

**WOMEN'S CIVIL AND POLITICAL RIGHTS
IN CANADA 2005**

The Canadian Feminist Alliance

for

International Action

submission to the

United Nations

Human Rights Committee

on the occasion of its review of Canada's 5th report on compliance with

the *International Covenant on Civil and Political Rights*

September 2005

Acknowledgements

This submission was developed with the assistance of the 50 member groups of the Feminist Alliance for International Action (FAFIA). It was prepared for FAFIA by Shelagh Day, Margot Young and Lisa Phillips, as a part of the work of the Social Rights Accountability Project, which is funded through a Community University Research Association grant from the Social Sciences and Humanities Research Council. We acknowledge the support and assistance of the National Association of Women and the Law and The Poverty and Human Rights Centre who are partners in the Social Rights Accountability Project. We also acknowledge the support of the Centre for Feminist Legal Studies at the University of British Columbia.

Table of Contents

| | | |
|-------|--|----|
| I. | The Canadian Feminist Alliance for International Action..... | 5 |
| II. | Introduction..... | 5 |
| III. | Human Rights Accountability and Compliance Review Mechanisms | 6 |
| IV. | Indivisibility of Civil and Political and Economic and Social Rights..... | 6 |
| V. | Non-Discrimination: Articles 3 and 26 | 8 |
| VI. | Canada: An Affluent and Prosperous Nation..... | 8 |
| VII. | Aboriginal Women (Articles 1, 2, 25, 26 and 27) | 9 |
| | i. Missing and Murdered Aboriginal Women..... | 10 |
| | ii. Section 67 of the <i>Canadian Human Rights Act</i> | 11 |
| | iii. Aboriginal Women’s Right to Property and Culture | 12 |
| | iv. Current Inequities from Historical “Marrying-Out” Provisions | 13 |
| | v. Unequal Political Participation for Aboriginal Women..... | 15 |
| VIII. | Women’s Poverty (Article 26)..... | 16 |
| IX. | Restructuring Federal-Provincial-Territorial Fiscal Arrangements and Canada’s Social Programs | 18 |
| X. | Eroding Income Security Benefits and Social Programs | 22 |
| | i. Social Assistance..... | 22 |
| | A. Death due to welfare fraud..... | 23 |
| | B. ‘Spouse in the house’ rules..... | 24 |
| | ii. National Child Benefit Supplement..... | 26 |
| | iii. Employment Insurance and Maternity and Parental Leave | 27 |
| | iv. Legal Aid..... | 30 |
| | v. Housing | 32 |
| | A. Housing for Aboriginal Women..... | 34 |
| | B. Women’s Homelessness | 35 |
| XI. | Other Failures to Protect Women from Discrimination (Articles 2, 3 and 26) | 35 |
| | i. Violence Against Women | 35 |

| | | |
|--------------|--|-----------|
| | A. Degendered law and order policies | 37 |
| | B. Diversion, counseling, mediation, restorative justice | 37 |
| | C. Falling welfare incomes | 38 |
| | D. Lack of affordable housing | 39 |
| | E. Cuts to shelter funding and inadequate supply.. | 39 |
| ii. | Court Challenges Programme | 40 |
| iii. | Protection from Discrimination on the Basis of Social Condition | 41 |
| iv. | Equal Pay for Work of Equal Value | 42 |
| | A. The N.A.P.E. Case..... | 44 |
| v. | The <i>Immigration and Refugee Protection Act</i> and Systemic Discrimination..... | 45 |
| | A. Economic Migrants | 46 |
| | B. The Live-In Caregiver Program..... | 46 |
| | C. Family Category Migration..... | 47 |
| | D. Refugee Immigration | 48 |
| XII. | Women Federal Prisoners (Articles 10 and 26) | 49 |
| | A. Male guards in women’s prisons | 49 |
| | B. Incarceration of Aboriginal women | 50 |
| | C. Segregation | 51 |
| | D. Lack of Decarceration Strategies, Exit Programs, Appropriate Training | 51 |
| | E. Accountability for Correctional Services of Canada .. | 52 |
| XIII. | Women’s Political Equality (Articles 25 and 26) | 53 |

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

This Report on Canada's compliance with the *International Covenant on Civil and Political Rights* has been prepared by the Canadian Feminist Alliance for International Action (FAFIA). (<http://www.fafia-afai.org/home.php>).

- FAFIA is an alliance of fifty Canadian women's equality-seeking organizations founded in February 1999. A central goal of FAFIA's is to ensure that Canadian governments fulfill the commitments to women that they have made under international human rights treaties and agreements, including the *International Covenant on Civil and Political Rights*

II. Introduction

1. The purpose of this submission is to provide the United Nations Human Rights Committee with the information needed to make a complete assessment of Canada's compliance with its obligations under the *International Covenant on Civil and Political Rights*, and, in particular, of Canada's compliance with Article 26 of the *Covenant*.

2. After reviewing Canada's last report, the Human Rights Committee expressed serious concerns about the state of civil and political rights in Canada and issued fifteen recommendations for better observation of those rights. Canada has largely disregarded those recommendations. This submission seeks to draw the Committee's attention to this inaction and to its consequences for the women of Canada.

3. FAFIA notes that little in this Report has not already been the subject of United Nations committee review and recommendations. Yet, Canadian governments, in the face of significant concerns expressed by the Human Rights Committee, the Committee on Social, Economic and Cultural Rights, and the Committee on the Elimination of Discrimination against Women, have not acted. Canadian governments remain inactive as well in the face of critical reports and recommendations from their own agencies, and appointed task forces and inquiry panels, such as the Canadian Human Rights Commission, the National Council on Welfare, the Pay Equity Task Force, the Canadian Human Rights Act Review Panel, and others. It is time that Canada is called to account—not only for its breaches of international human rights obligations but for its failure to credit and respect international human rights bodies by responding constructively and actively to their recommendations.

4. This report focuses on the erosion of social programs that has occurred in Canada over the last decade. Strong social programs are the building blocks of an egalitarian society. They are crucial to women's advancement, and to women's enjoyment of civil and political rights. They permit women to participate in work, education and public life as equal human beings, lifting some of the burden of their assigned role as the society's primary caregivers for children, old people, people with disabilities and men. They permit women to enjoy security of the person, liberty, equality, and privacy.

5. This report also focuses on women's poverty, since poverty exacerbates and

deepens the inequality of women. And, women's disproportionate poverty is, in turn, the product of systemic and entrenched sex discrimination in Canadian society. Additionally, poverty reinforces the particular disadvantages of Aboriginal women, single mothers, older women, racialized women, and women who are recent immigrants.

6. Poverty perpetuates women's under-representation in governments and in decision-making and their lack of political influence. Poverty forces women to accept sexual commodification and subordination to men in order to survive. They engage in prostitution or 'survival sex' to get by. They are not free to leave abusive relationships when destitution is the alternative. They lose autonomy to choose whether and when they will have children. They are more vulnerable to rape, assault and sexual harassment because they live in unsafe places, and they are not free to walk away from workplaces that are poisoned.

III. Human Rights Accountability and Compliance Review Mechanisms

7. During its fourth periodic review by the Human Rights Committee, Canada, as noted by the Committee in its Concluding Observations, undertook to take action to ensure effective follow-up in Canada of the Committee's concluding observations and to further develop and improve mechanisms for ongoing review of compliance of the State party with the provisions of the Covenant.¹ The Committee recommended further that Canada consider establishment of a public body responsible for overseeing implementation of the Covenant and for reporting on any deficiencies.² This has not happened. The Government has not established new and more effective mechanisms for ongoing review of its compliance with its international human rights obligations. Indeed, one of the specific comments by the Canadian governmental delegation before the Human Rights Committee was that the newly enacted Canada Social Transfer would be put under such a review. To date, nothing in the legislative provisions of the Canada Social Transfer and negotiations around it have dealt with this concern.

IV. Indivisibility of Civil and Political and Economic and Social Rights

8. Recognition that human rights are indivisible, interrelated, and interdependent is a fundamental principle of human rights protection. The historic separation of civil and political rights and social and economic rights into the two International Covenants cannot be understood to represent a sharp analytical distinction between the two categories of rights.³ The interdependence of all human rights is recognized in the third paragraph of the preamble of the ICCPR:

¹Human Rights Committee, *Concluding observations of the Human Rights Committee, Canada* CCPR/C/79/Add.105 (1999), para. 3.

² Human Rights Committee, *Concluding observations of the Human Rights Committee, Canada* CCPR/C/79/Add.105 (1999), para. 10

³ Craig Scott, "The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights" (1989) *Osgoode Hall L.J.* 769; Craig Scott, "Reaching Beyond (Without Abandoning) the Category of 'Economic, Social, and Cultural Rights'" (1999) *12 Hum. Rts. Q.* 633

...the *ideal of free human beings* enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, *as well as* his economic, social and cultural rights.... (emphasis added)

The interdependence of the content of the two Covenants, signaled by these prefatory remarks, has now been firmly demonstrated and accepted.

9. The HRC itself has argued that classical liberal rights (such as traditional political and civil liberties) place duties on the state to address the material conditions and associated inequality that render such rights otherwise meaningless for some members of society.⁴ Clearly, then, the provisions of the ICCPR place significant legal obligations on the state to address specifically the needs of the less advantaged in an affluent state such as Canada.

10. More relevant for this Report, the HRC has stated that the right to equal protection of the law in Article 26 of the ICCPR places affirmative obligations on states to deal with those social and economic inequalities between men and women that render problematic formally equal treatment by the state.⁵

11. Moreover, in the real lives of women, the distinction between civil and political rights and economic, social and cultural rights is an artificial one. For women in particular the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. Women who are economically and socially unequal, and who are disproportionately poor, do not enjoy liberty, security of the person, freedom from violence, sexual and personal autonomy, privacy, or full social and political citizenship. Thus achievement of women's civil and political rights is very much dependant upon their equal enjoyment of economic and social well-being and liberty.

12. FAFIA requests the Human Rights Committee to recognize the importance of a strong foundation of social and economic supports to the equality of women, and to women's equal enjoyment of civil and political rights. It is only through giving full effect to all human rights that women in Canada will be able to enjoy the equality—of civil and political liberties and of social and economic freedoms—to which they are entitled.⁶

⁴ See, for example, Human Rights Committee, *General Comment No. 6/16, Right to Life (Article 6)*, where the HRC has held that positive measures are required to reduce infant mortality resulting from health and nutritional conditions.

⁵ See, *General Comment No. 04: Equality between the sexes (Art. 3)* : . 30/07/81, *General Comment No. 18: Non-discrimination* : . 10/11/89.

⁶ Preamble, *International Covenant on Civil and Political Rights*, GA Res. 2200A (XXI), 21 U.N. GOAR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976; Preamble, *International Covenant on Economic, Social and Cultural Rights*, GA Res. 2200A (XX), 21 UN GOAR, (Supp. No. 16) UN Doc. A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46; Vienna Declaration and Programme of Action (Part I, para. 5), adopted by the World Conference on Human

V. Non-Discrimination: Articles 3 and 26

13. As the Human Rights Committee stated in General Comment 28 on Article 3, the state has an obligation to ensure “the removal of obstacles to the equal enjoyment of ...rights [guaranteed in the *Covenant*]” and to take “positive measures in all areas so as to achieve the effective and equal empowerment of women.”⁷ Thus the obligation imposed by Article 3 is a positive, proactive one.

14. The FAFIA Report details those factors—in particular, women’s disproportionate poverty and state abolition or reduction of social programmes—that most strongly “impede the equal enjoyment by women and men of each right specified in the *Covenant*.”⁸ We do so in recognition that the Committee itself has noted that it “wishes to have “information on the particular impact on women of poverty and deprivation that may pose a threat to their lives.”⁹

15. Discrimination, as prohibited by Article 26, is to be understood:

“... to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”¹⁰

The guarantee of non-discrimination provided by Article 26 is not limited to those rights provided for in the *Covenant*. Any and all legislation adopted by a State party must comply with the requirement of Article 26 that its content and application should not be discriminatory.¹¹

VI. Canada: An Affluent and Prosperous Nation

16. Canada is one of the wealthiest countries in the world and is in an enviable financial situation. The federal Government of Canada recently recorded its eighth consecutive annual surplus. Canada was once again the only Group of Seven (G7) country to post a total government sector surplus in the most recent fiscal year and is the only G7 country expected to do so in 2005 and 2006, according to the Organisation for

Rights, Vienna, 25 June 1993 (A/CONF.157/24 (Part I), chap. III); General Assembly Resolution 32/130 of 16 December 1977, (para 1(a) and (b)); Gwen Brodsky and Shelagh Day, “The Denial of the Means of Subsistence as an Equality Violation”, forthcoming in (2006) *Acta Juridica*.

