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Minding the Gap: Human Rights Commitments and Compliance

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The real meaning of our social ideals is largely defined by ... the institutional arrangements and social practices that realize these ideals. When, for example, we speak about democracy or community, our abstract principles and fighting words may be less telling guides to what we mean than the practical forms that realize these ideals.

– Roberto Mangabeira Unger, *False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy*

This chapter is concerned with what happens when United Nations treaty bodies express concern about deficiencies in Canada's compliance with its international human rights obligations. Over the last decade, after reviews of Canada's reports, UN treaty bodies have issued concluding observations that are critical of Canada's human rights performance.¹ A thoughtful response by federal, provincial, and territorial governments to these concluding observations could lead to concrete improvements in the exercise and enjoyment of human rights for residents of Canada.

Canadians wish to engage with their governments about domestic implementation of the rights in international human rights treaties, understanding that these rights form an integral part of our domestic human rights framework.² This desire is evident from the increased involvement of non-governmental organizations (NGOs) in the reviews by UN treaty bodies of Canada's compliance with its international human rights obligations. Over the last decade, Canadian NGOs have become active participants in the treaty body review process, submitting alternative reports and appearing before the treaty bodies to make oral submissions. This civil society involvement has improved the quality of the review process, making

it more interactive, complex, and honest, and the findings of the committees have become more relevant.

Unfortunately, once the reviews have taken place and the treaty bodies have issued their concluding observations, there is no process that leads to action by governments. There is no public examination of the treaty body findings in Parliament or in provincial legislatures. Nor are there discernible internal governmental procedures for addressing the substance of the recommendations. Consequently, the compliance reviews appear to have no outcome at home. Most Canadians never learn what the UN bodies have to say about Canada, and governments do not take up the expressed concerns and recommendations with a clear intent to improve Canada's record.

Roberto Unger suggests that the means a society offers for realizing its ideals is the best way to understand those ideals – both their content and their significance – and I agree.³ I mind the gap between Canada's commitments and its practice; between what it says and what it does. I mind the gap that exists when Canada ratifies international human rights treaties but does not take the necessary steps to ensure that Canada's laws, policies, and practices comply with them. The fact that Canadian governments have established no procedures and no venues for responding to treaty body criticism of their implementation of human rights raises the question: What do governments believe the treaty rights mean?

The purpose of this chapter is to examine the treaty body review process and to ask what conclusions can be drawn from Canada's lack of response to treaty body findings. I use the recent example of the review of Canada by the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) to explore these questions. The first part of the chapter describes the process of review by the CEDAW, the reports that were submitted by Canadian NGOs, the in-person review at the twenty-eighth session of the CEDAW in New York City in January 2003, and the concluding comments of that committee. The second section summarizes the efforts of NGOs, after the review, to encourage federal and provincial governments to follow up on the recommendations of the CEDAW and notes the steps taken so far by governments. The third part concludes that if international human rights are more than paper commitments, new domestic mechanisms are needed to permit Canadians to engage with their governments regarding the practical steps needed to give life to these human rights.

Engaging in the CEDAW Process

CEDAW Review Process

The Convention on the Elimination of All Forms of Discrimination against Women (Convention on Discrimination against Women), like other UN human rights

treaties, creates an oversight committee.⁴ The CEDAW is an expert body composed of twenty-three members. They are academics, lawyers, judges, and government officials who are experts on women's equality, nominated and then elected by the states that are party to the treaty. The *Convention on Discrimination against Women* requires the countries that ratify it to report about once every four years on their compliance with the terms of the treaty. Canada ratified the convention in 1981 and has since made five reports, the latest filed in March 2002.⁵ All Canadian governments provide their own sections so that Canada's report is a compilation of jurisdiction-by-jurisdiction reports.

In July 2002, following receipt of Canada's fifth periodic report, the CEDAW prepared written questions and Canada gave written answers.⁶ A hearing was then scheduled with the CEDAW for 23 January 2003 at the United Nations in New York City. Canada sent representatives so that Canadian officials and the CEDAW members could engage in a question-and-answer session in person. The Canadian delegation, headed by Florence Ievers, coordinator of Status of Women Canada, had twenty-six members, including representatives from nine federal departments and four provinces: British Columbia, Nova Scotia, Prince Edward Island, and Québec. Canadian NGOs also submitted written reports, which were distributed to CEDAW members at the beginning of the session. On 13 January, the first day of the session, NGOs from all of the countries being reviewed were permitted to make ten-minute presentations of their alternative reports. On 23 January, the day of Canada's review, the members of the Canadian delegation presented their report, followed by rounds of questions and answers. After this session, the concluding comments were drafted, approved by the CEDAW before the last day of the session on 31 January and issued publicly in late February 2003.⁷

Women's Alternative Reports

Canadian women's organizations submitted four reports to the CEDAW: (1) a national report prepared by the Canadian Feminist Alliance for International Action (FAFIA);⁸ (2) a BC report prepared by the BC CEDAW Group;⁹ (3) a Québec report prepared by the Regroupement provincial des maisons d'hébergement et de transition pour femmes victimes de violence conjugale, which was focused on funding for women's shelters in Québec; and (4) a report prepared by the Canadian Association of Elizabeth Fry Societies (CAEFS) on the treatment of federally sentenced women.¹⁰ Canadian women decided to report in a comprehensive way to the CEDAW in 2002 because the period since the CEDAW's last review of Canada in 1997 was particularly hard. It was a period of social program erosion and of backlash. Women, whose equality is intimately linked to the presence and adequacy of social programs, were hurt by the retrogressive measures that marked the 1990s.

Moreover, the most socially and economically disadvantaged women in Canada, including Aboriginal women,¹¹ women of colour, immigrant and refugee women,¹² single mothers, and women with disabilities,¹³ were hurt most.

