secondly, the federal government should build alliances with other countries to ensure that future international trade agreements explicitly allow the maintenance and expansion of publicly insured, financed, and delivered health care. Neither of these two recommendations was mentioned in the 2003 First Ministers’ Accord on Health Care Renewal.⁹⁴ “It is the public, not-for-profit character of Canada’s health care system that now insulates it from trade challenges.”⁹⁵ The wave of privatization measures weakens such protection.

Why has no action been taken on the recommendations of the Romanow Report aimed at ensuring that trade and investment agreements signed by Canada do not undermine the maintenance and expansion of publicly financed health care?

The Inadequacy of Long-Term Care

98. Long-term care institutions, which include nursing homes and residential care facilities, are designed for individuals who require the availability of 24-hour nursing care and supervision within a secure setting.⁹⁶ In Ontario alone, there are approximately 63,000 senior citizens who live in long-term care institutions.⁹⁷ Across Canada, the number of individuals over 65 years of age is increasing. In 1999, 12.42% of the population was over 65; by 2006, that figure is expected to rise to 13.06%.⁹⁸ A disproportionate number of the senior citizens living in long-term care facilities are among the most vulnerable and frail in society, and have significant care needs.⁹⁹ And yet public sector spending does not appear to be growing at a proportionate rate to Canada’s aging population. In 1999, the

⁹³ Canada, Commission on the Future of Health Care in Canada, *Building on Values: The Future of Health Care in Canada – Final Report* (Ottawa: Health Canada, 2002) at 241 (Commissioner: Roy J. Romanow), online: Health Canada <http://www.hc-sc.gc.ca/english/pdf/romanow/pdfs/HCC_Final_Report.pdf> [*Romanow Report*].

⁹⁴ Health Canada, “2003 First Ministers’ Accord on Health Care Renewal,” online: Health Canada <<http://www.hc-sc.gc.ca/english/hca2003/accord.html>>.

⁹⁵ The United Church of Canada, “Action on Health Care,” online: The United Church of Canada <<http://www.united-church.ca/healthcare/romanowresponse.shtm>>.

⁹⁶ Ontario Ministry of Health and Long-Term Care, “Seniors’ Care: Long-Term Care Homes,” online: Ontario Ministry of Health and Long-Term Care <http://www.health.gov.on.ca/english/public/program/ltc/15_facilities.html>.

⁹⁷ Paul McKay “Ontario’s Nursing Home Crisis – Part 1” *The Ottawa Citizen* (26 April 2003), online: Canadian Health Coalition <<http://www.healthcoalition.ca/mckay.pdf>>.

⁹⁸ Sustainability Reporting Program, “The Sustainability Report: Canada’s Aging Population,” online: Sustainability Reporting Program <http://www.sustreport.org/signals/canpop_age.html>.

⁹⁹ Paul McKay “Ontario’s Nursing Home Crisis – Part 1” *The Ottawa Citizen* (26 April 2003), online: Canadian Health Coalition <<http://www.healthcoalition.ca/mckay.pdf>>.

percentage of public sector health expenditure on long-term care facilities stood at 9.8%. In 2004, that percentage was forecasted to have increased by only 0.2%.¹⁰⁰ Further, in 2002, the daily provincial food allowance per resident in Ontario's 530 long-term care facilities was \$4.49,¹⁰¹ an amount that has increased by only \$0.23 during the past decade. Moreover, in a 2001 consumers' report by PricewaterhouseCoopers comparing nursing care and therapy levels in 11 comparable Canadian provinces, U.S. states, and European countries, Ontario was ranked at the very bottom.¹⁰² One year after the report was issued, the provincial auditor general found no evidence that the issues raised by the report had been addressed. Instead, annual inspections had dropped, contagious disease outbreaks were not being properly tracked, and there was no way of verifying that provincial funds earmarked for seniors' care were allocated as intended.¹⁰³ All of which jeopardizes the right of seniors to physical and mental health.

What steps has the government of Ontario taken to address the concerns raised in the 2001 consumers' report on long term care facilities by PricewaterhouseCoopers?

Please explain how the daily provincial food allowance per resident provided to long-term care facilities in Ontario ensures adequate quantity and quality of food for residents.

Please provide information on public expenditures on long-term care facilities and whether such expenditure is growing in proportion to the growth in the elderly population? If not, please explain.

The Unaddressed Health Problems of the Homeless

99. In 1998 the CESCRC inquired about the particular health problems of the homeless and this remains a significant issue. Mortality rates are a key indicator of the health status of any given population. A 2004 study released by the Canadian Medical Association Journal examined mortality rates in a cohort of homeless women in Toronto from 1995 to 1997, and found that homeless women aged 18 to 44 years were ten times more likely to die than women in the general population.¹⁰⁴ "Given that HIV/AIDS and drug overdose are the most common causes of death in these

¹⁰⁰ Canadian Institute for Health Information, "National Health Expenditure Trends" at 120, online: Canadian Institute for Health Information <http://secure.cihi.ca/cihiweb/dispPage.jsp?cw_page=AR_31_E>.

¹⁰¹ Paul McKay "Ontario's Nursing Home Crisis – Part 1" *The Ottawa Citizen* (26 April 2003), online: Canadian Health Coalition <<http://www.healthcoalition.ca/mckay.pdf>>.

¹⁰² Paul McKay "Ontario's Nursing Home Crisis – Part 1" *The Ottawa Citizen* (26 April 2003), online: Canadian Health Coalition <<http://www.healthcoalition.ca/mckay.pdf>>.

¹⁰³ Paul McKay "Ontario's Nursing Home Crisis – Part 6" *The Ottawa Citizen* (1 May 2003), online: Canadian Health Coalition <<http://www.healthcoalition.ca/mckay.pdf>>.

¹⁰⁴ Angela M. Cheung and Stephen W. Hwang, "Risk of death among homeless women: a cohort study and review of the literature" (2004) 170(8) CMAJ, online: Canadian Medical Association Journal <http://www.cmaj.ca/cgi/content/full/170/8/1243?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&fulltext=cheung+hwang&andorexactfulltext=and&searchid=1115042949187_939&stored_search=&FIRSTINDEX=0&sortspec=relevance&resourcetype=1&journalcode=cmaj>.

women, programs to prevent and treat HIV infection and to improve access to treatment for drug addiction are essential.” In another 2004 study by the Journal of the American Medical Association, mortality rates in a cohort of street youth in Montreal were tracked from January 1995 to September 2000. The mortality rate was reported to be 921 per 100 000 persons, and the leading causes of death were suicide and overdose.¹⁰⁵ In spite of these studies which stress the unique health problems facing homeless individuals in Canada, none of the National Homelessness Initiative programs from 1999 to 2003 were specifically targeted at improving homeless individuals’ access to the health care system.¹⁰⁶

Please provide information on the health of Canada’s homeless population.

Please explain why none of the National Homelessness Initiative programs from 1999 to 2003 have been specifically targeted at improving homeless individuals’ access to the health care system

¹⁰⁵ Elise Roy, Nancy Haley, Pascale Leclerc et al., “Mortality in a Cohort of Street Youth in Montreal” (2004) 292 JAMA 569-574, online: Journal of the American Medical Association <<http://jama.ama-assn.org/cgi/content/abstract/292/5/569>>.

¹⁰⁶ Government of Canada, National Homelessness Initiative, “NHI Programs,” online: Government of Canada <http://www.homelessness.gc.ca/initiative/nhiprograms_e.asp>.

[H] The Right to Education (Article 13)

Unequal Access to Primary Education

100. One policy analyst recently observed: “Each level of education has its barriers. At the primary level it’s the cost of supplies for art and music. For secondary school it’s things like ‘educational’ field trips, which can cost hundreds. At the post-secondary level there’s living costs, books, opportunity cost and, finally, tuition.”¹⁰⁷ For families living in poverty, such costs result in social exclusion.¹⁰⁸
101. Almost all school communities must now engage in fundraising to cover educational costs.¹⁰⁹ “Parent advisory councils [“PACs”] are increasingly becoming full-time fundraising bodies, and schools are increasingly dependent on that service.”¹¹⁰ The median amount raised per elementary school in Ontario increased substantially, from \$5,000 in 1998-1999 to \$8,000 in 2003-2004.¹¹¹ Schools raised funds to cover the costs of basic necessities (such as textbooks, computers, supplies, and library books), field trips, enrichment activities, playground equipment, sports, and music programs.¹¹²
102. The problem stems from “the underfunding of public education and the downloading of costs onto communities.”¹¹³ As the B.C. Confederation of Parent Advisory Councils observed: “If PACs didn’t fundraise, schools today would be lacking in basic supplies as well as many items that greatly enrich the educational experience of the students.”¹¹⁴ Increasing reliance on private fundraising reinforces socioeconomic inequity between schools.¹¹⁵ As People for Education reported, the top 10% of fundraising schools planned to raise \$2 million, while the bottom 10%

¹⁰⁷ Richard Shillington, “Dream of universal education access becomes more distant: Give-away budgets widen education gap for lower-income families and students” online: Straight Goods <<http://www.straightgoods.com/Analyze/0015.shtml>>.

¹⁰⁸ Paula Grosso, *Uprooting Poverty and Planting Seeds for Social Change: The Roots of Poverty Project* (Saskatoon: Printing Services, University of Saskatchewan, 2003) at 33, online: University of Saskatchewan <http://www.usask.ca/cuisr/docs/pub_doc/cuisr_mandate/GrossoFINAL.pdf>.

¹⁰⁹ People for Education, *The 2004 Elementary School Tracking Report* (Toronto: People for Education, 2004) at 69, online: People for Education <<http://www.peopleforeducation.com/tracking/summrpts/elem/2004a/ElemTracking04.pdf>>.

¹¹⁰ Erika Shaker, “Bake Sales & Buying Teachers: Fundraising Replaces Funding” *Our Times* (October-November 2003), online: Our Times <http://www.ourtimes.ca/features/03_oct_nov.html>.

¹¹¹ People for Education, *The 2004 Elementary School Tracking Report* (Toronto: People for Education, 2004) at 69, online: People for Education <<http://www.peopleforeducation.com/tracking/summrpts/elem/2004a/ElemTracking04.pdf>>.

¹¹² People for Education, *The 2004 Elementary School Tracking Report* (Toronto: People for Education, 2004) at 70-71, online: People for Education <<http://www.peopleforeducation.com/tracking/summrpts/elem/2004a/ElemTracking04.pdf>>.

¹¹³ Erika Shaker, “Bake Sales & Buying Teachers: Fundraising Replaces Funding” *Our Times* (October-November 2003), online: Our Times <http://www.ourtimes.ca/features/03_oct_nov.html>.

¹¹⁴ Erika Shaker, “Bake Sales & Buying Teachers: Fundraising Replaces Funding” *Our Times* (October-November 2003), online: Our Times <http://www.ourtimes.ca/features/03_oct_nov.html>.

¹¹⁵ Erika Shaker, “Bake Sales & Buying Teachers: Fundraising Replaces Funding” *Our Times* (October-November 2003), online: Our Times <http://www.ourtimes.ca/features/03_oct_nov.html>.

expected to raise only \$94,000.¹¹⁶ In other words, the top 10% of schools raised as much money as the bottom 58%.¹¹⁷

Please provide any data available from provinces on the extent to which private fundraising by parents and communities is replacing public funding for primary school education, and the extent to which this is exacerbating socio-economic inequality. Report on any provincial commitments or strategies to address this problem.

Literacy Issues in Youth, Adult, and Immigrant Populations

103. In the 2001 *Reply to List of Issues*, the Government of Canada was asked to account for the results of the International Adult Literacy Survey (IALS) conducted in 1994.¹¹⁸ The IALS revealed that almost half of Canadians lack the minimal literacy skills necessary to perform basic activities. The Government acknowledged this particular finding, but cited strong literacy results overall, crediting the 1987 establishment of the National Literacy Secretariat (“NLS”). The Government was unable to report the number of Canadians receiving literacy training.
104. In *Canada’s Fourth Report*, the Government highlighted the NLS’s increased annual budget of \$29.3 million in 1997-1998.¹¹⁹ The results of the IALS Survey, *Literacy in the Information Age*, were also reported.¹²⁰ The Government noted that though Canada outranked the U.S., the U.K., Australia, and New Zealand on all three literacy scales, the discrepancy between people with low and high literacy skills was far larger in Canada than in European countries. There is a significant literacy gap affecting secondary students for whom English is a second language and special needs students.¹²¹ There is also a literacy gap among adult and immigrant populations. What is known from the 1994 IALS is that almost half of

¹¹⁶ People for Education, *The 2004 Elementary School Tracking Report* (Toronto: People for Education, 2004) at 69, online: People for Education

<<http://www.peopleforeducation.com/tracking/summrpts/elem/2004a/ElemTracking04.pdf>>.

¹¹⁷ People for Education, *The 2004 Elementary School Tracking Report* (Toronto: People for Education, 2004) at 69, online: People for Education

<<http://www.peopleforeducation.com/tracking/summrpts/elem/2004a/ElemTracking04.pdf>>.

¹¹⁸ *Reply to List of Issues: Review of Canada’s Third Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN CESCR, 2001, UN Doc. E/C.12/Q/CAN/1 at para. 60, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Reply to List of Issues*].

¹¹⁹ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 485, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Canada’s Fourth Report*].

¹²⁰ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 486, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Canada’s Fourth Report*].

¹²¹ These gaps are evident in data relating to Ontario secondary school students, for instance: EQAO, “Ontario Secondary School Literacy Test, October 2000, Report of Provincial Results” online: EQAO <<https://eqaoweb.eqao.com/G10Marks/PBSRptPDF.asp>>.

the Canadian population 16 years of age and older had low literacy skills in all three literacy domains.¹²² Furthermore, the average literacy and numeracy scores of immigrants were significantly below the average scores of non-immigrants with equivalent educational credentials and other observable characteristics.¹²³

105. To address these gaps, the Standing Committee on Human Resources Development and the Status of Persons with Disabilities recommended in June 2003 that the NLS's annual budget be increased from \$28.2 million to \$50 million.¹²⁴ In response to the Standing Committee's report, the Government of Canada confirmed that the NLS's annual budget would remain at \$30 million per year.¹²⁵ With respect to the effectiveness of existing literacy programs, a 2001 study revealed that "less than 10 per cent of Canadians who could benefit from literacy upgrading programs actually enrol. Research indicates that barriers like job or money problems, lack of childcare and transportation are some of the reasons preventing people from enrolling."¹²⁶

Why did the Government of Canada not follow the 2003 recommendation of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities to increase the annual budget of the National Literacy Secretariat?

Why are literacy programs not more effective and what is the government doing to address the causes of ineffectiveness?

Early Childhood Education and Care

106. In *Canada's Fourth Report*, the federal government cited four initiatives in the area of early childhood education and care ("ECEC"): new investments under the Early Childhood Development Agreement, continued support of research and development projects, continued support of the First Nations/Inuit Child Care

¹²² Parliament of Canada, Standing Committee on Human Resources Development and the Status of Persons with Disabilities, "Raising Adult Literacy Skills: The Need for a Pan-Canadian Response" (June 2003) at 7, online: Parliament of Canada <<http://www.parl.gc.ca/InfoComDoc/37/2/HUMA/Studies/Reports/humarp03/humarp03-e.pdf>>.

¹²³ Statistics Canada, "Study: The Effect of Literacy on Immigrant Earnings" (14 July 2004), online: Statistics Canada <<http://www.statcan.ca/Daily/English/040714/d040714b.htm>>.

¹²⁴ Parliament of Canada, Standing Committee on Human Resources Development and the Status of Persons with Disabilities, "Raising Adult Literacy Skills: The Need for a Pan-Canadian Response" (June 2003) at 41, online: Parliament of Canada <<http://www.parl.gc.ca/InfoComDoc/37/2/HUMA/Studies/Reports/humarp03/humarp03-e.pdf>>.

¹²⁵ Government of Canada, *Government of Canada Response to "Raising Adult Literacy Skills: The Need for a Pan-Canadian Response"* at 3, online: Depository Services Program <<http://dsp-psd.communication.gc.ca/Collection/RH64-25-2003E.pdf>>.

¹²⁶ ABC Canada, "Literacy Facts," online: ABC Canada <http://www.abc-canada.org/literacy_facts/index.asp>.

Program (“FNICC”), and an increase in the Child Care Expense Deduction in the personal income tax system.¹²⁷

107. In October 2004, the OECD review team released its report on the state of ECEC in Canada, having focused on the four provinces of B.C., Saskatchewan, Manitoba, and P.E.I. during its September/October 2003 visit.¹²⁸ Though the OECD review team acknowledged the “significant strengths” which exist in Canada, it also provided the following critiques:

- The national and provincial policy for ECEC is “still in its initial stages. Care and education are still treated separately and coverage is low compared to other OECD countries. Over the coming years, significant energies and funding will need to be invested in the field to create a universal system in tune with the needs of a full employment economy, with gender equity and with new understandings of how young children develop and learn.”¹²⁹
- During the 1990s, a period in which the capacity of Canadian parents to provide ECEC for their children diminished, growth in ECEC services slowed significantly.¹³⁰ “The result is a patchwork of uneconomic, fragmented services, within which a small ‘child care’ sector is seen as a labour market support, often without a focussed child development and education role.”¹³¹ In contrast, during the same period, other OECD nations have progressed towards publicly-managed, universal ECEC systems.¹³²
- Public spending in the area of ECEC should be increased to address the following shortcomings: outside of Quebec, less than 20% of young children find a place in a regulated ECEC centre (compared to 78% for Denmark); there are long waiting lists in several jurisdictions, including in centres which cater to children with special needs; the quality of centres has stagnated across the board; the level of public expenditure per child care place was disproportionately low at \$3,200, relative to \$6,120 per child in kindergarten and \$15,000 per student at university; and outside of Quebec, parents cover 50% of child care costs, compared to the 15% in Finland.¹³³

¹²⁷ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 252-254, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Canada’s Fourth Report*].

¹²⁸ OECD, Directorate for Education, *Canada, Country Note, Early Childhood Education and Care Policy* (Paris: OECD, 2004) at 5, online: OECD <<http://www.oecd.org/dataoecd/42/34/33850725.pdf>>.

¹²⁹ OECD, Directorate for Education, *Canada, Country Note, Early Childhood Education and Care Policy* (Paris: OECD, 2004) at 6, online: OECD <<http://www.oecd.org/dataoecd/42/34/33850725.pdf>>.

¹³⁰ OECD, Directorate for Education, *Canada, Country Note, Early Childhood Education and Care Policy* (Paris: OECD, 2004) at 6, online: OECD <<http://www.oecd.org/dataoecd/42/34/33850725.pdf>>.

¹³¹ OECD, Directorate for Education, *Canada, Country Note, Early Childhood Education and Care Policy* (Paris: OECD, 2004) at 6, online: OECD <<http://www.oecd.org/dataoecd/42/34/33850725.pdf>>.

¹³² OECD, Directorate for Education, *Canada, Country Note, Early Childhood Education and Care Policy* (Paris: OECD, 2004) at 6, online: OECD <<http://www.oecd.org/dataoecd/42/34/33850725.pdf>>.

¹³³ OECD, Directorate for Education, *Canada, Country Note, Early Childhood Education and Care Policy* (Paris: OECD, 2004) at 7-8, online: OECD <<http://www.oecd.org/dataoecd/42/34/33850725.pdf>>.

- The OECD review team also noted that “Aboriginal children and children of lone parents are particularly vulnerable, as their parents live more frequently on welfare, or work irregular hours in low paid jobs.”¹³⁴
- Finally, the OECD review team observed that the “design standards of child care premises in Canada seemed poor, partly a reflection of many makeshift arrangements in low-rent buildings.”¹³⁵

108. In response to the OECD report, the federal government promised \$5 billion over five years to start building a framework for an Early Learning and Child Care initiative in collaboration with provinces and territories.¹³⁶ On April 29, 2005, the federal government signed two bilateral agreements with Manitoba and Saskatchewan worth \$26 million and \$22 million, respectively, to establish a publicly-managed, universal ECEC system in each province.¹³⁷ However, as one ECEC advocate cautioned: “Until the budget is passed, Manitoba doesn’t get a dime, so that means all those parents on waiting lists are going to keep waiting.”¹³⁸

What provisions are being put in place in the new national Early Childhood Education and Care program to address concerns identified in the 2004 OECD report, in particular, to ensure national standards and to meet the needs of children living in poverty, aboriginal children and children of newcomers?

Increasing Costs of Post-Secondary Education

109. In its 1998 *Concluding Observations*, the CESCR expressed concern over the dramatic increase in tuition fees for post-secondary education in Canada, noting the barrier it creates for those who wish to attend university in the absence of a loan or grant. The CESCR also noted with concern the significant increase in the average student debt upon graduation.¹³⁹

¹³⁴ OECD, Directorate for Education, *Canada, Country Note*, Early Childhood Education and Care Policy (Paris: OECD, 2004) at 10, online: OECD <<http://www.oecd.org/dataoecd/42/34/33850725.pdf>>.

¹³⁵ OECD, Directorate for Education, *Canada, Country Note*, Early Childhood Education and Care Policy (Paris: OECD, 2004) at 12, online: OECD <<http://www.oecd.org/dataoecd/42/34/33850725.pdf>>.

¹³⁶ Department of Finance Canada, “Budget 2005 – Budget Plan,” online: Department of Finance Canada <<http://www.fin.gc.ca/budget05/bp/bpc4ae.htm>>.

¹³⁷ Childcare Resource and Research Unit, “2 provinces join Ottawa’s child-care plan” (29 April 2005), online: Childcare Resource and Research Unit <http://action.web.ca/home/crru/rsrscs_crru_full.shtml?x=75917>.

¹³⁸ Childcare Resource and Research Unit, “2 provinces join Ottawa’s child-care plan” (29 April 2005), online: Childcare Resource and Research Unit <http://action.web.ca/home/crru/rsrscs_crru_full.shtml?x=75917>.

¹³⁹ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at para. 39, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Concluding Observations*].

110. In the 2001 *Reply to List of Issues*, the CESCR again raised the issues of increasing tuition fees and high student debt.¹⁴⁰ The federal government confirmed these trends to be true, but reiterated that the regulation of tuition fees is a provincial responsibility. The Government highlighted its contribution to post-secondary education through the CHST, the Canada Student Loans Program (“CSLP”), tax deductibles, interest relief, the Canadian Millennium Scholarship Foundation, and the Post-Secondary Education (“PSE”) Program for First Nations and Inuit. *Canada’s Fourth Report* reiterated the federal government’s commitment to these programs.¹⁴¹
111. In spite of these measures, accessibility to post-secondary education continues to be undermined by the steady rise of tuition fees in Canada. From 1999-2000 to 2004-2005, average undergraduate tuition fees in Canada increased by 25.4%.¹⁴² Consequently, the level of student debt has increased as well. University graduates from 2000 owed 30% more than graduates from 1995 and 76% more than graduates from 1990, while college graduates from 2000 owed 21% more than graduates from 1995 and 76% more than graduates from 1990.¹⁴³ The Canadian Federation of Students refutes the theory that the adverse impact of rising tuition fees on low-income students is offset by increasing student financial assistance.¹⁴⁴ The student advocacy group cited an Ontario study in which the deregulation of tuition fees for medical school resulted in a 50% decline in the participation of low-income students.

Please provide data on any increase in tuition fees and average student debt for post-secondary education since 1998. How have increases affected the participation of low-income groups in post-secondary education? And what measures are planned to ensure universal accessibility to post-secondary education?

Aboriginal Education

112. In the 2001 *Reply to List of Issues*, the Government of Canada was asked what steps it had taken to ensure post-secondary education remained equally accessible to all,

¹⁴⁰ *Reply to List of Issues: Review of Canada’s Third Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN CESCR, 2001, UN Doc. E/C.12/Q/CAN/1 at para. 59, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Reply to List of Issues*].

¹⁴¹ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 468-478, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Canada’s Fourth Report*].

¹⁴² Statistics Canada, “University Tuition Fees,” *The Daily* (2 September 2004), online: Statistics Canada <<http://www.statcan.ca/Daily/English/040902/d040902a.htm>>.

¹⁴³ Statistics Canada, “National Graduates Survey: Student Debt,” *The Daily* (26 April 2004), online: Statistics Canada <<http://www.statcan.ca/Daily/English/040426/d040426a.htm>>.

¹⁴⁴ Canadian Federation of Students, *Lower Tuition Fees for Lower Student Debt* (Ontario: Canadian Federation of Students, 2004) at 7, online: Canadian Federation of Students <http://www.cfs-fcee.ca/reviewrae/english/files/federation_submission.pdf>.

regardless of income.¹⁴⁵ With respect to the Aboriginal population, which suffers disproportionately higher rates of poverty, the federal government promoted the PSE Program, available to eligible Treaty and status Indians and Inuit. The PSE Program assists with the cost of tuition fees, books, and travel expenses. Spending on the PSE Program rose slightly from \$263 million in 1995 to \$305 million in 2004-2005.¹⁴⁶ In *Canada's Fourth Report*, the Government of Canada reiterated the same initiatives, emphasizing that educational reform continues to be one of the main thrusts of Canada's Aboriginal Action Plan.¹⁴⁷

113. In November 2004, the Auditor General reported on the status of Aboriginal education in Canada and the government programs designed to address the unique needs of Aboriginal students. Her findings reveal that the federal government has failed to significantly improve the education status of Aboriginal students in Canada.
114. Only limited progress has been made in addressing most of the issues and recommendations raised in earlier reports.¹⁴⁸ The Auditor General expressed uncertainty as to whether funding for Aboriginal education was sufficient and whether the results were in line with the resources provided.¹⁴⁹
115. A significant education gap continues to exist between First Nations on reserves and Canadians as a whole.¹⁵⁰ The proportion of First Nations people living on reserves with at least a high-school diploma increased from 36.6% in 1996 to 41.4% in 2001, representing an increase of 4.8%. Among Canadians overall, that proportion increased by 3.5% in the same period. So the gap between First Nations people on reserves and Canadians as a whole narrowed by 1.3% during that period. However, the rate of improvement slowed for First Nations people compared to the previous five-year period. The rate of improvement was slightly higher in the Canadian population. Based on this pace, the Auditor General predicted that it would now take 28 years (2029) for First Nations living on reserves to reach the same educational attainment level as the Canadian population.

¹⁴⁵ *Reply to List of Issues: Review of Canada's Third Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN CESCR, 2001, UN Doc. E/C.12/Q/CAN/1 at para. 59, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Reply to List of Issues*].

¹⁴⁶ Indian and Northern Affairs Canada, "Fact Sheet – Education," online: Indian and Northern Affairs Canada <http://www.ainc-inac.gc.ca/nr/prs/s-d2004/02527bbk_e.html>.

¹⁴⁷ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 462-467, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Canada's Fourth Report*].

¹⁴⁸ Canada, Office of the Auditor General, *Report of the Auditor General of Canada – November 2004* (Ottawa: Office of the Auditor General, 2004) at para. 5.1, online: Office of the Auditor General <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/04menu_e.html>.

¹⁴⁹ Canada, Office of the Auditor General, *Report of the Auditor General of Canada – November 2004* (Ottawa: Office of the Auditor General, 2004) at para. 5.1, online: Office of the Auditor General <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/04menu_e.html>.

¹⁵⁰ Canada, Office of the Auditor General, *Report of the Auditor General of Canada – November 2004* (Ottawa: Office of the Auditor General, 2004) at para. 5.30, online: Office of the Auditor General <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/04menu_e.html>.

116. The consequences of failing to narrow the education gap in a timely matter are significant.¹⁵¹ First, “[e]ducation is critical to improving the social and economic strength of First Nations individuals and communities to a level enjoyed by other Canadians.”¹⁵² Second, the Registered Indian population is younger than the overall Canadian population; 40% is under 19, compared with 25%.¹⁵³ Third, the population of First Nations on reserves is expected to grow at a disproportionately high rate than the Canadian population, from 445,000 in 2003 to 700,000 by 2021. “The need to close the education gap is even more urgent today given the current and projected demographics in First Nations communities.”
117. Because most First Nations communities have less than 500 residents, their schools have difficulty making available a range of educational services.¹⁵⁴
118. A better management and accountability framework is needed to ensure that funds are allocated equitably and for the purpose intended.¹⁵⁵

Please provide information on the education gap between first nations people on reserve and other in Canada. What measures are contemplated to address this gap?

Special Needs

119. Students with special needs have an equal right to free, primary education as do other students. In Ontario, the *Education Act* defines “exceptional pupils” as those whose educational needs are not met through regular classroom practices because of their behavioural, communication, intellectual, physical or multiple exceptionalities.¹⁵⁶ Schools are statutorily required to provide exceptional pupils with special education programs and services that are appropriate for their needs. It is the responsibility of the Identification, Placement, and Review Committee (“IPRC”) to identify and place exceptional pupils.

¹⁵¹ Canada, Office of the Auditor General, *Report of the Auditor General of Canada – November 2004* (Ottawa: Office of the Auditor General, 2004) at para. 5.32, online: Office of the Auditor General <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/04menu_e.html>.

¹⁵² Canada, Office of the Auditor General, *Report of the Auditor General of Canada – November 2004* (Ottawa: Office of the Auditor General, 2004) at para. 5.9, online: Office of the Auditor General <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/04menu_e.html>.

¹⁵³ Canada, Office of the Auditor General, *Report of the Auditor General of Canada – November 2004* (Ottawa: Office of the Auditor General, 2004) at para. 5.32, online: Office of the Auditor General <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/04menu_e.html>.

¹⁵⁴ Canada, Office of the Auditor General, *Report of the Auditor General of Canada – November 2004* (Ottawa: Office of the Auditor General, 2004) at para. 5.7, online: Office of the Auditor General <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/04menu_e.html>.

¹⁵⁵ Canada, Office of the Auditor General, *Report of the Auditor General of Canada – November 2004* (Ottawa: Office of the Auditor General, 2004) at para. 5.3, online: Office of the Auditor General <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/04menu_e.html>.

¹⁵⁶ Ministry of Education, “An Introduction to Special Education in Ontario,” online: Ministry of Education <<http://www.edu.gov.on.ca/eng/general/elemsec/speced/ontario.html>>.

120. One recent issue related to children with special needs is the claim (currently being investigated by the Ombudsman of Ontario) that parents of children with severe disabilities have been forced to relinquish custody of their children to Children's Aid Societies so that they may access costly special needs supports.¹⁵⁷ The Ombudsman stated that his office received a total of over 60 complaints from families in the same predicament.¹⁵⁸ One parent of a disabled child suggested that as many as 3,000 families have been compelled to give up custody of a child to enable access to special needs care. This is the third time since 2001 that the matter has been examined by the Ombudsman of Ontario. Furthermore, the provincial government was warned three months ago by a child advocacy group that 30 families faced imminent risk of losing their disabled child because they could not otherwise access special needs treatment. Thus, the Ombudsman's report, expected as early as the end of May 2005, and any recommendations which may stem from it, are long overdue and should be acted upon immediately.

Please provide and explain any evidence that families have been compelled to give up custody of a child to enable the child to get access to special needs care?

¹⁵⁷ Karen Howlett "Placing disabled children in custody fault of former government, minister says" *The Globe and Mail* (27 April 2005), online: The Globe and Mail <<http://www.theglobeandmail.com/servlet/ArticleNews/TPStory/LAC/20050427/CHILDREN27/TPNational/Canada>>.

¹⁵⁸ Karen Howlett "Ontario told months ago that parents risked losing custody of disabled children" *The Globe and Mail* (2 May 2005) A6, online: Ombudsman Ontario <http://www.ombudsman.on.ca/PR_details.asp?PRID=95>.

[I] Aboriginal

Article 1: The Rights of Self-Determination, Self-Government and Control over Resources

121. The Canadian Royal Commission on Aboriginal Peoples (“RCAP”), which reported in 1996, recommended that a number of steps be taken by the government of Canada to realize the rights of self-determination, self-governance and control over land and resources for aboriginal nations within Canada.¹⁵⁹ The government of Canada has at best only partially implemented the recommendations. In its review of the 3rd report, the CESCR expressed great concern over Canada’s failure to implement RCAP, specifically the recommendations to cease pursuing policies which violate Aboriginal treaty obligations and promote the extinguishment, conversion or giving up of Aboriginal rights and title, and urged Canada to “act urgently” with respect to implementing the recommendations of RCAP.¹⁶⁰ The recent report of the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People identifies a number of continuing failings:
122. **Insufficient progress in finalising land claims agreements:** the government signed eight comprehensive land claim agreements between 1994 and 1999, bringing the total to 14 at the end of that period,¹⁶¹ but it has only signed 2 treaties since then and over 60 negotiations remain unfinished;¹⁶²
123. **Insufficient transfer of land and resources:** with a few exceptions, the amount of land the federal government has allocated toward Aboriginal communities is very small. South of the 60th parallel, Aboriginal lands comprise only one-half percent of Canada’s total land mass and is insufficient for future growth and development. For the most part, the government has also failed to address Métis land claims, leaving the Métis without a land and resource base and no way of settling their grievances at the national level;¹⁶³

¹⁵⁹ Canada, Royal Commission on Aboriginal Peoples, *People to People, Nation to Nation: Highlights from the Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Minister of Supply Services Canada, 1996), online: Indian and Northern Affairs Canada <http://www.ainc-inac.gc.ca/ch/rcap/rpt/index_e.html> [RCAP].

¹⁶⁰ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 18, 43, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>>.

¹⁶¹ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 106, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>>.

¹⁶² Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN CHR, 61st Sess., UN Doc. E/CN.4/2005/88/Add. 3 (2004) 44 [Report of the Special Rapporteur].

¹⁶³ Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN CHR, 61st Sess., UN Doc. E/CN.4/2005/88/Add. 3 (2004) 46 [Report of the Special Rapporteur].

124. **Incomplete implementation of new agreements:** the Auditor General of Canada regards the performance of Indian and Northern Affairs Canada (INAC) with respect to the implementation of finalised treaties as incomplete and needing improvement;¹⁶⁴
125. **Continuing insistence on extinguishment of rights:** modern treaties or land claims agreements continue to be framed so as to suggest that Aboriginal rights are being extinguished in exchange for final compensation;¹⁶⁵
126. **Delay in resolving complaints under historic treaties:** 1,300 claims for violations of specific treaty rights have been filed with the Government of Canada, but only 115 are being negotiated, 444 have been resolved, and 38 are being reviewed by the Indian Specific Claims Commission, a mechanism for appeal.¹⁶⁶
127. Earlier this year, at a Special Chiefs Assembly, First Nations Chiefs agreed on a strategy to fill the self-government implementation gap identified by the Auditor General.¹⁶⁷ The strategy, which includes RCAP recommendations almost a decade old, includes a proposal for a formal political accord between the First Nations and Canada, a joint framework to recognize and implement First Nations government, and the elimination of the Department of Indian Affairs, to be replaced by a new Ministry of First Nations-Crown Relations and an Aboriginal and Treaty Rights Tribunal. Whether the Government of Canada will act on these recommendations remains to be seen.

In light of the statement in the 4th Periodic Report that the government has withdrawn the requirement for an express reference to extinguishment of Aboriginal rights and title in treaties and agreements, please explain the effect of terms requiring a ‘release’ certain rights.

What steps are governments of Canada taking to address the failings identified in the report on Canada of the UN Special Rapporteur on Indigenous Peoples, particularly with respect to the needs to accelerate the process for finalising comprehensive land claims agreements and treaties; transfer more land and other resources; address Metis land claims; properly implement existing agreements; and, resolve outstanding complaints under historic treaties?

¹⁶⁴ Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN CHR, 61st Sess., UN Doc. E/CN.4/2005/88/Add. 3 (2004) 69 [Report of the Special Rapporteur].

¹⁶⁵ Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN CHR, 61st Sess., UN Doc. E/CN.4/2005/88/Add. 3 (2004) 19-20, 91 [Report of the Special Rapporteur].

¹⁶⁶ Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN CHR, 61st Sess., UN Doc. E/CN.4/2005/88/Add. 3 (2004) 45 [Report of the Special Rapporteur].

¹⁶⁷ Assembly of First Nations, “First Nations Chiefs Unite to Chart Path to Self-Government at Special Chiefs Assembly in Vancouver,” online: Assembly of First Nations <<http://www.afn.ca/article.asp?id=621>>.

Article 2: Non-Discrimination

Prohibiting Discrimination under the Indian Act

128. The *Indian Act* is the primary framework for defining the social, political, legal and economic rights of “Status Indians” in Canada. The Canadian Human Rights Commission (“Commission”) is barred from dealing with discrimination complaints related to the *Indian Act* by s. 67 of the *Canadian Human Rights Act* (“*Human Rights Act*”).¹⁶⁸ Initially intended as a temporary provision, s. 67 has now been part of the *Human Rights Act* for 28 years. Repeal of this provision was recommended by RCAP and the Special Rapporteur. In 2003, the Government of Canada finally introduced a bill that included repeal of s. 67, but Parliament was dissolved before it could be passed and the new parliament has not taken any steps towards repeal.

Does the government of Canada remain committed to repealing s. 67 of the Canadian Human Rights Act and what steps is it planning to take to do so?

Article 11: The Right to an Adequate Standard of Living

Persistent Disproportionate Poverty

129. Poverty has long been identified as a pressing concern for Aboriginal communities in Canada. During the previous review, the government of Canada acknowledged that Aboriginal peoples are more vulnerable to poverty than the general population¹⁶⁹ and the CESCR noted Canada’s lack of progress in alleviating social and economic deprivation among Aboriginal people.¹⁷⁰ In its 4th periodic report Canada highlights the Aboriginal Human Resources Development Strategy and the First Nations National Child Benefit as its response to the problem of Aboriginal poverty.¹⁷¹ These responses are clearly inadequate. The 2001 Canadian census revealed that some 31% of aboriginal households were classified as low income, compared to only 12% of non-aboriginal households.¹⁷² Although the incidence of poverty among both groups had declined in absolute terms since the 1996 census,

¹⁶⁸ Canadian Human Rights Commission, “Submission of the Canadian Human Rights Commission to the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources, Bill C-7: First Nations Governance Act,” online: Canadian Human Rights Commission <http://www.chrc-ccdp.ca/legislation_policies/submission-en.asp#BILL%20C-31>.

¹⁶⁹ *Reply to List of Issues: Review of Canada’s Third Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN CESCR, 2001, UN Doc. E/C.12/Q/CAN/1 48, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Reply to List of Issues*].

¹⁷⁰ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 17, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>>.

¹⁷¹ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 279, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>>.

¹⁷² Statistics Canada, *Census 2001*, Topic-based Tabulations, Aboriginal Peoples of Canada, Cat. No. 97F0011XCB2001047 (available online: <http://www12.statcan.ca/english/census01/home/Index.cfm>).

aboriginal households remained more than twice as likely to be low-income as non-aboriginal households.¹⁷³ Aboriginal peoples living in urban areas are still twice as likely as non-Aboriginals to live in poverty. Some 52.1% of all Aboriginal children are poor and they are four times more likely than non-Aboriginal children to be hungry.¹⁷⁴ Over the period 1996 to 2000, off-reserve Aboriginal people have persistently comprised over 5% of the total low income population.¹⁷⁵ As the Canadian Council for Social Development has pointed out, not only is there still no specific urban aboriginal anti-poverty strategy, but Aboriginal peoples also suffer disproportionately from the lack of more general anti-poverty measures, such as a national day care strategy, a national initiative to raise the minimum wage in all jurisdictions above the poverty line, and a national welfare standard above the poverty line.¹⁷⁶

Why have the programs introduced to alleviate Aboriginal poverty not been more successful? What further steps will be taken to achieve greater success?

Is there a specific national strategy for addressing the needs of Aboriginal peoples living in urban and off-reserve areas and if not, why not?

On-Reserve Housing

130. Housing conditions in Aboriginal communities were described in RCAP in 1996 as ‘intolerable.’¹⁷⁷ In 1998 the CESCR expressed concern about the failure to provide safe and adequate drinking water to Aboriginal communities on reserves and the major repairs and lack of basic amenities, which plague almost a quarter of Aboriginal household dwellings.¹⁷⁸ While there have been some improvements in Aboriginal housing, there remain significant disparities between the housing conditions of Aboriginal and non-Aboriginal populations. Canadian Mortgage and Housing Corporation (“CMHC”) reported that in 2001, 22% of on-reserve status

¹⁷³ Statistics Canada, Census 1996 (available online: <http://www12.statcan.ca/english/census01/info/census96.cfm>). Comparisons between the 2001 and 1996 censuses pose some difficulties because the aboriginal population was enumerated using different methodologies.