⁷ *General Comment No. 28: Equality of rights between men and women (article 3)* : . 29/03/2000

⁸ *General Comment No. 28: Equality of rights between men and women (article 3)* : . 29/03/2000

⁹ *General Comment No. 28: Equality of rights between men and women (article 3)* : . 29/03/2000

¹⁰ *General Comment No. 18: Non-discrimination* : . 10/11/89.

¹¹ *General Comment No. 18: Non-discrimination* : . 10/11/89

Economic Co-operation and Development.¹² Canada also has the lowest debt burden of all G-7 countries.¹³

17. Canada has the resources, institutions and infrastructure necessary to eradicate poverty among women, which is an overt, material manifestation of long-standing systemic discrimination against them. Canada also has the capacity to provide women and men in Canada with strong social foundations in the form of social programs and services to support their enjoyment of civil, political social, economic, and cultural rights.

18. However, as this report shows, far from addressing the causes of poverty and adequately assisting the poorest women, in this decade Canadian governments have cut away programmes and services women rely on, introduced punitive and narrowed eligibility rules to control access to benefits, and made women's lives more desperate. The dire economic situation of many Canadian women and their children, with its corresponding limitation of women's civil and political liberties, remains unaddressed by Canadian governments.

VII. Aboriginal Women (Articles 1, 2, 25, 26 and 27)

19. While this Report focuses in a central way on women's poverty and the cutbacks to social programmes as evidence of Canada's failure to honour its commitments under the *Covenant*, the substantive section of the Report begins with details of the specific plight of Aboriginal women in Canada. They are the first women of Canada; it is appropriate and respectful to so order this Report. Moreover, the circumstances and adversity Aboriginal women face are dire. Governments of Canada have repeatedly failed to respond to their concerns. Every United Nations Committee has recommended that the federal government remedy significant breaches of Aboriginal women's human rights. Thus, the 2003 CEDAW Concluding Comments on Canada stated that:

...the Committee is seriously concerned about the persistent systematic discrimination faced by aboriginal women in all aspects of their lives.... The Committee is further concerned that the First Nations Governance Act currently under discussion does not address remaining discriminatory legal provisions under other Acts, including matrimonial property rights, status and band membership questions which are incompatible with the Convention.

The Committee urges the State party to accelerate its efforts to eliminate de jure and de facto discrimination against aboriginal women both in society at large and in their communities, particularly with respect to the remaining discriminatory

¹² Government of Canada, Department of Finance, *News Release*, September 21, 2005 <http://www.fin.gc.ca/news05/05-060e.html> (date accessed: October 9, 2005)

¹³ 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> (date accessed, October 9, 2005).

legal provisions and the equal enjoyment of their human rights to education, employment and physical and psychological well-being.¹⁴

20. The 1998 Concluding Observations of the CESCR Committee noted that:

... Aboriginal women living on reserves do not enjoy the same right as women living off reserves to an equal share of matrimonial property at the time of marriage breakdown.¹⁵

21. The 1999 Concluding Observations of the HRC stated that:

The Committee is concerned about ongoing discrimination against aboriginal women. ...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.¹⁶

In the face of these international committee observations, the Canadian Government has done nothing. So, again, we provide details of often-noted breaches of Aboriginal women's human rights.

i. Missing and Murdered Aboriginal Women

22. Approximately 500 Aboriginal women have been murdered or reported missing over the past 15 years in Canada. There has been no recognition of this as a massive human rights violation and too little media coverage detailing the scope of the disappearances and murders.

23. Police do not seem to be actively searching for these women. Many Aboriginal women have been murdered with no complete investigations into their deaths. When prosecuted, the courts have dealt with murders of Aboriginal women by white men in a racist manner.¹⁷

24. 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."¹⁸ Violence against Aboriginal women "is embedded in a history of colonization that involved dispossession, forced relocation, forced placement in

¹⁴ Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee: Canada* (2003) (A/58/38), paras. 361, 362.

¹⁵ Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights : Canada*. 10/12/98. E/C.12/1/Add.31, para. 29.

¹⁶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, CCPR/C/79/Add.105 (1999), para. 9.

¹⁷ Sisters in Spirit, *500 Aboriginal Women Missing in Canada*, online: Sisters in Spirit <<http://www.sistersinspirit.ca/engmissing.htm>> (date accessed: 3 June 2005).

¹⁸ Aboriginal Women: *A Demographic, Social and Economic Profile*, Indian and Northern Affairs Canada, Summer 1996

residential schools, cultural domination and other forms of racism.” The Native Women’s Association of Canada argues that the lack of protection of Aboriginal women’s human rights and their economic and social marginalization function to allow the cycle of racialized and sexualized violence to continue.

25. 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 sexist and racist violence against Aboriginal women. The Government of Canada promised to give the Native Women’s Association of Canada \$5 million for this campaign, but as of October 2005 it has not yet actually provided the money.

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

26. 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*.”

27. 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.

28. 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 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.

29. The Native Women’s Association of Canada says the following 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.¹⁹

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.²⁰

¹⁹ *Canadian Human Rights Act* Review Panel, *Promoting Equality: A New Vision* (Ottawa: Canadian Human Rights Act Review Panel, 2000) at 130.

²⁰ *Ibid.* at 132.

30. 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 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 26, as well as Articles 2 and 3, of ICCPR by denying Aboriginal women equal protection of the law.

iii. Aboriginal Women's Right to Property and Culture

31. 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 interest, 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.²¹

32. 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.

33. 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.

34. 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

²¹ *Indian Act*, R.S.C. 1970, c. I-6, Section 20.

properties upon dissolution of a marriage is a serious disadvantage to aboriginal women.²²

35. 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.²³

36. 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.²⁴ 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.

37. The government's failure to protect the rights of Aboriginal women upon the dissolution of marriage is also incompatible with Article 23 of the Covenant, which provides that "States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution." The federal government has thus refused to meet its constitutional and international obligations to ensure the equality of Aboriginal women.

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

38. 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

²² *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.

²³ *Ibid.*

²⁴ Framework Agreement on First Nation Land Management Between the Following First Nations: Westband, Musqueam, Lheit-lit'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.

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).

39. 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 policies that are premised on discriminatory practices that favour descent through the male line and perpetuates the inequities experienced by Aboriginal women.

40. 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 reinstatementees. 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.²⁵

41. 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 reinstatementees unwelcome on some reserves. Thus, women are prevented from moving back to their community and enjoying the rights that flow from their Indian status.²⁶

42. 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, reinstatementees 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.

²⁵ First Perspective, *Indian Status Issue Looming Crisis Say Native Groups*, April 30, 2005 online: First Perspective <http://www.firstperspective.ca/story_2005_04_30_native.html> (date accessed: 26 May 2005).

²⁶ Report of the Royal Commission on Aboriginal Peoples, Volume 4, *Perspectives and Realities* (Ottawa: Government of Canada, 1996), “Chapter 2: Women’s Perspective,” pages 43-50.

43. With respect to Article 27, the Committee's General Comment on Article 3 requires the State Party to "report on any legislation or administrative practices related to membership in a minority community that might constitute an infringement of the equal rights of women under the Covenant."²⁷ Women who have had their Indian Status reinstated continue to experience violations of their Covenant rights; firstly, in the differentiated treatment they encounter in their ability to pass Status to their grandchildren, and secondly, through the exclusionary practices of Band Councils.

44. In its 1999 Concluding Observations, the Human Rights Committee expressed concern about the persistence of discrimination against Aboriginal women in Canada. The Committee has recommended that the federal government address the current inequities in the "marrying-out" provisions of the *Indian Act*.²⁸ But the Government of Canada has failed to act to remove the lingering discrimination from the legislation, and to intervene when Indian Bands implement membership codes that discriminate against Aboriginal women. Also, the Government of Canada is currently opposing constitutional challenges by Aboriginal women to the continuing discriminatory effects of Bill C-31.

v. Unequal Political Participation for Aboriginal Women

45. Aboriginal women's organizations suffer from poor funding and exclusion from critical political processes. Groups such as the Pauktuutit (representing Inuit women) and the Metis National Council of Women are excluded from government lists identifying Aboriginal women's organizations. Further, the Metis National Council of Women has taken the federal government to court due to its refusal to allow the Council to choose its own political representative. Another organization that experienced the exclusionary practices of the government, the Native Women's Association of Canada (NWAC), was finally recognized as a legitimate voice only after a constitutional challenge to its exclusion from key constitutional talks about the recognition of Aboriginal self-government in 1992. However, even NWAC's participation is partial when compared to that of male-led Aboriginal groups. Aboriginal women's groups continue to receive less funding than other Aboriginal organizations, and groups like the Metis National Council of Women and the Pauktuutit continue to be excluded from meaningful political participation.

46. Aboriginal organizations that are invited to participate in the political process are typically male-led, and as such are unable to fully address the issues faced by Aboriginal women. Thus, in critical negotiations for self-determination, the relative exclusion of Aboriginal women's organizations prevents them from ensuring their interests are protected.²⁹

²⁷ Human Rights Committee, General Comment No. 28, para. 32.

²⁸ Concluding Observations of the Human Rights Committee: Canada. 04/07/99 CCPR/C/79/Add.105 at para. 15.

²⁹ Women's Environment and Development Organization, "Canada's Damaged Relations with Aboriginal Women: A Lost Decade" in *Beijing Betrayed: Women Worldwide Report that Governments have Failed to turn the Platform into Action*, (New York: WEDO, 2005) online: WEDO <http://www.wedo.org/files/gmr_pdfs/gmr2005_euna.pdf> (date accessed: 27 May 2005).

47. In its General Comment on Article 27, the Committee notes the protection of cultural rights may require “positive legal measures of protection and measures to ensure the effective participation of minority communities in decisions that affect them.” The government’s failure to officially recognize Aboriginal women’s groups and its unwillingness to include them in negotiations that critically impact Aboriginal women’s lives is a clear violation of their Covenant rights.³⁰

VIII. Women’s Poverty (Article 26)

48. The Human Rights Committee took note of women’s poverty and of the discriminatory impact of the restructuring of social programs in its Concluding Observations on Canada in 1999. Then the Human Rights Committee stated:

The Committee is concerned that 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. While the delegation expressed a strong commitment to address these inequalities in Canadian society, the Committee is concerned that many of the programme cuts in recent years have exacerbated these inequalities and harmed women and other disadvantaged groups. The Committee recommends a thorough assessment of the impact of recent changes in social programmes on women and that action be undertaken to redress any discriminatory effects of these changes.³³

No action has been taken on this recommendation. Since 1999 the trend has continued and worsened.

49. Between 1983 and 2002, the poverty rate for women fluctuated between 20.4 per cent and 14.8%, always significantly higher than the rate of poverty among men. At the time of this report, the rate of poverty is at its lowest point in this cycle. This lower rate is still extremely high. It means that one in seven Canadian women is living below the poverty line. Also, there is no reason to believe that the current lower rate represents a stable long-term decrease in the poverty of women in Canada that can be attributed to government anti-poverty measures.

50. Further, the poverty rate of women overall is misleading. It masks the exceptionally 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

³⁰ Human Rights Committee, General Comment No. 23 at para. 7.

³³ *Concluding observations of the Human Rights Committee: Canada. 07/04/99.CCPR/C/79/Add.105. (Concluding Observations/Comments)*

unattached women under sixty-five were living below the poverty line. Unattached men have significantly lower poverty rates.³⁴

51. 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 1998.³⁵

52. 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.³⁶

53. Disability also acts as a barrier to women's economic equality. Among women with disabilities who reside in a household rather than an institution and who have an income, those whose age was between 35-54 earned an average wage of \$17,000. This is only 55 per cent of what men with disabilities in the same age range earn. Women with disabilities who are older and younger earn less.³⁷

54. In 2003, the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW Committee) reviewed Canada's 5th periodic report on its compliance with the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW). In a recommendation echoing and reinforcing the earlier observation of the Human Rights Committee, the CEDAW Committee highlighted women and poverty as an area requiring urgent attention:

While appreciating the federal government's various anti-poverty measures, the Committee is concerned about the high percentage of women living in poverty, in particular, elderly women living alone, female lone parents, Aboriginal women, older women, women of colour, immigrant women and women with disabilities, for whom poverty persists or even deepens, aggravated by the budgetary adjustments since 1995 and the resulting cuts in social services. The Committee is also concerned that the measures are mostly directed towards children and not towards these groups of women.

³⁴ 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).

³⁵ Statistics Canada, *Women in Canada 2000: A Gender-Based Statistical Report* (Ottawa: Statistics Canada, 2000) [hereinafter *Women in Canada 2000*] at 259; National Council of Welfare, *Poverty Profile 1998* (Ottawa: National Council of Welfare, 2000) at 32 and 45.

