FAFIA-AFAI

Feminist Alliance for International Action

l'Alliance Féministe pour l'Action Internationale

CANADA

Women's Economic, Social and Cultural Rights in Canada: 2006-2015

Report to the Committee on Economic, Social and Cultural Rights on the Occasion of the Committee's Sixth Periodic Review of Canada

Submitted February 2016 by the Canadian Feminist Alliance for International Action (FAFIA)

Contact Information
Shelagh Day, Human Rights Committee Chair, FAFIA
251 Bank Street, 2nd Floor
Ottawa, ON K1P 1X3
Tel: +1 (604) 872-0250
Email: shelagh.day@gmail.com

Acknowledgments
FAFIA reports to international treaty bodies are a collaborative undertaking that rely on the expertise and generosity of women and organizations from across Canada. FAFIA thanks DAWN-RAFH (Bonnie Brayton and Carmela Hutchison), the Westcoast Domestic Workers Association (Natalie Drolet), the Canadian Federation of Students (Sarah McCue and Glenn Burley), Kathleen Lahey, Gwen Brodsky, Jennifer Mussell, Bhreagh Dabbs, Lois Moorcroft, Hillary Aitken, Kate Mechan, Jeanine O'Connell, Jennifer Jones, Sarah Clarke, Katherine Hensel, Natasha Bakht, Emily Bates, Margot Young, and Patricia Barkaskas.

FAFIA extends a particular thanks to Shelagh Day, Angela Cameron, Lara Koerner Yeo, Anne Levesque, and Laura Jellett for research, writing, editorial support and management of the report.

FAFIA thanks the Native Women's Association of Canada for their endorsement of the sections on Indigenous women and child welfare.

I. **Introduction** **5**
***Canada's* stance** 5
A new federal government, a new stance? 6

II. General Information: Domestic Implementation and Legal Remedies **7**
(a) Court Challenges Program 7
(b) Canada's failure to ratify the Optional Protocol to the *ICESCR* 8
(c) Disregard for social and economic rights in Canadian law 8
(d) Implementation of human rights commitments 9
(e) Funding for women's rights research and advocacy 9

III. Maximum Available Resources (Article 2, para 1) **10**
Tax Policy and Women's Human Rights 10
Canada's Tax Cut Agenda, 1995-present 10
Canada's Tax Cut Agenda Has Significantly Impaired Women's Economic Status 11
(a) Detaxation Cuts 12
(b) Tax Expenditures 14
(c) Joint Tax and Benefit Measures 15
(d) Corporate, Investment and International Tax Cuts 16
(e) 'Austerity' Spending Cuts 17
Lack of affordable childcare 18
Employment equity, equal pay and pay equity 19
Unemployment insurance gender gaps 19
Age 65/66 OAS/GIS pension cuts beginning in 2013 21

IV. Non-discrimination and Equality between Women and Men (Articles 2 and 3)
1) *Women with Disabilities* **22**
(a) Access to employment opportunities (Articles 2, 6, 7) (Issue 10) 22
(b) Poverty (Articles 2, 3, 11) (Issues 19 and 21) 23
(c) Violence (Articles 2, 3, 11, 12) 24

2) *Indigenous Women* **27**
(a) Matrimonial Real Property 27
(b) Sex discrimination in the *Indian Act* 28
(c) Violence against Indigenous Women and Girls 31
Murders and Disappearances of Indigenous Women and Girls 31
Social and Economic Disadvantage 31
Commentary by United Nations Human Rights Bodies 32
The Human Rights Committee 32
Other UN Treaty Bodies 32
UN Special Rapporteur on the rights of Indigenous peoples 33
Special Rapporteur on Violence against Women, its causes and consequences 34
Committee on the Elimination of Discrimination against Women 34
Inter-American Commission on Human Rights 36
A National Inquiry into Murders and Disappearances of Indigenous Women and Girls 37

3) *Muslim Women: discrimination on the ground of religion that undermines social and economic agency* **38**

(a) ***R v N.S.*** 38
(b) **The Proposed Québec Charter of Values (Bill 60)** 39
(c) ***Muslim Women and Citizenship (Ishaq v Canada)*** 40

Right to Work and Just and Favourable Conditions of Work (Articles 6 and 7)
4) ***Women's Working Conditions*** **41**
(a) **Women's economic equality in the workplace (Issue 9)** 41
Wage Inequality and Pay Equity (Issue 11) 41
Pay Equity: Federal Jurisdiction 43
Pay Equity: Provinces and Territories 44

(b) **Minority and Indigenous women's access to work (Issue 10)** 45
Indigenous peoples' access to work 45
Aboriginal Skills and Employment Training Strategy 46
Access to work by minority groups 47
i) Gender: women's employment lags behind mens' 47
Sex Segregation 47
Non-Standard and Precarious Work (Issue 12) 48
ii) Immigration Status 49
iii) Age 49
Racism-Free Workplace Strategy 50

(c) **Live-in-Caregiver Program (Issue 12)** 50
Federal Measures 51
Recent Changes to the Live-in Caregiver Program 51
Provincial and Territorial Measures 53

(d) **Sexual harassment in the workplace (Issue 13)** 54
RCMP Sexual Harassment of Female Officers 54
Sexual harassment in the Canadian Armed Forces 55

(e) **Childcare** 56
Continued Federal Government Failure to Invest in National Childcare 58
Canada's Current Childcare Policies Do Not Yet Help Women 60
Next Steps Under New Federal Leadership 61

Trade Union Rights (Article 8)
5) ***Trade union women (Issue 14)*** **62**
Unionization Enhances Equality for Women 62
Attacks on Unions and Bars no Unionization in Canada 64

Protection of Family, Mothers, and Children (Article 10)
6) ***Violence against Women (Issue 17)*** **68**
(a) **Domestic Violence Legislation** 68
(b) **Vulnerabilities to Violence: Women's Social and Economic Conditions** 68
i) Lack of adequate income assistance 68
ii) Lack of affordable housing 69
iii) The Vicious Circle 69

iv) Women's shelters 69
v) *National Action Plan* 70

7) *Child Welfare (Issue 18)* **71**
The Intersection of Violence Against Indigenous Women and Girls and the Child Welfare System 71
The Lack of Culturally Appropriate Prevention Services on Reserve 72
Update Regarding the Human Rights Complaint 73

The Right to Social Security and an Adequate Standard of Living (Articles 9 and 11)
8) *Women in poverty: measures to reduce poverty among marginalized and disadvantaged women and girls (Issue 19)* **75**
Poverty 75
Welfare 76
(a) Conditions on the Social Transfer Related to Social Assistance (Issue 15) 76
(b) Adequacy (Issue 16) 77
Adequate Housing 78
i) Core Housing Need 79
ii) Homelessness 79
iii) Federal Programs 80
iv) Indigenous Housing 80
Food Security: Compromised by Poverty and Housing Unaffordability 81
Food Security and Northern Women 81

The Right to Physical and Mental Health (Article 12)
9) *Women's Health* **83**
(a) Refugee and migrant women's access to health care 83
(b) Incarcerated women and mental health 85
(c) Access to abortion and sexual and reproductive health and information services (Issue 23) 87
Lack of Access to Abortion in the Maritime Provinces 88

The Right to Education (Articles 13 and 14)
10) *Women's Right to Education* **90**
(a) Accessing Education: data 90
(b) Barriers to accessing post-secondary education 91
(c) Financial Barriers: the long term financial impacts of unaffordable post-secondary education 91
Spiraling student debt 91
Internships 92
Underemployment 92
Gender pay gap: compounding the problem 93
(d) Registered Education Savings Plan (RESP) 93
(e) Women's involvement in the Science, Technology, Engineering and Math (STEM) fields 94

I. Introduction

The last decade has been a hard one for Canadian women. FAFIA's submission highlights particular gaps in Canada's compliance with the *International Covenant on Economic, Social and Cultural Rights*[1] and documents Canada's failures to respect, protect and fulfill the social and cultural (ESC) rights of Canadian women, rights which are essential to women's enjoyment of equality in all areas of life. Failures to fulfill women's economic, social and cultural rights lock in place the inequality of the most vulnerable women, including Indigenous women, racialized women and women with disabilities. Through this decade, the Government of Canada, under the Harper administration, repeatedly acted in ways that ignored, obfuscated or downplayed the significance of Canada's international human rights commitments. The federal government also increasingly framed the implementation of its human rights commitments as a matter of policy choice, as opposed to a matter of legal obligation.

Canada's stance

In 2015, in a response to a report from the Inter-American Commission on Human Rights (IACHR) addressing Canada's violations of the human rights of Indigenous women, the Government of Canada attempted to downplay the significance of the report and its findings by stating that the views and recommendations of the Inter-American Commission are "non-legally binding."[2]

The IACHR repudiated Canada's position, finding that Canada is bound by the *Charter of the Organization of American States* and by the rights set out in the *Declaration on the Rights and Duties of Man*, which the Commission interprets in light of similar rights that are set out in international human rights treaties and accepted as a part of international customary law.[3] Canada responded in a similar way when it rejected the ruling of the United Nations (UN) Committee on the Elimination of Discrimination against Women, which found that Canada is committing grave violations of the human rights of Indigenous women and girls by failing to respond adequately to their murders and disappearances.[4]

FAFIA is concerned that Canada's response to these reports marks a dire deterioration in Canada's commitment to fulfilling the human rights of its residents and meaningfully implementing its legal obligations in a way that is responsive to the findings and recommendations of UN and IACHR human rights expert bodies.

There are other examples. In 2012, the United Nations Special Rapporteur on Food Security, Mr. Olivier De Schutter, undertook a formal country mission to Canada.[5] The federal government agreed to his visit, but declined to set up any meetings between cabinet ministers and Mr. De Schutter—which is highly unusual for UN special rapporteur missions—and publicly attacked his preliminary findings.[6]

---

1 *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976, accession by Canada 19 May 1976) [*ICESCR* or "the *Covenant*].

2 *Missing and Murdered* Indigenous *Women in British Columbia,* Canada, Inter-Am Ct HR OEA/Ser.L/V/II. Doc.30/14, (21 December 2014), at para 106, online: OAS <http://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf> [IACHR, *Missing and Murdered* Indigenous *Women in British Columbia*].

3 [IACHR, *Missing and Murdered* Indigenous *Women in British Columbia*] *supra* note 2 at paras 107-10.

4 Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc CEDAW/C/OP.8/CAN/1, 6 March 2015, online: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15656&LangID=E> .

5 Human Rights Council, *Report of the Special Rapporteur on the right to food, Olivier de Schutter Mission to Canada*, UN Doc A/HRC/22/50/Add.1, 24 December 2012, online: SRFood.org <http://www.srfood.org/images/stories/pdf/officialreports/20121224_canadafinal_en.pdf> [Human Rights Council, *Report of the Special Rapporteur on the right to food*].

6 Shelagh Day, "Reflections on Government Hostility, Systemic Discrimination and Human Rights Institutions" in Shelagh Day, Lucie Lamarche & Ken Norman, eds, *14 Arguments in Favour of Human Rights Institutions* (Toronto: Irwin Law, 2014) at 21-2; see also Sarah

Special Rapporteur De Schutter noted the federal government's unwillingness to seriously examine the problem of food security in Canada, particularly amongst our poorest citizens.[7]

Also, FAFIA, along with Aboriginal and human rights organizations in Canada, have been disturbed by Canada's repeated assertions, after finally endorsing the *United Nations Declaration on the Rights of* Indigenous *Peoples* in 2010, that the UNDRIP is "…an aspirational …non-legally binding document that does not reflect customary international law nor change Canadian laws."[8] We note that the Truth and Reconciliation Commission, which issued its final call to action report on 2 June 2015, has called on Canada to implement the UNDRIP as part of the project of reconciliation.[9]

A new federal government, a new stance?

On 19 October 2015, a new federal government was elected in Canada. The Liberal Party of Canada holds a majority of seats in Parliament under the leadership of Justin Trudeau. The new Government of Canada has indicated its plans to address pressing human rights issues, including the crisis of missing and murdered Indigenous women and girls, nation-to-nation relations with Indigenous peoples and the lack of national action plans on poverty and homelessness.

FAFIA hopes that the new Government of Canada will become a champion of equality for women and work to repair the damage done by the Harper administration. The damage done in the last decade has been profound.

Schmidt, "UN envoy blasts Canada for 'self-righteous attitude' over hunger, poverty", *The National Post* (12 May 2012), online: <http://news.nationalpost.com/news/canada/un-envoy-blasts-canada-for-self-righteous-attitude-over-hunger-poverty>.

7 Human Rights Council, *Report of the Special Rapporteur on the right to food, supra* note 4 (see especially paras 6-8, 51).

8 Aboriginal Affairs and Northern Development, Media Release, "Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples" (12 November 2010), online: AANDC <http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142> [emphasis added].

9 Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg, MB: TRC, 2015), Recommendation 42 at 4, online: TRC <http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf>.

II. General Information: Domestic Implementation and Legal Remedies

(a) Court Challenges Program

In its 2006 Concluding Observations, the Committee reiterated "its recommendation that the State party extend the Court Challenges Program to permit funding of challenges with respect to provincial and territorial legislation and policies".[10]

Far from acting on this recommendation, the Government of Canada cancelled the Court Challenges Program (CCP) in 2006. This dealt a severe blow to the ability of women and other equality-seeking groups to challenge violations of their constitutional rights in Canadian courts. The CCP provided limited funds for test cases of national importance that sought to ensure government compliance with constitutional equality and language rights guarantees.[11] While funding for language rights test cases was eventually reinstated, there has been no funding available for new equality cases. Close to 400 cases had already been approved and were at various stages of the court system when the Government of Canada cancelled the program.[12] Without the modest assistance available through the CCP, the ability of women to use their equality rights has been severely curtailed. The *Charter's* equality guarantees are now, in essence, notional rights for women, since only women with substantial private means can exercise them.

The importance of the CCP to women's enjoyment of the right to equality was recognized by the CEDAW Committee in 2008,[13] and its importance to Indigenous peoples and African-Canadians was recognized by the UN Committee for the Elimination of Racial Discrimination (CERD Committee) in 2012.[14]

The mandate of the new Minister of Justice and Attorney General includes supporting the Minister of Canadian Heritage to reinstate and "modernize" the Court Challenges Program.[15] The Committee has recognized that many ESC rights issues that would be litigated under provincial legislation or section 7 of the *Charter of Rights and Freedoms* were excluded from the CCP with its former mandate. There is currently no indication from the Government of Canada that a "modernized" CCP will fund litigation to assert ESC rights in federal, provincial and territorial jurisdictions.

Recommendation

- **The Government of Canada should update the Court Challenges Program to include funding for economic, social and cultural rights test cases that arise in federal, provincial and territorial jurisdictions.**

10 Committee on Economic, Social and Cultural Rights, C*oncluding Observations of the Committee on Economic, Social and Cultural Rights*, UN Doc. E/C.12/CAN/CO/4-5, 22 May 2006, at para 42 [*CESCR 2006 Concluding Observations*].

11 Voices-Voix, "The Court Challenges Program What Happened", *voices-voix*, online: <http://voices-voix.ca/en/facts/profile/court-challenges-program> (the cancellation of the CCP was also accompanied by the dismantling of the Law Commission of Canada: Canadian Bar Association, News Release, "CBA Decries Cuts to Court Challenges Program and Law Commission of Canada" (26 Sept 2006), online: <http://www.cba.org/cba/news/2006_Releases/2006-09-26_cuts.aspx>).

12 Steve Rennie, "Scrapped court challenges program still 5-7 years from winding down, A small number of cases are still working their way through the court: document", *CBC News* (4 March 2015), online: <http://www.cbc.ca/news/politics/scrapped-court-challenges-program-still-5-7-years-from-winding-down-1.2981837>.

13 Committee on the Elimination of All Forms of Discrimination, *Concluding observations of the Committee on the Elimination of Discrimination against Women*, UN Doc. CEDAW/C/CAN/CO/7, 7 November 2008, at paras 21-2.

14 Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article of the Convention, Concluding observations of the CERD Committee Canada*, UN Doc CERD/C/CAN/CO/19-20, 9 March 2012, at para 21.

15 Prime Minister of Canada, "Minister of Justice and Attorney General of Canada Mandate Letter" (13 November 2015),, online: <http://pm.gc.ca/eng/minister-justice-and-attorney-general-canada-mandate-letter>.

(b) Canada's failure to ratify the Optional Protocol to the *ICESCR*

The Government of Canada has not ratified the Optional Protocol to the *ICESCR* (OP-*ICESCR*). It did not even address this important issue in its state report to the Committee.

The Government of Canada's commitment to the realization of economic, social and cultural rights is meaningless without the ability to enforce such rights through access to remedies. Canadian women have sought redress at UN treaty bodies through the optional protocol mechanism that allows for treaty bodies to receive and respond to communications and undertake inquiries into grave and systemic human rights abuses. This is an important mechanism for rights vindication for Canadian women.

Recommendation

- **The Government of Canada should ratify the OP-*ICESCR*.**

(c) Disregard for social and economic rights in Canadian law

The Committee has highlighted the lack of judicial redress available to Canadians, who suffer from individual and systemic ESC rights violations. In 2006, the Committee called on Canada to "take immediate steps, including legislative measures, to create and ensure effective domestic remedies for all Covenant rights in all relevant jurisdictions"[16] The Committee also called on courts to "take account of Covenant rights where this is necessary to ensure that the State party's conduct is consistent with its obligations under the Covenant, in line with the Committee's general comment No. 9 (1998)",[17] and reiterated "its recommendation that the federal, provincial and territorial governments promote interpretations of the Canadian Charter of Rights and Freedoms and other domestic law in a way consistent with the Covenant".[18]

Statutory human rights laws in Canada do not empower human rights institutions with the broad mandate that is expected by the Paris Principles. In particular, neither statutory human rights law nor the *Charter* has provided women in Canada with effective legal remedies for violations of ESC rights—which are crucial rights for women, affecting their enjoyment of civil and political rights.

Canada has consistently taken the position that ESC rights should not be justiciable under domestic or international law. The recent litigation of *Tanudjaja v Canada (Attorney General)*[19] about the right to adequate housing underscores this point. Tanudjaja argued that the governments of Ontario and Canada violated the rights of homeless people under section 7 of the *Canadian Charter of Rights and Freedoms* by failing to develop a housing strategy. In December 2014, the Ontario Court of Appeal dismissed this landmark case, finding that the right to housing was non-justiciable under the *Charter* and the section 7 *Charter* jurisprudence on the right to life, liberty and security of person does not confer a "general freestanding right to adequate housing".[20] This expands upon the non-justiciability of ESC rights set out in the Supreme Court of Canada's ruling in *Chaoulli v Quebec (Attorney General)*, which held that the "Charter does not confer a freestanding right to health care".[21] The Supreme Court of Canada denied Tanudjaja's leave to appeal.[22] The Supreme Court's refusal to hear the case affirms

16 *CESCR 2006 Concluding Observations*, *supra* note 10 at para 40.
17 *Ibid* at para 36.
18 *Ibid* at para 41.
19 2014 ONCA 852.
20 *Ibid* at para 30.
21 *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35 at para 104.
22 Laurie Monsebraaten, "Homeless denied day in Court", *The Toronto Star* (25 June 2015), online:

the Ontario Court of Appeal's ruling as the current, precedent setting common law regarding the justiciability of the right to adequate housing.

Recommendations
The Government of Canada should:

- **Recognize the justiciability of ESC rights in domestic courts and tribunals, acting to uphold and fulfill these rights when litigating under the *Charter*; and**
- **Ensure that its domestic legal system can provide effective remedies for violations of *ICESCR* rights.**

(d) Implementation of human rights commitments

There are widespread concerns that Canada lacks an effective mechanism to monitor and follow-up on UN treaty body concluding observations. The Continuing Committee of Officials on Human Rights (CCOHR) is generally recognized by domestic human rights advocates to be ineffective and non-transparent. Canada sorely lacks a mechanism across federal, provincial and territorial governments that monitors the implementation of Canada's human rights obligations.

Recommendation

- **The Government of Canada should call an inter-ministerial meeting that brings together federal, provincial and territorial ministers responsible for human rights to design a new national mechanism for monitoring and implementing treaty body recommendations in a coordinated, effective and transparent way.**

(e) Funding for women's rights research and advocacy

In 2006, Status of Women Canada cut funding for women's rights research and advocacy under the *Women's Program*. This funding was critical for many women's organizations in Canada that research, report and advocate on the domestic implementation of women's rights, including ESC rights. The recent mandate letter to the Minister of Status of Women did not include the restoration of research and advocacy funds to the *Women's Program*.[23] This is a stark omission by a new government that has thus far signaled its support for a women's rights and social equality law and policy reform agenda.

Recommendations
The Government of Canada should:

- **Restore funding for women's rights advocacy and research under the *Women's Program* of Status of Women Canada; and**
- **Restore the Status of Women Canada Independent Policy Research Fund for feminist research.**

<http://www.thestar.com/news/canada/2015/06/25/homeless-denied-day-in-court.html>.

23 Prime Minister of Canada, "Minister of Status of Women Mandate Letter" (13 November 2015), online: <http://pm.gc.ca/eng/minister-status-women-mandate-letter>.

III. Maximum Available Resources (Article 2, para 1)

Tax Policy and Women's Human Rights[1]

Canada's Tax Cut Agenda, 1995-present

Tax policy is a central tool for implementing women's human rights. Human rights experts and expert bodies are increasingly aware of the necessity to bring tax policy and human rights discourses together.[2]

As UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, said recently: "Tax policy is human rights policy." The decisions of governments about how to collect and distribute resources, from whom and to whom, either facilitate or deny women's enjoyment of their human rights. For this reason, since its inception, FAFIA has focused on Canada's tax policy and budgets; they are central to the implementation of women's human rights.

Canada's current tax policy violates Articles 2 and 26 of the *ICCPR* because it discriminates against women and impairs women's ability to fully enjoy their human rights. Canada's compliance with its human rights obligations must be seen inside this larger frame of the decisions being made by Canada about resources and their distribution.