¹⁷⁴ John Anderson, “Aboriginal Children in Poverty in Urban Communities: Social exclusion and the growing racialization of poverty in Canada,” online: Canadian Council on Social Development <<http://www.ccsd.ca/pr/2003/aboriginal.htm>>.

¹⁷⁵ Policy Research Initiative, *Poverty and Exclusion Income Inequality and Low Income in Canada* by G. Picot and J. Myles, (available online: http://policyresearch.gc.ca/page.asp?pagenm=v7n2_art_03).

¹⁷⁶ John Anderson, “Aboriginal Children in Poverty in Urban Communities: Social exclusion and the growing racialization of poverty in Canada,” online: Canadian Council on Social Development <<http://www.ccsd.ca/pr/2003/aboriginal.htm>>.

¹⁷⁷ Canada, Royal Commission on Aboriginal Peoples, *People to People, Nation to Nation: Highlights from the Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Minister of Supply Services Canada, 1996), online: Indian and Northern Affairs Canada <http://www.ainc-inac.gc.ca/ch/rcap/rpt/index_e.html> [RCAP].

¹⁷⁸ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 17, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>>.

Indian households lived in housing below the CMHC adequacy standard and were unable to afford acceptable housing – a rate ten times higher than for non-Aboriginal households.¹⁷⁹ Status Indian households were also ten times more likely to be overcrowded. Inuit households were twelve times more likely to be characterized as overcrowded and unable to afford acceptable housing. As acknowledged in Canada's Report, rather than increasing expenditures for on-reserve housing, CMHC expenditures for housing on reserve have dropped since the last review, from \$99 million in 1997-1998 to \$92 million.¹⁸⁰ Expenditures on capital facilities and maintenance decreased from \$845.2 million in 1997-1998 to \$759.5 million in 1998-1999.

Please provide information on CMHC expenditures for housing on-reserve since the 1998-1999 fiscal year.

Please provide up to date information on the adequacy rate of on-reserve housing in comparison to that of the general population and explain any continued disparities.

Off-Reserve Housing

131. The situation is even more dire for urban Aboriginal peoples, which includes First Nations peoples living off-reserve, Inuit and Metis. They comprise approximately 70 per cent of Canada's combined aboriginal population, yet received no new funding for their significant housing needs in the federal budget.¹⁸¹ Aboriginal persons are overrepresented in Canada's homeless population by a factor of 10.¹⁸² In reports from 1999, "[i]ndividuals of Aboriginal origin account for 35% of the homeless population in Edmonton, 18% in Calgary, 11% in Vancouver and 5% in Toronto, but only 3.8%, 1.9%, 1.7% and 0.4% of the general population of these cities respectively." Aboriginal women are over-represented in the population of families in homeless shelters.¹⁸³ Seventy three per cent of Aboriginal female lone parents live in poverty, the majority living in cities and most in "core housing need".¹⁸⁴

¹⁷⁹ Statistics Canada, "A profile of Canada's North American Indian population with legal Indian Status," online: Canada-Aboriginal Peoples Roundtable <http://www.aboriginalroundtable.com/sect/stscan/NAI_Status_e.pdf>.

¹⁸⁰ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 345-347, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>>.

¹⁸¹ National Aboriginal Housing Association, "Once Again! Federal Budget Ignores Non-reserve Aboriginal Housing Crisis," online: National Aboriginal Housing Association <http://www.aboriginalhousing.org/PDF/Press_Release_Once_Again.pdf>.

¹⁸² Stephen Hwang, "Homelessness and Health" (2001) 164(2) CMAJ, online: e-CMAJ <<http://www.cmaj.ca/cgi/content/full/164/2/229>>.

¹⁸³ Ministry of Social Development and Economic Security (British Columbia) 2001: vol 2, 23; vol 4, 8.

¹⁸⁴ Canadian Mortgage Housing Corporation, "2001 Housing Census Series Issue 6: Aboriginal Households," online: Canadian Mortgage Housing Corporation <https://www.cmhc-schl.gc.ca:50104/b2c/b2c/init.do?shop=Z01en&z_category=0/0000000012/0000000030/0000000043>.

Provide any available data on homelessness among Aboriginal people, and Aboriginal women in particular. What percentage of Aboriginal households in cities are in core housing need?

What steps are being taken to address the specific housing needs of Aboriginal women?

Right to Environment

132. The Special Rapporteur noted how the health of the Anishinaabe Nation in Ontario has been jeopardized by mercury poisoning in their waters, fish, and wildlife as a result of industrial wastes and poor forest management by non-Aboriginal business corporations.¹⁸⁵ Global warming has compromised the Inuit people's food supply, and in turn, their health.¹⁸⁶

Article 13: The Right to Education & Article 15: The Right to Culture

Indian Residential Schools Legacy

133. The legacy of Indian residential schools has severely compromised the right of Aboriginal peoples to education, to the enjoyment of the highest attainable standard of physical and mental health and to the conservation, development, and diffusion of culture. By compelling several generations of Aboriginal children away from their families, communities, and traditional lands, forbidding them to speak their native languages, and teaching them to reject their homes, their heritage, and their own identities, the Government of Canada profoundly contributed to the political, cultural, and economic decline of numerous Aboriginal communities and people.¹⁸⁷ The Special Rapporteur has drawn particular attention to the nexus between Indian residential schools, the intergenerational loss of culture, and social problems such as high adolescent suicide rates and family disorganization.¹⁸⁸ To address the wrongs it caused, the federal government initiated the Indian Residential Schools Resolutions Canada Alternative Dispute Resolutions Process ("the ADR process") and also established the Aboriginal Healing Foundation ("AHF"). The former has

¹⁸⁵ Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN CHR, 61st Sess., UN Doc. E/CN.4/2005/88/Add. 3 (2004) 48 [Report of the Special Rapporteur].

¹⁸⁶ Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN CHR, 61st Sess., UN Doc. E/CN.4/2005/88/Add. 3 (2004) 51 [Report of the Special Rapporteur].

¹⁸⁷ Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN CHR, 61st Sess., UN Doc. E/CN.4/2005/88/Add. 3 (2004) 60 [Report of the Special Rapporteur].

¹⁸⁸ Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN CHR, 61st Sess., UN Doc. E/CN.4/2005/88/Add. 3 (2004) 102 [Report of the Special Rapporteur].

been emphatically denounced as inefficient and ineffective by the government's own members and by the aboriginal community. As the Standing Committee on Aboriginal Affairs and Northern Development reported in 2005, "[t]he Committee is drawn to the inescapable conclusion that the ADR process is an excessively costly and inappropriately applied failure" that deserves to be terminated.¹⁸⁹ The latter was initially supported with funding of \$350 million, but the 2003 pledge of \$40 million in renewed funding represents only one-third the amount AHF needed to sustain all 285 of its projects.¹⁹⁰

In light of the view expressed in the report of the Standing Committee on Aboriginal Affairs and Northern Development that the Indian Residential Schools Resolutions Canada Alternative Dispute Resolution Process is "an excessively costly and inappropriately applied failure", what steps are being taken to improve the process?

Why has the government not provided the Aboriginal Healing Foundation with sufficient funds to renew all of its existing projects?

Article 12: The Right to Physical and Mental Health

Unequal Enjoyment of the Right to Health

134. The physical and mental health status of Aboriginal communities was deemed a "crisis" and a "tragedy" by RCAP in 1996.¹⁹¹ In 2004 the Special Rapporteur concluded that the Aboriginal health crisis continues to demand "priority attention".¹⁹² The gap in life expectancy between Registered Indians and Canadians is 6.4 years and the life expectancy of the Inuit is 10 years lower than the Canadian average.¹⁹³ Infant mortality rates remain high in northern Aboriginal communities.

¹⁸⁹ Parliament, Standing Committee on Aboriginal Affairs and Northern Development, "Study on the Effectiveness of the Government Alternative Dispute Resolution Process for the Resolution of Indian Residential School Claims" (7 April 2005), online: Parliament of Canada <<http://www.parl.gc.ca/Committee/CommitteePublication.aspx?SourceId=107649&Lang=1>>.

¹⁹⁰ Aboriginal Healing Foundation, For Immediate Release, "The Aboriginal Healing Foundation Welcomes Government's Announcement of Additional Funding" (23 February 2005), online: Aboriginal Healing Foundation <http://www.ahf.ca/newsite/english/pdf/press_release_feb_23_2005.pdf>.

¹⁹¹ Canada, Royal Commission on Aboriginal Peoples, *People to People, Nation to Nation: Highlights from the Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Minister of Supply Services Canada, 1996), online: Indian and Northern Affairs Canada <http://www.ainc-inac.gc.ca/ch/rcap/rpt/index_e.html> [RCAP].

¹⁹² Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN CHR, 61st Sess., UN Doc. E/CN.4/2005/88/Add. 3 (2004) 86 [Report of the Special Rapporteur].

¹⁹³ Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN CHR, 61st Sess., UN Doc. E/CN.4/2005/88/Add. 3 (2004) 40 [Report of the Special Rapporteur].

In 2001, the infant mortality rate in Nunavut was 16.9 per 1,000, more than three times the national infant mortality rate.¹⁹⁴

135. Compared to the national averages, the rate of tuberculosis in Aboriginal communities is six times higher, the rate of heart disease is 1.5 times higher, and the rate of diabetes is four times higher.¹⁹⁵ As Assembly of First Nations National Chief Phil Fontaine has noted, however, “Instead of receiving more funding to finally make inroads towards improving our shameful health status and strengthening the role of First Nations governments in delivering health care, this budget actually claws back much-needed funding...For example, First Nations desperately depend upon the coverage provided by Non-Insured Health Benefits. This program will be cut by \$27 million over the next three years.” “Again, no funding has been allocated towards public health infrastructure development in First Nations communities, even though this has been repeatedly identified in national reports as the largest gap in the Canadian public health system”.¹⁹⁶ The First Nations Health Information System has been completely eliminated.

Why have efforts to ameliorate the unequal enjoyment of the right to health among Aboriginal peoples not been more successful? What steps are being taken to achieve greater success?

In light of the continuing unequal enjoyment of the right to health among Aboriginal peoples, please explain the justification for the planned reduction in funding to Non-Insured Health Benefits and the elimination of the First Nations Health Information System.

HIV/AIDS in Aboriginal Communities

136. Aboriginal peoples compose 3.3% of the national population but account for 12.9% of the total reported AIDS cases and 23.8% of positive HIV test results.¹⁹⁷ Aboriginal women are particularly affected by HIV/AIDS comprising 45.1% of HIV/AIDS cases among women in Canada. The 2004 *Report of the Special Rapporteur* recommended that “emergency measures be taken to address the critical

¹⁹⁴ Health Canada, First Nations and Inuit Health Branch, “Statistical Profile on the Health of First Nations in Canada,” online: Health Canada <http://www.hc-sc.gc.ca/fnihb-dgspni/fnihb/sppa/hia/publications/statistical_profile.pdf>.

¹⁹⁵ Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN CHR, 61st Sess., UN Doc. E/CN.4/2005/88/Add. 3 (2004) 40 [*Report of the Special Rapporteur*].

¹⁹⁶ Assembly of First Nations, “Federal Budget Fails to Address First Nations Health Care Crisis,” online: Assembly of First Nations <<http://www.afn.ca/article.asp?id=181>>.

¹⁹⁷ Public Health Agency of Canada, “HIV/AIDS Among Aboriginal Peoples in Canada: A Continuing Concern,” online: Public Health Agency of Canada <http://www.phac-aspc.gc.ca/publicat/epiu-aepi/epi_update_may_04/9_e.html>.

issue of ... HIV/AIDS among Aboriginal people”.¹⁹⁸ In *Canada’s Fourth Report*, it notes that in May, 1998 \$42.2 million per year was allocated to the fight against HIV/AIDS, and across ten components, one of which is Aboriginal health and community development.¹⁹⁹ In May 2004, the Government of Canada announced an increase in HIV/AIDS funding from \$42.2 million to \$84.4 million by 2008-2009.²⁰⁰ Clearly the governmental response has not been adequate in light of this critical emergency.

What proportion of government funding allocated to the fight against HIV/AIDS has been specifically designated for Aboriginal peoples?

Does the federal government intend to act on the recommendation in the report on Canada of the UN Special Rapporteur on Indigenous Peoples that “emergency measures be taken to address the critical issue of ... HIV/AIDS among Aboriginal people” and, if so, with what measures?

Aboriginal Suicides

137. In 1996 RCAP noted that the number of suicides among Aboriginals in Canada sends a “blunt and shocking message to Canada that a significant number of Aboriginal people in this country believe that they have more reasons to die than to live”.²⁰¹ In 1998 the CESCR expressed deep concern over the high rate of suicide in Aboriginal communities, especially among Aboriginal youth.²⁰² In 2004 the Special Rapporteur described the high suicide rates in Aboriginal communities as “a severe social problem that requires long-term integrated policies at all levels.”²⁰³ Suicide rates among Aboriginal Communities remain high. Among the Inuit suicide rates are seven times higher than the rate in the general population.²⁰⁴ In

¹⁹⁸ Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN CHR, 61st Sess., UN Doc. E/CN.4/2005/88/Add. 3 (2004) 106 [*Report of the Special Rapporteur*].

¹⁹⁹ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 436, online: UN HCHR Treaty Body Database <<http://www.unhcr.ch/tbs/doc.nsf>>..

²⁰⁰ Public Health Agency of Canada, “The Federal Initiative to Address HIV/AIDS in Canada,” online: Public Health Agency of Canada <http://www.phac-aspc.gc.ca/aids-sida/hiv_aids/index.html>.

²⁰¹ Canada, Royal Commission on Aboriginal Peoples, *People to People, Nation to Nation: Highlights from the Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Minister of Supply Services Canada, 1996), online: Indian and Northern Affairs Canada <http://www.ainc-inac.gc.ca/ch/rcap/rpt/index_e.html> [RCAP].

²⁰² *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 17, online: UN HCHR Treaty Body Database <<http://www.unhcr.ch/tbs/doc.nsf>>.

²⁰³ Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN CHR, 61st Sess., UN Doc. E/CN.4/2005/88/Add. 3 (2004) 40 [*Report of the Special Rapporteur*].

²⁰⁴ Centre for Suicide Prevention, “Suicide Among Canada’s Aboriginal Peoples,” online: Centre for Suicide Prevention <<http://www.suicideinfo.ca/csp/assets/Alert52.pdf>>.

1999, suicide and self-injury accounted for 38% of deaths among youth in Aboriginal communities.²⁰⁵ A 1998 study revealed that Aboriginal communities with some form of self-government had the lowest rate of youth suicide.²⁰⁶ Land claims and education were the next most important factors in determining rates of suicide in Aboriginal communities.

In light of the deep concern expressed by the CESCR in 1998 over the high rate of suicide in Aboriginal communities, please provide information on the rate of suicide since the last report and on any steps taken to address it.

Does the federal government intend to act on the view expressed in the report on Canada of the UN Special Rapporteur on Indigenous Peoples that suicide rates among Aboriginal peoples are “a severe social problem that requires long-term integrated policies at all levels” and, if so, with what measures?

[J] Immigrants and Refugees

138. In the 2001 reply to list of issues, the Government of Canada assured the CESCR that children of landed immigrants have the same rights of access to social services and benefits, education, and health care as children of Canadians.²⁰⁷ However, for many other groups this is not the case. Provincial governments decide whether or not to provide social supports, education, and health care, and if so, to what degree.

139. Those seeking protection or refugee status and those with pending applications for landing on other grounds are denied equal access to health care and education. People seeking protection and those on temporary resident permits are only entitled to Federal Interim Health Coverage, a vastly inferior medical coverage limited to emergency care. Others waiting to have their status regularized from within Canada, (spouses, children and people applying for status on humanitarian and compassionate grounds) have no access to any medical care or other services.

Please identify any social services, social benefits, education or health care services which are not available to those without permanent status or those who seek protection, on the same terms as Canadian citizens. What has been done to address this problem on a national basis.

²⁰⁵ Health Canada, First Nations and Inuit Health Branch, “Statistical Profile on the Health of First Nations in Canada,” online: Health Canada <http://www.hc-sc.gc.ca/fnihb-dgspni/fnihb/sppa/hia/publications/statistical_profile.pdf>.

²⁰⁶ Centre for Suicide Prevention, “Suicide Among Canada’s Aboriginal Peoples,” online: Centre for Suicide Prevention <<http://www.suicideinfo.ca/csp/assets/Alert52.pdf>>.

²⁰⁷ *Reply to List of Issues: Review of Canada’s Third Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN CESCR, 2001, UN Doc. E/C.12/Q/CAN/1 at para. 15, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Reply to List of Issues*].

140. In *Canada's Fourth Report*, the Government of Canada recognized that while other Canadians' incomes were rising, recent immigrants had higher rates of poverty.²⁰⁸ The Government also described the anti-discrimination measures undertaken to protect immigrants and refugees, including the enactment of the new *Immigration and Refugee Protection Act* ("IRPA") and the March 2000 launch of integration programming, specifically Citizenship and Immigration Canada's ("CIC") *Canada We All Belong and Welcome Home*.²⁰⁹ As for protection of the family, mother, and child, the federal government referred to CIC's *Language Instruction for Newcomers to Canada* ("LINC"), which includes a child minding component to encourage the enrolment of female newcomers.²¹⁰ The Government reiterated the challenges that have to be met to ensure a decent quality standard of living for vulnerable groups like immigrants.²¹¹ For example, pregnant newcomers face a high risk of poor birth income, so they were included in the Canada Prenatal Nutrition Program ("CPNP").²¹² Finally, the Government cited the Host Program, which matches newcomer families with Canadian families to facilitate the former's integration.²¹³
141. The Longitudinal Survey of Immigrants to Canada ("LSIC") is a comprehensive survey of about 12,000 immigrants who arrived in Canada between October 2000 and September 2001.²¹⁴ LSIC is designed to study the process by which new immigrants adapt to Canadian society. Participants of LSIC have already been interviewed twice following their arrival, and will be interviewed a third time later this year.
142. According to LSIC, immigrants encountered difficulties in a wide range of areas. More than two-thirds (70%) of immigrants encountered at least one problem in the process of entering the labour force. Problem areas included the transferability of foreign qualifications, lack of contacts, and language barriers. Finding suitable

²⁰⁸ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 32, online: UN HCHR Treaty Body Database <<http://www.unhcr.ch/tbs/doc.nsf>> [*Canada's Fourth Report*].

²⁰⁹ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 134-136, online: UN HCHR Treaty Body Database <<http://www.unhcr.ch/tbs/doc.nsf>> [*Canada's Fourth Report*].

²¹⁰ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 261, online: UN HCHR Treaty Body Database <<http://www.unhcr.ch/tbs/doc.nsf>> [*Canada's Fourth Report*].

²¹¹ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 273, online: UN HCHR Treaty Body Database <<http://www.unhcr.ch/tbs/doc.nsf>> [*Canada's Fourth Report*].

²¹² *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 309, online: UN HCHR Treaty Body Database <<http://www.unhcr.ch/tbs/doc.nsf>> [*Canada's Fourth Report*].

²¹³ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 495, online: UN HCHR Treaty Body Database <<http://www.unhcr.ch/tbs/doc.nsf>> [*Canada's Fourth Report*].

²¹⁴ Statistics Canada "Longitudinal Survey of Immigrants to Canada" *The Daily* (4 September 2003), online: Statistics Canada <<http://www.statcan.ca/Daily/English/030904/d030904a.htm>>.

housing posed challenges for 38% of immigrants, who faced common problems such as high costs and discriminatory requirements such as lack of Canadian guarantors or co-signers. For 40% of immigrants, pursuing further education and training was made difficult by language barriers and financing. One in five immigrants encountered problems with the health care system, reporting long waiting lists, high costs of dental care or prescription medication, and language barriers.

143. With respect to employment, the proportion of new immigrants in the 25-44 age group participating in the labour force was 78%, compared to 86% in the total Canadian population. Six out of 10 new immigrants worked in different occupational fields after coming to Canada.
144. According to another Statistics Canada report, the earnings gap between recent immigrants and native-born Canadians has been growing.²¹⁵ While low-income rates for Native-born Canadians fell from 17% in 1980 to 14.9% in 2000, low-income rates for new immigrants rose from 25% to 36%. Among very recent immigrants (in Canada less than five years), the low-income rate in 1980 was 1.5 times higher than the rate among the Canadian-born. Two decades later, the low-income rate of recent immigrants rose to 2.5 times the native-born rate. Clearly, government measures aimed at successfully integrating immigrants into Canadian society have fallen short.

Please provide information on any trends in the difference in the low-income or poverty rate among recent immigrants and others, including gender-based data if possible. Explain any trends that are evident from the data and how Canadian governments intend to address income disparities between newcomers and others.

Non-Recognition of Credentials of Foreign-trained Immigrants

145. The assessment of foreign credentials in Canada is restrictive and rigorous; it is a major stumbling block for educated and skilled immigrants seeking employment in Canada. Individual studies indicate that less than half of immigrants seeking employment in regulated professions obtain Canadian accreditation. Credential assessment and certification systems function to the exclusion and disadvantage of immigrants while unfairly favouring Canadian-born or Canadian-educated workers.
146. Others barriers for immigrants seeking to join the paid workforce in Canada include various application and processing fees, for both the worker and their family, and the requirement that immigrants possess enough funds to support themselves for six months. Moreover, some employers and regulatory bodies require that assessment take place in Canada, which “makes it impossible for immigrants to assess the

²¹⁵ Garnett Picot and John Myles, “Poverty and Inclusion: Income Inequality and Low Income in Canada” *Policy Research Initiative* 7:2 (December 2004), online: Policy Research Initiative <http://policyresearch.gc.ca/page.asp?pagenm=v7n2_art_03>.

degree of devaluation [of their credentials] prior to immigration.” Should a prospective worker meet the credential assessment requirements, they may also have to meet such requirements as permanent residence in a given province, and previous Canadian work experience. These barriers to employment result in the deskilling of immigrant workers, as highly trained workers are forced to accept secondary work well below their qualifications.

147. The government has recently implemented the Foreign Credential Recognition Program which seeks to improve the integration of immigrant workers into the labour force by providing funding for credential assessment and recognition.²¹⁶

Describe the terms of the Foreign Credentials Recognition Program at the federal level. What are the provincial governments doing in their jurisdiction to address the problem of foreign credential recognition?

Barriers to Family Reunification

148. With the introduction of the Immigration and Refugee Protection Act in 2002, a new permanent barrier to family reunification was introduced. Regulation 117(9)(d) makes family members ineligible for immigration if the sponsor failed to declare them on their original application. The prohibition is permanent and applies without regard to the circumstances which led to the failure to disclose. Further, the government has removed the right of appeal on humanitarian and compassionate grounds for these cases and the prohibition is permanent, leading to the permanent separation of spouses and children. Civil society groups have consistently criticized this provision, which visits undeserved hardship upon immigrants.
149. The new Act also continues the discriminatory treatment of poor people which existed under the previous legislation because recipients of social assistance continue to be denied family reunification. Only those who receive social assistance because of a disability may sponsor family members. All others, including single mothers with dependent children and other non-disabled recipients are not entitled to family reunification.
150. Immigration fees, including application and right of landing fees, discriminate directly against poor people, who are denied family reunification because they cannot afford to pay the fees.

²¹⁶Citizenship and Immigration Canada, *Assessment of Credentials*, online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/skilled/work-3.html>> (date accessed: 9 May 2005); H. Bauder, “‘Brain Abuse’, or the Devaluation of Immigrant Labour in Canada” (2003) 35 *Antipode* 699; Government of Canada, *Foreign Credential Recognition Program – Immigrants, Foreign-trained Canadians to Benefit from Government of Canada Investments*, April 25, 2005, online: Government of Canada Website <<http://www.news.gc.ca/cfmx/CCP/view/en/index.cfm?articleid=141029&>> (date accessed: 9 May 2005).

Please identify what measures have been taken to ensure that family members are not permanently separated as a result of the application of 117(9)(d) of the Immigration Regulations. What efforts have been made to amend this legislative provision?

What efforts have been made to ensure that refugees and protected persons are able to afford to apply for landing once their status has been granted?

Please provide data on the number of families who have been denied family reunification because they are poor and indicate what measures have been adopted to eliminate the discrimination against people on social assistance which results from their ineligibility to sponsor family members.

[K] People with Disabilities

Unemployment among People with Disabilities

151. In the 1998 *Concluding Observations*, the CESCR recommended that the Government of Canada take additional steps to ensure the enjoyment of economic and social rights for people with disabilities.²¹⁷
152. In the 2001 *Reply to List of Issues*, the Government of Canada was asked to account for the fact that in 1991, over 40% of people with disabilities received no employment income and unemployment statistics for people with disabilities were among the highest of all minority groups.²¹⁸ In response, the Government cited the employment equity legislation and support programs already in place. The federal government also discussed the March 1998 launch of *In Unison: A Canadian Approach to Disability Issues*, which provides objectives and policy directions for future reform in four key areas: citizenship, disability supports, employment, and income. Finally, the federal government described the creation of the *Employability Assistance for People with Disabilities program* (“EAPD”) and the *Opportunities Fund*. However, no reference was made to figures which show whether or not the employment situation of persons with disabilities improved since 1991.
153. In *Canada’s Fourth Report*, the federal government reiterated the measures described in the 2001 *Reply to List of Issues*.²¹⁹

²¹⁷ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at para. 48, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Concluding Observations*].

²¹⁸ *Reply to List of Issues: Review of Canada’s Third Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN CESCR, 2001, UN Doc. E/C.12/Q/CAN/1 at para. 27, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Reply to List of Issues*].

²¹⁹ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 50, 178-181, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Canada’s Fourth Report*].

154. According to the Participation and Activity Limitation Survey (“PALS”) conducted by the Government of Canada in 2001, only 51.2% of working-age (25-54) adults with disabilities were employed, compared to 82.3% of adults without disabilities.²²⁰
155. In 2005, the 17th Annual Report on the *Employment Equity Act* was released, reaffirming the findings of PALS in many areas.²²¹ For example, at only 43.4%, the representativity index for persons with disabilities (defined as the workforce share compared to the availability in the Canadian labour market workforce) was very low in 2003 (2.3% divided by 5.3%).²²² In spite of some improvement in the representativity index, persons with disabilities remain seriously underrepresented in 11 occupational groups and severely underrepresented in 5 occupational groups. With respect to hirings and terminations, the situation is “disquieting.”²²³ In 2003, only 800 persons with disabilities were hired; the same number was hired fifteen years ago in 1988. Meanwhile, in 2003, 1,550 employees with disabilities were terminated. Terminations have exceeded hirings every year in the period 1995-2000. Consequently, the number of persons with disabilities in the workforce declined from 16,100 in 1995 to 14,400 in 2003. Persons with disabilities is the only designated group in which more people have been terminated than hired in the past ten years. It is also the only group which has experienced net declines almost every year for the past fifteen years. Given that the employment situation of people with disabilities has continually regressed, existing government measures aimed at reducing unemployment are clearly insufficient or inadequate. According to the Canadian Council of Canadians with Disabilities (“CCD”): “Organizations of persons with disabilities and their families agree that continued tinkering will not address the need and that a long range plan for investment in disability related supports must be developed and implemented.”

Please provide data on the participation of people with disabilities in the workforce, showing any changes between 1995 and the present. Do the federal and provincial/territorial governments agree with the Council of Canadians with Disabilities that a long range plan for investment in disability related supports must be developed and implemented?

Why have the policies put in place to address the disproportionate incidence of unemployment among persons with disabilities not been more successful? What steps have governments of Canada taken to achieve greater success?

²²⁰ Canada, Human Resources Development Canada, *Disability in Canada: A 2001 Profile*, (Ottawa: Human Resources Development Canada, 2003) at 25.

²²¹ Canada, Human Resources and Skills Development Canada, *Annual Report: Employment Equity Act, 2004*, (Ottawa: Human Resources and Skills Development Canada, 2005).

²²² Canada, Human Resources and Skills Development Canada, *Annual Report: Employment Equity Act, 2004*, (Ottawa: Human Resources and Skills Development Canada, 2005) at 66.

²²³ Canada, Human Resources and Skills Development Canada, *Annual Report: Employment Equity Act, 2004*, (Ottawa: Human Resources and Skills Development Canada, 2005) at 67.

Lack of Portability of Services across Provinces

156. In the 1998 *Concluding Observations*, the CESCR recommended that the Government of Canada take additional steps to ensure the enjoyment of economic and social rights for people with disabilities.²²⁴ One appropriate additional step would be to eliminate the disparity across the country with respect to the availability of disability supports.²²⁵ Disability supports are mainly provided by provincial and territorial governments. Disability supports available in one province may not be available in another province. The right of persons with disabilities to choose where they want to live is thus compromised by this fragmented system of disability supports. Organizations such as the Council of Canadians with Disabilities (CCD) have called for the establishment of a National Disability Related Supports Plan which would equalize supports across Canada and ensure the mobility rights of people with disabilities. To date, a national framework for investment in disability supports has yet to be implemented.

Identify any disparities that may exist among provinces and territories in the provision of disability supports and describe any plans for developing a national framework for such support services.

Poverty Rates among People with Disabilities

157. In the 1998 *Concluding Observations*, the CESCR recommended that all levels of government provide adequate support services for persons with disabilities to reduce homelessness and poverty.²²⁶ The CESCR also made a general recommendation that the Government of Canada to take additional steps to ensure the enjoyment of economic and social rights for people with disabilities.²²⁷

158. According to PALS, in 2001, 27.9% of working-age adults with disabilities lived below the LICO, compared to 12.7% in the non-disabled population.²²⁸ Among working-age adults with disabilities who were employed, 71% had individual

²²⁴ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at para. 48, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Concluding Observations*].

²²⁵ Council of Canadians with Disabilities, “A Framework for a National Disability Related Supports Plan” (February 2003) at 4.

²²⁶ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at para. 46, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Concluding Observations*].

²²⁷ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at para. 48, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Concluding Observations*].

²²⁸ Canada, Human Resources Development Canada, *Disability in Canada: A 2001 Profile*, (Ottawa: Human Resources Development Canada, 2003) at 24.

incomes below \$20,000.²²⁹ 18.3% of seniors with disabilities lived below the LICO, compared to 14.4% in the non-disabled population.²³⁰ PALS also showed that the average household income for children with disabilities was lower than for children without disabilities. In the preschool age group, the difference was \$11,478; among school age children, the difference was \$8,703.²³¹

159. As noted by the CCD and the Canadian Association for Community Living (“CACL”): “Current investments by governments are not making the difference needed.”²³² Among adults with disabilities, one-third have unmet needs; among children with disabilities, almost one half have unmet needs.²³³ The more severe the disability, the higher the rate of unmet needs. The two most common reasons for having an unmet need were that the assistive aids/devices were “too expensive” and that the aid or device was “not covered by insurance”. These findings clearly illustrate that income levels among persons with disabilities are insufficient to meet their special needs and ensure their right to an adequate standard of living.

Please provide the most recent data on the percentage of working age adults with disabilities living below the poverty line and compare this with the non-disabled population, as well as available data for children with disabilities compared to the non-disabled children. What measures are planned to address any disparities?

Please provide information on the factors that are taken into account in establishing the levels of social assistance available to persons with disabilities under federal, provincial or territorial social assistance programs and please explain why these programs are unable to ensure that persons with disabilities can meet their needs.

Women with Disabilities

160. In *Canada’s Fourth Report*, the Government of Canada referred to the June 1996 publication of *The Impact of Block Funding on Women with Disabilities*, supported by the Policy Research Fund of Status of Women Canada.²³⁴ However, the Government did not discuss whether it considered the findings of that publication.

²²⁹ Canada, Human Resources Development Canada, *Disability in Canada: A 2001 Profile*, (Ottawa: Human Resources Development Canada, 2003) at 25.

²³⁰ Canada, Human Resources Development Canada, *Disability in Canada: A 2001 Profile*, (Ottawa: Human Resources Development Canada, 2003) at 34.

²³¹ Canada, Human Resources Development Canada, *Disability in Canada: A 2001 Profile*, (Ottawa: Human Resources Development Canada, 2003) at 16.

²³² Council of Canadians with Disabilities and Canadian Association for Community Living, “A Call to Combat Poverty and Exclusion of Canadians with Disabilities by Investing in Disability Supports,” online: Council of Canadians with Disabilities <<http://www.ccdonline.ca/ccpe.htm>>.

²³³ Canadian Council on Social Development, “Disability Information Sheet: Number 17, 2005, Supports and Services for Persons with Disabilities in Canada: Requirements and Gaps,” online: Canadian Council on Social Development <<http://www.ccsd.ca/drip/research/drip17/index.htm>>.

²³⁴ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 240, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Canada’s Fourth Report*].

161. According to PALS, in 2001, working-age women with disabilities were more likely to be out of the labour force than their male counterparts (46.3% compared to 28.4%).²³⁵ The average income of working-age women with disabilities was \$23,302, while working-age men with disabilities earned \$28,697. Senior women with disabilities were also more likely to live below the LICO than senior men with disabilities (23.5% compared to 11%).²³⁶ The 17th Annual Report on the *Employment Equity Act* reaffirmed the trends shown by PALS. Whereas the salary gap between men with disabilities and men without disabilities narrowed in 2003, there was no change in the gap between women with disabilities and women without disabilities.²³⁷ In 2003, men with disabilities earned an average salary of \$59,536, while women with disabilities earned \$46,338. “What this indicates is that women with disabilities face a double disadvantage: their salary situation compares unfavourably with that of all women, and also with that of men with disabilities.”

Please explain the extent to which the Government of Canada agrees with the findings of the *The Impact of Block Funding on Women with Disabilities* report.

The 17th Annual Report on the *Employment Equity Act* suggests that while there has been some progress in relation to the gap between the salaries of men with disabilities compared to non-disabled men, there has been no measurable progress in addressing the gap between women with disabilities and non-disabled women. Does the Government of Canada agree with this, and what new measures are planned to address the problem?

Access to Education for People with Disabilities

162. In *Canada's Fourth Report*, the Government mentioned the Canada Study Grants program, which offers non-repayable assistance (\$5,000 maximum per loan year) to students with disabilities.²³⁸ PALS showed that in 2001, only 13.9% of working-age adults with disabilities completed university, compared to 24.8% in the non-disabled population.²³⁹ Almost one-third of adults with disabilities (29.5%) had less than a high-school education; in the disabled population, that proportion dropped to 18.2%.

²³⁵ Canada, Human Resources Development Canada, *Disability in Canada: A 2001 Profile*, (Ottawa: Human Resources Development Canada, 2003) at 26.

²³⁶ Canada, Human Resources Development Canada, *Disability in Canada: A 2001 Profile*, (Ottawa: Human Resources Development Canada, 2003) at 34.

²³⁷ Canada, Human Resources and Skills Development Canada, *Annual Report: Employment Equity Act, 2004*, (Ottawa: Human Resources and Skills Development Canada, 2005) at 68.

²³⁸ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 476, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Canada's Fourth Report*].

²³⁹ Canada, Human Resources Development Canada, *Disability in Canada: A 2001 Profile*, (Ottawa: Human Resources Development Canada, 2003) at 25.

In its Report, Canada mentions the Canada Study Grants Program for students with disabilities, with a maximum of \$5,000 per loan year. Is there any evidence that this program is resulting in a higher percentage of adults with disabilities completing universities? What further measures might be required to address these disparities?

Access to and Quality of Health Care for People with Disabilities

163. In the 1998 *Concluding Observations*, the CESCR expressed concern over the significant cuts in services on which people with disabilities rely, such as cuts in home care, attendant care and special needs transportation systems, and tightened eligibility rules for people with disabilities.²⁴⁰ The CESCR recommended that the Government of Canada to take additional steps to ensure the enjoyment of economic and social rights for people with disabilities.²⁴¹
164. Various studies of health care among persons with disabilities reveal problems with access and quality. According to one health survey of 201 persons with disabilities living in the Toronto region, 17.4% of participants reported difficulty obtaining a family doctor's services and 8% reported having been refused medical treatment because of their disability.²⁴² A significant proportion of respondents experienced difficulty in keeping medical appointments because of transportation problems (38%). Other barriers included difficulty accessing the family doctor's office (32.3%), equipment (38.3%), and washroom (22.9%). As for quality, 20.4% of participants reported feeling that their family doctor was insensitive to their disability; 19.9% felt that their family doctor was oversensitive. Overall, 19.4% reported feelings of inadequate primary health care services and 21.9% attributed the inadequacy to their disability.
165. Another study compared participants with disabilities and those without using the National Population Health Survey (1998-99).²⁴³ The study revealed a finding that is consistently reported in other countries like the U.S. and the U.K. In all categories – GP visits, medical specialist, eye doctor, dentist, chiropractor, and psychologist – persons with disabilities used significantly more medical services than their non-disabled counterparts.²⁴⁴ In spite of the increased use, adults with

²⁴⁰ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at para. 36, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Concluding Observations*].

²⁴¹ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at para. 48, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Concluding Observations*].

²⁴² Donna E. Stewart *et al.*, "Perceptions of Primary Healthcare Services among People with Physical Disabilities," online: DAWN Ontario <<http://dawn.thot.net/Part1.html#Stewart>>.

²⁴³ Mary Ann McColl *et al.*, *Health Status & Health Care in the Disability Community in Canada: Final Report to Canadian Population Health Initiative* (Kingston: Queen's Centre for Health Services, October 1, 2002 – September 30, 2003).

²⁴⁴ Mary Ann McColl *et al.*, *Health Status & Health Care in the Disability Community in Canada: Final Report to Canadian Population Health Initiative* (Kingston: Queen's Centre for Health Services, October 1, 2002 – September 30, 2003) at 27.

disabilities reported significantly more unmet health care needs.²⁴⁵ “In fact, the more they use the health care system, the more likely they are to report unmet needs. This suggests that for all the good the health care system is doing, it is missing the mark with this highly vulnerable population.”²⁴⁶

Please provide and comment on any available survey data for Canada and for each province and territory on access to health services by people with disabilities and on the adequacy of such services.

Could each province and territory describe what measures were taken following the Eldridge decision in 1998 to ensure the accommodation of hearing impairment and other disabilities in the provision of health services.

Access to Housing and Transportation for People with Disabilities

166. In the 1993 *Concluding Observations*, the CESCR expressed regret over the lack of information provided on the percentage of houses available to people with disabilities.²⁴⁷
167. In the 1998 *Concluding Observations*, the federal government, in addressing the issue of homelessness, cited the Residential Rehabilitation Assistance Program (“RRAP”), a component of which is dedicated to making the homes of persons with disabilities accessible.²⁴⁸ The CESCR recommended that all levels of government provide adequate support services for persons with disabilities to reduce homelessness and poverty.²⁴⁹ The CESCR also recommended that the Government of Canada take additional steps to ensure the enjoyment of economic and social rights for people with disabilities.²⁵⁰

²⁴⁵ Mary Ann McColl *et al.*, *Health Status & Health Care in the Disability Community in Canada: Final Report to Canadian Population Health Initiative* (Kingston: Queen’s Centre for Health Services, October 1, 2002 – September 30, 2003) at 42.

²⁴⁶ Mary Ann McColl *et al.*, *Health Status & Health Care in the Disability Community in Canada: Final Report to Canadian Population Health Initiative* (Kingston: Queen’s Centre for Health Services, October 1, 2002 – September 30, 2003) at 42.

²⁴⁷ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1993, UN Doc. E/C.12/1993/5 at para. 19, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Concluding Observations*].

²⁴⁸ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at para. 44, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Concluding Observations*].

²⁴⁹ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at para. 46, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Concluding Observations*].

²⁵⁰ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at para. 48, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Concluding Observations*].

168. In *Canada's Fourth Report*, the federal government again alluded to RRAP, which was reinstated in 1994 for two years at a cost of \$100 million.²⁵¹ No reference was made to the effectiveness of RRAP in improving the housing situation of people with disabilities.
169. The range of housing options available to persons with disabilities is limited. The Canadian Mortgage and Housing Corporation ("CMHC") recently conducted a survey of persons with disabilities living in Regina, Saskatchewan.²⁵² The 2003 survey found that 87% of respondents used one or more devices or aids to move around. Over half of the respondents lived in single family detached dwellings. One quarter lived in apartments, 5% lived in non-profit or subsidized housing, 4% lived in town houses, and 9% lived in foster homes, cooperatives, assisted living care homes, and retirement complexes. Over half of the participants reported that they did not have features in their homes which they needed, such as grab bars, lowered counters, sinks, and switches, and widened doorways. Among respondents aged 22 to 42, 69% wanted to move, whereas only 7% of seniors wished to do the same. The factors which prevented participants from moving included the lack of suitable accommodations, the inability to afford other accommodations, and the high cost of moving. Given that a substantial percentage of respondents reported barriers to access in their homes and an inability to escape those conditions due to the lack of suitable alternatives and/or the high costs of alternate accommodations and moving, an enhanced RRAP and income support for persons with disabilities has been recommended.