³⁶ Statistics Canada, *Women in Canada 2000: A Gender-Based Statistical Report* (Ottawa: Statistics Canada, 2000) at 205, 231, 232, 233, 258, 259; Shelagh Day and Gwen Brodsky, "Beyond the Social and Economic Rights Debate: Equality Speaks to Poverty", (2002) Vol. 14, No. 1, *Canadian Journal of Women and the Law/Revue Femmes et Droit* 185 at 189 – 193.

³⁷ Canadian Research Institute for the Advancement of Women, Factsheet: Women and Poverty, online: CRIAW <http://www.criaw-icref.ca/factSheets/Poverty_fact_sheet_e.htm> (date accessed: 12 May 2005).

The Committee urges the State party to 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.³⁸

IX. Restructuring Federal-Provincial-Territorial Fiscal Arrangements and Canada's Social Programs

55. 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.

56. In 1995, the federal government introduced the *Budget Implementation Act*,³⁹ which repealed the *Canada Assistance Plan Act* (CAP) and introduced a new Canada Health and Social Transfer (CHST).⁴⁰ 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 Canada Assistance Plan, 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. These rights were of particular importance to women, given women's high poverty rates;
- 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. Thus, post – 1995, more stigmatized social programs, such as social assistance, competed for funding out of the same general pool of money with more popular programs, such as health care; and,

³⁸ Report of the Committee on the Elimination of Discrimination Against Women, Twenty-eighth session, 13-31 January 2003, General Assembly Official Records, 58th Session, Supplement No. 38 (A/58/38), Canada's 5th periodic report, paras 325 – 389 [hereinafter CEDAW 2003 Concluding Comments] at para 357.

³⁹ *Budget Implementation Act* 1995, S.C. 1995, c. 17; *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8, as amended.

⁴⁰ 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> (date accessed: 6 December 2004).

- 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.⁴¹

57. Since the 1995 Budget there has been a decade-long erosion of 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.

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

59. Social programs and social services are a central means of creating an egalitarian society. In the years following World War II, Canada 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.

60. This system of public social programs and services was also an important foundation for the advancement of women. 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. Also, income security programs have softened women’s economic dependence on men, and supported women when most in need. Thus social assistance, unemployment insurance, and public pensions have given women more choices and more autonomy, including more sexual autonomy.

61. 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

⁴¹ Yalnizyan, A, *Canada’s Commitment to Equality: A Gender Analysis of the Last Ten Federal Budgets (1995-2004)*, (Ottawa: Canadian Feminist Alliance for International Action, 2005) [hereinafter *Ten Federal Budgets*] at 27. Since 1999, the federal government has increased the amount put into the CHST, but only in 2003 – 2004 did the amount of the CHST transfer return to the 1993-1994 level.

security.⁴² 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.⁴³

62. 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.

63. However, 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.⁴⁴ Indeed, the federal deficit was retired by 1998, two years earlier than planned.

64. The major reason for the slashing of social spending in the 1995 – 1998 period appears to be the political determination to “downsize” government, consistent with the rise of neo-liberal politics in Canada. Paul Martin, then Finance Minister, and now Prime Minister of Canada, said in his 1995 Budget Speech:

If we are to ensure durable fiscal progress, building towards budget balance – that can only happen if we redesign the very role and structure of government itself....

This budget secures that reform – *irrevocably*. Indeed, as far as we are concerned, it is this reform in the structure of government spending – in the very redefinition of government itself – that is the main achievement of this budget. After extensive review, this budget overhauls not only *how* government *works* but what government *does*. (emphasis in original)⁴⁵

An historically low level of program spending by government has been constant since 1998. Program spending fell from 16 per cent of GDP to 12 per cent of GDP in the three years between 1995 – 1998. Federal program spending is not expected to rise above 11.7

⁴² For an account of the impact on women of the privatization of hospital workers' jobs in B.C. see B.C. CEDAW Report http://www.fafia-afai.org/proj/ce/BC_CEDAW.php (date accessed: 6 October 2005) at para. 93.

⁴³ This is documented in detail in sections that follow.

⁴⁴ Dungan P. and T. Wilson, “Altering the Fiscal-Monetary Policy Mix: Credible Policies to Reduce the Federal Deficit” (1985) *Canadian Tax Journal* 309; W.I. 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).

⁴⁵ Budget 1995 Speech, <http://www.fin.gc.ca/budget95/speech/SPEECH3E.html>, (date accessed: October 9, 2005)

per cent of the GDP for the foreseeable future. A leading Canadian economist, Armine Yalnizyan, writes that: “This level of federal involvement in the economy and society is historically unprecedented and completely incongruent with modern society.”⁴⁶ The federal government has maintained this low level of program spending despite posting a budgetary surplus every year since 1997.⁴⁷

65. Between 1997 and 2004, in the era of back-to-back surpluses, the federal government has spent 42 billion on new departmental spending, 61.4 billion on debt reduction, and 152 billion dollars on tax reductions and tax-related benefits.⁴⁸ Some of the tax expenditure takes the form of the “fiscalization of social policy.” That is, taxation measures have been implemented to support certain individual care-giving activities. For example, a person who cares for a family member at home can receive a tax credit; some expenses for child care can be deducted from taxable income. However, as Yalnizyan points out in her study:

A small number of tax measures, by their nature, 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.⁴⁹

66. To summarize, 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.⁵⁰ 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 continues to default on its human rights obligations to address and ameliorate women’s disproportionate poverty and economic disadvantage.⁵¹

⁴⁶ *Ten Federal Budgets* at 100.

⁴⁷ More money has been put into transfers to the provinces and territories in recent years, but until the most recent Health Accord, it was one-time money, not stable increases to the base amount of the transfers, and most of it was designated for health care.

⁴⁸ *Ten Federal Budgets* at 95 – 97.

⁴⁹ *Ibid* at 101.

⁵⁰ *Ibid* at 7.

⁵¹ *Ibid.* at 94.

X. Eroding Income Security Benefits and Social Programs

67. In this section, FAFIA provides a description of the erosion of some of Canada's central income security benefits and social programs. These are examples only.

i. Social Assistance

68. Social assistance is a key social program for women. Women are the majority of the poor in Canada and the majority of those dependant on social assistance programs recipients.⁵² Moreover, women dependent upon this form of income security are disproportionately single mothers, disabled women, racialized women, Aboriginal women, and women who are recent immigrants.

69. The last decade has seen drastic and dramatic government scaling back of income supports available to the most vulnerable Canadians, women included. While social assistance programs lie within provincial jurisdiction in Canada's federal state, the erosion of these programmes 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.

70. 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.⁵⁵ The Council concluded: "Rates this low cannot be described as anything other than punitive and cruel."⁵⁶

71. In 1995 the Ontario government cut social assistance benefits by 21.6 per cent. To date, the Government has restored only 3 per cent of this, in 2005. Of the more than one million persons whose subsistence income was cut, 35,800 were persons considered by the Ministry to be temporarily disabled, 500,000 were children, 5,231 were elderly people and 200,000 were sole-support parents (predominately women).⁵⁷

⁵² Scott, K., *Women and the CHST: A Profile of Women Receiving Social Assistance in 1994* (Ottawa: Status of Women Canada. 1998) at 17 and 19, Friends of Women and Children in B.C., *Report Card*, (2002), Vol. 1 No.1 <http://www.wmst.ubc.ca/FWCBCApr02.pdf> (date accessed: 1 November, 2004).

⁵⁵ National Council of Welfare, Press Release, July 7, 2004 http://www.ncwcnbes.net/htmldocument/reportWelfareIncomes2003/PressReleaseWI2003_e.pdf (date accessed: 1 November 2004).

⁵⁶ National Council of Welfare, *Welfare Incomes 2003* http://www.ncwcnbes.net/htmldocument/reportWelfareIncomes2003/WI2003_e.pdf (date accessed: 1 November 2004) at 16.

⁵⁷ *Masse v. Ontario (Ministry of Community and Social Services)* (1996), 134 D.L.R. (4th) 20, 89 O.A.C. 81, [1996] O.J. No. 363 (QL) (Ont. Div. Ct.) [CRO No. SAS-D-00234], leave to appeal to Ont. C.A. refused [1996] O.J. No. 1526 (QL), leave to appeal to S.C.C. refused [1996] S.C.C.A. No. 373 (QL).

72. For the poorest women, these cuts meant turning to food banks because they could not purchase adequate food; increased use of shelters by women and children who were evicted; and increased likelihood that abused women would return to violent relationships because welfare did not offer adequate support for them and their children. Roughly 50 per cent of women receiving social assistance have experienced domestic violence involving physical or sexual abuse.⁵⁸

A. Death due to welfare fraud

73. Many provinces have instituted bans, temporary or permanent, for persons convicted of an offence in relation to the receipt of social assistance. The case of Kimberly Rogers reveals the extreme impact of punitive welfare rules of this kind, and the problems experienced by women who need to rely on welfare, and who attempt to find ways to better their conditions.

74. In the fall of 2002, the Government of Ontario conducted an inquest into the death of Kimberly Rogers. Ms Rogers was a poor, pregnant 40 year old woman who died during a heat wave while imprisoned in her own home, as a result of a conviction for welfare fraud. Ms. Rogers had been 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 then also terminated her welfare payments, recognizing that Ms Rogers would be left with no apparent means of support, and facing a possible jail sentence were she to breach the conditions of her house arrest by leaving the house to look for support elsewhere.

75. On December 19, 2002, the coroner's jury looking into Ms Rogers's death released its findings and recommendations. The jury recommended that:

...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.⁵⁹

⁵⁸ Social Planning Council of Metropolitan Toronto, *Welfare Cuts in Ontario: Punishing the Poor*, 1995: 14(1) Social Infopac at 1; Ontario Association of Food Banks, *Hunger in Ontario in the Year 2000: Common, but Senseless* (Toronto: OAFB, 2000); City of Toronto, *Housing in the City* (Toronto: Community and Neighbourhood Services, 2000) Novac, S. et al., *Women on the rough edge: A decade of change for long-term Homeless Women* (Ottawa: Canadian Mortgage and Housing Corporation, 1999) at 22-23; Ontario Association of Interval and Transition Houses (OAITH), *Locked In, Left Out Impacts of the Budget Cuts on Abused Women and Their Children* (Toronto: OAITH, 1996); Lenon, S., "Living on the Edge: Women, Poverty and Homelessness in Canada" (2000) Vol 20, No. 3 *Canadian Woman Studies* 123; Metro Toronto Committee Against Wife Assault & Metro Woman Abuse Council, "Before and After: A Woman's Story with Two Endings" in L. Ricciutelli et al., *Confronting the Cuts: A Sourcebook for Women in Ontario* (Toronto: Inanna, 1998).

⁵⁹ Verdict of Coroner's Jury in the Death of Kimberly Ann Rogers, <http://www.povnet.org>.

These recommendations have only been partially acted on. While the lifetime ban was removed in 2003,⁶⁰ temporary and indefinite bans from social assistance continue. And rates remain well below actual costs for housing and basic needs.

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

76. Single mothers have the highest poverty rate of any group in Canada – 51.6 per cent in 2002. Single mothers are 83 per cent of all single parent families. Twenty-seven per cent of adult welfare recipients are single mothers.⁶²

77. Government regulations in Ontario impose a legal presumption of spousal status when a social assistance recipient shares a residence with another adult.⁶³ 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.

78. Disproportionately, it is single mother-led families 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.⁶⁵

⁶⁰ Ontario Regulations 456/03 and 457/03.

⁶² The National Anti-Poverty Organization, *The Face of Poverty in Canada: An Overview*, online: NAPO http://cafb-acba.ca/documents/Face_of_Poverty_Canada_2003_Napo_Report.pdf (date accessed: 8 May 2005); Department of Justice Canada, *Selected Statistics on Canadian Families and Family Law: Second Edition*, online: Department of Justice <http://canada.justice.gc.ca/en/ps/sup/pub/rap/SelStats.pdf> (date accessed: 8 May 2005).

⁶³ O.Reg. 134/98. s. 1(1).

⁶⁵ Mosher, J. E., “Managing the Disentitlement of Women: Glorified Markets, the Idealized Family and the Undeserving Other”, in Neysmith, S., ed, *Restructuring Caring Labour: Discourse, State Practice and Everyday Life* (Oxford University Press, 2000); Leighton, M., “Handmaids’ Tales: Family Benefits Assistance and the Single- Mother-led Family” (1987) 45 *University of Toronto Faculty of Law Review* 324.

79. In 2002, the Ontario Court of Appeal ruled in *Falkiner v. Director, Income Maintenance Branch*⁶⁶ that 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.