FAFIA, in its report, notes that in one of the wealthiest countries in the world, during the period under review, almost one in five women were living in poverty and that among Aboriginal women, women of colour, immigrant women, single mothers, and other single women rates of poverty were much higher.¹⁴ FAFIA views women's poverty as a rights matter,¹⁵ a key indicator of whether Canadian women enjoy equality, a manifestation of systemic discrimination, and a cause of diminished personal, sexual, and reproductive autonomy, increased vulnerability to violence, and loss of political voice. While FAFIA's report exhaustively itemizes inadequacies in specific legal protections and programs, it also assesses the impact on women of larger economic and social policies and decisions regarding resource allocation. The alternative reports explain that Canadian governments made policy and financial choices between 1994 and 2002 that exacerbated women's social and economic inequality and that such conduct infringes women's rights to equality under international human rights law.¹⁶

The FAFIA report also focuses on the impact on women of the restructuring of Canada's federal-provincial fiscal arrangements. Similarly, in its report, the BC CEDAW documents the changes to social policy and social protections introduced by the BC Liberal government since its election in May 2001 and the negative effects of those changes on women.¹⁷ The national FAFIA report and the BC CEDAW report provide different perspectives on the Canadian social union, revealing how the federal and provincial governments' decisions to downsize government and cut social spending are linked and compound women's loss of ground.

Both the FAFIA report and the BC CEDAW report point out that there is a close connection between women's equality and social programs. They note that increased participation of women in the labour force and the increased enrolment of women in higher education,¹⁸ which have been features of social change in Canada over the last thirty years, are, in good part, due to the development of public programs of health care, long-term care, childcare, and education, which have shifted part of the burden of unpaid caregiving from individual women to the state, permitting women to enjoy more freedom of choice in their social and economic lives.¹⁹ Public social programs have also provided women with access to "good jobs" – with union protection, benefits, and security – in the caregiving sector, as teachers, nurses, and social workers. The FAFIA report and the BC CEDAW report treat these programs as key to an egalitarian society with more choice for women and more class mobility.

The FAFIA and BC CEDAW reports also describe Canada's income security programs, including employment insurance, social assistance, old age security, and public pensions as essential to reducing women's economic dependence on men. Social assistance, they note, is a vital social program for women, since women need to be able to resort to social assistance to maintain their sexual and personal autonomy. Without access to adequate social assistance, women can be coerced into unwanted relationships and into survival sex – whether paid or unpaid – in order to have shelter and food to eat. Women in violent and abusive relationships cannot leave them unless there is adequate social assistance to support themselves and their children.

FAFIA reports that over the 1994-2002 period women lost good jobs in the caregiving sector,²⁰ they assumed an increased burden of unpaid caregiving,²¹ their employment and education opportunities were narrowed, and, when income security benefits were lowered and eligibility rules tightened, women were less able to leave harassing, abusive, or dangerous work or home situations.²²

The FAFIA report identifies the federal government's transfer of money to the provinces and territories for social programs as a rights-delivery mechanism because it has ensured that key social programs (health care, post-secondary education, and social assistance and related services), were delivered in all jurisdictions, with some common entitlements and standards. The restructuring of federal-provincial fiscal arrangements through the *Budget Implementation Act, 1995*,²³ FAFIA states, has had implications for women's enjoyment of human rights because the amounts of the transfers were cut, and conditions and entitlements that provinces and territories were previously required to meet in order to receive the monies were removed.²⁴ In short, in their alternative reports, women's NGOs provided an analysis of the causes of women's inequality in Canada and of recent government decisions and policies that maintain it and, indeed, exacerbate it.

The Hearing

In January 2003, having had the benefit of Canada's substantial official reports, its answers to written questions, and the NGO reports, the CEDAW members' questioning of Canada at the in-person hearing was informed and intense.²⁵ The committee members expressed surprise at the extent of poverty among women in Canada and at the federal government's failure to deal with overt inequalities in law for Aboriginal women. They were also concerned by evidence of the impact of racism on women, by the sex discrimination inherent in the *Immigration Act*,²⁶ and by the weakening of employment standards and the dismantling of standard work, all of which have had particularly damaging effects on the most marginalized women.

Some questions focused on decisions taken recently by governments that clearly worsened conditions for the poorest women, including cuts to welfare benefits, the National Child Benefit Supplement clawback, and cuts to already thin legal aid provision for family law and poverty law.

The surprise about Canada's failures and deficiencies stems from the CEDAW members' knowledge of Canada as a key supporter and promoter of many international initiatives to advance women's human rights, such as the *Declaration on the Elimination of Violence against Women*, and the appointment of a special rapporteur on violence against women.²⁷ CEDAW members were also aware that the Canadian International Development Agency provides funds specifically earmarked for women's projects in developing countries. The difference between Canada's international and domestic faces was evident. CEDAW members expressed both their congratulations to Canada for its leadership in the international arena and their concern about the situation of women at home.²⁸ The CEDAW members asked some pointed questions, including:

- Why was Canada's fifth report, which documents initiatives taken between 1994 and 1998, not provided to the CEDAW until 2002?
- Is gender analysis mandatory for all parts of the federal government and for the provincial governments? Why was a gender analysis of the impact of the 1995 *Budget Implementation Act*,²⁹ which restructured federal-provincial relations with respect to social programs, not done? Why has the federal government given up attaching conditions to the monies it provides to provincial governments since this permits inconsistencies in the implementation of obligations of the *Convention on Discrimination against Women*?
- How will Canada achieve harmonious implementation of the *Convention on Discrimination against Women*, given the different responsibilities of the federal and provincial governments and the lack of a mechanism for ensuring consistency?
- Why did the proposed *Act Respecting Leadership Selection, Administration and Accountability of Indian Bands, and to Make Related Amendments to Other Acts*³⁰ not address the residual discrimination against women in Bill C-31, *An Act to Amend the Indian Act*,³¹ and provide for the equal division of matrimonial property at the time of marriage breakdown for on-reserve Aboriginal women?
- How does Canada justify the high levels of poverty among women? Why were social assistance rates not restored to adequate levels, as recommended by the CEDAW in 1997?
- What is the justification for the long list of cuts and closures in the province of British Columbia – to health care, welfare, legal aid, courts and judicial services, and employment standards protections?