Provide any available survey data on the housing situations of people with disabilities, either nationally, regionally or locally, and assess whether the RRAP program and income support for persons with disabilities is presently adequate to ensure the equal enjoyment of the right to adequate housing.

170. Transportation is crucial for social inclusion and the fulfillment of basic needs.²⁵³ But for 4% of adults with disabilities in 2001, the use of public transportation services was not an option. The proportion rose to 11% for persons with very severe disabilities. For those individuals who were able to use public transportation services, 17% experienced difficulties. The percentage increased to 35% for persons with very severe disabilities. Many persons with disabilities rely on specialized transportation services such as Handi-Transit in Winnipeg and Wheel-Trans in Toronto. In spite of the crucial functions served by public transportation services, inadequate resources result in lower priority trips being cancelled and

²⁵¹ *Fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant*, UN CESCR, 2004, E/C.12/4/Add.15 at para. 331, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Canada's Fourth Report*].

²⁵² Canadian Mortgage Housing Corporation, "Research Highlights, Socio-economic Series 03-008, July 2003, Examining the Housing Choices of Individuals with Disabilities," online: Canadian Mortgage Housing Corporation <https://www.cmhc-schl.gc.ca:50104/b2c/b2c/init.do?shop=Z01en&z_category=0/0000000012/0000000030/0000000044>.

²⁵³ Michelle Owen and Colleen Watters, *Housing for Assisted-Living in Inner City Winnipeg: A Social Analysis of Housing Options for People with Disabilities* (January 2005) at 13.

worse, employment and education requests being turned down.²⁵⁴ In Ontario, 1998 the Provincial Government ceased all operational financing and oversight of public transportation for persons with disabilities, leaving many communities without specialized transit services.²⁵⁵

Provide data on the percentage of people with severe disabilities who are able to access public transportation services. Has accessibility of transportation been significantly improved since 1998? How has downloading of services affected the ability of Canadian governments to ensure uniform standard of accessibility and service levels?

171. The federal government has also been criticised for weakening rather than strengthening accessibility standards in modes of transportation that fall under its jurisdiction, such as Air Canada and VIA Rail.²⁵⁶

Can the Federal Government please comment on concerns that accessibility standards in Air Canada and VIA Rail have not been improved and have actually been weakened in recent years.

²⁵⁴ Michelle Owen and Colleen Watters, *Housing for Assisted-Living in Inner City Winnipeg: A Social Analysis of Housing Options for People with Disabilities* (January 2005) at 14.

²⁵⁵ Peter Dunn, *The Development of Government Independent Living Policies and Programs for Canadians with Disabilities* (Waterloo, Faculty of Social Work, Wilfred Laurier University, 1999.)

²⁵⁶ David Baker, *Moving Backwards: Canada's State of Transportation Accessibility in an International Context, Final Report to the Council of Canadians with Disabilities* (February 2005) at 14.

[L] The Social and Economic Rights of Women in Canada

Articles 2 and 3

Aboriginal Women

1. Aboriginal women are the poorest of the poor, poorer than Aboriginal men. They are also extremely vulnerable to violence, and do not enjoy the same protections in law that non-Aboriginal women do. Aboriginal women living on reserves do not have the same matrimonial property rights as other women, nor can they seek protection and redress under human rights legislation when they are discriminated against by Band Councils and Band officials. Aboriginal women have been disenfranchised from self-government discussions, and Canada has failed to follow the recommendations, made in the report called *Gathering Strength*, to address this systemic issue by funding Aboriginal women's groups to strengthen their involvement in self-government negotiations
2. Many women who prior to 1985 lost their Indian status because they "married out" have still not been restored to full status in their Bands. Nor can they, even though their Indian status has been restored, pass on their Indian status to their grandchildren on the same basis as men who "married out" prior to 1985.
3. While self-government agreements are being negotiated, women are not equal participants with Aboriginal men and governments. Consequently, their interests are not being adequately protected, and their recourse to legal protections of equality, once self-government is established, is not clearly guaranteed.
4. The situation of Aboriginal women in Canada is extreme. Governments at all levels continue a pattern of neglect and overt discrimination.

Aboriginal Women and Section 67 of the Canadian Human Rights Act

5. This section currently provides that: "Nothing in this *Act* affects any provision of the *Indian Act* or any provision made under or pursuant to that Act." This section was originally passed in order to protect decision-making by Band Councils, and to prevent non-Aboriginal persons from claiming that the provision of Aboriginal-specific benefits discriminated against them.
6. However, section 67 has had the effect of immunizing Band Council from challenges when their decisions are discriminatory. Currently, many Band Councils deny services and access to benefits to "Bill C-31 women" that is, to Indian women who originally lost their Indian status because they "married out" and who regained their Indian status under Bill C-31. These women cannot seek a remedy for this discrimination under human rights legislation, because section 67 bars their complaints.

7. The Canadian Human Rights Act Review Panel recommended removing section 67 from the *Canadian Human Rights Act* in June 2000. The Panel stated that the *Act* should apply to self-governing Aboriginal communities, until such time as an Aboriginal human rights code applies, as agreed by the Federal and First Nations governments.²⁵⁷
8. While the government has made a proposal to change this provision in the *First Nations Governance Act* that proposed legislation is the subject of hot dispute by a number of Aboriginal organizations, and has not moved ahead.

When will the federal government ensure that Indian women living on reserves can enjoy the protection of the *Canadian Human Rights Act* when they are discriminated against by their Band Councils on the basis of sex or other grounds?

Aboriginal Women's Participation in negotiations regarding self-government, and the funding and delivery of social programs to Aboriginal communities

9. The federal government refused to provide direct funding to the Native Women's Association of Canada (NWAC), and other Aboriginal women's organizations in 1992 at the time of constitutional talks regarding Aboriginal rights and the Constitution, although it provided funding to male-led Aboriginal organizations, such as the Assembly of First Nations.
10. Since that time, the federal government has included NWAC in some discussions regarding new self-government agreements. However, this participation is still incomplete, underfunded, and less than that available to male-led Aboriginal groups. Other Aboriginal women's organizations representing distinct groups, namely Pauktutuit, representing Inuit women, and the Metis National Council of Women, representing Metis women, also continue to struggle to be included in important governmental discussions, such as those respecting national and regional agreements on job creation programs and health services for Aboriginal people.
11. The federal government's continuing failure to include NWAC and other Aboriginal women's organization in the levels of funding and political participation offered to male-led Aboriginal groups violates Aboriginal women's right to self-determination and to non-discrimination and equality.
12. Currently, there are ongoing negotiations to put in place self-government agreements with many Bands across Canada. However, Aboriginal women are not equal participants in these negotiations, and are not in a position to secure adequate protections for themselves and their children as these agreements are put in place. As the federal government turns over more powers to Aboriginal peoples, it must

²⁵⁷ Canadian Human Rights Act Review Panel, *Promoting Equality: A New Vision* (Ottawa: Canadian Human Rights Act Review Panel, 2000) at 132.

ensure that Aboriginal women can be equal participants in self-governance and in the processes which lead to it.

13. The Canadian government has failed to follow through with recommendations, made in the Gathering Strength report, to fund (capacity build) Aboriginal women's groups in order to strengthen their involvement in self-government negotiations.²⁵⁸

What measures has the federal government put in place to ensure the equal participation of Aboriginal women in the negotiations of self-government agreements, treaties, and intergovernmental agreements dealing with employment, health, education, child welfare and other social services for Aboriginal people, as well as the on-going consideration of the federal Indian Act?

What funding has the federal government provided to male-led Aboriginal organizations to ensure effective participation in these negotiations?

By comparison, what funding has the federal government provided to Aboriginal women's organizations to ensure their effective participation?

What steps has the federal government taken to ensure that women's interests are protected in concluded agreements?

What steps has the federal government taken to ensure that Aboriginal women's organizations are equally involved in the delivery of services established under any agreements?

Inequality of Educational Opportunity Amongst Aboriginal Women

14. School completion rates for Aboriginal children and youth are much lower than they are for non-Aboriginal children and youth. For example, in British Columbia 38 per cent of Aboriginal students graduate from high school, compared to 77 per cent of non-Aboriginal students.²⁵⁹
15. This is disturbing since the Aboriginal population is the only population group in Canada that is growing. It is also a population group that is disproportionately a

²⁵⁸ J. Sayers, K.A. MacDonald, A Strong and Meaningful Role for First Nations Women in Governance. In First Nations Women, Governance and the Indian Act: A Collection of Policy Research Reports. Status of Women Canada, November 2001; Canada, INAC (Indian and Northern Affairs Canada). 1999. Gathering Strength: Canada's Aboriginal Action Plan. Ottawa: Ministry of Indian Affairs and Northern Development.

²⁵⁹ British Columbia Human Rights Commission, *Equality Through Access*, Annual Report, 2000-2001, at 3.

young one, with approximately 70 percent of the population now under 15 years of age. Unless the education needs of Aboriginal students are met successfully, the pattern of poverty and unemployment among Aboriginal people will be perpetuated.

16. In 1996, over half (54%) of Aboriginal women had not completed high school compared to 36% of non-Aboriginal women. 25% of Aboriginal women had completed some form of post-secondary education, compared to 39% of non-Aboriginal women.²⁶⁰

What is the current rate of completion of secondary and post-secondary education for Aboriginal women?

What measures have the federal and provincial governments taken to ensure substantively equal access to secondary and post-secondary education for Aboriginal women, and to address any barriers that stand in the way of Aboriginal women participating in secondary and post-secondary education on an equal footing?

Discrimination in Employment – Aboriginal Women

17. Aboriginal women are heavily concentrated in low-paying occupations traditionally held by women. Their unemployment rates are more than double those of non-Aboriginal women (21% in 1996), and they have very low incomes (\$13,300 in 1996).²⁶¹

What steps are federal, provincial and territorial governments taking to address the inequality of Aboriginal women in the workforce, and the systemic discrimination that they face.

Aboriginal Women's Health

18. First Nations women suffer from reproductive tract and breast cancers at rates at least double the national average; Life expectancy for First Nations women is 11 years less than that of the general Canadian female population; 75% of Indigenous girls under the age of 18 have been sexually abused and 80% of Indigenous women have experienced violence; Infant mortality rates for First Nations are twice the national average and post-neonatal mortality rates (which are more sensitive to socioeconomic and environmental factors) are three times the national average; Overall, the number of AIDS cases in Canada has leveled off, but it has risen steadily among Indigenous Peoples in the last decade – the proportion of

²⁶⁰ Statistics Canada, *Women in Canada 2000*, at 255.

²⁶¹ Tait, H., *Women in Canada* (Ottawa: Statistics Canada, 2000) at 257 – 258.

Indigenous women among the adult AIDS cases is almost twice as high as non-Indigenous women (12.6% vs. 6.9%).²⁶²

19. First Nations women continue to receive piece-meal services because of the lack of clarity and competing interests of federal, provincial and territorial governments regarding their constitutional, moral and financial responsibilities for health care. Roy Romanow in his recent Royal Commission inquiry into health care identified this unwillingness to assume jurisdiction and responsibility on the part of both levels of government as a continuing problem affecting the health of Aboriginal people.²⁶³

Current Inequities Resulting From Historic “Marrying-out” Provisions

20. Prior to 1985, section 12(1)(b) of the *Indian Act* stipulated that Aboriginal women lost their Indian status if they married non-status men. Such women also lost the right to confer Indian status on their children. By contrast, status Indian men who married non-status women retained their status and, additionally, were able to confer that status on their wives and children. Thus the basic entitlement provision in the pre-1985 *Indian Act* was based on descent through the male line, subject to special rules for illegitimacy and marriage.²⁶⁴
21. Because of s. 12(1)(b) of the *Indian Act*, prior to 1985, many Indian women and their children lost the rights and benefits that flow from Indian status. They were no longer entitled to receive treaty payments, could not vote in Band elections, and ultimately, could be forced to leave the reserve. Today, Indian status entitles an Aboriginal person to benefits such as on-reserve schooling, financial support for higher education, health services, and housing.²⁶⁵
22. Legal challenges by Aboriginal women to the sex discrimination inherent in these “marrying out” provisions were rejected by the Supreme Court of Canada in 1974. Sandra Lovelace, an Aboriginal woman who lost status by marrying a non-Aboriginal man, brought her case to the United Nations Human Rights Committee alleging a violation of her civil and political rights under the *International Covenant on Civil and Political Rights*. In a decision released in 1981, the Committee held that Canada had violated section 27 of the *Covenant* by denying Lovelace’s right as a person belonging to an ethnic minority to enjoy her culture

²⁶² Lea Nicholas-MacKenzie, *Forest Maidens: Myth, Racism and Indigenous Women in Canada*, unpublished paper, 2001.

²⁶³ **R.J. Romanow (Commissioner), *Commission on the Future of Health Care in Canada*, Chapter 10 “A New Approach to Aboriginal Health”, at 212.**

²⁶⁴ *Indian Act*, R.S.C. 1970, c. I-6.

²⁶⁵ Report of the Royal Commission on Aboriginal Peoples, Volume 4, *Perspectives and Realities* (Ottawa: Government of Canada, 1996), “Chapter 2: Women’s Perspective” at 24-30.

and language, since the loss of her Indian status meant the removal of her and her children from her reserve community.²⁶⁶

23. In 1985, Canada amended the *Indian Act* and restored status to the Aboriginal women who had lost status through the old legislation's "marrying out" provisions. As of June 1995, the amended *Act* allowed for the reinstatement of 95,429 persons, more than half of whom were women (57.2%).²⁶⁷
24. However the current legislation still discriminates against certain Aboriginal women, as compared to Aboriginal men. The discrimination results from Section 6 of the current *Indian Act* and is known as the "second generation cut-off" rule. Women who lost status by marrying non-Aboriginal men before 1985 and who are now reinstated under section 6(1) can pass status on to their children, but not necessarily to their grandchildren. Only if these women's children themselves marry status Indians will the women's grandchildren have status. Thus, only if the grandchildren of women reinstated under the 1985 amendments to the *Indian Act* have two status parents, will the grandchildren themselves be status Indian. By contrast, men who married non-Aboriginal women before 1985 did not lose status and, upon marriage, passed status onto their non-status wives. Their children thus did not need to be reinstated under the new legislation but, instead, had status from birth. Because of this, the status of these men's grandchildren does not depend upon both parents being status Indians. These men's grandchildren will be status Indians even if only one of their parents is a status Indian.
25. In this manner, the current federal law structuring the ability of some women to pass on their Indian status remains premised on past sexist practices favouring descent through the male line and thus continues to discriminate against Aboriginal women.²⁶⁸
26. Additional problems for Aboriginal women have resulted following the 1985 amendments. As part of the amendments to the 1985 *Indian Act*, Aboriginal bands can now control their own membership through the establishment of a membership code (although the Canadian government retains control of determining "Indian" status). Although initial membership codes have to include those Aboriginal persons, principally women and their children, who were reinstated through the 1985 amendments, bands can subsequently change these codes to exclude such

²⁶⁶ Report of the Royal Commission on Aboriginal Peoples, Volume 4, Perspectives and Realities (Ottawa: Government of Canada, 1996), "Chapter 2: Women's Perspective" at 27-33; *Canada (A.G.) v. Lavell*, [1974] S.C.R. 1349; *Lovelace v. Canada*, [1981] 2 H.R.L.J. 158 (U.N.H.R.C.).

²⁶⁷ Bill C-31, *An Act to Amend the Indian Act*, R.S.C. 1985, c. 32 (1st Supp. 1985); *Indian Act*, R.S.C 1985, c. I-5.

²⁶⁸ *Indian Act*, R.S.C 1985, c. I-5; *Report of the Royal Commission on Aboriginal Peoples*, Volume 4, *Perspectives and Realities* (Ottawa: Government of Canada, 1996), "Chapter 2: Women's Perspective", pages 33-34.

persons. Despite the fact that some Bands have adopted membership codes that disenfranchise and perpetuate discrimination against Bill C-31 reinstates, the Canadian government has chosen not to intervene in disputes about Band membership, stating that these are questions between individuals and their respective Bands. In the name of its respect for self-determination, the Canadian government has refused to *Act* to prevent discrimination against these Aboriginal women, despite their fiduciary duty to Indian people, and despite the fact that Band discrimination against Bill C-31 reinstates results from prior government discrimination.

27. Due to the large number of persons re-instated under the 1985 amendments, some Bands have expressed concern about the lack of a corresponding increase in resources provided by the federal government to meet the needs of such an increase in population for on-reserve housing, health and education. The result is that many women and children who have been reinstated have not been able to move back to their reserves nor have they been able to access the benefits that flow from Indian status.
28. By being forced to live off-reserve, many of the women reinstated under the 1985 *Indian Act* amendments are denied the right to vote in Band council elections because of residency requirements either in the *Indian Act* (section 77(1)) or in Band custom. The denial of participation in Band's political process disproportionately impacts those Aboriginal women who lost their Indian status under the pre-1985 discriminatory provisions of the *Indian Act* and who have been reinstated under the 1985 amendments.
29. In addition, Bill C-31 reinstates are being denied the right to participate in the negotiation of self-government agreements, and to benefit monetarily and otherwise from settlements of land claims. In short, Bill C-31 reinstates are still subject to discrimination that affects their participation in Band governance and community life, and their access to benefits, including education, health, child care, and housing. Women who dispute Band decisions are vulnerable to threats and violence.²⁶⁹
30. The Supreme Court of Canada has found that section 77(1) of the *Indian Act* violates the equality provisions of the Canadian *Charter of Rights and Freedoms* by denying to off-reserve members the right to vote in Band elections.²⁷⁰
31. However, this decision of the Court has not lead to any perceptible change in Band practices.

²⁶⁹ *Indian Act*, R.S.C. 1970, c. I-6, sections 77; *Report of the Royal Commission on Aboriginal Peoples*, Volume 4, *Perspectives and Realities* (Ottawa: Government of Canada, 1996), "Chapter 2: Women's Perspective," at 43-50.

²⁷⁰ *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203.

32. The UN Human Rights Committee made the following observation at the time of its April 1999 review of Canada's report under the *International Covenant on Civil and Political Rights*:

The Committee is concerned about the ongoing discrimination against aboriginal women. Following the adoption of the Committee's views in the Lovelace case in July 1981, amendments were introduced to the *Indian Act* in 1985. Although the Indian status of women who had lost status because of marriage was reinstated, this amendment affects only the woman and her children, not subsequent generations which may still be denied membership in the community. The Committee recommends that these issues be addressed by the State party.²⁷¹

33. The federal government's failure to ensure and support the full re-incorporation into their Bands of Aboriginal women who have had their status restored has the effect of denying to Aboriginal women their right to participate in Aboriginal self-governance and violates their rights under Articles 10, 11 and 15 of the Covenant.
34. Aboriginal women have launched a number of constitutional challenges to Bill C-31.

When will the federal government introduce legislation to remedy the continuing inequities caused by Bill C-31?

Why is the federal government opposing the constitutional challenges brought by Aboriginal women to the continuing discrimination against them caused by Bill C-31?

What arguments is the federal government making in response to these constitutional challenges?

Aboriginal Women and the Division of Matrimonial Property

35. Currently the federal government does not provide for fair division of matrimonial property and the possibility of temporary exclusive possession of the matrimonial home upon marriage breakdown for on-reserve Aboriginal women. More specifically, the federal government has failed to ensure adequate housing for on-reserve Aboriginal women and their children by denying them protections available to off-reserve women and children.
36. Under the Canadian Constitution, provincial law governs the division of marriage assets upon marriage breakdown. However, section 91(24) of the *Constitution Act*,

²⁷¹ *Concluding observations of the Committee on Civil and Political Rights: Canada*. O7/04/99. C/79/Add.105 at para 19.

1867 confers exclusive legislative authority on the federal government in all matters coming within the subject “Indians, and lands reserved for the Indians.” Thus, with respect to the division of on-reserve property upon marriage breakdown, a court is governed not by provincial family law but by the federal *Indian Act*, which contains no provisions for distribution of matrimonial property upon marriage breakdown.

37. While the land possession system in the *Indian Act* does not prohibit women from possessing reserve property, the cumulative effect of a history of federal legislation which has denied Aboriginal women property and inheritance rights has created the perception that women are not entitled to do so. Moreover, most Aboriginal women live on their husbands’ reserves (until recently this was mandatory by federal law). Thus, it is a matter of historical and current fact that it is more likely to be the male partner who, under law, possesses on-reserve properties. The consequences of this for Aboriginal on-reserve women are significant and twofold.²⁷²
38. Provincial family relations statutes typically provide that each spouse is entitled to an undivided half-interest in all family assets, regardless of which spouse holds title to such assets, upon an order for dissolution of marriage. Property used for a family purpose, for example, the matrimonial home, is such a family asset. These provisions, however, are not applicable to reserve lands. In 1986, the Supreme Court of Canada held that, as a result of the federal *Indian Act*, a woman cannot apply for one-half of the interest in the on-reserve properties for which her husband holds Certificates of Possession. At best, a woman may receive an award of compensation to replace her half-interest in such properties. 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.²⁷³
39. Provincial family relations statutes also allow for interim exclusive possession of the matrimonial home by one of the spouses. Such a provision recognizes the importance of temporary exclusive possession for women, many of whom also retain primary custody of children, who are seeking to escape an abusive relationship. However, again because of the federal *Indian Act*, such provincial provisions are inapplicable to women whose matrimonial home is on-reserve. The result is that Aboriginal women living on-reserve are significantly disadvantaged, denied protections widely recognized as essential to women and children upon marriage dissolution. Land and housing are in short supply on many reserves. On-reserve Aboriginal women in abusive domestic situations who do not hold the certificate of possession to the matrimonial home often face either remaining in the

²⁷² *The Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K), Part VI, ss. 91, 92; *Indian Act*, R.S.C. 1970, c. I-6, Section 20.

²⁷³ *Indian Act*, R.S.C. 1970, c. I-6, Section 20; *Derrickson v. Derrickson*, [1986] 1 S.C.R. 285; *Report of the Royal Commission on Aboriginal Peoples*, volume 4, *Perspectives and Realities* (Ottawa: Government of Canada) at 51-53.

abusive situation or seeking housing off-reserve, away from support networks of community, friends, and family.²⁷⁴

40. The federal government, to date, has failed to provide legislative protection for married Aboriginal women facing these situations. More recently, in ongoing negotiations to turn over land management to select Aboriginal Bands, the federal government has refused Aboriginal women's requests to ensure that the resulting agreements provide for the protection of the equality rights of on-reserve married women with respect to matrimonial property. The land management framework agreement resulting from these negotiations simply states that Bands must "within a year" enact provisions with respect to the division of matrimonial property on marriage breakdown. There is no requirement that this must be done in a way that respects on-reserve women's domestic and international equality rights. The Federal Government has thus refused to meet its constitutional and international responsibilities for the equality of Aboriginal women.²⁷⁵
41. Aboriginal women have launched a Charter challenge to the federal government's discriminatory treatment of them with respect to matrimonial property.

**When will the federal government put in place legislation and policies that will permit Aboriginal women living on all the reserves in Canada to enjoy the same protections in family breakdown situations, and access to division of matrimonial property, as are accorded all other (non-reserve) women in the country?
How is the government's opposition to the constitutional challenge to this inequality consistent with its obligations under the ICESCR?**

Missing and Murdered Aboriginal Women

42. Approximately 500 Aboriginal women have been murdered or reported missing over the past 15 years. There has been little, if any, media coverage, and police do not seem to be actively searching for these women. Many Aboriginal women have been murdered with no complete investigations into their deaths.²⁷⁶ Murders of Aboriginal women by white men, when prosecuted, have been dealt with by the courts in a racist manner.

²⁷⁴ *Indian Act*, R.S.C. 1970, c. I-6, Section 20; *Paul v. Paul* [1986] 1. S.C.R. 307; *Report of the Royal Commission on Aboriginal Peoples*, Volume 4, *Perspectives and Realities* (Ottawa: Government of Canada) at pp. 51-53

²⁷⁵ *Indian Act*, R.S.C. 1970, c. I-6, Section 20; Framework Agreement on First Nation Land Management Between the Following First Nations: Westband, Musqueam, Lheidlit'en, N'quatqua, Squamish, Siksika, Muskoday, Cowessess, Opaskwayak Cree, Nipissing, Mississaugas of Scugog Island, Chippewas of Mnjikaning, Chippewas of Georgina Island and the Government of Canada, 1997.

²⁷⁶ See *Sisters in Spirit*, online at: <http://www.sistersinspirit.ca/engdocuments.htm>.

43. In 1996 Indian and Northern Affairs Canada reported that, "Aboriginal women with status under the Indian Act and who are between the ages of 25 and 44 are five times more likely to experience a violent death than other Canadian women in the same age category.²⁷⁷ The crime has not stopped and with approximately 1.5 million Aboriginal people in Canada and half of that population being women, Aboriginal women have become prime targets and are the most vulnerable to such acts of violence.
44. The Native Women's Association of Canada has asked the federal government for \$10 million dollars for the Sisters in Spirit campaign, to help document the missing and murdered women, and to provide public education on the issue of the sexist and racist violence against Aboriginal women. So far this funding has not been provided.

Will the federal government provide the requested \$10 million in funding to the Sister in Spirit Campaign?
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Non-Discrimination and Equality/Maximum of Available Resources

A Decade of Going Backwards

45. Erosion of social programs by federal, provincial and territorial governments reinforces women's social and economic inequality.

Failure to use maximum of available resources to support realization of economic, social and cultural rights.

46. In the 1995 – 2005 decade Canada restructured its social programs, and the fiscal arrangements between the federal government and the provinces and territories, without any consideration of the impact on women of these massive changes.
47. In 1995, the federal government introduced the *Budget Implementation Act*. That *Act* repealed the *Canada Assistance Plan Act (CAP)* and introduced a new Canada Health and Social Transfer (CHST). As CESCR is well aware, this had the effect of fundamentally altering the mechanisms through which the federal, provincial and territorial governments share the cost of central social programs in Canada, namely, health care, post-secondary education, social assistance (welfare) and related social services.
48. The restructuring of social program financing, and the cuts to services and benefits made by both the federal and provincial governments during this decade, have increased the social and economic vulnerability of women in Canada, who have a higher risk of poverty and who rely on social programs and services to

²⁷⁷ Aboriginal Women: A Demographic, Social and Economic Profile, Indian and Northern Affairs Canada, Summer 1996.

counterbalance the powerful dynamics of patriarchy that keep them poorer, more dependent, more responsible for unpaid care-giving, and still marginal to decision-making.

49. Social programs and social services are a central means of creating an egalitarian society. Since World War II, Canada has built a “social safety net” of programs and services that provided income security through social assistance, unemployment insurance, workers’ compensation and public pensions, and in addition provided public health care and education, some child care and home care services.
50. This system of public social programs and services has been the foundation for the advancement of women. Women are still socially assigned the major role as caregivers for children, old people, sick people, and men. By providing public caregiving programs – health care, public education, child care, home care – Canada shifted some of the burden of women’s caregiving responsibilities to the shoulders of the state. This provided more opportunity for women to seek paid employment, enter higher education and participate in public life. Simultaneously, this shift provided good jobs for women in the public caregiving sector - jobs as nurses, teachers, social workers, with job security, union protection, benefits and decent pay.
51. Also, income security programs have softened women’s economic dependence on men, and supported them when they were most in need. Social assistance, unemployment insurance, and public pensions have given women more choices and more autonomy, including more sexual autonomy.
52. Not surprisingly then, the cutbacks to social programs and services have had the effect of pushing women backwards. Cutting public care-giving programs (cuts to hospitals, health care services, schools, teachers, and child welfare services, for example) have pushed more unpaid care-giving work back onto women, increasing their stress and straining their health. Cutbacks have also resulted in women losing “good jobs” in the public sector, as jobs are cut or contracted out at lower pay and without job security. Diminished income security benefits, such as social assistance and employment insurance, and narrowed eligibility rules for these benefits, have made women more economically and socially vulnerable, and less able to leave abusive situations at work or at home.
53. Canada justifies the 1995 8.2 billion dollar cut to the federal transfer payments on the grounds that social spending caused the country’s fiscal health to deteriorate, and that cuts were necessary to reduce the federal deficit.
54. This justification does not withstand careful scrutiny. Numerous economists, spanning a range of philosophical viewpoints, have concluded that the federal deficit was not caused by “excessive” social spending. Rather, high interest rates and the low employment and poor economic growth they helped bring about were by far the most significant causes of Canada’s deficit. Nor were spending cuts primarily responsible for eliminating the deficit. Lower interest rates and the increased revenues flowing from stronger economic growth were far more

significant factors. These facts cast grave doubt on whether the spending cuts made between 1995 and 1998 were ever needed to balance government budgets. In fact, a number of commentators indicate that the Finance Minister's original goal of balancing the budget by 1999-2000 could have been achieved without any program cuts whatsoever.²⁷⁸

55. At the same time as transfers to the provinces and territories were cut between 1995 and 1998, so was federal program spending as a share of the economy. It fell from 16% of GDP to 12% of GDP in the three years between 1995 – 1998. This historically low level of program spending has been held constant since then. Federal program spending is not expected to rise above 11.7% of the GDP for the foreseeable future. Armine Yalnizyan in her report on federal budgets between 1995 and 2005 says that this low level of federal involvement in the economy and society is historically unprecedented and completely incongruent with modern society.
56. Since 1997 Canada has had budget surpluses, year after year. The year upon year surpluses have not resulted in higher federal government program spending, nor have they been used to reverse the losses caused by the cuts and restructuring of the 1995 Budget.
57. Between 1997 and 2003, the federal government spent 152 billion dollars on tax reductions and tax-related benefits. Some of this expenditure takes the form of the “fiscalization of social policy.” That is, taxation measures have been implemented to support certain individual care-giving activities. A small number of tax measures addressed women's realities more than men's. But even these – for example, tax credits for care-givers or tax deductions for expenses on child care - were more valuable to women with taxable levels of income. Such tax measures a) did nothing for the women who have no taxable income, who tend to be the least advantaged and b) did nothing to help fund and regulate services, in order to insure that reliable supports are available in the first place, for Canadian women of all ages and circumstances.
58. Between 1995 and 1998, the effect of federal cuts and changes to transfer payments destabilized programs and services at the provincial and territorial levels, eroding community programs, income supports and public goods that women in Canada rely on for economic and social security. During these years the federal government also made massive changes to federal programs, like (un)employment insurance. Though the years 1998 – 2003 have been years of surplus budgets, Canada's major expenditures have been on tax cuts and debt reduction, not on investment or re-investment in social programs and services that will advance women's equality. Despite having the resource capacity to address the growing gap between the rich and the poor in Canada, and between men and women, the federal government has

not done this. Instead, for women, and for the poorest Canadians, it has been a decade of going backwards.²⁷⁹

How does the federal government justify the reduction of its contribution to social program funding in light of the importance of the funded provincial programming to the economic and social well-being of women and their families?

With respect to the transfer payments currently provided by the federal government, what guarantees are in place to ensure that provincial and territorial governments spend these funds in ways that provide adequate social programs and assistance to women, and reflect the obligations of federal, provincial and territorial governments under the ICESCR?

Why has the federal government moved away from its historic role in ensuring minimum national standards for programs such as social assistance, and of designating the social programs for which transferred funds are to be used?

Given the line of federal surpluses registered since 1998, why does the federal government continue to maintain the lowest level of federal spending since WWII when high rates of poverty, inadequate housing, and lack of affordable child care persist?

Legal Aid

59. The federal government provides general funds under the Canadian Health and Social Transfer, which at the provinces' discretion may be used for civil and family

²⁷⁹ Sources: Dungan P. and T. Wilson, "Altering the Fiscal-Monetary Policy Mix: Credible Policies to Reduce the Federal Deficit" (1985) *Canadian Tax Journal* 309; Gillespie, *Tax, Borrow and Spend: Financing Federal Spending in Canada, 1867- 1990* (Ottawa: Carleton University Press, 1991); Kneebone, R.D., "Deficits and Debt in Canada: Some Lessons from Recent History" (1994) *20 Canadian Public Policy* 152; Bakker, I., "The Politics of Scarcity: Deficits and the Debt" in M.S. Whittington and G. Williams, eds. *Canadian Politics in the 1990's*, 4th ed. (Scarborough: Nelson Canada, 1995); Osberg L. and P. Fortin, eds., *Unnecessary Debts* (Toronto: Lorimer, 1996); Stanford, J., "Growth, Interest and Debt: Canada's Fall from the Fiscal Knife- Edge" in *Alternative Federal Budget Papers 1997* (Ottawa: Canadian Centre for Policy Alternatives, 1997); *Alternative Federal Budget Papers 1998* (Ottawa: Canadian Centre for Policy Alternatives/ Choices: A Coalition for Social Justice, 1998); Yalnizyan, A., *Canada's Commitment to Equality: A Gender Analysis of the Last Ten Federal Budgets (1995-2004)*, prepared for the Feminist Alliance for International Action, <http://www.fafia-afai.org/images/pdf/CanadaCommitmentsEquality.pdf> (date accessed: May 5, 2005).

legal aid. By comparison, criminal law legal aid is specifically funded by the federal government. Studies show that criminal law legal aid is mainly used by men, whereas civil law legal aid, especially family law legal aid is mainly used by women.²⁸⁰

Has the federal government conducted a gender analysis of its special targeted funding of criminal law legal, and its lack of targeted funding for poverty, civil and family law legal aid?

Describe the current restrictions on access to poverty, civil and family legal aid in each jurisdiction, and the results of any gender-based analysis of these restrictions?

How much money does the federal government transfer to the provinces and territories annually for criminal law legal aid?

Violence Against Women

60. Male violence against women is a persistent problem in Canada, constraining women's enjoyment of all their other rights.

Document any changes by each government – federal, provincial and territorial - in direct funding of women's shelters, women's rape crisis services and support services for women who have experienced male violence since the last report to the Committee, and describe conditions or restrictions on the funding that is provided.

Article 7

The Gender Wage Gap

61. The gender wage gap persists in Canada despite the fact that a greater proportion of women earners hold university degrees than men. Women, across jobs and work circumstances, earn just under 64 cents for every dollar men earn. And women who work on a full-time, full-year basis earn only 71 cents for every dollar men earn. The gender wage gap becomes more severe when factors such as race and ethnic origin are considered. In 1995, the average earnings of visible minority women were \$16,600 compared to \$17,100 earned by other women in Canada. The

²⁸⁰ Addario, L., NAWL Report (June 1997), "Getting a Foot in the Door: Women, Civil Legal Aid and Access to Justice at 25, 46.

situation is dire for Aboriginal women, who had an average income of just \$13,300 in 1995.²⁸¹

What measures, other than pay equity legislation, has the federal government implemented to deal with the gender wage gap in particular, and, more specifically, with the gender wage gap in relation to racialized women, Aboriginal women and immigrant women?

Pay Equity

62. Only four jurisdictions currently have laws guaranteeing women's right to equal pay for work of equal value in the both the public and private sectors – federal, Yukon, Ontario, and Quebec. Alberta's legislation provides only for equal pay for the same work. Pay equity legislation in other provinces applies only to the public sector; some provinces (such as British Columbia) have no pay equity legislation at all. The federal legislation does not account for the differences in pay of racialized women, and as such is unable to address the obstacles encountered by women whose experiences are impacted by the interaction of race and gender. Further, the current legislative scheme is inaccessible to women who have neither the time nor resources to file complaints. Non-unionized women workers are rarely able to bring forth complaints, while unionized women workers who lodge complaints may wait years for their resolution. Thus, in spite of the CESCRC Committee's recommendations that the Canada ensure women's right to equal remuneration for work of equal value, the federal and provincial governments have failed to adequately address women's pay inequity, including addressing pay equity issues particular to visible minority women.
63. In 2004, the federal Pay Equity Task Force issued numerous recommendations. Thus far, the federal government has taken no action with respect to the Task Force's recommendations.²⁸²

²⁸¹ Statistics Canada, *Earnings of Canadians*, online: Statistics Canada <http://www12.statcan.ca/english/census01/Products/Analytic/companion/earn/canada.cfm> (date accessed: 6 May 2005); Department of Justice Canada, *Recommendations to the Pay Equity Task Force*, Status of Women Canada, online: Department of Justice <<http://canada.justice.gc.ca/en/payeqsal/4493.html>> (date accessed: 6 May 2005).

²⁸² Department of Justice Canada: *Pay Equity Review*, online: Department of Justice Website <<http://canada.justice.gc.ca/en/payeqsal/1200.html>> (date accessed: 6 May 2005); Department of Justice Canada: *Pay Equity Review Submissions*, online: Department of Justice Website <<http://canada.justice.gc.ca/en/payeqsal/4406.html>> (date accessed: 6 May 2005); Department of Justice Canada: *Pay Equity Review*, online: Department of Justice Website <<http://www.justice.gc.ca/en/payeqsal/index.html>> (date accessed: 6 May 2005).

Will the federal government implement the recommendations of the federal Task Force on Pay Equity?

When will Alberta and British Columbia implement legislation guaranteeing equal pay for work of equal value to women? When will all jurisdictions in Canada have legislation in place that extends the guarantee of equal pay for work of equal value to private sector workers?

Pay Equity and the Courts

64. In 1991, the Newfoundland and Labrador government legislatively erased its obligation to pay three years (\$24 million) of pay equity back wages to public sector health care workers. The obligation arose from a 1988 pay equity settlement agreement signed by the government and the workers' union. In 2004, the Supreme Court of Canada upheld this action as justified discrimination under the *Canadian Charter of Rights and Freedoms*. The Court accepted the government's claim that its deficit budgetary situation justified this denial of pay equity to these workers. The Newfoundland and Labrador Government has reached an accord regarding provincial retention of revenue flowing from off-shore resources.

Will the Newfoundland and Labrador Government honour this past commitment to these female workers?

Employment Equity

65. Employment equity in the federal jurisdiction is governed by the federal *Employment Equity Act*, which seeks to promote equality in the workplace for women, members of visible minorities, Aboriginal Peoples and persons with disabilities. In its 2002 response to the Standing Committee on Human Resources Development and the Status of Persons with Disabilities' report, the government acknowledged that the progress of Aboriginal Peoples and persons with disabilities in the private sector has been limited, while visible minorities continue to be underrepresented in the federal public service Sector. It is also notable that of the 3, 241 executive positions within the federal public service, women hold only 919 of them, 23 of whom are visible minority women.
66. In March 2000, the Task Force on the Participation of Visible Minorities in the Federal Public Service submitted its Action Plan to the federal government. The Task Force found that visible minorities were vastly underrepresented in the federal public service even as their numbers grow within the population. For those visible minorities who are part of the federal public service, promotion to management and executive levels has halted. The Task Force noted that the integrity of the federal government and the services they provide are at stake. They found that the government has not met its legislated employment equity objectives for visible

minorities, and that progress has been impeded by a lack of government-wide commitment to employment equity.²⁸³

Has the federal government implemented any of the elements of the action plan submitted by the Task Force on the Participation of Visible Minorities in the Federal Public Service?

Discrimination in Employment – Immigrant and Refugee Women

67. The 1996 Canadian Census reveals patterns of systemic discrimination against immigrant and refugee women. Many immigrant and refugee women are highly educated but are unable to find work. Despite being more highly educated than their Canadian-born counterparts, recent immigrant and refugee women, those arriving between 1990-1995, were less likely to be working or able to find work. Among those aged 25-44, 17% of recent immigrant women had a bachelor's or first professional degree compared with 13% of Canadian-born women; 9% had a master's degree or doctoral degree compared with 4% of Canadian-born women who had an advanced degree. Nonetheless 12% of all immigrant women, and 19% of recent immigrant women aged 25-44 were unemployed at the time of the Census compared to 9% of Canadian-born women in the same age group.²⁸⁴
68. Higher levels of education do not assist immigrant women to enter the labor market to the same extent that they assist Canadian-born women. University educated women aged 25-44 who immigrated to Canada in the five years before the Census have a higher rate of unemployment than Canadian-born women of **any** educational background. Immigrant women aged 25-44 who held a bachelor's degree or higher were four times as likely to be unemployed as similarly educated Canadian-born women (17% compared to 4%). Only Canadian-born women in this age group with less than Grade 9 education had higher rates of unemployment.²⁸⁵
69. Immigrant women work longer hours, for lower pay in lower skilled jobs compared to Canadian-born women. Compared to Canadian-born women who were working, immigrant women were more likely to be working full-time. However, most employed immigrant women were concentrated in administrative, clerical, sales and service jobs and a disproportionate number were manual workers (12% of all

²⁸³ Government of Canada, *Workplace Equity*, online: Government of Canada Website <<http://www.hrsdc.gc.ca/asp/gateway.asp?hr=/en/lp/lo/lsw/we/review/response/index-we.shtml&hs=wzp - progress>> (date accessed: 6 May 2005); Treasury Board of Canada Secretariat, *Embracing Change in the Federal Public Service*, online: Treasury Board of Canada Website <http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_852/ecfps1_e.asp> (date accessed: 6 May 2005).