The connection between tax policy and the realization of women's human rights is articulated specifically in the *Convention on the Elimination of Discrimination against Women*,[3] and in the *Beijing Platform for Action*.[4]

The preamble to the CEDAW as well as numerous general and specific provisions prohibit discrimination on the basis of sex in relation to tax, spending, and other fiscal policies: Articles 1, 2(d) and (f), 3, 4, and 5(a) and (b) (general articles); Articles 7 (political and public life, policy formation); 11(1)(d), (e) (employment, remuneration, benefits, and social security); 11(2)(b), (c), (d) (public life, paid work, maternity leave, job protection rights, and child care resources); 13(a), (b), (c) (economic and social benefits); and 15(1), (2) (women in unpaid or subsistence areas).

Since 1988, CEDAW General Recommendations 6, 16, 17, 21, and 23 have all provided increasingly detailed guidance on the importance of ensuring that all fiscal issues and policies are resolved in ways that promote sex equality, not undercut it. Extensive guidance is provided in numerous provisions in the Beijing *Platform for Action.*

Canada has had a federal national plan to implement CEDAW and the *Platform for Action* since 1995.[5] Nonetheless, and notwithstanding the CEDAW decision in 2014 in *Blok v. Netherlands* finding

---

1 FAFIA thanks Professor Kathleen A. Lahey for this analysis of the gender implications of Canada's tax policy. Further information on Professor Lahey's work is online: <http://law.queensu.ca/faculty-research/faculty-directory/lahey>.

2 CESCRvideo, "Philip Alson: Tax as a fundamental human rights issue" (29 April 2015), online: <https://www.youtube.com/watch?v=YdRGFp7D66A>.

3 *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981, accession by Canada 10 December 1981) [*CEDAW*].

4 *Beijing Declaration and Platform for Action*, Fourth World Conference on Women, UN Doc A/CONF.177/20, UN Doc A/CONF.177/20/Add.1, 15 September 1995 (see paras 58(a)-(d) (fiscal and economic priorities regarding women and poverty); 150, 155, 165(f), (i), 179(f) (women and economic relations); 205(c) (adequate funding for gender mainstreaming institutional machinery); and 345-9 (diverse aspects of implementing fiscal equality analysis) [*Beijing Declaration and Platform*].

5 Canada, Status of Women Canada, *Setting the Stage for the Next Century: The Federal Plan for Gender Equality* (Ottawa: SWC, 1995), online: <http://publications.gc.ca/collections/Collection/SW21-15-1995E.pdf> (for text of Canada's commitment at the Fourth World Conference on Women in Beijing, see Sheila Finestone, "Statement by the Secretary of State (Status of Women and Multiculturalism)" (Address delivered at the Fourth United Nations World Conference on Women, Beijing, 6 September 1995), online: <http://www.un.org/esa/gopher-data/conf/fwcw/conf/gov/950906204201.txt>; and for other archived country statements see this online parent directory: <http://www.un.org/esa/gopher-data/conf/fwcw/natrep/NatActPlans/Canada/>).

violation of CEDAW in maternity leave regulations,[6] and the subsequent decision in *Inquiry Report concerning Canada*, finding structural and systemic discrimination against Indigenous women in Canada including failure to adequately fund gender equality machinery and basic programs,[7]

Canada has for two decades followed a systematic program of continuous tax cuts and attendant program cuts that have severely impaired Canada's financial and governance capacity as one of the richest and most advanced economies of the world in meeting its domestic and international obligations to women.

Literally since agreeing to and implementing the *Platform* in 1995, Canada had already begun to accelerate tax cuts aimed at 'taxing for economic growth' to the exclusion of all other policy objectives. By 2011, Canada had cut its tax ratio – total revenues expressed as a percentage of GDP – by 5.5%.[8]

These tax cuts represented a total reduction in annual revenues of 15%, which, as of 2011, meant a reduction in Canadian dollar terms of at least $100 billion in that year alone. Within a few short years of embarking upon this tax reduction program, Canada was no longer rated #1 globally on sex equality by the UN. In recent years, its rankings have vacillated between 18th and 23rd.

Canada's Tax Cut Agenda Has Significantly Impaired Women's Economic Status

Internationally, Canada has been singled out for particular criticism for its tax cut agenda. These cuts have accelerated since 2005, and the OECD has repeatedly criticized Canada for embarking upon this two-decade program of detaxation and spending cuts as being unnecessary and unjustified on any economic or fiscal grounds.

Canada's tax cuts discriminate against women in five distinctive ways:

- Deliberate **detaxation**—systemic permanent reduction in tax revenues—has cut revenues in ways that have given the largest share of tax cuts to men.
- At the same time, these tax cuts have been used to justify huge **budgetary austerities** that have de-funded governmental sex equality institutional mechanisms as well as sex equality, social spending, income security, and anti-poverty programs—most of which negatively affect women more than men.
- While structural detaxation has been accelerating, the use of highly selective tax cuts—**'tax expenditures'** built into specific provisions of tax legislation—have funneled additional tax cut benefits disproportionately to men, hollowing out the already-impaired revenue systems Canada relies on for its government revenues and expanding another major channel by which tax cuts benefit men far more than they benefit women.
- Tax and other fiscal policies increasingly presume, support, and reward discriminatory and stereotyped breadwinner roles for men and caregiver/marginal paid worker roles for women. This is done by increased use of **joint tax and benefit laws**—a category of fiscal instruments that disproportionately benefit men and disadvantage women as well as all those rendered more vulnerable by Aboriginal status, racialization, disability, poverty, immigration, and economic class.
- Tax cuts and benefits as well as direct benefits and penalties have disproportionately

6 Committee on the Elimination of Discrimination against Women, *Communication No. 36/2012, Elisabeth de Blok et al v The Netherlands*, Un Doc CEDAW/C/57/D/36/2012, 24 March 2014, at paras 8-9.

7 Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc CEDAW/C/OP.8/CAN/1, 6 March 2015, online: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15656&LangID=E>.

8 OECD, *Revenue Statistics 2013*, ISBN 978-92-64-20421-8 (PDF), (2013), at 94-5, Table 2, online: OECD <http://www.oecd-ilibrary.org/taxation/revenue-statistics-2013_rev_stats-2013-en-fr> (updated September 2014; Canada's tax ratio was 35.9% in 1997-98, 30.4% in 2011).

benefitted **private capital, investment, and business owners**—another major channel through which substantially greater tax benefit go to men than to women both in terms of the distribution of actual tax cuts and in terms of justifying cuts to social provisioning and reproduction, education, public employment, and human development programs that themselves have disproportionate negative effects on women.

Following is a more extensive description of (1) structural or detaxation cuts; (2) expanded use of tax expenditures; (3) increased use of joint tax-benefit measures to provide fiscal incentives to women to shift work effort away from paid work and toward unpaid or privatized work; (4) disproportionate support for capital, investment, and business sectors; and (5) spending cuts.

(a) Detaxation Cuts

Structural detaxation was initiated in the late 1990s with Canada's federal 'Tax Advantage' program, which was designed to attract companies and investment to Canada through tax competition. After 2005, the conservative government intensified this competition with large sequential cuts to the three basic sources of federal revenue—personal income taxes, corporate income taxes, and the goods and services tax (VAT).

Unlike 'tax expenditures,' discussed in the next section, detaxation cuts take the form of large tax cuts or increased tax exemptions across the board for everyone, do not require any specific behaviours to qualify for such benefits, and are justified in general political terms that can change depending on the circumstances.[9]

Because they are too general to incentivize specific behaviours, 'detaxation' cuts have been referred to as 'virtual manna' in the sense that they fall to anyone who is already in a position to receive them, but may not be easy to access because they are not particularly linked to identifiable or easily-changed behaviours.[10]

9 Kathleen A. Lahey, *Canada's Gendered Budget 2012: Impact of Bills C-38 and C-45 on Women* (Kingston: FLSQ, 2012) at 125-6, online: FLSQ <http://femlaw.queensu.ca/workingPapers/KLCanGenderedBudgetDc312012subm-printToPDF.pdf> [Lahey, Gendered Budget 2012].

10 Pierre Cahuc and Stéphanie Carcillo, "The Detaxation of Overtime Hours: Lessons from the French Experiment," Discussion Paper No 5439 (Bonn: Institute for the Study of Labor (IZA), 2011) at 8.

Table 1 shows how much federal revenue alone was turned over to the private sector over the first five years of accelerated cuts in Canada. The annual lost revenues accounted for almost 2% of Canada's GDP.

Type of tax	Total amounts of detaxation	Women's shares of detaxation cuts
GST rate cuts	$48.4 billion	38%
Corporate income tax cuts	$30.4 billion	10-37%
Personal income tax cuts	$51.6 billion	40%
Total revenue losses	$130.4 billion	32-38.6%
Total annual budgetary deficits, 2008-2012	$115.8 billion	

Table 1: Cumulative federal detaxation cuts by gender, 2008-2012
Source: The cumulative and annual personal and corporate detaxation figures are taken from the Economic Action Plan prepared by the Government of Canada in 2009, 254, adjusted to remove estimated tax expenditures reported for those years.

The 2006 Conservative government had announced its major tax cut plans long before the 2008 recession began, claiming that they would help increase Canada's economic growth and productivity. Once the recession began, these same tax cuts were quickly repackaged as 'crisis stimulus' policies designed to help soften the effects of the recession on workers and businesses.

Between 2007/8 and 2012, these tax cuts removed at least $130.5 billion from total annual federal revenues that could have been collected in those years. They quickly wiped out existing annual surpluses and ran up total operating deficits of $115.8 billion.[11]

It was this huge deficit—induced unnecessarily by these permanent detaxation cuts—that were then used to justify massive government spending cuts beginning in 2011 and 2012.

It is important to note that this privatized fiscal space was not allocated equally to each person in Canada, on a *per capita* basis. Nor was it allocated on the basis of need or even with regard to the needs of members of vulnerable groups during the recession.

Instead, these tax cut benefits are distributed in proportion to the amount each individual would otherwise (before cuts) have contributed monetarily to public revenues. Because Canada has a graduated rate structure, this means that although individuals are taxed at higher rates only when they have the financial ability to pay higher tax rates, 'giving back' fiscal space on the same basis insures that the largest detaxation cuts will always go to those who need them the least—and the smallest or no detaxation benefits to those who need them the most. In other words, detaxation turns the basic tax policy principles of 'ability to pay' and no 'taxing people into poverty' upside down. Unless changed by a subsequent government, these detaxation cuts will remain in place permanently.
These massive detaxation benefits go predominantly to men for three reasons:

- First, women have much smaller incomes than men, on average, and own fewer capital or investment assets. Thus detaxation cuts that reduce income tax rates for individuals or for corporations will give those with the biggest incomes the biggest tax cut benefits.

11 Canada, Minister of Finance, *Canada's Economic Action Plan: Budget 2009* (Ottawa: Public Works Canada, 2009), at 255, Table A2.2 [Canada, *Budget 2009*].

- Second, these tax cuts will be regressive in incidence to the extent that the rates being cut were originally progressive in incidence. The more progressive or sharply graduated the rates being cut are, the larger these 'upside down' detaxation benefits going to those with the highest incomes will be.
- Third, 40% of all women in Canada have such low incomes that they do not have any income tax liability in the first place. Thus they will never get any financial benefits from any income tax cuts. Men own nearly twice as much income and wealth as women, and so they hold more 'entry cards' that qualify them to receive the benefits of detaxation. Giving a personal income tax cut to someone who has little or no income tax liability gives them nothing at all, just as giving tax cuts to corporations leaves out all those who do not own corporate shares.

(b) Tax Expenditures

'Tax expenditures' are special tax rules that are designed to forego tax revenues under carefully defined circumstances. They are used to give government benefits to qualifying individuals through fine print hidden in tax laws instead of through direct spending programs. They are called tax 'expenditures' to emphasize that by foregoing tax revenue for special purposes, the fiscal effect is the same as direct budgetary expenditures.[12]

But they are difficult to identify and measure—they include tax deductions, exemptions from taxation, tax credits, special tax rates, deferral provisions, and refundable tax credits that are paid even if there is no tax liability being 'credited.'[13]

Canada's tax systems have all been 'hollowed out' by the many tax expenditures enacted over the decades. In 2010, total federal revenues came to $191.5 billion. In that same year, total federal tax expenditures came to $172.0 billion—almost as much as the total amount of federal revenue collected. When added to annual revenue losses from detaxation, as Table 2 indicates, the two types of tax cuts cut a huge hole in Canada's revenue bases—equal to more than 11% of Canada's GDP in 2011. The cost of a universal national childcare program has been estimated at just 1% of GDP per year.

12 Stanley S. Surrey, *Pathways to Tax Reform: The Concept of Tax Expenditures* (Cambridge, MA: Harvard Univeristy Press, 1973).
13 Tax Policy Center, *The Tax Policy Briefing Book* (Washington, DC, and Boston, MA: Urban-Brookings Institute, 2012), at I-8-1, online: <http://www.taxpolicycenter.org/briefing-book/>.

Type of federal tax cuts	Total revenue lost	Men's shares of lost revenue	Women's shares of lost revenue
Detaxation cuts (cumulative annual effect in 2012)			
Personal income tax	$13.0 bill.	60%	40%
GST	$13.8 bill.	62%	38%
Corporate and business tax	$13.3 bill.	66%	33%
Subtotal	**$40.1 bill.**	62%	38%
Tax expenditures (2010)			
Personal income tax	$128.6 bill.	60%	40%
GST	$17.4 bill.	70%	30%
Corporate income tax	$26.0 bill.	62%	38%
Subtotal (2010)	**$172.0 bill.**	62%	38%
Total all revenue losses from both detaxation and tax expenditures	$212.1 bill.	62%	38%
Total all revenue losses as percent of 2012 GDP	11.6%	7.2%	3.4%

Table 2: Revenues lost from detaxation and tax expenditures, by sex, Canada, 2012
Source: SPSD/M v. 20.1; Statistics Canada, 'Expenditures based GDP, 2012,' CANSIM, table 380-0064 (Gender shares are based on SPSD/M simulations (ver. 20), estimated for 2012. The assumptions and calculations underlying the simulation results based on Statistics Canada's Social Policy Simulation Database and Model (SPSD/M) were prepared by Kathleen Lahey, Andrew Mitchell, and Val Kulkov, and the responsibility for the use and interpretation of these data is entirely theirs).

Despite the large amounts of potential revenue left in private hands as the result of tax expenditures, it is arithmetically impossible for tax expenditures as they are presently structured to help close the gender gap between men's 60% shares of after-tax incomes and women's 40% shares.

Like detaxation benefits, tax expenditures are distributed on an 'upside down' basis – the overwhelming majority of specific tax expenditures provide much larger financial benefits for taxpayers with high incomes than they will for those with low incomes. Some technical variations produce more extreme maldistributions than others.

(c) Joint Tax and Benefit Measures

Canadian federal tax law alone contains over a hundred different tax provisions that treat spouses/common-law couples as presumed interdependent and financially integrated tax units. These provisions are then replicated in most provincial/territorial tax laws.

Joint tax and benefit laws are generally used for different purposes at different income levels. High-income joint tax laws tend to give high-income breadwinners large tax benefits for supporting spouses or cohabitants who themselves have no incomes. These types of provisions give tax reductions to high-income breadwinners while increasing their spouses' incomes, or simply give the tax benefit to the breadwinner.

Low-income joint tax or benefit laws tend to take public benefits away from low-income individuals, such as single mothers when they are considered to be in a permanent relationship of a year or more with another adult—these joint provisions reduce public and spending benefits and control government costs.

Both high-income and low-income types of joint tax and benefit provisions violate principles of ability to pay, equality, and need. They also create powerful fiscal incentives to the spouse/cohabitant who has the lower income—or no income—to remain in or even increase unpaid work hours in the home rather than enter or remain in paid work. Thus they subsidize women's unpaid work, induce them to enter into longterm relations of economic dependency, and provide significant social provisioning and unpaid work supporting all the other members of their households. In 2014-2015 alone, the total costs of these types of tax and benefit laws came to at least $25 billion—nearly 1.5% of Canada's GDP for the year.

Table 3 illustrates how extreme the maldistributions on the basis of both income and gender can be with this type of joint tax law. This is not the worst example by any means; the distribution of pension income splitting benefits is even more skewed in favour of high-income men.

Range of total family incomes in each decile	Single parent families ($)	Two-parent families ($)	Share of $2 bill. per decile (%)	Share of $2 bill. to women main earners in each decile (%)	Share of $2 bill. to men main earners in each decile (%)
1 Up to $19,200	$ 0	$ 0 mill.	0 %	0 %	0 %
2 $19,201-$27,400	$ 0	$ 0 mill.	0 %	0 %	0 %
3 $27,401-$37,700	$ 0	$ 1 mill.	0.1%	0 %	0.1%
4 $37,701-$47,700	$ 0	$ 18 mill.	0.9%	0.2%	0.7%
5 $47,701-$59,600	$ 0	$ 64 mill.	3.3%	0.7%	2.6%
6 $59,601-$74,100	$ 0	$147 mill.	7.6%	0.8%	6.8%
7 $74,101-$92,200	$ 0	$291 mill.	15.0%	1.6%	13.4%
8 $92,201-$116,200	$ 0	$475 mill.	24.6%	4.0%	20.6%
9 $116,201-$157,400	$ 0	$435 mill.	22.5%	3.4%	19.1%
10 $157,401 and up	$ 0	$502 mill.	26.0%	4.0%	22.0%
All	$ 0	$ 2 bill.	100%	14.7%	85.3%
Top 5%: >$202,900		$271 mill.	14.1%		
Top 1%: >$385,600		$ 61 mill.	3.2%		

Table 3: Distribution of $2 billion income splitting credit by family type, gender, and decile, Canada, 2014
Source: Statistics Canada SPSD/M v. 21; deciles and results have been rounded.

(d) Corporate, Investment and International Tax Cuts

Corporate and investment tax cuts as a category disproportionately rewards those who own capital.

The largest majority of capital owners are men. Roughly 67% of all shareholders are men, and the percentage of women holding CEO or top managerial positions in companies in Canada is extremely low—less than 10% across all corporations. Pension funds theoretically open corporate share ownership up more widely, but the reality is that men also have the largest pension entitlements as compared with women. These are all channels that are markedly discriminatory against women who do not get equal benefit of the myriad tax expenditures for employee stock options, capital gains, corporations, corporate dividends, and other forms of capital incomes.

In addition, the reluctance of Canadian governments to prevent 'offshoring' of capital investments and business operations to avoid paying even preferentially low levels of corporate and investment taxes has resulted in the loss of large amounts of annual revenue. Indeed, since the Auditor General began in the 1980s to attempt to get accurate figures on just how much revenue Canada does lose through these methods, the amounts of income lost through offshore, developing country, and tax competition benefits have actually increased.

In 2005, the Canadian Revenue Agency reported to the Auditor General of Canada that over 16,000 Canadian corporations had reported transactions with foreign affiliates valued at over $1.5 trillion in that year alone.[14]

Despite Canada's treaty obligations to cooperate in bringing such international transactions into compliance with domestic tax laws, the federal government has repeatedly backed away from enforcing anti-tax haven measures in favour of limited 'co-compliance' projects that involve closed door negotiations with large companies and those with large offshore investments. The reality is that without a full suite of anti-avoidance initiatives, only a tiny amount of tax will ever be collected on the massive overseas financial flows initiated by growing numbers of Canadian businesses and individuals.

Given the claim that Canada cannot even afford to maintain its already-diminished social welfare and income security programs with any stability, recovering some of the trillions located in offshore tax havens could transform Canada's domestic economy. While those who would be negatively affected by the recovery of these monies would be predominantly men, low-income women, Indigenous communities, and all those rendered most vulnerable by decades of tax- and spending-cut regimes could at least benefit from the infusion of such tax revenues into the federal treasury.

(e) 'Austerity' Spending Cuts

As the 2008-9 recession began, the government went ahead with its detaxation cuts even though losing those massive amounts of revenues pushed the government into operating deficits equal in size to the amounts of tax revenues lost through tax cuts. The government resisted all all calls to reverse those tax cuts and to stop running up deficits.

As the recession appeared to come to an end, the government then used the huge detaxation-induced deficits to justify massive spending cuts all across all areas of the federal government. All of these cuts cuts negatively impacted women more than men, because women work and live at higher risk of poverty than men do, on average. In addition, a much larger percentage of the jobs that were cut were held by women. Often women who had been terminated were then offered their jobs back on an outsourced 'contract' basis at lower rates of pay and with no pension, health care coverage, job security, or union membership available to them in their new status as 'self-employed' business

14 Auditor General, "International Taxation – Canada Revenue Agency" in *Report of the Auditor General of Canada* (Ottawa: Minister of Public Works and Government Services Canada, 2007) at Chapter 7, Introduction.

owners.

These cuts touched on all areas of federal government responsibility, from enforcement of employment equity and equal pay laws, to reductions in income security benefits and refusal to make childcare services available to women working for pay. This section provides details on how these austerity measures affected women in terms of already severe economic problems faced by women:

- lack of affordable childcare;
- persistent gender income gaps caused by failure to enforce workplace equality laws;
- inadequate unemployment insurance coverage for unemployed women; and
- the negative gender impact of Old Age income security cuts on women.

Lack of affordable childcare:

With the sole exception of Quebec, neither the federal nor any of the other provincial governments have ever established accessible and affordable childcare sufficient to enable women to hold maintain their paid work status when they have infants or young children who cannot responsibly be left alone. Because gender wage and income gaps in Canada are so intractably high, this means that 'paid work does not pay' for too many women who need childcare.

The OECD has carried out detailed aftertax analysis of how much of women's pay goes to the combination of taxes they pay on their wages plus on the cost of childcare. This calculation was done for Ontario, using average fulltime childcare and women's average fulltime earnings, for the 2012 year. Married/cohabiting women who need fulltime childcare if they are employed will spend 31% of their total earnings on childcare with just one child under the age of siz. Single parents who need fulltime childcare will spend 53% of their total earnings on childcare, again with one preschool child.[15]

Both figures include all government childcare subsidies and tax credits available to a person in that type of household.

When the taxes paid on those earnings are also taken into account, the combination of taxes on earnings plus childcare costs in Ontario in 2012 was calculated on average to cost 78% of an average women's fulltime pay. For a single parent, the total cost of taxes on earnings plus childcare comes to 94% of total earnings. Truly, women's paid work in Canada does not pay unless their earnings are very high.