80. 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.”⁶⁸ Other provinces and territories still have variations of this rule in place, despite judicial statement of the discriminatory effect on women.⁶⁹

81. These rules are clearly contrary to the Covenant. More specifically, in its General Comment No. 19, the Committee noted the importance under Article 23 of equal treatment for single mothers, and of ensuring that domestic law and practices protect these vulnerable families.⁷³ In General Comment No. 28 the Committee further noted that discriminatory social security laws violate Article 26.⁷⁴ The Committee has also noted in General Comment No. 28 that Article 3 is violated by laws and practices that interfere with women's right to enjoy privacy and other rights protected by article 17 on the basis of equality with men.⁷⁵

⁶⁶ *Falkiner v. Director, Income Maintenance Branch* can be found at http://www.ontariocourts.on.ca/decisions/OntarioCourtsSearch_VOpenFile.cfm?serverFilePath=d%3A%5Cusers%5COntario%20courts%5Cwww%5Cdecisions%5C2002%5Cmay%5CfalkinerC35052%2Ehtm (date accessed: 2 November, 2004).

⁶⁸ Ontario Regulation 134/98, amended by O. Reg. 231/04, <http://www.canlii.org/on/laws/regu/1998r.134/20041008/whole.html> (date accessed: November 3, 2004). The two criteria listed for determining whether a live-in person is a spouse are: 1) social and familial aspects consistent with cohabitation; and 2) degree of financial interdependence consistent with cohabitation. It is not evident that these re-worded criteria make any significant change to the discriminatory ‘spouse-in-the-house’ rule.

⁶⁹ See, for example, British Columbia *Employment And Assistance Act*, Section 1(1), online: http://www.mhr.gov.bc.ca/PUBLICAT/VOL1/Part_3/3-2.htm (date accessed: 8 May 2005).

⁷³ *General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses (Art. 23)* : . 27/07/90

⁷⁴ *General Comment No. 28: Equality of rights between men and women (article 3)* : . 29/03/2000

⁷⁵ *General Comment No. 28: Equality of rights between men and women (article 3)* : . 29/03/2000.

82. Canadian governments continue to implement and defend this type of discriminatory legislation contrary to Articles 23 and 26, thereby endangering the most impoverished and vulnerable families in Canada.

ii. National Child Benefit Supplement

83. 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.

84. The federal government permits the provinces and territories to claw the Supplement back from welfare recipients.⁷⁶ While not all provinces and territories do claw back the Supplement from welfare recipients, the vast majority does. Thus, the NCBS benefits the working poor and their children, but is effectively denied to most families on social assistance. Indeed, the clawback means 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.”⁷⁷

85. The result, as summarized by the National Council of Welfare, is that the clawbacks to the NCBS “discriminate against families on welfare.”⁷⁸ The Council estimates that only 66 per cent of poor families with children benefited from the federal child tax benefit between June 1998 and June 1999, and only 57 per cent of poor single-parent families were allowed to keep the supplement.

86. As women head most single-parent families, the Council believes that this constitutes discrimination on the basis of sex.⁷⁹ The benefit delivery, in particular its clawback, echo and reinforce historic and current discriminatory attitudes towards families receiving social assistance, and in particular, single mothers and their children.

87. This discrimination has not gone unremarked upon. Notably, in 1999 the Human Rights Committee expressed concern that the implementation of the NCBS in some provinces may result in the denial of this benefit to some low-income children. This assessment by the Committee has been ignored: the majority of the provinces continue to deny at least some of this benefit to the most impoverished families and their children.⁸²

⁷⁶ For an account of how the clawback works, province by province, see *Welfare Incomes 2003*, supra note 25 at 14-15.

⁷⁷ *Ibid.* at IX.

⁷⁸ *Ibid.* at 47-48.

⁷⁹ *Ibid.* at 15.

⁸² HRC 1999 Concluding Observations at para. 18.

88. In short, to summarize this section on income security, 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. All levels of government in Canada bear responsibility for this situation.

iii. Employment Insurance and Maternity and Parental Leave

89. In this post-Beijing decade major changes were also made to another key federal; income security program vital to women in Canada: (un)employment insurance. Canadian women were told that the changes would benefit them. However, for most unemployed women this has not turned out to be the case. Fewer women are eligible for regular unemployment insurance - now re-labeled employment insurance - and benefit levels are lower than ever before. While maternity/parental benefits have been enhanced by providing a longer period of benefits – up to 50 weeks—fewer women qualify for benefits and many low income women even if they do qualify, cannot afford to take the leave, because of the low benefit rate and the absence of employer “top-ups”.

90. In 1993 and 1994 the federal government radically changed the rules for unemployment insurance. As economist Armine Yalnizyan recounts, 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.”⁸³

91. 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. The effect was that 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 a period of 52 weeks to qualify for benefits.

92. Also, the new *Employment Insurance Act* also erected obstacles for people who had been out of the labour force for a long period.⁸⁴

93. These changes in eligibility requirements hit working women disproportionately hard. Women, more than men, work in those temporary, part-time, seasonal, and/or

⁸³ *Ten Federal Budgets* at 36.

⁸⁴ For analysis of the impact of the 1996 employment insurance changes on women, see 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).

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.⁸⁵ 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

94. 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

95. As Yalnizyan reports, “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 per cent to 44 per cent of all unemployed men. Coverage for women fell more dramatically over this period, from 39 per cent to 33%.”⁸⁸ In its 1999 report *Left Out in the Cold: The End of UI for Canadian Workers*, the Canadian Labour Congress showed that only 32 per cent of unemployed women got unemployment insurance benefits in 1997. Only 11 per cent of women under 25 were receiving unemployment insurance benefits compared to 18 per cent of men. Part-time female workers continued to pay premiums but, the data showed, they disproportionately were not able to claim unemployment benefits.⁸⁹ Meanwhile, between 1994 and 2003, the Employment Insurance Account has accumulated a surplus—reported to have reached over 40 billion dollars.⁹⁰

96. 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.”⁹¹

⁸⁵ By 2000, the Government of Canada admitted that some of the new rules punished women. See Proposed Amendments to Employment Insurance (EI), September 29, 2000, Former Prime Minister’s Newsroom Archive (1995-2003), http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=pmarchive&Sub=FactSheets&Doc=amendmentsei.20000929_e.htm (date accessed: 3 November 2004).

⁸⁶ Phillips, P., and Erin Phillips, supra note 52 at 144.

⁸⁷ Iyer N., supra note 41 at 173.

⁸⁸ *Ten Federal Budgets* at 37.

⁸⁹ 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; “Unequal hardship” *The Toronto Star*, A84, 25 November 1999.

⁹⁰ *Ten Federal Budgets* at 37.

⁹¹ Human Resources Development Canada, “UI and Social Assistance in Canada” [http://www11.hrdc-drhc.gc.ca/pls/edd/v_report.document?cat=&sub=IDSA&doc_num=18007&hl=syn\(EMPLOYMENT%20](http://www11.hrdc-drhc.gc.ca/pls/edd/v_report.document?cat=&sub=IDSA&doc_num=18007&hl=syn(EMPLOYMENT%20)

97. 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 per cent in 1971, 60 per cent in 1980, 57 per cent in 1993 and 55 per cent after 1997.⁹²

98. Enhanced duration of maternity, parental and sickness benefits were 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.⁹³ But take-up of these enhanced benefits is reduced by the high rates of ineligibility among women workers and the low level of benefit levels, as detailed below.

99. Women in Canada remain inadequately 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.

100. Economist Armine Yalnizyan concludes that these legislative changes have resulted in:

increased payments to a select group of women, but decreased claims for support on the part of all working women: That is the story of enhancement reforms introduced in 2000, reforms that targeted new mothers/parents but forgot about the rest.⁹⁴

Similar concerns were expressed in the CEDAW Committees' 2003 Concluding Comments on Canada.⁹⁵

[NSURANCE\)|\(%20%7BEMPLOYMENT%7D%20%7BINSURANCE%7D%20\)%2A3,%20\(%20%7BEMPLOYMENT%7D%20%26%20%7BINSURANCE%7D%20\),%20\(%20%7BEMPLOYMENT%7D%2A%7B.2%7D%20,%20%7BINSURANCE%7D%2A%7B.1%7D%20\)](#) (date accessed: November 11, 2004).

⁹² *Ten Federal Budgets* at 37.

⁹³ Benefits World, *Parental Benefits and the Employment Standards Act*, http://www.benefitsworld.com/AA/GovBen/EmpIns/Parental_Leaves.asp (19 March 2001); Human Resources Development Canada, "Changes to Maternity and Parental Benefits December 31, 2000", <http://www.hrdc.gc.ca/insur/claimant/10-00.shtml> (date accessed: 19 October 2000).

⁹⁴ *Ten Federal Budgets* at 73-74.

⁹⁵ In CEDAW 2003 Concluding Comments at para. 382, 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.

The Committee also encouraged the State party to consider raising the benefit level for parental leave.

iv) Legal Aid

101. Provision of legal aid is a provincial responsibility and many provinces have drastically reduced funding for civil legal aid. While, the federal government provides specific funding for provincially-delivered criminal legal aid programs through the Canada Health and Social Transfer (CHST) (from 1995 – 2004) and now from the Canada Social Transfer, this is not the case for civil legal aid.

102. The impact of civil legal aid cuts on women, and on the most vulnerable women, is enormous. While men disproportionately benefit from criminal legal aid services, it is predominantly women who rely on the provision of civil legal aid. The Canadian Bar Association acknowledges that the achievement of women's equality is directly tied to their ability to access justice through civil legal aid services.⁹⁷

103. 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, consequences as critical to women's liberty, security of the person, and equality interests.

104. These consequences are made evident in the case of *J.G. v Minister of Health and Community Services et al.* Ms G. was faced with a state-initiated proceeding seeking to remove her three children from her care and place them in temporary wardship with the Minister of Health and Community Services of New Brunswick. Ms G., a low-income single mother, was denied legal aid on the basis that legal representation was only available for permanent wardship hearings. All other parties, including the Minister of Health and Community Services, the children, and the father of one of the children, were represented by paid counsel.

105. While the Supreme Court of Canada found that the provincial government in question was under a constitutional obligation to provide the appellant with state-funded counsel, the Court characterized this entitlement in a manner that was extremely narrow and limited to the circumstances of this case. Thus, the court did not establish *a priori* entitlement to legal aid in all guardianship cases, or even in all permanent guardianship cases. "The right to a fair hearing" the court wrote, "will not always require an individual to be represented by counsel when a decision is made affecting an individual's right to life, liberty and security of the person. In particular, a parent need not always be represented by counsel in order to ensure a fair custody hearing."⁹⁸

⁹⁷ Status of Women Canada, *Gender-Based Analysis, External Demands for Accountability: Helpful or Harmful?* GBA Conference, January 27-28, 2005, Speaking notes for Presentation by Daphne Dumont of the Canadian Bar Association, online: Status of Women Canada <http://www.swc-cfc.gc.ca/resources/gba/conf05-ddnotes_e.html> (date accessed: 16 May 2005).

⁹⁸ *New Brunswick (Minister of Health and Community Services) v. G.(J.)* [1999] 3 S.C.R. 46.

106. The remedy of this decision requires each woman who seeks legal representation to make her own case for legal aid services in court before a judge, and to argue on her own the complex matter of her constitutional entitlement to legal aid. Further, the entitlement will only be triggered once a woman has come before the court. The vast majority of people who come into contact with the justice system require legal representation long before the proceeding reaches the court. For this reason, the decision in J.G. is limited to an inequitable degree.

107. The Canadian Bar Association has noted that legal aid in Canada is seriously underfunded, resulting in low income persons having to represent themselves in legal proceedings. And because there are no national standards regarding the provision of civil legal aid services, access to justice is uneven and unequal. The CBA also noted that cuts to legal aid services have had the worst impact on the most marginalized groups in Canada, recognizing that “the low-income population is made up of a disproportionate number of women, people with disabilities, recent immigrants, members of racialized communities and Aboriginal peoples.”⁹⁹

108. Women rely on civil legal aid services for divorce applications, custody and access applications, and applications for child and spousal support. As well, poor women experience a range of legal problems, including problems with receipt of social assistance, tenancy problems and discrimination stemming from their status as welfare recipients.

109. The province of British Columbia is one of the worst offenders. In 2002, British Columbia, on top of earlier legal aid cuts, cut the budget of the Legal Services Society by 40 per cent. The majority of the 40 per cent cut occurred in family law legal aid, poverty law, and immigration law. A leading women’s legal equality advocacy group writes in its report, *Legal Aid Denied: Women and the Cuts to Legal Services in BC*, that:

The number of funded referrals to private lawyers for family law matters decreased by 58 per cent between 2000/01 and 2003/04; referrals for criminal cases decreased by just 2 per cent. The province has restricted access to family law legal aid to situations where someone is fearful for their own safety or that of their children. The amount of representation available has also decreased dramatically – even when aid is granted, it is limited to a maximum of 8 hours and is provided only to assist with obtaining a restraining order or change in custody agreement to protect the recipient’s and /or her children’s safety.