- Why are poverty eradication strategies focused on children but not on women?
- The *Immigration and Refugee Protection Act*³² has been found to have a male bias, favouring – in the economic immigrant class – those with high skills and/or investment income. What system is there for monitoring the situation of immigrant and migrant women?
- What rationale does Canada provide for the unequal treatment and lack of adequate social protections provided to women who enter the country as domestic workers under the Live-In Caregiver Program?
- What provisions are there to deal with women who are victims of trafficking? What is the legal position of a woman who is a victim of trafficking?
- How many women have been admitted as refugees based on a finding of gender-based persecution? What facilities and programs are made available to these women?
- Will Canada, at the time of its next report, provide an evaluation of federal and provincial programs designed to address the inequalities of Aboriginal women, including high rates of poverty and incarceration, lower educational attainment, poorer health, and unequal status at law?

Florence Ievers, the head of the Canadian delegation, indicated in her responding remarks that no gender analysis of the 1995 *Budget Implementation Act* was done and that this did “mark a regression in the condition of women.” Ievers also indicated, at the conclusion of the review session, that Canada “would endeavour to meet the recommendations of the Committee.”³³

Concluding Comments

The CEDAW issued its concluding comments at the end of February 2003. It praised Canada for some initiatives, taking special note of Canada’s leadership internationally on women’s human rights, Québec’s childcare program, the creation of domestic violence courts in some jurisdictions, and the creation of the Institute of Gender and Health. However, the CEDAW, in diplomatic language, expressed a high level of concern about Canada’s failures to eliminate discrimination against women. The CEDAW made twenty-three recommendations to Canada. In summary, they are:

- Find innovative ways to strengthen federal-provincial-territorial mechanisms in order to ensure that coherent and consistent measures are in place to implement the *Convention on Discrimination against Women*.
- Reconsider those changes in the fiscal arrangements between the federal government and the provinces and territories so that national standards of a sufficient level are re-established and women will no longer be negatively affected in a disproportionate way in different parts of the state party’s territory.

- Make gender-based impact analysis mandatory.
- Make funds available for constitutional equality test cases in all jurisdictions.
- Ensure that sufficient legal aid is available to women for civil and family law matters.
- Assess the gender impact of anti-poverty measures and increase efforts to combat poverty among women in general and among vulnerable groups of women in particular.
- Accelerate efforts to eliminate discrimination against Aboriginal women.
- Eliminate legislated discrimination against Aboriginal women.
- Sensitize Aboriginal communities about women's human rights.
- Ensure that Aboriginal women receive sufficient funding to participate in governance and legislative processes.
- Eliminate the provisions in the *Immigration and Refugee Protection Act* that still discriminate against immigrant women.
- Reconsider the live-in requirement of the Live-In Caregiver Program and ensure that live-in caregivers have adequate social security protection and quicker access to permanent residency.
- Assist victims of trafficking through counselling and reintegration.
- Step up efforts to combat violence against women and girls and increase funding for women's crisis centres and shelters.
- Take additional measures to increase the representation of women in political and public life.
- Introduce employment-related measures that will bring more women into standard employment arrangements with adequate social benefits.
- Accelerate efforts to implement equal pay for work of equal value.
- Expand affordable childcare facilities in all jurisdictions.
- Reconsider the eligibility rules under the *Employment Insurance Act*³⁴ and consider raising the benefit levels for parental leave.
- Redesign supports for socially assisted housing based on a gender-based impact analysis.
- Disseminate widely the concluding comments in order to make the people of Canada, and, particularly, government administrators and politicians, aware of the future steps required.³⁵

Overall, the treaty compliance review was a credible one. Canada was given a thorough hearing, NGOs were permitted to participate, and the CEDAW had access to better information than ever before about the situation of women in Canada. The concluding comments of the CEDAW are fair and pertinent. If Canadian governments were to take the CEDAW's recommendations seriously, they could significantly improve women's enjoyment of their rights.

Following up on the CEDAW Review

What is startling, given their engagement in the review process, is that not one of the federal, provincial, and territorial governments has a procedure in place for responding substantively to the recommendations of treaty bodies nor do they have a collaborative procedure. Though the point of treaty compliance reviews is to evaluate, note deficiencies, and improve human rights performance where needed, Canadian governments have no mechanisms in place for doing so.

After the public release of the CEDAW's concluding comments in February 2003, FAFIA and the BC CEDAW asked the federal government and the BC government to deal with the recommendations. On 30 April 2003, FAFIA wrote to Prime Minister Jean Chrétien and to pertinent members of Cabinet, asking them to respond in a serious and systematic manner to the CEDAW recommendations and to work with FAFIA to design and implement two processes: a process through which federal government practices and policies could be reviewed and changed in light of the CEDAW's recommendations and a process for ensuring that "coherent and consistent measures in line with the *Convention*" are implemented in all Canadian jurisdictions.³⁶

The federal government has direct responsibility for any lack of treaty compliance that falls within its own areas of jurisdiction, including immigration law, criminal law, matters related to Indians and Indian lands, labour law, human rights and pay equity for the federal sector, federally sentenced prisoners, and employment insurance. However, the CEDAW also underlined the federal government's principal responsibility for implementing the *Convention on Discrimination against Women* and urged it to find ways to ensure that treaty rights are observed by all levels of government.³⁷ The CEDAW noted that there appear to be no mechanisms that women can rely on to ensure that treaty standards will be met consistently in all jurisdictions in Canada. This absence leads to women in some provinces, as in the case of British Columbia, being deprived of the enjoyment of their treaty rights, with no obvious recourse.

