Submission of the Canadian Feminist Alliance for International Action and the National Association of Women and the Law to the United Nations Committee on Economic, Social and Cultural Rights On the occasion of its review of Canada's 4th and 5th periodic reports

APRIL 2006

The Canadian Feminist Alliance for International Action (FAFIA)

is an alliance of fifty Canadian women's equality-seeking organizations founded in February 1999. On of the FAFIA central goals is to ensure that Canadian governments respect, protect and fulfill the commitments to women that they have made under international human rights treaties and agreements, including the International Covenant on Economic, Social and Cultural Rights.

The National Association of Women and the Law (NAWL)

is a Canadian non-profit organization that has worked to improve the legal status of women in Canada through law reform since 1974. NAWL promotes the equality rights of women through legal education, research and law reform advocacy.

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ARTICLES 2 AND 3: ALLOCATION OF RESOURCES AND WOMEN'S EQUAL ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

An Affluent Nation Implements Retrogressive Measures

Issue # 1 – 4th Periodic Report

Canada is one of the wealthiest countries in the world and is in an enviable financial situation. The Government of Canada recently recorded its eighth consecutive annual surplus. Canada is the only G7 country expected to post a surplus in 2006.[1] Canada also has the lowest debt burden of all G-7 countries.[2]

Canada has the resources, institutions and infrastructure necessary to eradicate poverty among women, men and children and to provide women and men in Canada with strong social foundations in the form of social programs and services to support their enjoyment of economic, social, and cultural rights.

However, in this decade Canadian governments have cut away programs and services that women rely on, introduced punitive and narrowed eligibility rules to control access to benefits, and made women's lives harsher. The poorest women, who are most likely to be single mothers, Aboriginal, African-Canadian and other racialized women, women with disabilities, and women who are elderly, are the most harmed.[3]

Canada's wealth and prosperity and international stance on human rights belie the reality of human rights neglect at home. Louise Arbour, United Nations High Commissioner for Human Rights and former justice of the Supreme Court of Canada, recently made the following observation about Canada:

> Despite our international standing, …poverty and gross inequalities persist…in our own backyard. And so, the 'Human Poverty Index' tells a … story, …last year Canada could manage only a 12th place ranking out of the 17 OECD countries listed, a distressingly consistent pattern since the UNDP's rankings began. Other reports, studies and indicators, from home and abroad, reveal that First Peoples, single parent families headed by women, persons with disabilities and many other groups continue to face conditions in this country that threaten their fundamental economic, social, civil, political and cultural human rights, the birthrights of all human beings under international law. [4]

We submit that Canada has not only failed to fulfill its obligations under Articles 1 and 6 through 15 of the International Covenant on Economic, Social and Cultural Rights during the period under review, it has also taken retrogressive measures, contrary to its obligations under Article 2.

Federal, provincial and territorial governments should consult with non-governmental organizations representing women and other groups affected by systemic discrimination in Canada in order to develop strategies and mechanisms for monitoring compliance with economic, social and cultural rights and for ensuring that laws, policies and decisions regarding resource allocation and resource sharing among jurisdictions, contribute to the progressive realization of Covenant rights.

The Poverty and Economic Inequality of Women in Canada: A Snapshot

Issue #32 – 4th Periodic Report

Canada's failure to fulfill its obligations, and the retrogressive measures it has taken, have had disproportionately harmful impacts on women. Canada has also violated its obligations under Article 3.

The rate and depth of women's poverty and the overall economic inequality of women is surprising, if not shocking, in a country as wealthy as Canada.

The number of women joining the workforce continues to rise in Canada, with over 7.5 million women, or 58% of all women over 15 years of age, doing paid work in 2004.[5] But women still enter, and work in, a sex-segregated labour force where they do not enjoy equality with men in access to jobs, remuneration, or benefits.

Most Canadian women continue to be denied access to the most lucrative, and powerful paid employment in Canadian society, and continue to be streamed into 'women's work'. In 2004 67% of women doing paid work were teaching, nursing or doing clerical or administrative work, compared to only 30% of men. This number has remained virtually unchanged for over a decade.[6] Women continue to occupy only 37% of managerial positions, and are highly concentrated in lower management.[7] In 2004 women made up only 21% of professionals in the natural sciences, engineering, and mathematics, a number that has not changed significantly since 1987.[8]

Women are paid less than their male counterparts across all age groups, education levels, and occupational categories.[9] Comparing men and women who have full-year, full time employment, women make 71% of the income of men.[10] This number drops significantly when we compare income from all sources. Women have just 62% of the income of men.[11]

Women are more likely than their male counterparts to be in part-time, temporary, or multiple jobs, which are less likely to have pensions and other benefits. This is not

necessarily from choice. Women are more likely than men to take these jobs because of childcare responsibilities,[12] or because they are not able to find full-time work. “In 2004 26% of women part-time workers indicated that they wanted full time employment, but could only find part-time work.”[13]

Aboriginal women and other racialized women, as well as women with disabilities, are more likely to have higher unemployment rates, and lower earnings than other women and than their male counterparts, even when they have comparable educational qualifications, or better ones. They are disproportionately employed in Canada’s low-paid work sector. The overrepresentation of women, and of racialized women in particular, in low paid and "precarious" work is addressed specifically under Article 7 below.

Women with children have shown a particularly sharp increase in employment rates, with 73% of mothers with children under 16 doing paid work.[14] In particular women with very young children are showing increased employment levels, with 70% of mothers with children ages 3 to 5 in the labour force. The vast majority of these working mothers hold fulltime jobs.[15]

However, while women are doing paid work in increasing numbers, they also do most of the unpaid domestic and childcare work in their homes,[16] and most of the volunteer work in their communities.[17] In 2000 women did two thirds of the unpaid domestic work in their families.[18]

Women make up a disproportionate number of poor Canadians.[19] Particular groups of women are hit harder. In 2003 38% of families headed by single mothers lived in poverty, compared to 13% of families headed by single fathers.[20] Families headed by single mothers have by far the lowest income of all family types,[21] and their income has dropped in the last 2 years. In contrast, the incomes for two-parent families, and those headed by single fathers have risen over the same time.[22]

Aboriginal women,[23] immigrant women,[24] women with disabilities,[25] senior women,[26] and women of colour[27] are also disproportionately poor, both when compared to other Canadian women, and to their male counterparts. In 2000 36% of Aboriginal women,[28] 23% of immigrant women,[29] 29% of women of colour,[30] and 26% of women with disabilities[31] lived in poverty.[32] In 2003 19% of senior women lived in poverty. Many of these groups intersect. For instance, Aboriginal and Black women are more likely to be single mothers than other women.

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

disabled. Income and poverty data reveal a general picture of material inequality in relation to the distribution of the society's wealth. This data is also concrete evidence of the lower worth that is assigned to women, and to women's paid and unpaid work.

Women's poverty also has gender-specific consequences. For women, poverty enlarges every dimension of inequality, not just the economic dimension. Poor women get sex inequality writ large. They are less able to protect themselves from being treated as sexual commodities and nothing more, and more likely to accept sexual commodification and subordination in order to survive. They lose sexual autonomy in relationships. And they are also stigmatized as sexually irresponsible women, and as bad mothers. Their vulnerability to rape and assault is magnified. Their ability to care for their children is compromised, and they are more likely to have their children taken away in the name of "protection," often because they do not have adequate housing and cannot supply proper food or ensure safe conditions. They have no political voice or influence. Without access to adequate social programs, including adequate social assistance and social services, such as shelters and transitional housing, women are much less able to resist or escape subordination and violence.[33]

Because of the social and economic inequality of women, the diminishment of social supports and income security programs has particularly harmful impacts on their opportunities and well-being.