Women are being put in totally unacceptable situations... Without legal aid they must spend endless days navigating a complex legal system – researching and preparing legal documents, appearing without a lawyer for highly charged

⁹⁹ Canadian Bar Association, *Canadian Bar Association’s Position on Legal Aid*, online: CBA <<http://www.cba.org/CBA/Advocacy/legalAid/default.asp>> (date accessed: 6 June 2005).

divorce and custody cases, and agreeing to settlements that are not in their own or their children's interests.....¹⁰⁰

110. The results of inadequate access to legal aid have been documented. Women in abusive relationships remain in unsafe conditions. 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) are denied coverage for an application to vary the terms of their immigration status and as a consequence are deported.¹⁰¹

111. The CEDAW Committee's 2003 Concluding Comments on Canada noted the disproportionate effect of these changes on women and urged Canadian governments to address this problem.¹⁰² Governments have not done this.

112. In its General Comment on Article 3, the Committee articulates the importance of equal access to justice for women, and emphasizes the need to ensure women have equal access to legal aid for family matters. We request that the Committee urge the federal government to comply with its international obligations and ensure women's access to civil legal aid,¹⁰⁴ as well as access to legal aid on civil matters for all of the poorest residents of Canada.

v. Housing

113. During this past decade the federal and provincial governments have withdrawn from the social housing field in a startling manner. This has affected the availability of subsidies for existing social housing units and the building of new social housing. As a result, homelessness in Canada has been declared a national emergency by the municipal governments of the largest cities, and the lack of affordable housing is widely understood to be a crisis.

114. From the mid-1980s the federal government started making cuts in allocations to assisted rental housing. This culminated in a freeze in 1993 in federal contributions to

¹⁰⁰ Canadian Centre for Policy Alternatives, "Women paying price of legal services cutbacks" (2004) <http://www.policyalternatives.ca/bc> (date accessed: 3 November 2004).

¹⁰¹ Federal/Provincial/Territorial Working Group of Attorneys General, *Gender Equality in the Justice System* (Ottawa: 1993); "The Impact of Cuts to Legal Aid on Women in British Columbia".

¹⁰² In CEDAW 2003 Concluding Comments at paras.355-356, the CEDAW Committee said:

The Committee is ... concerned that federal legal aid funds in civil and family law and for legal matters related to poverty issues, in contrast to legal aid for criminal cases, are channeled to the provinces and territories at their discretion. That, in practice, turns out to have a disproportionately restrictive impact on women seeking legal redress as compared with men.

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

¹⁰⁴ Human Rights Committee, *General Comment No. 28*, para. 18.

social housing.¹⁰⁵ Because provincial expenditures on social housing were commonly tied to federal expenditures through cost-sharing programs, by 1997 provincial spending on social housing had been cut back by over 90 per cent to just over \$100 million annually. Taken together cutbacks in allocations to social housing in the last decade have meant a reduction of about \$2 billion a year in government spending on assisted rental housing.¹⁰⁶

115. Women are more likely than men to meet income qualifications for assisted housing and they are, therefore, more adversely affected by cuts to assisted housing. Women-led households are more likely to be renters than men and women are more likely to be paying high percentages of their income toward rent. For example, in 1997, 71 per cent of single mothers in Canada were renters compared to 48 per cent of single fathers and 22 per cent of two spouse families with children. Sixty per cent of sole support mothers who rented paid more than 30 per cent of income toward rent compared to 40 per cent of sole support fathers and 29 per cent of two spouse families. Thirty-nine per cent of households in core need in Canada are lone parents.¹⁰⁷

116. Cuts to federally funded social housing have forced low-income women to rely more extensively on private market rental units. In the private market, women are more vulnerable to discrimination based on family status, race, and poverty.¹⁰⁸

117. Not only is the funding for social housing inadequate, the new structure of program delivery is having an adverse effect on women. Since 1993, the federal government has been actively devolving the administration of social housing to provinces which, in turn, have been downloading to municipalities. Under “Social Housing Agreements” that the federal government negotiates with the provinces, there is virtually no monitoring of who gets the benefit of subsidies nor any consideration of how different allocation systems may affect women and other groups at risk of homelessness. As it stands subsidized units are targeted at anyone paying more than 30 per cent of their income on rent, rather than on those most at risk of homelessness or those most in need.¹⁰⁹

118. In November 2001 the federal government announced a federal-provincial-territorial framework for a new \$1.36 billion affordable housing initiative. This money for building affordable rental housing represented the first such expenditure since the

¹⁰⁵ Centre for Equality Rights in Accommodation, *Women and Housing in Canada: Barriers to Equality* (March 2002) [hereinafter *Barriers to Equality*] at 17-18.

¹⁰⁶ *Ibid.* at 18.

¹⁰⁷ Canada Mortgage and Housing Corporation defines core housing need as follows: “A household is said to be in core housing need if its housing falls below at least one of the adequacy (does not require major repairs), suitability (has enough bedrooms), or affordability (shelter costs are less than 30 per cent of before-tax household income) standards AND it would have to pay more than 30 per cent of its income to pay the average rent of alternative local market housing that meets all three standards.” (CMHC, *Canadian Housing Conditions* (Research Highlights Issue 55-1). See also, *Barriers to Equality* at 19; Statistics Canada, *Women in Canada 2000: A Gender-based Statistical Report* (Catalogue No. 89-503-XPE) at 161, 163; *Housing Canada’s Children* at 18-19.

¹⁰⁸ *Barriers to Equality* at 20.

¹⁰⁹ *Ibid.* at 22 – 23.

1993 elimination of funding for new social housing. The federal government agreed to spend \$680 million over five years to build 80,000 new units of rental housing. But none of this money will go toward housing subsidies. Also noticeably absent from the agreements with the provinces are preconditions ensuring that a minimum proportion of units will be allocated to core need households – those that need it most. All that is stipulated is that funded units should be “modest in size and amenities.”¹¹⁰

119. Further, the new supply initiatives in the private market are not linked to any measures addressing widespread discrimination that prevents women from accessing the more affordable units. Important regulatory legislation such as rent control and rental housing stock 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.¹¹¹

A. Housing for Aboriginal Women

120. The federal government has responsibility for on-reserve housing, and it recognizes that “many First Nations still face a large backlog of substandard and overcrowded houses.”¹¹²

121. There are three constitutionally recognized Aboriginal peoples in Canada: First Nations, Metis and Inuit. Inuit are currently facing the worst housing crisis in Canada. They are living in severely overcrowded, inadequate and unsafe housing conditions. Because Inuit do not have “status” under the federal *Indian Act*, they are compelled to compete with other non-aboriginal Canadians for social housing. The high cost of private rental market housing in Arctic regions where Inuit live, coupled with the high percentage of Inuit living in poverty, makes the need for social housing acute. As it stands, for Inuit across Canada, demand for social housing far exceeds supply and Inuit are kept on long waiting lists for subsidized housing.¹¹³ **Yet, in 1993**, the federal government eliminated its portion of cost-shared funds to the governments of the Northwest Territories, Quebec and Newfoundland and Labrador for the construction of new social housing units, regions where Inuit housing concerns are extremely acute.

122. Only 21 per cent of Aboriginal households live on reserve. Because many Aboriginal women cannot access on-reserve housing, and because they experience discrimination, violence and disempowerment on-reserve, Aboriginal women outnumber Aboriginal men in urban centers. The vast majority of Aboriginal women - 68 per cent of Métis women, 46 per cent of First Nations women and 30 per cent of Inuit women - are living in cities and towns.¹¹⁴

123. Federal funding for new units under the Urban Native Non-Profit Housing Program (UNH) (social housing owned and operated by Aboriginals) ceased in 1993

¹¹⁰ Ibid. at 21-22.

¹¹¹ Ibid.

¹¹² Report submitted by Canada to the Committee on the Elimination of Discrimination Against Women for consideration in its review of Canada's Fifth Report on the Convention on the Elimination of All Forms of Discrimination Against Women, Update, Submitted, December 2002, http://www.pch.gc.ca/progs/pdp-hrp/docs/cedaw5/cedaw5up_e.cfm (date accessed: 15 November 2004).

¹¹³ *Barriers to Equality* at 35.

¹¹⁴ Ibid. at 34, 35, 41, 43.

and urban waiting lists are extremely long. Moreover, most of the housing stock is quite old and repair and maintenance of existing units is a real concern. With social housing not really an option for Aboriginal women, these women are compelled to turn to the private rental market where rent is expensive and they experience discrimination based on race, sex, family status, and poverty on a regular basis.¹¹⁵

B. Women's Homelessness

124. In December 1999, the Government of Canada announced that it would invest \$753 million in a National Homelessness Initiative to help alleviate and prevent homelessness across Canada. Canada has acknowledged that single women and families headed by women account for an increasing proportion of the homeless population and that spousal violence and poverty are key factors underlying homelessness.

125. However, the National Homelessness Initiative as a whole has been predominantly focused on “absolute” or street homelessness and on short-term solutions aimed at enhanced services and increased emergency housing supply. This is not the predominate form of homelessness women experience, although there are increasing numbers of women living on the streets. 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. And so, while the NHI focus is important in addressing the emergency housing needs of women, it is essential that there be an equal emphasis on addressing the systemic causes of women's homelessness and the other forms of homelessness and housing insecurity women experience.¹¹⁶ Women experiencing housing crises and homelessness in diverse ways – living with the threat of violence because there are no other housing options; living in unsafe or unhealthy accommodation with family or friends; or losing custody of their children because of inadequate housing.¹¹⁷

XI. Other Failures to Protect Women from Discrimination (Articles 2, 3 and 26)

i. Violence Against Women (Articles 6, 7, and 26)

126. 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

¹¹⁵ Ibid. at 42.

¹¹⁶ Ibid. at 1, 31-32.

¹¹⁷ Ibid. at 1.

¹²⁰ Status of Women Canada, *Fact Sheet: Statistics On Violence Against Women In Canada* (Ottawa: Status of Women Canada, 2003) [hereinafter *SWC Fact Sheet on Violence Against Women*] at 1.

in 2000, females made up the vast majority of victims of sexual assaults (86%), criminal harassment (78%) and kidnapping/hostage-taking or abduction (67%).¹²⁰

127. 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.”¹²¹ 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.¹²² Only 57 per cent of Canadian shelters offered 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.¹²³

128. During the last decade, combating violence against women and improving the conditions of women who are victims of violence has become increasingly difficult. As documented by the Canadian Association of Sexual Assault Centres in a report entitled *Canada's Promises To Keep: The Charter and Violence Against Women*,¹²⁷ the following are reasons why combating violence is difficult.

¹²¹ Canadian Research Institute for the Advancement of Women (CRIAW) *Fact Sheet on Violence Against Women and Girls* (Ottawa: CRIAW, 2002) [hereinafter *CRIAW Fact Sheet on Violence*] at 2.

¹²² Canadian Council on Social Development, *Nowhere to Turn? Responding to Partner Violence Against Immigrant and Visible Minority Women*, Dr. Ekuwa Smith, 2004, <http://www.ccsd.ca/pubs/2004/nowhere/index.htm>, (date accessed: 7 October 2005); Chinese Canadian National Council Toronto Chapter. “A Study of Community Services for Female Chinese Victims of Domestic Violence.” www.ccnctoronto.ca/downloads/discussion%20paper%20rev%20dec%201.doc, (date accessed 9 May 2005); Chinese Family Services of Ontario, “Cultural Implications for Chinese Who are Abused,” www.projectbluesky.ca/english/cultural/chinese.html, (date accessed: 6 May 2005); Federal-Provincial-Territorial Ministers Responsible for the Status of Women, “Assessing Violence Against Women: A Statistical Profile,” Status of Women Canada, 2002, http://www.swc-cfc.gc.ca/pubs/0662331664/200212_066231664_e.pdf, (date accessed: 7 October 2005); Yasmin Jiwani, “Intersecting Inequalities: Immigrant Women of Color, Violence and Health Care,” FREDA Centre for Research on Violence Against Women, www.harbour.sfu.ca/freda/articles/hlth02.htm (date accessed: 5 May 2005); Linda MacLeod and Maria Shin. “Isolated, Afraid and Forgotten: The Service Delivery Needs and Realities of Immigrant and Refugee Women Who are Battered.” National Clearinghouse on Family Violence, Health and Welfare Canada, 1990.

¹²³ CRIAW *Fact Sheet on Violence* at 2.

¹²⁷ Canadian Association of Sexual Assault Centres, *Canada's Promises To Keep: The Charter and Violence Against Women*, Report of CASAC LINKS, a five year research and community development project (CASAC: Vancouver, 2004).

- **A. De-gendered Law and Order Policies**

129. 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.

130. Rather than supporting women's rape crisis centres and shelters for battered women, 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.¹²⁸ De-gendered and de-racialized approaches to violence against women are more comfortable, but ineffective.