²⁸⁴ Chard, J., et al., *Women in Canada*. (Ottawa: Statistics Canada, 2000) at 197,199.

²⁸⁵ Chard, J., et al., *Women in Canada* (Ottawa: Statistics Canada, 2000) at 201.

employed immigrant women and 17% of recent immigrant women, compared to 6% of Canadian-born women). Highly educated recent immigrant women are only about half as likely as Canadian-born women to be employed as professionals or managers.²⁸⁶

70. A race, class, gender, language interaction is evident in immigrant women's barriers to integration into Canadian society and the situation is worsening. Racialised immigrant and refugee women experience more barriers and difficulties integrating into Canadian society than their male counterparts.²⁸⁷
71. Immigrant women who do not speak either of the official languages experience more difficulty integrating than those who do speak these languages (an unemployment rate of 26% compared to 19% for those who speak either official language). Unemployment rates for immigrant women are almost doubled compared to the previous decade, rising from 10% to 19%. In comparison, unemployment rates for Canadian born women increased only slightly from 8% to 9%. Immigrant women are disproportionately absorbing the negative impacts of structural adjustments in the economy.²⁸⁸
72. There is growing poverty among racialised immigrant and refugee women. Given their economic prospects, it should not be surprising that immigrant women earn less compared to Canadian-born women and men and immigrant males. Racialized immigrant women are more dependent on government assistance and three in 10 immigrant women live below the Statistics Canada low-income cutoff. Elderly immigrant women are among Canada's poorest.²⁸⁹

What steps are federal, provincial and territorial governments taking to address the systemic inequality of immigrant and refugee women in the Canadian labour force?

Discrimination in Employment – Women of Colour

73. Women of colour have higher unemployment rates than other women. They are twice as likely as other women to be employed in manual jobs. Women of colour with university training are more likely than non-racialized women with university training to be working in clerical, sales, or service jobs. They have lower employment earnings.²⁹⁰

²⁸⁶ Chard, J., et al., *Women in Canada* (Ottawa: Statistics Canada, 2000) at 201-202.

²⁸⁷ Chard, J. *Women In Canada* (Ottawa: Statistics Canada, 2000) at 219-246

²⁸⁸ Chard, J., et al., *Women in Canada* (Ottawa: Statistics Canada, 2000) at 199-200.

²⁸⁹ Chard, J., et al., *Women in Canada* (Ottawa: Statistics Canada, 2000) at 199-200.

²⁹⁰ Chard, J., *Women in Canada* (Ottawa: Statistics Canada, 2000) at 225 – 230.

What steps are federal, provincial and territorial governments taking to address the inequality of women of colour in the workforce, and the systemic discrimination that they face.

Live-In Caregiver Program

74. The Live-In Caregiver Program provides that after working for two years in Canada as live-in caregivers, individuals can obtain permanent residence in Canada. The workers who hold these positions are predominantly visible minority women. The requirement that the caregiver live in her employer's home is widely criticized. Status of Women Canada reports 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."
75. Should a participant in the program obtain permanent residence, her overseas educational credentials are rarely recognized in Canada, resulting in a return to care giving and eventual loss of occupational skills.²⁹¹

How is the federal government responding to these concerns about the live-in-caregiver programme? Please document any consultations held with representative groups of the visible minority women who disproportionately use this programme? If consultations have been held, what government actions have come out of these consultations?

Article 9: Social Security

Women and Employment Insurance and Maternity and Parental Leave

76. Changes to Employment Insurance have made it harder for women to qualify, The government has also reduced benefit levels and shortened benefit periods.

²⁹¹ 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*, online: Status of Women Canada http://www.swc-cfc.gc.ca/pubs/066231252X/200010_066231252X_9_e.html#2 (date accessed: 8 May 2005); Newsbreak, *Live-in Partners*, July 19, 2004, online: Newsbreak http://www.inq7.net/newsbrk/2004/jul/19/nbk_8-1.htm (date accessed: 8 May 2005); National Association of Women and the Law et al., *Brief on the Proposed Immigration and Refugee Act (Bill C-11)* submitted to the Standing Committee on Citizenship and Immigration, April 2001, online: National Association of Women and the Law <http://www.nawl.ca/brief-immig.htm#42> (date accessed: 8 May 2004).

77. **Decreased Access to Employment Insurance for Women:** Changes to Employment Insurance disproportionately disqualified women workers. Coverage for men fell marginally after the 1996 changes, from 45% to 44% of all unemployed men. Coverage for women fell more dramatically over this period, from 39% to 33%. In its 1999 report *Left Out in the Cold: The End of UI for Canadian Workers*, the Canadian Labour Congress showed that only 32 percent of unemployed women got unemployment insurance benefits in 1997. Only 11 percent of women under 25 were receiving unemployment insurance benefits compared to 18 percent of men. Part-time female workers continued to pay premiums but they disproportionately were not able to claim unemployment benefits.
78. **Replacement Income Levels Lowest Ever:** Replacement rate of income under employment insurance was reduced during this decade to 55 per cent. This is the lowest percentage in the history of employment insurance in Canada. The replacement rate of income was 67% in 1971, 60% in 1980, 57% in 1993 and 55% after 1997.
79. ***Maternity and Parental Leave Improved, But Many Do Not Qualify.*** *The good news is that during the decade, maternity/parental benefits, for those who qualify, have been enhanced providing women with a longer period of benefits – up to 50 weeks.*
80. Since 1994 major changes were made to Canada's employment insurance scheme, a key income security program that is vital to women. For most unemployed women these changes have turned out to be harmful. Fewer women are eligible for regular unemployment insurance - now re-labeled employment insurance - and benefit levels are lower than ever before. The good news is that during the decade, maternity/parental benefits, *for those who qualify*, have been enhanced providing women with a longer period of benefits – up to 50 weeks.
81. In 1993 and 1994 the federal government radically changed the rules for unemployment insurance. These rules made it harder to become eligible for benefits; they shortened the duration of benefits; and they dropped the rate at which income would be replaced by benefits.
82. In 1996, the federal government changed the rules again in a way that affected women most. Entitlement to benefits was no longer based on weeks of work but on hours of work. Under the old scheme, an individual needed 12 - 20 weeks (depending upon where that individual lived) of insurable earnings within the qualifying period to become eligible for full benefits (including maternity benefits). A week of insurable earnings was a week in which at least 15 hours were worked.

83. After 1996 a claimant needed a minimum of 700 hours of insurable earnings within the qualifying period.²⁹² This is equivalent to twenty 35-hour weeks or approximately 46.6 15-hour weeks. For most individuals who work less than 35 hours a week, eligibility requirements became significantly more stringent than they were before. Indeed, the more part-time an individual's work, the longer it took for that worker to meet eligibility requirements. Anyone working less than 14 hours a week could not accumulate the required number of hours within the qualifying period of 52 weeks.
84. The new *Employment Insurance Act* also erected obstacles for people who had been out of the labour force for a long period. The new rules stipulated that such individuals need 910 hours of paid employment (the equivalent of 26 weeks of full-time work or a much longer period of part-time work) to qualify for benefits.
85. These changes in eligibility requirements hit working women disproportionately hard. Women, more than men, work in those temporary, part-time, seasonal, and/or unstable work situations—the secondary labour sector—where meeting these eligibility requirements is most difficult. They are also those employees especially vulnerable to work reduction and lay-offs. Additionally, the increased qualifying hours mandated for people returning to the labour force after a long absence disproportionately impacted women. Women's child rearing and caregiving responsibilities often result in precisely the kind of workforce absences and working patterns that were penalized under these rules. The expansion in female self-employment in Canada is also responsible for an increase in the number of unemployed women who are ineligible to receive benefits.
86. Aboriginal women, women of colour, immigrant women, and women with disabilities are overrepresented in the "marginal" labour force. Thus, changes to unemployment insurance—as they affect both unemployment insurance benefits and maternity benefits—have exacerbated inequities already present in these women's involvement in the paid labour force.
87. After the changed rules kicked in, the gap in EI protection between men and women more than doubled. Coverage for men fell marginally after the 1996 changes, from 45% to 44% of all unemployed men. Coverage for women fell more dramatically over this period, from 39% to 33%. In its 1999 report *Left Out in the Cold: The End of UI for Canadian Workers*, the Canadian Labour Congress showed that only 32 percent of unemployed women got unemployment insurance benefits in 1997. Only 11 percent of women under 25 were receiving unemployment insurance benefits compared to 18 percent of men. Part-time female workers continued to pay premiums but, the data showed, they disproportionately were not able to claim unemployment benefits. Meanwhile, between 1994 and 2003, the Employment Insurance Account has accumulated a surplus—reported to have reached over 40 billion dollars.

88. Being ineligible for employment insurance contributes to women's higher incidence of poverty. As a Statistics Canada report notes: "Not collecting UI has important implications for an individual's probability of being poor while unemployed - regardless of the policy environment, poverty is significantly higher among those who experience unemployment but do not receive UI benefits."
89. In addition to the tightened eligibility rules for employment insurance, which have made fewer women eligible than ever before, the replacement rate of income under employment insurance was reduced during this decade to 55 per cent. This is the lowest percentage in the history of employment insurance in Canada. The replacement rate of income was 67% in 1971, 60% in 1980, 57% in 1993 and 55% after 1997.
90. The good news about employment insurance came in the form of enhanced maternity, parental and sickness benefits introduced in December 2000. Parental benefits were increased to 35 weeks for both biological and adoptive parents. In addition to the 15 weeks of maternity leave (which remains unchanged), this means that a total of 50 weeks of combined benefits are now available.
91. Despite these positive changes, women in Canada are not yet adequately supported as child-bearers and caregivers for infants. Only women who have 600 hours of paid work in the previous 52 weeks can claim the employment insurance maternity benefit. And the benefit level is low - 55 per cent of earnings up to a maximum of 413 dollars a week. Low-income women can get a family supplement if their family income is below \$25,921 per year. But this still makes it difficult for women who do not have employers who top up the benefit, or partners with substantial earnings, to take advantage of the 50 weeks of maternity/parental leave.

Reforms introduced in 2000 failed to address two issues: the need for *all* new parents to have some forms of income support as they begin their lives with infants/newly adopted children; and the need to redress the continued squeeze placed on the unemployed due to eligibility restrictions, reduced benefit levels, and shorter duration periods that flowed from the reforms to unemployment insurance in the 1990s.²⁹³

²⁹³ Sources: *Employment Insurance Act*, 1996, c. 23, <http://laws.justice.gc.ca/en/E-5.6/text.html>; Iyer, N., "A Re-examination of Maternity Benefits", in Susan Boyd, ed., *Challenging the Public/Private Divide: Feminism, Law, and Public Policy* (Toronto: University of Toronto Press, 1997)

168; Paul Phillips and Erin Phillips, *Women and Work: Inequality in the Canadian Labour Market* (Toronto: James Lorimer and Publishers, 2000); Jane Pulkingham, "Remaking the Social Divisions of Welfare: Gender, 'Dependency,' and UI Reform" (1998) 56 *Studies in Political Economy*; and National Association of Women and the Law, *Bill C-12: An Act Respecting Employment Insurance in Canada: The Impact on Women* (Ottawa: National Association of Women and the Law, 1996); Yalnizyan, A., *Canada's Commitment to Equality: A Gender Analysis of the Last Ten Federal Budgets (1995-2004)*, prepared for the Feminist Alliance for International Action,

92. In its 2003 Concluding Comments, the CEDAW Committee urged Canada to:

... reconsider the eligibility rules of that 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.

Does Canada have plans to improve the Employment Insurance scheme, in particular to improve access to benefits for women, particularly part-time workers, and increase benefit levels, including benefit levels for women receiving maternity and parental benefits?

Article 10

Federal Childcare

93. The federal government has begun the process of brokering child care agreements with the provinces. Its initial efforts were aimed at a multilateral deal on child care, which failed when Québec and Alberta refused to sign on to the agreement. Thus, the government is negotiating bilateral agreements with the provinces and has signed agreements with Manitoba and Saskatchewan. The Coalition of Child Care Advocates of Canada notes that not-for-profit services are essential to ensure accountability, high-quality care, and to prevent corporate child care chains from setting up in the provinces.²⁹⁴

<http://www.fafia-afai.org/images/pdf/CanadaCommitmentsEquality.pdf> (date accessed: May 5, 2005). Canadian Labour Congress, *Left Out in the Cold: The End of UI for Canadian Workers* (Ottawa: Canadian Labour Congress, 1999); Greenspon, E., "UI changes hit youths, women" *The Globe and Mail*, March 18, 1999, A1.

²⁹⁴Coalition of Child Care Advocates, *BC Politicians challenged to meet or exceed Manitoba and Saskatchewan Child Care Agreements*, April 29, 2005, online: CCCABC

http://action.web.ca/home/cccabcc/alerts.shtml?sh_itm=32b33222173cefe202a7cb7266033723 (date accessed: 9 May 2005).

Child Care Advocacy Association of Canada, *Advocates say child care agreement sets bar for others*, April 29, 2005, online: CCAAC <<http://action.web.ca/home/ccaac/alerts.shtml?x=75959>> (date accessed: 9 May 2005).

Office of the Prime Minister, *Moving Forward: Governments of Canada and Manitoba sign an Agreement on Early Learning and Child Care*, April 29, 2005, online: Office of the Prime Minister <<http://pm.gc.ca/eng/news.asp?id=472>> (date accessed: 9 May 2005).

CTV News, *PM announces child-care deals with Manitoba*, April 29, 2005, online: CTV.ca <http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1114775947255_18/?hub=TopStories> (date accessed: 9 May 05).

Ontario Coalition for Better Childcare, *Coalition Welcomes Bilateral Agreement on Early Learning and Care*, May 6, 2005, online: OCBCC <<http://action.web.ca/home/ocbcc/alerts.shtml?x=76721>> (date accessed: 9 May 2005).

What, if any national standards, will be attached to the provision of federal child care funds to the provinces? Will the federal government attach conditions guaranteeing that the funds will be spent on community-based, not-for-profit services?

How will the federal government ensure that transferred funds are spent on child care and not on other provincial expenses?

Article 11: An Adequate Standard of Living

Women: The Majority of the Poor

Persistent Disproportionate Poverty

94. Between 1983 and 2002, the poverty rate for women fluctuated between 15% and 20%, always significantly higher than the rate of poverty among men. Even the lower rate is extremely high. It means that, in one of the wealthiest countries in the world, one in seven women is living below the poverty line.
95. Further, the overall poverty rates mask the high rates of poverty of particular groups of women. Single mothers and other “unattached women” are most likely to be poor. In 2002 51.6 per cent of single mothers, 41.5 per cent of unattached women over sixty-five, and 35 per cent of unattached women under sixty-five were living below the poverty line. Unattached men have significantly lower poverty rates.
96. Single mothers, who now lead 20% of families with children in Canada, are the group Canada with the highest poverty rate. The shockingly high rate of poverty among single mothers is even higher when the figures are disaggregated by race and by the mothers’ ages. In 1996, 73 per cent of Aboriginal single mothers were living below the poverty line. In 1998, 85.4 per cent of single mothers under twenty-five were living in poverty. Single mothers were also living in the deepest poverty, with incomes \$9,230 below the poverty line in 1998.
97. Also, race and disability seriously affect women’s economic equality in Canada. Aboriginal women, immigrant women, women of colour, and women with disabilities are significantly more vulnerable to poverty than other women in Canada. In 1997, 43 per cent of Aboriginal women, 37 per cent of women of colour, and 48 per cent of women who are recent immigrants (those who arrived between 1991 and 1995) were living below the poverty line. Aboriginal women and

women of colour also have higher rates of poverty and substantially lower incomes than their male counterparts. Women with disabilities had a poverty rate of 25.1 per cent in 1991.

98. Children make up a third (37%) of people dependent on social assistance for survival. Monica Townson in her *Report Card on Women and Poverty* released in April 2000 notes that “while Canadians are justifiably concerned about the increasing numbers of children growing up in poverty, we have tended to overlook the fact that ... it is the poverty of women that is behind the poverty of so many of our children.”²⁹⁵

Given the high rates of poverty among women in Canada, and the persistence and depth of this poverty, what measures have been taken at the federal, provincial and territorial levels to deal with this national economic and social problem?

Are there anti-poverty measures that are specifically targeted to women, and to specific groups of women who experience particularly high poverty rates?

Describe Canada’s strategies for addressing the poverty of single mothers, Aboriginal women, women of colour, women who are recent immigrants, women with disabilities and elderly single women.

Are there new strategies being designed given that women’s poverty is persistent?

Are there anti-poverty measures that have been designed to address specific problems that are known to contribute to women’s poverty, such as a lack of affordable, safe childcare, discriminatory wage differentials between women and men, the disproportionate burden of unpaid caregiving work which women carry, the failure to recognize foreign credentials of immigrant women, and racism in hiring practices?

Since the existing programs and legislative schemes regulating the workforce appear to be inadequate to improve the overall picture of women’s poverty (and unequal

²⁹⁵ Sources: Statistics Canada, Persons in low income before tax, CANSIM table [202-0802](#) and Catalogue no. [75-202-XIE](#) <http://www.statcan.ca/english/Pgdb/famil41a.htm> (date accessed: 4 November 2004).

Statistics Canada, *Women in Canada 2000: A Gender-Based Statistical Report* (Ottawa: Statistics Canada, 2000); National Council of Welfare, *Poverty Profile 1998* (Ottawa: National Council of Welfare, 2000) at 32. Fawcett G., *Living with Disability in Canada* (Ottawa: Human Resources Canada, 1996) Morris, M., *Women and Poverty* (Ottawa: Canadian Research Institute for the Advancement of Women, 2000). Monica Townson, *A Report Card on Women and Poverty* (Ottawa: Canadian Centre for Policy Alternatives, 2000).

incomes), what new initiatives are Canadian governments planning to address this problem?

The majority of those who have the supplemental portion of the federal National Child Benefit clawed back by provincial governments are single mothers. What measures is the federal government considering to address this sex-based inequality?

Have the federal and provincial governments done a gender analysis of the impact of the National Child Benefit Program, and the clawback in particular, in light of the fact that this program appears to be one of Canada's current anti-poverty strategies?

Women and Social Assistance

99. Because of their higher incidence of poverty, women are also the majority of those reliant on social assistance.²⁹⁶
100. The erosion of social assistance, including reduced welfare rates and narrowed eligibility rules, disproportionately affects women.
101. The National Council of Welfare in their report entitled *Welfare Incomes 2003* noted that, with few exceptions, welfare incomes across Canada have deteriorated “through cuts, freezes and the eroding cost of inflation.” Welfare incomes are far below the poverty line in all provinces and territories. The Council concluded: “Welfare incomes which reach only one fifth or one third of the poverty line are unacceptably low and should be raised at the earliest possible date. Rates this low cannot be described as anything other than punitive and cruel.”
102. Over the last decade, the Committee on Economic, Social and Cultural Rights and other UN treaty bodies reviewing Canada's performance have expressed concern about the poverty of women and the impact on women of inadequate social assistance. They have expressed concern that:
- That more than half the single mothers in Canada live in poverty; (CESCR, 1993, para.13)
- That “...cuts in social assistance rates, social services and programmes have had a particularly harsh impact on women, in particular single mothers, who are the majority of the poor, the majority of adults receiving social assistance and the majority among the users of social programmes.” (CESCR, 1998, para. 23)

²⁹⁶ Source: Katherine Scott, *Women and the CHST: A Profile of Women Receiving Social Assistance in 1994*, Status of Women Canada 1998, p. 73. Online at: http://www.swc-cfc.gc.ca/pubs/0662266250/199803_0662266250_e.html (date accessed: 5 May 2005).

That “the significant reductions in provincial social assistance programmes, the unavailability of affordable and appropriate housing and widespread discrimination with respect to housing create obstacles to women escaping domestic violence. Many women are forced, as a result of those obstacles, to choose between returning to or staying in a violent situation, on the one hand, or homelessness and inadequate food and clothing for themselves and their children, on the other;” (CESCR, 1998, para. 28)

“[t]hat many women have been disproportionately affected by poverty. In particular, the very high poverty rate among single mothers leaves their children without the protection to which they are entitled under the Covenant...the Committee is concerned that many of the programme cuts in recent years have exacerbated these inequalities and harmed women and other disadvantaged groups.” (Human Rights Committee, 1999, para. 20).

103. Furthermore, the Committees have gone beyond these expressions of concern to make specific recommendations to Canadian governments for immediate action. In particular, they have recommended that:

“social assistance programmes directed at women be restored to an adequate level;” (CEDAW, 1997 at para. 342.)

“a greater proportion of governmental budgets be directed specifically to address women's poverty and the poverty of their children;” (CESCR, 1998 at para. 54)

“assess the gender impact of antipoverty measures and increase its efforts to combat poverty among women in general and the vulnerable groups of women in particular.” (CEDAW, 2003, para. 358).

What steps have federal, provincial and territorial governments taken to address the concerns of United Nations treaty bodies about women’s poverty and the disproportionate impacts on women of cuts to social assistance and other social services.

Provide information from each province and territory as to the proportion of people in receipt of social assistance who are single women, single mothers, women in couples with children, women in couples without children.

What are their rates of social assistance in each province and territory for these different groups? Are these rates sufficient to enable women to secure adequate housing in light of average rents across the country?

Since the repeal of CAP welfare has been eroded. What does the federal government intend to do to ensure that social assistance schemes help to meet the requirements of Article 11 for the poorest Canadians in all jurisdictions?

[M] Quebec

Information submitted by the Ligue des droits et libertés du Québec to the Committee of Experts of the International Covenant on Economic, Social and Cultural Rights following the filing of Canada's Fourth Periodic Report (1994-1999), E/C.12/4/Add.15

May 2005

1. The Ligue des droits et Libertés du Québec has existed since 1963. It is affiliated with the Fédération internationale des droits de l'Homme. The Ligue was mandated by a broad spectrum of Quebec NGO's and unions to submit the information outlined below to the International Covenant on Economic, Social and Cultural Rights Committee of Experts (CESCR). This document is the result of an education campaign about the ICESCR and a long process of consultation and compilation of input from across Quebec.
2. The information outlined below concerns mainly the Province of Quebec where the francophone nation of Canada lives. Quebec's population is roughly 7.5 million people out of a total population of roughly 31 million people in Canada. Quebec society is a distinct society within Canada.
3. Although the 4th Periodic Report of the Canadian Government deals only with the 1994-1999 period, the Quebec NGO's and unions consider it advisable to submit up-to-date information to the CESCR in order to optimize the impact of the evaluation which this Committee will eventually make concerning the application of the rights guaranteed by the ICESCR in Canada and Quebec.

Canada and Quebec Overview (1994-1999)

4. As appears from paragraphs 27 and following of the Periodic Report filed by the Canadian government (E/C.12/4/Add.15), this government concentrated on recovering from a financial crisis and a major structural deficit during the period covered by the Report (1994-1999). **However, a period of prosperity followed this fight against the deficit.** The cumulative increase of the GNP in Canada for the 1994-2003 period was 58%. Despite the prosperity of the last decade, programme expenditures of the federal government proportional to the GNP fell by 4.5%. In 2004, these expenditures represented 11.8%, close to a record low.²⁹⁷
5. The 2004-2005 federal budget provided for a 4 billion dollar surplus, of which three billion would be allocated for the contingency reserve. The Canadian Social Development Council estimates that this surplus is 9 billion, if we make abstraction

²⁹⁷ That is to say the level of the beginning of the 1950s (see 2004 Federal Budget). See also Canadian Council on Social Development, Analysis of the 2004 budget.

of the reserve for contingencies.²⁹⁸ The 2005 Quebec budget is also a balanced budget and based on a 2.4% rate of growth.

6. **Canada is well placed to honour the commitment set forth in Section 2(1) of the ICESCR and to ensure, with a maximum of its available resources, the progressive realisation of the rights recognized and guaranteed by the ICESCR.**
7. According to the 2004 Poverty Index of rich countries established by the UNDP, Canada ranked 12th amongst 17 countries. Therefore Canada should not boast about ranking 4th out of 177 countries according to the General Human Development Index.
8. Between 1993 and 1998, the average real income of low income families in Canada went down, resulting in an increase in the gap between the average income and low income families.²⁹⁹ From 1984 to 1999, the average wealth of the poorest households went down, going from a positive value of \$5,956 to a negative value of \$10,656.³⁰⁰
9. Whereas for the 1981-1991 period, the GNP per inhabitant in Quebec (i.e. economic growth) and available income grew at the same rate, the situation was completely different for the 1991-2001 period. During this decade, the growth in the available income of individuals was lower than the growth of the economy; and, citizens didn't reap the fruits of economic growth. Companies benefited from substantial tax cuts while government transfers to individuals only increased by 3.8%. Moreover, during the same period, consumer and other indirect taxes were significantly increased.³⁰¹
10. According to the new consumer's shopping cart index put out by Canada Human Resources Development (CHRD), an adult living in Montreal requires a monthly income of \$935 to cover his/her needs and two adults require \$1,322. In Quebec, almost 400,000 people are dependant on last resort assistance for survival. Presently, the monthly rate of this assistance varies between \$533 and 771 for a single person.
11. According to the Quebec Finance Department's figures, between 1997 and 2000, the average gross income of the richest Quebec families went from \$100,333 to \$121,560 and their average net income went from \$72,255 to \$87,016 from 1997 to 2000. According to the 2001 census, the City of Montreal (in Quebec) has the highest rate of low income people (29%) amongst Canadian cities. In Montreal,

²⁹⁸ For example, in November 2004, the federal government provided for a surplus of 1.9 billion dollars which quickly changed into a surplus of 9.1 billion dollars.

²⁹⁹ Picot, G., R. Morissette et J. Myles, 2003. « Low-income intensity during the 1990s: The role of economic growth, employment earnings and social transfers », Analytical Studies Branch research paper series 11F0019MIE2003172, Analytical Studies, Ottawa, Statistics Canada.

³⁰⁰ Canadian Centre for Policy Alternatives, *Wealth Inequality in Canada*, 2002, 13.

³⁰¹ Source : www.dec-ced.gc.ca/Complements/Publications/ADT2003/fr/Graph.html

where 36% of Quebec's welfare recipients (last resort assistance) live, 37% of children are poor. This situation is even worse in the case of immigrants and single parent families headed up by a woman. In Quebec, urban poverty is getting worse.

12. In its 1998 Conclusions, (E/C.12/1Add.31,para.11), the CESCR expressed concern over the negative impact of the government's zero deficit agenda and the resulting cuts in social expenditures on the exercise of the rights guaranteed by the ICESCR. **It is unacceptable and contrary to the ICESCR recommendations that Quebecois are still victims of the same rights violations and this despite a significant upswing of economic growth and the elimination of Canadian and Quebec budget deficits.**

The implementation of ICESCR conclusions in Quebec

13. In its 1998 Conclusions (E/C.12/1Add.31, paragraphs 14 and 15), the CESCR stated that it was concerned by the restrictive interpretation of constitutional and quasi-constitutional laws in Canada and in Quebec. According to the CESCR, such interpretations limit the effective benefit of the rights guaranteed by the ICESCR to the detriment of Canadians and Quebecois.
14. The Commission des droits de la personne et des droits de la jeunesse du Québec published in 2004 their *Bilan* (Evaluation) of 25 years of existence of the Quebec Charter of Human Rights and Freedoms.³⁰² The Charter has a quasi-constitutional status within the Canadian legal system. With regard to relations between the Quebec Charter and international law, the words of the *Bilan* speak for themselves: “(...) *international law has had a determining influence on the general economy of the Quebec Charter (...). But we are still far from the situation where all the legal bodies who interpret the Charter are sufficiently attentive to the links existing between international and internal law*”.³⁰³ The Commission recommends that the Preamble to the Charter state that the Charter is based on international legal instruments, notably the Covenants.³⁰⁴
15. Concerning the rights guaranteed by the ICESCR, the Commission adds the following: “(...) *in many aspects, economic and social rights are still the poor cousins of the Charter. (...). This state of facts is explained in great part by the absence of the primacy of these rights over the rest of the legislation, as well as by the discretionary nature of the legislator's choices in social and economic matters*”.³⁰⁵ The Commission recommends therefore that Chapter IV of the Quebec Charter, dedicated to the recognition of certain economic and social rights, *begin*

³⁰² Commission des droits de la personne et des droits de la jeunesse du Québec, *Après 25 ans La Charte québécoise des droits et libertés, Bilan et Recommandations*, 2003.

³⁰³ *Id.*, Volume I, p. 101.

³⁰⁴ *Ibid.*, Recommendation 23.

³⁰⁵ *Ibid.*, p. 17

with a general provision providing for the primacy of the rights guaranteed in this Chapter over any other Quebec legislation.³⁰⁶

How does the Quebec government intend to implement the “Bilan” (Evaluation) of the 25 years of existence of the Quebec Charter of Rights and Freedoms suggestion to enshrine the primacy of economic and social human rights over any other legislation in Quebec?

16. In 2002, the *Gosselin c. Québec* (P.G.)³⁰⁷ case was heard by the Supreme Court of Canada in response to the argument that the regulations governing social assistance in Quebec during the 80’s was discriminatory.³⁰⁸ Persons less than 30 years of age, living alone and considered capable of working were paid benefits amounting to only one-third of those paid to welfare recipients over the age of thirty. The majority decision (five judges against four) illustrates well the complexity of the issues raised by this case. According to the majority of the Court, such measures were not discriminatory. The Court concluded that there had been no breach of the right to financial assistance measures and social measures, provided for by the law and susceptible to ensure a decent standard of living, as guaranteed by Section 45 of the Quebec *Charter of Human Rights and Freedoms*. Although Section 45 obliges the government to establish social assistance measures, *it removes from the court’s power of control the question of whether or not these measures are adequate*. The wording of Section 45 requires only that the government establish “measures susceptible to ensure a decent standard of living”. It does not obligate the government to defend the merit of these measures. In examining Section 7 of the Canadian Charter, the Court concludes that *nothing in the jurisprudence tends to indicate that Section 7 imposes a positive obligation on the State*. In the opinion of the Court, Section 7 restricts the State’s capacity to breach the right to life, liberty and the security of the person. There was no breach of this kind in the case at hand and *the circumstances do not justify a new application of Section 7 according to which it would impose on the State the positive obligation to guarantee a decent standard of living*.
17. The courts thus denied the right of the poorest Canadians (and the poorest Quebecois as concerns Section 45 of the Quebec Charter) to equality, security and a decent standard of living, despite the prescriptions of the ICESCR. The positions that the Canadian and Quebec governments have submitted to other bodies of control over United Nations treaties are ambiguous in this regard, at the very least. Thus, Canada has already argued that Section 6 of the Covenant on Civil and Political Rights (right to life) requires that Member States take measures designed to protect the health and well-being of individuals (CCPR/C/31/Add.62, para. 25). Likewise, in its 1998 final Observations (E/C.12/1/Add.31, para. 5), the CESCR notes with satisfaction that the *federal government has recognized that Section 7 of the Charter (liberty and security of the person) guarantees the satisfaction of*

³⁰⁶ Ibid., Recommendation 1.

³⁰⁷ *Gosselin c. Québec (Procureur général)*, [2002] 4 R.C.S. 429

³⁰⁸ Natasha Kim and Tina Piper, *Gosselin v. Québec: Back to the Poorhouse ...*, (2003) 48 *McGill L.J.* 749.

fundamental needs. However, before domestic courts, the legal representatives of the provincial governments, including those of the Quebec government, argued vigorously that there was no connection between the “civil” right to life and security of the person and the right to non-discriminatory financial assistance measures, which they consider to be non-enforceable. This was the case in the *Gosselin* case.

Can the Canadian and Quebec governments explain what legislative and other measures they intend to take in order to clarify the *positive obligation of the State to effectively guarantee the enforceable right of every person to a decent standard of living and to physical security, which are put at risk by poverty?*

Access to justice and legal aid

18. In 1996, the Quebec government carried out a major reform of its legal aid system: reduction of the services covered; changing the calculation of financial eligibility from a weekly to an annual basis; not taking into account the financial situation of the applicant in terms of the nature of the legal service requested and the impact on the realisation of his/her rights; introduction of a financial contribution by beneficiaries;

Can the government of Quebec explain how it intends to guarantee to low income persons the right to have access to justice in order to claim all their rights, and notably the rights guaranteed by the ICESCR?

The right to work and the right to have the possibility of earning one’s living by working at a freely chosen job

19. In its 1998 final Observations (E/C.12/1/Add.31, paragraph 30), the CESCR stated that it was worried about the fact that at least six Canadian provinces (including Quebec and Ontario) had adopted compulsory work programmes which made the right to social assistance conditional on employment measures or *reduced* the welfare benefits of the beneficiaries, usually young people who defended their right to freely chose the kind of employment which suited them. The Quebec government argued, on the contrary (E/C.12/1/Add.31, paragraph 1654), that the present programmes consisted of asking the welfare recipients to take steps to regain their economic and social autonomy. Moreover, the Quebec government had made the same argument before the Quebec Court of Appeal in the *Lambert* case.³⁰⁹

³⁰⁹ Québec Court of Appeal, *P.G. Québec c. Lambert*, 500-09-004457-974, Mars 2002.

Can the Quebec government explain how maintaining a rate of social assistance benefits well below the low income level which is only increased on the basis of participation in employability measures, preserves the voluntary nature of these so called employability and social reintegration measures?

20. The Quebec government adopted the *Act to foster the development of manpower training*³¹⁰. Originally, this Act stipulated that employers whose annual payroll was at least \$250,000 had to invest the equivalent of at least 1% of the payroll in employee training. The adoption of a recent Regulation³¹¹ increases the minimum payroll level to which the Act applies from \$250,000 to \$1 million. In consequence, nearly a quarter of the Quebec employees who work in small enterprises are no longer eligible for this programme. The difficulties of access to job training will therefore get worse.

Can the Quebec government explain why it excludes a large number of workers from training which would increase their qualifications with a view to guaranteeing the right to freely chosen work and why it increased the minimum payroll level to which the Act to *foster the development of manpower* applies to \$1 million ?

21. In its “Bilan” (Evaluation) of the 25 years of the existence of the Quebec Charter of Rights and Freedoms³¹², the Commission des droits de la personne et des droits de la jeunesse recommends that the right to measures and programmes facilitating, among other things, the highest level of employment, access to a job, professional training and professional reintegration be enshrined in the Quebec Charter.³¹³

Can the Quebec government specify when and how it intends to implement the Recommendation of the Commission des droits de la personne et des droits de la jeunesse to the effect of enshrining in the Quebec Charter of Human Rights and Freedoms the right to measures and programmes facilitating, amongst other things, the highest level of employment, access to a job, professional training and professional reintegration.

The right to enjoy fair and favourable working conditions

22. The Quebec government’s Action Plan to combat poverty and social exclusion announces the government’s intention to undertake an annual review of the minimum wage based on the criteria of the average income in Quebec.³¹⁴ The

³¹⁰ Act to foster the development of manpower training, L.R.Q. c. D-7.1

³¹¹ Regulation respecting the determination of total payroll, D. 1585-95, a. 1.

³¹² Supra, note 5.

³¹³ Id., Recommendation no 4.

³¹⁴ Reconciling Freedom and Social Justice: A Challenge for the Future, Government Action Plan to Combat Poverty and Social Exclusion, Ministère de l’emploi de la solidarité sociale et de la famille, April 2004, p. 42.

decision making process adopted for the minimum wage review is the one proposed by an interdepartmental Committee which wants to maintain the minimum wage at less than 50% of the average hourly wage.³¹⁵

In paragraph 1639 of Canada's Report, the Quebec government indicates that the minimum wage was \$6.90 in 2000. Presently, in May 2005, it is \$7.60. How does the government of Quebec justify that the minimum wage hasn't caught up with the real value of the 1975 minimum wage which had a real value of \$10.30?

23. In February 2004, the Quebec Superior Court invalidated Chapter IX of the Pay Equity Act.³¹⁶ On November 21, 1996, the government adopted the Pay Equity Act, a law which came into effect on November 21, 1997. This law applies to all companies in Quebec with 10 or more employees. The companies concerned had a maximum of 4 years (until November 21, 2001) to set up pay equity programmes which would redress the pay discrimination suffered by their female employees. However, Chapter IX of the Act stipulated that companies which had started or completed work on pay relativity or pay equity before November 1996 could request that this work be recognized as complying with pay equity principles in order to avoid having to redo the exercise. The Quebec government, along with more than one hundred Quebec employers, thus sent such a request to the Pay Equity Commission (PEC) which approved the plans proposed by these requests, despite the iniquities contained in the plans. The Superior Court of Quebec invalidated this chapter of the Act. The Quebec government, while deciding not to appeal, has not yet complied with the decision nor paid the appropriate retroactive salary adjustments nor implemented pay equity for the future. This situation applies notably to female employees in the Quebec civil service.

Can the Quebec government explain why it is not complying with the February 2004 judgement of the Quebec Superior Court concerning pay equity?

Freedom to form a trade-union and the right to bargain

24. In 2003, the Quebec government adopted the *Act to amend the Act respecting childcare centres and childcare services*³¹⁷, and the *Act to amend the Act respecting health services and social services*³¹⁸. The aim of these two laws was to deny the right to unionize to the family daycare services providers and to intermediate resources in health and social services, **the majority of who are women**. Quebec

³¹⁵ Rapport du comité interministériel sur la révision des critères de détermination du salaire minimum. Bibliothèque nationale du Québec, mars 2002, pp. 60-61.

³¹⁶ Syndicat de la fonction publique du Québec inc c. Procureur général du Québec et Commission de l'équité salariale 200-05-011263-998, février 2004.

³¹⁷ L.Q. 2003 c. 13.

³¹⁸ L.Q. 2003 c. 12.

unions have filed complaints with the Committee on Freedom of Association of the International Labour Organization.

Can the Quebec government explain why it refuses to recognize the right of family daycare providers and intermediate resources in health and social services to unionize? Can the Quebec government explain how such a measure protects the right to equality of these workers?

25. The government also adopted in 2003 the *Act to amend the Labour Code*.³¹⁹ Certain provisions of this Act allow enterprises to outsource activities or “functions” to a contractor, thus “freeing them from the contractual constraints of collective agreements”. Within the health and social services and education systems, **where numerous jobs are filled by women**, we can foresee the consequences of this reform: poorer working conditions, loss of fringe benefits such as pension funds or group insurance plans, lower pay and weakening of collective labour relations. On the subject of this Act, the Commission des droits de la personne et de la jeunesse du Québec asks: “How can we ensure that the employer doesn’t contract out activities for the sole purpose of escaping from its obligations in virtue of the Pay Equity Act, or the Act regarding Access to Employment Equality in Public Agencies?”³²⁰
26. Lastly, the government adopted, again in 2003, the *Act respecting bargaining units in the social affairs sector and amending the Act respecting the process of negotiation of the collective agreement in the public and parapublic sectors*.³²¹ This law redefined the configuration of bargaining units within the health and social services system, and limits the number of certification units to five. Thus forcing the merger of different bargaining units within the five job categories set by the law. Quebec unions have filed complaints with the Committee on the Freedom of Association of the International Labour Organization.

Can the Quebec government explain why it abolished the protection of the collective agreements in the case of contracting out? Can the government also explain why it interferes with the fundamental freedoms of work in the case of the forced merger of union certifications?

The right to social security, including social assurance

27. The Canadian unemployment insurance (UI) system is an insurance system into which employers and workers pay. Since 1994, the cumulative surplus of the UI

³¹⁹ L.Q. 2003 c. 26.