Federal, provincial and territorial governments should adopt anti-poverty measures that will reduce the persistently high rates of poverty among particular groups of women, including elderly women living alone, female lone parents, Aboriginal women, women of colour, immigrant women and women with disabilities.

Governments in Canada should aggressively attack the persistent sex and race discrimination in the labour market, and develop enhanced strategies for eliminating its effects.

Restructuring Federal-Provincial-Territorial Fiscal Arrangements and De-investing in Canada's Social Programs

Issue # 10 – 5th Periodic Report

Between 1995 – 2005 Canada undertook the restructuring of 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.

(i) Federal Transfers

In 1995, the federal government introduced the *Budget Implementation Act,*[34] which repealed the *Canada Assistance Plan Act* (CAP) and introduced a new Canada Health and Social Transfer (CHST).[35] 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. *The Budget Implementation Act:*

- eliminated key rights that were in the CAP, including the right of any person in need to receive welfare; the right to an amount of welfare sufficient to meet basic needs; the right to appeal when social assistance is denied; and the right not to have to work for welfare.
- rolled funds into one undifferentiated block transfer, so that post–1995 federal monies transferred to the provinces had few conditions or designations attached, and no accountability system to track where the money was spent.
- cut the amount of the federal transfers to the provinces for health care, post-secondary education and social assistance and social services by 8.2 billion dollars between 1995 and 1998, a reduction of 30 per cent in these cash transfers.[36]

Experts agree that when health care, post-secondary education and social assistance and social services were all included under the CHST, health care spending systematically crowded out spending on post-secondary education and social assistance and other services.[37]

In 2004 the federal government split the Canada Health and Social Transfer into two transfers: the Canada Health Transfer and the Canada Social Transfer. The federal government then increased its contribution to the costs of health care through the new dedicated health transfer. In 2005–06, federal cash transfers to the provinces under CHT stood at $19 billion. Also, the federal government has introduced some stability by committing itself to a 6 percent annual escalator in the health transfer until 2013–14, bringing the total amount at the end of the period to $30.3 billion.[38]

But when the CHST was split into two component parts, spending on both post-secondary education and social programs suffered in order to increase spending on health care. The federal government's support for post-secondary education, social assistance and social services has never been restored to 1994-95 levels. The CST for 2005-2006 is $8.4 billion. To increase CST support for post-secondary education and social assistance and social services to their 1994-95 levels, adjusted for inflation, would require an additional $2.2 billion annually.[39]

ii) Federal Social Spending

Since the 1995 budget, there has been a decade-long erosion of both federal and provincial programs and social protections, featuring diminished services and entitlements, narrowed

eligibility rules for income security benefits, and user fees attached to a number of previously free services.

Nearly 12 billion dollars a year was lost in federal funds for critical programs between 1995 and 1998.[40] Canada justified these cuts on the grounds that they were necessary to reduce the federal deficit. But Paul Martin, then Finance Minister, was also determined to "downsize" government. In his 1995 Budget Speech he said that it was his intention to make a permanent change not only to "how government works but what government *does*."[41]

Federal program spending fell from 16 per cent of GDP to 12 per cent of GDP in the three years between 1995 – 1998. The federal government has maintained a low level of program spending since then despite posting a budgetary surplus every year since 1997.[42] This level of federal involvement in the economy and society is historically unprecedented and completely incongruent with modern society, according to leading economists.[43]

In the era of back to back surpluses from 1997 to 2004, the federal government spent 42 billion on new departmental spending, but 61.4 billion on debt reduction, and 152 billion dollars on tax reductions and tax-related benefits.[44]

To summarize, between 1995 and 1998, 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.[45] Though the years since 1998 have been years of surplus budgets, Canada's major expenditures have been on tax cuts and debt reduction.

Cutbacks to social programs negatively affect all women, men and children in Canada. But, social programs play a special role in women's lives – by shifting some caregiving work to the state and giving women more opportunity to be involved in paid work, higher education and public life. Because of this the cutbacks to social programs and services have had a particularly harsh effect on women, pushing them backwards. This gendered impact has been recognized by CESCR, HRC and CEDAW in recent reviews of Canada.[46]

Women have been particularly harmed by the erosion of social assistance, Employment Insurance, civil legal aid, supports for women leaving violent relationships, supports for housing, and labour standards protections and enforcement. Some cuts have resulted in direct discrimination against women. Others have had disproportionately harmful effects because of women's already disadvantaged position in the society. To enjoy their right to equality, as well as their Article 3 right to equal enjoyment of their economic, social and cultural rights, women need re-invigorated support for social programs and protections, including childcare and post-secondary education.

Given Canada's enviable fiscal circumstances, the Government of Canada should re-invest in social programs. In particular, it should increase the funds in the Canada Social Transfer that supports post-secondary education, social assistance, civil legal aid, and other social services of particular importance to women, and attach common standards of adequacy and eligibility. It should also maintain and strengthen the new childcare agreements and housing agreements with the provinces.

ARTICLES 3, 7, 10, 11, 12, 13 AND 15: ABORIGINAL WOMEN AND EQUALITY, JUST AND FAVOURABLE CONDITIONS OF WORK, SUPPORT FOR THE FAMILY, AND ADEQUATE STANDARD OF LIVING, EDUCATION, HEALTH AND CULTURE

Aboriginal women are still at a disadvantage at law in Canada. They do not enjoy the same rights as Aboriginal men with respect to passing on their Indian status to their children and grandchildren. Nor do Aboriginal women living on reserve enjoy the same rights to the division of matrimonial property as their Aboriginal and non-Aboriginal counterparts who live off reserve.[47] Also, s. 67 of the *Canadian Human Rights Act* denies them the right to make complaints of sex discrimination against Band Councils.[48]

This discriminatory treatment of Aboriginal women at law affects their enjoyment - and the enjoyment of their children and grandchildren - of their right to culture, ancestral lands, the benefits of land claims, and other social and economic benefits provided to Indians.

The Government of Canada has failed to correct the overt discrimination against Aboriginal women, despite recommendations of the Royal Commission on Aboriginal Peoples and the Canadian Human Rights Act Review Panel, and the repeated recommendations of this Committee and other UN treaty bodies.[49]

i. Section 67 of the *Canadian Human Rights Act*

Section 67 of the *Canadian Human Rights Act* 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.

However, section 67 has had the effect of immunizing Band Council from challenges when their decisions are discriminatory. Currently, some Band Councils deny services and access to benefits, such as band housing, to Indian women who 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.

The Native Women's Association of Canada says about section 67:

> That section proclaims that the Government of Canada and the government's creations, the Band Councils, are permitted to discriminate at will against Aboriginal people on the basis of race, gender, and other characteristics, as long as their discrimination has a formal connection to the *Indian Act*. It proclaims that Aboriginal people are entitled to less protection of their human dignity than are other Canadians.[50]

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 *Canadian Human Rights 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.[51]

In 2003, the Government of Canada introduced a bill that included repeal of s. 67, but Parliament was dissolved before it could be passed and the government has not taken any further steps to remove s. 67 from the legislation. As it exists now, s. 67 of the *Canadian Human Rights Act* violates Article 3 of the *ICESCR* by denying Aboriginal women equal protection of anti-discrimination law, which they need in order to gain access to band-provided social services and economic benefits to which they are entitled.