- **B. Diversion, Counseling, Mediation, Restorative Justice**

131. Government have a new emphasis on diversion, counseling, mediation and "restorative justice." While many anti-violence workers are critics of Canada's prison system, they are also concerned about the social message that is sent, and about the safety of women, when male abusers of women are diverted to counseling and mediation programs. Women who are victims of male violence are increasingly pushed to enter mediation or counseling with their abuser. Or they see their abuser given a conditional sentence, which may include house arrest or community service, even when there are too few personnel to provide adequate supervision or supports. In many circumstances, this means that the safety of the woman who was assaulted is compromised.

132. Aboriginal women are concerned about the increasing promotion by federal and provincial governments of community-based "restorative justice" models, particularly for Aboriginal offenders. Many of these diversion programs, held out as "culturally appropriate," lack any analysis of their impact on Aboriginal women, and risk exposing Aboriginal women and children who are victims of crimes of abuse to further harm.

¹²⁸ Lakeman, L., "Why 'Law and Order' Cannot End Violence Against Women; and Why the Development of Women's (Social, Economic and Political and Civil) Rights Might" (2000) Vol. 20, No. 3 *Canadian Woman Studies* 24.

133. While women were promised that diversion programs and conditional sentencing would not be used in cases of violence against women, they *are* being used in these cases, and women's safety and equality is compromised.¹²⁹

C. Falling welfare incomes

134. As noted above, welfare incomes have decreased 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

135. Author of a recent report on women on welfare in Ontario, Janet Mosher, describes the situation this way:

Benefits in Ontario at present certainly do not approximate basic requirements. Virtually every one of the 64 women receiving welfare ...interviewed for a recent research study...indicated that it was difficult, or impossible, to survive on welfare. The monthly rents paid by some exceeded their total benefit levels. Others were left, after paying rent, with a food budget of \$20-30 for four or five people for an entire week. Often, despite their best efforts and the enormous amount of energies expended in the quest to survive, women and children's basic needs went unmet. Many reported living on one meal or less per day, having children who were not adequately nourished, and being confined in less-than-adequate housing without money for bus fare or phone. Several women reported medical problems as a result of inadequate nutrition. Many described how all of their energies were drawn into, and exhausted by, the task of survival.

All of the women interviewed were survivors of woman abuse or presently living in an abusive relationship. Six of the women interviewed were contemplating returning to their partners (including to relationships that they knew were potentially lethal) because they were struggling so hard to survive on welfare. Seven had already returned to abusive relationships, opting for the abuse of their intimate partners over what they often described as the abuse of the state. Nine others indicated that they had remained in abusive

¹²⁹ W. Stewart, A. Huntley and F. Blaney, "The Implications of Restorative Justice for Aboriginal Women and Children Survivors of Violence: A Comparative Overview of Five Communities in British Columbia" (Vancouver: Aboriginal Women's Action Network, 2001).

¹³⁰ Ontario Association of Interval and Transition Houses (OAITH), *Report to the Special Rapporteur on Violence Against Women*, (Toronto: OAITH, 1996) at 22. A 1996 survey of women's shelters conducted by the OAITH found that workers in 66 per cent of the shelters reported that some women were returning to abusive relationships because they cannot receive sufficient social assistance to meet the basic needs of themselves and their children. Further, there has been a rise in the incidence of spousal murders. OAITH, the largest shelter association in Canada, blames the rise directly on ongoing cuts to social services, which make women unable to afford to leave violent relationships, especially if children are involved.

relationships because they worried that they could not provide for themselves and their children on welfare.¹³¹

D. Lack of affordable housing

136. The same report 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.¹³²

E. Cuts to shelter funding and inadequate supply

137. 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 being underfunded and struggling to meet the demands of the women who need them.¹³³

138. 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

¹³¹ The women were interviewed as part of the Woman Abuse and Welfare Research Project, a multi-disciplinary research project of Professors Janet Mosher, Margaret Little and Patricia Evans, and two community partners, the Ontario Social Safety Network and the Ontario Association of Interval and Transition Houses and funded by the Social Sciences and Humanities Research Council. The research explores the intersections of welfare and domestic violence. The report on the project, *Walking on Eggshells: Abused Women's Experiences of Ontario's Welfare System*, is available online: Woman and Abuse Welfare Research Project <http://dawn.thot.net/walking-on-eggshells.htm> (date accessed: 30 June 2004) [hereinafter *Walking on Eggshells*].

¹³² 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. An independent appeal process needs to be established with staff members [at public housing facilities] who are knowledgeable in poverty and abuse issues (Recommendation 29).

¹³³ See the assessment of Quebec's funding policy for shelters and transitions houses over this decade by the Regroupement provincial des maisons d'hébergement et de transition pour femmes victimes de violence conjugale in *Canada's Failure to Act: Women's Inequality Deepens*, Submission of the Canadian Feminist Alliance for International Action to the United Nations Committee on the Elimination of Discrimination Against Women on the Occasion Of the Committee's Review of Canada's 5th Report, <http://www.fafia-afai.org/proj/ce/CEDAWReportJan03En.doc> (date accessed: 6 October 2005) at paras 180 – 199.

¹³⁵ SWC *Fact Sheet On Violence Against Women* at 4.

children away because the shelter was full.”¹³⁵ In other words, shelter capacity has grown in 27 years, but it remains inadequate, despite findings from independent researchers of the crucial necessity of shelter availability as a tool against violence against women.”¹³⁶

139. Violence against women continues unabated. Like poverty, it is a marker of women’s inequality in the society. Improvements in this area, worthy of reporting to the UN, are not likely to materialize until Canadian governments undertake more concerted and concrete strategies to address women’s inequality with respect to their enjoyment of the full range of human rights.¹³⁷

ii. Court Challenges Programme

140. The federal government provides funding for test cases that advance equality and language rights through its Court Challenges Programme. Funds can be accessed by individuals and community organizations to bring test cases to challenge provincial, territorial or federal laws and practices that contravene language rights set out in the *Canadian Charter of Rights and Freedoms*. Funds can similarly be accessed to support test cases that challenge laws or policies on the grounds that they contravene the equality guarantee of the *Charter*, but only if the challenges are to federal laws or policies. Unfortunately, many issues that are critical to women’s enjoyment of civil and political rights, and to women’s equality, fall within provincial jurisdiction – social assistance, labour, health, education, legal aid, for example. These restrictions on test case funding for equality rights matters impede the ability of women to assert and exercise their constitutional right to equality. Officials from the Court Challenges Program state that they frequently receive applications that raise important equality issues in the areas of provincial jurisdictions, but these applications must be refused by the Programme and have no alternatives for support. The cases are dropped or the quality of legal representation can be severely affected.¹³⁸

141. In its Concluding Observations following Canada’s last review in 1998, the Committee on Economic, Social and Cultural Rights recommended that the Court

¹³⁶ *Walking on Eggshells*. The report makes this recommendation about shelters: Funding for women’s shelters needs to be restored and enhanced. The definition of need for emergency shelter needs to be more broadly defined to include women who are recovering from a history of abuse, even if this abuse is currently not on-going.

¹³⁷ 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.

¹³⁸ Court Challenges Program of Canada, online: CCPC <http://www.ccpcj.ca/e/ccp.shtml> (date accessed: 6 June 2005); Department of Canadian Heritage, *Summative Evaluation of the Court Challenges Program*, February 26, 2003, online: Department of Canadian Heritage http://www.pch.gc.ca/progs/em-cr/eval/2003/2003_02/index_e.cfm (date accessed: 10 June 2005).

Challenges Programme be expanded to include equality challenges to provincial legislation.¹³⁹ The CEDAW Committee in its 2003 Concluding Comments made the same recommendation.¹⁴⁰

142. The Government of Canada has not acted on these recommendations.

iii. Protection from Discrimination on the Basis of Social Condition

143. The failure of the federal government and of many provincial governments to provide protection from discrimination on the basis of social condition is a breach of Canada's obligations under sections 2 and 26 of the *Covenant*.

144. Women are particularly vulnerable to discrimination on the basis of social condition as a result of their disproportionate and persistent poverty and ongoing stereotypes about women's economic dependence. In particular, single mothers on social assistance are frequently stigmatized and experience widespread discrimination.

145. Among federal, provincial and territorial human rights legislation, only Québec, and as of this year, New Brunswick, list social condition as a prohibited ground of discrimination. Newfoundland prohibits discrimination on the basis of social origin, while Nova Scotia, Manitoba, Alberta, Prince Edward Island and the Yukon prohibit discrimination based on source of income. Ontario and Saskatchewan prohibit discrimination on grounds of receipt of public assistance. British Columbia provides some protection only when tenancy is at issue. The federal government and the Northwest Territories provide no protection.

146. In Québec, social condition protection provides protection based on social standing, which may involve factors such as level or source of income, education, occupation, and family background. In other jurisdictions protection from discrimination on the ground of social condition would help to protect low income persons from stereotypical notions about the poor, that prevent them from accessing services such as opening bank accounts, accessing loans, mortgages, accommodations and utility services.¹⁴¹

147. In 1999, a Panel, headed by former Supreme Court Justice, Gerald LaForest, was commissioned to conduct a review of the *Canadian Human Rights Act*. The Panel submitted its report in 2000; in its findings, the Panel noted that it heard more about poverty than any other issue. With respect to the need to include social condition as a prohibited ground of discrimination, the Panel stated:

Our research papers and the submissions we received provided us with ample evidence of widespread discrimination based on characteristics related to social conditions, such as poverty, low education, homelessness and illiteracy... We

¹³⁹ Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada. 04/12/98. E/C/12/1Add.31 at para. 59.

¹⁴⁰ See CEDAW 2003 Concluding Comments at paras. 355-356.

¹⁴¹ Lynn Iding, "In a Poor State: The Long Road to Human Rights Protection on the Basis of Social Condition" (2003) 41 *Alberta Law Review* 513.

believe it is essential to protect the most destitute in Canadian society against discrimination. At the very least, the addition of this ground would ensure there is a means to challenge stereotypes about the poor in the policies of private and public institutions. We feel that this ground would perform an important educational function. It sends out a signal about assumptions and stereotypes to be taken into account by policymakers.¹⁴²

The federal government has not adopted the Panel's recommendation.

148. In its 2004 Annual Report, the Canadian Human Rights Commission stated that among stakeholders there was a general consensus regarding "the necessity to add something that speaks to social condition as a new ground". The Commission found that the failure to address discrimination on the grounds of social condition constituted a weakness within Canada's human rights system.¹⁴³

iv. Equal Pay for Work of Equal Value (Pay Equity)

149. Occupational segregation and the gender wage gap persist in Canada. Women are denied equal access to work in higher-paid enclaves that continue to be male-dominated and they also do not enjoy the right to equal pay for work of equal value in all sectors and in all jurisdictions. Women still make only 71 per cent of what men make. The gap is greater for immigrant women, racialized women, and women with disabilities, reflecting the additional sex, race and disability-based barriers to integration into employment that these groups experience.¹⁴⁴ Aboriginal women experience the deepest gap, with an average income of just \$13,300, compared to non-Aboriginal women's average wage of \$19,350 and \$18,200 for Aboriginal men.¹⁴⁵

150. All provincial and territorial governments have instituted legislation that requires that women receive the same pay when they perform the same or similar work as men.

¹⁴² Canadian Human Rights Act Review, *Promoting Equality: A New Vision*, June 23, 2000, online: Department of Justice Website <<http://canada.justice.gc.ca/chra/en/frp-c17.html#e>> (date accessed: 6 June 2005).

¹⁴³ Canadian Human Rights Commission, Publications, online: CHRC <http://www.chrc-ccdp.ca/publications/prohibited_grounds-en.asp> (date accessed: 18 May 2005). Canadian Human Rights Commission, *Annual Report 2004*, online: CHRC <http://www.chrc-ccdp.ca/pdf/AR_2004_RA_en.pdf> (date accessed: 18 May 2005).

Canadian Human Rights Commission, *Legislation and Policies*, online: CHRC <http://www.chrc-ccdp.ca/legislation_policies/consultation/page3-en.asp> (date accessed: 18 May 2005).

¹⁴⁴ For commentary regarding integration into employment for immigrant women, see , Valerie Preston, "Employment Barriers Experienced by Chinese Immigrant Women in the Greater Toronto Area" (Toronto: York University, 2001); See also, S. Sherkin and A. Demchuk. "Economic Integration of Immigrant Women in Toronto: A Bilateral Perspective," Canadian Centre for Women's Education and Development and Children's Aid Society of Toronto, 2003.

¹⁴⁵ 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).

But this type of legislation does not address the undervaluing of work in those occupations and sectors where women predominate. Only legislation requiring that women be paid the same as men when they are performing work of equal value can address this form of systemic discrimination. However, in Canada, only the federal government, Ontario, Québec and the Yukon have laws that require women be paid the same as men when they are performing work of equal value, whether they work in the public sector or the private sector. Of the remaining provinces and territories, Manitoba provides this protection for public sector workers only. Saskatchewan, British Columbia, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Northwest Territories and Nunavut provide only that women be paid the same as men when they perform the same or similar work. In 2001 the government of British Columbia, which had previously introduced a new pay equity provision, repealed it immediately following a provincial election.