³²⁰ Commission des droits de la personne et des droits de la jeunesse du Québec, *La Commission des droits de la personne et des droits de la jeunesse recommande la poursuite de la réflexion avant toute modification*, 27 novembre 2003, <http://www.cdpdj.qc.ca/fr/accueil.asp?noeud1=0&noeud2=0&cle=0>

³²¹ *Act respecting bargaining units in the social affairs sector and amending the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors*, L.Q. 2003 c. 25.

account has increased dramatically and had reached 46 billion dollars on March 31, 2004³²². Before the 1996 implementation of the *Employment Insurance Act* (previously the *Unemployment Insurance Act of Canada*), the cumulative balance of the UI account always hovered around the profitability threshold, thanks to the mechanism setting the rate of premiums in force at that time. This mechanism was eliminated with the adoption of the *Employment Insurance Act*. In other words, the 46 billion accumulated surplus belongs to the employees who pay premiums and the employers. But this money has been siphoned off to pay down the national debt, and diverted to the Consolidated Fund of Canada and other expenditures. The Auditor-General, in her comments concerning the employment-insurance fund, declared that such a surplus was contrary to the spirit of the Act. Moreover, many cuts have been imposed on unemployed workers and the money saved has been used to finance so-called employment activation measures which were previously financed by the State's contributions to the unemployment-insurance system.³²³

28. In November 2004, the Standing Committee on Human Resources, Competency Development, Social Development and the Status of Handicapped Persons (Standing Committee of the House of Commons of the Canadian Parliament) presented its 3rd Report.³²⁴ The members of the Committee unanimously found that since the end of the 1990's, there are serious failings in the government's management of employment insurance funds. The premium payers – both employees and employers – have had to bear costs which are excessive compared to the advantages that the system was supposed to procure and that this must cease immediately.
29. Since 1994, the proportion of unemployed persons/beneficiaries in Canada plummeted from 89% to 42% since 1994. Recommendation 10 of the Report of the Standing Committee on Human Resources proposes that the government establish a uniform eligibility period of 360 hours, regardless of the regional rate of unemployment and of the type of benefits. Moreover, Recommendation 15 proposed that the government increase the rate of benefits from 55 to 60% of the average of the insurable weekly earning. On February 23, 2005, the President of the Privy Council of the Queen for Canada, Minister of Intergovernmental Affairs and Minister of Human Resources and Development of Competencies announced the arrival of new measures to improve the employment-insurance system.

In its 1998 final Observations (E/C.12/1/Add.31, paragraph 45), the CESCR recommended that the Canadian UI system be reformed in order to ensure **all** unemployed persons adequate protection in terms of the percentage of the benefits and the duration of benefits. Can the Canadian government specify when and how it intends to follow up on the 1998 Recommendations of the CESCR and the recommendations of the Standing Committee on Human Resources of the House of Commons of Canada?

³²² An accumulated surplus of \$48.272 billion is provided for 2005.

³²³ Since 1997, the sums charged to these measures rise roughly to 17.6 billion dollars.

³²⁴ See http://www.tbs-sct.gc.ca/rma/dpr/03-04/HRSDC-RHDCC/HRSDC-RHDCCd3405_e.asp

The right of families, mothers and children to protection and assistance

30. Paragraphs 1663, and following, of the Report produced by the Canadian government concern Quebec and support to families through appropriate tax measures. According to the Quebec government, several tax measures allow families with children to reduce their taxes. These measures include notably tax credits for minor dependant children, single-parent families, low-income families, adult children pursuing postsecondary studies and for handicapped adult children. These credits aim at compensating the expenses already incurred by families and to replace certain services of help and protection which were historically ensured by the State.

Can the Quebec government explain in what way tax credits aimed at supporting families can replace certain services of help and protection historically ensured by the State when a person doesn't have sufficient income to incur the expenses and then subsequently have access to these tax measures?

Can the Quebec government explain what measures it intends to adopt in order that the "fiscalisation" of services to families doesn't undermine the right of the poorest families to protection and help?

31. Section 2 of the *Act respecting childcare centres and childcare services*³²⁵ stipulates, that "Every child is entitled to receive, until the end of elementary school, good, continuous and personalized childcare services" However, Section 2 specifies that this right is subject to the organisation, and the resources, of persons and agencies which supply these services, the rules regarding subsidies, etc. As described by the Quebec government in paragraph 1665 of the Report submitted by Canada, in Quebec, two programmes of subsidies reduce cost of childcare services for parents. **The Act doesn't contain any provision concerning the obligation to integrate handicapped children.**

How does the Quebec government intend to ensure the right of handicapped children to access, without discrimination, the childcare services reserved for early childhood in Quebec considering that the *Act respecting childcare centres and childcare services* doesn't contain any provision concerning the obligation to integrate handicapped children ?

32. As described by the Quebec government in paragraph 1634 of the Report submitted by Canada, family responsibilities largely dictate the situation of Quebec women, both in terms of professional choices and their place in the labour market. Therefore the government recognizes the importance of measures aimed at facilitating the conciliation between work and family responsibilities. The responsibility of close family members to help parents who are losing their autonomy or handicapped

³²⁵ L.R.Q. c. C-8.2

spouses or children is one of the family responsibilities which has an impact on the family-work conciliation. The Home Support Policy³²⁶ adopted in February 2003 recognizes the importance of the contribution of close family helpers, **a majority of whom are women**. But the Quebec government has not adopted a policy specifically aimed at these women, anymore than it has adopted adequate support measures for close family helpers. On the contrary, in a document produced in July 2004 and entitled *Toward a Policy on Work-Family Balance*³²⁷, it is stated that “*The delivery by the family of care and services is at the centre of the services delivery model in health care*”. Various sources of government information (Conseil de la santé et du bien-être/ Health and Welfare Council, Vérificateur général du Québec/Auditor-General of Quebec, etc) denounce the under-financing of home care support services for persons who are losing their independence and for handicapped persons. Today, it is women who offer more than 80% of the help required and often, they do it to their own detriment. Several professional associations recognize that the care families are asked to provide goes beyond what is reasonable. In its 2005-2006 budget, the Quebec government included support measures for close family helpers which are only fiscal measures. As in the case of other measures of this kind, they don’t help the poorest people who must **pay** for the services needed and they contribute to the poverty of the «natural» helpers.

Can the Quebec government explain, in the absence of a *policy and adequate support measures* for close family helpers how it intends to meet its responsibilities of protection and help for families ?

33. In light of the provisions of the *Act respecting income support, employment assistance and social solidarity*³²⁸, a person must defend his/her rights as a condition of eligibility for last resort benefits. This requirement applies to divorce support payments, whether this divorce support is payable for the welfare recipient or uniquely for her minor children. Since June 1, 1998, the parent who receives divorce support uniquely for his/her child is entitled to keep a maximum of \$100 per month of this support payment. In Quebec, the income security benefits are paid only to meet the needs of the adult heading up the household. In paragraph 257 of the Report produced by Canada, it is stated that the government is particularly concerned by the well-being of children in case of a divorce. Divorce falls within federal jurisdiction but social assistance or last resort assistance falls within provincial jurisdiction.

What action does the Canadian government intend to take with regard to the provinces, including Quebec, which deduct the divorce support payment from social assistance benefits?

³²⁶ <http://msssa4.msss.gouv.qc.ca/fr/document/publication.nsf/0/a71804248795cb7c85256cd3000ec44f?OpenDocument>

³²⁷ http://www.mfacf.gouv.qc.ca/publications/index_en.asp?categorie=concTF

³²⁸ L.R.Q. c. S-32.001

34. In the “Bilan” (Evaluation) of the 25 years of existence of the Quebec Charter of Rights and Freedoms³²⁹, the Commission des droits de la personne et de la jeunesse du Québec recommends that the family’s right to support measures be enshrined in the Quebec Charter.

Can the Quebec government specify when and how it intends to implement the Recommendation of the Commission des droits de la personne et des droits de la jeunesse du Québec to enshrine in the Quebec Charter of Rights and Freedoms the family’s right to support measures?

The right of any person to a decent standard of living for herself/himself and her/his family, including sufficient food, clothing and housing, as well as to a continuous improvement of her/his conditions of existence.

35. Paragraph 35 of Canada’s Report states the following with regard to the funding of social and health programmes in Canada: “it is in 1996 that the Canadian Health and Social Transfer (CHST) replaced the Canada Assistance Plan (a system of equal sharing of the costs of social service and welfare costs) and the Established Programmes Financing (EPF) (overall subsidy for health and post secondary education). The CHST is a single overall financing mechanism resulting in transfers of funds and in fiscal transfers. The provincial and territorial distribution in force within the structure of the former system of transfers was carried over in the CHST, which provided support for health, post-secondary education and social services and welfare programmes.”
36. The federal government thus contributes significantly to the financing of health and social programmes which are within provincial jurisdiction through two main programmes of transfers to the provinces: equalization payments and the Canadian Health and Social Transfer (CHST), which result from the “federal power to spend”³³⁰. These transfers have continually evolved since their creation. **Over time, the CHST, a *per capita* financing, based on the respective demographic numbers of the provinces, replaced the notion of need which took into account both the level of poverty and the distribution by age of the population.**³³¹ These changes in the transfer programmes benefited the rich provinces and were to the detriment of the poorest provinces. Each time, cuts were made along with the

³²⁹ Supra, note 5, Recommendation 9.

³³⁰ The Quebec government always disputed the constitutionality of this federal power to spend and did not sign the 1982 Constitutional Act.

³³¹ See diagram 2 on the process of consolidating federal conditional transfer programs – 1950-1995, in Commission on Fiscal Imbalance, *Fiscal Imbalance in Canada: Historical Context, Report*, Supporting document 1, Bibliothèque nationale du Québec, 2002, p. 48. As from 2004, the CHST has been divided in two components: the Canadian Health Transfer (CHT) (dedicated only to health) and the Canadian Social Transfer (CST: includes post-secondary education, social assistance and social services, including early childhood development and early learning and childcare). Funding of each one is provided through cash payments and tax transfers (the federal government cedes some of its “tax room” to provincial governments, without spending money).

changes.³³² In fact transfers to the provinces reached a minimum as low as 11.2% in 1998-99.³³³ According to the report of the Seguin Commission on the fiscal imbalance between the federal government and the provinces, the cumulative withdrawal of the federal government compared to the 1977 structure of the programme, for the 1982-1983 to 2001-2002 period, was 44.9 billion dollars in Quebec.³³⁴ For the year 2001-2002 alone that corresponds to a lack of revenue of 6.4 billion dollars. From 1997 on, the government made certain reinvestments: 4.3 billion dollars for 1997-1998 to 2000-2001 and 1.7 billions dollars for 2001-2002. However, these targeted reinvestments only represented 27% of Quebec's lack of revenue for 2001-2002 and 10% of the federal cuts made in Quebec since 1982-1983.³³⁵

37. During the 1995-2005 decade Quebecois have become poorer. This observation is in accordance with the UNDP conclusions about the Poverty Index in Canada. The CESCR, in its Conclusions adopted in 1998, committed Canada to setting an official poverty threshold (paragraph 41); it also committed the Canadian government to consider the reintroduction of a national programme for the universal financing of social assistance and social services programmes in regard to which beneficiaries would have enforceable rights (paragraph 40). In paragraphs 275, and following, of the last Report filed Canada confirmed that it still has no official measurement of poverty and prefers (paragraph 277) to rejoice over the reduction of the low income rate. Nonetheless, we know that the gap is widening between the poorest and the richest households. The vulnerability of the income of households in the lowest quintile of income is getting worse, while at the same time the federal government is not restoring the level of financing of social and social assistance programme to that of the preceding decade.

What action do the federal and provincial governments intend to take concerning the 1998 recommendation of the CESCR to reintroduce the programmes for universal financing of social services and social assistance in regard to which beneficiaries would have enforceable rights in order to meet the ICECSR requirements?

When will the Canadian government adopt an official poverty threshold for Canada?

38. In Quebec, the situation of poverty is aggravated by a series of government decisions which undermine the right of the poorest households to a continually

³³² Commission on Fiscal Imbalance, *Fiscal Imbalance in Canada: Historical Context, Report*, Supporting document 1, op. cit., chart 15, p. 50.

³³³ *Id.*, chart 17, p. 56.

³³⁴ Commission on Fiscal Imbalance, *A new division of Canada's Financial Resources, Report*, Bibliothèque nationale du Québec, 2002, Table 11, p. 79.

<http://www.desequilibrefiscal.gouv.qc.ca/en/document/publication.htm>.

³³⁵ *Id.*, p. 79.

improving decent standard of living. Last recourse and social assistance benefits have only been indexed once between 1993 and 2000. For the year 2005, these benefits will be indexed according to the increase in the cost of living and the indexation formula used in the tax system for individuals in the case of welfare recipients with severe employment constraints³³⁶. For the year 2005, the amount of annual assistance will increase from \$9,372 to \$9,492, an increase of \$120 (1.3%). **However, in the case of persons capable of working but currently with temporary constraints, the indexation will be partial.** Only half of the indexation will be applied to their benefit. An amount equivalent to the rest of the indexation will be used to increase the bonus for participation.

When will the Quebec government re-establish complete and annual indexation of last resort benefits?

39. In 2004 the Quebec government introduced Bill 57 entitled *The Act respecting assistance to persons and families*. This Act will eventually replace the *Act respecting income support, employment assistance and social solidarity*. In paragraph 1656 of the Report filed by Canada, the Quebec government reminds us that it didn't implement the provision of the Act concerning income support provided for garnisheeing last resort checks for the benefit of landlords. The CESCR, in its 1998 general Observations (paragraph 26) had made unfavourable comments about this measure. Quebec's Bill 57 reintroduces once again a mechanism for landlords to garnishee cheques. After the numerous opinions voiced during the study of Bill 57, the Quebec government proposed to replace this measure by setting up so-called voluntary trusts. However, the proposed measure remains discriminatory and is the equivalent of putting beneficiaries under trusteeship. Beneficiaries would have to accept the voluntary trusts in order to have access to the housing they want or to avoid eviction.

Can the Quebec government explain why it reintroduced in Bill 57 dealing with assistance for families and persons the mechanism of garnisheeing welfare cheques to pay the rent when the last observations of the CECSR had indicated that such a mechanism was contrary to its commitments in virtue of the Convention?

40. Quebec adopted in 2002 the *Act to combat poverty and social exclusion*³³⁷. The purpose of this Act is to: guide the government and society as a whole in the planning and realisation of actions to fight poverty; to eliminate the causes; alleviate its impacts on individuals and families; work against social exclusion; and, move towards a Quebec free from poverty. To this end, Section 1 of the Act also stipulates that the government will institute a national strategy for the fight against poverty and social exclusion and create both an Advisory Committee on the fight

³³⁶ Indexation which does not correspond to the consumer price index but is lower.

³³⁷ L.R.Q., chapter L-7

against poverty and social exclusion, as well as an Observatory on poverty and social exclusion. These bodies will carry out the functions entrusted to them by this Act with a view to reaching the goals pursued by the national strategy.

41. In paragraph 1646 of Canada's Report, the Quebec government states that the Quebec system of last resort assistance is supported by Section 45 of the Quebec Charter which guarantees the right to financial assistance provided for by the law to any person. During the parliamentary debates on Bill 57 (*Act respecting assistance to persons and families*) which will replace the *Act respecting income support, employment assistance and social solidarity*, the **Minister reiterated several times that he was not obliged to ensure that the essential needs of persons qualifying under the law were met**. These statements were in response to comments that the present and eventual levels of social assistance were inadequate, and that the Bill didn't include the principle of full indexation.³³⁸
42. Moreover, the Quebec government has not set up either of the institutions it was supposed to create in virtue of the *Act to combat poverty* (Advisory Committee to combat poverty and social exclusion, as well as an Observatory on poverty).
43. Likewise, the government is not respecting the prescriptions of Section 20 of the *Act to combat poverty and social exclusion* which reads as follows: "Each minister shall, if the minister considers that proposals of a legislative or regulatory nature could have direct and significant impacts on the incomes of persons or families who, according to the indicators retained under this Act, are living in poverty, shall, when presenting the proposals to the Government, give an account of the impacts the minister foresees". Section 20 of the Act to combat poverty is in force.

Can the Quebec government clearly say whether or not it recognizes that it has the obligation to meet the essential needs of the poorest people within Quebec society, and this notably in virtue of Section 45 of the Quebec Charter?

Can the Quebec government explain why it doesn't respect the prescriptions of the Act to combat poverty and notably, Section 20 of the *Act to combat poverty and social exclusion* which provides for the obligation of the Minister to assess the impact on poverty of any legislative or regulatory measure about to be adopted ?

The right to housing

³³⁸ For a report of the debates, see :
<http://www.assnat.qc.ca/fra/37legislature1/DEBATS/journal/cas/041005.htm> et suiv.

44. In its final Observations of June 3 1993 (E/C.12/1993/5, paragraph 20), the CESCR writes: “Given the obvious presence of homeless people and inadequate housing conditions, the Committee is astonished that the money spent on social housing is not more than 1.3 % of public expenditures”. In its final Observations of December 10, 1998, the CESCR comes back to the subject again recommending that “the federal, provincial and territorial governments tackle the problem of homeless and badly housed people as a national emergency.” (paragraph 24).

Despite the 1994-1999 initiatives described in paragraphs 325, and following, of Canada’s Report, how does the federal government explain that it only plans to allocate 1.1% of its budget expenditures on housing in 2005-2006, i.e. \$2.2 billion out of \$194.9 billion, while the number of households in Canada with urgent housing needs has gone up from 1,166,000 in 1991 to 1,709,000 in 2001 and that recent documents report that 150,000 people are homeless?

45. Paragraph 329 of Canada’s Report indicates that there were a total of 639,200 units of subsidized housing on December 31, 1999. How can the State explain that this number, instead of increasing, has gone down compared to 1994 when there were 661, 481 units?

How does the federal government explain that the number of subsidized housing units has continued to go down since 1999 to arrive at the number of 635, 900 as of December 31, 2003, and this despite the budget surpluses available to the federal government?

46. Despite what the Quebec government states in paragraphs 1597 to 1599 of Canada’s Report, a survey carried out for the Quebec government among 1500 households who had to be given emergency financial assistance because they found themselves without housing in 2001 and 2002 indicated that a large number named discriminatory motives to explain why they couldn’t find housing : 21 % stated that landlords didn’t want to rent to people with children or “too many” children; 17 % indicated that landlords didn’t rent to them because they were on social assistance; 7 % talked about discrimination on the basis of their ethnic origin. These numbers reveal only a tiny part of the global problem of discrimination because they only surveyed households whose difficulties were so great that they had no housing.

Given the scope of the problem of discrimination in housing, how can the Quebec government and the Commission des droits de la personne et des droits de la jeunesse explain that from January 1, 2001 to March 31, 2003, barely 332 complaints concerning discrimination in housing were opened at the Commission and that of this number, only 17 recourses were instituted in virtue of the Charter of Human Rights and Freedoms?

47. In its *Bilan des 25 années d'existence de la Charte des droits et libertés du Québec*³³⁹, the Commission des droits de la personne et des droits de la jeunesse recommends that the right to adequate housing be enshrined in the Quebec Charter.

Can the Quebec government specify when and how it intends to implement the recommendation of the Commission des droits de la personne et des droits de la jeunesse du Québec to enshrine the right to adequate housing in the Charter of Human Rights and Freedoms ?

The right to a sufficient quantity of good quality food

48. Despite the affirmations of Canada in paragraphs 292 to 298 of the last Report filed with the CESCR, the “Bilan-faim 2004” (Hunger Evaluation 2004) produced by the Canadian Association of Food Banks demonstrates that the use of food banks in Canada has gone up by 122.7 % since 1989, and 26.6 % since 1998. The CESCR had expressed its concern about this situation in its 1998 general Observations (paragraph 33).

How does Canada explain that the use of food banks has continued to increase in Canada since the examination of its last report, to the point where 47.8 % of these organizations state that they have difficulty in responding to the demand, and often have to resign themselves to either limiting seriously the frequency of use or to give less food than usual or to refuse people?

In paragraph 292, the Canadian government affirms that the vast majority of Canadians enjoy food security. How does the government intend to develop policy concerning price fixing of food products given the studies showing that discounts are not available in the beginning of the month for persons on social assistance in the provinces?

The right to education, free elementary schooling and special needs adaptation

49. Paragraphs 1725, 1726 and 1727 of the Report submitted by Canada describe the reform of education undertaken in Quebec in virtue of changes to the *Education Act*. The review of the *Education Act*³⁴⁰ brought changes to Section 25 dealing with the mainstreaming of handicapped students and students with learning difficulties or special needs. In virtue of Section 235 of the Act : “*Every school board shall adopt, after consultation with the advisory committee on services for handicapped students and students with social maladjustments or learning difficulties, a policy concerning the organization of educational services for such students to ensure the harmonious integration of each such student into a regular class or group and into*

³³⁹ Supra, note 5, Recommendation no 2.

³⁴⁰ L.R.Q. I-13.3

school activities if it has been established, on the basis of an evaluation of the students abilities and needs that such integration would facilitate the student's learning and social integration and would not impose an excessive constraint significantly undermine the rights of other students". In its 2003-2004 report, the Auditor-General of Quebec devoted a chapter to special needs. He pointed out numerous failings in the application of the School Adaptation Policy. He was concerned notably with: the evaluation of the application of the policy; and, the absence of rules that would require school boards to be accountable for the use of monies received for special needs services aimed at supporting the mainstreaming of the handicapped students and those with learning and adaptation difficulties.

Can the Québec government explain how the changes made in 1998 to the Education Act will ensure non-discriminatory access of students with handicaps, learning difficulties or special needs to ordinary classes?

Can the Québec government demonstrate that the measures adopted in the follow-up to the School Adaptation Policy have had a positive impact on the educational success of students with handicaps or difficulties, given the weaknesses identified by the Auditor-General of Quebec in his 2003-2004 report?

50. In paragraph 1731 of the Report submitted by Canada, the Quebec government affirms, concerning post-secondary education, that the main goal of Ministry's loan-bursary programme is to remove the obstacle of lack of resources for students who want to pursue their studies.

How can the Québec government justify the fact that during the 2004-2005 school year it cut 103 million in loans-bursaries thus increasing exorbitantly the debt burden of Quebec's poorest students? Is this measure in keeping with the government's commitment to gradually ensure fully equal access to post-secondary education?

51. Elementary school education is free in Quebec. However, we note a tendency of increasing costs related to education of children: school textbooks, school transportation, lunch supervision, etc. Surprisingly, the sudden emergence of registration fees now represents the most expensive school item that schools call on parents to pay. In elementary school, the average cost per student is \$62.00 per year whereas at the secondary level the average cost is \$81. Sports clothing and work books come second and third with sports clothing costing \$47 for elementary school and \$67 for secondary school and work books costing \$42 and \$46 respectively. A study done by the Quebec Federation of Parents' Committees³⁴¹ (2000) showed that the cost of lunch supervision (with no organized activities) for parents who don't use school daycare, are on average \$101 per child per year, in addition to the other costs. When animation or organized activities are offered, expenses of \$24 and \$75 must be added respectively. Elementary school childcare

³⁴¹ <http://www.fcppq.qc.ca/en/index.cfm>

services, although subsidized, cost parents an average of \$935 per year. **In 2004, the Quebec government cancelled \$105 million of financial assistance given to schools to help cover such costs.**

How can the Québec government justify having cut, in 2004, \$105 million in financial assistance for elementary schools aimed at covering school related costs? Is this measure in keeping with the ICESCR obligation to guarantee free elementary education?

52. In its *Bilan des 25 années d'existence de la Charte des droits et libertés du Québec*³⁴², the Commission des droits de la personne et des droits de la jeunesse recommends that the right to education, including education to human rights, be enshrined in the Quebec Charter.

Can the Quebec government specify when and how it intends to implement the Recommendation of the Commission des droits de la personne et des droits de la jeunesse du Québec to enshrine in the Quebec Charter of Human Rights and Freedoms the right to education, including education to human rights ?

The right to health

53. Different health financing agreements have been signed between the federal government and the provinces since 1997. The 2000 agreement provided for a reinvestment of 23 billion dollars over 5 years, in 2003³⁴³ the federal government re-injected 37 billion dollars over 5 years; and finally, in September 2004 it re-injected 41 billion dollars over 10 years, with a 6% indexation clause as of 2006-2007. More specifically, the 2003 First Ministers Accord on Health Care Renewal provided for a reinvestment of 24 billion dollars of which 17.5 billion dollars went to specific funds, 1.1 billion to specific bodies and 5.4 billion to the general transfer³⁴⁴. In the fall of 2004, the federal government and the provinces signed a new 10-year health agreement³⁴⁵, with the goal of reducing the waiting list and expanding home care. **For the Quebec government, this latest agreement led to the payment of 500 million dollars in 2004 which the Prime Minister of Quebec paid into the Consolidated Revenue Fund under the pretext that he**

³⁴² Commission des droits de la personne et des droits de la jeunesse du Québec, *Après 25 ans La Charte québécoise des droits et libertés, Bilan et Recommandations*, 2003.

³⁴³ 2003 First Minister's Accord on Health Care Renewal, [Online]: <http://www.hc-sc.gc.ca/english/hca2003/accord.html> (page consulted on April 25th 2005).

³⁴⁴ Health Council of Canada, *Health Care Renewal in Canada : Accelerating change*, January 2005, p. 5 and 42, [Online]: http://hcc-ccs.com/report/Annual_Report/report_index.aspx (page consulted on April 25th 2005).

³⁴⁵ Canadian Intergovernmental Conference Secretariat (CICS), *A 10-year Plan to Strengthen Health Care*, September 15th 2004; *Asymmetrical Federalism that Respects Quebec's Jurisdiction*, September 15th 2004.

had already committed amounts for health for 2004.³⁴⁶ The equalization system and the Canadian Health Transfer (CHT) represent therefore an increase of 74 billion dollars over ten years (2004-2014). However, compared to the surpluses estimated by the Conference Board of Canada for the Commission on fiscal imbalance, “the federal government will have continually growing surpluses which will reach 90 billion dollars for the year 2019-2020”³⁴⁷.

How does the federal government intend to resolve the fiscal imbalance between it and the Canadian provinces in order that the provinces can offer to the population the social programmes for which they are responsible in virtue of the Canadian constitution?

In particular, how does the Canadian government intend to re-establish the margin of manoeuvre of the provinces in healthcare and social services while guaranteeing that the provinces exercise their full jurisdictions?

54. In paragraph 1712 of the Report submitted by Canada, the Quebec government affirms that Quebec can count on competent, devoted medical professionals to service a population benefiting from a universal and free system where the citizen has access to the doctor of their choice. In terms of medical resources, in 1998, there were 14,112 doctors to service an eligible population of 7.2 million, that is to say a ratio of 196 doctors for 100,000 persons, which puts Quebec in an advantageous position among industrialized countries. However, according to a Statistics Canada study, **one person out of four in Quebec did not have a family doctor in 2003**³⁴⁸. Research published this year by the Université de Montréal indicates that there is little hope for a change in this situation.³⁴⁹

Can the Quebec government explain how the obvious shortage of family doctors is compatible with the exercise of the right to health including notably access to medical services and to medical help in case of sickness?

55. In paragraph 1714 of the Report submitted by Canada, the Quebec government cites the existence of a prescription drug insurance system in Quebec which was instituted in 1997. However, the poorest people and the two thirds of social assistance beneficiaries must pay a deductible and a co-insurance, thus losing the benefit of free prescription drugs. An impact study carried out for the government in 1999 showed an increase of almost 100% in undesirable events

³⁴⁶ «Charest n’a jamais envisagé verser l’argent en santé», *Le Soleil*, 18 septembre 2004, p. A-17; Tommy Chouinard, «Le réseau de la santé se sent trahi par Charest», *Le Devoir*, 18 et 19 septembre 2004, p. A-1.

³⁴⁷ Commission on Fiscal Imbalance, *A new division of Canada’s Financial Resources, Report*, Bibliothèque nationale du Québec, 2002, p. vii and chart p. viii.

³⁴⁸ Access to Health Care Services in Canada, 2003, Statistics Canada, June 2003, p. 11.

³⁴⁹ Caractéristiques des médecins du Québec et de leur pratique selon le temps consacré à leurs activités professionnelles Groupe de recherche interdisciplinaire en santé, Université de Montréal, February 2005, p. 1.

(hospitalisations, institutionalizations, deaths outside a health institution) related to a reduction in the use of prescription drugs.³⁵⁰

What does the Québec government intend to do to remedy the restrictive access to prescription drugs and how does it explain that the most vulnerable groups within society, including social assistance beneficiaries, no longer have free access to prescription drugs ?

56. In its *Bilan des 25 années d'existence de la Charte des droits et libertés du Québec*³⁵¹, the Commission des droits de la personne et des droits de la jeunesse du Québec recommends that the right to benefit from programmes, goods, services equipment and conditions allowing one to enjoy the best possible state of mental and physical health be enshrined in the Quebec Charter of Human Rights and Freedoms.

Can the Quebec government specify when and how it intends to implement the Recommendation of the Commission des droits de la personne et des droits de la jeunesse du Québec to enshrine in the Quebec Charter of Human Rights and Freedoms the right to benefit from programmes, goods, services, equipment and conditions allowing one to enjoy the best possible state of physical and mental health?

Immigrant women and domestic work

57. The clientele of the federal programme of Live-in Caregiver Programme (LCP) is 97% women. Although this programme fully recognizes the skills associated with domestic work and care-giving, this programme doesn't allow the immigrants in question to qualify for the *qualified workers* category. And yet many of the candidates have much more than the 12 years of schooling required. Such a recognition or qualification would often protect these candidates from abusive working conditions. Studies show that criteria related to the level of education are in no way aimed at ensuring the integration of these women into Canadian society but much more aimed at depriving them of access to Canadian educational services.³⁵²

Can the Canadian government explain how it intends to guarantee the recognition of the professional qualifications acquired abroad in the case of domestic immigrant workers?

³⁵⁰ Rapport d'évaluation de l'impact du régime général d'assurance-médicaments, Mars 1999, pp. 17-18.

³⁵¹ Supra, note 5, Recommendation no 3.

³⁵² Lisa Marie Jakubowski, "The Live-in Caregiver Program: Exploring the interplay between the Text of Law and Law Talk", in *Immigration and the Legalization of Racism*, Fernwood Publishing, Halifax, 1997

58. Medical and hospitalisation services are covered for all persons residing in Quebec 183 or more days per year, who have their health insurance card, and whose waiting period is over, if applicable. The waiting period is a maximum period of three months during which newly arrived persons are not covered by the Quebec health insurance system. Immigrants coming from countries which have concluded a reciprocity agreement on social security with Quebec are generally exempted from the waiting period.

Can the Quebec government explain why persons who are newly arrived in Quebec are deprived of access to universal, free medical services for the first three months?

The right of persons with functional limitations to enjoy economic and social human rights without discrimination

59. In paragraphs 1704 and 1705 of the Report submitted by Canada, the Quebec government recognizes that the majority of handicapped persons are tenants (90%) or live in institutions. There exists in Quebec the Residential Adaptation Assistance Programme (RAAP) (*Programme d'adaptation de domicile* (PAD)), an inadequate programme which has had many difficulties for many years including a constantly increasing waiting list which reached a record number of 3,200 persons in July 2003 according to the Société d'habitation du Québec (SHQ)'s figures. The waiting period can be more than nine years. In April 2003 the Quebec government injected a non-recurring sum of \$29 million distributed over 3 years in order to reduce the waiting list, without however revising the level of assistance granted. This new measure plans to prioritize households with incomes below \$23,000. However, the level of assistance granted by the RAAP is \$8,000 (maximum). This assistance is paid to the landlord in order that he/she adapt the tenant's apartment with functional limitations or is \$16,000 in the case of an occupying owner. The average real costs of the required adaptations are presently around \$40,000 to \$50,000 (according to the files of the Société d'assurance automobile du Québec and the Commission de la santé et de la sécurité au travail). Thus, a family with an annual income of only \$23,000 would be unable make up the difference between what is required and what is paid. **The waiting list will therefore continue to grow and this mainly in the case of low income families.**

Can the Quebec government explain why it maintains, in its present form, a handicapped persons home adaptation policy which undermines the realisation of the right of these persons to housing as well as to physical safety and to the right of choosing their residence and the location of this residence?

60. As of March 31, 2003, according to the data compiled by the l'Association des établissements en réadaptation en déficience physique du Québec (AERDPQ), more than

8,200 persons, **of whom more than 3,000 are children**, were on waiting for physical rehabilitation services. The average waiting time for certain kinds of problems or in certain regions is more than 3 years. This means, necessarily, that the state of the person deteriorates and results in particularly negative impacts on the life style of these persons, on their social inclusion, their degree of autonomy or of dependency on their close family, and the exhaustion of the family, without including their level of anxiety and insecurity.

What does the Quebec government intend to do, notably for handicapped children, in order to reduce the waiting lists for rehabilitation centres and thus respect the right of any person to enjoy, without discrimination, the best state of physical and mental health that he/she is capable of attaining?

61. In October 2001, the Commission des droits de la personne et des droits de la jeunesse produced a report entitled *The Exploitation of the Elderly; Towards a Tightened Safety Net*³⁵³. This report denounces serious failings observed in the long term residential care centres in terms of: the establishment of specific hygiene and safety standards; under financing and organizational factors limiting the capacity of these centres to respect the needs and the rights of the residents; and, of the application of the Code of Ethics. The report concluded that there were breaches of the integrity, the safety, the dignity, the freedom and the privacy of persons. The report also pointed out failings in terms of the training of staff, the availability of home care, care and services dispensed in the private residences and the living conditions in the public system of residences.

What does the Quebec government intend to do in order to remedy the breaches of the rights of persons residing in public and private residences to enjoy all their social rights in the respect of their integrity, dignity and privacy?

The right to benefit from scientific progress and its applications and the obligations of States to take measures with a view to ensuring the full exercise of this right, notably that concerning the dissemination of science (Section 15, 1, b and 15,2 of ICESCR)

62. During the period covered by the 4th Periodic Report of the Canadian government, the presence of genetically modified organisms (GMO) in the food chain became an important issue of great concern to consumers. According to the data coming from the NGO's, "it is estimated that in Canada, around 60% of the products that we find on supermarket shelves contain GMO's and the food ration of livestock can contain up to 25% of GMO'S."³⁵⁴ A consumer is entitled to exercise his/her free

³⁵³ <http://www.cdpdj.qc.ca/en/publications/liste.asp?Sujet=113&noeud1=1&noeud2=6&cle=0>

³⁵⁴ Institut national de santé publique du Québec, *Aliments génétiquement modifiés et santé publique*, Document synthèse, 2001, page 19.

choice concerning his/her own food but this right is presently inapplicable because the governments have not made the labelling of GMO's, compulsory. In an opinion filed with the government of Quebec, the Commission on ethics in science and technology, a government agency, recognizes this fact and recommends "that the Quebec government, alone or in cooperation with the Canadian government, impose compulsory labelling for any product coming from transgenesis in order that the consumer can make an informed free choice".³⁵⁵

How do the Quebec and Canadian government intend to take action on the recommendation of its Commission on ethics in science and technology concerning the compulsory labelling of GMO's in products intended for human consumption?

³⁵⁵ Commission de l'éthique de la science et de la technologie, *Pour une gestion éthique des OGM*, un avis au Gouvernement du Québec, 2003, p. xxxi.

[N] British Columbia

Human Rights Move Backwards in British Columbia: An NGO Submission to the UN Committee on Economic, Social and Cultural Rights On the Occasion of the Consideration of Canada's 4th Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights

1. The B.C. CESC Group is a coalition of non-governmental organizations that deal with social rights issues, and issues of poverty, in the province of British Columbia in Canada. These organizations have recognized expertise as front-line service providers, legal advocates, community advocates, and social policy analysts.
2. Some of the members of the B.C. CESC Group wrote to the Committee on Economic, Social and Cultural Rights in February 2002 to bring to its attention a massive assault on the social and economic rights of the poorest people by the Government of British Columbia. Because Canada was between reports, the Committee did not intervene as requested, but the Chairperson of the Committee, Virginia Dandan, advised that the Committee would ask specific questions to the Government of British Columbia at the time of Canada's 4th report.

3. Review Time Period

Canada's 4th Report describes measures that were in effect between 1994 and 1999. In the Province of British Columbia *almost all of these measures have been changed or abolished since May 2001 when the current provincial government was elected*

The Committee's review process will not be a credible one if Canada can present its record to the Committee on the basis of programs that no longer exist, or have been substantially altered. The changes that the Government of B.C. has made are more than the usual fine-tuning or improvements to programs that naturally occur between the time reported on and the time of the Committee's examination of a state party. In this case, there is a wholesale withdrawal of programs and protections. Consequently, if the Committee bases its conclusions regarding B.C.'s compliance on the information provided in the 4th Report, its Concluding Observations will be irrelevant to today's situation.

4. Access to Justice and Cuts to Legal Aid

In its 1998 Concluding Observations, the Committee expressed serious concerns about the ability of people in Canada to seek and obtain effective remedies under domestic law for violations of their social and economic rights. (paras. 16, 42, 51, 54).

Despite this central concern of the Committee, the Government of British Columbia has cut legal aid. The budget for legal aid was cut by 38.8% between 2002 and 2005. Legal

aid is now provided only for criminal law matters, *Young Offender Act* matters, mental health reviews, restraining orders, and child apprehensions. No direct services are provided for family law matters, except where a party can show that violence is involved. Direct services for poverty law matters, that is for landlord/tenant, employment insurance, employment standards, welfare, disability pension claims or appeals, foreclosures, and disability trusts, have been entirely eliminated. Legal aid is being provided for immigration and refugee matters temporarily but is not expected to continue.

As well, the Government of British Columbia eliminated the B.C. Human Rights Commission and cancelled the funding for all women's centres in the province. These changes deprive members of the most disadvantaged groups of the means to seek remedies for violations of economic, social and cultural rights.

Can the government of British Columbia explain how it intends to guarantee to low income persons the right to have access to justice in order to claim all their rights, and notably the rights guaranteed by the ICESCR?

How much of the Legal Service Society's annual budget is now allotted to family law, poverty law, and immigration/refugee law?

Provide data regarding the use of criminal legal aid by women and men in B.C., and the use of poverty, civil and family law legal aid by women and men in B.C.

Have alternatives forms of advocacy and legal representation been provided for individuals with poverty law related claims or human rights issues? If so, what are the numbers of individuals served as compared to the numbers before reduced government funding? What has the response of representative groups of members of the legal profession been to legal aid funding cuts?

Article 1: The Right to Self-Determination

5. There are 55 First Nations engaged in treaty negotiations in B.C. No final agreements have been concluded yet through this current process.³⁵⁶

6. In 2002, the Government of British Columbia held a referendum seeking a mandate to deny First Nations' inherent rights as guaranteed in the Canadian Constitution, as well as the right to self-determination in the Covenant. The referendum generated major opposition across British Columbia, with tens of thousands of citizens spoiling their ballots in protest and sending them to First Nations organizations, and thousands more refusing to vote.³⁵⁷

³⁵⁶ http://www.bctreaty.net/files_3/updates.html (date accessed: May 4, 2005).

³⁵⁷ *First Nations Summit's Views on the Province Wide Referendum on Treaty Negotiations*, online: First Nations Summit <http://www.fns.bc.ca/pdf/FNSReferendumPosition.pdf> (date accessed: May 4, 2005). *First Nations Summit Unveils 29,000 Protest Ballots; Further Proof of a "Failed, Divisive" Referendum on Treaties*, online: First Nations Summit http://www.fns.bc.ca/pdf/Refballot_June%202002.pdf (date accessed: May 4, 2005)

To what extent in its role in treaty negotiations is the Government of British Columbia relying on the results of or taking guidance from the 2002 Referendum?

Articles 2 and 3: Failure to use the maximum available resources

7. The Government of British Columbia has not pursued full realization of Covenant rights “to the maximum of its available resources”. In 2001, the provincial government brought in over \$2 billion in tax cuts, mainly benefiting corporations and high-income earners. In light of this, the provincial government is unable to support its position that large-scale cuts to social services were either necessary or legitimate.³⁵⁸

Approximately, in dollar amounts, in 2002-2004, how much was cut from government spending through elimination of legal aid, elimination of funding for women’s centres, changes to benefit level and delivery of social assistance, hospital closures, and court house closures?

Articles 2.2 and 3: Rights to Non-Discrimination and Equality

8. The rights to non-discrimination and equality underpin every Covenant right, such that failure to comply with Articles 2 and 3 undermines any successes claimed regarding compliance with other Articles. Recent actions of the B.C. government have violated the rights of women, Aboriginal peoples, immigrants, refugees, children, single parents - particularly single mothers, and people with disabilities, as members of these groups figure disproportionately among the poorest residents of the province and those most reliant on the social programs and services which were cut during the 2001 – 2005 period. What follows details these violations.