In its April 2003 letter, FAFIA requested Prime Minister Jean Chrétien and the ministers of his Cabinet to do the following:

- Put in place a serious, participatory, and transparent review process to respond to the recommendations of the CEDAW regarding the practices and policies of the federal government.
- Design and implement a public process for national oversight to ensure that women's treaty rights are complied with in all Canadian jurisdictions.
- Ensure that all review processes attend to the specific and serious concerns of the CEDAW regarding Aboriginal women.

- Encourage the provinces and territories to comply with the terms of the *Convention on Discrimination against Women* and to treat the recommendations of the CEDAW with respect and responsiveness.
- Offer training to elected and other officials in the provinces and territories to ensure that they understand their obligations under the *Convention on Discrimination against Women*, and make other supports available to assist these officials in responding to the circumstances of women in their own provinces and territories.³⁸
- Provide financial assistance to non-governmental women's groups that are currently working with provincial, territorial, and federal governments to address women's equality concerns.

These letters elicited *pro forma* responses only, many of them referring FAFIA back to the secretary of state for the status of women, who had insufficient authority to satisfy the requests that were made.³⁹ As a result of the breadth of issues raised, responding substantively to the CEDAW's recommendations required collaboration and action by many members of Cabinet.

Unwilling to accept this preliminary dismissal, in June 2003, FAFIA convened a meeting of some of its member groups and some independent experts to consult with federal government officials regarding their follow-up process and to develop a more elaborated proposal for federal government response to the CEDAW recommendations. Government officials were asked to provide information on initiatives being taken in their departments. While most of the officials present indicated interest in consulting with FAFIA on a follow-up process to the CEDAW review, it was clear that they had no instructions to develop substantive responses and there was no lead department or agency. While Heritage Canada coordinates the production of Canada's reports to the treaty bodies, its authority stops there. Heritage Canada distributed the concluding comments to other departments and was convening meetings to discuss changing the format for reporting in response to the CEDAW's request. Yet by June 2003, there had been no interdepartmental meetings to discuss a substantive response. Officials indicated that they were trying to comply with Canada's obligations under the *Convention on Discrimination against Women* by introducing gender-based analysis to the work of their departments on a voluntary basis.⁴⁰

The FAFIA follow-up meeting developed a five-point plan, which was similar in outline to its April 2003 requests but more specific. In a July 2003 letter to Jean Augustine, then secretary of state for the status of women, FAFIA wrote: "The federal government has three key roles to play with respect to Canada's compliance with international treaty obligations: (1) using its direct authority within federal jurisdiction to ensure that policies and

programs meet international rights standards; (2) taking political leadership with the provinces and territories to foster provincial and territorial compliance; and (3) using negotiating authority and the federal spending power at intergovernmental tables as a means of ensuring that there is Canada-wide compliance with international human rights commitments to women's equality."⁴¹

FAFIA then outlined the five-point plan: the establishment of a Cabinet-authorized cross-departmental process leading to an action plan for implementing the 2003 CEDAW recommendations; the use of an analytical framework that takes into account the diversity of women and the intersection of sex discrimination with race, disability, age, marital status, ethnicity, sexual orientation, and socio-economic class; the inclusion of women's NGOs as partners in the development of the action plan; an established time frame for the process; and adequate funding to support the process and the implementation of the CEDAW 2003 recommendations.⁴² This proposal was widely distributed by FAFIA to other ministers, other political parties, FAFIA member organizations, and other NGOs. Secretary of State Augustine responded positively, indicating her support for the proposal. However, broader ministerial support was needed.⁴³

In November 2003, FAFIA held a national symposium for its fifty member organizations to consider plans for future action. The lack of governmental response to the CEDAW recommendations and the lack of an obvious existing governmental forum where governmental responses could be formulated and implemented raised a number of basic questions regarding institutions and human rights implementation. FAFIA members were concerned about the paucity of opportunities to engage seriously and substantively with politicians about the equality implications of government policies. At the federal level, parliamentary committees have not demonstrated a regular and ongoing interest in women's issues.⁴⁴ Status of Women Canada, as noted above, is not a full ministry, and, at the time the CEDAW recommendations were issued, Secretary of State Jean Augustine carried the women's portfolio, along with multiculturalism, under the broader umbrella of Heritage Canada. Existing government machinery was apparently inadequate to meet the challenge presented by the CEDAW recommendations.

At the intergovernmental level, women noted a similar lack of adequate machinery. The federal government's decision to back away from attaching designations and conditions to the federal dollars transferred to the provinces weakened a central instrument for ensuring some consistency across the provinces and territories in social programs and services provided and in the standards for some of these programs. The 1999 *Framework to Improve the Social Union for Canadians. An Agreement between the Government of*

Canada and the Governments of the Provinces and Territories, which promised to be a vehicle to enable democratic participation, has not, in any jurisdiction, provided more opportunity for women to consult with government about social programs and services.⁴⁵ Nor has it provided any access for women to intergovernmental tables where decisions about social programs are being made.

At the November 2003 symposium, FAFIA chose to focus on: (1) continuing to press for implementation of the five-point plan for responding to the CEDAW recommendations; (2) seeking a special parliamentary committee on women's issues; (3) seeking full ministry status for the status of women; (4) obtaining conditions attached to the new Canada Social Transfer⁴⁶ that would ensure that social programs funded under this intergovernmental agreement are consistent with Canada's international human rights obligations; and (5) seeking other entries to intergovernmental negotiations regarding social programs.