The federal government should immediately repeal section 67 of the Canadian Human Rights Act.

ii. Aboriginal Women's Right to Property and Culture

Issue #37 – 4th Periodic Report

Under the Canadian Constitution, provincial law governs the division of marriage assets upon marriage breakdown; typically, each spouse gets an undivided one-half interest in all family property, irrespective of who holds title. However, the federal government has jurisdiction with respect to laws governing Aboriginals and Aboriginal land. Thus, with respect to the division of on-reserve property upon marriage breakdown, a court is governed by the federal *Indian Act,* which contains no provisions for distribution of matrimonial property upon marriage breakdown.[52]

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.

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. As a result, men frequently hold the Certificate of Possession rather than women. And until recently, federal law required that Aboriginal women reside on their husbands' reserve; thus, many women continue to reside in homes to which they would have no possessory claim upon marriage breakdown.

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.[53]

Provincial legislation provides for interim exclusive possession of the matrimonial home by one of the spouses upon marriage breakdown. This law is fundamental in ensuring the safety and security of women and their children in situations of spousal abuse. The Indian Act provides no protection to women who are victims of spousal abuse, in spite of the fact that Aboriginal women are particularly vulnerable to this kind of abuse. Land and housing are in short supply on reserves. Thus, if her husband holds the Certificate of Possession, she must choose between remaining in an abusive relationship or seeking off-reserve housing, removed from family, friends, and community support networks.[54]

The federal government has done nothing to remedy the inequities Aboriginal women endure upon marriage breakdown. In its negotiations to turn over land management to select Aboriginal Bands, it has refused requests by Aboriginal women to protect their equality rights and ensure equal distribution of matrimonial property. Rather, the resulting land management framework agreement is silent with respect to the rights of Aboriginal women.[55] The Standing Senate Committee on Human Rights made recommendations to the federal government on this issue in 2003, requesting the federal government to ensure that

Aboriginal women living on reserves would enjoy the same protections afforded by provincial family law.[56] The Native Women's Association of Canada is attempting to challenge the constitutionality of the government's failure to ensure the equal division of matrimonial property. To date, the government has sought to frustrate NWAC's ability to assert Aboriginal rights, by challenging NWAC's standing to bring a case challenging the Constitution, and by arguing that there is no Aboriginal right to remain secure in the community after marriage breakdown.

The government's failure to protect the rights of Aboriginal women upon the dissolution of marriage is also incompatible with Articles 10, 11 and 15 of the Covenant, which provide that State Parties will provide protection and assistance to the family, ensure that everyone enjoys an adequate standard of living, including adequate shelter, and recognize that everyone has the right to take part in cultural life. The federal government has thus refused to meet its constitutional and international obligations to ensure the equality of Aboriginal women.

The federal government should take immediate steps to ensure that Aboriginal women living on reserve benefit from the same rights and protections with respect to matrimonial property as those afforded by provincial family law.

iii. Current Inequities from Historical "Marrying-Out" Provisions

Issue #10 – 4th Periodic Report

The *Indian Act* continues to discriminate against Aboriginal women who lost their status prior to 1985 because of "marrying-out" provisions. 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. 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. Under this provision, many Aboriginal women lost their status. In 1985, Bill C-31 was enacted to amend the *Indian Act* so that marriage has no effect on the Indian status of either spouse, and to provide for re-instatement of women who had lost their status because of s. 12(1)(b).

However, the current *Indian Act* continues to discriminate against Aboriginal women. Women who have had their status reinstated under the new provisions are able to pass status on to their children, but status will only pass to their grandchildren if their children marry status Indians. Of course, men who married non-status Indians prior to 1985 did not need to be reinstated, and nor did their children, who had status from birth. As a result, the status of these men's grandchildren is not dependent on their children marrying a status Indian – their grandchildren will have status irrespective of whom their children marry. Thus, while the legislation has changed, the government continues to favour descent through the male line and perpetuates the inequities experienced by Aboriginal women.

The 1985 *Indian Act* amendments also allow Indian Bands to control their own membership through the establishment of membership codes. Initially, these membership codes must include Aboriginal women and children who have had their Indian status reinstated. However, Bands may then change their codes to exclude reinstatees. By 1997, approximately 40 per cent of Indian Bands had adopted their own membership codes, and some are discriminatory. The Canadian government has chosen not to intervene in disputes about band membership stating that these are questions between individuals and their respective bands.[57]

Seventy-five per cent of people who had their Indian status restored under the new provisions were women. Most of them continue to live off-reserve, though for some it is not by choice. Lack of on-reserve housing and band resistance to crowding, and fears that services, such as health care and education, will not be able to support "new" members make women reinstatees unwelcome on some reserves. Thus, women are prevented from moving back to their community and enjoying the rights that flow from their Indian status.[58]

Women who have had their Indian status reinstated are still 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, reinstatees are still subject to discrimination that affects their participation in Band governance and community life, and in their access to benefits, including education, health, child care, and housing. Women who dispute Band decisions are vulnerable to threats and violence.

The Government of Canada has failed to act to remove the lingering discrimination from the legislation, or to intervene when Indian Bands implement membership codes that discriminate against Aboriginal women. The Government of Canada is also currently opposing constitutional challenges by Aboriginal women to the continuing discriminatory effects of the *Indian Act*.[59]

The federal government should immediately amend the Indian Act to remove the continuing discrimination against Aboriginal women who married out and against those whose Indian status is derived from female ancestors.

iv. Poverty and Violence

Aboriginal women are among the poorest women in Canada. They are marginalized in the labour force, mainly working in lower paid and unstable jobs, with higher unemployment rates and lower incomes.[60] They do not have the same level of educational attainment as non-Aboriginal women.[61] Their life expectancy is lower.[62] They experience more violence.[63]

More than 500 Aboriginal women have gone missing or been murdered over the last 15 years. There has been no recognition of this as a massive human rights violation. 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."[64] The lack of protection of Aboriginal women's human rights and their economic and social marginalization permit the cycle of racialized and sexualized violence to continue.

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

ARTICLES 2 AND 3: WOMEN'S EQUAL ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND ACCESS TO DOMESTIC REMEDIES

Access to Justice

i Legal Aid

Legal aid is the basic means through which persons of low income can have access to legal representation and legal services to defend themselves in criminal cases and to exercise their rights under law in civil matters.

The federal government provides targeted funds directly to the provinces and territories to support criminal law legal aid. By comparison, the provinces, at their discretion, may fund civil law legal aid from the Canadian Health and Social Transfer (now the Canada Social Transfer). Civil legal aid, which includes family law, poverty law, and immigration and refugee law, competes for revenues with other programs and services that are also supported by the CHST or CST. Over the last decade, financial support for civil legal aid has diminished, and access to it has become increasingly restricted. Because women are the major users of civil legal aid, this erosion has particularly affected them.

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.[65] In British Columbia, data show that, before cuts to legal aid were made in that province, women were twice as likely as men

to use family law legal aid, while men were five times more likely than women to use criminal law legal aid.[66] But in many jurisdictions, family law legal aid is virtually unavailable now.