As noted in the child care section (reference) of this report, Quebec is the only province in which child care is truly affordable. Quebec's provincially-funded childcare program provides subsidies that reduce the cost to women in paid work to $7.30 per day per child (2016). This program has actually paid for itself by generating more provincial and federal income tax revenues from women's increased incomes than the costs of the childcare program subsidies to governments.[16]

But deeply entrenched dislike of public programs even in Quebec has brought expansion of that program to a halt, and, as the fees have been going up (they started at $5 per day per child), many women now cannot afford that payment when working on minimum wage or on irregular or late shifts.

Canada has had the lowest level of funding for childcare programs of all the OECD countries for over a decade. Canada is one of the richest countries in the world. It chooses to use this means to prevent

15 Organisation for Economic Co-operation and Development, *Participation tax rate [PTR] on second or lone parents, by childcare costs, 2012*, (OECD: Stat, 2014).

16 Pierre Fortin, *Impact of Quebec's Universal Low Fee Childcare Program on Female Labour Force Participation, Domestic Income, and Government Budgets* (Sherbrooke, Quebec: University of Sherbrook, 2012) at 18.

women from gaining employment and financial security but refusing to provide adequate childcare resources. Women who cannot earn enough to provide their own economic security cannot earn pension credits and are dependent on other adults. This is a precarious state for women, especially when they have responsibility for young children.

Employment equity, equal pay, and pay equity:
At the federal level, employment equity, equal pay, and pay equity laws all moved backward beginning in 2009 and continuing to the present. Quebec continued to lead the provinces in all three areas of combating gender discrimination in paid work; Ontario has recently begun to review and improve its pay equity laws; the rest of the provinces, however, continued to have weak work equality laws, or had still failed to enact any legislation on some points.

Overall, this has left women in Canada with *growing* earnings gaps. As Table 4 below demonstrates, progress in closing earnings gaps for women in fulltime employment closed dramatically between 1976 and 1995. However, since 1995, it has stalled or grown.

Overall for the whole country as of 2011, the gender earnings gap for women in fulltime fullyear paid work is now larger than it was in 1995:

Government	1976	1995	2011
Canada	41%	27%	28%
Quebec	37%	26%	25%
Ontario	43%	28%	26%
Alberta	40%	30%	37%

Table 4: Fulltime fullyear gender earnings gaps, Canada, Quebec, Ontario, and Alberta, 1976, 1995, and 2011
Source: Statistics Canada, CANSIM, table 202-0407.

The federal government changes are particularly significant. Its employment and pay equity laws had been included in the Canadian Human Rights Act, in recognition of the fact that workplace equality is one of the world's oldest and most fundamental women's human rights.

As noted in the section on pay equity, the federal government has taken steps backwards, particularly with respect to pay equity.[17]

Canada is entirely capable of maintaining stellar pay equity, employment equity, and equal pay laws and regulatory regimes. The province of Quebec is internationally considered to be one of the most effective pay equity laws in the world, better even than Sweden's.[18]

But, no other Canadian jurisdiction has yet adopted the Quebec model.

Unemployment insurance gender gaps:
Since the mid-1990s, Canada has consistently reduced coverage rates and benefits for those who are unemployed. During the global financial crisis, it became quite obvious that women suffered the effects of those cuts far more than men did. As the recession intensified, women lost much more fulltime permanent employment than men did, but had to keep working sometimes multiple jobs to help meet household needs. At the same time, men benefitted from special federal programs that let

17 *Budget Implementation Act, 2009*, RSC 1985, c H-6, SC 2009, c 2, s 394.
18 Marie-Thérèse Chicha, *A comparative analysis of promoting pay equity: models and impacts* (Geneva: International Labour Office, 2006); URCOT, *Pay Equity: How to Address the Gender Pay Gap* (Melbourne, Victoria: Industrial Relations Victoria, 2005).

them receive both partial unemployment benefits from the federal government and keep working at half their fulltime pay on a part-time basis to get them through the recession. Women were even more disadvantaged rather than helped by that arrangement.

Table 5 demonstrates how gender unemployment insurance gaps increased rapidly during the recession, with women receiving much less coverage under that federal program:

Women						**Men**				
Month /year	**Oct. 2008**	**Dec. 2008**	**Feb. 2009**	**Apr. 2009**	**Jun. 2009**	**Oct. 2008**	**Dec. 2008**	**Feb. 2009**	**Apr. 2009**	**Jun. 2009**
Unemployed (#)	454.7	458.3	544.9	563.8	601.8	569.4	981.7	954.7	988	900.5
Receiving EI (#)	153.6	2014.2	244.0	256.5	236.3	217.5	360.0	561.1	570.8	434.2
Receiving EI (%)	36.0	44.6	44.8	45.5	39.3	38.2	52.8	58.8	57.8	48.2
Gender gap (in %)	2.2	8.2	14.0	12.3	9.0					

Table 5: Percentage of unemployed receiving employment benefits (EI), by sex, Oct. 2008-Jun. 2009, Canada
Source: Statistics Canada, custom tabulation; (000's) indicates thousands.

The Canadian federal budget in 2012 made further changes to the unemployment program that disadvantaged women. New funding of nearly $200 million was allocated to changing eligibility to 'best 22 weeks' instead of best 14 weeks, which reduced women's ability to access unemployment benefits. The government had found earlier than the 'best 14 weeks' test of eligibility benefited nearly twice as many women as men,[19] yet raised the eligibility test anyway.

The unemployment rules were also changed. Previously workers were required to accept all 'suitable employment,' a definition that permitted their EI benefits to be cut off only if they did not accept employment at 10% to 30% less than their previous pay.[20]

But in this new set of rules, there is literally no floor. They simply provide that a worker cannot be forced to accept pay less than the minimum wage. However, with women's average wages being so much closer to that level all through their lives than men's, and with women's greater structural involvement in part-time, seasonal, temporary, and contract work, they are already at greater risk than men of being classed as occasional or frequent EI claimants, and disentitled.

The 'working while on EI' program was extended during the recession, and workers became subject to the obligation to move to 'high demand' regions of the country to qualify for EI, mobility that is much less feasible for women, especially when – normally – their spouses/cohabitants are earning higher salaries or receiving higher benefits in their present locations. The government instituted tax credits and allocated infrastructure funds to support EI training programs during the recession, even though this support disproportionately excluded women, Aboriginal, and immigrant workers.[21]

19 See Lahey, *Gendered Budget 2012*, at 34, for details of this change; the report from which this account was drawn has been removed from the Government of Canada website [Employment and Social Development Canada, "Small Weeks Provision" (2010), online: <http://www.esdc.gc.ca/eng/employment/ei/reports/eimar_2010/Chapter5_3_2.shtml>].

20 See Lahey, *Gendered Budget 2012*, at 36, for details of this change; the report detailing this policy and its impact has been removed from the Government of Canada website [Employment and Social Development Canada, "Defining 'Suitable Work' and 'Reasonable Job Search'" and "Annex A: Suitable Employment," online: <http://www.hrsdc.gc.ca/eng/employment/ei/BIA/defining.shtm>].

21 See Budget 2012, Table 3.3, for a summary of the specific programs, online: <http://www.budget.gc.ca/2012/plan/pdf/Plan2012-eng.pdf>.

Age 65/66 OAS/GIS pension cuts beginning in 2013:

Budget 2012 cancelled Old Age Security (OAS) universal pension rights for anyone age 65 or 66, beginning in 2023. This change will also block access to the other components of the OAS system for those same ages -- the Guaranteed Income Supplement (GIS), which is the old age version of social assistance for those living in poverty, and the spousal survivor allowance (SPA)and survivor benefits for spouses/cohabitants who would live in poverty if their partner died.

The full impact of all those cuts has not yet been tabulated definitively. However, some types of cuts can be quantified more easily than others -- such as the decision to prospectively cut age 65/66 GIS and OAS benefits from the income security system.

The substantial majority of these cuts will be borne by women. Although women who are between ages 51 and 57 in 2015 will lose some portion of their age 65/66 GIS and OAS, women who are age 51 or younger will face loss of the full income safety net when they reach age 65. Regardless of their health, care responsibilities, or incomes, they will have to continue to depend on social assistance -- which generally provides lower benefits -- until they reach age 67.

These are the same women who will be least likely to have earned enough to save enough to replace those two years of benefits, which have a combined value at the present time of nearly $20,000 per year -- not above all poverty lines, but above some.

The spending cuts carried out in successive waves of 'austerity' budgets have replicated these types of gender effects in countless programs. They have been made so fast and with so little impact analysis of any sort, let alone gender impact analysis, that their full impact has yet to be fully documented.

Recommendations

The Government of Canada should:

- **Execute the federal national plan to implement CEDAW and the *Platform for Action* that has been in place since 1995, so that tax policy supports and enhances women's equality;**
- **Reverse the tax policies and laws in place for the past ten years that have followed a systematic program of continuous tax cuts, tax expenditures, and attendant program cuts that benefit better off Canadians and men, particularly old age pensions;**
- **Restore full progressivity to the graduated income tax rates in both federal and provincial/territorial tax laws, together with realistic low-income exemptions;**
- **Restore full progressivity to corporate income tax rates and tax corporations as separate entities;**
- **Reduce reliance on flat-rated consumption and commodity taxes, including GST/HST and ad hoc taxes; and**
- **Restore the integrity of all Canadian tax bases by eliminating tax expenditures, special credits, and 'boutique' tax items that largely benefit the wealthy and reduce revenue.**

IV. Non-Discrimination and Equality between Women and Men (Articles 2 and 3)

1) *Women with Disabilities*

Women with disabilities continue to disproportionately suffer discrimination in the workplace, live in poverty, and be subjected to violence when compared to men with disabilities and women and men without disabilities. Canada recognizes the vulnerable position of women with disabilities and has made an international commitment to recognize and protect the rights of persons with disabilities. Canada ratified the *Convention on the Rights of Persons with Disabilities* ("*CRPD*") in 2010.[1] Federal, provincial and territorial governments have made varying commitments to implement the *CRPD*. However, the Government of Canada has not officially designated a national independent mechanism to monitor its implementation and has not signed the *CRPD Optional Protocol*.[2] More recently, the newly elected federal government has pledged to lead an engagement process with provinces, territories, municipalities to implement a *Canadians with Disabilities Act* that will aim to provide clear, strong and enforceable standards to address discrimination against persons with disabilities.[3]

This Committee has stressed the need for governments to implement policy and programming that responds to the particular needs of people with disabilities to ensure that their economic, social and cultural rights are realized in their everyday lives.[4] The Committee has also emphasized the intersecting, compounding and cumulative discrimination suffered by women with disabilities and the need for governments to act with high priority in respecting and protecting the rights of women with disabilities.[5]

(a) Access to employment opportunities (Articles 2, 6, 7) (Issue 10)

In Canada in 2012 approximately 3.6 million people, 13.7%, report having a disability with more women than men in every age group reporting a disability.[6]

The labour market participation rate of people with disabilities in Canada aged 25 to 54 is 66% compared to people without disabilities in this age group (88.2%).[7]

While the representation of people with disabilities in the workforce has increased from 1.6% in 1987 to 2.6% in 2012, this amounts to only about half of their 4.9% labour market availability (LMA).[8]

---

1 Convention on the Rights of Persons with Disabilities, A Res 106, UNCRPD, 61st Sess, 76th Plen Mtg, Supp No 49 (2007).

2 UNCRPD, Committee on the Rights of Persons with Disabilities, *Consideration of reports submitted by States parties under article 35 of the Convention: Initial reports of States parties due in 2012*, UN Doc. C/CAN/1, July 2015; Canadian Human Rights Commission, "The Rights of Persons with Disabilities to Equatliy and Non-Discrimination: Monitoring the Implementation of the UN Conventionon the rights of Persons with Disabilities" (December 2015) at 2, online: <http://www.chrc-ccdp.gc.ca/sites/default/files/chrc_un_crpd_report_eng.pdf>.

3 Office of the Prime Minister of Canada, "Minister of Sport and Persons with Disabilities, Mandate Letter" (November 2015), online: <http://pm.gc.ca/eng/minister-sport-and-persons-disabilities-mandate-letter>; see also Canadian Disability Policy Alliance, A Canadians with Disabilities Act? (Kingson, ON: Queen's University, Centre for Health Services & Policy Research, 2010) (loose-leaf 2010 supplement).

4 Committee on Economic, Social and Cultural Rights, *General Comment No 5: Persons with Disabilities*, UNESCR, 11th Sess, Supp, UN E/1995/22 (1994), 1 Jan 1995, at para 8, online: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4760&Lang=en>.

5 *Ibid* at para 19.

6 Employment and Social Development Canada, "Canadians in Context – People with Disabilities" (24 October 2015), online: <http://mieux-etre.edsc.gc.ca/misme-iowb/indicator.jsp?&indicatorid=40> (There is no universal definition of disability across studies; this particular study considers pain, flexibility, mobility, mental/psychological, dexterity, hearing, seeing, learning, memory, developmental and unknown; "persons with activity limitations" is also a Statistics Canada indicator that encompasses people with disabilities; also see Vecova, *Violence Against Women with Disabilities – Violence Prevention Review*, February 2011, at 4, online: <http://www.canadianwomen.org/sites/canadianwomen.org/files/PDF%20-%20VP%20Resources%20-%20Vecova_CWF_%20Women%20with%20Disabilities_%202011.pdf>) [Vevcova]

7 Human Resources and Skills Development Canada, "Disability in Canada: A 2006 Profile", ISSD-042-02-11, 2011, (Gatineau, QC: HRSDC, 2 November 2011) at 26, online: <http://www.esdc.gc.ca/eng/disability/arc/disability_2006.pdf> [Disability in Canada].

8 Employment and Social Development Canada, Employment Equity Act: Annual Report 2013, LT-185-03-14, (Ottawa, ON: ESDC, 2013),

Progress in equitable representation in the workplace is reflected in the narrowing of the gap between workplace representation and a group's LMA.[9] For people with disabilities, some limited progress has been made through government initiatives provided for in the *Employment Equity Act,* however, there are many people with disabilities who are available to work, yet unemployed. The *Employment Equity Act* reporting data does not provide gender-disaggregated data that tracks women's with disabilities representation in the workplace when compared to their LMA.

Compared to women and racialised minorities, people with disabilities and Indigenous peoples have plateaued in their overall representation in the workplace when compared to their LMA.[10] There is no sector in Canada that has achieved workplace representation equal to the LMA of persons with disabilities.[11]

Women with disabilities are more likely to not be in the workforce, face unemployment, suffer chronic unemployment, want to work full-time, and have lower incomes than men with disabilities and men and women without disabilities:

- Men with mild, moderate and severe disabilities are more likely to be in the labour force than women with mild, moderate and severe disabilities.[12] Working age women with mild and moderate disabilities are more likely to be unemployed than working age men with mild and moderate disabilities,[13] and to face chronic unemployment when compared to men with disabilities and women and men without disabilities.[14]
- Women with disabilities who work part time are more likely to want to work full time when compared to women and men without disabilities, as well as men with disabilities.[15]
- Women with disabilities continue to earn less than men with disabilities and women and men without disabilities. Working age adults with disabilities have an average income that is 73.4% of the average income for a working age adult without a disability in Canada.[16] Working age women with disabilities earn on average less than half the income of working age men with disabilities.[17]
- The age of men with disabilities in a high salary range ($60,000 or more a year) increased from 472% to 28.9% between 2011 and 2012; for women with disabilities, thepercentage increased from 29% to 32.5%.[18] In 2012, men with disabilities were more likely (48.9%) to be in the high salary range, whereas women with disabilities were more likely (43.3%) to be in the low salary range ($50,000 and below).[19]

While there are more women with disabilities in the workforce today, they continue to be underrepresented and underpaid when compared to men with disabilities and men and women without disabilities.

(b) Poverty (Articles 2, 3 and 11) (Issues 19 and 21)

In the Committee's Concluding Observations to Canada in 2006, it noted with concern the high

---

online: <http://www.labour.gc.ca/eng/standards_equity/eq/pubs_eq/annual_reports/2013/docs/eereport2013_en.pdf>.

9 *Ibid* at 1.
10 *Ibid* at 3.
11 *Ibid* at 5.
12 Vecova, *supra* note 6 at 27.
13 *Ibid* at 28.
14 Canadian Human Rights Commission, *Report on Equality Rights of People with Disabilities*, Cat. No. HR4-20/2012E-PDF (Minister of Public Works and Government Services, 2012) at 48, online: <http://www.chrc-ccdp.ca/sites/default/files/rerpd_rdepad-eng.pdf>.
15 *Ibid* at 45-7.
16 Vecova, *supra* note 6 at 30.
17 *Ibid*.
18 Disability in Canada, *supra* note 7 at 11.
19 *Ibid*.

poverty rates of people with disabilities.[20] The Committee recommended to Canada that Canadian governments address homelessness and inadequate housing, in part by taking steps to provide adequate support services for people with disabilities.[21]

Women with disabilities are more likely to spend over 50% of their before-tax income on housing than men with disabilities.[22] They are also more likely to need accessibility features in their homes.[23] There is little indication that Canadian governments are providing housing support services to women with disabilities in a way that is allowing women to exit homelessness and access affordable housing.

Women with disabilities have less money and limited access to affordable housing in Canada. The median income for women with disabilities is less than women and men without disabilities,[24] as well as less than men with disabilities. The median income for women with disabilities is lower than men with disabilities in every income bracket quintile except the lowest 20%;[25] it is substantially lower in the 65 years and more age bracket—making elderly women with disabilities in Canada the most impoverished group of people with disabilities in the country.[26] Women with disabilities are more likely to live in poverty[27] and be single parents when compared to men with disabilities.

Women with disabilities are more likely to live with persistent low incomes than women without disabilities.[28] They are also more likely to rely on government transfers as a major source of income when compared to men with disabilities and men and women without disabilities.[29]

The governments of Canada have initiated different programs to respond to the particular needs for persons with disabilities; however, there remains no affordable housing strategy for homeless Canadians living in poverty and no housing strategy specific to the needs of persons with disabilities. While Status of Women Canada provides funding to support women's programming, Status of Women Canada does not have a topic or initiative specific to women with disabilities and there is no clear indication how the Ministry is taking active steps to assist women with disabilities exit poverty.

(c) Violence (Articles 2, 3, 11, 12)

Women with disabilities are subject to many forms of violence—physical, emotional, verbal, sexual, racist, psychological—and are in many cases unable to escape the violence.[30]

- Women with disabilities report experiencing emotional or financial abuse at a proportion that is 11.8% higher than women without disabilities and at a rate higher than men with disabilities (6.7%).[31]
- Persons with disabilities report physical and sexual assault at a rate double that of persons

20 Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights Canada, Canada*, UN Doc E/C.12/CAN/CO/4-5 (22 May 2006) at para 15.
21 *Ibid* at para 62.
22 Statistics Canada, *A profile of persons with disabilities among Canadians aged 15 years or older, 2012*, by Rubab Arim, Catalogue No. 89-654-X (13 March 2015) at 78, online: <http://www.statcan.gc.ca/pub/89-654-x/89-654-x2015001-eng.htm>).
23 *Ibid* at 78-9.
24 Vecova, *supra* note 6 at 22.
25 *Ibid* at 25.
26 *Ibid*.
27 *Report on Equality Rights, supra* note 14 at 20.
28 *Ibid* at 31.
29 *Ibid* at 33; and Statistics Canada, *Women in Canada: A Gender-based Statistical Report*, Catalogue No. 89-503-X (Ottawa: Statics Canada, July 2011) at 374, online: <http://www.statcan.gc.ca/pub/89-503-x/89-503-x2010001-eng.pdf>.
30 DAWN-RAH Canada, *Women with Disabilities and Abuse: Access to Supports Report on the Pan-Canadian Focus Groups* (Montréal: Canadian Womens' Foundation, March 2011), online: <http://www.canadianwomen.org/sites/canadianwomen.org/files/PDF%20-%20VP%20Resource%20-%20DAWN-RAFH%20Canada%20-%20Focus%20Groups%20WWD_201.pdf> [*Women with Disabilities and Abuse*].
31 Vecova, *supra* note 6 at 100.

without disabilities.[32] Women with disabilities report physical and/or sexual assault at a rate that is 4.4% higher than women without disabilities[33] and assault at a rate that is 6.1% higher than women without disabilities.[34]

- Compared to men with disabilities, 13.2% more women with disabilities report feeling vulnerable to crime[35] and 20.8% more women with disabilities report feeling unsafe walking alone after dark.[36]
- Persons with disabilities are more likely to be victims of multiple incidents of violence.[37] 51% of women with disabilities reported multiple victimizations in the twelve months preceding the Statistics Canada General Social Survey as opposed to 36% of women without disabilities.[38] The reported rate of multiple victimizations in this instance did not differ between men with and without disabilities.[39]
- Approximately two thirds (65%) of people with disabilities know the people who inflict violence upon them;[40] and among those persons with disabilities who reported spousal violence, they were also more likely to be injured as result of violence, need medical attention, be fearful for their lives, and not attend daily activities.[41]
    - Women with disabilities are subject to violence from intimate partners and spouses, as well as from other family members and caregivers, including social workers, health care providers, doctors, nurses, and staff of the residences where women with disabilities may reside.[42]
- Persons with disabilities are more likely to report incidents of violence against them (30%) compared to persons without disabilities (19%); incidents where a man with disabilities is the victim are more likely to be reported (49%) than when a woman with disabilities is the victim (30%).[43] Many people with disabilities do not report incidents of violence that are perceived to be 'minor' (3%) when compared to people without disabilities who do report such incidents (15%). Thus, while persons with disabilities are reporting incidents, they are very likely underreporting because of their perceived normalization of minor incidents of violence inflicted upon them when compared to persons without disabilities.

Women with disabilities are more vulnerable to violence because of their economic insecurity and social marginalization. This is compounded by the lack of services and accessibility to services that support women with disabilities to identify, report and exit situations of violence.