After the June 2004 election, Liza Frulla was appointed minister of Canadian heritage and the minister responsible for the status of women. The fact that a woman has a seat at the Cabinet table may raise the profile of women's issues. But there is still no full Ministry for the Status of Women, no deputy minister, and few resources. Also in the fall of 2004, for the first time and as a result of women's lobbying, a Parliamentary Committee on the Status of Women was established. This committee has produced a number of reports but it has not yet studied the matter of the gap between Canada's treaty obligations to women and its implementation of them.⁴⁷

As a result of its concern about the responsibilities of all levels of government for treaty compliance, FAFIA asked to meet with federal, provincial, and territorial ministers responsible for the status of women at their annual meeting to allow FAFIA to brief them about its proposal for a follow-up to the CEDAW review. This request was denied in 2003 and again in 2004. In September 2005, FAFIA representatives met with Liza Frulla and other ministers and officials prior to the ministers' meeting in Regina. The federal, provincial, and territorial ministers responsible for the status of women made it clear that they have no organized means of addressing treaty compliance or any coordinated plans for implementing the CEDAW recommendations. FAFIA representatives invited the ministers to develop a joint plan of action with them so that governments and women's NGOs could go to the CEDAW at the time of Canada's next review, in 2007, with an agreed-upon strategy for moving forward.

Following up in British Columbia

Women in British Columbia seeking implementation by their provincial government of the CEDAW recommendations encountered not only the

same institutional vacuum and political unwillingness to respond that FAFIA experienced at the federal level but also more direct hostility. The CEDAW singled out the province of British Columbia for criticism. It stated that it was concerned about the “disproportionately negative impact on women and girls of a number of recent changes in British Columbia, including the cuts in funds for legal aid and welfare assistance; narrowed eligibility rules for welfare; the incorporation of the Ministry of Women’s Equality under the Ministry of Community, Aboriginal and Women’s Services; the abolition of the independent Human Rights Commission; the closing of a number of courthouses; the cut in support programs for victims of domestic violence and the proposed changes regarding the prosecution of domestic violence.”⁴⁸ The CEDAW recommended that the BC government review its policies, “analyze the negative impact of its recent legal and other measures on women and girls, and amend them as necessary.”⁴⁹

Early in April 2003, the BC CEDAW Group wrote to the premier, the attorney general, and every member of the Legislative Assembly, drawing their attention to the CEDAW concluding comments and asking that the recommended review be put in place. The BC CEDAW Group also asked for meetings with the premier and pertinent ministers to discuss how these recommendations could be addressed. Premier Gordon Campbell responded by reassuring women that his government “remains committed to ensuring that government programs address issues relating to women’s economic and social equity, and that women are safe in their communities.”⁵⁰ Notably, his letter made no mention of the treaty body, its recommendations, or the recommendation of a review. He advised the BC CEDAW Group that he was too busy to meet with them and referred them to Lynn Stephens, the minister of state for women’s equality.

In the media, however, Lynn Stephens had already called the CEDAW’s concerns about the BC government’s treatment of women “completely unfounded.”⁵¹ She had also called the BC CEDAW Group “politically motivated” and said that the group had made its report to the United Nations in “an attempt to bring disrepute to B.C.”⁵² Stephens, however, had little credibility in her portfolio when she made these statements. One year earlier, in February 2002, she had given an interview to a local newspaper in which she expressed the view that women were poorer than men because they made bad choices: “Women already have equality, they just have to make choices – such as deciding to make more money.”⁵³ In the same interview, she defended the abolition of the Ministry of Women’s Equality and the absorption of women’s issues into the Ministry of Community, Aboriginal and Women’s Services on the grounds that her NDP predecessor had called the Ministry of Women’s Equality a “sunset” ministry that would fade out in time. According to Stephens, “it’s getting closer to the sunset.” She defended

tax cuts that benefited wealthier residents of the province and service cuts that hit people with lower incomes harder, saying the “rich get richer and the poor get poorer ... That’s the world we live in, the world we’ve always lived in.” Similarly, Ms. Stephens defended cuts to childcare services, the withdrawal of funding from all BC women’s centres, and the abolition of some victim assistance services. By the time the CEDAW issued its recommendations and the premier referred the BC CEDAW Group to Stephens, there were widespread calls for her resignation.⁵⁴

The BC CEDAW Group was received more civilly by Attorney General Geoff Plant, who was the only cabinet minister who agreed to meet and discuss the recommended review. The BC CEDAW Group appealed to Plant as the chief law enforcement officer of the province, stressing his authority and responsibility to ensure that the acts and policies of the government were consistent with legal obligations, including those under international human rights treaties. In a June 2003 meeting, Plant said that he considered women’s equality to be an important matter and indicated that the call for a review of his government’s policies and cuts was worth serious consideration. The attorney general said that he would consult with his colleagues and get back to the BC CEDAW Group with an answer.⁵⁵

In November 2003, however, the attorney general declined to proceed with a review. He wrote: “[T]he government has been attentive to the needs and concerns of women and children in adopting and reforming its policies, and I do not believe there is a need to conduct an additional review at this time. I agree with my colleague, the Minister of State for Women’s Equality, the Honourable Lynn Stephens, that our Government is advancing women’s equality in British Columbia. We will continue to ensure that our program and policy reform is informed by a consideration of potential impacts on all parts of society, including gender analysis.”⁵⁶ The BC government thus refused to take up the recommendations of the CEDAW or to take any other steps to address the CEDAW’s concerns. The federal government has not expressly refused, but it has simply taken no action. So far, it has done nothing to respond to the CEDAW recommendations or to engage with Canadian women about the serious matter of Canada’s compliance with treaty rights.

Needed: New Domestic Mechanisms

For Canadian women’s organizations, engaging in the CEDAW review process has been valuable in several ways. First, the reports to the CEDAW were prepared with the collaboration of many women’s groups and individual women through a large participatory process, and the NGO reports provide a complex and detailed picture of women’s lives in Canada in 2002.⁵⁷ Par-

icipating in the process has made many more Canadian women familiar with Canada's international treaty obligations and has reinforced the connections between poverty, social programs, and rights. Second, Canadian women's organizations have taken their rights and their governments seriously. They have embraced the rights underwritten by their governments, with the expectation that they will be fulfilled. They have formally requested that their elected representatives deal with the recommendations that emerged from the compliance review and suggested ways in which this could be done.