In some jurisdictions, poverty law legal aid has also been seriously eroded, or has been eliminated.[67] This means that poor women and men cannot access legal services when they are denied benefits to which they are entitled, such as social assistance, employment insurance, disability benefits, and workers' compensation, or when they face eviction.

The impact of these civil legal aid cuts on women, and on the most vulnerable women, is enormous. Women give up pursuing their share of family assets, or variations in custody or support orders when they are faced with representing themselves.[68] Domestic workers, whose exploitative working conditions provide reasonable cause to leave their jobs, are denied employment insurance benefits because of lack of legal representation at the appeal hearing. Immigrant women whose sponsorship is withdrawn by a spouse (often an abusive spouse) can be denied coverage for an application to vary the terms of their immigration status, and can face deportation.[69]

Governments at both the federal and provincial levels point to the importance of the liberty interests at stake in criminal cases. Unrecognized are the equally serious consequences attached to civil cases typically faced by women, which affect their security and their enjoyment of their economic, social and cultural rights.

The Canadian Bar Association reports that civil legal aid is in crisis, and that the poorest Canadians currently do not enjoy equal protection of the law, or the benefit of the rule of law.[70] The Association has filed a constitutional suit against the Attorney General of Canada and the Attorney General of British Columbia, claiming that the inadequate provision of civil legal aid violates the rule of law and sections 7 and 15 of the Charter.

The federal government should provide targeted funds to support civil legal aid and, in co-ordination with provincial governments, ensure that there are effective national standards for coverage, eligibility and adequacy. Standards should take women's particular needs into account.

ii. The Court Challenges Program

Issue #4 – 5th Periodic Report

The Court Challenges Program provides funding to support some test cases where there is a constitutional equality rights issue at stake. This is a modest, but extremely important program. Without it, in effect, only wealthy Canadians would be able to exercise their constitutional right to equality.

However, under the terms of the contract with the federal government, the Court Challenges Program can fund only test cases that challenge federal laws, policies or programs. It cannot fund test cases that challenge provincial laws, policies or programs. Because many economic, social and cultural rights are implemented through provincial legislation, this restriction makes constitutional equality rights inaccessible to women and to other disadvantaged groups in the very situations their where economic and social rights are at stake.

Despite repeated recommendations from the Committee on Economic, Social and Cultural Rights and other treaty bodies,[71] made over the last decade, the federal government has not expanded the mandate of the Court Challenges Program so that equality test cases can be funded when the challenge is being brought to provincial laws. The expansion of this mandate is crucial to women and to other disadvantaged groups in Canada in order for them to have access to domestic remedies for infringements of their economic, social and cultural rights.

The federal government should expand the mandate of the Court Challenges Program so that constitutional test cases challenging provincial laws and policies can be funded.

ARTICLE 7: EQUAL PAY FOR WORK OF EQUAL VALUE (PAY EQUITY)

Issue #12 - 4th Periodic Report

Women who work in full-year, full time employment make 71% of the income of men, regardless of age or education.[72] Canada still does not have laws in every jurisdiction that require both public and private sector employers to pay women equal pay for work of equal value (pay equity). In Saskatchewan, B.C., Alberta and Newfoundland there are no pay equity laws. Laws there require only that women be paid the same as men when they perform the same work. In Manitoba, New Brunswick, Nova Scotia and Prince Edward Island there are pay equity laws that apply to some public sector employers, but not to private sector employers. Only in Ontario, Quebec, and the federal sector are there pay equity laws applying to both public and private sector employers.

While there are federal pay equity provisions, contained in section 11 of the *Canadian Human Rights Act,* they are not working. The federal law is only activated if there is a complaint. The process of complaint investigation and hearing is too long and too costly, especially for non-unionized women.

The federal government appointed a Pay Equity Task Force in 2001.[73] In May 2004, the Task Force recommended: 1) a new pro-active pay equity law that requires employers to review pay practices, identify gender-based and race-based wage discrimination gaps, and develop a plan to eliminate pay inequities within a specific time frame; and 2) a Pay Equity Commission and a Pay Equity Tribunal to administer new pay equity laws.

No action has been taken on these Task Force recommendations, despite the fact that over 200 local, provincial and national organizations have requested the immediate implementation of these recommendations.[74]

All governments should implement laws requiring public and private sector employers to pay women equal pay for work of equal value. The federal government should immediately implement the recommendations of the Pay Equity Task Force.

The *N.A.P.E.* Case

Issues #3 and #11 - 4th Periodic Report

The Government of Newfoundland and Labrador and the Supreme Court of Canada dealt a heavy blow to women's equality in Canada in the case of *Newfoundland (Treasury Board) v. N.A.P.E.*

The decision of the Government of Newfoundland and Labrador to confiscate a portion of women's pay contravened the right of women to equal pay for work of equal value that is set out in Article 7(a)(i) of the *Covenant*. The decision of the Supreme Court of Canada in this case failed to uphold women's right to equality and to just and favourable conditions of work.

The Government of Newfoundland and Labrador entered into a Pay Equity Agreement with the Newfoundland Association of Public Employees (NAPE) in June 1988. The purpose of the Agreement was to remedy a long history of sex-based wage discrimination for health sector workers. The government agreed to provide pay adjustments that would incrementally achieve pay equity for employees in female-dominated job classes over a five-year period beginning in April 1988. In 1991 NAPE and the government reached an agreement about the amount of the adjustments, and women were then owed the payments for 1988, 1989, 1990 and 1991. But prior to paying out the agreed-upon amounts, the government predicted a budget deficit, and introduced the 1991 *Public Sector Wage Restraint Act*. This legislation cancelled the pay adjustments owed for the period from April 1988 to March 1991, and pushed back the date for beginning any progress towards equal pay.

In effect, the Newfoundland government: 1) cancelled permanently its obligation to provide women with equal pay for work done between April 1988 and March 1991, and thus confiscated a portion of women's wages for this period; 2) required women to wait three more years to even *begin* to achieve wages equal to men's; and, 3) permanently disadvantaged older women and women with disabilities who left the workforce between 1988-91 because their pensions and disability benefits are tied to the discriminatory wage rate. The full amount taken from women in order to retire the Newfoundland government's 1991 budget deficit is estimated to be $80 million.

The women employees of the Newfoundland government challenged this confiscation of their pay under s. 15 of the *Charter of Rights and Freedoms.*

In *Newfoundland (Treasury Board) v. N.A.P.E.,* the Supreme Court of Canada found that the Newfoundland government had violated section 15, the equality guarantee of the Charter, by discriminating against its women employees twice over: first, by systematically paying them less than their male colleagues for decades, and, then, by asking them to forego payments for their lost wages.

However, the Court then found that the discrimination was justified (under section 1 of the *Charter*) because the Newfoundland government had a "severe fiscal crisis" on its hands and had to make hard choices.

In making the decision that the Newfoundland government could override the equality rights of its women employees, the Court accepted shockingly weak evidence regarding the "severe fiscal crisis" - an extract from Hansard and a few budget documents. There was no critical probing of the long-term effect of the legislation on women employees or of the alternatives considered. In effect, the Court accepted the Newfoundland government's *word* that violating women's rights was necessary, and did not seriously test the government's claim, contrary to its own jurisprudence on justifiable limitations on rights.