Vecova, a disabilities services and research organization, has outlined key barriers that perpetuate the cycle of violence inflicted upon women with disabilities.[44] These barriers include:

- **Lack of disclosure of the abuse**: women with disabilities are less likely to report abuse than men with disabilities. Possible explanations for this include women's perceived losses and fears upon disclosing abuse, including loss of financial security, loss of housing or welfare benefits, fear of not being believed or considered credible by the police, belief that there are no

32 Statistics Canada, *Criminalization and Health: A Profile of Victimization Among Persons with Activity Limitations or Other Health Problems*, by Samuel Perreault, Catalogue No. 85F0033M-No.21, May 2009, at 8, online: <http://www.statcan.gc.ca/pub/85f0033m/85f0033m2009021-eng.pdf> [*Criminalization and Health*].
33 Vecova, *supra* note 6 at 101.
34 *Ibid* at 103.
35 *Ibid* at 105.
36 *Ibid* at 106.
37 *Criminalization and Health, supra* note 33 at 10.
38 *Ibid*.
39 *Ibid*.
40 *Ibid* at 6.
41 *Ibid* at 11.
42 StatsCan*, supra* note 30 at 4.
43 Vecova, *supra* note 6 at 10.
44 *Ibid* at 10-3; *Women with Disabilities and Abuse, supra* note 30.

intervention services, inability to contact intervention services, barriers to accessing transportation, and fear of being institutionalized.

- **Lack of access to justice**: women with disabilities report greater dissatisfaction with police response to violence. Their claims of abuse also may be filtered out by the criminal justice system because of the difficulty of prosecuting cases where a victim may be unable to articulate her abuse in a way that is perceived as credible by the trier of fact.
- **Lack of community supports and networks of women with disabilities affected by violence**: there are a dearth of resources to support community services that focus on establishing and maintaining networks of women with disabilities who are affected by violence. Strong civil society networks for women with disabilities who are affected by violence serve as a way to break down the social isolation of women with disabilities and provide meaningful ways for them to access community services with the support of a network of women with shared lived experiences.
    - **Lack of shelters with supports for women with disabilities**: 10% of women staying in shelters report having a disability; however, only 75% of shelters report having a wheelchair accessible entrance, 66% of shelters provided wheelchair accessible rooms and bathrooms, 17% of shelters provide sign language, and 5% offer braille, reading materials.[45] The general lack of accessibility features in shelters across Canada prevents many women with disabilities from being able to use shelter services.
- **Lack of health care intervention**: health care professionals can play an important role in conducting routine medical screenings of women with disabilities, identifying abuse and providing patients with the resources to report it; however, at present health care professionals do not receive comprehensive training in this type of screening.
- **Lack of sensitivity training**: there is a general lack of sensitivity training for professionals who work with women with disabilities affected by violence.
- **Lack of violence prevention training**: many women with disabilities lack basic information about healthy relationships and how to identify abusive relationships.
- **Lack of rights education and self-advocacy**: women with disabilities do not have access to services that educate them about their rights and provide them with the skills to identify and communicate when they are subject to rights violations.
- **Lack of funding to enhance the accessibility of intervention services**: organizations that provide social support services to women with disabilities affected by violence have been subject to public funding cuts and in most cases do not have access to stable, long-term funding.

Recommendations

The Government of Canada should:

- **Sign the *CRPD Optional Protocol*;**
- **Ensure that the national independent body responsible for monitoring the implementation of the *CRPD* collects data disaggregated according to gender, with regard to both absolute numbers and percentages, so that interested users can easily obtain information on the situation of women with disabilities across Canada;**
- **Ensure that Canada's response to Carter v Canada, the Supreme Court of Canada decision on assisted suicide, provides adequate safeguards to protect women with disabilities and consider their unique and intersecting vulnerabilities;**
- **Enact pay equity measures that support women with disabilities to attain equal pay for equal work;**
- **Develop and implement a national housing strategy that includes affordable, accessible**

45 *Women with Disabilities and Abuse, supra* note 30 at 8.

housing for persons with disabilities;

- **Allocate long-term funding to support social service programming for women with disabilities;**
- **Provide a comprehensive list of agencies that service women with disabilities, identify regional and service gaps;**
- **Create a network for these agencies so that they are better equipped to coordinate services for women with disabilities and take action to intervene when a woman with disabilities in the community presents as being a victim of violence;**
- **Provide educational opportunities for women with disabilities that includes human rights and self-advocacy training;**
- **Provide funding to support social networks of women with disabilities to create safe spaces for women with disabilities to come together and share their experiences;**
- **Require that agencies working on ending violence against women allocate public monies to raising awareness about the pervasive violence against women with disabilities; and**
- **Increase funding to women's shelters and earmark accessibility funds for shelters.**

2) *Indigenous Women*

(a) Matrimonial Real Property

Although the federal government claims to have addressed injustices experienced by First Nations women with regard to matrimonial property and rights, this has not happened. Legislative changes have been of piecemeal, patchwork, and of inadequate effect, as attested to by Indigenous women advocates and lawyers.

The *Family Homes on Reserves and Matrimonial Interests or Rights Act* [*FHRMIRA*] came into force on December 16, 2013.[1]The first part of *FHRMIRA* allowed a transition period of one year in which First Nations could enact their own laws before the provisional federal rules applied. After December 16, 2014, if a First Nation did not have their own law, then the provisional federal rules applied to the First Nation, with some exceptions,[2] until and unless a First Nation enacts their own community-specific matrimonial real property law under sections 7-11.

The exemptions have worked to create the uneven application of *FHRMIRA* from its implementation. There are First Nations without their own laws in effect to whom *FHRMIRA* does not presently apply; members and non-members of these Nations remain without specific rights or protections upon the breakdown of matrimonial or common-law relationships in these communities.

FHRMIRA should have created standards at law for resolving the rights and protections available to married and common-law spouses living on reserves when there is a breakdown of their relationships. However, inequities exist even within *FHRMIRA*; for example, the same rights and protections set out in communities where there are Certificates of Possession or Certificates of Occupation are not available to First Nations members living on custom allotted lands.

1 S.C. 2013, c. 20 [FHRMIRA].

2 There are exceptions if a First Nation was on the schedule to the *First Nations Land Management Act* [*FNLMA*] before *FHRMIRA* received Royal Assent on June 19, 2013, or for First Nations with self-government agreements. Nations with a land code under the *FNLMA* had a 12-month period to enact the rules and procedures dealing with matrimonial rights or interests in reserve land relating to their land code, while those without a code have a three-year exemption in which to enact a land code and address issues related to matrimonial rights or interests in reserve land under *FNLMA*. First Nations with reserve lands and a self-government agreement in effect, who also have jurisdiction over land management, and who have acted on that jurisdiction, are exempt from *FHRMIRA*. These Nations may ask the Minister under section 12 of *FHRMIRA* to make a declaration that the provisional federal rules apply to them – none have.

Moreover, allowing First Nations to opt-out of *FHRMIRA* by writing their own laws has the deleterious effect of creating uneven application of matrimonial property laws and emergency protection measures most often needed by women, and their children, across First Nations reserve communities in Canada.

There are no specific guidelines or minimum standards of protection for women or children which must be considered in laws enacted by First Nations, nor are there consistent definitions under law to be applied, including defining the length of time required for the establishment of common-law relationships (set out in various enacted First Nations laws as between 2-10 years, and in some cases as only between a man and a woman). And, while *FHRMIRA* allows that a court of competent jurisdiction may make rulings about emergency protection orders and as to the occupancy of the family home, some First Nations laws refer decision-making powers to a First Nations tribunal or court, and a few do away with any external court jurisdiction.

As a result, *FHRMIRA* does not necessarily address the gendered inequities faced by women living on reserves or create a standard at law for married and common-law spouses living on reserves.

(b) Sex discrimination in the *Indian Act*

In 2006, the Committee recommended that Canada "in consultation with First Nations and including Aboriginal women's groups, adopt measures to combat discrimination against First Nations women and their children in matters relating to Indian status, band membership and matrimonial property".[3] The federal government did legislate on the issues of matrimonial property, as addressed above, and Indian status. Problems with these legislative approaches, however, persist.

In response to successive court decisions in the case of *McIvor* v. *Canada*,[4] finding that the 1985 *Indian Act*[5] is inconsistent with the sex equality guarantees of the Canadian *Charter of Rights and Freedoms*, [6] in 2010, Parliament passed Bill C-3: *An Act to promote gender equity in Indian registration.*[7]

However, Bill C-3, which came into force in January 2011,[8] has not eliminated the sex discrimination in the *Indian Act*.

Specifically, despite many years of protest by Indigenous women, and the 1981 decision of the UNHRC in *Lovelace* v. *Canada,*[9] under Bill C-3 the following groups are still excluded, based on the ground of sex:[10]

- Aboriginal grandchildren born prior to September 4, 1951, who are descendants of status women who married non-status men, which is commonly referred to as "marrying out" (in

3 Committee on Economic, Social and Cultural Rights, C*oncluding Observations of the Committee on Economic, Social and Cultural Rights*, UN Doc. E/C.12/CAN/CO/4-5, 22 May 2006, at para 45 [*CESCR 2006 Concluding Observations*].

4 *McIvor v Canada*, 2009 BCCA 153, 91 BCLR (4th) 1, online: CanLII <http://www.canlii.org/en/bc/bcca/doc/2009/2009bcca153/2009bcca153.html?autocompleteStr=mcivor%20v%20&autocompletePos=3> [*McIvor*].

5 *Indian Act*, RSC 1985, c-15, online: <http://laws-lois.justice.gc.ca/eng/acts/i-5/> (see s 6).

6 *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act 1982, being Scheduled B to the Canada Act 1982 (UK), 1982, c 11 at art 15.

7 Canada, Bill C-3, *An Act to promote gender equity in Indian registration by responding to the Court of Appeal for British Columbia decision McIvor v Canada (Registrar of Indian and Northern Affairs)*, 3rd Sess, 40th Parl, 2010 (royally assented 15 December 2010, came into force 1 January 2011), online: <http://www.parl.gc.ca/content/hoc/Bills/403/Government/C-3/C-3_4/C-3_4.PDF>.

8 *Ibid*.

9 *Lovelace v Canada*, Communication No R6/24, UNHRC, 1981, Supp No 40, UN Doc A/36/40.

10 Poverty and Human Rights Centre, *Sharon McIvor and Jacob Grismer v Canada, Petitioner Comments in response to State Party's Submission on the Admissibility and Merits of the Applicant's Petition to the Human Rights Committee*, Communication No 2020/2010, UNHCR, 2011, at ii, iii, online: Poverty and Human Rights Centre <http://povertyandhumanrights.org/wp-content/uploads/2011/08/Mcivor-v.-Canada-Petitioner-Comments-December-5-2011.pdf> [Sharon McIvor, *Petitioner Comments*].

contrast, comparable grandchildren of status men are eligible for status);

- Aboriginal grandchildren, born prior to April 17, 1985, to status women who parented in common-law unions with non-status men (in contrast, comparable grandchildren of status men are eligible for status); and
- Aboriginal female children of male Indians, born prior to April 17, 1985, referred to in the legislation as "illegitimate" (in contrast, male "illegitimate" children of status men are eligible for status).

In addition, Bill C-3 carries forward sex discrimination by continuing to assign people to different categories of status based on their sex or the sex of their forebear. Bill C-3 relegates Aboriginal women, who were victims of sex discrimination under former versions of the *Indian Act*, and their descendants to inferior categories of status. Women like Sharon McIvor, who was penalized by the infamous "marrying out" rule, which was at issue in *Lovelace*, can never have full Indian status.[11] Consigning the women to the inferior "s. 6(1)(c)" status category devalues them, and it reduces the quality of the status they are able to transmit to their descendants.[12]

The current scheme newly grants non-transmissible s. 6(2) status to the grandchildren born prior to April 17, 1985, whose grandmothers are Aboriginal women who married non-status men and bore children who married non-status partners.[13] In contrast, grandchildren born prior to April 17, 1985, to status men who married non-status women and whose children married out are eligible for full 6(1)(a) status.[14] This consigning of the grandchildren of women who married non-status men to the non-transmissible s. 6(2) status category will have exclusionary, discriminatory effects on generation after generation, because of the sex of their Aboriginal ancestor.

As a result of Bill C-3's deficiencies, there is a petition pending before the UN Human Rights Committee (*McIvor* v. *Canada* (Communication No. 2020/2010), which relies on Articles 26, 2(1), 3 and 27, and 2(3)(a), of the *ICCPR*.[15]

An additional manifestation of *Indian Act* sex discrimination is that there are children of Indigenous women who have recovered status as a result of amendments to the 1985 *Indian Act,* who still have not been able to secure band membership.[16] That remaining sex discrimination was not addressed by Bill C-3.

Also, in order for the children of an Indigenous woman to be recognized as having full status, the administrative policy is that the identity of the father must be declared and the signatures of both parents must be presented, otherwise it will automatically be assumed that the father is non-Indian.[17] That remaining sex discrimination was not addressed by Bill C-3.

A recent decision of the Inter-American Commission on Human Rights: *Missing and Murdered* Indigenous *Women in British Columbia*, finds that:

---

11 *Ibid* at iii.
12 *Ibid.*
13 *Ibid.*
14 *Ibid.*
15 *Ibid.*
16 *Ibid* at 35, para 97.
17 Native Women's Association of Canada, Aboriginal *Women and Unstated Paternity An Issue Paper Prepared for the National* Aboriginal *Women's Summit, 20-22 June 2007* (Ottawa: NWAC, 2007) at 1, online: <http://www.lynngehl.com/uploads/5/0/0/4/5004954/nwac-paternity.pdf> (see also Human Rights Council, *Report of the Special Rapporteur on the rights of* Indigenous *peoples, James Anaya, The situation of* Indigenous *peoples in Canada*, UN Doc A/HRC/27/52/Add.2 (7 May 2014) at para 55, online: <http://unsr.jamesanaya.org/docs/countries/2014-report-canada-a-hrc-27-52-add-2-en.pdf> [Human Rights Council, *Report of the Special Rapporteur*]; Aboriginal Affairs and Northern Development Canada, "Unstated Paternity on Birth Certificate: Quick Facts on documentation required" (12 April 2012), online: AANDC <http://www.aadnc-aandc.gc.ca/eng/1334234251919/1334234281533>).

- in addressing only particular subsets of Indigenous women who face discrimination, the *Indian Act* as amended by Bill C-3 fails to fully address remaining concerns about gender equality;[18] and
- Indigenous women face multiple challenges with respect to securing status for themselves and their children, and in some cases the presence of a second, intermediate status classification can rise to the level of cultural and spiritual violence against Indigenous women, since it creates a perception that certain subsets of Indigenous women are less purely Indigenous than those with "full" status. This can have severe negative social and psychological effects on the women in question, even aside from the consequences for a woman's descendants.[19]

In addition, the decision of the IACHR decision links *Indian Act* sex discrimination to the murders and disappearances of Indigenous women, finding:

- with regard to the causes of high levels of violence against Indigenous women, that historical *Indian Act* sex discrimination is a root cause of high levels of violence against Indigenous women and the existing vulnerabilities that make Indigenous women more susceptible to violence;[20] and
- with regard to the State's international obligations, that addressing violence against women is not sufficient unless the underlying factors of discrimination that originate and exacerbate the violence are also comprehensively addressed.[21]

On March 6, 2015, the UN Committee on the Elimination of Discrimination Against Women issued a decision in an Article 8 Inquiry with regard to missing and murdered Indigenous women in Canada: *Report of the inquiry concerning Canada of the Committee of the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.*

This decision of the CEDAW echoes the analysis of the IACHR and recommends that:

> *Canada amend the Indian Act to eliminate discrimination against women with respect to the transmission of Indian status and in particular to ensure that* Aboriginal *women enjoy the same rights as men to transmit status to children and grandchildren, regardless of whether their* Aboriginal *ancestor is a woman, and remove administrative impediments to ensure effective registration as a Status Indian for* Aboriginal *women and their children, regardless whether or not the father has recognized the child.*[22]

Most recently, on August 12, 2015, the UN Human Rights Committee released its Concluding Observations and included a recommendation to Canada that similarly echoes the IACHR analysis and CEDAW decision:

> *The State party should speed up the application of the 2011 Gender Equity in Indian Registration Act and remove all remaining discriminatory effects of the Indian Act that affect [I]ndigenous women and their*

18 *Missing and Murdered* Indigenous *Women in British Columbia,* Canada, Inter-Am Ct HR OEA/Ser.L/V/II. Doc.30/14, (21 December 2014), at para 68, online: OAS <http://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf> [IACHR, *Missing and Murdered* Indigenous *Women in British Columbia*].

19 *Ibid* at para 69.

20 *Ibid* at paras 93, 129.

21 *Ibid* at para 306.

22 Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc CEDAW/C/OP.8/CAN/1 (6 March 2015) at 51, para X(C)(v), online: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15656&LangID=E> .

descendants, so that they enjoy all rights on an equal footing with men.[23]

Recommendations
The Government of Canada should:

- **Immediately ensure that s. 6(1)(a) of the status registration regime, introduced by the 1985 *Indian Act*, and re-enacted by the *Gender Equity in Indian Registration Act* (Bill C-3), is interpreted or amended so as to entitle to registration under s. 6(1)(a) those persons who were previously not entitled to be registered under s. 6(1)(a) solely as a result of the preferential treatment accorded to Indian men over Indian women born prior to April 17, 1985, and to patrilineal descendants over matrilineal descendants, born prior to April 17, 1985;**
- **Implement the CEDAW and Human Rights Committee recommendations; and**
- **Work with First Nation's women's organizations to eliminate any other sex discrimination in access to recognition of status under the *Indian Act*.**

(c) Violence against Indigenous Women

Murders and Disappearances of Indigenous Women and Girls

Violence against Indigenous women and girls in Canada is a problem of massive proportions. In May, 2014 the Royal Canadian Mounted Police reported that for Canada as a whole they had counted 1,181 missing and murdered Indigenous women over a thirty year period. This number makes Indigenous women about 16% of those murdered during this period while they are only about 4% of the population.

Two new reports from Statistics Canada show that Indigenous women are 3.5 times more likely to be raped,[24] and 6 times more likely to be murdered than non-Indigenous women.[25]

Social and Economic Disadvantage

Aboriginal women and girls are one of the most socially and economically disadvantaged groups in Canada, and many of their disadvantages are rooted in the history and modern day effects of colonization.

Indigenous women face severe economic and social hardship, including high rates of poverty and unemployment,[26] lower educational attainment, poor health, lack of access to clean water, and overcrowded, substandard housing. Indigenous women and girls face discrimination on multiple fronts: as women in their home communities due to the patriarchal legacy of colonization, as women in mainstream society, and as Indigenous persons in mainstream society.[27] Additionally, a disproportionate number of the most vulnerable street prostituted women are Indigenous, and they

23 Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, UN Doc CCPR/C/CAN/CO/6 (13 August 2015) at para 17, online: OHCHR <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCAN%2fCO%2f6&Lang=en> [*HRC 2015 Concluding observations*].

24 Juristat, Samuel Perrault, *Criminal victimization in Canada, 2014* at 17, online: <http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14241-eng.pdf>.

25 Statistics Canada, *The Daily, November 25, 2015*, Homicide in Canada 2014 at 3, online: <http://www.statcan.gc.ca/daily-quotidien/151125/dq151125a-eng.pdf>.

26 Canada, Ministry of Aboriginal Affairs and Northern Development, *Aboriginal Women in Canada: A Statistical Profile from the 2006 Census* (2012), at 59, online: AADNC <https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/ai_rs_pubs_ex_abwch_pdf_1333374752380_eng.pdf> (Aboriginal women in Canada are twice as likely to live in poverty than non-Aboriginal women) [Aboriginal Women in Canada].

27 The B.C. CEDAW Group, *Inaction and Non-compliance: British Columbia's Approach to Women's Inequality* (September 2008) at 10, online: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CEDAWCanadaBC2008.pdf>.

struggle with addiction, homelessness, and chronic, often life-threatening, health problems.[28] Engagement in prostitution is a reflection of the overall economic and social marginalization faced by Indigenous women and girls, and it further increases levels of vulnerability to coercion, abuse and violence.

Commentary by United Nations Human Rights Bodies

Since 2006 this human rights crisis has been commented on by United Nations human rights bodies and Canada has been repeatedly urged to take action to address it.

The Human Rights Committee

In its 2006 Concluding Observations, the Human Rights Committee commented on violence against Indigenous women and girls, stating its concern that Indigenous women are more likely to experience a violent death than other Canadian women.[29] The Committee specifically highlighted the "lack of precise and updated statistical data on violence against Aboriginal women", observed that the root causes of the violence include the social and economic marginalization of Indigenous women, and noted "the reported failure of police forces to recognize and respond adequately to the specific threats" of violence.[30]

The Committee recommended to Canada in 2006:

> The State party should gather accurate statistical data throughout the country on violence against Aboriginal women, fully address the root causes of this phenomenon, including the economic and social marginalization of Aboriginal women, and ensure their effective access to the justice system. The State party should also ensure that prompt and adequate response is provided by the police in such cases, through training and regulations.[31]

In its 2015 Concluding Observations, the Human Rights Committee reiterated its concern and recommended to Canada:

> The State party should, as a matter of priority, (a) address the issue of murdered and missing Indigenous women and girls by conducting a national inquiry, as called for by the Committee on the Elimination of Discrimination Against Women, in consultation with Indigenous women's organizations and families of the victims; (b) review its legislation at the federal, provincial and territorial levels, and coordinate police responses across the country, with a view to preventing the occurrence of such murders and disappearances; (c) investigate, prosecute and punish the perpetrators and provide reparation to victims; and (d) address the root causes of violence against Indigenous women and girls.[32]

Other UN Treaty Bodies

The Committees against Torture,[33] on the Elimination of Racial Discrimination[34] and on the Rights of

---

28 *Ibid* at 29.
29 Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant Concluding observations of the Human Rights Committe*e, CCPR/C/CAN/CO/5 (20 April 2006) at para 23 [HRC, *2006 Concluding observations*].
30 *Ibid*.
31 *Ibid*.
32 *HRC 2015 Concludign observations, supra* note 23 at para 9.
33 Committee against Torture, *Concluding observations of the Committee against Torture, Canada*, UN Doc CAT/C/CAN/CO/6 (25 June 2012) at para 20, online: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/CAN/CO/6&Lang=En>.
34 Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination, Canada*, UN Doc CERD/C/CAN/CO/19-20 (4 April 2012) at para 17, online:

the Child[35] made recommendations in their most recent concluding observations of Canada regarding the situation of violence against Indigenous women and girls.[36] These treaty bodies called on Canada to improve its response to violence against Indigenous women and girls; and develop a coordinated, comprehensive national plan to respond to the violence in cooperation with Indigenous organizations.