However, the failure by governments to respond raises a central question: What do Canadian governments really think about the treaties and the treaty process? From their conduct, it appears that, for Canadian governments, the most important thing to do with human rights treaties is to ratify them. By doing so, Canada can hold itself out internationally as a leader, and as a promoter of human rights standards. Sadly, it does not appear that Canada has ratified treaties in order to ensure that Canadians enjoy the substance of the rights.

Canada engages in intergovernmental consultation before ratifying a treaty, and it only ratifies a treaty when it believes that it is already in substantial compliance. It thus appears that, once Canada has ratified, governments believe that the job is done. The compliance reviews must be done to respect the procedures set out in the treaty, but they do not require anything more than *pro forma* engagement. In other words, Canadian governments appear to view ratification as the end rather than the beginning of an ongoing process that requires constant self-critical assessment and a constant willingness to assign resources and political capital to making rights real.

Canada's failure to implement treaty body recommendations, and the institutional vacuum into which they fall, was highlighted by the United Nations Human Rights Committee in the fall of 2005 after its fifth review of Canada's compliance with the *International Covenant on Civil and Political Rights*.⁵⁸ The human rights committee criticizes Canada severely for its discriminatory treatment of Aboriginal women and of women federal prisoners and notes again Canada's failure to deal with the discriminatory effects of cuts to social assistance and social programs on women. Yet its first concern is that Canada is not paying attention to deficiencies already noted by the treaty body and not correcting them. The Human Rights Committee recommends that

[t]he State party should establish procedures, by which oversight of the implementation of the Covenant is ensured, with a view, in particular, to

reporting publicly on any deficiencies. Such procedures should operate in a transparent and accountable manner, and guarantee the full participation of all levels of government and of civil society, including indigenous peoples.⁵⁹

During the 2006 federal election campaign, FAFIA asked all party leaders and candidates to sign a pledge stating that if elected, they would “take concrete and immediate measures, as recommended by the United Nations, to ensure that Canada fully upholds its commitments to women in Canada.” Every party leader signed on.⁶⁰ Will this finally turn into action? It is clear from all of these efforts that Canadian women are looking for willingness on the part of governments to treat the review process as an opportunity for serious deliberation and engagement and for substantive improvement in women’s enjoyment of their equality rights. Unless Canadian governments create institutional spaces where this discussion can occur, the treaty rights will remain paper commitments, beneficial for Canada’s international reputation but not for Canada’s women.

Notes

- 1 See, for example, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, UN ESCOR, UN Doc. E/C.12/1993/5 (1993); *Concluding Observations of the Committee on the Rights of the Child: Canada*, UN Doc. CRC/C/15/Add.37 (1995); *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Canada*, UN Doc. A/52/38/Rev.1 (1997) at paras. 306-43; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, UN ESCOR, UN Doc. E/C.12/1/Add.31 (1998); *Concluding Observations of the Human Rights Committee: Canada*, UN Doc. CCPR/C/79/Add.105 (1999); *Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination, Canada*, UN Doc. A/57/18 (2002) at paras. 315-43; and *Concluding Observations of the Committee on the Rights of the Child, Canada*, UN Doc. CRC/C/15/Add.215 (2003); Human Rights Committee, 85th session, *Concluding Observations of the Human Rights Committee: Canada*, UN Doc. CCPR/C/CAN/CO/5 (2005); Committee on Economic, Social and Cultural Rights, 36th session, UN ESCOR, UN Doc. E/C.12/CAN/CO/5 (1-19 May 2006).
- 2 Canada has ratified the *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 U.N.T.S. 3 (entered into force 3 January 1976) [ICESCR]; the *International Covenant on Civil and Political Rights*, 16 December 1966, 999 U.N.T.S. 171 (entered into force 23 March 1976) [ICCPR]; *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 U.N.T.S. 13 (entered into force 3 September 1981) [*Convention on Discrimination against Women*]; *Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, 660 U.N.T.S. 195 (entered into force 4 January 1969) [CERD]; *Convention on the Rights of the Child*, 20 November 1989, Can. T.S. 1992 No. 3 (entered into force 2 September 1990) [CRC]; and *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, Can. T.S. 1987 No. 36 (entered into force 26 June 1987) [CAT]. The Supreme Court of Canada has held that rights in the *Canadian Charter Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, must be interpreted in light of Canada’s human rights treaty obligations. See *Slaight Communications v. Davidson*, [1989] 1 S.C.R. 1038; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2