9. B.C. Human Rights Commission eliminated

In 2002, the Government of British Columbia eliminated the B.C. Human Rights Commission. B.C. is now the only Canadian province without a Human Rights Commission. The Commission had the authority to conduct research, report to the legislature on serious human rights issues, promote human rights awareness, investigate complaints before they went to a hearing, intervene in cases before the Human Rights Tribunal, and provide legal help to complainants, including representation at hearings. An amended and somewhat restricted *Human Rights Code* remains in place, providing protection against discrimination on grounds such as sex, age, race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sexual orientation, criminal record, and - with respect to tenancy only - source of income. The elimination of the Commission means there is no longer any independent

³⁵⁸ Marc Lee, “Let Them Eat Cake: The Anniversary of B.C.’s Tax Cuts Is No Reason to Celebrate” (5 June 2002) Canadian Centre for Policy Alternatives, online: Canadian Centre for Policy Alternatives www.policyalternatives.ca (date accessed: 4 May 2005).

public body with the mandate to eradicate systemic discrimination, and no public voice for human rights in the province.³⁵⁹

What is the Government of British Columbia current annual expenditure on human rights compared to its pre-2001 annual expenditure? How many decisions *on the merits* - not procedural matters - were heard by the B.C. Human Rights Tribunal in 2003 and 2004? Do all human rights complainants have access to legal representation? How many cases of systemic discrimination has the B.C. Human Rights Tribunal heard since 2002?

10. No recognition of social and economic rights in B.C.'s *Human Rights Code*

The Committee on Economic, Social and Cultural Rights has urged “federal, provincial and territorial governments to expand protection in human rights legislation to include social and economic rights and to protect poor people in all jurisdictions from discrimination because of social or economic status.” B.C. has not complied with this recommendation, even the Code was amended as recently as 2002.

The Government of British Columbia amended the B.C. Human Rights Code in 2002. Why did it not add ‘social condition’ as a ground of discrimination?

11. Funding cuts to Women’s Centres

Thirty-seven women's centres across B.C. lost their core funding as of April 1, 2004, causing many to close completely. Women’s centres are providers of crisis counselling, stop violence against women programs, bridging programs, welfare advocacy, child care, health information, referral services, job entry programs and housing registries specifically for women. In 2001 women’s centres provided these and other services to

³⁵⁹ . *Human Rights Code Amendment Act*, S.B.C. c.62, amending R.S.B.C. 1996, c.210, online: British Columbia Ministry of Attorney General http://www.legis.gov.bc.ca/37th3rd/3rd_read/gov64-3.htm (date accessed: 4 May 2005); *Human Rights Code*, R.S.B.C. 1996, c.210, online: Ministry of Management Services http://www.qp.gov.bc.ca/statreg/stat/H/96210_01.htm (date accessed: 4 May); Shelagh Day, “Human Rights Plunge into the Past” (2002) Canadian Centre for Policy Alternatives, online: Canadian Centre for Policy Alternatives http://www.policyalternatives.ca/dcoments/BC_Office_Pubs/human_rights_code_brief.pdf (date accessed: 4 May 2005).³⁵⁹ http://www.bctreaty.net/files_3/updates.html (date accessed: May 4, 2005).

³⁵⁹ *First Nations Summit’s Views on the Province Wide Referendum on Treaty Negotiations*, online: First Nations Summit <http://www.fns.bc.ca/pdf/FNSReferendumPosition.pdf> (date accessed: May 4, 2005). *First Nations Summit Unveils 29,000 Protest Ballots; Further Proof of a “Failed, Divisive” Referendum on Treaties*, online: First Nations Summit http://www.fns.bc.ca/pdf/Refballot_June%202002.pdf (date accessed: May 4, 2005)

³⁵⁹ Marc Lee, “Let Them Eat Cake: The Anniversary of B.C.’s Tax Cuts Is No Reason to Celebrate” (5 June 2002) Canadian Centre for Policy Alternatives, online: Canadian Centre for Policy Alternatives www.policyalternatives.ca (date accessed: 4 May 2005).

³⁵⁹ . *Human Rights Code Amendment Act*, S.B.C. c.62, amending R.S.B.C. 1996, c.210, online: British Columbia Ministry of Attorney General http://www.legis.gov.bc.ca/37th3rd/3rd_read/gov64-3.htm

300,569 women, or 16% of all women and girls in the province. The majority of the women served were experiencing violence and/or living in poverty.³⁶⁰

What is the government's rationale for cutting core funding to all women's centres in the province.? How many dollars did this save?

12. Cuts and Changes to Social Programs Harm Women

The province's poorest and most vulnerable people have been affected most by recent cut backs of social programs. Women, particularly Aboriginal women, immigrant and refugee women, women with disabilities, senior women, and single mothers, have been harmed in particular.³⁶¹ In the 2003 Report of the CEDAW Committee, British Columbia was singled out for specific criticism for the negative impact that cuts to provincial welfare and related social programmes have had on women in the province. The CEDAW Committee specifically recommended that the government of British Columbia review recent changes to programmes and policies to determine their impact on women and to change them as necessary.³⁶²

Q What has the Government of British Columbia done to respond to the concerns and recommendations of the CEDAW Committee in 2003? Has the government done a gender impact analysis of changes to the social assistance regime? What specific measures has the Government of British Columbia put in place to deal with the issues of discrimination against women?

Article 6 and Article 10 : Children's Right to Work Freely Chosen

³⁶⁰ B.C. Coalition of Women's Centres, Press Release, "Woman's life not worth \$5.65 in British Columbia" (28 May 2002), online: B.C. Coalition of Women's Centres http://www3.telus.net/bcwomen/archives/womanslife_notworth_5_65.html (date accessed: 4 May 2005).

³⁶¹ Gill Creese and Veronica Strong-Boag, *Losing Ground: the Effects of Government Cutback on Women in British Columbia, 2001 – 2005*.

³⁶² *Consideration of reports of States Parties: Canada Fifth Periodic Report*, Committee on the Elimination of Discrimination against Women, Twenty-eighth session 13-31 January 2003, online: CEDAW <http://www.un.org/womenwatch/daw/cedaw/cedaw28/ConComCanada.PDF> (date accessed: 21 April 2005), paras. 33, 34, 35, 36.

13. In British Columbia, poor children are coerced to work. Children whose parents receive social assistance can be required to seek employment as soon as they reach age 16. This requirement can be made a condition of their family's receipt of social assistance, such that the family is penalized by \$100 if the youth fails to comply. Thus, while other youths are encouraged to concentrate on their education, youths whose families rely on social assistance are pressured to seek paid employment. This policy implicates Article 6, as well as Article 10, which requires British Columbia to protect children from exploitation and to protect and assist children without discrimination.³⁶³

How many children under the age of 16 work? How many of these children are in families in receipt of social assistance?

Article 7: Just and Favourable Conditions of Work

14. Inadequate minimum wage

Article 7 guarantees the right of all workers to wages that provide a decent living for themselves and their families. As the Committee has already noted minimum wages are insufficient to fulfill the obligations set out in Article 7. In 2003, British Columbia's \$8 dollar an hour minimum wage was not sufficient to allow a full-time, full-year worker to rise above any measure of poverty, leaving very basic needs unmet. In addition, the inadequacy of the minimum wage level in British Columbia violates Articles 2 and 3 of the Covenant because the majority of people who rely on minimum wage jobs are women.³⁶⁴

Provide a race and sex breakdown of minimum wages workers in B.C., as well as a description of the industries and sectors in which they are employed?

15. Training wage introduced for first workers

In 2001 B.C. introduced a \$6 per hour "training wage," \$2 dollar per hour lower than the minimum wage, for the first 500 hours of work. The most obvious impact of this change is on youth, many of whom rely on minimum wage work to help finance post-secondary education. However, the training wage is also affecting immigrants as well as women

³⁶³ BC Employment and Assistance Act S.B.C. 2002, c.40, s. 9, online: Ministry of Management Services http://www.qp.gov.bc.ca/statreg/stat/E/02040_01.htm (date accessed: 4 May 2005). BC Employment and Assistance Regulation B.C. Reg. 263/2002, s. 30, online: Ministry of Management Services http://www.qp.gov.bc.ca/statreg/reg/E/263_2002.htm (date accessed: 4 May 2005).

³⁶⁴ National Council of Welfare Reports, *Income for Living?* (Spring 2004) at 45, online: NCW http://www.ncwcnbes.net/html/document/reportIFL/IFL_e.pdf (date accessed: 5 May 2005). Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, 4 December 1998, E/C.12/1/Add.314 at para. 32. Christopher Schenk, *From Poverty Wages to a Living Wage* (Toronto: Centre for Social Justice, 2001) at 5, online: Centre for Social Justice <http://www.socialjustice.org/pdfs/povertylivingwage.pdf> (date accessed: 5 May 2005).

returning to the labour force after interruptions caused by child-raising. All of these workers now face greater risk of poverty.³⁶⁵

Provide data on who is being paid the training wage by age, race, and sex.

16. Child Labour

In 2002 the *Employment Standards Act* was amended to reduce the regulation of child labour. Under the new scheme, employers are no longer required to have the permission of the government to hire a child between the ages of 12 and 15 as long as one of the child's parents consent. Children are allowed to work up to 20 hours a week at unlimited times (other than during school hours) and doing unlimited types of work; in other words, the new legislation neither prohibits children from working nightshifts nor from performing labour with heavy machinery nor doing other dangerous activities.³⁶⁶

How many children between the ages of 12 and 15 are currently employed, in what kinds of work, and for what hours? What are the racial backgrounds and family incomes of these children? What data does the government have on who is being paid the training wage?

17. Overtime Averaging Agreements

In British Columbia, the standard work day is eight hours and the standard work week is 40 hours. Employers used to have to pay workers overtime for any hours exceeding those limits. However, the *Employment Standards Act* has been amended to allow employers and employees to negotiate a work schedule under an “averaging agreement”. A work schedule negotiated under an averaging agreement would maintain the standard 40 hour work week, but be averaged over two, three or four weeks. Thus, an employee can work up to 12 hours in a day without receiving overtime pay, as long as they work no more than 160 hours in a month.³⁶⁷

The government claims that these changes create more “flexibility” for workers who “want to schedule extra hours in exchange for time off to meet work and family responsibilities.” However, these changes do not benefit vulnerable workers such as low-income, non-unionized women and immigrants who do not negotiate with their employers on an equal footing and thus are at great risk of exploitation.³⁶⁸

³⁶⁵ <http://www.labour.gov.bc.ca/esb/facshts/firstjob.htm> (date accessed: 5 May 2005). Friends of Women and Children in B.C., Report Card, 15 April 2002, Vol. 1 No.1, online: University of British Columbia Centre for Women's Studies and Gender Relations <http://www.wmst.ubc.ca/FWCBCApr02.pdf> (date accessed: 5 May 2005)

³⁶⁶ *Skills Development and Labour Statutes Amendment Act*, S.B.C. 2001, c. 33, s.3, online: Legislative Assembly of British Columbia http://www.legis.gov.bc.ca/37th4th/1st_read/gov37-1.htm. (date accessed: 4 May 2005).

³⁶⁷ *Employment Standards Amendment Act*, S.B.C. 2002, c. 42, s.17, online: British Columbia Legislature http://www.legis.gov.bc.ca/37th3rd/3rd_read/gov48-3.htm (date accessed: 4 May 2005).

³⁶⁸ BC Ministry of Skills Development and Labour website, online: Ministry of Skills Development and Labour <http://www.labour.gov.bc.ca/esb/averaging/> (date accessed: 4 May 2005).

What groups of workers (by race, sex, and age) in what industries and labour force sectors, are mainly affected by overtime averaging agreements?

18. Minimum shift

The *Employment Standards Act* has also been amended to allow employers to call employees in to work for only two hours rather than the previous minimum of four. This change has a particularly harmful impact on women workers who are the majority of part-time workers and will have to incur costs for arranging child care despite the short length of the shift. In addition, workers must pay the full cost of return transportation yet receive a fraction of the earnings they would receive from working a full shift.³⁶⁹

What groups of workers, (race, sex, and age), in what industries and labour force sectors, are mainly affected by the reduced minimum call out?

19. No unconditional obligation to enforce standards

Except under extremely limited circumstances, workers who have a complaint about wages or workplace conditions must attempt to resolve the issue on their own using a “self-help kit” before the Employment Standards Branch will hear their complaint. In general, there is no longer any statutory obligation for the government to enforce the *Employment Standards Act* until resolution has been attempted by the individual worker.³⁷⁰

Who are the workers most affected by recent changes to the Employment Standards Act?

20. Agricultural workers excluded

Under new *Employment Standards Act* regulations, agricultural workers are now excluded from rules governing hours of work, overtime, and statutory holiday pay.³⁷¹

What are the working conditions, wages, and employment benefits available to agricultural workers? What is the racial, ethnic, and gender composition of this group of workers?

³⁶⁹ *Employment Standards Amendment Act*, S.B.C. 2002, c. 42, online: Legislative Assembly of British Columbia http://www.legis.gov.bc.ca/37th3rd/3rd_read/gov48-3.htm (date accessed: 16 June 2004).

³⁷⁰ Employment Standards Self-Help Kit, Ministry of Skills Development and Labour website, online: Ministry of Skills Development and Labour <http://www.labour.gov.bc.ca/esb/self-help/sh-start.htm> (date accessed: 4 May 2005). *Employment Standards Amendment Act*, S.B.C. 2002, c. 42, s.39, online: British Columbia Legislature http://www.legis.gov.bc.ca/37th3rd/3rd_read/gov48-3.htm (date accessed: 16 June 2004).

³⁷¹ Reg.396/95, s.34.1, online: Ministry of Management Services http://www.qp.gov.bc.ca/statreg/reg/E/EmployStand/396_95.htm (date accessed: 24 June 2004).

21. Pay equity repealed

In 2001 the government of British Columbia repealed the section of the B.C. *Human Rights Code* that prohibited paying women less than men for work of equal value, in direct defiance of the Committee's recommendation that Canadian governments adopt measures to protect women's rights to equal remuneration for equal work. After the repeal, the government appointed a Task Force on Pay Equity that noted the need for aggressive action on the part of the B.C. government to address women's pay inequity. The "gender wage gap" in B.C. stands at 19%. The government has taken no action on this report.³⁷²

What does the government intend to do to address the ongoing pay inequity experienced by women in British Columbia? What data does the government have on pay equity and on the racial and ethnic composition of the female work force and corresponding rates of pay?

Article 8: Right to join trade unions and to strike

22. Contracts broken and right to strike denied

The Government of British Columbia has directly challenged the rights set out in Article 8. Since 2001, it has introduced several pieces of legislation to end strikes and enforce contract terms. For example, the *Health Services Continuation Act* forced health professionals and nurses to end lawful job action. The *Skills Development and Labour Statutes Amendment Act* made education an essential service so that striking by teachers would be illegal. Both the *Health Care Services Collective Agreements Act* and the *Education Service Collective Agreement Act* imposed the employers' last offer as the contracts for nurses and teachers.³⁷³

The International Labour Organization's Committee on Freedom of Association (I.L.O.) found that this type of legislation violates the *Convention on Freedom of Association and*

³⁷² Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, 4 December 1998, E/C.12/1/Add.314 at para. 53. N. Iyer, *Working through the Wage Gap: Report of the task force on pay equity* (28 February 2002) Ministry of Attorney General at 88-9 and 154, online: Ministry of Attorney General http://www.ag.gov.bc.ca/public/working_through_the_wage_gap.pdf (date accessed: 5 May 2005).

³⁷³ Bill 2, *Health Services Continuation Act*, 1st Sess., 37th Parl., British Columbia, 2001, online: Legislative Assembly of British Columbia http://www.legis.gov.bc.ca/37th1st/1st_read/gov02-1.htm (date accessed: 4 May 2005). Bill 15, *Health Care Services Collective Agreements Act*, 2^d Sess., 37th Parl., British Columbia, 2001, online: Legislative Assembly of British Columbia http://www.legis.gov.bc.ca/37th2nd/1st_read/gov15-1.htm (date accessed: 4 May 2005). Bill 18, *Skills Development and Labour Statutes Amendment Act*, 2^d Sess., 37th Parl., British Columbia, 2001, online: Legislative Assembly of British Columbia http://www.legis.gov.bc.ca/37th2nd/1st_read/gov18-1.htm (date accessed: 4 May 2005). Bill 27, *Education Service Collective Agreement Act*, 2^d Sess., 37th Parl., British Columbia, 2001, online: Legislative Assembly of British Columbia http://www.legis.gov.bc.ca/37th2nd/1st_read/gov27-1.htm (date accessed: 5 May 2005).

Protection of the Right to Organize. The Committee admonished the B.C. government to avoid resorting to such extreme measures in its union dealings and expressed grave concern about the many detrimental effects of imposing legislative restrictions on collective bargaining. The I.L.O. recommended that B.C. amend (or in some cases repeal) the offending legislation to bring the province within the scope of its international obligations. Further, the Committee stressed that the B.C. government is required to take its I.L.O. obligations more seriously, as “all governments are obliged to respect fully the commitments undertaken by ratification of I.L.O. Conventions.”³⁷⁴

Despite the I.L.O.’s stern reminder about B.C.’s international human rights commitments, the B.C. government maintained its position in a more recent labour dispute, when members of the Health Employees’ Union (H.E.U.) were legislated back to work after a three-day strike. The H.E.U. was engaging in the collective bargaining process with hopes of undoing some of the damage inflicted by the *Health and Social Services Delivery Improvement Act*, which had given health and social services sector employers the right to disregard collective agreements, including job security provisions, and which was one of the Bills condemned by the I.L.O. for violating workers’ rights. The H.E.U. reports 6000 jobs have been lost since January 2002 when the legislation was passed. The effects have been particularly devastating as so many of H.E.U.’s 40,000 members are women (85%), immigrants, visible minorities, and older workers. The privatization of health care workers jobs, resulting from this legislation, has meant a 44% wage decrease for housekeepers from the old H.E.U. contract levels.³⁷⁵

The H.E.U. was also bargaining for a retreat from Bill 94, passed in December, 2003, which exempted private corporations operating within the health care system from abiding by existing collective bargaining agreements and basic labour regulations that apply to other unionized workers. In passing back-to-work legislation, the government’s response repeated its previous violations of the right to bargain collectively.³⁷⁶ Further,

³⁷⁴ *Convention on Freedom of Association and Protection of the Right to Organize* (C87), 1948, online: International Labour Organization <http://www.ilo.org/ilolex/english/convdisp1.htm> (date accessed: 4 May 2005). I.L.O. Case(s) No(s). 2166, 2173, 2180, 2196, Report No. 330 (Canada): *Complaints against the Government of Canada concerning the Province of British Columbia*, at paras. 288 and 304, online: International Labour Organization <http://www.ilo.org/ilolex/english/newcountryframeE.htm> (date accessed: 4 May 2005).

³⁷⁵ Bill 29, *Health and Social Services Delivery Improvement Act*, 2d Sess., 37th Parl., British Columbia, 2001, online: Legislative Assembly of British Columbia http://www.legis.gov.bc.ca/37th2nd/1st_read/gov29-1.htm (date accessed: 4 May 2005).

³⁷⁶ Bill 94, *Health Sector Partnerships Agreement Act*, 4th Sess., 37th Parl., British Columbia, 2003, online: Legislative Assembly of British Columbia http://www.legis.gov.bc.ca/37th4th/1st_read/gov94-1.htm (date accessed: 4 May 2005). “‘Son of Bill 29’ gives corporations in health care more power” *Guardian* 22:1 (January 2004), online: Hospital Employees Union http://www.heu.org/cgi-bin/pi.cgi?t.../pubs/past_article3_9.html+published_articles_list.FILE:/guardian/22-1/published_articles_list+published_articles_list.RECORD!Display:10010+publications_list.FILE:/admin/d_atabase/publications_list+publications_list.RECORD:10001+published_dates_list.FILE:/guardian/publishes_d_dates_list+published_dates_list.RECORD:10018 (date accessed: 22 June 2004). Bill 37, *Health Sector (Facilities Subsector) Collective Agreement Act*, 5th Sess., 37th Parl., British Columbia, 2004, online: Legislative Assembly of British Columbia http://www.legis.gov.bc.ca/37th5th/3rd_read/gov37-3.htm (date accessed: 4 May 2005).

the B.C. Supreme Court, asked to consider the constitutionality of this legislation, chose to ignore international human rights.³⁷⁷

What position does the Government of British Columbia currently take with respect to freedom of association under s. 2(c) of the Canadian Charter of Rights and Freedoms and the applicability of that section to the labour issues the government faces in the health sector?

Article 9

23. Compensation for workplace injuries reduced

Recent changes to the Workers Compensation regime have reduced the system's capacity to provide adequate social security for injured workers. In 2002, the *Workers Compensation Act* was amended to change the way benefits are calculated. In practice, this change has resulted in a significant reduction of benefits for workers. Further, the process for reviewing and appealing decisions has been changed in ways that impose severe limitations on workers' appeal rights.³⁷⁸

Describe the changes made to the Workers' Compensation scheme. Have these resulted in reduced benefits to injured workers?

24. Seniors Supplement eliminated

The Seniors Supplement is a provincial program that used to guarantee the monthly income of B.C.'s seniors. It is being reduced and eliminated by the summer of 2004, causing much anxiety among B.C.'s low-income seniors. The decision is based on an increase in the amount given to seniors under the federally-administered Guaranteed Income Supplement and Allowances. The federal increase is intended only to keep up with inflation, but instead it became an opportunity for the provincial government to claw back the increase. The effect is particularly harmful to older women, who have a higher incidence of poverty than older men. In 2002, 41.5 percent of unattached Canadian women over the age of 65 were below the before tax low-income cut-off line.³⁷⁹

³⁷⁷ *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia* [2003] B.C.J. 2107 2003 B.C.S.C. 1379 Vancouver Registry No. L020810 at paras. 122-123.

³⁷⁸ *Workers Compensation Act*, R.S.B.C. 1996, c.492, online: Legislative Assembly of British Columbia http://www.qp.gov.bc.ca/statreg/stat/W/96492_00.htm (date accessed: 4 May 2005). Workers' Compensation Board of B.C. website, online: Workers' Compensation Board of B.C. http://www.worksafebc.com/law_and_policy/legislation_and_regulation/new_legislation/bill_49/default.asp (date accessed: 4 May 2005). Workers' Compensation Board of B.C. website, online: Workers' Compensation Board of B.C. http://www.worksafebc.com/law_and_policy/legislation_and_regulation/new_legislation/bill_63/default.asp (date accessed: 4 May 2005).

³⁷⁹ Seniors Policies and Programs Database website, online: Seniors Policies and Programs Database http://www.sppd.gc.ca/sppd-bdppa/english/details.jsp?PROGRAM_ID=192 (date accessed: 4 May 2005). Statistics Canada, *Persons in low income before tax*, online: Statistics Canada <http://www.statcan.ca/english/Pgdb/famil41a.htm> (date accessed: 4 May 2005).

What is the effect on the incomes of seniors in B.C. of the elimination of the Seniors Supplement. What would their incomes have been if they had been allowed to keep the federal increase to GIS and the Seniors Supplement? What percentage of the LICO does this income represent?

Article 10

25. 'Child protection' discriminatory

Article 10 requires that “special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.” In British Columbia, Aboriginal children are 6.3 times more likely to be removed from their homes, in the name of protection, than non-Aboriginal children, and they make up approximately 40% of all children in care. These practices reflect the failure of British Columbia’s child protection regime to adequately consider the needs of Aboriginal children, families, and communities. Further, this failure seriously infringes the right to participate fully in cultural life (Article 15), as approximately 3,000 of the 4,200 B.C. Aboriginal children in care have been housed in non-native homes with limited or no contact with the culture of their birth parents and ancestors.³⁸⁰

Children are also disproportionately removed from single parents, especially single parent families on welfare, from which group come 65 percent of all child apprehensions. Mothers in poverty, especially those from racialized groups, are vulnerable to child welfare authorities because they are living under conditions of deprivation imposed by the state—inadequate food, substandard shelter, inadequate child care, inadequate clothing, and generally impoverished environments—that make parenting extremely challenging. Clearly, British Columbia is failing to support these families sufficiently.³⁸¹

What support for the families of children at risk due to the poverty of their parents does the Government offer? What specific support is offered for single mother-led families on income assistance? What is the number of child apprehensions made from families on income assistance in each year between 2000 and 2005? What is the number of child apprehensions made from families of Aboriginal ancestry in each year between 2000 and 2005?

26. Children in need criminalized

³⁸⁰ Ministry of Children and Family Development, *The health and well-being of aboriginal children and youth in British Columbia* (1 June 2002) at 31 and 32. Jeff Lee “The politics of caring: As scandal rages, aboriginal kids languish in non-native care” *The Vancouver Sun* (5 June 2004).

³⁸¹ Ministry of Children and Family Development, News Release, “Families, Regions Key to New Strategy—Minister” (18 January 2002).

In the absence of adequate social services, children and youth in need are criminalized. In particular, girls and young women living in poverty are disproportionately targeted by the criminal justice system and over-incarcerated. Sentencing young women to custody, particularly for inconsequential offences such as breach of a probation order, is a paternalistic attempt to protect them from violence, poverty, and addiction on the street. In early 2005, the B.C. Liberal government introduced the *Safe Care Act*, legislation under which police may apprehend underage sex-trade workers for 30 days. In addition, the *Safe Streets Act* has been enacted. This legislation criminalizes activities like pan-handling and squeegeeing (unsolicited car window-cleaning), which are the result of poverty.³⁸²

What supports are being provided for street children in British Columbia regarding access to adequate income (food, clothing and shelter), education, safe housing, drug treatment, counselling? What supports are being provided, in particular, for girls living on the streets with respect to access to education, safe (all girl) housing, exit programs from prostitution and drug addiction?

27. Child Care

Access to child care, which has never been adequate to the needs of families, especially women, has been made worse since 2002 by the following changes.

- Further restricting access to child care for single mothers on social assistance.
- Eliminating the Funding Assistance Programme of Child Care BC, which provided 15,000 child care spaces for school aged children at a maximum fee of \$7 dollars a day for before and after school care.³⁸³
- Eliminating salary top ups to child care workers in licensed day care centres, who are among the lowest paid women workers.
- Cutting funds to child care resource and referral services, making locating appropriate child care more difficult for parents.
- Lowering the income level for eligibility for child care subsidies, so that families have to be poorer to qualify. As of 2002, the day care subsidy started to be reduced for a single mother with one child when she had an income of \$16,836 annually, or, in other words, when she was earning \$9.25 an hour for full-time work. The 2002 reduced eligibility for full subsidy negatively affected 10,500 families. In short: 1) fewer families were able to access child care subsidies; and, 2) eligible families received fewer dollars to assist with monthly child care fees.³⁸⁴
- Changing the operating funding programme available to child care providers to a *per capita* grant based on enrollment. This funding formula favours child care centres in well-to-do neighbourhoods where families can pay more than the subsidy amount and

³⁸² Raymond R. Corrado, Candice Odgers, and Irwin M. Cohen, "The incarceration of female young offenders: Protection for whom?" (2000) 42 Can. J. Crim. 2 at 192.

³⁸³ Coalition of Child Care Advocates of British Columbia, *Timeline of child care in BC*, online: Coalition of Child Care Advocates <http://www.cccabc.bc.ca/res/timeline.html> (date accessed: 21 February 2005).

³⁸⁴ B.C. Ministry of Human Resources Fact Sheet, *Child Care Subsidy*, May 9, 2002.

thus effectively top up available funding to allow higher quality care. Recent reports show that child care centres in poor neighbourhoods have declining enrollments and some are closing, because the families in these neighbourhoods cannot pay the real costs of child care. And, of course, then, as enrollments in poor neighbourhoods decline, their operating funding grant also declines and closure is more likely.

- Poorer women, not able to afford or unable to access licensed day care, turn to unlicensed child care arrangements. The effect of current policies, including the focus on subsidies rather than direct funding of licensed child care, seems to be to foster a large private, unlicensed daycare sector where poor women, receiving far too little compensation for their work, are looking after the children of other poor women.

In November 2005, the Government of British Columbia announced that it would put \$33 million back into child care. Most of this will go to restoring the child care subsidies to 2001 levels. The income level at which parents qualify for a subsidy will increase by \$200 a month, a net increase of \$15 in paid benefits over the 2001 threshold level.³⁸⁵

But funding has not been restored to the 2001 level. It is estimated that \$64 million was removed from regulated child care between 2001 and 2004.¹ Over the last four years, BC has received close to \$250 million from the federal government for early childhood development, including child care. Yet, BC cut its own child care budget in each of the last three years. The provincial contribution for 2005 alone is \$42 million, or 20%, less than it was in 2001/02.³⁸⁶

The restoration of subsidies to their previous (inadequate) levels does not create the kind of new regulated child care spaces that British Columbia's women, children and families need in order to enjoy a stable, accessible, affordable, quality child care system. Nor do any of the government's actions adequately ensure that the day care that is available is of high quality. Research shows that government funding is best directed at licensed, not-for-profit child care. British Columbia is the only government that sends funds to unlicensed caregivers.³⁸⁷

Why was funding removed from child care in B.C.? What is the government's plan for improving child care for families and children in the province?

³⁸⁵ Ministry of Children and Family Development, News Release, "\$33 Million To Improve Child Care Access, Flexibility" (26 October 2004), online: Ministry of Children and Family Development http://www2.news.gov.bc.ca/nrm_news_releases/2004MCF0026-000889.htm (date accessed: 24 February 2005).

³⁸⁶ Coalition of Child Care Advocates of BC, *British Columbia Provincial Allocation for Regulated Child Care 2001, Adjusted According to Announcements Made By Various Government of British Columbia Ministries up to December 2002*, online: Coalition of Child Care Advocates of BC http://www.cccabc.bc.ca/res/pdf/childcare_reductions.pdf (date accessed: 21 February 2005). "Leftovers Due To The Lack Of A Child Care Plan?: Largesse Leading Up To The Provincial Election?", February 2005, online: CCABC <http://www.cccabc.bc.ca> (Date accessed: 21 April 2005).

³⁸⁷ . *What Do We Mean By Quality Child Care And Developmentally Appropriate Programming?*, Child Care Advocacy Association of Canada/Fact Sheet (24 October 2004), online: CCCABC http://action.web.ca/home/ccabc/alerts.shtml?sh_itm=286d0dcb4cf45621f781ff53a1ce3286&AA_EX_Session=8457882659300fa612f7a6ea4ccbf305 (Date accessed: 21 April 2005).

Article 11: An Adequate Standard of Living

28. Poverty rates highest in Canada

The B.C. government has not only failed to improve living conditions since Canada's last report to CESCR, it is implementing measures that actually increase the incidence and depth of poverty and widen the gap between the rich and the poor. B.C. now has a greater inequality in wealth distribution than anywhere else in Canada.³⁸⁸

In British Columbia, thousands of people experience a standard of living that is significantly below a level that provides adequate food, shelter, and clothing. According to the main measures of poverty used in Canada, 12.4 to 20 percent of individuals in British Columbia live below an adequate standard of living. This is the highest rate of poverty in Canada.³⁸⁹

What income groups benefited from the package of income tax changes introduced in 2001? What further income tax measures have been implemented since then by the government? What amount of surplus or deficit will result from the 2004 budget?

29. Social Assistance rates cut, rules narrowed

A new B.C. *Employment and Assistance Act* makes sweeping changes to the social assistance system. The changes include: (1) new restrictions on eligibility for income assistance, and (2) lower rates of income assistance.

In 2002 welfare rates were cut. The welfare regime is now less able than before to lift those depending on it out of poverty. Those living on social assistance do not have adequate food or shelter. Changes to welfare rates include the following:

- The basic support portion of the social assistance benefit was cut. The reduction for single parents affected 21,823 families. Most of the single parents affected are mothers. They are the largest group of families receiving social assistance.
- On top of this, shelter allowances for families of 3 or more were reduced.³⁹⁰

				2002 benefits
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³⁸⁸ Steve Kerstetter, "BC home to greatest wealth gap in Canada" (28 November 2001) Canadian Centre for Policy Alternatives at 1, online: CCPA <http://www.policyalternatives.ca> (date accessed: 4 May 2005).

³⁸⁹ Social Planning and Research Council of British Columbia, Press Release, "New Study Confirms Gross Inadequacy of BC Welfare Rates" (27 May 2003), online: SPARC BC http://www.sparc.bc.ca/supportitems/mr_market_basket_measures.pdf (date accessed: 4 May 2005).

³⁹⁰ Seth Klein and Andrea Long, *A Bad Time to be Poor: Analyzing BC's New Welfare Policies* (Spring 2003) Canadian Centre for Policy Alternatives at 20, online: CCPA <http://www.policyalternatives.ca> (date accessed: 4 May 2005).

Type of recipient	2001 benefit rate	2002 benefit rate	Monthly income loss	as a percentage of the poverty line (LICO)
single “employable” adult age 55-59	\$557	\$510	\$47	32%
single “employable” adult age 60-64	\$608	\$510	\$98	32%
single parent, one child	\$1004	\$961	\$43	48%
single parent, two children	\$1201	\$1,111	\$47	43%
“employable” couple, two children	\$1266	\$1221	\$45	40%

Experts estimate that social assistance benefits in British Columbia meet only 44-60% of minimum living costs. Thus, it is clear that individuals who live on income assistance in British Columbia survive at a level far below an adequate standard of living, indeed far below all measures of the “poverty line”.³⁹¹

Other changes to benefit rates include the following:

- **The Family Maintenance Exemption**, which previously permitted a single parent receiving child support payments from a spouse to keep 100 dollars per month, has been eliminated. All child support paid is now deducted dollar for dollar from income assistance benefits.
- The **Earnings Exemption** has been eliminated for “employable” recipients. This exemption allowed people on welfare to work and keep \$100 if they were single, or \$200 if they had children or a partner.
- **Crisis grants** for individuals have now been limited to a maximum of \$20 per month for food and \$100 per year for clothing. The limits for families are \$400 per year for clothing and one month’s shelter allowance per year.

Also, B.C. continues to claw back the **National Child Benefit Supplement** from families on social assistance, dollar for dollar.

For some single parents, mostly mothers, the combination of the rate cuts and the loss of exemptions means that they lost as much as \$380 dollars per month.

³⁹¹ Andrea Long and Michael Goldberg, *Falling Further Behind: A Comparison of Living Costs and Employment and Assistance Rates in British Columbia* (2002) Social Planning and Research Council of British Columbia at ii, online: SPARC BC http://www.sparc.bc.ca/research/falling_further_behind.pdf (date accessed: 4 May 2005).

Provide the rationale for the current welfare rates. Provide the rationale for the cuts to welfare rates made in 2002.

Eligibility Rules

Changes to welfare eligibility rules in British Columbia include the following:

- Refugee claimants, although not allowed to work without special authorization, are no longer eligible for social assistance.
- Before being able to start the application process, individuals, following their initial contact with the welfare office, are required to undertake a “three-week self-directed job search”, during which income assistance benefits are not available. Moreover, once the job search period is over, applicants typically wait another three weeks before they receive benefits. In practice, therefore, there is a waiting period of approximately six weeks, during which extremely needy people receive no financial help. This waiting period is causing severe hardship, including British Columbians going without adequate food and losing their housing.
- Most income assistance applicants without children must now show that they have been in the paid workforce for two consecutive years in order to be eligible for income assistance.
- Single parents are considered “employable” after their youngest child reaches 3 years of age (down from 7 years of age). This change affected approximately 8,900 single parents, the vast majority of whom are single mothers, who are now expected to seek paid employment despite a lack of affordable child care.
- The government introduced flat time limits for receipt of welfare. “Employable” people without children may only receive welfare for two years during any five-year period. In response to strong criticism from the public, the government recently introduced a series of exemptions that lessen the impact of this time limit. However, as long as it remains on the books, this time limit is the only such arbitrary limit of its kind in Canada.
- People with disabilities are now covered by the same legislation as general welfare recipients, a change that ignores the unique needs of people with disabilities. It has also caused great anxiety that claimants will be deemed “employable”, thus losing their eligibility, even though performing regular work is not possible for them.
- In addition to any civil or criminal penalty imposed by the courts, those found guilty of welfare “fraud” (which may include failure to report a gift) are now banned from receiving income assistance for periods ranging from 3 months to lifetime.
- Young adults (19 and over) are now required to demonstrate that they have lived independently of their parents for two years before they are eligible for welfare.
- Individuals who leave jobs “voluntarily” or are fired for cause are ineligible for assistance. Advocates are concerned that individuals may be considered ineligible for welfare even if they have left jobs because of sexual harassment, unsafe working conditions, or labour standards violations.

- A new more restrictive appeals procedure has been introduced to achieve “maximum efficiency”. Individuals cannot appeal various decisions, such as those regarding travel allowances, requests for a new worker, or access to employment programs.³⁹²

The changes to social assistance made by the Government of British Columbia have had a drastic effect on the groups in British Columbia who are those most vulnerable to poverty and social exclusion. These groups include Aboriginal people, women, single mothers, people of colour, recent immigrants, refugee claimants, people with disabilities, older people, youth, and children. The Committee expressed particular concern about these groups in its 1998 Observations. It noted that there is a gross disparity between Aboriginal people and the majority of Canadians with respect to the enjoyment of *Covenant* rights. It also noted that cuts to social assistance and social services are having a particularly harsh impact on women in Canada, and that reductions in provincial social assistance programmes, combined with the unavailability of affordable housing, create obstacles to women escaping domestic violence. The Committee expressed concern that homelessness among youth and young families is at a crisis level. The Committee also observed that cuts to home care, attendant care and special needs transportation, as well as tightened eligibility rules for social assistance, are increasing the social and economic vulnerability of persons with disabilities (paras. 17, 18, 23, 28, 35, 36).

The Committee recommended that Canada consider re-establishing a legally enforceable right to adequate assistance for all persons in need, a right to freely chosen work, a right to appeal and a right to move freely from one job to another (para. 40). The Committee also recommended that a greater proportion of federal, provincial and territorial budgets be directed specifically to measures to address women’s poverty and the poverty of their children (para. 54). Further, the Committee recommended that the federal, provincial and territorial governments, address homelessness and inadequate housing as a national emergency by increasing social housing programmes for those in need, increasing shelter allowances and social assistance rates to realistic levels, and improving protection of security of tenure for tenants (para. 46). The Committee also expressed its concerns about workfare programmes which violate the right to freely chosen work and other labour standards, including minimum wage (paras. 30 and 55).

The changes that the Government of British Columbia has announced are only possible in a post-*Canada Assistance Plan Act* (CAP) era where there are no national standards for social assistance and social services that bind provinces and territories. In light of the Committee’s concern that the repeal of CAP accorded “virtually unfettered discretion to

³⁹² *BC Employment and Assistance Act* S.B.C. 2002, c. 40, s. 8, online: Ministry of Management Services http://www.qp.gov.bc.ca/statreg/stat/E/02040_01.htm (date accessed: 4 May 2005). B.C. Reg. 263/2002, s. 3, online: Ministry of Management Services http://www.qp.gov.bc.ca/statreg/reg/E/263_2002.htm (date accessed: 4 May 2005). B.C. Reg. 263/2002, s. 29, online: Ministry of Management Services http://www.qp.gov.bc.ca/statreg/reg/E/263_2002.htm (date accessed: 4 May 2005). B.C. Reg. 263/2002, s. 27, online: Ministry of Management Services http://www.qp.gov.bc.ca/statreg/reg/E/263_2002.htm (date accessed: 4 May 2005). Employment and Assistance Appeal Tribunal of the Province of British Columbia, *Basis for Appeal to the Tribunal*, online: Employment and Assistance Appeal Tribunal of the Province of British Columbia http://www.gov.bc.ca/eaat/popt/basis_for_appeal.htm (date accessed: 4 May 2005).

provincial governments in relation to social rights,” the Committee urged the Government of Canada in its 1998 Concluding Observations “to take concrete steps to ensure that the provinces and territories are made aware of their legal obligations under the Covenant and that the Covenant rights are enforceable within the provinces and territories through legislation or policy measures and the establishment of independent and appropriate monitoring and adjudication mechanisms” (emphasis added) (para. 52). No steps have been taken to implement this recommendation, the importance of which is now painfully evident to the most vulnerable groups in British Columbia.