In Canada's first Universal Periodic Review in 2009, recommendations were made on the subject of violence against Indigenous women and girls.[37] At the second review of Canada in 2013,[38] the Human Rights Council Working Group made the following recommendations:

- develop a national action plan by 2015 to respond to violence against women that includes Indigenous perspectives, to align with the recommendations of the UN Secretary-General's campaign to end violence against women, *UNiTE to end violence against women*;[39]
- adopt a national action plan to respond to violence against Indigenous women and girls;[40]
- undertake an independent national inquiry into missing Indigenous women;[41]
- undertake an independent investigation into the murders and disappearances of Indigenous women and girls in Canada with the Special Procedures of the Human Rights Council;[42]
- adopt federal and provincial/territorial policy and services, such as gender and race disaggregated data collection,[43] to respond to discrimination[44] and violence, including its root causes, against Indigenous women and girls;[45]
- include Indigenous peoples, particularly Indigenous women and Indigenous women's organizations, in developing, implementing and enforcing more effective means to combat violence against Indigenous women and girls;[46] and
- continue to combat all forms of violence against women and girls.[47]

Thirty-two States made recommendations to Canada on the situation of violence against women, the majority of which specifically called on Canada to address violence against Indigenous women and girls.

UN Special Rapporteur on the rights of Indigenous peoples

UN Special Rapporteur on the rights of Indigenous peoples in his 2014 report to the Human Rights Council on the situation of Indigenous peoples in Canada highlighted the violence against Indigenous women and noted the:

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/CAN/CO/19-20&Lang=En>.

35 Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic report of Canada*, adopted by the Committee at its sixty-first session (17 September-5 October 2012), UN Doc CRC/C/CAN/CO/3-4 (6 December 2012) at para 47(b); see also Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, A/HRC/WG.6/16/CAN/2 (7 February 2013) at para 34, online: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CASession16.aspx>.

36 Also see Canadian Feminist Alliance for International Action, Native Women's Association of Canada & Miami Law Human Rights Clinic, "Request for Thematic Hearing during the 14th Period of Sessions March 19-30, 2012" (17 January 2012), online: FAFIA <http://www.fafia-afai.org/wp-content/uploads/2014/09/1-IACHR-Final-Request-Thematic-Hrg-Canada-Aboriginal-Women-Girls.pdf>.

37 Human Rights Council, *Report of the Working Group on the Universal Periodic Review Canada*, A/HRC/11/17 (5 October 2009) at paras 86.27, 86.33-6, online: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CASession4.aspx>.

38 Human Rights Council, *Report of the Working Group on the Universal Periodic Review Canada*, A/HRC/24/11 (28 June 2013), online: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CASession16.aspx>.

39 *Ibid* at para 128.100.

40 *Ibid* at paras 128.58, 128.96, 128.97, 128.99, 128.104.

41 *Ibid* at paras 128.104.

42 *Ibid* at para 128.101.

43 *Ibid* at para 128.105.

44 *Ibid* at paras 128.84, 128.85, 128.86, 128.87, 128.88, 128.89, 128.91, 128.92, 128.93, 128.94, 128.95, 128.102, 128.103.

45 *Ibid* at para 128.94, 128.97, 128.98, 128.102.

46 *Ibid* at paras 128.90, 128.99.

47 *Ibid* at paras 128.81, 128.82, 128.83, 128.98.

> consistent, insistent calls across the Canada for a comprehensive, nation-wide inquiry, organized in consultation with Indigenous peoples, that could provide an opportunity for the voices of the victims' families to be heard, deepen understanding of the magnitude and systemic dimensions of the issue, and identify best practices that could lead to an adequately coordinated response.[48]

Anaya formally added his voice to the call for a national inquiry.[49] In his report, he recommended that the federal government "undertake a comprehensive, nation-wide inquiry into the issue of missing and murdered Aboriginal women and girls, organized in consultation with Indigenous peoples."[50]

The current Special Rapporteur on the rights of Indigenous peoples, Victoria Tauli-Corpuz, has added her voice to the call for a national inquiry.[51] In May 2015, Tauli-Corpuz characterized Canada's response as "not enough" and "not an adequate response".[52]

Special Rapporteur on Violence against Women, its causes and consequences

The murders and disappearances of Indigenous women in Canada were addressed in Rashida Manjoo's 2012 report to the Human Rights Council on gender-motivated killings; she noted the intersection of racial discrimination and violence against women.[53]

Committee on the Elimination of Discrimination against Women

In 2008, in its Concluding Observations, the Committee on the Elimination of Discrimination against Women urged Canada to "examine the reason for the failure to investigate the cases of missing or murdered [A]boriginal women and to take the necessary steps to remedy the deficiencies in the system."[54] This was a priority recommendation and Canada was asked to report back in one year.

> In summer 2010, the Committee noted that it "considers that its recommendation [regarding missing and murdered Aboriginal women and girls at para 32 of its 2008 Concluding observations] had not been implemented." [55]

In 2011, FAFIA and the Native Women's Association of Canada (NWAC) asked the CEDAW Committee to initiate an inquiry[56]under Article 8 of the Optional Protocol[57] to the *Convention*, into the crisis of murders and disappearances of appearances of Indigenous women and girls. In March 2015, the Committee released a groundbreaking report.[58]

---

48 *Ibid* at para 37.

49 Susana Mas, "UN Aboriginal envoy says Canada is facing a 'crisis'", *CBC News* (15 October 2013), online: <http://www.cbc.ca/news/politics/un-Aboriginal-envoy-says-canada-is-facing-a-crisis-1.2054682>.

50 Human Rights Council, *Report of the Special Rapporteur on the rights of* Indigenous *peoples, James Anaya, The situation of* Indigenous *peoples in Canada,* UN Doc A/HRC/27/52/Add.2 (7 May 2014) at para 89, online: <http://unsr.jamesanaya.org/docs/countries/2014-report-canada-a-hrc-27-52-add-2-en.pdf>.

51 Tom McCarthy, "Canada has failed to protect Indigenous women from violence, says UN official", *The Guardian* (12 May 2015), online: <http://www.theguardian.com/world/2015/may/12/canada-violence-Indigenous-first-nations-women>.

52 *Ibid*.

53 Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, UN Doc A/HRC/20/16/Add.4 (16 May 2012) at para 21, online: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-16-Add4_en.pdf>.

54 Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women Canada*, UN Doc CEDAW/C/CAN/CO/7 (7 November 2009) at para 32, online: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCAN%2fCO%2f7&Lang=en> (see also paras 31, 44).

55 Committee on the Elimination of Discrimination against Women, *Letter to Canada*, UN Doc HDI/follow-up/42/CAN/46 (25 August 2010), online: <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT_CEDAW_FUL_CAN_11939_E.pdf>.

56 *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc A/RES/54/4, 15 October 1999 (entered into force 22 December 2000, accession by Canada 18 October 2002).

57 "Campaign of Solidarity with Aboriginal Women Article 8 Inquiry", Canadian Feminist Alliance for International Action, 2015, online: <http://www.fafia-afai.org/en/solidarity-campaign/#the-cedaw-inquiry>.

58 Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada of the Committee on the*

The CEDAW Committee concluded that Canada's on-going failures to act effectively and in a co-ordinated way to address the situation of violence against Indigenous women and girls constitute "grave violations" of their human rights, contravening Articles 1, 2(c), (d), and (e), 3, 5(a), read in conjunction with 14(1) and 15(1)—the core equality guarantees—of the *Convention on the Elimination of All Forms of Discrimination against Women*.[59] This finding is unprecedented for Canada; a country that considers itself a champion of women's human rights and substantive equality in law and practice. In its response, Canada rejects the finding that there is a grave violation of *Convention* rights, and reasserts, in effect, that what it is already doing is enough.[60]

The Committee's decision is highly important for Canada.[61] It demonstrates the indivisibility of economic, social, political and civil rights in the lives of women through its analysis of this crisis.[62] It also focuses on grave, intersectional and systemic discrimination[63]—considering Indigenous women and girls as a group, and recognizing that the root causes of the violence against them lie in Canada's colonial history, including the dispossession of lands, the residential school policy, the historical and ongoing sex discrimination in the *Indian Act*; and social and economic marginalization.

The Committee's decision also finds that it is Canada's failures to act, to take effective steps to make women equal beneficiaries of legal guarantees, protections, services and programs that constitute discrimination and violate the *Convention.*[64]

The decision identifies significant and on-going failures on the part of Canada:

- the protracted failure of the State party to take effective measures to protect Indigenous women;[65]
- the failure of the established legislative and institutional legal framework to provide effective protections and remedies;[66]
- the failure to take adequate steps to address the stereotyping of Indigenous women and girls, including the stereotyping of them as prostitutes, transient or runaways and having high-risk lifestyles, and an indifferent attitude towards reports of missing Indigenous women;[67]
- the failure to take into account the increased vulnerability of Indigenous women because of discrimination based on both sex and race;[68]
- the failure to take into account the particular problems of Indigenous women living in remote communities;[69]
- the failure to provide sufficient coordination between the different jurisdictions and institutions of the State;[70] and

---

Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination, UN Doc CEDAW/C/OP.8/CAN/1 (6 March 2015), online: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15656&LangID=E> (see paras 13-20 for background on the inquiry procedure) [CEDAW, *Article 8 Inquiry*].

59 *Ibid* at para 214-5; see also Canadian Feminist Alliance for International Action and the Native Women's Association of Canada, Press Release, "Canada Commits 'Grave Violation' of Rights of Aboriginal Women and Girls: United Nations Committee on the Elimination of Discrimination against Women Releases Report on Inquiry" (6 March 2015), online: <http://www.fafia-afai.org/wp-content/uploads/2015/03/ENG_CEDAW-Press-Release_FINAL.pdf>.

60 CEDAW, *Article 8 Inquiry, supra* note 58.

61 See Shelagh Day, "Canada Violates the Rights of Aboriginal Women and Girls" (9 March 2015), *Blogging for Equality* (blog), online: <http://www.bloggingforequality.ca/2015/03/cedaw-report-on-missing-and-murdered.html>.

62 CEDAW, *Article 8 Inquiry supra* note 58 (see paras 199, 203).

63 *Ibid* (see para 204).

64 *Ibid* (see para 214).

65 *Ibid* at paras 207-8, 210, 214 (also see section C(3) and (4)).

66 *Ibid* at para 210.

67 *Ibid* at para 205.

68 *Ibid* at para 204.

69 *Ibid*.

70 *Ibid* at para 203 (also see paras 148-50, 158-9).

- the failure to ensure the realization of economic, social, political and cultural rights of Indigenous women – this includes education, housing, transportation options, support to families and children and adequate living conditions on and off reserve – necessary to permit women to escape violence.[71]

Following an extensive examination of evidence, the Committee issued 38 comprehensive recommendations that cover issues including:[72]

- mandatory protocols for missing women investigations and reporting;
- monitoring mechanisms for these protocols;
- support services for families;
- reliable systems for data collection;
- mechanisms for inter-jurisdictional and inter-agency coordination of police response;
- independent police oversight bodies;
- access to justice, including sufficient funding for legal aid;
- appropriate victim services;
- measures to address stereotyping;
- measures to address over-criminalization;
- assistance for women exiting prostitution;
- measures to account for connections between systemic violence and human trafficking;
- measures to improve socio-economic conditions of women and girls, including national anti-poverty, food security, housing, education and employment strategies;
- measures to overcome the legacy of the colonization, including amending the *Indian Act* to remove continuing sex discrimination;
- establishment of a national public inquiry – fully independent and transparent – that can develop a national action plan and a coordinated mechanism for overseeing it, along with sufficient resources for effective implementation.

The Committee called for its recommendations to be implemented as a comprehensive whole, not in a piecemeal fashion.

The findings and recommendations of the CEDAW Committee reinforce those of the Inter-American Commission on Human Rights, which were issued in January 2015.

Inter-American Commission on Human Rights

At the request of the Native Women's Association of Canada (NWAC) and the Canadian Feminist Alliance for International Action (FAFIA), the Inter-American Commission investigated murders and disappearances of Indigenous women in British Columbia, Canada. In January 2015, the Inter-American Commission on Human Rights released its report.[73] The IACHR found that provincial and federal governments in Canada have a two-pronged legal obligation: 1) to prevent the risk factors that cause and perpetuate the violence; and 2) to strengthen the institutions, including police and justice institutions, so that they can respond effectively in cases of violence against Indigenous women. The IACHR found that the root causes of the endemic violence against Indigenous women and girls lie in Canada's history of colonization, including the dispossession of lands, the long-standing and continuing sex discrimination in the *Indian Act*, the legacy of the residential school system, and the social and economic marginalization of Indigenous women.[74]

---

71 *Ibid*.
72 *Ibid* at para 216.
73 *Missing and Murdered* Indigenous *Women in British Columbia,* Canada, Inter-Am Ct HR OEA/Ser.L/V/II. Doc.30/14, (21 December 2014), at para 106, online: OAS <http://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf>.
74 *Ibid* at paras 93, 305.

The IACHR found that, given the strong connection between the greater risks for violence that Indigenous women confront and the social and economic inequalities they face, federal and provincial governments must design and implement a co-ordinated national action plan to address the social and economic factors that prevent Indigenous women from fully enjoying their rights, which includes measures to combat poverty, improve education and employment opportunities, guarantee adequate housing and deal with the over-criminalization and over-incarceration of Indigenous women.[75]

The IACHR report focused on British Columbia, but the IACHR finds that there are legal obligations for both levels of government, and its findings regarding governmental obligations also apply to every province and territory.

The IACHR also recommended that British Columbia and Canada:

- provide access to legal aid and support services for families of missing or murdered Indigenous women, with families able to freely choose their own representatives;[76] and
- create a national level action plan or nation-wide inquiry because "there is much more to understand and to acknowledge….".[77]

A National Inquiry into Murders and Disappearances of Indigenous Women and Girls

Until October, 2015, the Government of Canada maintained that it was taking all necessary steps to address the crisis of murders and disappearances and, in particular, refused to call a national inquiry. The new Liberal federal government, elected October 19, 2015, has announced that it will initiate a national inquiry into murders and disappearances of Indigenous women and girls.[78]

The government is currently conducting pre-inquiry consultations to hear from family members about how this inquiry should be structured and focused in order to bring an end to the violence.[79]

Recommendations

The Government of Canada should ensure that:

- **The mandate of the national public inquiry on murders and disappearances of Indigenous women and girls includes full examination of failures to fulfill the economic, social and cultural rights of Indigenous women and girls and that the inquiry's mandate include the design of concrete strategies and a comprehensive plan for addressing these failures.**
- **The scope of the public inquiry is national, not just federal, in order to ensure that the conduct of officials and institutions, and the policies, laws, programs and services of all levels of government, including provincial and territorial governments, can be scrutinized, and a comprehensive plan to address the violence can be co-ordinated effectively across institutions and jurisdictions.**

75 *Ibid* at paras 306, 309.
76 *Ibid* at para 312.
77 *Ibid* at para 309.
78 Canada, "National Inquiry into Missing and Murdered Indigenous Women and Girls" (24 January 2016), online: AADNC <http://www.aadnc-aandc.gc.ca/eng/1448633299414/1448633350146> ("The Government of Canada is launching a national inquiry into missing and murdered Indigenous women and girls").
79 Canada, "Pre-inquiry design process" (24 January 2016), online: AADNC <http://www.aadnc-aandc.gc.ca/eng/1449240082445/1449240106460>.

3) *Muslim Women: discrimination on the ground of religion that undermines social and economic agency*

In recent years, the religious freedom of Muslim women has become an increasingly contentious issue in Canadian social and political life. Most recently, women that wear face-veils, headscarves, and other forms of religious dress have been portrayed as a threat to the 'Canadian values' of secularism and women's equality. These discussions arguably indicate the increasing prevalence of Islamophobia in Canada,[80] with the brunt of the secularism debate disproportionately directed at the role of Muslim women in public space.

Political and judicial developments in recent years show a troubling trend towards further institutionalizing the alienation and marginalization of Muslim women. Three developments are illustrative: (1) the test developed in *R v NS* in 2012 to determine when a woman may wear a niqab when testifying in court, (2) the Québec *Charter of Values* proposed in 2013, and (3) the 2011 federal government ban on niqab-wearing women from citizenship ceremonies. In practice, these developments curtail key fundamental rights of Muslim women, including:

- The right to testify and/or bring forward claims in court, including those of sexual assault or domestic violence;
- The right to employment and/or economic independence;
- The right to access government services for themselves and their families; and
- The right to attain Canadian citizenship and exercise those rights, including the right to vote.

The Harper government defended these policy and judicial decisions by claiming that they were advocating for the rights of Muslim women on the basis of secularism and gender equality.[81] However, these policies ultimately create a significant distinction on the basis of religion to undermine the social and economic agency of Muslim women contrary to the *ICESCR*.

The recently elected Trudeau government has indicated that it will not defend such policy and judicial decisions, and will instead "ensure that we respect the values that make us Canadians, those of diversity, inclusion and respect for those fundamental values".[82] Despite the progressive aspirations of the current federal government, Muslim women, and specifically niqab-wearing Muslim women, remain subject to hostile public environments.[83]

(a) *R v N.S.*

On December 20, 2012, the Supreme Court of Canada (SCC) released its decision in *R v N.S*. to determine whether a witness could wear a niqab when testifying during a criminal proceeding.[84] Specifically, the Court considered whether wearing the face-covering niqab during a trial proceeding would compromise the right of the defendants to a fair trial when facing sexual assault charges. The defendants argued that the complainant's credibility could not be adequately assessed since the judge and jury could not see the victim's face.

---

80 Uzma, Jamil, "Discrimination Experienced by Muslims in Ontario" (2013) 9:3 *Spec Iss Div Mag* 64, online: <http://www.ohrc.on.ca/en/creed-freedom-religion-and-human-rights-special-issue-diversity-magazine-volume-93-summer-2012/discrimination-experienced-muslims-ontario>.

81 Gloria Galloway & Jane Taber, "Tories, Liberals back Quebec's veil ban" *The Globe and Mail* (26 March 2010), online: <http://www.theglobeandmail.com/news/politics/tories-liberals-back-quebecs-veil-ban/article4190090/>.

82 Susana Mas, "Justin Trudeau's government drops controversial niqab appeal", *The Globe and Mail* (16 November 2015), online: <http://www.cbc.ca/news/politics/niqab-appeal-appeal-citizenship-ceremonies-canada-jody-wilson-raybould-1.3321264>.

83 For example, see "6 anti-Muslim incidents in Ontario since Paris attacks", *CBC News* (21 Nov 2015), online: <http://www.cbc.ca/news/canada/toronto/hate-crimes-ontario-paris-attacks-1.3328660>.

84 *R v N.S.*, 2012 SCC 72, [2012] 3 SCR 726 [*R v NS*].

As an intervener in that case, the Women's Legal Education and Action Fund (LEAF) argued that "whatever one's personal views are on the niqab, effectively disenfranchising sexual assault complainants who wear the niqab from the criminal justice system is inconsistent with promoting their substantive equality and respecting and protecting their s 7 Charter rights to life, liberty and security of the person."[85] Ultimately, the court responded by applying a test to balance the religious rights of the niqab-wearer and the right of the defendants to a fair trial. [86]

While the majority of the Court acknowledged that it would be problematic to never permit women to wear niqabs during legal proceedings, the test will more often than not require a woman to remove her niqab if she would like to testify in criminal proceedings. This is particularly relevant during sexual assault proceedings because the evidence will necessarily be contested and witness credibility will be assessed.[87]

In contrast, Muslim men (or members of other religious groups) would not face the same level of scrutiny in the court system as Muslim women. The dissenting judge noted that such a "choice" was not a choice at all for niqab-wearing women. As a result, women could be dissuaded from testifying in court, or from bringing forward these types of legal claims entirely. The implications are extremely problematic for women's equality, and could have the effect of increasing the risk of gender-based discrimination and violence against Muslim women.

(b) The Proposed Québec Charter of Values (Bill 60)

In 2013, Québec proposed Bill 60 as a "*Charter* affirming the values of State secularism and religious neutrality and the equality between women and men, and providing a framework for accommodation requests."[88] The proposal contained key provisions to: (1) amend the Québec Charter of Human Rights and Freedoms by entrenching state neutrality and secularism for public institutions; (2) establish a duty of neutrality for all state personnel; (3) limit the wearing of conspicuous religious symbols; (4) make it mandatory to have one's face uncovered when providing or receiving a state service; (5) establish an implementation policy for state organizations.[89]

Among these provisions, some of the more troubling included banning public sector employees from wearing "ostentatious" religious symbols while on the job, and requiring that those receiving or providing government services uncover their faces. These provisions would have disproportionately impacted Muslim women who wear religious clothing, with the potential effect of forcing them to choose between their religion and their jobs, or excluding them from receiving public services.[90]

Despite the fact that the Bill was proposed as a mechanisms to promote gender equality, these provisions would have the effect of further alienating and marginalizing Muslim women vis-a-vis the state. Moreover, the women's rights coalition L'R des Centres de Femmes du Québec noted that the

85 Women's Legal and Education Action Fund, "N.S. v R (SCC) (Judgment December 20, 2012)" (20 December 2012), online: <http://www.leaf.ca/r-v-n-s-scc/>.

86 The four-part balancing test assesses the following: (1) would removing the niqab interfere with the wearer's religious beliefs; (2) would wearing the niqab while testifying threaten trial fairness; (3) is there a way to accommodate both rights (*R v NS supra* note 284 at 9); (4) if there is no accommodation to be made, does the positive effect of the wearer removing the niqab outweigh the negative effects of doing so.

87 The majority held that uncontested evidences does not impinge trial fairness.

88 Bill 60, *Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests*, 1st Sess, 40th Leg, Quebec, 2013.

89 Women's Legal and Education Action Fund, "The Québec Charter of Values Detracts from the Fight for Women's Equality" (18 October 2013), *Women's Legal and Education Action Fund*, online: <http://www.leaf.ca/the-quebec-charter-of-values-detracts-from-the-fight-for-womens-equality/>.

90 *Ibid*.

Charter proposal led to "women's centers in Québec witnessing an increase in intolerance, violence and racism, especially [for] Muslim women who wear the veil."[91]

Although the Bill was dropped in 2014 due to a change in Québec's government, a revised proposal is currently on the table.[92] More broadly, the Bill is indicative of the ongoing public policy discourse that prioritizes legislating on how women – particularly Muslim women – should dress and behave in public space.