- S.C.R. 817 at 860-2; *R. v. Ewanchuk*, [1999] 1 S.C.R. 330 at 365 (L'Heureux-Dubé J.); and *United States v. Burns*, [2001] 1 S.C.R. 283. When reporting to treaty bodies, Canada claims the *Charter* and statutory human rights legislation as the domestic means by which international human rights are implemented. See, for example, *Convention on the Elimination of All Forms of Discrimination against Women: Fifth Report of Canada*, Canadian Heritage, Human Rights Program, http://www.pch.gc.ca/progs/pdp-hrp/docs/cedaw5/index_e.cfm (27 July 2004) at para. 8 [*Canada's Fifth Report*].
- 3 Roberto Mangabeira Unger, *False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy* (Cambridge: Cambridge University Press, 1987) at 10.
 - 4 *Convention on Discrimination against Women*, *supra* note 2, Article 17.
 - 5 *Canada's Fifth Report*, *supra* note 2; see also *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Fifth Periodic Report of States Parties, Addendum – Canada*, UN Doc. CEDAW/C/CAN/5/Add.1 (2002).
 - 6 *Responses by Canada to the Advance Written Questions of the Committee on the Elimination of Discrimination against Women – Part I* (11 October 2002), Canadian Heritage, Human Rights Program, http://www.pch.gc.ca/progs/pdp-hrp/docs/cedaw5/5cedawcan_e.cfm (7 July 2004); *Responses by Canada to the Advance Written Questions of the Committee on the Elimination of Discrimination against Women – Part II* (21 November 2002), Canadian Heritage, Human Rights Program, http://www.pch.gc.ca/progs/pdp-hrp/docs/cedaw/cedaw5/5cedawcan2_e.cfm (7 July 2004).
 - 7 *Report of the Committee on the Elimination of Discrimination against Women, 28th and 29th Session*, UN GAOR, 58th Sess., Supp. No. 38, UN Doc. A/58/38 (2003) at paras. 336-89 [*Concluding Comments*].
 - 8 "Canada's Failure to Act: Women's Inequality Deepens" (2003), Feminist Alliance for International Action (FAFIA), <http://www.fafia-afai.org/Bplus5/natFAFIAreport012103.doc> (22 July 2004). FAFIA is an alliance of more than fifty national, provincial, and local women's organizations.
 - 9 "British Columbia Moves Backwards on Women's Equality" (2003), Feminist Alliance for International Action, <http://www.fafia-afia.org/Bplus5/bcCEDAWreport012103.doc> (22 July 2004). The BC CEDAW group is a coalition of twelve BC women's organizations.
 - 10 The information contained in the reports of the Québec network of women's shelters and the Canadian Association of Elizabeth Fry Societies (CAEFS) is incorporated into the national Canadian FAFIA report. Amnesty International also made a submission to the committee. FAFIA and the BC Committee on the Committee on the Elimination of All Forms of Discrimination against Women (BC CEDAW Group) were represented at the CEDAW review by Sharon McIvor, Margot Young, and Shelagh Day. Regroupement provincial was represented by Louise Riendeau. Kim Pate represented the CAEFS, and Cheryl Hotchkiss represented Amnesty International.
 - 11 "Canada's Failure to Act," *supra* note 8 at paras. 14-18.
 - 12 *Ibid.* at paras. 20-21.
 - 13 *Ibid.* at para. 22.
 - 14 "Canada's Failure to Act," *supra* note 8 at paras. 52-6.
 - 15 For further discussion of this point, see Gwen Brodsky and Shelagh Day, "Beyond the Social and Economic Rights Debate: Substantive Equality Speaks to Poverty" (2002) 14 *Canadian Journal of Women and the Law* 184.
 - 16 In addition to being a signatory to the *Convention on Discrimination against Women*, *supra* note 2, Canada is also a signatory to the *ICCPR*, *supra* note 2, which includes a guarantee of non-discrimination applicable to all state party activity (Article 26); and to the *ICESCR*, *supra* note 2, which includes the right to an adequate standard of living (Article 11).
 - 17 Since 2001, British Columbia has seen the largest budget and public sector cuts in Canadian history. "British Columbia Moves Backwards," *supra* note 13. See also Caledon Institute of Social Policy, *A New Era in British Columbia: A Profile of Budget Cuts across Social Programs* (Ottawa: Caledon Institute, 2002).

- 18 *Canada's Fifth Report*, *supra* note 2 at paras. 14 and 35.
- 19 *Ibid.* at para. 267.
- 20 "Canada's Failure to Act," *supra* note 8 at para. 77. See also Marjorie Griffin Cohen, "Destroying Pay Equity: The Effects of Privatizing Health Care in British Columbia," which was prepared for the Hospital Employees' Union, March 2003; Chris Allnutt, "B.C. Wants to Turn Back the Clock," *National Post* (15 July 2004).
- 21 "Canada's Failure to Act," *supra* note 8 at para. 77.
- 22 *Ibid.*
- 23 *Budget Implementation Act*, 1995, S.C. 1995, c. 17.
- 24 Analysis in the FAFIA report draws on Shelagh Day and Gwen Brodsky's *Women and the Equality Deficit: The Impact of Restructuring Canada's Social Programs* (Ottawa: Status of Women Canada, 1998).
- 25 The author was present for this questioning.
- 26 *Immigration Act*, R.S.C. 1985, c. I-2, repealed by *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 274.
- 27 *Declaration on the Elimination of Violence against Women*, GA Res. 48/104, UN GAOR, 48th Sess., Supp. No. 49, UN Doc. A/48/49 (1993).
- 28 *Concluding Comments*, *supra* note 7 at para. 340: "The Committee commends the State party's policy, at the international level, in setting women's human rights standards, providing financial and other assistance to women's rights projects in developing countries as well as mainstreaming gender in its development assistance programmes and projects."
- 29 *Budget Implementation Act*, *supra* note 23.
- 30 Bill C-7, *An Act Respecting Leadership Selection, Administration and Accountability of Indian Bands, and to Make Related Amendments to Other Acts*, 2d Sess., 37th Parl., 2002 (had not received second reading when Parliament was dissolved in May 2004).
- 31 *An Act to Amend the Indian Act*, S.C. 1985, c. 27; see also Sharon Donna McIvor, "Aboriginal Women Unmasked: Using Equality Litigation to Advance Women's Rights," in this volume.
- 32 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 33 Shelagh Day, "CEDAW Review" (2003) 22(1) *Jurifemmes*, <http://www.nawl.ca/v22-no1.htm> (22 October 2004).
- 34 *Employment Insurance Act*, S.C. 1996, c. 23.
- 35 *Concluding Comments*, *supra* note 7 at paras. 349-89.
- 36 Letters were sent to John Manley, deputy prime minister and minister of finance; William Graham, minister of foreign affairs; Claudette Bradshaw, minister of labour; Martin Cauchon, minister of justice; Denis Coderre, minister of citizenship and immigration; Sheila Copps, minister of Canadian heritage; Stephane Dion, minister of intergovernmental affairs; Anne McLellan, minister of health; Robert Nault, minister of Indian affairs and northern development; and Jane Stewart, minister of human resources development. Letters were also sent to Jean Augustine, secretary of state for the status of women; Alan Rock, chair of the Social Union Committee of Cabinet; and Alex Himmelfarb, clerk of the Privy Council and secretary to Cabinet.
- 37 *Concluding Comments*, *supra* note 7 at paras. 349-50.
- 38 FAFIA noted in its letter that the Canadian International Development Agency had recently provided two grants amounting to \$21.4 million to assist developing countries to understand their obligations under the *Convention on Discrimination against Women*, *supra* note 2. There is no history of similar interest in training related to the *Convention on Discrimination against Women* for elected representatives and officials in Canada.
- 39 In April 2003, the secretary of state for the status of women, Jean Augustine, was a junior minister, reporting to the minister of heritage Canada, Sheila Copps, with limited resources and authority.
- 40 These comments are based on the "Report from the FAFIA CEDAW Strategy Meeting, Ottawa, June 15 and 16, 2003" [on file with author] and on the author's observations.
- 41 The CEDAW, the Committee on Economic Social and Cultural Rights, and the Committee on the Rights of the Child have expressed the same concerns to Canada. The treaty bodies state that the federal government has principal responsibility for treaty compliance