The government of Newfoundland predicted that for 1990-91 there would be a deficit of $120 million. The Court concluded that this was an 'unprecedented' time in the finances of the provincial government, and that it faced a crisis, sufficient to justify overriding the rights of women. However, a deficit of $120 was not unprecedented in Newfoundland at this time, it was normal. The deficits of the previous five years were: 1985-86: $253 million; 1986-87: $231 million; 1987-88: $197 million; 1988-89: $226 million; 1989-90: $175 million.[76] Also, Newfoundland has had bigger deficits since then. If the prospect of a $120 million deficit provides a constitutional justification for ignoring the equality rights of women, women in Newfoundland, and in other parts of Canada, may have no rights they can rely on. Governments should not be permitted to respond to budgetary concerns by confiscating pay from women. They are obligated by their human rights commitments to allocate resources in ways that treat women as equal members of society.

The Government of Newfoundland argued that there was no violation of s. 15 involved because it had no obligation to pay women equal pay for work of equal value. Newfoundland argued that the devaluation of women's work is caused by society, not government, and it had no obligation to rectify it. Further, the Government of British Columbia argued that the Court could not deal with any issue that involved social spending.

For the years 1988 – 1991, women employees were required to work for less pay than men, even though they were performing work of equal value. The Supreme Court of Canada allowed this and, in doing so, showed a grave disregard for women's human rights. It allowed the Government of Newfoundland to discriminate against women to save money, essentially imposing a gender-specific tax on an already exploited group of women workers.

In Issue 3 regarding the 4th periodic report, the Committee expressed its concern that, in some cases, provincial governments have urged upon courts an interpretation of the *Charter* that would deny any protection of Covenant rights, and a concern that courts had opted for an interpretation of the *Charter* which excluded protection of Covenant rights. The Government of Canada has replied that "there is nothing to suggest that governments in Canada have ever urged or encouraged the courts to adopt a position of the nature described in the Committee's question." This answer is shown to be inaccurate by the arguments made by governments in the NAPE case and by the decision of the Supreme Court of Canada.

All governments should review their approaches to Charter litigation to ensure that they are supporting and encouraging interpretations of Charter rights that will help to realize women's economic, social and cultural rights. This review should be undertaken in collaboration with non-governmental organizations that represent women and with women who are constitutional equality rights experts.

ARTICLE 7: SEX AND RACE DISCRIMINATION AND THE LOW PAID WORK SECTOR

Racialized women are disproportionately part of Canada's low-paid work sector. Employed Aboriginal women are disproportionately represented in low-paying occupations 'traditionally' held by women. In 2000 60% of employed Aboriginal women worked in sales, service or administration jobs, and were twice as likely to work in these low-paying positions than Aboriginal men.[77] In 2001 only 7% of Aboriginal women held managerial positions.[78]

While immigrant women are highly educated compared to other Canadian women, their educational attainment does not provide them with higher incomes and better

employment.[79] Immigrant women are more likely than their native-born counterparts to have completed university, and are more likely to have an advanced university degree such as a Masters or Ph.D.[80] Despite this immigrant women are less likely to be employed than native-born women,[81] and once employed are more likely to be concentrated in 'traditional' female jobs than their male counterparts. In 2001 46% of immigrant women were employed in sales or service positions, clerks or administrators.[82] Immigrant women are also over-represented in the low-paid manufacturing sector, and underrepresented in management, and the professions compared to their male counterparts, and native-born women.[83] The credentials of immigrant women, obtained in other countries, are often not recognized in Canada, contributing to unemployment and underemployment.

Women of colour in Canada are also a well-educated population. In 2001 21% of women of colour had a university degree, compared to 14% of other women, and young women of colour have a disproportionate share of advanced degrees.[84] Despite this women of colour are ghettoized in low-paying administrative, clerical, sales, and service jobs,[85] and have lower employment earnings than other women,[86] and their male counterparts.[87] A large proportion (21%) of women of colour also reported that they are discriminated against in finding employment, and in their places of employment.[88]

Women, and particularly immigrant and racialized women are disproportionately employed in the 'precarious' 'non-standard' work sector, working in part-time, temporary, and casual jobs. Their access to unionization, benefits, job security, and pensions is poor.[89]

All governments should improve labour standards and human rights protections and enhance enforcement. Rigorous strategies for eliminating sex, race and disability discrimination in the labour market should be implemented. Steps should be taken immediately to raise minimum wages, and improve the access of women to unionization, benefits and job security.

Live-In Caregiver Program (LCP)

Women from developing countries come to Canada as temporary workers to participate in Canada's Live-In Caregiver Program (LCP). These women are allowed into Canada, subject to conditions that are not imposed on other skilled workers. The conditions infringe their right to equal treatment without discrimination based on sex and race.

There are two conditions associated with the temporary immigration status under the LCP that potentially lead to abuse and a violation of workers' rights. First, the possibility of gaining permanent resident status is directly tied to and conditional upon a good work record. Second, the LCP requires foreign domestic workers to live in the homes of their

employers. This live-in requirement produces extra pressures and restrictions on the work and life of a domestic worker and creates oppressive power dynamics in the relation between employer and employee. Live-in caregivers experience non-payment or under-payment of wages, unremunerated overtime work, lack of food, privacy, or proper accommodations, and violence and abuse.[90]

The live-in requirement has been widely criticized. The combined effect of temporary migrant status and the compulsory live-in requirement for these workers create circumstances that promote economic, physical and psychological exploitation.

It should be noted that not only do employers benefit from the undervalued labour of live-in caregivers, but Canada, which is just now working on the development of a national child care program, has reaped economic and political benefits from facilitating a supply of migrant women to furnish inexpensive, private child care to a certain segment of Canadian parents.

The federal government's refusal to grant domestic workers permanent residency immediately and to remove the live-in requirement from the criteria for the LCP program violates Articles 3 and 7 of the Covenant.

It should be noted that the federal government's own policy paper on new immigration and refugee protection legislation, issued in 1998, recommended the removal of the live-in requirement in the LCP. The CEDAW Committee in its 2003 Concluding Comments recommended that the live-in requirement be removed and that permanent resident status for domestic workers be facilitated.[91]

To date there is no change.

The federal government should immediately remove the live-in requirement from the Live-In Caregiver Program and facilitate access to permanent resident status for domestic workers.

ARTICLES 7 AND 10: CHILD CARE

Women with children have shown a particularly sharp increase in employment rates, with 70% of mothers with children ages 3 to 5 in the labour force.[92] The vast majority of these working mothers hold full-time jobs.[93] There is also ample evidence now that access to good quality childcare is not only crucial to women's equality in the family and the workforce, but to the best early development of children.

Childcare is an issue for women, because they do not enjoy just and favourable conditions of work, or non-discriminatory access to work, unless they can rely on safe and affordable

care for their children. Child care is also a central means of providing assistance to the family, and of providing support to children.

Despite the importance to women, children and families of reliable, affordable, and high quality child care, no region of Canada, except Quebec, provides a system of well-designed and funded child care care services.[94] Only 12.1% of children under 12 had access to regulated child care spaces in 2001.[95] Safe, affordable child care is not available for the women, children and families who need it.

Thirty-five years ago the Royal Commission on the Status of Women recommended that the federal government act to create a national system of child care. Successive governments, both Liberal and Conservative, have promised to do so, but have not. In 2004 the Government of Canada signed child care agreements with the provinces, providing money to support the development of regulated child care spaces. This was the first real step forward in 35 years.