(c) Muslim Women and Citizenship (*Ishaq v Canada*)

The federal government's 2011 Operational Bulletin 359 required face coverings to be removed when completing a citizenship oath.[93] While not explicitly directed at any particular group, this policy disproportionately affects Muslim women for reasons that have already been discussed. The policy was successfully challenged at the Federal Court in *Ishaq v Canada* on administrative law grounds, but the government has appealed the ruling and obtained a stay of the Federal Court's order striking the ban.[94] Subsequently, the Federal Court of Appeal also found in Ishaq's favour (*MCI v Ishaq,* 2015 FCA 194), refused to stay the judgment and Ishaq received her citizenship in time to vote in the October 2016 election. Although reasonable accommodations can easily be made to allow women to take the citizenship oath and still have their face seen (for instance, niqab-wearing women could swear the oath privately in front of female officers), the Harper government adamantly pursued this policy. It is difficult to comprehend how a policy that prevented women from pursuing or attaining citizenship could assist in promoting women's equality.[95] One of the first matters of business for the new Minister of Justice, Jody Wilson-Raybould, was to drop the federal government's appeal of the *MCI v Ishaq* 2015 decision.[96]

Recommendation

- **The Government of Canada should ensure that there are no legal prohibitions against women wearing religious articles of clothing whether they are in public or in private, and in particular women should be permitted to wear religious articles of clothing when testifying in court, when voting or accessing public services and during citizenship ceremonies.**

91 L'R des Centres de Femmes du Québec, "Intolerance, violence, and racism on the rise following the Charter of Values", *L'Rdes Centres de Femmes du Québec* (2 October 2013), online <http://www.rcentres.qc.ca/public/2013/10/intolerance-violence-et-racisme-en-augmentation-suite-a-la-charte-des-valeurs.html>.

92 Philip Authier, "Québec Values Charter 2.0: Ban against crosses, hijabs, would only apply to new public employees", *The National Post* (16 January 2015), online: <http://news.nationalpost.com/news/canada/quebec-values-charter-2-0-ban-against-crosses-hijabs-would-only-apply-to-new-public-employees>.

93 *Ishaq v Canada (Citizenship and Immigration),* 2015 FC 156.

94 *Ibid*.

95 A 2007 Bill which would have required that voters' faces be visible in order to cast their ballot was dropped when the minority government failed to obtain enough support to pass it in Parliament: "Government drops plan to ban veiled voting", *CBC News* (26 June 2009), online: <http://www.cbc.ca/news/canada/government-drops-plans-to-ban-veiled-voting-1.787964>.

96 Sean Fine, "Libgeral government drops Supreme Court of Canada niqab appeal", *The Globe and Mail* (7 Nov 2015), online: <http://www.theglobeandmail.com/news/politics/liberals-drop-controversial-supreme-court-of-canada-niqab-appeal/article27280846/>.

4) *Women's Working Conditions*

(a) Women's economic equality in the workplace (Issue 9)

In every jurisdiction in Canada statutory human rights legislation has been in place since the 1970s. These laws prohibit discrimination in employment based on sex, race, disability, ethnicity and sexual orientation. However, these laws have not provided an effective counter to the structural and systemic discrimination that women, and particular groups of women, face in the paid work force.

Employment equity programs designed to address systemic barriers in the workplace and to increase the representation of women, Indigenous peoples, racialized people, and people with disabilities in jobs and at levels where they are under-represented were introduced in some jurisdictions after Justice Rosalie Abella issued her ground-breaking Royal Commission report in the mid 1980s.[1]

This report encouraged Canadian governments to actively and concertedly address sex, race and disability discrimination in Canadian workforces through establishing employment equity programs, and addressing discrimination in workplaces as a whole.

However, although there were employment equity programs in some jurisdictions during the 1990s, most are now gone. In federal jurisdiction, there is employment equity legislation. The federal *Employment Equity Act* makes some employment equity requirements of federal sector employers with over 100 employees, and the Federal Contractors Program makes some requirements of federal contractors.[2]

In 2012, however, in the Government of Canada's budget bill[3] changes were made so that the Minister responsible for the Federal Contractors Program is no longer obliged to apply the employment equity standards set out in the *Employment Equity Act*.[4] This is likely to weaken the effect of the Federal Contractors Program.

In sum, there is no requirement on most employers in Canada to take conscious and pro-active steps to identify and correct discrimination and under-representation of women and minorities in occupations, job groups, and job levels in their workplaces, or to actively scrutinize and change their policies if they have discriminatory effects. The burden for correcting discrimination lies on those who experience it, and women are stuck with trying to end deeply entrenched discrimination in the labour force through individual, one-by-one complaints.

Wage Inequality and Pay Equity (Issue 11)

Canadian women are paid less than their male counterparts in nearly all sectors of the economy.[5] This

1 Canada, *Equality in Employment: A Royal Commission Report* (Ottawa: Public Works and Government Services Canada, 1984) (see the General Summary of the Commission undertaken by Justice Rosalie Silberman Abella, online: <http://cws.journals.yorku.ca/index.php/cws/article/viewFile/12792/11875>).

2 *Employment Equity Act*, SC 1995, c 4 (also see the Federal Contractors Program, online: <http://www.labour.gc.ca/eng/standards_equity/eq/emp/fcp/index.shtml>).

3 Canada, Bill C-38, An Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures, 1st Sess, 41st Parl, 2012, at s 602, Division 42 (as passed by the House of Commons 29 June 2012).

4 Marjorie Griffin Cohen, "Budget Bill and the Federal Contractors Program" (31 may 2012) *The Progressive Economics Forum* (blog), online: <http://www.progressive-economics.ca/2012/05/31/budget-bill-and-the-federal-contractors-program/>.

5 Canadian Centre for Policy Alternatives, *Progress on Women's Rights: Missing in Action* (Ottawa: CCPA, 2014) at 9, 11, online: CCPA <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2014/11/Progress_Women_Beijing20.pdf> [CCPA, *Progress on Women's Rights*]; Government of Canada, *Twentieth Anniversary of the Fourth World Conference on Women and the Adoption of the Beijing Declaration and Platform for Action Canada's National Review* (June 2014), at 11, online:

occurs regardless of women's level of education.[6] Even those women with comparable education, experience, and responsibility to men are usually paid less.[7] Women who work in female dominated occupations typically have lower rates of pay than those who work in male dominated occupations.[8] For racialized women,[9] disabled women,[10] and Indigenous women,[11] the gender pay gap is even wider.[12]

- Women's median employment incomes are 34% lower than men's.[13]
- Comparing women and men who work full-time, full-year jobs women take home 20% less than men.[14]
- The pay gap on average between men and women in Canada is double that of the global average.[15]
- The wage gap is not due to a difference in education. In a study that looked at women's and men's earnings over a 20 year period women with a bachelor degree earned 36% less than men with the same education, women with a college certificate earn approximately 43% less, and women with high school diplomas earn approximately 48% less.[16]
- Irrespective of Canada's 1st place ranking in educational attainment in the World Economic Forum Gender Gap Index of 2015, Canada ranked 80th in the wage equality for similar work survey.[17]
- Women are also more likely to work for minimum wage (between $10-$11 across Canada),[18] and to hold multiple, part time jobs.[19]
- Some provinces have specified minimum hourly wages for gendered work sectors. For example in British Columbia, employees who serve liquor – who are predominantly women – can be paid $1.25 *less* than minimum wage. Where in New Brunswick construction labourers – who are predominately men – have a required minimum wage that is $2.33 *higher* than the standard minimum wage.[20]

<http://www.unece.org/fileadmin/DAM/Gender/publication/Canada_National_Review_Beijing_20.pdf>.

6 Statistics Canada, "Study: Cumulative earnings by major field of study, 1991 to 20" (28 October 2014), online: <http://www.statcan.gc.ca/pub/11-626-x/11-626-x2014040-eng.htm> [Statistics Canada, "Study: Cumulative earnings"].

7 *Ibid*.

8 Kate McInturff & Paul Tulloch, *Narrowing the Gap: The Difference That Public Sector Wages Make* (Ottawa: Canadian Centre for Policy Alternatives, 2014), at 7, online: CCPA <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2014/10/Narrowing_the_Gap.pdf> [McInturff et al, *Narrowing the Gap*].

9 Statistic Canada, *Women in Canada: A Gender Based Statistical Report Visible Minority Women,* by Tina Chui, Catalogue No 89-503-X (Ottawa: Statistics Canada, July 2011), online <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11528-eng.pdf>.

10 National Union of Public and General Employees, "Facts about Women and Economic Wellbeing" (2011), at 2, online: <http://alltogethernow.nupge.ca/sites/alltogethernow.nupge.ca/files/documents/Facts_About_Women_Economic_Well-Being.pdf> [NUPGE, "Facts"].

11 McInturff et al, *Narrowing the Gap supra* note 6 at 4.

12 NUPGE, "Facts" *supra* note 10 at 2.

13 Statistics Canada, "CANSIM Table 202-0102, Average male and female earnings", *Statistics Canada* (27 June 2013), online: <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2020102>.

14 Canadian Centre for Policy Alternatives, *Progress on Women's Rights: Missing in Action* (Ottawa: CCPA, 2014) at 9 [CCPA, *Progress on Women's Rights*].

15 "Gender pay gap in Canada more than twice global average, study shows", *The Globe and Mail* (5 May 2015), online: <http://www.theglobeandmail.com/news/british-columbia/gender-pay-gap-in-canada-more-than-twice-global-average-study-shows/article24274586/>.

16 Statistics Canada, "Study: Cumulative earnings by major field of study, 1991 to 20" (28 October 2014), online <http://www.statcan.gc.ca/pub/11-626-x/11-626-x2014040-eng.htm> [Statistics Canada, "Study: Cumulative earnings"].

17 World Economic Forum, "Canada" (2015), online: <http://reports.weforum.org/global-gender-gap-report-2015/economies/#economy=CAN> [World Economic Forum].

18 Government of Canada Labour Program, "Current and Forthcoming Minimum Hourly Wage Rates for Experienced Adult Workers in Canada" (27 January 2015), online: <http://srv116.services.gc.ca/dimt-wid/sm-mw/rpt1.aspx?lang=eng> [Government of Canada Labour Program, "Current and Forthcoming"].

19 CCPA, *Progress on Women's Rights supra* note 14 at 8.

20 Government of Canada Labour Program, "Current and Forthcoming" *supra* note 70; Statistics Canada, "Employment by Industry and Sex", *Statistics Canada* (28 January 2015), online <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/labor10a-eng.htm>.

- According to the World Economic Forum's Global Gender Gap Index of 2015, Canada's economic and participation ranking was 28th, down from 10th in 2006—shockinginly Canada ranked 80th in the wage equality for similar work survey.[21]
- Women with disabilities earn 32% less than women overall, and 57% less than men.[22]
- Racialized women earn 70.5% as much as racialized men.[23]
- Indigenous women who live off-reserve earn 68.5% as much as First Nations men living off-reserve.[24]
- All women earn less than non-racialized men.[25]

Pay Equity: Federal Jurisdiction

In 2009, the Government of Canada introduced the *Public Service Equitable Compensation Act* (*PSECA*)[26] as part of an omnibus budget bill. PSECA drastically alters the manner in which pay equity disputes are settled for employees of the Government of Canada. However, while the bill has been enacted, the bulk of it is not in force yet.[27]

Pay equity is an important human rights issue for women. It differs from wage inequality because it seeks not solely equal pay for equal work, but equal pay for work of equal value. This is essential because women who work in female dominated industries are often undervalued and under-compensated. Work of equal value that requires comparable skills, responsibility and working conditions should be compensated equally regardless of the gender of the worker.[28]

Prior to 2009, federal public sector employees could make pay equity complaints under the *Canadian Human Rights Act* (*CHRA*) based on discriminatory practices.[29] This process was expensive and long.[30] In some instances it took over a decade for a complaint to be resolved.[31] However, these complaints did force recognition that pay equity is a human rights issue. Rather than enacting proactive federal pay equity legislation to improve the effectiveness of pay equity law, as was recommended by the federal Pay Equity Task Force in 2004,[32] in 2009 the federal government passed regressive legislation that limits the ability of its own women employees to seek pay equity. Though this legislation has not come fully into force, the proposed changes are drastic for women employees of the Government of Canada. Under the new regime, pay equity issues are addressed through the *Public Service Labour Relations Board*[33] rather than through the Canadian Human Rights Commission

---

21 World Economic Forum, *supra* note 17.
22 NUPGE, "Facts", *supra* 10 at 2; also see CCPA, *Progress on Women's Rights supra* note 14 at 9, 19.
23 NUPGE, "Facts", *ibid* at 2.
24 *Ibid*.
25 *Ibid*.
26 *Public Sector Equitable Compensation Act*, SC 2009, c 2, s 394 [*PSECA*].
27 *Ibid* (all the shaded sections, as they appeared on 1 May 2015, are not in force, online: <http://laws-lois.justice.gc.ca/PDF/P-31.65.pdf>).
28 House of Commons, Standing Committee on the Status of Women, *An Analysis of the Effects of the Public Sector Equitable Compensation Act* (June 2009), at 2 (Chair: Hedy Fry), online: <http://www.parl.gc.ca/content/hoc/Committee/402/FEWO/Reports/RP4007440/402_FEWO_Rpt07/402_FEWO_Rpt07-e.pdf> [Standing Committee on the Status of Women, *An Analysis*].
29 *Ibid* at 4.
30 *Ibid.*
31 *Ibid* at 4, 15.
32 Pay Equity Task Force, *Pay Equity: A New Approach to a Fundamental Right* (Ottawa: Pay Equity Task Force, Minister of Justice and Attorney General of Canada, 2004), at 503, online: <http://www.collectionscanada.gc.ca/webarchives/20071121055449/http://www.justice.gc.ca/en/payeqsal/docs/petf_final_report.pdf> (also see the archived Pay Equity Task Force review website, online: <http://www.collectionscanada.gc.ca/webarchives/20071115062515/http://www.justice.gc.ca/en/payeqsal/index.html>; and a government summary of the Task Force's history, Treasury Board of Canada Secretariat, "The P*ublic Sector Equitable Compensation Act* and the Reform of Pay Equity" (5 February 2013), online: <http://www.tbs-sct.gc.ca/lrco-rtor/relations/consult/psecarpe-lerspres04-eng.asp>).
33 Public Service Labour Relations Board, "Public Service Labour Relations and Employment Board" (6 November 2014), online: <http://pslreb-crtefp.gc.ca/index_e.asp> (the Public Service Labour Relations and Employment Board is provided for in the *Public Services Labour Relations and Employment Board Act*, SC 2013, c 40, s 365).

and Canadian Human Rights Tribunal. Pay equity is to be dealt with through collective bargaining.[34] This makes pay equity for women a bargaining chip - putting women union members in contest with male members over benefits that will form part of a bargaining package - rather than a human right.

The definition of "predominantly female" groups who are entitled to seek a remedy is altered by *PSECA*.[35] A group is required to be comprised of at least 70% women, where under the previous *Canadian Human Rights Act* guidelines, groups consisting of 55% women were able to seek a remedy.[36] Once *PSECA* is fully in force, women will be compelled to file complaints alone,[37] an extraordinary, perhaps impossible, task for one individual without support. Under the PSECA, unions that support their female members in filing a pay equity complaint can be fined $50,000.[38] This is a violation of the right of women and their unions to freedom of association.

The Public Service Alliance, which represents employees of the federal government, has challenged the constitutional validity of the PSECA, arguing that the Act actually restricts the capacity of women to claim and to obtain pay equity, and is thus in violation of the consitutional equality rights of working women that are guaranteed in section 15 of the *Canadian Charter of Rights and Freedoms*.

In addition, PSAC alleges that the provisions in the Act that prohibit union assistance in filing pay equity complaints constitute a violation of the right to freedom of association that is guaranteed in section 2 of the Charter. This prohibition completely restricts the ability of unions and their members to take collective action, and it violates the right of women to be represented by their unions in important matters that relate to their working conditions. It precludes the union from accomplishing its most basic duties, that is: fully representing its members on issues relating to working conditions, such as wage discrimination. The prohibition also prevents the unions from expressing any views and advising the workers on anything that might assist or encourage them to file complaints regarding pay equity. This undermines the constitutional right of unions to express opinions and give advice to their members on matters that bear on their members' rights as workers.

In 2009, the Parliamentary Standing Committee on the Status of Women recommended that the *PSECA* be repealed and be replaced with a proactive federal pay equity law.[39]

Pay Equity: Provinces and Territories

In its 2006 Concluding Observations, the Committee recommended that:

> legislation be adopted at the provincial and territorial levels, where necessary, to ensure equal renumeration for work of equal value in both the public and private sectors.[40]

Not only, does the Government of Canada need to repeal *PSECA* and enact a proactive federal pay equity law, most provinces and territories also need to improve their pay equity laws and enact legislation so that pay equity protections are in place for both public and private workers.

In most jurisdictions in Canada, there is no pay equity legislation that applies to both public and private sector employers. Only the Ontario, Quebec and federal jurisdictions have legislation requiring equal pay for work of equal value that applies to both public and private sector employers. Some provinces

34 Standing Committee on the Status of Women, *An Analysis supra* 28 at 5.
35 *PSECA, supra* note 26 at s 2(1) "female predominant".
36 Standing Committee on the Status of Women, *An Analysis supra* 28 at 6.
37 *Ibid* at 5, 6.
38 *PSECA, supra* note 26 at s 41.
39 Standing Committee on the Status of Women, *An Analysis supra* 28 at 8.
40 Committee on Economic, Social and Cultural Rights, C*oncluding Observations of the Committee on Economic, Social and Cultural Rights*, UN Doc. E/C.12/CAN/CO/4-5, 22 May 2006, at para 50 [*CESCR 2006 Concluding Observations*].

and territories have proactive pay equity legislation, such as Manitoba, New Brunswick and Prince Edward Island; however, it only applies to public sector employers. Private sector employers in most jurisdictions in Canada are not covered by pay equity legislation. They are required by law to provide women with equal pay when they are performing the same work, or substantially similar work, as male co-workers, but not when they are performing work of equal value.

Recommendations
The Government of Canada should:

- **Implement strategies that will address the structural inequality of women, and marginalized women, in employment in all jurisdictions, including employment equity programs, higher minimum wages and 'living wage' strategies, increased access to unionization, and enhanced resources and legal capacities for human rights institutions and law to address systemic discrimination in employment; and**
- **Repeal the *Public Service Equitable Compensation Act* and replace it with a proactive federal pay equity law.**

The governments of all provinces and territories should:

- **Ensure that there is effective, proactive pay equity legislation in place in their jurisdiction that will address and correct the lower pay assigned to 'women's work' and apply to both public and private sector employers.**

(b) Minority and Indigenous women's access to work (Issue 10)

The unemployment and employment rates of the overall Canadian population have changed by a negligible amount from 2007 to 2015.[41]

Indigenous peoples' access to work

Overall, the employment rates of Indigenous[42] and Non-Indigenous peoples differ by no more than 7%. In 2015, these rates were 55.2% and 61.4% respectively. For both groups, the employment rate decreased by 3%, and the unemployment rate has been slowly increasing, between 2007 and 2015.[43]

It is worth noting, however, that there remains differences between Indigenous and non-Indigenous Canadians' access to work:

- The unemployment rate of Indigenous Canadians is disproportionately high.
    - Since 2007, the unemployment rate among Indigenous people is consistently between 1.5 and 2.0 times that of non-Indigenous peoples, regardless of education level, or sex.[44]
    - The current unemployment rate for Indigenous Canadians is 10.9%.[45]

41 Unless otherwise stated, the statistics for the following sections are representative of the age group 15 years and over; and for the general population, the unemployment rate is 6.9% and the employment rate is 61.4%; for the general Statistics Canada, "Table 282-0002, Labour force survey estimates (LFS), by sex and detialed age group – annual" (Ottawa, ON: StatsCan, 2007-2015), online: <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2820002> [Statistics Canada, "CANSIM Table 282-0002].

42 In the following section, the terms Aboriginal and Indigenous are used interchangeably to represent individuals (or a group of individuals), who self-identified as First Nations or Métis peoples.

43 Statistics Canada, "Table 282-0227, Labour force survey estimates (LFS), by detailed Aboriginal group, sex and age group, Canada and selected regions – annual" (Ottawa, ON: StatsCan, 2007-2015), online: <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2820227>.

44 Statistics Canada, "Table 282-0228, Labour force survey estimates (LFS), by Aboriginal group, educational attainment and age group, Canada and selected regions – annual" (Ottawa, ON: StatsCan, 2007-2015), online: <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2820228>.