151. At the federal level a Pay Equity Task Force was established in 2003, because it was acknowledged that the federal legislation requiring that women be paid equal pay for work of equal value was not working effectively. The Task Force released a report in 2004 recognizing pay equity as a human right. It also recommended a “proactive” pay equity law, requiring employers in the federal sector to implement pay equity, rather than waiting for women to lodge complaints.¹⁴⁶

152. In June of 2005, the Standing Committee on the Status of Women of the Parliament of Canada issued a report recommending the immediate adoption and implementation of the Pay Equity Task Force’s 113 recommendations. The Committee noted that the Minister of Justice and the Minister of Labour and Housing both acknowledged the need to improve the pay equity regime, but that in spite of this acknowledgement no action has been taken. The Committee has noted that urgency is required with respect to closing the gender wage gap, and has requested that new pay equity legislation that complies with the Task Force’s recommendations be drafted and tabled by October 2005.¹⁵⁰

153. No new legislation has been tabled as of 7 October 2005.

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

¹⁴⁶ 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)

¹⁵⁰ *Moving Forward on the Pay Equity Task Force Recommendations*, Report of the Standing Committee on the Status of Women, Parliament of Canada, (Ottawa, House of Commons, June 2005) at 9.

154. 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.*¹⁵¹ These judicial decision and the government action that underlies it are in clear contravention of Article 26 of the *Covenant*.

155. 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 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.

156. 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 about \$80 million.

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

158. 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 guarantees of the Charter, by discriminated 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.

159. 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 the alternatives considered. In effect, the Court accepted the Newfoundland government's *word* that violating women's rights was necessary, and

¹⁵¹ [2004] 3 S.C.R. 381

did not seriously test the government's claim, contrary, in fact, to previous jurisprudence on justifiable limitation of rights.

160. The government of Newfoundland predicted that for 1990-91 there would be a deficit of \$120 million. Deficits of this size are not "unprecedented" but normal in Newfoundland, with the result that if the prospect of a \$120 million deficit provides a constitutional justification for ignoring the equality rights of women, women in Newfoundland may have no rights they can rely on.

161. FAFIA submits that the confiscation of pay from women employees of the Newfoundland government is a violation of Articles 8 and 26 of the *Covenant*. 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, by allowing the provincial government to discriminate against women to save money. Governments should not be permitted to respond to budgetary concerns by confiscating equal pay from women. Governments are obligated by their human rights commitments to allocate resources, even in emergency situations (which this was not), in ways that treat women as equal members of society.

162. More specifically, the standard of derogation from the rights of women in Newfoundland and Labrador that the Court accepted in N.A.P.E. is not in keeping with the *Covenant*. In particular, Article 5 of the *Covenant* speaks against finding that the N.A.P.E. decision is consistent with Article 26 of the *Covenant*. While Article 4 permits derogation in cases of public emergencies, such derogation must not itself be discriminatory.

v. The *Immigration and Refugee Act* and Systemic Discrimination

163. A new *Immigration and Refugee Protection Act* came into force in June 2002. This new *Act* did not remove the systemic discrimination against women that was inherent in previous legislation.

164. The two principal categories of permanent immigration to Canada are economic immigration and family reunion immigration. Each of these categories is structured in a way that encodes women's dependence on men.

A. Economic Migrants

165. Economic migration has been the largest component of Canada's immigration policy since 1995. Each of the principal subgroups in this category – skilled workers, investors, entrepreneurs and self-employed persons – is structured so that men are more likely to qualify than women. Through this category Canada is seeking to attract individuals who are well-educated, who have labour market experience, who speak English or French, and who are wealthy. These indicators favour men over women, even within Canada. Framing migrant selection this way ensures that gender disparities

from outside Canada are imported.

166. The new legislation has altered the selection system so that some of the economic subcategories explicitly value the contributions of a migrant's partner (three partnerships are now recognized in the law: spouses, common law partners and conjugal partners) by awarding points based on a partner's education and language skills. However, the points for the partner's skills are awarded at one fourth or one fifth the rate they are awarded for the primary migrant. These "partner points" will most often be applied to women and represent an official devaluing of women's contribution to economic well-being.

B. Live-In Caregiver Program (LCP)

167. Canada's Live-In Caregiver Program (LCP) is also a part of the economic migrant category and is the one sub-program that is dominated by women applicants. Foreign domestic workers are a particularly vulnerable group of women workers, whose circumstances should be considered by the Human Rights Committee. Most of these workers are racialized women migrating from countries that have been severely hurt by globalization and economic restructuring policies. Compared to the conditions for entry for skilled worker immigrants (the other category of entry for persons filling long term or chronic labour gaps), the criteria imposed on live-in caregivers clearly exposes a racialized and gendered inequality of treatment.

168. Women entering Canada to be domestic workers under the LCP are required to live in the homes of their employers. This requirement has been widely criticized because of the vulnerability of these women workers to abuse. 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.

169. Specifically there are two restrictions associated with the temporary immigration status under the LCP which potentially lead to abuse and a violation of workers' rights. First, the possibility of permanent resident status is directly tied to and conditional upon a good work record. Second, living with one's employer produces extra pressures and restrictions on the work and life of a domestic worker and creates specifically oppressive power dynamics in the relation between employer and employee. Live-in caregivers experience non or under-payment of wages, unremunerated overtime work, lack of food, privacy, or proper accommodations, and violence and abuse.¹⁵²

170. 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

¹⁵² National Association of Women and the Law et al. Draft Brief on the Proposed Immigration and Refugee Act (Bill C-11) submitted to the Standing Committee on Citizenship and Immigration at 24-25; Intercede, *Caregivers Break the Silence A Participatory Action Research on the Abuse and Violence, including the Impact of Family Separation, Experienced by Women in the Live-In Caregiver Program* (Toronto: Intercede, 2001) at 36-58.

national child care programme, 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.

171. 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 8 and 26 of the Covenant.

172. 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. Also, a recent review of the LCP was undertaken by the Canada Immigration Commission. To date, there is no change.

C. Family Category Migration

173. Family category migration has been dominated, and will continue to be dominated, by the arrival of female partners of male Canadian residents. The new aspects of this category include formal recognition of common law partnerships, including same-sex partnerships, and raising the age of some eligible dependent children to 21.

174. Family category migration continues to be based on the principle of sponsorship. When a sponsor applies to have his partner and children or other family members come to Canada, he must undertake to ensure that they will not take social benefit payments from the state for at least three years. In this way, sponsorship formalizes a relationship of dependence of the migrant on the sponsor. Immigration policies perpetuate myths and stereotypes regarding family and the economic dependence of women on men, and impair the ability of women to achieve economic independence.

175. The majority of women who are sponsored are racialized women who experience both racial and sexual discrimination in Canada. Immigration policy enforces and worsens the already vulnerable position of these sponsored women by increasing their dependence on their spouse. A report by Status of Women Canada notes the following obstacles encountered by sponsored spouses:

Sponsorship traps women into unequal relationships where they legally "depend" on their husband for support. A man may use the official "dependency" of his wife to justify his wish to control her life totally, including managing "his" wife's income. In many cases, the sponsorship relationship upsets the balance of power within the couple, allowing the sponsor to be the only one able to work, have a social life and, sometimes, total control over the wife's income.

Because they are usually ill informed about their rights by immigration officials, sponsored women may believe their husband has the power to withdraw the sponsorship even when this is no longer possible. Threats of withdrawing

sponsorship and deportation have forced many women to tolerate physical and psychological violence as well as economic abuse.¹⁵³

176. The situation is even more desperate for sponsored women who apply for permanent residence while already in Canada. Until they become permanent residents, they have no access to health insurance, work permits, study grants, social welfare or other programs until their application for permanent residence has been approved "in principle" by the federal government, leaving these women particularly vulnerable to poverty and abuse. Also, their spouse may unilaterally revoke sponsorship at any time prior to obtainment of permanent resident status, putting them at risk of deportation.¹⁵⁴

D. Refugee immigration

177. Since 2002 refugee decision making procedures in Canada have been weakened for women and men. There is no possibility of appealing a negative refugee determination decision and very limited access to judicial review. The rights of refugee claimants to access courts are severely limited.

In December 2004, Canada and the United States implemented a safe third country agreement governing refugee claims made at their respective land borders. This cuts off access to Canada for refugee claimants, and puts Canadian human rights commitments in the hands of American decision makers. It affects women disproportionately in two ways. First, as a greater proportion of women's refugee claims are made at land borders, proportionately more women will be denied access to Canada. Second, it fails to take into account that Canada has a superior record to the United States in terms of taking into account gender related forms of persecution.

XII. Women Federal Prisoners (Articles 10 and 26)

¹⁵³ ; Status of Women Canada, *Sponsorship – For Better or for Worse: The Impact of Sponsorship on the Equality Rights of Immigrant Women*, online: SWC <http://www.swc-cfc.gc.ca/pubs/0662296427/200103_0662296427_2_e.html> (date accessed: 19 May 2005).

¹⁵⁴ Citizenship and Immigration Canada, *Family Class Sponsorship*, online: CIC <<http://www.cic.gc.ca/english/irpa/faq-family.html>> (date accessed: 19 May 2005).

D. Rose, V. Preston and I. Dyck, "Women, Gender and Immigration: Perspectives and Challenges" in *Immigration and Social Cohesion* (2002) 5 Horizons 12, online: Policy Research Initiatives <http://policyresearch.gc.ca/v5n2_e.pdf> (date accessed: 1 June 2005).

¹⁷¹ Canadian Human Rights Commission, *Protecting their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, December 2003, online: CHRC <<http://www.chrc-cdp.ca/pdf/reports/FSWen.pdf>> (date accessed: 18 May 2005).

178. Women federal prisoners are predominantly first-time offenders under age 35. Many are single mothers. Eighty per cent are survivors of abuse. A disproportionate number of women federal prisoners are Aboriginal. Aboriginal women account for 3 per cent of the female population but account for 29 per cent of women federal prisoners. The rate of incarceration of Aboriginal women is increasing. Ninety per cent of Aboriginal women offenders have experienced abuse, 61 per cent have been sexually abused.¹⁷¹

A. Male Guards in Women's Prisons

179. In April of 1994, the Warden of the Prison for Women ordered 8 women federal prisoners strip-searched by an all-male response team. After their concrete cells were stripped of beds, and wearing only paper gowns, the women were left in body belts, shackles and leg irons. No evidence was presented to suggest such restraints were necessary. Body cavity searches were conducted on seven of the eight women. Women who 'consented' to the searches were searched while shackled. They were subsequently given showers, a security gown, cigarettes, and had their restraints removed. The woman who did not consent did not receive any of these benefits.

180. An investigation into these events, led by Justice Louise Arbour, now United Nations High Commissioner for Human Rights, resulted in a series of recommendations to improve the operations of women's prisons. One recommendation, adopted by the Correctional Service of Canada (CSC) was the creation of a Cross-Gender Monitor, whose mandate was to study the use of male guards in women's prisons.