However, the newly elected minority Conservative government has given notice to the provinces that it will cancel these agreements as of March 2007, offering as an alternative a family allowance of $1,200 per year for each child under 6. A family allowance, while useful, does not build a national child care system.[96] Preserving the childcare agreements, and building on them, is essential for women, children and families.[97]

The federal government and the provinces should preserve and build on the childcare agreements so that a national child care system, providing affordable, quality, and child-development-focussed care is universally available.

ARTICLE 9: WOMEN AND EMPLOYMENT INSURANCE AND MATERNITY AND PARENTAL BENEFITS

Issue #24 – 4th Periodic Report

Women have been hit particularly hard by tightened eligibility rules, reduced benefit levels and shortened benefit periods for Employment Insurance introduced during this decade.

- **Decreased Access:** Only 39% of unemployed workers were eligible for EI in 2001 compared to 74% in 1990. Changes to eligibility rules have disproportionately disqualified women workers. Only 33 % of unemployed women got unemployment insurance benefits in 2001 compared to 44% of men. Part-time female workers continue to pay premiums but they disproportionately are unable to claim unemployment benefits.[98]

- **Replacement Income Levels Lowest Ever:** Replacement rate of income is now 55%, the lowest percentage in the history of employment insurance in Canada. The replacement rate was 67% in 1971, 60% in 1980, 57% in 1993 and 55% after 1997.[99]

- **Maternity and Parental Leave Improved, But Many Do Not Qualify.** Maternity/parental benefits have been enhanced, providing women with a longer period of benefits – up to 50 weeks. ***But these benefits are available only to those who qualify.*** Many women have no access to paid maternity benefits.[100]

The federal government should revise the EI eligibility rules and benefit levels to ensure that unemployed workers are adequately assisted, and that rules do not discriminate against women workers.

ARTICLES 9 AND 11: WOMEN AND SOCIAL ASSISTANCE

Issue #30 and #32 – 4th Periodic Report

Social assistance is a key social program for women. Women are the majority of those reliant on social assistance.[101] The erosion of social assistance, including reduced welfare rates and narrowed eligibility rules, disproportionately affects them. Moreover, the women who are reliant on social assistance are disproportionately single mothers, women with disabilities, racialized women, and Aboriginal women. Twenty-seven per cent of all adult welfare recipients are single mothers.[102]

The National Council of Welfare in its 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.[103] The Council concluded: "Rates this low cannot be described as anything other than punitive and cruel."[104]

In addition, eligibility rules have been narrowed in many jurisdictions and women and men who are genuinely in need may nonetheless be deemed ineligible.[105] Many jurisdictions have punitive rules regarding fraud, and spouse-in-the-house rules that have discriminatory impacts on women. Here are two examples.

i) Death due to welfare fraud

Many provinces have instituted bans, temporary or permanent, for persons convicted of "welfare fraud." That is, breaking welfare rules is a criminal offence, and persons convicted of doing so can be banned, temporarily or permanently, from receiving welfare. In Ontario, policing of the poor has taken the form of snitch lines, and prosecutions and punishment of those suspected of fraud. This approach lead to the death of Kimberly Rogers.

Ms Rogers was a poor, pregnant 40-year old woman. She was found guilty of fraud and sentenced to house arrest because she had accepted student loans while also receiving welfare, contrary to welfare regulations. The Government of Ontario terminated her welfare payments, even though it knew that Ms Rogers would be left with no means of support, and faced a possible jail sentence were she to breach the conditions of her house arrest, by leaving the house to seek work or some other means of support.

"Isolated, and in her eighth month of pregnancy, with an uncertain future at best, and unable to leave her apartment, Ms Rogers died of a prescription drug overdose during a sweltering heat wave in mid-August 2001."[106]

In the fall of 2002, the Government of Ontario conducted an inquest into the death of Kimberly Rogers. The coroner's jury recommended that lifetime bans on welfare should be removed and that welfare rates should be raised. It said:

> …the Ministry of Community, Family, & Children's Services …should assess the adequacy of all social assistance rates. Allowances for housing and basic needs should be based on actual costs within a particular community or region. In developing the allowance, data about the nutritional food basket prepared annually by local health units and the average rent data prepared by Canada Mortgage and Housing Corporation should be considered.[107]

These recommendations have only been partially acted on. While the lifetime ban was removed in 2003,[108] temporary and indefinite bans from social assistance continue. Rates remain well below actual costs for housing and basic needs. In April 2006, as FAFIA and NAWL complete this submission, Sara Anderson, a woman from Sudbury, is in the third week of a hunger strike, in a desperate effort to get the Ontario government to raise the social assistance rates, and to make applying and qualifying for Ontario Disability benefits more accessible.[109]

ii. Spouse in the house rules and the stigmatization of single mothers

Government regulations in Ontario impose a legal presumption of spousal status when a social assistance recipient shares a residence with another adult.[110] The consequences of being presumed "spouses" are significant. The income and social assistance status of both adults will be considered in either adult's application for social assistance, often resulting in the disentitlement of the original social assistant recipient. This presumption pertains even where the individuals do not consider themselves "spouses", have no legal obligation to support each other, and are not financially interdependent.

Disproportionately, it is single mother-led families who are disentitled by this provision. Many are forced into economic dependence on men who have no legal obligations of support to them, making women vulnerable to economic coercion and control by men, a result particularly harmful to women who have already experienced abusive relationships.[111]

In 2002, the Ontario Court of Appeal ruled in *Falkiner v. Director, Income Maintenance Branch*[112] that the Ontario spouse-in-the-house rule violated the equality guarantee of the *Canadian Charter of Rights and Freedoms* on the grounds of sex, family status and receipt of social assistance.

Ontario has responded to this judicial ruling not by abolishing the rule but only by qualifying its application. After three months of living in the same dwelling as a man, women can be disqualified on the grounds that they have a "spouse in the house."[113] Other provinces and territories still have variations of this rule in place, despite the judicial ruling on the discriminatory effect on women.[114]

iii. National Child Benefit Supplement Clawback

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

The federal government permits the provinces and territories to claw the Supplement back from welfare recipients.[115] While not all provinces and territories claw back the Supplement from welfare recipients, the majority has. Thus, the NCBS benefits the working poor and their children, but is effectively denied to most families on social assistance. Indeed, the clawback has meant that "welfare incomes for families on welfare remained low – and actually decreased in most cases – in the years following the federal government's introduction of the National Child Benefit."[116]

The result, as summarized by the National Council of Welfare, is that the clawback to the NCBS "discriminates against families on welfare."[117] As single parent families are the majority of families from whom the Supplement is clawed back and women head most single-parent families, the Council believes that this constitutes discrimination on the basis of sex.[118]

To summarize, this is a decade in which the most basic income security program for the poorest women has been eroded. Welfare incomes have declined; fewer women can qualify; new rules that have discriminatory impacts on women have been put in place; and, old rules with discriminatory effects have been difficult, if not impossible, to disturb.

While social assistance programs lie within provincial jurisdiction in Canada's federal state, the erosion of these programs is linked directly to the federal government's repeal of the *Canada Assistance Plan,* abolition of most federal standards for use of federal monies, and funding cuts detailed above. Thus, responsibility for this situation lies with both levels of government.