45 StatsCan, "Table 282-0227" *supra* note 43

- When divided according to sex, the unemployment and employment rates differ little between Indigenous men or women, and non-Indigenous men or women.
    - For both groups, men have a higher employment rate (by at least 6%).[46]
- Access of Indigenous peoples to different occupations varies greatly.
    - The most common occupational fields for a Native Canadian are "Sales and services" and those relating to "Trades, transport and equipment operators", with around 138,000 people in each sector respectively.[47]
- Indigenous peoples are better able to access and retain employment in diverse fields in 2014 than in 2007.
    - Access to work by Indigenous peoples has increased in all occupational fields, from 2007 to 2014, as measured by number of people in each respective field.[48]
    - The most notable increase has been by 46.4% in occupations related to "natural and applied sciences, health, social science, education, government services, religion, art, culture, recreation and sport".[49]
    - Each occupational field studied experienced an increase in Indigenous employees of at least 20% during that time.[50]
        - By contrast, there has been an increase of non-Indigenous employees by only 7.6%.[51]
- There continues to be a noticeable difference in earnings, between Indigenous and non-Indigenous people, though the trend of earnings since 2007 indicates this difference is shrinking.
    - In 2015, the weekly wage rate (in CAD) for Indigenous people was identified as $860.69/wk, compared to a rate of $924.14/wk, for approximately 35 hours of work.[52]
    - There has been an increase in wages earned by Indigenous people from 2007 to 2015 of $195.95, whereas there was an increase of $171.48 for non-Indigenous people during the same time frame.[53]

Aboriginal Skills and Employment Training Strategy

The Aboriginal Skills and Employment Training Strategy (ASETS) is a nationwide program designed to increase the number of Indigenous persons in the workforce through financial assistance to Indigenous organizations, and the creation of job-skills programs.[54]
In conjunction with the Skills and Partnership Fund (SPF), which funds short-term skills development projects, ASETS was able to form partnerships with 71% of employers contacted.[55]

These partnerships were used to develop detailed, demand-driven skills workshops, and create employment opportunities.[56] In 2015, between 80% and 90% of employers believed their partnership with ASETS would continue, indicating that it was a highly successful program from the perspective of

---

46 *Ibid.*
47 Statistics Canada, *Labour Force Survey: Table 282-0232, Labour force survey estimates (LFS), employment by* Aboriginal *group, National Occupation Classification for Statistics (NOC-S) and age group, Canada, selected provinces and regions – annual* (Ottawa, ON: StatsCan, 2007-2015), online: <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2820232>.
48 *Ibid.*
49 *Ibid.*
50 *Ibid.*
51 *Ibid.*
52 Statistics Canada, Labour Force Survey: Table 282-0233, Labour force survey estimates (LFS), average hourly and weekly wages and average usual weekly hours by Aboriginal group and age group, Canada, selected provinces and regions – annual (Ottawa, ON: StatsCan, 2007-2015), online: <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2820233>.
53 *Ibid.*
54 Employment and Social Development Canada, Evaluation of the Aboriginal Skills and Employmetn Training Strategy and the Skills and Partnership Fund, Final Report, Strategic Policiy and Research Branch (ESDC, 2 February 2015) at 1.
55 ESDC, *Evaluation of Aboriginal Skills*, *supra* note 14 at vi.
56 *Ibid* at iv.

the employers involved.[57] Furthermore, 81% of employers felt that the workshops developed successfully reflected the needs of their industry, and area, and 92% felt the program was demand-driven.[58] ASETS was largely successful from the perspective of the clients, as well. On average, clients saw an increase in annual earnings by $1,621 (an increase of $636.60 over a 2% inflation rate).[59] The incidence of employment increased by 5% as well, to 64%, and those who held employment before the program were able to earn more work hours or retain a better paying job than previously.[60] In the year following their involvement in the program, 42.3% of clients experienced positive post-program outcomes, such as employment or returning to school.[61]

It would appear that ASETS and SPF have been successful in reaching out to employers, and helping their clients earn the credentials and training needed for employment. The Assembly of First Nations has voiced its support for ASETS and sought to have the program continued and renewed through the 2016 fiscal year.[62] The issue was tabled in 2014, and reopened in 2015. ASETS has been extended until March 31, 2016.

Recommendations
The Government of Canada should ensure that the Aboriginal Skills and Employment Training Strategy (ASETS) program:

- **Receives funding to continue its operations;**
- **Continue to partner with employers to create demand-driven workshops and training;**
- **Partner with local schools to create education-based workshops, and academic counseling, when requested;**
- **Encourage employers to make long-term job opportunities available to program participants, where possible; and**
- **Be expanded to include more remote communities, particularly in northern areas.**

Access to work by minority groups

This section evaluates access to work in relation to i) gender, ii) immigration status, and iii) age.[63]

i) Gender: women's employment lags behind men's

Women's employment rates remain lower than men's.

- The employment rate is consistently lower for women, while the unemployment rate is consistently higher for men. In 2014, the employment rate for Canadian women was 57.6%, compared to 65.4% for Canadian men, and the unemployment rate was 6.4%and 7.4%, respectively.[64]
    - There are more women than men who are not in the labour force.

Sex Segregation

The Canadian labour force is still divided along gender lines. Canadian women are not equally

57 *Ibid* at vi.
58 *Ibid* at 4.
59 *Ibid* at 9.
60 *Ibid.*
61 *Ibid* at 10.
62 Bryan Hendry, "First Nation Labour Force and Human Resources Development", *Assembly of First Nations (2015),* online: <http://www.afn.ca/en/policy-areas/human-resources-development>.
63 It is worth noting that Statistics Canada has not evaluated access to work in relation to any other defining feature of a minority group (e.g. race, ethnicity, religion, sexuality, non-binary gender, etc.) in the last 10 years. This problem should be improved in the coming years, as the current government has announced its intention to reinstate the long-form census.
64 StatsCan, "Table 282-0002" *supra* note 41.

represented in the most lucrative and powerful paid employment, and they continue to be principally employed in 'women's work'.

- The average gender divide in the workplace is 47.5% female, and 52.5% male, however these figures vary greatly depending on sector.[65]
- The occupations that vary from this norm by 10% or more are as follows:[66]

Management Occupations	63.8% male
Business, finance, and administrative occupations	69.0% female
Occupations in social science, education, government service and religion	70.0% female
Natural and applied sciences, and related occupations	76.8% male
Health Occupations	80.0% female
Trades, transport and equipment operators and related occupations	93.4% male

- In 2009, 67% of all employed women were working in teaching, nursing and related health occupations, clerical or other administrative positions, or sales and service occupations. This compared with 31% of employed men. This number has remained virtually unchanged for two decades.[67]
- In 2009, just 22.3% of professionals in the natural sciences, engineering and mathematics were women. Again thispercentage has barely changed in twenty years.[68]

Women continue to be more likely to work in traditionally feminized positions, such as administrative, social science, and health related fields, relegating them to caregiver roles. Whereas, traditionally masculinized positions continue to be dominated by men, such as management, natural science and trade related fields.

Non-Standard and Precarious Work (Issue 12)

Women in Canada are also more likely than men to be in part-time, temporary, or multiple jobs, which are less likely to have pensions and other benefits. Approximately 26% of women, compared to less than 11% of men are in part-time jobs.[69]

Working part-time is not necessarily women's choice, but rather is due to childcare responsibilities or an inability to find full-time work. The growth of precarious, unstable work in Canada affects those workers who are already vulnerable - women, and particularly immigrant, racialized, and Indigenous women and women with disabilities.[70] There has been little traction on the Committee's 2006 recommendation to Canada to ensure effective protections for workers, especially women workers, in precarious, part-time, temporary and low-paying jobs.[71]

ii) Immigration Status

Among landed immigrants, women have more difficulty finding and retaining work than men. The employment rate for immigrant men has remained fixed around 64.7%, whereas the employment rate

65 Statistics Canada, "Table 282-0010, Labour force survey estimates (LFS) by National Occupational Classification for Statistics (NOC-S) and sex – annual" (Ottawa, ON: StatsCan, 2007-2015), online: <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2820010>.
66 *Ibid.*
67 Statistics Canada, *Women in Canada: A Gender-Based Statistical Report Paid Work*, by Vincent Ferrao, Catalogue No 89-503-X (Ottawa, ON: StatsCan, December 2010), online: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11387-eng.pdf.>
68 *Ibid*.
69 Statistics Canada, "Table: 282-0002", *supra* note 41.
70 Law Commission of Ontario, *Vulnerable Workers and Precarious Work: Final Report* (Toronto, ON: Law Commission of Ontario, 2012), online: <http://www.lco-cdo.org/en/vulnerable-workers-final-report> (see section II. Identifying Vulnerable Workers and Precarious Work).
71 *CESCR 2006 Concluding Observations, supra* note 40 at para 49.

for immigrant women has remained at 51.6%.[72] This difference could be due to cultural norms of incoming immigrants, which may value male labour over female or position women into homemaker roles, and thus discourage women from seeking employment.

- Since 2007, there have been approximately double the amount of women not in the labour force, than men.[73]
- In 2015, of those who immigrated in the last five years, 212,600 women were not in the labour force, compared to 103,100 men.[74]
- Among all immigrant groups, as among the total Canadian population, there are always more immigrant men in the labour force than immigrant women.[75]

It is also likely that immigrating women face challenges to retaining work as a result of a socio-cultural bias towards particular cultures, ethnic groups, etc. Members of intersectional groups (such as immigrant women) often face more oppression and micro-aggressions, which would present itself through decreased access to work. This is supported when one considers the rates, in relation to time since immigrating:

- At 5 years since immigration, the employment rate is 21.5% higher for men than women.[76]
- At 10 years since immigration, the employment rate is 10.7% higher for men than women.[77]

Among all immigrant groups, the unemployment rate is consistently higher for women than men. This is not reflected in the total Canadian population.[78]

Recommendation

- **The Government of Canada should develop a program which focusses on employment skills building and career development for landed immigrants, particularly women and newly arrived individuals.**

iii) Age

Seniors have a very low employment rate compared to the total population. Those in the age group 65-69 have an employment rate of 24.8%, and seniors aged 70+ have an employment rate of 6.7%.[79] Both of these rates have increased since 2007.[80] However, given that both are markedly lower than that of the total population, it is clear that seniors continue to be less employable. While some seniors may choose not to work, many do not have this choice. Without pension plans, there are many individuals who do not have any financial means to stop working. Elderly women are most specifically affected, and when compared to elderly men, are twice as likely to be living in poverty.[81]

Recommendation

- **The Government of Canada should create and promote employment and financial saving programs for seniors, particularly elderly women.**

72 Statistics Canada, "Table 282-0104, Labour force survey estimates (LFS), by immigrant statues, sex and detailed age group, Canada – annual" (Ottawa, ON: StatsCan, 2007-2015), online: <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2820104>.
73 *Ibid.*
74 *Ibid*.
75 *Ibid.*
76 *Ibid.*
77 *Ibid.*
78 *Ibid.*
79 StatsCan, "Table 282-0002" *supra* note 41.
80 *Ibid.*
81 Canada Labour Congress, "Did you know senior women are twice as likely to live in poverty as men?" (January 2016), online: <http://canadianlabour.ca/issues-research/did-you-know-senior-women-are-twice-likely-live-poverty-men>.

Racism-Free Workplace Strategy

The overall objective of the Racism-Free Workplace Strategy (RFWS) is to decrease race-based discrimination in the workplace. RFWS seeks to promote diversity and address racism in the workplace by facilitating the development of non-discriminatory policies and practices, and teaching intervention strategies to reduce barriers to diversity. This is done through educational outreach activities (such as publications, collaborative agreements and workshops).[82]

While there have been successes, the RFWS has faced challenges, identified in a 2010 assessment report. Only 1% of participating organizations were union groups.[83] The vast majority of participating organizations are already following practices outlined by the Legislated Employment Equity Program and the Federal Contractors Program for Employment Equity.[84] Thus, it would appear that those with the least education on diversity were not being reached by the program. The RFWS had little involvement from the Aboriginal Sector Councils, nor the Canadian Human Rights Commission, suggesting that their program did not cover the issues identified by these groups.Though 80% confirmed a need for outreach activities addressing racism in the workplace[85], only 39% of participants felt the program had had a strong impact, and 19% said that the RFWS had no impact at all on their companies' organizational policies and practices.[86] There was no analysis nor discussion of intersectional groups, nor women, who often face more discrimination.

Since 2010, the managers of the RFWS are working with the Aboriginal Sector Council, the Canadian Human Rights Commission, the Aboriginal Human Rights Council, and regional non-governmental organizations.

Recommendations

The Government of Canada should ensure that the Racism-Free Workplace Strategy (RFWS):

- **Expand to reach more unionized organizations;**
- **Enlarge its focus to address the issues commonly linked to racism such as ethnocentricity, xenophobia, islamophobia, anti-semitism, and sexism; and**
- **Facilitate focus groups to identify and develop a program that can better address workplace-specific factors of discrimination.**

(c) Live-in-Caregiver Program (Issue 12)

In 2006, the Committee urged Canada to:

> adopt effective measures, legislative or otherwise, to eliminate exploitation and abuse of migrant domestic workers who are under the federal Live-in Caregiver Program.[87]

The Government of Canada has not acted on this recommendation. While the federal government did enact regulatory changes to the Live-in Caregiver Program in 2014, these changes have exacerbated the systemic vulnerabilities of migrant domestic workers in new ways.

82 Human Resources and Skills Development Canada, Summative Evaluation of the Racism-Free Workplace Strategy, Final Report, Strategic Policy and Research Branch (Gatineau, QC: HRSDC, May 2011) at 1-4, online: <http://www.esdc.gc.ca/eng/publications/evaluations/labour/2011/01/may.shtml>.
83 *Ibid* at 25.
84 *Ibid* at 39.
85 *Ibid* at iv.
86 *Ibid* at 31.
87 *CESCR 2006 Concluding observations, supra* note 40 at para 49.

Federal Measures

On November 30, 2014, regulatory changes to the federal Live-in Caregiver Program took effect.[88] The Live-in Caregiver Program was eliminated and replaced with the Caregiver Program, a new branch of the federal Temporary Foreign Worker Program.[89] Ninety-five% of caregivers are women who are largely from the Philippines.[90] They continue to be vulnerable to exploitation and their precarious status has increased with the changes to the Program.

Between 1992 and 2014, all caregivers who had completed two years of domestic service within a four-year period were given universal access to apply for permanent residency in Canada.[91] They were the only group of low-wage temporary foreign workers who had universal access to permanent residency.[92] In 2014,[93] the Canadian Government placed a cap on the number of caregivers who could apply for permanent residency and added new requirements for qualification.[94] These changes increased the instability of this already vulnerable group.

Recent Changes to the Live-in Caregiver Program

Though recent changes to the Live-in Caregiver Program removed the "live-in" requirement, caregivers continue to experience exploitation. They also face new vulnerabilities.

- Though the "live-in" requirement has been removed,[95] caregivers are still tied to their employers. Requirements of the program make it difficult—if not impossible—to switch employers. Caregivers are still expected to work as caregivers for two years within a four-year period[96] and are only allowed to work for the employer listed on their work permit.[97] It takes a significant amount of paper work and time to switch employers. The caregiver must apply for a new work permit and the employer will need a Labour Market Impact Assessment, which can take months.[98]

- High living expenses in Canada combined with low wages[99] that are inadequate to support a household encourage caregivers to continue to choose the live-in option where working conditions are most exploitative, even though it is no longer mandatory. Live-in workers have reported being perpetually on-call, working extended over-time that they were not compensated for, and some have experienced sexual harassment and assault.[100] Living in the home of the employer also increases social isolation and decreases the likelihood of workplace

88 Citizenship and Immigration Canada, "Backgrounder Improving Canada's Caregiver Program" (31 October 2014), online: <http://news.gc.ca/web/article-en.do?nid=898719>.
89 Employment and Social Development Canada, "Families Hiring In-Home Caregivers" (15 December 2015), online: <http://www.esdc.gc.ca/eng/jobs/foreign_workers/caregiver//index.shtml>.
90 Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity* (Toronto: George Cedric Metcalf Charitable Foundation, 2012) at 36 [Faraday].
91 Amrita Hari, "Temporariness, Rights, Citizenship: The Latest Chapter in Canada's Exclusionary Migration and Refugee History" (2014) 30:2 *Refuge: Canadian Journal on Refugees* 35 at 38, online: <http://pi.library.yorku.ca/ojs/index.php/refuge/article/viewFile/39617/35896> [Hari, "Temporariness"].
92 Faraday, *supra* note 90 at 25.
93 Citizenship and Immigration Canada, *Ministerial Instructions Establishing the Caring for Children Class*, 24 November 2014, online: Archived Content Canadian Gazette <http://www.gazette.gc.ca/rp-pr/p1/2014/2014-11-29/html/notice-avis-eng.php#footnote.47973>.
94 Citizenship and Immigration Canada, "Backgrounder Improving Canada's Caregiver Program" (31 October 2014), online: <http://news.gc.ca/web/article-en.do?nid=898719> [CIC, "Backgrounder"]; also see Debra Black, "New rules for federal live-in caregivers program," *The Toronto Star* (21 February 2015), online: <http://www.thestar.com/news/canada/2014/11/28/new_rules_for_federal_livein_caregivers_program.html> [Black, "New rules"].
95 CIC, "Backgrounder" *ibid*.
96 Black, "New rules" *supra* note 94.
97 Citizenship and Immigration Canada, "Extend Your Work Permit-Live-in Caregivers" (5 November 2014), online: <http://www.cic.gc.ca/english/work/caregiver/extend-stay.asp#change>.
98 Citizenship and Immigration Canada, "Labour Market Impact Assessment Basics" (23 March 2015), online: <http://www.cic.gc.ca/english/work/employers/lmo-basics.asp>.
99 Faraday, *supra* note 90 at 88.
100 Melissa Cederqvist & Eudoxie Sallaz, "Live-in Caregivers and Intimidation in the Workplace" (November 2014) at 7, online: <https://www.mfa.gouv.qc.ca/fr/publication/Documents/2014-11-30.8-Memoire.pdf>.

inspections that may identify abusive behaviour of employers.[101] For those caregivers who do not live in independent accommodations, their family reunification process is delayed.[102]

- Low-wage workers, like caregivers, face greater challenges in bringing their families to Canada; unlike high-wage workers, whose spouses are eligible for open work permits and whose children can get study permits.[103] The spouses of low wage workers must obtain an individual Labour Market Opinion, which is time consuming and can be difficult to obtain.[104] Caregivers' dependents are not allowed to apply to migrate under Humanitarian and Compassionate grounds and if their dependents are inadmissible, the caregiver will also be inadmissible.[105]

- Caregivers in the Program continue to be admitted as temporary workers rather than as permanent residents. Prior to 2014, caregivers had a high likelihood of gaining permanent residency. In 2009, 90% applied for permanent residency and 98% of those were successful.[106] Current caps significantly reduce this likelihood of success. Caregivers who are not granted permanent residency after four years are required to return to their country of origin. 2,750 lower skilled caregivers who care for children can apply for permanent residency each year.[107] These applicants must complete two years of caregiving in the four-year time period and pass a Level 5 English or French proficiency test.[108] All caregivers who apply for permanent residency now must have at least one year of post-secondary education.[109] 2,750 higher skilled caregivers who care for people with high medical needs (i.e. Registered Nurses, Licensed Practical Nurses, Personal Support Workers, or Registered Psychiatric nurses) can apply for permanent residency each year.[110] These applicants must complete two years of caregiving in the four-year period and pass a Level 7 English or French proficiency test.[111] The total number of caregivers permitted in both streams, 5,500, is well below the annual average of 8,000 caregivers coming into Canada.[112] The restrictive caps combined with the stringent language and educational requirements will make the most marginalized caregivers less likely to be granted permanent residency and the benefits that come along with it.

Linguistic and cultural barriers make it difficult for caregivers to understand and assert their rights. In Ontario, employers and recruiters are required by law to provide new caregivers to Canada with information on the *Employment Standards Act,*[113] but caregivers are not provided information about community-based organizations, labour organizations, and workers advocates who could provide them with individual and collective support.[114] Connection with these types of organizations is particularly important because caregivers are not entitled to services and benefits that permanent residents are, such as extended medical care and certain tax benefits.[115]

Despite continuing demands for caregivers, the immigration system fails to accord sufficient

101 Faraday, *supra* note 90 at 97.
102 Hari, "Temporariness", *supra* note 91 at 42.
103 Ibid.
104 *Ibid*; Faraday, *supra* note 90 at 99.
105 Black, "New rules" *supra* note 94.
106 Faraday, *supra* note 90 at 36.
107 CIC, "Backgrounder" *supra* note 94.
108 *Ibid*.
109 Ibid.
110 *Ibid*.
111 Ibid.
112 Black, "New rules" *supra* note 94.
113 Employment Standards Act, SO 2000, c 41.
114 Faraday, *supra* note 90 at 84.
115 Rupalem Bhuyan et al, *Unprotected, Unrecognized Canadian Immigration Policy and Violence Against Women, 2008-2013*, (Toronto: Migrant Mothers Project and University of Toronto, 2014) at 23, online: <http://www.migrantmothersproject.com/wp-content/uploads/2012/10/MMP-Policy-Report-Final-Nov-14-2014.pdf> [Bhuyan et al, *Unprotected*].

recognition to the skills of these workers, thus preventing them from coming in under the regular admission system. The need for a special program is symptomatic of the longstanding problem of the sexist and classist nature of the immigration selection process, which fails to appropriately value the skills and experiences of women and caregivers.

Provincial and Territorial Measures

Caregivers are regulated by the applicable provincial or territorial employment standards legislation in the province or territory of employment. While six provinces, including Nova Scotia, New Brunswick, Ontario, Manitoba, Saskatchewan and Alberta, have enacted additional specific legislation to protect migrant workers, including migrant domestic workers, the provinces of Newfoundland, Prince Edward Island, Quebec, and British Columbia, and the territories of Yukon, Northwest Territories and Nunavut have not adopted nor do they plan to do so. The result is a piecemeal approach to migrant worker protection.

Provisions aimed at protecting migrant workers include strengthening regulation of recruiters of foreign workers. In order to be matched with an employer, caregivers typically utilize the services of third party recruiters. Payments to these agencies average several thousand dollars.[116] These illegal fees are difficult for caregivers to get back once they are in Canada, as recruiters are commonly paid in cash in the country of origin.

Caregivers are also subject to a type of fraud known as “release upon arrival” in the recruitment process whereby they receive a job offer, employment contract and Labour Market Impact Assessment for an employer in Canada from the agency only to find that the employer does not require their services upon arrival in Canada.[117]

The *Foreign Worker Recruitment and Immigration Services Act* enacted in 2013, in Saskatchewan,[118] is a model for best practices for the recruitment of migrant workers. Highlights of the legislation include:

- *Licensing*: The Act requires that recruiters are licensed by the Government of Saskatchewan. Recruiters may be required to provide a security deposit at the time of licensing.
- *Code of Conduct*: Recruiters must adhere to the Saskatchewan Code of Conduct for Recruiters.
- *Employer registration*: Employers must be registered by the Government of Saskatchewan before hiring foreign workers.
- *No recruitment fees*: Recruiters are prohibited from charging recruitment fees to workers. Employers are similarly prohibited from recovering recruitment costs from workers.
- *Mandatory reporting*: Recruiters must report on information about the recruiter supply chain in and outside of Canada.
- *Recruiter liability*: Recruiters are liable for actions of actors in the recruiter’s supply chain.
- *Record keeping*: Recruiters must keep records on migrant workers recruited and employers. Employers must keep records on worker contracts and use of recruiters.
- *Unethical practices*: Recruiters, immigration consultants and employers are prohibited from providing workers with misleading information regarding the recruitment process, confiscating a worker’s personal property, including passport and work permit, and threatening workers with deportation.
- *Compensation*: Workers can seek compensation if they incur costs as the result of a violation

116 Fay Faraday, *Profiting from the Precarious: How recruitment practices exploit migrant workers* (Toronto: George Cedric Metcalf Charitable Foundation, 2014) at 33.
117 *Equity in Employment, supra* note 1 at 38.
118 The Foreign Worker Recruitment and Immigration Services Act, SS 2013, c F-18.1, as amended by SS 2015, c.21.

under the Act.