The Government of British Columbia sought to justify its new welfare scheme on the grounds that it was facing a “structural” deficit. However, introducing measures that imperil the rights of the most disadvantaged people to food, shelter, clothing, and access to justice is not defensible as a deficit cutting strategy. The Committee noted in its 1998 Concluding Observations (paragraph 11) that by slashing social expenditure to address budget deficits, Canada “has not paid sufficient attention to the adverse consequences for the enjoyment of economic, social and cultural rights by the Canadian population as a whole, and by vulnerable groups in particular.” The Government of British Columbia has chosen to ignore this observation. Further, in 2005 the province has a surplus, and a booming economy. But the measures that have harmed the most vulnerable people are not slated for reversal.

What effect have the changes in eligibility rules had on single mothers who are required to seek work when their youngest child is three? What child care is available to single mothers receiving social assistance?

What is the rationale for requiring applicants for welfare to have worked for two years in order to be eligible, or to have lived outside the family home for two years?

Does the Government of British Columbia plan to enforce the time limits in the social assistance legislation? If not, why does it not repeal these provisions?

By how many individuals, in each category of recipient, have the welfare rolls been reduced by since 2001? What tracking of individuals who have left the welfare system has been done by the government? What is the situation of those who have left welfare with respect to income, employment?

30. Hunger

The Dietitians of Canada report that social assistance rates in British Columbia are insufficient to ensure food security. For example, a family with two parents and two children will receive only \$401 to cover all costs other than housing. In contrast, the actual cost of providing healthy food sufficient to provide the basic nutritional needs of that family is \$648. Single mothers are most likely to go hungry.³⁹³

³⁹³ Dietitians of Canada, BC Region, *The Cost of Eating in BC* (2003) Dietitians of Canada and Community Nutritionists Council of BC, online: Dietitians of Canada http://www.dietitians.ca/news/downloads/cost_of_eating_in_BC_2003.pdf (date accessed: 4 May 2005).

The Canadian Association of Food Banks reports that 84,317 people used food banks in March 2004 in British Columbia, an increase of 16% in one year. Almost 8,000 more children needed emergency food in 2004 than in 2003, an increase of 41.7%.³⁹⁴

What plans does the Government have for dealing with the issue of food insecurity? How many food banks are there in British Columbia? How many were there 20 years ago? Who are the people who rely upon food banks?

31. Homelessness

In its 1998 Concluding Observations, the Committee noted it was “gravely concerned that such a wealthy country as Canada has allowed the problem of homelessness and inadequate housing to grow to such proportions that the mayors of Canada's ten largest cities have now declared homelessness a national disaster.” Homelessness in British Columbia remains a growing and extremely pressing concern.³⁹⁵

In the Greater Vancouver Regional District, approximately 60,000 households, or 130,000 individuals out of 2,000,000, are at risk of homelessness because of economic factors alone. A January 2002 study indicated that between 1,000 and 2,000 people sleep in temporary shelters or on the street every night in Vancouver. Reports from shelters and agencies in winter 2003 counted about 2,400 people who are absolutely homeless, at least double the figure from the previous year. People at risk of homelessness are disproportionately female, Aboriginal, immigrants, lone parents, people with disabilities, and people dependent on social assistance. Using income levels, one study investigating homelessness among Aboriginal people throughout British Columbia estimates that up to 55,000 (41%) Aboriginal people are at risk of homelessness, with up to 24,000 (22%) absolutely homeless. In addition, a disproportionately high number of people with mental illness end up homeless and/or in the criminal justice system, despite findings that the cost of providing these people with adequate housing would be less than the combined costs to the prison and hospital systems.³⁹⁶

Unfortunately, rather than addressing this crisis, the government of British Columbia has implemented changes that increase the risk of homelessness for many people, and exacerbate the suffering of those who are already homeless. In March 2002, the government cancelled the Homes BC project, which produced 5,000 affordable housing units between 1994 and 2001. The government had just signed a national agreement to address homelessness, yet by this cancellation it abandoned 1,700 provincially funded social housing units that had been approved for development, intending to replace them

³⁹⁴ Canadian Association of Food Banks, *Hunger Count 2004*, online at: <http://www.cafb-acbc.ca>. Also vulnerable are B.C.'s shut-in seniors and people with disabilities who have relied on meals delivered by Meals-on-Wheels, a program which has had its funding cut by 50% in 2003 and was eliminated entirely in 2004.

³⁹⁵ Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, 4 December 1998, E/C.12/1/Add.314 at para. 24.

³⁹⁶ Greater Vancouver Regional District, *Report on Homelessness in Greater Vancouver* (July 2002) at ii, online: GVRD http://www.gvrd.bc.ca/homelessness/pdfs/Volume1_Executive_SummaryL.pdf.

with 697 units funded by the federal government under the new agreement. Thus, British Columbia suffered a net loss of social housing units at a time of pressing need. Currently, 11,000 households are on B.C. Housing's waiting list for social housing. Two thousand Aboriginal people are on waiting lists for Aboriginal housing services.³⁹⁷

British Columbia has also made changes to laws governing residential tenants, increasing the number of people at risk of becoming homeless. The changes make it easier in for landlords to increase rental prices and evict tenants, while weakening tenants' rights in general. Cuts to legal aid have increased the difficulty for tenants to protect their housing rights. Further, recent cuts to social services have made the experience of homelessness harsher than ever. Many community services for people in housing crises have been forced to close due to reduced or eliminated government funding, including women's centres and safe houses for at-risk children and youth.³⁹⁸

What is the Government's current strategy for meeting the housing needs of those British Columbians who are homeless or facing housing insecurity?

32. Housing and Aboriginal peoples

The current housing situation disproportionately affects B.C.'s Aboriginal population, which already suffers some of the worst housing conditions in the country. Crowded living conditions are linked to increased risk of health problems, disease transmission, and injuries, as well as mental health problems, tension, and violence. B.C.'s 1681 reserves are among the most crowded in Canada.³⁹⁹

Also, fifteen percent of the off-reserve Aboriginal population lives in crowded conditions in Vancouver, and 18 percent of the Aboriginal population lives in homes requiring major repairs, as opposed to 8 percent of the total B.C. population.⁴⁰⁰

What is the Government's current strategy for meeting the housing needs of off-reserve Aboriginal people in B.C.?

Article 12: Highest Attainable Standard of Physical and Mental Health

33. The right to the highest attainable standard of physical and mental health is not enjoyed equally by all B.C. residents. Recent changes in British Columbia make it more

³⁹⁷ Linda Mix, "Snapshot from BC—Province Shuts Down Housing Program" (October 2003) Housing Again Bulletin, online: Shared Learnings on Homelessness http://www.sharedlearnings.org/index.cfm?fuseaction=News.FA_dsp_news&yym=2003-10 (date accessed: 4 May 2005). B.C. Housing website, online: B.C. Housing <http://www.bchousing.org/Applicants/> (date accessed: 4 May 2005).

³⁹⁸ *Residential Tenancy Act*, S.B.C. 2002, c. 78.

³⁹⁹ Union of British Columbia Indian Chiefs, "British Columbia's Specific Claims: A Unique History" at 7, online: UBCIC http://www.ubcic.bc.ca/docs/ICB_presentation_100802.PDF (date accessed: 4 May 2005).

⁴⁰⁰ Vivian O'Donnell and Heather Tait, "Aboriginal Peoples Survey 2001—initial findings: Well-being of the non-reserve Aboriginal Population" (September 2003) Housing, Family and Social Statistics Division, Statistics Canada at 25, online: Statistics Canada <http://www.statcan.ca/english/freepub/89-589-XIE/pdf/89-589-XIE03001.pdf> (date accessed: 4 May 2005).

difficult for the most vulnerable members of society to access the conditions necessary for good health, such as food, shelter, medical care, and prescription medicine. The government of British Columbia is moving away from commitments to universally accessible health care and is taking actions that will exacerbate the health problems of the least well off.

34. Changes to health care diminish access and quality

The following changes will effect all users of the B.C. health system, but especially seniors and people with chronic sickness, disability, or mental illness.

- The premium B.C. residents pay to access the public health care system has increased significantly. This change diminishes the ability of low-income people to enjoy good health and also shifts responsibility for medical care from a public system funded by taxation to the individuals and families in need of health care.⁴⁰¹
- Some medical services that were covered under the provincial medical health insurance plan are no longer covered. These include regular eye exams, physiotherapy, massage, chiropractic care, podiatry, and naturopathy.
- The private costs associated with prescription medication have increased. The deductible rate and the charges per prescription are higher and some medications are no longer covered at all.⁴⁰²
- Drastic cuts have been made to home support for the elderly and for people with disabilities. Home support services like bathing, housekeeping, shopping, banking, and advance meal preparation have been eliminated or greatly diminished. Remaining services are provided only on the condition that getting help from the client's friends and family is impossible. These regulatory changes are causing people, most of whom are on small fixed income budgets, high levels of stress and as they face the prospect of going without adequate care.⁴⁰³
- Cuts have been made to mental health services that put the mentally ill at greater risk of police violence, homelessness, poverty, and poor physical health. The Adult Mental Health Division of the Ministry of Health Services has seen a 70% reduction in its staff. In 2001, the B.C. government closed the office of the mental health advocate, who provided semi-independent reporting on mental health issues in the province.⁴⁰⁴

⁴⁰¹ Ministry of Health Services, Press Release, "MSP Premiums Increased to Fund Wage Costs" (7 February 2002), online: Government of British Columbia http://www2.news.gov.bc.ca/nrm_news_releases/2002FIN0024-000488.htm (date accessed: 4 May 2005).

⁴⁰² Sylvia Fuller, 'Fair' Pharmacare: A backgrounder on the government's changes to BC's pharmacare program (April 2003) Canadian Centre for Policy Alternatives at 2-4, online: CCPA: <http://www.policyalternatives.ca> (date accessed: 4 May 2005).

⁴⁰³ B.C. Health Coalition, Fact Sheet, "Risky living: home alone with no support", online: B.C. Health Coalition http://www.bchealthcoalition.ca/pdfs/campaigns/riskyliving/Fact_Sheet_RiskyLiving.pdf (date accessed: 4 May 2005).

⁴⁰⁴ B.C. Institute Against Family Violence, "B.C. Provincial Cuts to Health and Mental Health Services: Anticipated Impact on Women Who Experience Violence" (10 April 2002), online: BCIFV http://www.bcifv.org/cuts/mental_health.pdf (date accessed: 4 May 2005).

- Refugees and recent immigrants residing in B.C. and other provinces are denied health care on the basis of their immigration status. This discrimination extends to Canadian born children who have Canadian citizenship yet are denied health care on the basis of their parents' immigration status. The mental and physical health of refugees and recent immigrants is exceptionally vulnerable, especially among women, from experiences of post-traumatic stress, exposure to violence, lack of or reduced autonomy, lack of recognition of foreign credentials and experience, cultural and systematic barriers to care, poverty, underemployment, language, the burden of multiple roles within the family, social isolation, loss of pre-existing social support systems, and discrimination.⁴⁰⁵
- In 2001 B.C.'s 52 health authorities were replaced by five regional health authorities and one provincial health authority. People in rural areas are forced to travel further than ever to obtain medical care. In some cases, lives have been endangered under the new regime, either because of time lost traveling or because low-income people are going without medical care when they can't afford the costs of transportation and meals. Low travel allowances for people on social assistance have proven onerous to those in rural areas, who must travel great distances to receive certain medical services.⁴⁰⁶
- Twenty-five thousand seniors live in residential care facilities and three quarters of these seniors have low incomes. The majority are frail elderly women. In the past few years, the government of British Columbia has closed more than 3,300 beds in residential care facilities. This is despite the fact that B.C.'s population of seniors over the age of 75 is predicted to increase by 68% over the next 20 years. Government plans indicate that up to 5,600 beds will be closed over the next few years, to be replaced by "assisted living spaces" and home care under the *Community Care and Assisted Living Act*. Assisted living spaces do not provide the same level of support as residential care and also shift some costs to seniors, such as drugs, medical supplies and equipment, and recreational activities. Because assisted living is housing, not health care, it is not licensed or regulated like residential care facilities have been. Therefore, seniors will not be provided with the same levels of health and safety protection.⁴⁰⁷

⁴⁰⁵ Marika Morris and Jennifer Sinnott, Fact Sheet "Immigrant and Refugee Women" (2003) Canadian Research Institute for the Advancement of Women, online: Canadian Research Institute for the Advancement of Women http://www.criaw-icref.ca/indexFrame_e.htm (date accessed: 4 May 2005).

⁴⁰⁶ Canadian Centre for Analysis of Regionalization and Health, "About Regionalization in British Columbia" (15 January 2004), online: CCARH http://www.regionalization.org/Regionalization/Reg_BC.html (date accessed: 23 June 2004).

⁴⁰⁷ BC Health Coalition, Press Release, "Long-term care numbers, government report show mounting crisis in continuing care. Health coalition says minister of intermediate, long-term and home care should resign" (17 September 2003), online: BCHC <http://bchealthcoalition.ca/pdfs/newsreleases/091703.pdf> (date accessed: 4 May 2005). *Community Care and Assisted Living Act* S.B.C. 2002, c. 75. Charmaine Spencer, "Assisted Living Consultation Response: Health and Safety" (November 2003) at 9-10 and 13, online: Aging in Canada <http://www.canadianelderlaw.ca/myweb/Assisted%20Living%20Consultation%20Response.pdf> (date accessed: 5 May 2005).

- Beds for acute, rehabilitative, mental health, cancer, inpatient, and ante-partum and pediatric care have also been closed. The number of acute and rehabilitative care beds is 35% below what was recommended in the 1991 Royal Commission on Health Care and Costs, yet the government continues closing beds without providing adequate replacement services. Bed closures have meant an increase in waiting time for almost all surgical procedures; in the past 2.5 years the number of people waiting for surgery has increased 42%. Data from February 29th, 2004 revealed that 76,828 B.C. patients were waiting for surgical procedures and wait times ranged from just a few days to well over one year.⁴⁰⁸
- B.C.'s standards for drinking water quality are consistently less stringent than those set by the World Health Organization. First Nations people are particularly vulnerable to health risks from drinking water supplies. In B.C., 196 out of 290 water systems in First Nations communities have been assessed as posing a potentially high or medium risk to health and safety. Despite B.C. already having the highest rate of water-borne disease in Canada, the provincial government has made legislative changes to agricultural and industrial regulations that are likely to increase B.C. residents' exposure to water-related health risks.⁴⁰⁹

Describe rules and criteria governing access to health care and services for refugees and recent immigrants in B.C.

How many long term care beds are currently available to elderly seniors in B.C.? How many seniors are on the waiting list for these beds? What is the difference in cost to the senior for long term care compared to assisted living?

What services have been de-listed for coverage under medical services since 2000? What is the average cost of each of these services to the person purchasing them?

What rules govern access to home care? Has this changed? Has the budget for home care been cut by regional health authorities?

Article 13: The Right to Education

35. Primary and secondary education funding cut

Education funding has been drastically cut over the last few years. The Government of British Columbia states per-pupil funding in 2004-5 will rise to \$6,748, an increase of

⁴⁰⁸ Ministry of Health Services website, online: Ministry of Health Services <http://www.swl.hlth.gov.bc.ca/swl/> (date accessed: 14 June 2004).

⁴⁰⁹ West Coast Environmental Law, submission to the drinking water review panel, "What BC Needs in Safe Drinking Water Legislation" (December 2001), online: West Coast Environmental Law <http://www.wcel.org/wcelpub/2001/13568.pdf> (date accessed: 4 May 2005). Indian and Northern Affairs Canada, Summary Report, "National Assessment of Water and Wastewater Systems in First Nations Communities" (February 2003) at 10-11, online: Indian and Northern Affairs Canada http://collection.nlc-bnc.ca/100/200/301/inac-ainc/national_assessment-e/watw_e.pdf (date accessed: 4 May 2005).

\$532 per student since 2000-01. However, these figures are misleading, since they do not present the per-student funding in constant dollars and do not take into account additional costs incurred by school districts such as hydro payments, MSP, and salary increases. When these costs are factored in, the real 2004 per-pupil funding amount will be \$165 less than in 2001, and \$355 less than in 1992. This reduction in spending leads to inequalities in education quality as schools in wealthy neighbourhoods can depend on private contributions for funding, while schools in poorer districts must survive on restricted budgets.⁴¹⁰

As a result of the decrease in per-pupil funding, students are receiving less individual attention, less support with learning difficulties, less support from specialist teachers, fewer choices for courses, and an overall diminished quality of education. Some of the September 2001-03 cuts to direct services for students are outlined below:

Services cut	Percent change
Teachers	- 7.7
• Includes:	
○ Special Education Teachers	- 17.5
○ Teacher-librarians	- 23.4
○ Counsellors	- 9.5
○ Continuing Ed. Teachers	- 34.5
○ Career Program Teachers	- 27.4
○ ESL Teachers	- 20.0
Clerical and Support Staff	- 10.2
Administrators	- 4.1

Disadvantaged students from low-income families will suffer most from these cuts, as these services apply specialized skills and knowledge to address the challenges these students face within the school system. Without such services, it is feared that schools will find no way to accommodate students' diverse backgrounds and abilities.⁴¹¹

Describe the numbers of teachers positions cut and schools closed since 2000 and any changes in teacher/student ratios and class sizes.

36. Students with special needs

As class sizes and cuts to specialized teaching staff continue to increase, support for students with special needs is diminishing. Prior to August 2002, the teachers' collective

⁴¹⁰ Marc Lee, "Who's Cutting Classes: Untangling the Spin about K-12 Education in B.C." (Winter 2003) *B.C. Commentary*, online: Canadian Centre for Policy Alternatives <http://www.policyalternatives.ca/bc/index.html> (date accessed: 4 May 2005).

⁴¹¹ British Columbia Teachers Federation, "Cuts to direct services for B.C. students September 2001-September 2003," online: BCTF <http://www.bctf.ca/action/cuts/EdFunding/CutsToServices.pdf> (date accessed: 5 May 2005).

agreement contained a number of clauses that set limits on class size, on the number of students with special needs being integrated into the same classroom, and on the ratio of specialist teachers to students. These provisions have been stripped from the collective agreement and are no longer in effect. As a result, the capacity of children with special needs to access and benefit from education is severely diminished. Students and teachers no longer have adequate support services to turn to for assistance. Some students with special needs have lost their special education assistant and can no longer take part in classes. Others have enrolled in distance education instead of the classroom-based, integrated education experience they need.⁴¹²

Moreover, B.C. has removed the targeted funding for students with special needs, which used to oblige school districts to direct a certain proportion of funds towards special needs programs, support, and services.⁴¹³

What impact have cuts to teaching positions and changes to class sizes had on teaching children with special needs, and children for whom English is a second language? Have services to support these students been reduced? In what ways? Provide school completion rates for Aboriginal children compared to all children in B.C.

37. Post-secondary education tuition fees and debt loads increase

From 2001 to 2005, the B.C. government deregulated tuition fees. For this period, there was no legislation governing fee setting by public universities or colleges. From 1999–2005 undergraduate university tuition fees have risen 84.4% in British Columbia, the steepest rise during this period in any province. In 2004 – 2005, for the third consecutive year, British Columbia posted the largest increase in average undergraduate fees of all Canadian provinces, up 15.6% more, on top of a 29% increase in 2003. In 2004 – 2005, undergraduate university students in British Columbia paid an average of \$4,735, surpassing the national average of \$4,172.⁴¹⁴

The government has now, starting in the fall of 2005, announced that it will re-cap post-secondary tuition fees. However, while it is unclear precisely what the Budget 2005 promise of re-capping tuition fees will entail, it is certain that it will not restore them to anything close to pre-2001 levels (even allowing a reasonable annual increase since then).

In August 2004, the government eliminated its grant programme for needy students. Low-income post-secondary students now must face a higher debt load from student loans in order to remain enrolled in school. The grant programme was the province's only programme targeted at assisting low-income students, many of whom will now be

⁴¹² British Columbia Teachers Federation Report, "The Impact of Funding Cuts on Special Education", online: BCTF <http://www.bctf.bc.ca/action/cuts/EdFunding/ImpactOfFundingCuts.html> (date accessed: 5 May 2005).

⁴¹³ British Columbia Teachers Federation, *2003 Education Funding Brief*, online: BCTF <http://www.bctf.ca/publications/edfunding/2003brief/2003brief.html> (date accessed: 5 May 2005).

⁴¹⁴ "University Tuition Fees" *The Daily* (2 September 2004), online: Statistics Canada <http://www.statcan.ca/Daily/English/040902/d040902a.htm> (date accessed: 1 February 2005).

deterred from entering post-secondary education. In its place, the government has instituted a loan reduction programme. This programme does not provide grants up front but does allow students with dependent children some reduction of student loans when each year of study is completed and the student remains in good academic standing.⁴¹⁵

In addition to making post-secondary education more expensive for poor students, the Government of British Columbia has eliminated a number of key educational support and training programmes vital to poor students, especially women. Among them are: Institutional Based Training (IBT) which provided colleges and institutes with funds to set up programmes to support students receiving welfare; grants for first year students at colleges and universities and the grant portion of student assistance for first time students; Bridging Programmes for Women, that helped those facing multiple barriers (such as past abuse and violence); and Programmes at the Open Learning Agency (OLA), where many low income women and single mothers on welfare have been able to continue their education and receive credit for their learning.⁴¹⁶

What range of post-secondary tuition fee levels is the government aiming for? Why has the government cut the grant program for needy students? What is the rationale for refusing to provide social assistance to full-time post-secondary students?

38. Increased enrolment and reduced funding

The 2004-05 provincial budget mandates 11,811 additional spaces in B.C. universities and colleges by the fall of 2006, but provides only 56 percent of the current average funding level to do so. Effectively, universities and colleges will be required to create 1,597 new student positions without any funding. Combining the effects of these unfunded student spaces and inflation, the amount of money the provincial government provides for each full-time equivalent post-secondary student space will fall from \$8,708 in 2003/04 to \$7,974 in 2006/07. The government has announced that the first year of the 'expansion' in post-secondary spaces will be paid for by the elimination of the grant program for needy students. Eliminating the grant program for needy students severely compromises the ability of less privileged individuals to obtain post-secondary education.

The provincial budget reduces expenditures on student financial assistance programs from \$165,429,000 in 2003/4 to \$136,291,000 in 2004/05 and \$137,369,000 in 2005/06. The loss of student grants in post secondary programs will increase the maximum debt for a single student in a four-year degree program from \$23,881 to \$33,096. In the case of a university student who is also a single parent, the maximum debt will rise from

⁴¹⁵ Government of British Columbia Student Financial Aid
<http://www.aved.gov.bc.ca/studentservices/student/loanreduction.htm> (date accessed: 4 April 2005).

⁴¹⁶ Friends of Women and Children, Volume 2, Number 3, Report Card March 2003, Closing the Doors to Education and Training for Women on Low Income, (Prepared by Shauna Butterwick, Wendy Frisby & Yulia Kolpakova).

\$23,881 to \$48,956. Based on the 2003/04 enrolment rates 23,378 students will be affected by this change.⁴¹⁷

Article 15

39. Indigenous cultural life threatened by diminished environmental protection

Indigenous cultural life exists in connection with the land. The Committee on Economic, Social and Cultural Rights has urged Canadian governments to “to take concrete and urgent steps to ensure respect for Aboriginal economic land and resource base rights adequate to achieve sustainable Aboriginal economies and cultures.” The positions held by the B.C. government in treaty-making, litigation, and policy decisions have impeded and denied B.C. First Nations control over and sometimes access to their traditional territories. The protection of the right to participate in cultural life under Article 15(1)(a) obliges the B.C. government to make good faith efforts to protect and foster the relationship between Aboriginal people and the land.⁴¹⁸

B.C.’s obligations include the responsibility to protect the land itself through sustainable development practices, yet the 2004/05 budget includes funding cuts to several ministries responsible for environmental protection, and the watchdog office of Commissioner for Environment and Sustainability has been terminated. In addition, the government is implementing massive deregulation schemes under what it calls “New Era” commitments. For example, the Ministry of Water, Land and Air Protection will reduce regulations by 38% over three years. The government continues to allow industrial development in unceded territory and has indicated it will pursue offshore oil and gas development despite opposition from First Nations groups and the Canadian government, which continues to support a 33-year-old moratorium on oil and gas exploration. Such exploration poses known risks to B.C.’s fragile marine ecosystems, risks particularly high in the proposed exploration sites because they are susceptible to sudden storms and earthquakes. The health of the oceans is a critical foundation of economic and cultural life for the hundreds of Aboriginal communities located in coastal areas.⁴¹⁹

⁴¹⁷ Government of British Columbia, *Budget 2004*. Robert Clift “Budget 2004: The Shell Game Continues” (19 February 2004) Confederation of University Faculty Associations of British Columbia, online: CUFA <http://www.cufa.bc.ca/dispart.php?artid=a1125&subm=main> (date accessed: 5 May 2005).

⁴¹⁸ **Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada, 4 December 1998, E/C.12/1/Add.314 at para. 43.***

⁴¹⁹ Tim Howard “B.C. Liberals Send the Bill to Nature: Why you didn’t hear the word ‘environment’ in B.C.’s brown budget” *The Tyee* (24 February 2004), online: The Tyee <http://www.sierralegal.org/media%5Farticles/ed04%5F02%5F24.html> (date accessed: 5 May 2005). *2004/05-2006/07 Service Plan*, British Columbia Ministry of Water, Land and Air Protection. Ben Parfitt, “A Crude Solution: Should the Moratorium on Offshore Oil and Gas Development in BC be lifted?” (1999) Sierra Legal Defence Fund for The Living Oceans Society and Greenpeace at 5, online at: http://www.sierralegal.org/reports/crude_solution.pdf (date accessed: 5 May 2005).

Please describe the steps taken by the Government of British Columbia to ensure that Aboriginal economic land and resource base rights in the province will be protected in a way that will adequately sustain Aboriginal economies and cultures. What consultation process is in place to negotiate with Aboriginal peoples when mining or logging or other industrial use of unceded lands is planned?

[O] Nova Scotia:

1. In its Concluding Observations following the review of Canada's Third Report, the Committee recommended that the Government:

49....develop and expand adequate programmes to address the financial obstacles to post-secondary education for low-income students, without any discrimination on the basis of citizenship status.

-and-

50. The Committee urges the federal, provincial and territorial governments to adopt positions in litigation which are consistent with their obligation to uphold the rights recognized in the Covenant.

2. The social assistance program in Nova Scotia had, up to 2001, permitted recipients of assistance to pursue university degrees. The Committee understands that the Province of Nova Scotia amended its social assistance program in 2001 to make social assistance recipients ineligible for assistance if they were pursuing a university degree. Moreover, in a subsequent litigation challenge to this rule change (the *Clyke* case), the provincial government urged the Court to interpret the social assistance legislation as not being intended to assist recipients—including the single mother claimant—to obtain a university degree and that the Equality Rights guarantee in the *Charter* ought not be applied so as to assist people seeking assistance while enrolled in university programs.⁴²⁰

Please inform the Committee how the regulatory change which was the subject of the challenge in the *Clyke* case, accords with the Committee's recommendation in paras. 49 and 50 of its 1998 Concluding Observations.

3. In Nova Scotia, as well as other provinces/territories, there is a crisis in the area of a lack of community-based supportive housing for people with mental disabilities. The problem is so severe that many provincial government reports have highlighted the problem and called upon the government to create additional space so that people with mental disabilities will no longer be needlessly detained in forensic facilities and under civil commitment in psychiatric hospitals, not because they need to be there for legal or medical reasons but solely for the reason that they have no suitable, supportive housing in the community.⁴²¹

⁴²⁰ The rule change making ineligible recipients seeking university degree was provided for in s. 67(1) of the [Employment Support and Income Assistance Regulations](#) made pursuant to the [Employment Support and Income Assistance Act](#). The case challenging the regulation is: [Clyke v. Minister of Community Services, 2005 NSCA 3](#).

⁴²¹ A sample of these reports include: "[Transitions in Care](#): Nova Scotia Dep't. of Health Facilities Review (March 2000); *Psychiatric Facilities Review Board Annual Report, 1998-1999* as well as those for 1999-2000, 2000-2001 and 2001-2002. A very similar situation happened in the habeas corpus case of Yukon Territory; see *D.J. v. Yukon (Review Board)*, [2000] Y.J. No. 80.

Please inform the Committee how many people, on average, are under forensic detention and civil commitment in Nova Scotia solely because of a lack of suitable community-based supportive housing? Please inform the Committee how the Province of Nova Scotia complies with its obligations to protect the right to housing under article 11(1) of the Covenant as explained in General Comment 4?

4. Recently the Nova Scotia Utilities and Review Board completed rate-setting hearings for the cost of electrical power rates in Nova Scotia. [Dalhousie University's Legal Aid Service](#), representing low income people, presented evidence and made argument that the Board needed to order the utility company to create a “rate assistance program” in order to ensure that poor people could have non-discriminatory access to housing, including electrical power for purposes of heating against the bitterly cold Canadian winter. In its rate-setting decision, the Utility and Review Board declined to order a “rate assistance program” despite being clothed with the legislative remedial power to impose whatever order is “just”.⁴²²

Please inform the Committee whether the Board reasons for decision took into account the provisions of the ICESCR or General comment 4 in construing the scope of its remedial power. If the Covenant was not considered, please explain why not.

⁴²² The board's decision is: *In The Matter of an Application by Nova Scotia Power Inc. for approval of certain Revisions to its Rates, Charges and Regulations*: NSPI P-881 Decision 31 Mar 051, 2005NSUARB 27. The Board's remedial jurisdiction is located in s.44 of the [Public Utilities Act](#), S.N.S. 1989 c. 380, s. 44.

[II] Suggested Questions: Consolidation

Introduction

Time Period of Canada's 4th Periodic report

1. In light of concerns expressed by the CEDAW Committee that Canada unnecessarily restricted its periodic Report to outdated information, why has Canada largely restricted its Fourth Periodic Report under the ICESCR to the years 1994-99 when the CESCR has made it clear that it requests the most up to date information available on the implementation of the ICESCR?

Lack of Information on Specific CESCR Concerns & Recommendations

2. Why has the Periodic Report not ensured that it has addressed each concern and recommendation arising from the previous review of Canada? Please provide information with respect to follow-up of each concerns and recommendation in the last periodic review.

No Process for Domestic Review of ICESCR Compliance

3. Do governments in Canada accept recommendations 5 and 8 of the Standing Senate Committee on Human Rights' report "Promises to Keep"? What further action is planned to ensure ongoing monitoring of compliance with the ICESCR and effective and open follow-up to concerns and recommendations from the CESCR and other treaty monitoring bodies?

[A] Effective Domestic Remedies

4. Following up on the Committee's previous recommendations and concerns about government pleadings with respect to the scope of sections 7 and 15 of the Charter, and referring to General Comment No. 9 of the CESCR, please explain the positions taken by the federal and provincial governments, in the cases of [Gosselin v. Quebec \(Attorney-General\)](#), [2002] 4 S.C.R. 429 and [Auton \(Guardian ad litem of\) v. British Columbia \(Attorney General\)](#).

The Right to Equal Remuneration for Work of Equal Value

5. Please explain the positions of provincial governments before the Supreme Court of Canada in [Newfoundland \(Treasury Board\) v. N.A.P.E](#) [2004] 3 S.C.R.. 381 with respect to fiscal justifications for over-riding the right to non-discrimination. Is it the position of the Government of Canada that limiting the right to equal remuneration for work of equal value in this manner is consistent with articles 2 and 3 of the ICESCR?

6. Please inform the Committee in what sense federal and provincial governments see s.36 as “relevant” to the implementation of rights in the ICESCR, particularly with respect to the provision of effective legal remedies.
7. Please inform the Committee of the positions on the obligation to protect the right to health under section 7 of the Canadian Charter taken by respondent and intervening governments in the case of *Chaoulli v. Quebec (Attorney-General)*. Referring to General Comment No. 14 please explain how the governments’ positions advanced an interpretation of the Charter that is consistent with the protection of the right to health under the Covenant and the equal enjoyment of this right by disadvantaged and vulnerable groups.
8. Please outline any initiatives that have been undertaken since 1998 with respect to judicial education on the ICESCR and the dissemination of the concluding observations of the CESCR to judges.
9. Please indicate and comment on the extent to which Canada’s national human rights institution and corresponding provincial/territorial human rights institutions have the authority and mandate to oversee compliance with economic, social and cultural rights, in conformity with the Paris Principles (General Assembly resolution 48/134, annex) and with the principles outlined in General Comment No. 10.
10. What is the position of the federal government and provincial territorial governments to strengthen the Social Union Framework Agreement to include a framework which ensures “universal entitlements and national standards and lays down a legally enforceable right to adequate assistance for all persons in need, a right to freely chosen work, a right to appeal and a right to move freely from one job to another” as recommended by the CESCR in 1998?
11. Please inform the Committee why the newly-created *Canada Social Transfer* (CST) contains no universal entitlements or national standards; does not need to be spent by provinces on social assistance or social services and does not require provinces to even have social assistance programs of any kind. What plans are being considered to ensure that the CST is linked to federal/provincial/territorial cost sharing agreements which provide enforceable protections of rights under the ICESCR?
12. What action has been taken or is being contemplated to extend the mandate of the Court Challenges Program to include challenges to provincial legislation or policy?
13. What is the response of the federal and provincial/territorial governments to the Canadian Bar Association’s five-point platform on legal aid reform?

14. What action has been taken or is contemplated in each jurisdiction to ensure that any complaint of discrimination is subject to adjudication and remedy before a competent tribunal? Where the 'gatekeeper' function of human rights commissions has been abolished, have there been adequate measures taken to ensure adequate representation and resources for complainants, as recommended by the Canadian Human Rights Act Review Panel?
15. Please explain the status of complaints filed under Ontario's *Human Rights Code*, in February, 2003 alleging that shelter allowances in the calculation of social assistance in Ontario are grossly inadequate and violate the right to equality and non-discrimination in housing for people on welfare.

[B] International Trade and Foreign Investment

ESCR and Mining Operations

16. Has the Government of Canada sought to ensure an increased consideration of human rights in World Bank projects in resource extraction as proposed in the Extractive Industries Review Final report of 2003?
17. What specific procedures are in place to ensure that economic, social and cultural rights are actively considered when the Canadian Government offers public support to mining exploration, exploitation or legislation in developing countries? How have concerns about particular Canadian corporations such as Glamis Gold in Guatemala and TVI in the Phillipines been investigated and addressed?

Export Development Canada (EDC)

18. Outline ways in which Export Development Canada intends to modify its policies to take economic, social and cultural rights into account throughout its decision-making processes, place conditions on projects to ensure that economic social and cultural rights are not violated, and address concerns raised by civil society groups about the impact of funded projects on economic, social and cultural rights in a thorough and transparent manner.

WTO & Agriculture

19. Considering that the majority of poor people in the world are farmers in developing countries, how have Canada's negotiation positions in the area of agriculture been specifically designed to promote and protect the economic, social and cultural rights of these vulnerable groups? What specific flexibilities for developing countries is Canada promoting within the WTO negotiations on agriculture in order to protect and encourage domestic policies and programs aimed at complying with the right to food and other obligations under the ICESCR?

Development Assistance

20. Why did Canada change its decision to prioritize agriculture for its development assistance to poor countries? Will Canada continue to tie its food aid to Canadian production? What steps has Canada taken to ensure that food aid does not disrupt local markets and therefore the living standards and food security of vulnerable groups?

[C] The Right to Just and Favourable Conditions of Work (Article 7)

Women and Work

21. What percentage of minimum wage earners are women? What measures are planned to create more just and favourable conditions of work for women?

Wages & Income Security

22. Provide data on the income earned at the minimum wage in each province and territory in 1998 and 2004, and compare this income with the poverty line for a single parent with two children. Explain any situations in which the gap between the poverty line and the income on minimum wage has increased.
23. Please report on changes in the extent of poverty among female single parents. Explain what further measures are contemplated.

[D] The Right to Social Security (Article 9)

Employment Insurance

24. What measures have been taken to address concerns expressed by the CESCR in 1998 about the number of unemployed women, youth and other groups disqualified from receiving Employment Insurance benefits by tightened eligibility rules? Please provide updated information on the percentage of unemployed women, young people, immigrants, visible minority, seasonal, part-time and contract workers who receive Employment Insurance benefits. Provide any available data on the risk of homelessness among these groups in the event of job loss.
25. Please also provide information on the ability of youth, women, immigrants, visible minority, seasonal, part-time and contract workers to obtain Employment Insurance. Please also provide information on any changes to the rules for eligibility for Employment Insurance and on the impact of any such changes these types of workers.

[E] The Right to Protection of Family, Mother and Child (Article 10)

Child Protection System and ESCR⁴²³

26. Can the provincial and territorial governments please provide the Committee with the number of low-income families, single-mother-led families, Aboriginal families and other disadvantaged families as a proportion of all families whose children are apprehended?
27. What measures have been undertaken by federal and provincial/territorial governments to ensure that disadvantaged families at risk of child apprehension have adequate income, housing, and other supports to care for their children?

[F] The Right to an Adequate Standard of Living (Article 11)

The Inadequacy of Poverty Measurement

28. Using the newly developed Market Basket Measure of low income and/or other reliable measures of poverty, what is the present (disaggregated) incidence of low-income in Canada and how has that incidence changed over the period since 1998?
29. Why is the federal government continuing to refuse to designate an official poverty line, and how, in the absence of such a measure, can it ensure compliance with article 11 of the Covenant?

Overall Poverty Deepening

30. Identify groups which are particularly vulnerable to poverty in Canada and provide data on how the extent and depth of poverty among these groups may have changed since 1998. Compare progress in poverty alleviation with reliable measures of average household income.

Adequacy of Social Assistance Rates

31. Please provide a comparison of the level of social assistance with the cost of living and/or the poverty line in 1994, when the Canada Assistance Plan was in place, with 2004, in each province, for various categories of households. Provide an

⁴²³ Chau, S., Fitzpatrick, A., Hulchanski, J.D., Leslie, B. & Schiata, D. (2001). One in five...Housing as a factor in the admission of children to care. Centre for Urban and Community Studies Research Bulletin, 5, 1-6. <http://www.urbancentre.utoronto.ca/pdfs/researchbulletins/05.pdf>. This study found that the family's housing situation was a factor in 20.7% of admissions into child protection care in Ontario in 2000. This represented a significant increase from 1992. Kellington, S. (2000, May 2002). *"Missing voices": mothers at risk or experiencing apprehension in the child welfare system in BC*. The National Action Committee on the Status of Women - BC Region. <http://www.nac-cca.ca/about/regions/bc/events.htm>. These reports look at the experiences of Aboriginal and non-Aboriginal mothers involved in or at risk of the child welfare system in British Columbia. They recommend that support should be directed at parents through the child welfare system, and that a broad-ranging system to prevent child maltreatment replace the current system which is based upon responding to abuse and neglect.

explanation for any situations in which recipients are receiving a lower benefit, in real terms in 2004 compared to a decade earlier.

Canada Social Transfer

32. How does the federal government ensure that provincial programs funded by the Canada Social Transfer comply with the ICESCR. What consideration was given to recommendations for enforceable standards for social assistance programs made by the Committee in its 1998 concluding observations, and will they be implemented with respect to the CST?

National Child Benefit Supplement for Low-Income Families

33. What has been done by the federal government and the provinces and territories to follow up on the recommendation of the CESCR and other treaty monitoring bodies to eliminate the clawback of the National Child Benefit Supplement from households relying on social assistance.

Canada's Housing Crisis

34. Please provide current data on the extent of homelessness in Canada and explain any failures on the part of governments to adequately address this national crisis.
35. Has the Government of Canada adopted a National Housing Strategy or Policy? If it has or if it intends to, what explicit provisions does it include to ensure that it is based on principles of non-discrimination and equality between men and women and meets the needs of the most disadvantaged groups in Canada?

Funding Cuts, Downloading and Ad Hoc Policy Initiatives and Shortcomings

36. After downloading housing programs to sub-national governments in the 1990s, how does the Government of Canada monitor and report on the actions of sub-national governments to make sure that Canadians have access to good housing at a reasonable cost?
37. Please provide data from performance reports under the Affordable Housing Framework Agreement and bilateral housing agreements on the number of housing units created in recent years under these agreements.
38. How much funding of the original \$1 billion promised for housing has actually been committed? How many new homes have been created? What are the rents or ownership costs?