- within the boundaries of the state party and must use federal-provincial fiscal arrangements or other means to ensure that all levels of government comply consistently with treaty obligations. See *Concluding Observations of the Committee on Economic, Social and Cultural Rights* (1998), *supra* note 1 at paras. 40 and 42; *Concluding Observations of the Committee on the Elimination of Racial Discrimination* (2002), *supra* note 1 at para. 326; and *Concluding Observations of the Committee on the Rights of the Child* (1995), *supra* note 2 at paras. 9 and 20.
- 42 Letter from FAFIA to the Honourable Jean Augustine, secretary of state for the status of women (16 July 2003).
 - 43 Status of Women Canada officials acknowledge that they can do little on their own. Inside government, Status of Women Canada has been assigned the role of researcher and encourager. It is a tiny, underfunded, and relatively powerless agency, without any status to shape policy or direction for government. Its capacity was diminished further by a \$5-million cut to its budget announced by John Baird, president of the Treasury Board, in September 2006. Canadian women will not see any substantive response to the CEDAW's recommendations unless other cabinet ministers decide to engage.
 - 44 Some issues of importance to women have received attention from committees. For example, the Standing Senate Committee on Human Rights undertook a study on the issue of on-reserve matrimonial real property in September 2003. Canada, Standing Senate Committee on Human Rights, *A Hard Bed to Lie In: Matrimonial Real Property on Reserve* (Ottawa: Canadian Government Publishing, 2003) (chaired by Hon. Shirley Maheu).
 - 45 *Framework to Improve the Social Union for Canadians. An Agreement between the Government of Canada and the Governments of the Provinces and Territories* (4 February 1999), http://www.socialunion.ca/news/020499_e.html (4 May 2004).
 - 46 In the February 2004 budget, the Canada Health and Social Transfer was divided into the Canada Health Transfer, which is now the mechanism for transferring federal dollars to the provinces for health expenditures, and the Canada Social Transfer (CST), which is now the mechanism for transferring federal dollars to the provinces for all other social services. There are no conditions attached to the CST.
 - 47 For more information on this committee and access to its reports, see http://www.parl.gc.ca/committee/CommitteeHome.aspx?Lang=1&PARLSES=381&JNT=0&SELID=e17_&COM=8997 (7 November 2005).
 - 48 *Concluding Comments*, *supra* note 7 at para. 359.
 - 49 *Ibid.* at para. 360.
 - 50 Letter dated 30 April 2003 [on file with the BC CEDAW Group].
 - 51 *Langley Advance* (18 March 2003), <http://www.langleyadvance.com/issues03/033103/news/033103nnf.html#top> (21 July 2004).
 - 52 *Ibid.* The BC CEDAW Group responded to Lynn Stephens's public charges in a letter dated 9 April 2003: "[W]e are concerned that in the media you have characterized the B.C. CEDAW Group as 'politically motivated.' You also state that we 'went to the UN specifically in an attempt to bring disrepute to B.C.' Neither statement is true. The B.C. CEDAW Group is a coalition of twelve B.C.-based non-governmental organizations. The B.C. CEDAW Group has no affiliation with any political party, provincial or national. Our primary concern is the compliance of all levels of government in Canada with the terms of the international *Convention on the Elimination of All Forms of Discrimination against Women*. We have no desire to bring disrepute to B.C. Indeed, our dearest wish is to see B.C. bring honour to itself because it takes seriously its human rights commitments to women. We certainly take these commitments seriously and we hope that you will too."
 - 53 "Lynn Stephens: Poor Choices Create Inequality," *Langley Advance* (2 February 2002), <http://www.langleyadvance.com/issues02/023102/news/023102nn1.html> (26 July 2004).
 - 54 Stephens was replaced in January 2004 by Ida Chong.
 - 55 BC CEDAW Group, media release, "Attorney General Plant to Consult with Liberal Colleagues Regarding U.N.-advised review" (6 June 2003).
 - 56 Letter from the Hon. Geoff Plant, attorney general of British Columbia, to the BC CEDAW Group (17 November 2003).

- 57 These reports have been praised by Canadian officials, particularly by officials of Status of Women Canada, for their quality and thoroughness.
- 58 *ICCPR*, *supra* note 2.
- 59 *Concluding Observations of the Human Rights Committee*, 85th Sess., Canada, Doc. CCPR/C/CAN/CO/5 (2005) at para. 6.
- 60 The text of the pledge can be found at <http://www.fafia-afai.org/proj/gb/pledge.php> (18 January 2006).