As noted earlier, lacking the means of subsistence has gendered consequences. Women lose autonomy in their relations with men. Low welfare rates and rules that make women ineligible coerce women into "survival sex" or prostitution in order to survive.[119] They exchange sex for food or shelter. They live in unsafe housing and are more vulnerable to rape and sexual harassment. They are more likely to have their children apprehended because they cannot provide adequate housing and food. They cannot leave abusive relationships because welfare rates are not sufficient to support them and their children. And, if they do leave, they often return to abusive relationships, even when they are dangerous, for economic reasons. Roughly 50 per cent of women receiving social assistance have experienced domestic violence involving physical or sexual abuse.[120]

Also, women are the overwhelming majority of single parents, and they now lead 20% of Canadian families. As noted earlier, single mothers have the highest poverty rate of any group in the country: 38% of single mothers have after tax incomes that are below the poverty line, compared to 13% of single fathers. Single mothers in particular are punished by welfare rules which bar them from receiving assistance while being enrolled in post-secondary education, by a lack of access to adequate and affordable child care, and by welfare policies which simply push them into marginal employment where they continue to live in poverty. The Dietitians of Canada say that single mothers on welfare are most likely to go without food.[121]

This Committee and other treaty bodies have repeatedly expressed concern about the high poverty rates among women, and among single mothers in particular, and the harmful effects on women when adequate social assistance is not available (CESCR 1993, para. 13, CEDAW 1997, para. 342; CESCR 1998, paras. 28, 33, 54; HRC 1999, para. 20; CEDAW, 2003, 358).

The impact of the repeal of the *Canada Assistance Plan Act* is starkly evident in the deterioration of the social assistance schemes across the country. The lack of any standards governing social assistance, combined with the cuts to funds for social programs and social services over the decade, have combined to make welfare policy in Canada an "utter disaster", in the words of the National Council of Welfare. The poorest women's lives, health and safety are jeopardized.

The Government of Canada should attach common standards of adequacy and eligibility for social assistance to the Canada Social Transfer to ensure that women in need are not deprived of social assistance, that rates are adequate to meet current real costs of food, clothing and housing, that single mothers can support themselves and their children, and that women are not coerced into remaining in violent relationships or engaging in prostitution because they lack adequate means.[122]

Articles 3 and 11: Violence Against Women

Half of Canadian women (51%) have been victims of at least one act of physical or sexual violence since the age of 16. Further, of all victims of crimes against the person in 2000, females made up the vast majority of victims of sexual assaults (86%), criminal harassment (78%) and kidnapping/hostage-taking or abduction (67%).[123]

Women who face multiple forms of discrimination, such as Aboriginal women, women of colour, immigrant women, lesbians, disabled women, young girls and older women, are at a higher risk of violence. Further, these women have a more difficult time accessing services. For example, "less than two-thirds of shelters for abused women report being accessible to women with disabilities."[124] Also, there is a complex set of issues, attitudes, barriers and gaps in service that make immigrant and racialized women uniquely vulnerable when faced by domestic violence.[125] Only 57 per cent of Canadian shelters offer services that are sensitive to cultural differences. Further, women who have difficulty speaking the official language where they live face enormous barriers in accessing services and dealing with the justice system. When services and the justice system fail, women find it even more difficult to escape abuse.[126]

During the last decade, combating violence against women and improving the conditions of women who are victims of violence has become increasingly difficult.[127] These are some of the reasons.

i. De-gendered Law and Order Policies

Canada has adopted new 'law and order' measures, such as tougher laws for dangerous offenders. The dangerous offender legislation allows judges to extend periods of incarceration without trials when a prisoner is already serving a term. These measures have given the appearance of "getting tough" on law breakers, but have not improved the response of the police and the justice system to violence against women. This 'law and order' approach ignores the root cause of violence against women, namely women's subordinated social, political, legal, and economic status. Women are victims of violence by men, including the men with whom they are most intimate, because women have less status and power in Canadian society. Violence against women is a result of women's inequality.[128]

Rather than supporting women's rape crisis centres and shelters for battered women, and women-run front line services, these women-led, non-governmental services have had funds cut, while public money is being given to "victim's assistance" programs, run by police, crown prosecutors, or non-profit organizations that do not recognize that violence against women is a manifestation of women's inequality.[129]

ii. Falling welfare incomes

As noted above, welfare incomes have fallen across the country. Shelter and transition house workers have noted that women are returning to abusive relationships because they cannot support themselves and their children adequately on welfare incomes. These women choose continued exposure to violence for themselves over being unable to feed and house their children.[130]

iii. Lack of affordable housing

A recent report on women on welfare in Ontario notes that lack of affordable housing:

> …is a key reason why many women do not leave abusive partners or return to them. Many women interviewed experienced insecure and precarious housing arrangements. Canada is one of the few industrialized countries that do not have a national housing policy. At the same time, the provincial government has withdrawn its funding from subsidized, co-operative and second-stage housing…. Women…identified quick access to housing as an important need.[131]

iii. Cuts to shelter funding and inadequate supply

Shelters and services for women victims of male violence were services designated under the *Canada Assistance Plan* for cost-sharing. The elimination of CAP's designations and 50/50 cost-sharing formula and its replacement with the CST as a block undesignated transfer from the federal government to the provinces has also affected support for shelters and transition houses in some provinces. Over the 1995 – 2005 period, some provincial governments have cut funding to women's shelters and transition houses, resulting in many shelters and transition houses and front line services being underfunded and struggling to meet the demands of the women who need them.[132]

Status of Women Canada's 2003 *Fact Sheet: Statistics On Violence Against Women* notes that "in … April 17, 2000, 89 shelters turned away 476 people (254 women and 222 children). More than 7 in 10 of these shelters (71%) turned women and children away because the shelter was full."[133] In other words, shelter capacity has grown in Canada since the first shelters opened 27 years ago, but it remains inadequate, despite findings from independent researchers of the "crucial necessity of shelter availability as a tool against violence against women."[134]

Governments at all levels should provide adequate funding and resources to women-run front line anti-violence services, shelters and transition houses. Standards attached to the Canada Social Transfer should ensure that adequate funds are provided to support these services, and that the needs of diverse women, and the needs of women in rural and remote areas, are taken into account.[135]

Recommendations

- Federal, provincial and territorial governments should consult with non-governmental organizations representing women and other groups affected by systemic discrimination in Canada in order to develop strategies and mechanisms for monitoring compliance with economic, social and cultural rights and for ensuring that laws, policies and decisions regarding resource allocation and resource-sharing among jurisdictions, contribute to the progressive realization of Covenant rights.
- Federal, provincial and territorial governments should adopt anti-poverty measures that will reduce the persistently high rates of poverty among particular groups of women, including elderly women living alone, female lone parents, Aboriginal women, women of colour, immigrant women and women with disabilities.
- Governments in Canada should aggressively attack the persistent sex and race discrimination in the labour market, and develop enhanced strategies for eliminating its effects.
- Given Canada's enviable fiscal circumstances, the Government of Canada should re-invest in social programs. In particular, it should increase the funds in the Canada Social Transfer that supports post-secondary education, social assistance, civil legal aid, and other social services of particular importance to women, and attach common standards of adequacy and eligibility. It should also maintain and strengthen the new childcare agreements and housing agreements with the provinces.
- The federal government should immediately repeal section 67 of the *Canadian Human Rights Act*.
- The federal government should take immediate steps to ensure that Aboriginal women living on reserve benefit from the same rights and protections with respect to matrimonial property as those afforded by provincial family law.
- The federal government should immediately amend the *Indian Act* to remove the continuing discrimination against Aboriginal women who married out and against those whose Indian status is derived from female ancestors.
- All levels of government need to design and implement comprehensive and co-ordinated measures to address the inequality of Aboriginal women with respect to health, the attainment of education, employment and just conditions of work. These measures should be designed in consultation with Aboriginal women's

organizations. Resources should be allocated specifically to support the advancement of Aboriginal women, including equal resources for Aboriginal women's organizations to participate in the negotiation of self-government and other agreements affecting their lives.