39. What are the Government of Canada's plans to meet the housing needs of Aboriginal people, especially those living off-reserve in urban, rural, remote and Northern communities?
40. Why has the Government of Canada not increased federal funding commitments to meet the goal of the One Percent Solution, which calls for \$2 billion in new spending annually?
41. Is the Government of Canada's definition of affordable housing truly affordable to low-income renter households?

Homelessness

42. Does the Government of Canada agree that the current allocation of \$753 million to address homelessness is inadequate to meet the real scale of the need for temporary shelter, transitional housing and services for the homeless?
43. In light of the ongoing need, does the Government of Canada plan to move the National Homelessness Initiative from a temporary program that must be renewed periodically to a permanent program?
44. Has the Government of Canada worked directly with Aboriginal homelessness and service agencies to make sure that the unique needs of off-reserve Aboriginal homeless people are adequately addressed?

Women, Housing & Homelessness

45. Could the Government of Canada please provide the Committee with disaggregated statistics to demonstrate the numbers of low-income women and other disadvantaged groups reached by these programs and how each of these programs is actually benefiting low-income women, particularly women in receipt of social assistance?
46. Please provide data on the affordability of housing for low income households, and particularly for low income women. Outline the extent of measures such as rent supplements or shelter allowances designed to address the affordability gap.
47. Please outline concerns about unstable income among low income women arising from unemployment, disability or pregnancy and parenting, and measures that can better protect women in these situations from homelessness.
48. Outline measures that have been undertaken to eliminate discriminatory barriers facing low income women, young people, newcomers and other groups in private and social housing. What measures have been undertaken, in particular, to address discriminatory barriers to housing based on income level and on credit and

reference requirements which many women, young people and newcomers are unable to meet?

49. Provide information on the extent to which lack of access to housing limits the ability of women to escape abusive relationships. What measures are contemplated to address this crisis?
50. Can the Government of Canada and the provincial and territorial governments please indicate by how much they have increased shelter allowance rates within social assistance programs, as recommended by the CESCR in 1998, and how do shelter allowance rates across the country now compare with average rents as defined by the Canada Mortgage and Housing Corporation?
51. Can the Government of Canada and provincial and territorial governments please furnish the Committee with disaggregated statistics regarding: i) the numbers of low income women, including women in receipt of social assistance, currently waiting for social housing in every province and territory and the average length of time these women will wait before receiving social housing; ii) the numbers of other disadvantaged group members currently waiting for social housing in every province and territory and the average length of time they will wait before receiving social housing; and iii) the numbers of low-income women, including women in receipt of social assistance, who have been evicted from their housing across the country in the last 5 years, and the housing conditions of these women at the present time.
52. Can the Government of Canada and relevant provincial and territorial governments please indicate the accountability mechanisms that have been established under the Affordable Housing Agreements being negotiated between the provinces/territories and the federal government to ensure that any new housing being built under this program is in fact being allocated to those in core housing need, particularly Indigenous women living in urban centres, women in receipt of social assistance and other women living in poverty?
53. Can the Government of Canada and relevant provincial and territorial governments please indicate the mechanisms they have established to ensure that the units being built under the Affordable Housing Program are actually meeting the housing needs of low income women, in terms, for example of size, and accessibility to services?

Housing the Homeless Through Rental Assistance

54. In light of the successful outcomes of the Emergency Homeless Pilot Project in Toronto, what plans do the federal and provincial governments have to expand rent supplement programs targeted to those who are homeless or who are in the greatest need of assistance with paying the rent.

Forced Evictions

55. Please explain to what extent tribunals or courts in each province must consider whether a household facing eviction has access to alternative accommodation and whether the eviction may lead to homelessness. What changes are necessary to ensure that evictions are not permitted where they will lead to homelessness?
56. Please outline the extent to which security of tenure is guaranteed in each province to tenants in non-self contained units, motel units and other accommodation that tends to be relied upon by low income or disadvantaged households. What measures are planned to ensure that legal security of tenure is universally enjoyed?

Pay Equity

57. What percentage of Canadian workers are protected by pay equity legislation? How much has this increased in the last decade? Outline any recommendations made by the federal task force on pay equity which have not been implemented, and explain why.

[G] The Right to Health

The Rise of Privatization and the Lack of Enforcement

58. Please provide data for each province and territory on the number of private, for-profit healthcare facilities receiving public healthcare funding, the nature of the service provided, and the amount of money transferred to those facilities and whether any fees are charged for the services.
59. What impact is the maintenance or growth in private healthcare having upon the timeliness and quality of care available in the public system, particularly for members of disadvantaged groups?
60. What steps are being taken to ensure that the contracting-out of health and hospital services does not have a detrimental impact upon the quality of healthcare?
61. To what extent does the Dispute Avoidance and Resolution Process implemented in April 2002 ensure compliance of provincial health care programs with the right to health as outlined in General Comment No. 14? What is the mechanism for affected individuals or groups to seek remedies to any violations of the right to health under these processes?

The Erosion of Public Health Protection

62. How does the federal government intend to address the concerns of the Canadian Medical Association Journal and others that the current emphasis on partnerships with industry and rapid drug approval conflicts with the public's expectation that these agencies exist to protect them”?

The Lack of Pharmaceutical Coverage

63. Why has no action been taken to implement the recommendation for a Catastrophic Drug Transfer? What groups are most affected by the lack of a pharmaceutical drug plan in Canada and how?

The Lack of Protection of Right to Health from International Trade Agreements

64. Why has no action been taken on the recommendations of the Romanow Report aimed at ensuring that trade and investment agreements signed by Canada do not undermine the maintenance and expansion of publicly financed health care?

The Inadequacy of Long-Term Care

65. What steps has the government of Ontario taken to address the concerns raised in the 2001 consumers' report on long term care facilities by PricewaterhouseCoopers?
66. Please explain how the daily provincial food allowance per resident provided to long-term care facilities in Ontario ensures adequate quantity and quality of food for residents.
67. Please provide information on public expenditures on long-term care facilities and whether such expenditure is growing in proportion to the growth in the elderly population? If not, please explain.

The Unaddressed Health Problems of the Homeless

68. Please provide information on the health of Canada's homeless population.
69. Please explain why none of the National Homelessness Initiative programs from 1999 to 2003 have been specifically targeted at improving homeless individuals' access to the health care system

[H] The Right to Education (Article 13)

Unequal Access to Primary Education

70. Please provide any data available from provinces on the extent to which private fundraising by parents and communities is replacing public funding for primary school education, and the extent to which this is exacerbating socio-economic inequality. Report on any provincial commitments or strategies to address this problem.

Literacy Issues in Youth, Adult, and Immigrant Populations

71. Why did the Government of Canada not follow the 2003 recommendation of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities to increase the annual budget of the National Literacy Secretariat?
72. Why are literacy programs not more effective and what is the government doing to address the causes of ineffectiveness?

Early Childhood Education and Care

73. What provisions are being put in place in the new national Early Childhood Education and Care program to address concerns identified in the 2004 OECD report, in particular, to ensure national standards and to meet the needs of children living in poverty, aboriginal children and children of newcomers?

Increasing Costs of Post-Secondary Education

74. Please provide data on any increase in tuition fees and average student debt for post-secondary education since 1998. How have increases affected the participation of low-income groups in post-secondary education? And what measures are planned to ensure universal accessibility to post-secondary education?

Aboriginal Education

75. Please provide information on the education gap between first nations people on reserve and other in Canada. What measures are contemplated to address this gap?

Special Needs

76. Please provide and explain any evidence that families have been compelled to give up custody of a child to enable the child to get access to special needs care?

[I] Aboriginal Peoples

The Rights of Self-Determination, Self-Government and Control over Resources (Article 1)

77. In light of the statement in the 4th Periodic Report that the government has withdrawn the requirement for an express reference to extinguishment of Aboriginal rights and title in treaties and agreements, please explain the effect of terms requiring a 'release' certain rights.
78. What steps are governments of Canada taking to address the failings identified in the report on Canada of the UN Special Rapporteur on Indigenous Peoples, particularly with respect to the needs to accelerate the process for finalising comprehensive land claims agreements and treaties; transfer more land and other

resources; address Metis land claims; properly implement existing agreements; and, resolve outstanding complaints under historic treaties?

Prohibiting Discrimination under the Indian Act (Article 2)

79. Does the government of Canada remain committed to repealing s. 67 of the Canadian Human Rights Act and what steps is it planning to take to do so?

Persistent Disproportionate Poverty (Article 11)

80. Why have the programs introduced to alleviate Aboriginal poverty not been more successful? What further steps will be taken to achieve greater success?
81. Is there a specific national strategy for addressing the needs of Aboriginal peoples living in urban and off-reserve areas and if not, why not?

On-Reserve Housing (Article 11)

82. Please provide information on CMHC expenditures for housing on-reserve since the 1998-1999 fiscal year.
83. Please provide up to date information on the adequacy rate of on-reserve housing in comparison to that of the general population and explain any continued disparities.

Off-Reserve Housing (Article 11)

84. Provide any available data on homelessness among Aboriginal people, and Aboriginal women in particular. What percentage of Aboriginal households in cities are in core housing need?
85. What steps are being taken to address the specific housing needs of Aboriginal women?

Right to Environment

Indian Residential Schools Legacy (Article 13 & 15)

86. In light of the view expressed in the report of the Standing Committee on Aboriginal Affairs and Northern Development that the Indian Residential Schools Resolutions Canada Alternative Dispute Resolution Process is “an excessively costly and inappropriately applied failure”, what steps are being taken to improve the process?
87. Why has the government not provided the Aboriginal Healing Foundation with sufficient funds to renew all of its existing projects?

Unequal Enjoyment of the Right to Health (Article 12)

88. Why have efforts to ameliorate the unequal enjoyment of the right to health among Aboriginal peoples not been more successful? What steps are being taken to achieve greater success?
89. In light of the continuing unequal enjoyment of the right to health among Aboriginal peoples, please explain the justification for the planned reduction in funding to Non-Insured Health Benefits and the elimination of the First Nations Health Information System.

HIV/AIDS in Aboriginal Communities (article 12)

90. What proportion of government funding allocated to the fight against HIV/AIDS has been specifically designated for Aboriginal peoples?
91. Does the federal government intend to act on the recommendation in the report on Canada of the UN Special Rapporteur on Indigenous Peoples that “emergency measures be taken to address the critical issue of ... HIV/AIDS among Aboriginal people” and, if so, with what measures?

Aboriginal Suicides

92. In light of the deep concern expressed by the CESCR in 1998 over the high rate of suicide in Aboriginal communities, please provide information on the rate of suicide since the last report and on any steps taken to address it.
93. Does the federal government intend to act on the view expressed in the report on Canada of the UN Special Rapporteur on Indigenous Peoples that suicide rates among Aboriginal peoples are “a severe social problem that requires long-term integrated policies at all levels” and, if so, with what measures?

[J] Immigrants and Refugees

94. Please identify any social services, social benefits, education or health care services which are not available to those without permanent status or those who seek protection, on the same terms as Canadian citizens. What has been done to address this problem on a national basis.
95. Please provide information on any trends in the difference in the low-income or poverty rate among recent immigrants and others, including gender-based data if possible. Explain any trends that are evident from the data and how Canadian governments intend to address income disparities between newcomers and others.

Barriers To Family Reunification

96. Please identify what measures have been taken to ensure that family members are not permanently separated as a result of the application of 117(9)(d) of the Immigration Regulations. What efforts have been made to amend this legislative provision?
97. What efforts have been made to ensure that refugees and protected persons are able to afford to apply for landing once their status has been granted?
98. Please provide data on the number of families who have been denied family reunification because they are poor and indicate what measures have been adopted to eliminate the discrimination against people on social assistance which results from their ineligibility to sponsor family members.

Non-Recognition of Credentials of Foreign-trained Immigrants

99. Describe the terms of the Foreign Credentials Recognition Program at the federal level. What are the provincial governments doing in their jurisdiction to address the problem of foreign credential recognition?

[K] Disability

Unemployment among People with Disabilities

100. Please provide data on the participation of people with disabilities in the workforce, showing any changes between 1995 and the present. Do the federal and provincial/territorial governments agree with the Council of Canadians with Disabilities that a long range plan for investment in disability related supports must be developed and implemented?
101. Why have the policies put in place to address the disproportionate incidence of unemployment among persons with disabilities not been more successful? What steps have governments of Canada taken to achieve greater success?

Lack of Portability of Services across Provinces

102. Identify any disparities that may exist among provinces and territories in the provision of disability supports and describe any plans for developing a national framework for such support services.

Poverty Rates among People with Disabilities

103. Please provide the most recent data on the percentage of working age adults with disabilities living below the poverty line and compare this with the non-disabled

population, as well as available data for children with disabilities compared to the non-disabled children. What measures are planned to address any disparities?

104. Please provide information on the factors that are taken into account in establishing the levels of social assistance available to persons with disabilities under federal, provincial or territorial social assistance programs and please explain why these programs are unable to ensure that persons with disabilities can meet their needs.

Women with Disabilities

105. Please explain the extent to which the Government of Canada agrees with the findings of the *The Impact of Block Funding on Women with Disabilities* report.
106. The 17th Annual Report on the *Employment Equity Act* suggests that while there has been some progress in relation to the gap between the salaries of men with disabilities compared to non-disabled men, there has been no measurable progress in addressing the gap between women with disabilities and non-disabled women. Does the Government of Canada agree with this, and what new measures are planned to address the problem?

Access to Education for People with Disabilities

107. In its Report, Canada mentions the Canada Study Grants Program for students with disabilities, with a maximum of \$5,000 per loan year. Is there any evidence that this program is resulting in a higher percentage of adults with disabilities completing universities? What further measures might be required to address these disparities?

Access to and Quality of Health Care for People with Disabilities

108. Please provide and comment on any available survey data for Canada and for each province and territory on access to health services by people with disabilities and on the adequacy of such services.
109. Could each province and territory describe what measures were taken following the Eldridge decision in 1998 to ensure the accommodation of hearing impairment and other disabilities in the provision of health services.

Access to Housing and Transportation for People with Disabilities

110. Provide any available survey data on the housing situations of people with disabilities, either nationally, regionally or locally, and assess whether the RRAP program and income support for persons with disabilities is presently adequate to ensure the equal enjoyment of the right to adequate housing.

111. Provide data on the percentage of people with severe disabilities who are able to access public transportation services. Has accessibility of transportation been significantly improved since 1998?
112. Can the Federal Government please comment on concerns that accessibility standards in Air Canada and VIA Rail have not been improved and have actually been weakened in recent years.

[L] The Social and Economic Rights of Women in Canada

Articles 2 and 3

Aboriginal Women and Section 67 of the *Canadian Human Rights Act*

113. When will the federal government ensure that Indian women living on reserves can enjoy the protection of the Canadian *Human Rights Act* when they are discriminated against by their Band Councils on the basis of sex or other grounds?

Aboriginal Women's Participation in negotiations regarding self-government, and the funding and delivery of social programs to Aboriginal communities

114. What measures has the federal government put in place to ensure the equal participation of Aboriginal women in the negotiations of self-government agreements, treaties, and intergovernmental agreements dealing with employment, health, education, child welfare and other social services for Aboriginal people, as well as the on-going consideration of the federal Indian Act?
115. What funding has the federal government provided to male-led Aboriginal organizations to ensure effective participation in these negotiations?
116. By comparison, what funding has the federal government provided to Aboriginal women's organizations to ensure their effective participation?
117. What steps has the federal government taken to ensure that women's interests are protected in concluded agreements?
118. What steps has the federal government taken to ensure that Aboriginal women's organizations are equally involved in the delivery of services established under any agreements?

Inequality of Educational Opportunity Amongst Aboriginal Women

119. When will the federal government introduce legislation to remedy the continuing inequities caused by Bill C-31?

120. Why is the federal government opposing the constitutional challenges brought by Aboriginal women to the continuing discrimination against them caused by Bill C-31?

121. What arguments is the federal government making in response to these constitutional challenges?

Aboriginal Women and the Division of Matrimonial Property

122. When will the federal government put in place legislation and policies that will permit Aboriginal women living on all the reserves in Canada to enjoy the same protections in family breakdown situations, and access to division of matrimonial property, as are accorded all other (non-reserve) women in the country?

123. How is the government's opposition to the constitutional challenge to this inequality consistent with its obligations under the ICESCR?

Missing and Murdered Aboriginal Women

124. Will the federal government provide the requested \$10 million in funding to the Sister in Spirit Campaign?

Non-Discrimination and Equality/Maximum of Available Resources: Failure to use maximum of available resources to support realization of economic, social and cultural rights.

125. How does the federal government justify the reduction of its contribution to social program funding in light of the importance of the funded provincial programming to the economic and social well-being of women and their families?

126. With respect to the transfer payments currently provided by the federal government, what guarantees are in place to ensure that provincial and territorial governments spend these funds in ways that provide adequate social programs and assistance to women, and reflect the obligations of federal, provincial and territorial governments under the ICESCR?

127. Why has the federal government moved away from its historic role in ensuring minimum national standards for programs such as social assistance, and of designating the social programs for which transferred funds are to be used?

128. Given the line of federal surpluses registered since 1998, why does the federal government continue to maintain the lowest level of federal spending since WWII when high rates of poverty, inadequate housing, and lack of affordable child care persist?

Legal Aid

129. Has the federal government conducted a gender analysis of its special targeted funding of criminal law legal, and its lack of targeted funding for poverty, civil and family law legal aid?
130. Describe the current restrictions on access to poverty, civil and family legal aid in each jurisdiction, and the results of any gender-based analysis of these restrictions?
131. How much money does the federal government transfer to the provinces and territories annually for criminal law legal aid?

Violence Against Women

132. Document any changes by each government – federal, provincial and territorial - in direct funding of women’s shelters, women’s rape crisis services and support services for women who have experienced male violence since the last report to the Committee, and describe conditions or restrictions on the funding that is provided.

Article 7

The Gender Wage Gap

133. What measures, other than pay equity legislation, has the federal government implemented to deal with the gender wage gap in particular, and, more specifically, with the gender wage gap in relation to racialized women, Aboriginal women and immigrant women?

Pay Equity

134. Will the federal government implement the recommendations of the federal Task Force on Pay Equity?
135. When will Alberta and British Columbia implement legislation guaranteeing equal pay for work of equal value to women? When will all jurisdictions in Canada have legislation in place that extends the guarantee of equal pay for work of equal value to private sector workers?

Pay Equity and the Courts

136. Will the Newfoundland and Labrador Government honour this past commitment to these female workers?

Employment Equity

137. Has the federal government implemented any of the elements of the action plan submitted by the Task Force on the Participation of Visible Minorities in the Federal Public Service?

Discrimination in Employment – Immigrant and Refugee Women

138. What steps are federal, provincial and territorial governments taking to address the systemic inequality of immigrant and refugee women in the Canadian labour force?

Discrimination in Employment – Women of Colour

139. What steps are federal, provincial and territorial governments taking to address the inequality of women of colour in the workforce, and the systemic discrimination that they face?

Live-In Caregiver Program

140. How is the federal government responding to these concerns about the live-in-caregiver programme? Please document any consultations held with representative groups of the visible minority women who disproportionately use this programme? If consultations have been held, what government actions have come out of these consultations?

Article 9: Social Security

Women and Employment Insurance and Maternity and Parental Leave

141. Does Canada have plans to improve the Employment Insurance scheme, in particular to improve access to benefits for women, particularly part-time workers, and increase benefit levels, including benefit levels for women receiving maternity and parental benefits?

Article 10

Federal Childcare

142. What, if any national standards, will be attached to the provision of federal child care funds to the provinces? Will the federal government attach conditions guaranteeing that the funds will be spent on community-based, not-for-profit services?

143. How will the federal government ensure that transferred funds are spent on child care and not on other provincial expenses?

Article 11: An Adequate Standard of Living

Women: The Majority of the Poor

Persistent Disproportionate Poverty

144. Given the high rates of poverty among women in Canada, and the persistence and depth of this poverty, what measures have been taken at the federal, provincial and territorial levels to deal with this national economic and social problem?
145. Are there anti-poverty measures that are specifically targeted to women, and to specific groups of women who experience particularly high poverty rates?
146. Describe Canada's strategies for addressing the poverty of single mothers, Aboriginal women, women of colour, women who are recent immigrants, women with disabilities and elderly single women.
147. Are there new strategies being designed given that women's poverty is persistent?
148. Are there anti-poverty measures that have been designed to address specific problems that are known to contribute to women's poverty, such as a lack of affordable, safe childcare, discriminatory wage differentials between women and men, the disproportionate burden of unpaid caregiving work which women carry, the failure to recognize foreign credentials of immigrant women, and racism in hiring practices?
149. Since the existing programs and legislative schemes regulating the workforce appear to be inadequate to improve the overall picture of women's poverty (and unequal incomes), what new initiatives are Canadian governments planning to address this problem?
150. The majority of those who have the supplemental portion of the federal National Child Benefit clawed back by provincial governments are single mothers. What measures is the federal government considering to address this sex-based inequality?
151. Have the federal and provincial governments done a gender analysis of the impact of the National Child Benefit Program, and the clawback in particular, in light of the fact that this program appears to be one of Canada's current anti-poverty strategies?

Women and Social Assistance

152. What steps have federal, provincial and territorial governments taken to address the concerns of United Nations treaty bodies about women's poverty and the disproportionate impacts on women of cuts to social assistance and other social services.
153. Provide information from each province and territory as to the proportion of people in receipt of social assistance who are single women, single mothers, women in couples with children, women in couples without children.
154. What are their rates of social assistance in each province and territory for these different groups? Are these rates sufficient to enable women to secure adequate housing in light of average rents across the country?
155. Since the repeal of CAP welfare has been eroded. What does the federal government intend to do to ensure that social assistance schemes help to meet the requirements of Article 11 for the poorest Canadians in all jurisdictions?

[M] Quebec

Canada and Quebec Overview (1994-1999)

The implementation of ICESCR conclusions in Quebec

156. How does the Quebec government intend to implement the "Bilan" (Evaluation) of the 25 years of existence of the Quebec Charter of Rights and Freedoms suggestion to enshrine the primacy of economic and social human rights over any other legislation in Quebec?
157. Can the Canadian and Quebec governments explain what legislative and other measures they intend to take in order to clarify the positive obligation of the State to effectively guarantee the enforceable right of every person to a decent standard of living and to physical security, which are put at risk by poverty?

Access to justice and legal aid

158. Can the government of Quebec explain how it intends to guarantee to low income persons the right to have access to justice in order to claim all their rights, and notably the rights guaranteed by the ICESCR?

The right to work and the right to have the possibility of earning one's living by working at a freely chosen job

159. Can the Quebec government explain how maintaining a rate of social assistance benefits well below the low income level which is only increased on the basis of participation in employability measures, preserves the voluntary nature of these so called employability and social reintegration measures?
160. Can the Quebec government explain why it excludes a large number of workers from training which would increase their qualifications with a view to guaranteeing the right to freely chosen work and why it increased the minimum payroll level to which the Act to *foster the development of manpower* applies to \$1 million ?
161. Can the Quebec government specify when and how it intends to implement the Recommendation of the Commission des droits de la personne et des droits de la jeunesse to the effect of enshrining in the Quebec Charter of Human Rights and Freedoms the right to measures and programmes facilitating, amongst other things, the highest level of employment, access to a job, professional training and professional reintegration.

The right to enjoy fair and favourable working conditions

162. In paragraph 1639 of Canada's Report, the Quebec government indicates that the minimum wage was \$6.90 in 2000. Presently, in May 2005, it is \$7.60. How does the government of Quebec justify that the minimum wage hasn't caught up with the real value of the 1975 minimum wage which had a real value of \$10.30?
163. Can the Quebec government explain why it is not complying with the February 2004 judgement of the Quebec Superior Court concerning pay equity?

Freedom to form a trade-union and the right to bargain

164. Can the Quebec government explain why it refuses to recognize the right of family daycare providers and intermediate resources in health and social services to unionize? Can the Quebec government explain how such a measure protects the right to equality of these workers?
165. Can the Quebec government explain why it abolished the protection of the collective agreements in the case of contracting out? Can the government also explain why it interferes with the fundamental freedoms of work in the case of the forced merger of union certifications?

The right to social security, including social assurance

166. In its 1998 final Observations (E/C.12/1/Add.31, paragraph 45), the CESCR recommended that the Canadian UI system be reformed in order to ensure **all**

unemployed persons adequate protection in terms of the percentage of the benefits and the duration of benefits. Can the Canadian government specify when and how it intends to follow up on the 1998 Recommendations of the CESCR and the recommendations of the Standing Committee on Human Resources of the House of Commons of Canada?

The right of families, mothers and children to protection and assistance

167. Can the Quebec government explain in what way tax credits aimed at supporting families can replace certain services of help and protection historically ensured by the State when a person doesn't have sufficient income to incur the expenses and then subsequently have access to these tax measures?
168. Can the Quebec government explain what measures it intends to adopt in order that the "fiscalisation" of services to families doesn't undermine the right of the poorest families to protection and help?
169. How does the Quebec government intend to ensure the right of handicapped children to access, without discrimination, the childcare services reserved for early childhood in Quebec considering that the *Act respecting childcare centres and childcare services* doesn't contain any provision concerning the obligation to integrate handicapped children ?
170. Can the Quebec government explain, in the absence of a *policy and adequate support measures* for close family helpers how it intends to meet its responsibilities of protection and help for families ?
171. What action does the Canadian government intend to take with regard to the provinces, including Quebec, which deduct the divorce support payment from social assistance benefits?
172. Can the Quebec government specify when and how it intends to implement the Recommendation of the Commission des droits de la personne et des droits de la jeunesse du Québec to enshrine in the Quebec Charter of Rights and Freedoms the family's right to support measures?

The right of any person to a decent standard of living for herself/himself and her/his family, including sufficient food, clothing and housing, as well as to a continuous improvement of her/his conditions of existence.

173. What action do the federal and provincial governments intend to take concerning the 1998 recommendation of the CESCR to reintroduce the programmes for universal financing of social services and social assistance in regard to which beneficiaries would have enforceable rights in order to meet the ICECSR requirements?

174. When will the Canadian government adopt an official poverty threshold for Canada?
175. When will the Quebec government re-establish complete and annual indexation of last resort benefits?
176. Can the Quebec government explain why it reintroduced in Bill 57 dealing with assistance for families and persons the mechanism of garnisheeing welfare cheques to pay the rent when the last observations of the CECSR had indicated that such a mechanism was contrary to its commitments in virtue of the Convention?
177. Can the Quebec government clearly say whether or not it recognizes that it has the obligation to meet the essential needs of the poorest people within Quebec society, and this notably in virtue of Section 45 of the Quebec Charter?
178. Can the Quebec government explain why it doesn't respect the prescriptions of the Act to combat poverty and notably, Section 20 of the *Act to combat poverty and social exclusion* which provides for the obligation of the Minister to assess the impact on poverty of any legislative or regulatory measure about to be adopted ?

The right to housing

179. Despite the 1994-1999 initiatives described in paragraphs 325, and following, of Canada's Report, how does the federal government explain that it only plans to allocate 1.1% of its budget expenditures on housing in 2005-2006, i.e. \$2.2 billion out of \$194.9 billion, while the number of households in Canada with urgent housing needs has gone up from 1,166,000 in 1991 to 1,709,000 in 2001 and that recent documents report that 150,000 people are homeless?
180. How does the federal government explain that the number of subsidized housing units has continued to go down since 1999 to arrive at the number of 635, 900 as of December 31, 2003, and this despite the budget surpluses available to the federal government?
181. Given the scope of the problem of discrimination in housing, how can the Quebec government and the Commission des droits de la personne et des droits de la jeunesse explain that from January 1, 2001 to March 31, 2003, barely 332 complaints concerning discrimination in housing were opened at the Commission and that of this number, only 17 recourses were instituted in virtue of the Charter of Human Rights and Freedoms?
182. Can the Quebec government specify when and how it intends to implement the recommendation of the Commission des droits de la personne et des droits de la

jeunesse du Québec to enshrine the right to adequate housing in the Charter of Human Rights and Freedoms ?

The right to a sufficient quantity of good quality food

183. How does Canada explain that the use of food banks has continued to increase in Canada since the examination of its last report, to the point where 47.8 % of these organizations state that they have difficulty in responding to the demand, and often have to resign themselves to either limiting seriously the frequency of use or to give less food than usual or to refuse people?

184. In paragraph 292, the Canadian government affirms that the vast majority of Canadians enjoy food security. How does the government intend to develop policy concerning price fixing of food products given the studies showing that discounts are not available in the beginning of the month for persons on social assistance in the provinces?

The right to education, free elementary schooling and special needs adaptation

185. Can the Québec government explain how the changes made in 1998 to the Education Act will ensure non-discriminatory access of students with handicaps, learning difficulties or special needs to ordinary classes?

186. Can the Québec government demonstrate that the measures adopted in the follow-up to the School Adaptation Policy have had a positive impact on the educational success of students with handicaps or difficulties, given the weaknesses identified by the Auditor-General of Quebec in his 2003-2004 report?

187. How can the Québec government justify the fact that during the 2004-2005 school year it cut 103 million in loans-bursaries thus increasing exorbitantly the debt burden of Quebec's poorest students? Is this measure in keeping with the government's commitment to gradually ensure fully equal access to post-secondary education?

188. How can the Québec government justify having cut, in 2004, \$105 million in financial assistance for elementary schools aimed at covering school related costs? Is this measure in keeping with the ICESCR obligation to guarantee free elementary education?

189. Can the Quebec government specify when and how it intends to implement the Recommendation of the Commission des droits de la personne et des droits de la jeunesse du Québec to enshrine in the Quebec Charter of Human Rights and Freedoms the right to education, including education to human rights ?

The right to health

190. How does the federal government intend to resolve the fiscal imbalance between it and the Canadian provinces in order that the provinces can offer to the population the social programmes for which they are responsible in virtue of the Canadian constitution?
191. In particular, how does the Canadian government intend to re-establish the margin of manoeuvre of the provinces in healthcare and social services while guaranteeing that the provinces exercise their full jurisdictions?
192. Can the Quebec government explain how the obvious shortage of family doctors is compatible with the exercise of the right to health including notably access to medical services and to medical help in case of sickness?
193. What does the Québec government intend to do to remedy the restrictive access to prescription drugs and how does it explain that the most vulnerable groups within society, including social assistance beneficiaries, no longer have free access to prescription drugs ?
194. Can the Quebec government specify when and how it intends to implement the Recommendation of the Commission des droits de la personne et des droits de la jeunesse du Québec to enshrine in the Quebec Charter of Human Rights and Freedoms the right to benefit from programmes, goods, services, equipment and conditions allowing one to enjoy the best possible state of physical and mental health?

Immigrant women and domestic work

195. Can the Canadian government explain how it intends to guarantee the recognition of the professional qualifications acquired abroad in the case of domestic immigrant workers?
196. Can the Quebec government explain why persons who are newly arrived in Quebec are deprived of access to universal, free medical services for the first three months?

The right of persons with functional limitations to enjoy economic and social human rights without discrimination

197. Can the Quebec government explain why it maintains, in its present form, a handicapped persons home adaptation policy which undermines the realisation of the right of these persons to housing as well as to physical safety and to the right of choosing their residence and the location of this residence?
198. What does the Quebec government intend to do, notably for handicapped children, in order to reduce the waiting lists for rehabilitation centres and thus

respect the right of any person to enjoy, without discrimination, the best state of physical and mental health that he/she is capable of attaining?

199. What does the Quebec government intend to do in order to remedy the breaches of the rights of persons residing in public and private residences to enjoy all their social rights in the respect of their integrity, dignity and privacy?

The right to benefit from scientific progress and its applications and the obligations of States to take measures with a view to ensuring the full exercise of this right, notably that concerning the dissemination of science (Section 15, 1, b and 15,2 of ICESCR)

200. How do the Quebec and Canadian government intend to take action on the recommendation of its Commission on ethics in science and technology concerning the compulsory labelling of GMO's in products intended for human consumption?

[N] British Columbia

Review Time Period

Access to Justice and Cuts to Legal Aid

201. Can the government of British Columbia explain how it intends to guarantee to low income persons the right to have access to justice in order to claim all their rights, and notably the rights guaranteed by the ICESCR?
202. How much of the Legal Service Society's annual budget is now allotted to family law, poverty law, and immigration/refugee law?
203. Provide data regarding the use of criminal legal aid by women and men in B.C., and the use of poverty, civil and family law legal aid by women and men in B.C.
204. Have alternative forms of advocacy and legal representation been provided for individuals with poverty law related claims or human rights issues? If so, what are the numbers of individuals served as compared to the numbers before reduced government funding? What has the response of representative groups of members of the legal profession been to legal aid funding cuts?

Article 1: The Right to Self-Determination

205. To what extent in its role in treaty negotiations is the Government of British Columbia relying on the results of or taking guidance from the 2002 Referendum?

Articles 2 and 3: Failure to use the maximum available resources

206. Approximately, in dollar amounts, in 2002-2004, how much was cut from government spending through elimination of legal aid, elimination of funding for women's centres, changes to benefit level and delivery of social assistance, hospital closures, and court house closures?

Articles 2.2 and 3: Rights to Non-Discrimination and Equality

B.C. Human Rights Commission eliminated

207. What is the Government of British Columbia current annual expenditure on human rights compared to its pre-2001 annual expenditure? How many decisions *on the merits* - not procedural matters - were heard by the B.C. Human Rights Tribunal in 2003 and 2004? Do all human rights complainants have access to legal representation? How many cases of systemic discrimination has the B.C. Human Rights Tribunal heard since 2002?

No recognition of social and economic rights in B.C.'s Human Rights Code

208. The Government of British Columbia amended the B.C. Human Rights Code in 2002. Why did it not add 'social condition' as a ground of discrimination?

Funding cuts to Women's Centres

209. What is the government's rationale for cutting core funding to all women's centres in the province.? How many dollars did this save?

Cuts and Changes to Social Programs Harm Women

210. What has the Government of British Columbia done to respond to the concerns and recommendations of the CEDAW Committee in 2003? Has the government done a gender impact analysis of changes to the social assistance regime? What specific measures has the Government of British Columbia put in place to deal with the issues of discrimination against women?

Article 6 and Article 10 : Children's Right to Work Freely Chosen

211. How many children under the age of 16 work? How many of these children are in families in receipt of social assistance?

Article 7: Just and Favourable Conditions of Work

Inadequate minimum wage

212. Provide a race and sex breakdown of minimum wages workers in B.C., as well as a description of the industries and sectors in which they are employed?

Training wage introduced for first workers

213. Provide data on who is being paid the training wage by age, race, and sex.

Child Labour

214. How many children between the ages of 12 and 15 are currently employed, in what kinds of work, and for what hours? What are the racial backgrounds and family incomes of these children? What data does the government have on who is being paid the training wage?

Overtime Averaging Agreements

215. What groups of workers (by race, sex, and age) in what industries and labour force sectors, are mainly affected by overtime averaging agreements?

Minimum shift

216. What groups of workers, (race, sex, and age), in what industries and labour force sectors, are mainly affected by the reduced minimum call out?

No unconditional obligation to enforce standards

217. Who are the workers most affected by recent changes to the Employment Standards Act?

Agricultural workers excluded

218. What are the working conditions, wages, and employment benefits available to agricultural workers? What is the racial, ethnic, and gender composition of this group of workers?

Pay equity repealed

219. What does the government intend to do to address the ongoing pay inequity experienced by women in British Columbia? What data does the government have on pay equity and on the racial and ethnic composition of the female work force and corresponding rates of pay?

Article 8: Right to join trade unions and to strike

Contracts broken and right to strike denied

220. What position does the Government of British Columbia currently take with respect to freedom of association under s. 2(c) of the Canadian Charter of Rights and Freedoms and the applicability of that section to the labour issues the government faces in the health sector?

Article 9:

Compensation for workplace injuries reduced

221. Describe the changes made to the Workers' Compensation scheme. Have these resulted in reduced benefits to injured workers?

Seniors Supplement eliminated

222. What is the effect on the incomes of seniors in B.C. of the elimination of the Seniors Supplement. What would their incomes have been if they had been allowed to keep the federal increase to GIS and the Seniors Supplement? What percentage of the LICO does this income represent?

Article 10

'Child protection' discriminatory

223. What support for the families of children at risk due to the poverty of their parents does the Government offer? What specific support is offered for single mother-led families on income assistance? What is the number of child apprehensions made from families on income assistance in each year between 2000 and 2005? What is the number of child apprehensions made from families of Aboriginal ancestry in each year between 2000 and 2005?

Children in need criminalized

224. What supports are being provided for street children in British Columbia regarding access to adequate income (food, clothing and shelter), education, safe housing, drug treatment, counselling? What supports are being provided, in particular, for girls living on the streets with respect to access to education, safe (all girl) housing, exit programs from prostitution and drug addiction?

Child Care

225. Why was funding removed from child care in B.C.? What is the government's plan for improving child care for families and children in the province?

Article 11: An Adequate Standard of Living

Poverty rates highest in Canada

226. What income groups benefited from the package of income tax changes introduced in 2001? What further income tax measures have been implemented since then by the government? What amount of surplus or deficit will result from the 2004 budget?

Social Assistance rates cut, rules narrowed

227. Provide the rationale for the current welfare rates. Provide the rationale for the cuts to welfare rates made in 2002.

Eligibility Rules

228. What effect have the changes in eligibility rules had on single mothers who are required to seek work when their youngest child is three? What child care is available to single mothers receiving social assistance?

229. What is the rationale for requiring applicants for welfare to have worked for two years in order to be eligible, or to have lived outside the family home for two years?

230. Does the Government of British Columbia plan to enforce the time limits in the social assistance legislation? If not, why does it not repeal these provisions?

231. By how many individuals, in each category of recipient, have the welfare rolls been reduced by since 2001? What tracking of individuals who have left the welfare system has been done by the government? What is the situation of those who have left welfare with respect to income, employment?

Hunger

232. What plans does the Government have for dealing with the issue of food insecurity? How many food banks are there in British Columbia? How many were there 20 years ago? Who are the people who rely upon food banks?

Homelessness

233. What is the Government's current strategy for meeting the housing needs of those British Columbians who are homeless or facing housing insecurity?

Housing and Aboriginal peoples

234. What is the Government's current strategy for meeting the housing needs of off-reserve Aboriginal people in B.C.?

Article 12: Highest Attainable Standard of Physical and Mental Health

Changes to health care diminish access and quality

235. Describe rules and criteria governing access to health care and services for refugees and recent immigrants in B.C.
236. How many long term care beds are currently available to elderly seniors in B.C.? How many seniors are on the waiting list for these beds? What is the difference in cost to the senior for long term care compared to assisted living?
237. What services have been de-listed for coverage under medical services since 2000? What is the average cost of each of these services to the person purchasing them?
238. What rules govern access to home care? Has this changed? Has the budget for home care been cut by regional health authorities?

Article 13: The Right to Education

Primary and secondary education funding cut

239. Describe the numbers of teachers positions cut and schools closed since 2000 and any changes in teacher/student ratios and class sizes.

Students with special needs

240. What impact have cuts to teaching positions and changes to class sizes had on teaching children with special needs, and children for whom english is a second language? Have services to support these students been reduced? In what ways? Provide school completion rates for Aboriginal children compared to all children in B.C.

Post-secondary education tuition fees and debt loads increase

241. What range of post-secondary tuition fee levels is the government aiming for? Why has the government cut the grant program for needy students? What is the rationale for refusing to provide social assistance to full-time post-secondary students?

Article 15

Indigenous cultural life threatened by diminished environmental protection

242. Please describe the steps taken by the Government of British Columbia to ensure that Aboriginal economic land and resource base rights in the province will be protected in a way that will adequately sustain Aboriginal economies and cultures. What consultation process is in place to negotiate with Aboriginal peoples when mining or logging or other industrial use of unceded lands is planned?

[O] Nova Scotia

243. Please inform the Committee how the regulatory change which was the subject of the challenge in the *Clyke* case, accords with the Committee's recommendation in paras. 49 and 50 of its 1998 Concluding Observations.

244. Please inform the Committee how many people, on average, are under forensic detention and civil commitment in Nova Scotia solely because of a lack of suitable community-based supportive housing? Please inform the Committee how the Province of Nova Scotia complies with its obligations to protect the right to housing under article 11(1) of the Covenant as explained in General Comment 4?

245. Please inform the Committee whether the Board reasons for decision took into account the provisions of the ICESCR or General comment 4 in construing the scope of its remedial power. If the Covenant was not considered, please explain why not