181. The 2001 report by the Cross-Gender Monitor recommended that men not be allowed to be front-line, primary workers in women's federal prisons. The CSC has chosen not to implement this recommendation and continues to allow men to hold these positions. They have also added men guards to the Edmonton Institution for Women, the only prison for women that did not initially operate with men on the front-line. The Canadian Human Rights Commission (CHRC), in its 2003 report on federally-sentenced women, recommended that policy regarding protocol and training for male front-line workers be improved and strictly followed. In its report, the CHRC found that the protocol was not being followed, that male guards were doing unit and bed checks and that prisoners continued to experience harassment from male guards. The CSC has chosen to adopt Commission's recommendation only in part.¹⁷²

B. Incarceration of Aboriginal Women

182. Writing for the Supreme Court of Canada in *R. v. Gladue*, Justices Cory and Iacobucci termed the overrepresentation of Aboriginal persons and the unresponsiveness of the justice system a crisis, noting "the drastic overrepresentation of

¹⁷² Correctional Service Canada, *The Cross-Gender Monitoring Project: CSC's Response to the Third and Final Annual Report*, online: CSC <http://www.csc-scc.gc.ca/text/prgrm/fsw/gender4/CGM_response_e.shtml#LinkTarget_197> (date accessed: 18 May 2005); Canadian Human Rights Commission, *Protecting their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, December 2003, online: CHRC <<http://www.chrc-ccdp.ca/pdf/reports/FSWen.pdf>> (date accessed: 18 May 2005).

aboriginal peoples within both the Canadian prison population and the criminal justice system reveals a sad and pressing social problem.”¹⁷³

183. The Okimaw Ohci Healing Lodge is a federal women’s prison that was specifically designed for Aboriginal women prisoners. The blanket policy currently in place prohibits Aboriginal women categorized as maximum security from being placed there, even though they are the most likely to benefit from its programs. A report issued by Status of Women Canada noted the particular hardships for Aboriginal women in federal prisons:

Unnecessarily restrictive operation procedures, typically developed with a male offender in mind, impose constraints on Aboriginal women inmates which are not needed or appropriate given the cultural contexts from which many of them come. On the other hand, the small number of facilities available for the housing of female offenders in Canada has resulted in a situation whereby Aboriginal women serving federal time (and, to a lesser extent, provincial time) are incarcerated hundreds or thousands of kilometers away from their children or families, with little opportunity for regular visits or contact. Moreover, when these practices are combined with a general insensitivity of the justice system to Aboriginal traditions and healing practices, the result is a deep-seated alienation and anger, with little scope for rehabilitation.¹⁷⁴

184. The CSC rejected the 2003 recommendation of the CHRC (a recommendation first made in the Arbour report in 1996) that Aboriginal women, who are disproportionately classified as maximum security prisoners, be individually assessed to determine whether they may be housed at the Healing Lodge. The CSC indicates that it plans to implement classification tools that are gender responsive, but is silent with respect to a tool that is specifically designed to classify women who experience both race and sex discrimination.¹⁷⁵

C. Segregation

185. Studies show that segregating women inmates jeopardizes their safety and mental health. Segregation is only to be used when there is no other reasonable alternative; in 2002-2003 in a population of 376 women prisoners, there were 265 admissions to segregation. Aboriginal women and other racialized women are segregated more frequently and for longer periods than other women. One Aboriginal woman was in segregation for 567 days. In addition, the new maximum security units for women in each of the five federal regionally located prisons for women result in the isolation of

¹⁷³ *R. v. Gladue* [1999] 1 S.C.R. 688

¹⁷⁴ M. Stout and G. Kipling, *Aboriginal Women in Canada: Strategic Research Directions for Policy Development* (Ottawa: Status of Women Canada, 1998).

¹⁷⁵ Correctional Service Canada, *CSC Action Plan in Response to the Report of the Canadian Human Rights Commission*, online: CSC <http://www.csc-scc.gc.ca/text/prgrm/fsw/gender4/CHRC_response_e.shtml#LinkTarget_3571> (date accessed: 18 May 2005).

women so that they are segregated from the rest of the women in the general population. The CHRC's report echoes the recommendation of the Arbour report that there ought to be independent adjudication for decisions relating to involuntary segregation. The CSC responded to this recommendation, stating that independent adjudication is outside the current legislative option, but they would, together with Public Safety and Emergency Preparedness Canada, develop options. None have yet been examined to specifically address women prisoners who are segregated.

D. Lack of Decarceration Strategies, Exit Programs, Appropriate Training

186. There are increasing numbers of women in prison, due to the erosion of social programs and services. Poor women and girls, especially those who are racialized and have mental health issues, are being increasingly criminalized and jails appear to be one of Canada's responses to homelessness.

This speaks directly to the need for concerted decarceration strategies, as well as the need for new linkages between provincial, territorial, and federal social services, education, health, and other support services.¹⁷⁶

187. Currently, there are 810 women serving federal sentences (2 years or more). Of these, about 48 per cent are incarcerated and about 52 per cent are serving the remainder of their sentences in the community under various forms of conditional release (day parole, full parole, or statutory release). However, with respect to the Aboriginal women population (172), almost 60 per cent (103) of Aboriginal women are incarcerated compared to just over 40 per cent (72) who are in the community.

188. Too many women stay in prison long past all their eligibility dates. Moreover, the prisons are ill-equipped to deal with reintegrating women into their communities after imprisonment. More often, being in prison actually makes the pre-existing challenges of being poor, and from a racialized group worse, as the stigma of being labeled a "criminal" makes it even more difficult for women to integrate into the community.

189. Funding is overwhelmingly devoted to supporting imprisonment. The Auditor General, the all-party Parliamentary Public Accounts Committee, and the Canadian Human Rights Commission have all pointed out in reports issued in the last two years that Correctional Service Canada spends many millions of dollars to operate the women's prisons, and very little on release programs for women leaving prison.

190. Women need additional support both in prison, and when they are released. Current training, educational and therapeutic programs do not meet the needs of the women in Canada's prisons. Although it is clear the programs are not comparable in quantity, quality or variety to those provided to sentenced men, it is not useful to make simple comparisons between programs for men and programs for women. Instead, the particular needs and interests of women prisoners must be examined to ensure

¹⁷⁶ Canadian Association of Elizabeth Fry Societies. *Finance Committee Submission: Pre-Budget Consultations: 2005 Federal Budget - November 2004* on line <<http://www.elizabethfry.ca/submissn/prebg05/prebdg05.pdf>.

substantive equality, and allow women prisoners to progress toward a successful reintegration into society.

191. Programs that should prepare women for meaningful work are virtually non-existent. In many cases, the emphasis is on traditional “female” skills, such as cooking, cleaning, and sewing. Where promising programs do exist, enrollment is often very limited or the equipment and training skills taught are outdated. Limited access to job training and educational programs directly interferes with the ability of women to meet the terms of their “correctional treatment plan”. As a result, women frequently experience delays in accessing conditional release into the community on parole.

192. For women with disabilities, there are even fewer training programs geared to their needs. Access to therapeutic counseling is very limited, especially for those with the greatest need, most of whom spend most of their time in virtual isolation in the segregated maximum-security units. Moreover, there is a coercive nature to the therapeutic treatment offered. Aboriginal women have limited access to programs and services of any kind, let alone programs that meet their cultural needs.¹⁷⁷

E. Accountability for Correctional Service Canada

193. There have been repeated calls for accountability by Correctional Service Canada. These calls for accountability were made by Justice Louise Arbour in her 1996 report and were reiterated this year by the Canadian Human Rights Commission. Indeed, the Office of the Correctional Investigator, the Task Force on Federally Sentenced Women and many previous reports and Commissions of Inquiry, not to mention the reports of the Auditor General, the Parliamentary Committee on Justice and Human Rights and the Public Accounts Committee, have called for increased accountability within corrections and between the Correctional Service Canada and other external bodies. These recommendations have not been acted on.¹⁷⁸

XIII. Women’s Political Equality (Articles 25 and 26)

194. Women continue to be underrepresented in the political sphere. Barriers to election to office include the higher rates of poverty women experience and the subsequent prioritizing of their basic needs over political participation; cultural barriers such as gender stereotyping, reproductive roles, housekeeping responsibilities, and child care costs; occupational segregation into “women’s work” or nurturing occupations which inhibit political life. Also, the higher the position in the political hierarchy, the less likely it is to find women holding office.

| Jurisdiction | No. of Seats | No. of Women | Percent of Women |
|---------------------------|---------------------|---------------------|-------------------------|
| Federal | 308 | 65 | 21% |
| Newfoundland and Labrador | 48 | 10 | 21% |

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

| | | | |
|-----------------------|-----|----|-----|
| Prince Edward Island | 27 | 6 | 22% |
| Nova Scotia | 52 | 6 | 12% |
| New Brunswick | 55 | 7 | 13% |
| Québec | 125 | 40 | 32% |
| Ontario | 103 | 23 | 22% |
| Manitoba | 57 | 13 | 23% |
| Saskatchewan | 58 | 11 | 19% |
| Alberta | 83 | 13 | 16% |
| British Columbia | 78 | 19 | 24% |
| Yukon | 18 | 3 | 17% |
| Northwest Territories | 19 | 2 | 11% |
| Nunavut | 19 | 2 | 11% |

195. Canada's "first past the post" electoral system also contributes to women's exclusion from the political process. Political parties attempt to maximize their chances of success by nominating "safe" candidates, particularly in ridings where they are most likely to win; women, Aboriginal persons, and men and women of colour are frequently thought to be controversial candidates and so are less likely to be nominated. Canada is one of only three countries with populations of over 8 million which have retained a "first past the post" electoral system.

196. In 1991, the Royal Commission on Electoral Reform and Party Financing recommended that the government provide incentives to encourage parties to elect more women. In 2004, the Law Commission of Canada reiterated this recommendation in its electoral reform report, advocating the use of quotas to facilitate women's participation in Parliament. Such recommendations have not been adopted. Canadian political scientists have acknowledged that getting to be a candidate is a major obstacle to women's representation in elected office:

The numerical underrepresentation of women seems to reflect biases in the recruitment and nomination process rather than discrimination on the part of voters. Local party control over recruitment is cited as a critical barrier to women's access to elected office. Women are much less likely than men to be candidates, and female candidates are less likely to win than male candidates because they are more likely to be nominated in unwinnable seats.¹⁷⁹

197. In countries where political parties have quotas for women candidates, women are more frequently elected to office. For example, political parties in Sweden require that 50 per cent of candidates are women; as such, women constitute over 45 per cent of persons elected.¹⁸⁰

¹⁷⁹ Elisabeth Gidengil "Gender and attitudes toward quotas for women candidates in Canada" (1996) 16:4 *Women and Politics* 21 at 23.

¹⁸⁰ Institute for Democracy and Electoral Assistance, *Global Database of Quotas for Women*, online: IDEA <<http://www.quotaproject.org/system.cfm>> (date accessed: 1 June 2005); Law Commission of Canada, *Voting Counts: Electoral Reform for Canada*, 2004, online: LCC

198. Among women representatives in Parliament, Aboriginal women have been largely absent. There is currently one federal Member of Parliament who is Aboriginal. Aboriginal women encounter many barriers to election; many Aboriginal women live well below the poverty line, are more likely to be subject to violence, and have less education than non-Aboriginal women. They are less likely to be able to afford the costs of election campaigns. Further, they face increased discrimination due to the interaction of race and gender, adding to the difficulty of getting through the selection process. The Aboriginal Women's Program of the Department of Canadian Heritage provides some funding in an effort to encourage Aboriginal women's participation in policy and decision-making; this does not begin to address the historical disadvantage, systemic discrimination and poverty that function to exclude Aboriginal women from Canadian political life.

199. The Royal Commission on Electoral Reform and Party Financing in 1991, and the Royal Commission on Aboriginal Peoples in 1996, have both recommended that there be designated seats for Aboriginal peoples in the House of Commons. The federal government has taken no such action.¹⁸¹

200. In its General Comment on Article 26, the Committee has noted:

The right to participate in the conduct of public affairs is not fully implemented everywhere on an equal basis. States parties must ensure that the law guarantees to women the rights contained in article 25 on equal terms with men and take effective and positive measures to promote and ensure women's participation in the conduct of public affairs and public office, including appropriate affirmative action.¹⁸²

201. The governments of Canada have not taken positive measures to ensure equal political participation for women. Women hold just over one-fifth of the seats in the

<http://www.lcc.gc.ca/en/themes/gr/er/er_report/ER_Report.pdf> (date accessed: 1 June 2005); Law Commission of Canada, *Renewing Democracy: Debating Electoral Reform in Canada*, 2002, online: LCC http://www.lcc.gc.ca/en/themes/gr/er/discussion_paper/electoral_reform_dp.pdf (date accessed: 1 June 2005).

¹⁸¹ S. Dysart, "Barriers to Women's participation in Parliament" (1994) 17(3) Canadian Parliamentary Review online: Canadian Parliamentary Review <<http://www.parl.gc.ca/infoparl/english/issue.htm?param=150&art=1009>> (date accessed: 13 May 2005); Electoral Insight, *Women and Political Participation in Canada*, January 2001, online: Elections Canada <http://www.elections.ca/eca/eim/article_search/article.asp?id=84&lang=e&frmPageSize=&textonly=false> (date accessed: 1 June 2005); Electoral Insight, *The Participation of Aboriginal Women in the Canadian Electoral Democracy*, November 2003, online: Elections Canada http://www.elections.ca/eca/eim/article_search/article.asp?id=26&lang=e&frmPageSize=&textonly=false (date accessed: 16 May 2005); Indian and Northern Affairs Canada, *Gathering Strength: Canada's Aboriginal Action Plan, A Progress Report*, July 2000, online: Indian and Northern Affairs Canada <http://www.ainc-inac.gc.ca/gs/pdf/progr2_e.pdf> (date accessed: 16 May 2005).

¹⁸² Human Rights Committee, *General Comment No. 28*, para. 29.

House of Commons; in seven of the provinces and territories, they hold even less, occupying as few as 11 per cent of the seats. Economic inequality, gender stereotyping, increased unpaid caregiving responsibilities, inadequate child care programs, and the failure of the government to impose candidacy quotas or abandon the “first past the post” electoral system all function as barriers to the equal enjoyment of women’s political rights.

CONCLUSION

202.FAFIA submits that, in the many ways described in this Report, Canada is in violation of the civil and political liberties set out in the *International Covenant on Civil and Political Rights*.