- The federal government should provide targeted funds to support civil legal aid and, in co-ordination with provincial governments, ensure that there are effective national standards for coverage, eligibility and adequacy. Standards should take women's particular needs into account.
- The federal government should expand the mandate of the Court Challenges Program so that constitutional test cases challenging provincial laws and policies can be funded.
- The federal government and the provinces should preserve and build on the childcare agreements so that a national child care system, providing affordable, quality, and child-development-based care is universally available.
- All governments should implement laws requiring public and private sector employers to pay women equal pay for work of equal value. The federal government should immediately implement the recommendations of the Pay Equity Task Force.
- All governments should review their approaches to Charter litigation to ensure that they are supporting and encouraging interpretations of Charter rights that will foster the realization of women's economic, social and cultural rights. This review should be undertaken in collaboration with non-governmental organizations that represent women and with women who are constitutional equality rights experts.
- All governments should improve labour standards and human rights protections and enhance enforcement. Rigorous strategies for eliminating sex, race and disability discrimination in the labour market should be implemented. Steps should be taken immediately to raise minimum wages, and improve the access of women to unionization, benefits and job security.
- The federal government should immediately remove the live-in requirement from the Live-In Caregiver Program and facilitate access to permanent resident status for domestic workers.
- The federal government should revise the EI eligibility rules and benefit levels to ensure that unemployed workers are adequately assisted, and that rules do not discriminate against women workers.

- The Government of Canada should attach common standards of adequacy and eligibility for social assistance to the Canada Social Transfer to ensure that women in need are not deprived of social assistance, that rates are adequate to meet current real costs of food, clothing and housing, that single mothers can support themselves and their children, and that women are not coerced into remaining in violent relationships or engaging in prostitution because they lack adequate means.[136]
- Governments at all levels should provide adequate funding and resources to women-run front line anti-violence services, shelters and transition houses. Standards attached to the Canada Social Transfer should ensure that adequate funds are provided to support these services, and that the needs of diverse women, and the needs of women in rural and remote areas, are taken into account..

Footnotes

1 Government of Canada, Department of Finance, *News Release*, September 21, 2005: http://www.fin.gc.ca/news05/05-060e.html.

2 Canadian Centre for Policy Alternatives, Press Release, *Getting the Most Bang for Our Bucks,* February 9, 2005: http://www.policyalternatives.ca/index.cfm?act=news&do=Article&call=1012&pA=BB736455.

3 Social Watch. 2005. Report on Canada: http://www.socialwatch.org/en/informeImpreso/pdfs/canada2005_eng.pdf/

4 Louise Arbour, UN High Commissioner for Human Rights, LaFontaine-Baldwin Symposium 2005 Lecture, Quebec City, March 4, 2005: http://www.lafontaine-baldwin.com/speeches/2005.

5 Statistics Canada, *Women in Canada 2005: A Gender-Based Statistical Report* (Ottawa: Statistics Canada, 2005) at 103. [Women in Canada 2005].

6 *Ibid*. at 113.

7 *Ibid*.

8 It is worth noting that due to the small number of women entering university in these areas, this number is not likely to increase in the foreseeable future. *Ibid*. at 113.

9 *Ibid*. at 139-140.

10 *Ibid*. at 139.

11 *Ibid*. at 133.

12 *Ibid*. at 109.

13 *Ibid*. at 110.

14 *Ibid*. at 105.

15 *Ibid*.

16 For instance employed women were more than twice as likely as their male counterparts to miss time from employment for family responsibilities. *Ibid*. at 109. This division of childcare continues upon marriage breakdown. When sole custody is awarded, mothers receive custody of children 48% of the time, compared to 8% of men. Ibid. at 40. See also: Susan B. Boyd, *Child Custody, Law, and Women's Work* (Oxford: Oxford University Press, 2003) at 215.

17 *Ibid*. at 116.

18 *Women in Canada 2000: A Gender-Based Statistical Report* (Ottawa: Statistics Canada, 2000) at 97. This work represented between 32 and 54% of the Gross Domestic Product for 2000, depending on the valuation used. Ibid. at 97.

19 *Women in Canada 2005* at 143.

20 *Ibid*. at 144.

21 *Ibid*. at 134.

22 *Ibid*. at 135.

23 *Ibid*. at 199.

24 *Ibid*. at 228.

25 *Ibid*. at 297.

26 *Ibid*. at 280.

27 *Ibid*. at 254.

28 *Ibid*. at 200.

29 *Ibid*. at 228.

30 *Ibid*. at 254.

31 *Ibid*. at 297.

32 Ibid. at 280.

33 This account of the gendered consequences of poverty is reproduced, with permission, from an article by Gwen Brodsky and Shelagh Day. 2006. "Women's Poverty is an Equality Violation", forthcoming in

Making Equality Rights Real. Irwin Law.

34 *Budget Implementation Act* 1995, S.C. 1995, c. 17; *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8, as amended.

35 The Canada Health and Social Transfer remained in place until 2004, when it was split into two transfers: the Canada Health Transfer and the Canada Social Transfer. As part of the 2003 Health Accord, First Ministers agreed to create separate transfers, "thereby enhancing the transparency and accountability of federal support for health while continuing to provide provinces and territories with the flexibility to allocate funds among social programs according to their respective priorities." Department of Finance Canada (DFC) (2004) *What is the Canada Health Transfer?:* http://www.fin.gc.ca/fedprov/chte.html.

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38 Council of the Federation, 2006, ibid.

39 Council of the Federation, 2006, at 75.

40 Yalnizyan, A. at 6.

41 Budget Speech, 1995. http://www.fin.gc.ca/budget95/speech/SPEECH3E.html.

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43 Yalnizyan, A. at 100.

44 Yalnizyan, A. at 95 – 97.

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131 *Walking on Eggshells: Abused Women's Experiences of Ontario's Welfare System*: http://dawn.thot.net/walking-on-eggshells.htm.This report makes two recommendations about housing: 1) the Ontario Government should renew its commitment to second stage housing and provide more units of this nature. This would permit abused women some time to live in a safe place before they needed to find a permanent home….(Recommendation 28); and 2) more subsidized housing units are needed and these units need to be more welcoming to women.

132 Morrow, M., Hankivsky, O., & Varcoe, C. 2004. "Women and violence: The effects of dismantling the welfare state". Critical Social Policy, 24(2).

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135 In CEDAW 2003 Concluding Comments at paras. 369-370, the CEDAW Committee stated:

Despite the commendable measures taken by the State party to combat violence against women and girls, including criminal law reforms, the Committee notes with concern that violence against women and girls persists. The Committee is particularly concerned about the inadequate funding for women's crisis services and shelters.

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

136 FAFIA and NAWL agree that to foster the distinct culture of Quebec and the autonomy of Quebec, the Government of Quebec should play a leading role with respect to social program policy and delivery within Quebec. Parallel standards and monitoring mechanisms are appropriate.