- *Penalties*: Fines of up to $50,000 and up to one year in prison for an individual and $100,000 for a corporation that violates the Act.

There is a need for improved legislation aimed at protecting migrant domestic workers in all jurisdictions to ensure that workers do not continue to face structural vulnerability that leads to exploitation in the Canadian labour force.

Recommendations
The Government of Canada should:

- **Permit domestic workers to come to Canada as regular immigrants;**
- **Eliminate tied work permits;**
- **Take steps to ensure that it works with the provinces to improve regulation of recruitment agencies based on best practices;**
- **Remove the caps on access to residency and citizenship for migrant domestic workers; and**
- **Ratify the Domestic Workers Convention and bring domestic laws into alignment.**

(d) Sexual harassment in the workplace (Issue 13)

Employers shoulder the legal obligation to provide and maintain a safe, non-discriminatory workplace. However, some workplaces, including the Royal Canadian Mounted Police (RCMP) and Canadian Armed Forces, perpetuate a culture of sexual harassment and impunity with debilitating, longterm impacts.

RCMP Sexual Harassment of Female Officers

As of 2015, hundreds of female RCMP officers have reported sexual harassment and gender-based discrimination within the RCMP.[119] Reports include discriminatory promotional practices, inappropriate sexual comments, sexual assault, and repercussions for reporting male officer misconduct.

Policies are in place to prevent this type of behavior and complaints processes do exist.[120] However, female officers are reluctant to report abuse because the policies and procedures that are in place to protect them are not enforced in an accountable way.[121] Often, reporting women were told to withstand the abuses by their senior officers who did not view the harassment as problematic.

The RCMP has thus far failed to adequately address the abuse of female officers by male officers. While there have been previous reviews of police culture,[122] only recently, in 2011, after female officers reported abuse to the media and filed multiple civil suits against the RCMP, did the organization's handling of sexual harassment become the subject of internal and independent review.

---

119 Nancy Macdonald, "Inside the RCMP's biggest crisis", *Maclean's* (27 February 2015), online: <http://www.macleans.ca/society/inside-the-rcmps-biggest-crisis/> [Macdonald, "Inside the RCMP"].

120 Civilian Review and Complaints Commission for the RCMP, "Jurisdiction of the Commission", *CCR* (16 December 2014), online: <https://www.crcc-ccetp.gc.ca/en/public-interest-investigation-report-issues-workplace-harassment-within-royal-canadian-mounted>.

121 Human Rights Watch, *Those Who Take Us Away supra* note 423; Royal Canadian Mounted Police, *Summary Report on Gender Based Harassment and Respectful Workplace Consultations "E" Division*, 17 April 2012, online: <http://www.cbc.ca/bc/news/bc-121107-rcmp-survey.pdf> [RCMP, *Summary Report on Gender Based Harassment]*; Commission for Public Complaints Against the Royal Canadian Mounted Police, *Public Interest Investigation into RCMP Workplace Harassment* (Ottawa: CPC, 2013), online: <https://www.crcc-ccetp.gc.ca/en/public-interest-investigation-report-issues-workplace-harassment-within-royal-canadian-mounted> [CPC, *Public Interest Investigation*].

122 Government of Canada, Task Force on Governance and Cultural Change in the RCMP, Rebuilding the Trust (14 December 2007, online: <http://www.publicsafety.gc.ca/cnt/cntrng-crm/tsk-frc-rcmp-grc/_fl/archive-tsk-frc-rpt-eng.pdf>; also see Christopher Murphy et al, Rethinking Police Governance, Culture & Management (3 December 2007) at 6-7, online: <http://www.publicsafety.gc.ca/cnt/cntrng-crm/tsk-frc-rcmp-grc/index-eng.aspx> (this review does not provide a gendered analysis of police culture).

In 2012, the RCMP released a gender-based harassment report.[123] The study included 426 officer participants. They reported a culture of complacency and normalization towards the sexual harassment of female officers. Women found that when they reported sexual harassment, they were more likely to be transferred to a different jurisdiction or be demoted to a less desirable job than have their complaint dealt with directly. Issues that were consistently raised amongst study participants include: fear of retribution if one comes forward with a complaint;[124] an "Old Boys Club" culture that awards certain types of behaviour and bestows preferential treatment on those who conform;[125]a lack of institutional capacity to respond to harassment complaints;[126] a lack of accountability and credibility in the complaint process, including investigations into complaints;[127] a lack of access to reliable information and guidance about the complaints process;[128] a lack of adequate member training on harassment;[129] and loss of confidence in the RCMP.[130]

In response to increasing public concern about the handling of sexual harassment complaints in the RCMP, the Commission for Public Complaints Against the RCMP (now the Civilian Review and Complaints Commission for the RCMP) launched a public interest investigation into the issue in November 2011.[131] The final report made numerous recommendations, such as: the need for improved data collection of workplace conflict;[132] centralization of RCMP harassment complaint process oversight;[133] an external accountability mechanism to review harassment decisions;[134] specialized training on investigating harassment allegations;[135] and the development of clear investigative standards for harassment investigations.[136] However, among those who are knowledgeable about RCMP culture, there is scepticism about whether implementing these recommendations will make the change that is necessary.[137]

Former RCMP officers Catherine Galliford, Atoya Montague, Anitra Singh, Karen Katz, Susan Gastaldo, and Janet Merlo have each filed civil suits against the RCMP for gender-based harassment and sexual assault. Janet Merlo's application to determine a schedule for certification of a class action was approved in 2013.[138] So far, Merlo's class action includes 380 female officers from across the country.[139] The number of plaintiffs could go as high as 1,500.[140]

Sexual Harassment in the Canadian Armed Forces

A recent external review, conducted by former Supreme Court Justice Marie Deschamps, reports "an underlying sexualized culture in the [Canadian Armed Forces] CAF that is hostile to women and LGTBQ members, and conducive to more serious incidents of sexual harassment and assault."[141]

123 RCMP, *Summary Report on Gender Based Harassment*, *supra* note 121.
124 *Ibid* at 8.
125 *Ibid* at 8-9.
126 *Ibid* at 9.
127 *Ibid* at 10.
128 *Ibid.*
129 *Ibid.*
130 *Ibid* at 11.
131 CPC, *Public Interest Investigation, supra* note 121.
132 *Ibid* at 9.
133 *Ibid* at 22.
134 *Ibid* at 23.
135 *Ibid* at 27.
136 *Ibid.*
137 Macdonald, "Inside the RCMP", *supra* note 119.
138 *Merlo v Canada (Attorney General),* 2013 BCSC 1136.
139 Macdonald, "Inside the RCMP", *supra* note 119.
140 *Ibid.*
141 Marie Deschamps, *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*, External Review Authority, National Defence and the Canadian Armed Forces (27 March 2015) at p i, online: CAF <http://www.forces.gc.ca/en/caf-community-support-services/external-review-sexual-mh-2015/summary.page>.

The 2015 report found that on the extreme side of this culture, sexual violence was used to enforce power relationships and to punish members of the unit.[142] In less explicit ways, the culture of the CAF normalized and desensitized its members to sexual harassment. Both inadequate policies and a failure of senior members to deter this behavior contributed to this harmful culture that targets female CAF members.[143]

Interviewees reported that this culture is maintained at all levels of the CAF. Lower-ranking members frequently—and without consequence—use highly degrading language in reference to women's bodies, sexual jokes, rape jokes, and discriminatory language that questioned the abilities of female members.[144] Higher-ranking members are often desensitized to the culture and have been complicit in deterring complaints about sexual harassment and assault.[145]

In most cases, military women do not report sexual harassment or assault to their senior officers because of fears of professional repercussions; a lack of faith that those higher in the chain of command will adequately deal with their complaints; and pressure to accept the sexual environment or risk social exclusion.[146]

Of the ten recommendations from the report, only the first two[147] were accepted outright by the CAF.[148] Military leadership was uneasy with some of the recommendations, including the recommendation to create an independent centre where victims can seek support and advice.[149]

The Prime Minister has specifically highlighted in the November, 2015, mandate letter to the Minister of National Defence that the Minister will prioritize working with "senior leaders of the Canadian Armed Forces to establish and maintain a workplace free from harassment and discrimination".[150]

Recommendations
The Government of Canada should:

- **Ensure that procedures for addressing sexual harassment complaints within the RCMP are effective and provide protections, assistance and appropriate remedies to complainants;**
- **Provide regular public reports on measures taken, including disciplinary measures, to eliminate sexism and racism from police culture and to address complaints of discrimination from members and the public; and**
- **Implement the Deschamps report within the Canadian Armed Forces.**

(e) Childcare

Universal access to quality, affordable childcare[151] is essential to the fulfillment of Canada's obligations

142 *Ibid* at ii.
143 *Ibid* at 46.
144 *Ibid* at 13, 15.
145 *Ibid* at 17.
146 *Ibid* at 15, 29, 31.
147 *Ibid* at 27.
148 Stephanie Levitz, "Military's sexualized culture hostile to women, inquiry says", *Global News* (30 April 2015), online: <http://globalnews.ca/news/1971501/militarys-sexualized-culture-hostile-to-women-inquiry-says/>.
149 Lee Berthiaume, "Military culture 'hostile' to women, gays, says damning Canadian Armed Forces Report", *National Post* (30 April 2015), online: <http://news.nationalpost.com/news/canada/military-culture-hostile-to-women-gays-says-explosive-canadian-armed-forces-report>.
150 Prime Minister of Canada, "Minister of National Defence Mandate Letter" (13 November 2015), online: <http://pm.gc.ca/eng/minister-national-defence-mandate-letter>.
151 There are various terms used to describe childcare, including, but not limited to, daycare, early care and learning, early childhood

under articles 3, 7 and 10 of the *ICESCR*, which provide for gender equality, women's equal enjoyment of just and favourable conditions of work and the right to assistance afforded to the family, particularly when the family must provide for the care and education of dependent children. The *Convention on the Elimination of Discrimination against Women*[152] recognizes the "link between discrimination and women's reproductive role" and demands "fully shared responsibility for child-rearing by both sexes", as well as requiring State parties to ensure that there are Childcare facilities that allow women to combine family responsibilities with participation in employment and public life.[153]

While the Committee did not identify childcare in its list of issues to Canada in 2015, it has made recommendations to Canada on the subject in its 1998[154] and 2006[155] concluding observations. The Canadian Feminist Alliance for International Action (FAFIA) reported to the Committee on the occasion of Canada's fourth and fifth periodic review in 2006 that the lack of available and affordable childcare spaces in Canada compromises women's social and economic rights, particularly women's ability to equally benefit from just and favourable conditions of work.[156] At the time, FAFIA called on the Committee to recommend to Canada's federal and provincial governments to preserve and build on the existing Childcare agreements.

In 2006, the Committee made the recommendation that Canada consider the "right to work of women and the need of parents to balance work and family life, by supporting their care choices through adequate childcare services".[157] In subsequent years, Canada did not take meaningful action on this recommendation. When a new government came to power in 2006, it cancelled the beginning of a longawaited national Childcare program, which was in the process of being developed through agreements between the federal, provincial and territorial governments.[158]

Since 2006, there has a lack of federal leadership and action on the issue of universal, affordable Childcare services. This has been noted by other UN bodies. For example, in its 2008 review of Canada's progress under the *Convention on the Elimination of All Forms of Discrimination against Women*, the CEDAW Committee expressed concern about access to childcare in the context of women's rights in Canada. The Committee urged Canada "to step up its efforts to provide a sufficient number of affordable childcare spaces",[159] linking this recommendation with the necessity to increase efforts to provide "affordable and adequate housing options."[160] The Human Rights Council similarly highlighted the lack of affordable Childcare spaces during Canada's 2013 Universal Periodic Review, noting the Committee on the Rights of the Child's concern "at the high cost of Childcare, lack of available places for children in such care, [and] absence of uniform training requirements for all child-

---

education and care (ECEC), and early childhood development and care (ECDC). Within this report, these terms generally refer to educator-led programs that focus on young children's healthy development in partnership with parents.

152 *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981, accession by Canada 10 December 1981).

153 UN Women, "Convention on the Elimination of All Forms of Discrimination against Women Full Text of the Convention" (2009), online: UN Women <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (see the Introduction section).

154 Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, social and Cultural Rights, Canada*, UN Doc EC.12/1/Add.31 (10 December 1998) at paras 42 and 54, online: OHCHR <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1%2fAdd.31&Lang=en>.

155 CESCR 2006 Concluding observations, supra note 40 at para 46.

156 Committee on Economic, Social and Cultural Rights, *Compilation of Summaries of Canadian NGO Submissions to the UN Committee on Economic, Social and Cultural Rights in Connection with the Consideration of the Fourth and Fifth Periodic Reports of Canada*, UN Doc E/C.12/36/3 (25 April 2006) at 24, online: OHCHR <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fCAN%2fCO%2f5&Lang=en>.

157 *CESCR 2006 Concluding observations, supra* note 40 at para 46.

158 Morna Ballantyne, "Harper and Childcare" in Teresa Healy, ed, *The Harper Record* (Ottawa: Canadian Centre for Policy Alternatives, 2008), online: CCPA <http://www.policyalternatives.ca/sites/default/files/uploads/publications/National_Office_Pubs/2008/HarperRecord/Harper_and_Child_Care.pdf>.

159 Committee on the Elimination of All Forms of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women*, Canada, UN Doc CEDAW/C/CAN/CO/7 (7 November 2008) at para 40.

160 *Ibid*.

care staff."[161] In its most recent review before the Human Rights Committee, Canada did not address the issue of childcare in its state report and the Committee did not make a concluding observation on the subject, despite childcare being a pressing concern and one that FAFIA included in our June 2015 submission to the Human Rights Committee.[162]

Continued Federal Government Failure to Invest in National Childcare

The concerns expressed by the CEDAW Committee in 2008 are consistent with the findings in a broad range of reports – from local community consultations to international comparative analyses – that assess Canada poorly on childcare[163] (outside of Quebec).

- At 0.25% of GDP, Canada's public investment is about one-half of the OECD average and one-third of the minimum recommended level.[164] As a result, Canada has among the lowest levels of access to childcare and the highest parent fees in the OECD.
- Canada's weak international ranking on childcare is actually bolstered by Quebec, which has only 22% of Canada's child population (under age 12) yet provides 41% of the country's regulated spaces and invests 60% of Canada's total public spending on childcare.[165]

Seven years after the CEDAW report – and forty-five years after the Royal Commission on the Status of Women called for a national childcare program, describing it as the 'ramp' to women's equality—regulated childcare is available for only 20.5% of Canadian children under age 12.[166] Federal and provincial governments have made no substantive progress on any of the 2008 CEDAW recommendations regarding childcare, specifically:

- **Comprehensive cost/benefit analysis** – while the Canadian government has not carried out this analysis, academics and economists have published child are studies which consistently find that the benefits of quality, state-funded Childcare outweigh its costs to the government.[167] For example, research from the University of Sherbrooke shows that the $7/day system in Quebec more than pays for itself. In 2008, "each $100 of daycare subsidy paid out by the Quebec government generated a return of $104 for itself and a windfall of $43 for the federal government." Also, 70,000 more women hold jobs as a result,[168] and analyses show that lower-

161 Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16.21 Canada*, UN Doc A/HRC/WG.6/16/CAN/2 (7 February 2013) at para 67 [Human Rights Council, *Compilation*].

162 Human Rights Committee, *Consideration of reports submitted by States parties under Article 40 of the Covenant Sixth periodic reports of States parties due in October 2010, Canada*, UN Doc CCPR/C/CAN/6 (28 October 2013) [Human Rights Committee, *Canada's 2013 State report*]; and Human Rights Committee, *Concluding Observations on the sixth periodic report of Canada*, UN Doc CCPR/C/CAN/CO/6, 23 July 2015, online: OHCHR <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCAN%2fCO%2f6&Lang=en>.

163 See Childcare Advocacy Association of Canada (CCAC) & Coalition of Childcare Advocates of BC (CCCABC), *A Tale of Two Canadas: Implementing rights in early childhood*, February 2011, online: CCCABC <http://www.cccabc.bc.ca/res/rights/ccright_tale2can_brief.pdf> [CCAC et al, *A Tale of Two Canadas*].

164 OECD, Directorate for Education, Starting Strong II: Early Childhood Education and Care (Paris: OECD, 2006), online OECD <http://www.oecd.org/edu/school/startingstrongiiearlychildhoodeducationandcare.htm> (note that this is the most current complete data on Canadian ECEC available from the OECD; based on available information in Canada, ECEC funding has undoubtedly increased since 2006, as several provinces have added full day kindergarten, while childcare funding has continued to grow slowly. No comparative data, however, are available as Canada's entries in the OECD Family Database (2009) and other international sources are incomplete).

165 M. Friendly et al, Early childhood education and care in Canada 2012 (Toronto: Childcare Resource and Research Unit, 2013), at 61, Table 7, 64, Table 10, 65, Table 11, online: <http://childcarecanada.org/sites/default/files/CRRU_ECEC_2012_revised_dec2013.pdf> [Friendly et al, *Early childhood education*].

166 *Ibid* at 67, Table 13.

167 P. Fortin et al, *Impact of Quebec's universal low-fee childcare program on female labour participation, domestic income, and government budgets* (Sherbrooke: University of Sherbrooke, 2012), online: <http://www.usherbrooke.ca/chaire-fiscalite/fileadmin/sites/chaire-fiscalite/documents/Cahiers-de-recherche/Etude_femmes_ANGLAIS.pdf> [Fortin et al, *Impact of Quebec's universal low-fee childcare program*]; and The Centre for Spatial Economics, *Estimates of Workforce Shortages: Understanding and addressing workforce shortages in early childhood education and care (ECEC) project* (Ottawa: Childcare Human Resources Sector Council, 2009), online: <http://www.ccsc-cssge.ca/sites/default/files/uploads/Projects-Pubs-Docs/2.4-WFSEstimatesMain_Eng.pdf >.

168 Fortin et al, *Impact of Quebec's universal low-fee childcare program, ibid* at 27.

income mothers have particularly benefited from this system with poverty rates dropping by approximately 50%.[169]

- **Changes to kindergarten programs does not correspond to childcare needs** – in recent years, some provinces have expanded their kindergarten (school entry) programs, generally to serve younger children and/or to move to full school-day programming. However, these changes have not addressed the needs of the majority of mothers, who work or go to school and need before and after school care.

Between 2008 and 2012, the most recent year for which data is available, the percentage of children under 12 years of age with access to a regulated childcare space in Canada grew only slightly, from 18.6% to 20.5%.[170]

Moreover, access to these limited spaces is unattainable for many due to prohibitively high parent fees. This often causes women to leave the workforce after having children. West Coast LEAF found "because women's incomes tend to be lower than men's, it is often the woman in a heterosexual couple who will leave the workforce."[171] The strong link between childcare availability and affordability, and women's workforce participation, informed a recent study[172] of childcare parent fees in large Canadian cities. The study found that outside of Quebec and Manitoba, where parent fees are capped,[173] median childcare fees range from 23% to 36% of median pre-tax market income for women aged 25 to 34. In other words, mothers in most Canadian provinces pay three to four months of their annual salary in Childcare costs.

- **Prioritize Indigenous communities and low-income women** – while childcare affordability is a serious issue for most families, it is of particular concern for Indigenous women and women in lower income families. In fact, West Coast LEAF found childcare is "a key defence against poverty, as it can assist women in finding and holding employment."[174] Yet, according to the Canadian Centre for Policy Alternatives, "fee subsidies for lower income families are inadequate [and] the proportion of subsidized children has essentially remained static since 2001."[175] In Ontario, a study by the Childcare Resource and Research Unit found:

> there are many fewer available subsidies than there are eligible parents. In other provinces/territories, the fee subsidy provided often does not cover the fee charged by the centre/provider, so fully subsidized parents may still be required to pay out-of-pocket.[176]

Furthermore, there is no evidence that childcare in Indigenous communities has been a policy priority, and some evidence to indicate just the opposite. Although the federal government has direct responsibility for Indigenous childcare, program funding has been static since 2006, and dropped in

---

169 *Ibid* at 7.

170 *Friendly et al, Early childhood education supra* note 165 at 67, Table 13.

171 Laura Track, *CEDAW 2014 Report Card: How BC is measuring up in women's rights* (Vancouver: West Coast LEAF, 2014) at 10, online: West Coast LEAF <http://www.westcoastleaf.org/wp-content/uploads/2014/10/2014-CEDAW-Report-Card.pdf> [Track, *CEDAW 2014 Report Card*].

172 M. Friendly et al, *The Parent Trap: Childcare fees in Canada's big cities* (Ottawa: Canadian Centre for Policy Alternatives, 2014), online: CCPA <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2014/11/Parent_Trap.pdf>.

173 Parent fees are also capped in Prince Edward Island (PEI), but PEI cities were not included in the study because they did not fall within the study's definition of big cities.

174 Track, *CEDAW 2014 Report Card supra* note 171 at 10.

175 Canadian Centre for Policy Alternatives, *Delivering the Good: Alternative Federal budget 2015* (Ottawa: Canadian Centre for Policy Alternatives, 2015), at 41, online: CCPA <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2015/03/AFB2015_MainDocument.pdf>.

176 C. Ferns et al, *The state of early childhood education and care in Canada 2012* (Toronto: Moving Childcare Forward Project, 2014), at 4, online: <http://childcarecanada.org/sites/default/files/StateofECEC2012.pdf> (the Project is a joint initiative of the Childcare Resource and Research Unit, Centre for Work, Families and Well-Being at the University of Guelph, and the Department of Sociology at the University of Manitoba) [Ferns et al, *The state of early childhood education and care*].

2008/2009.[177] BC research on Indigenous ECDC "indicates that the current federal government is uninterested in expanding access to Indigenous ECDC programs or in ensuring the level of quality that leads to successful outcomes."[178]

Canada's Current Childcare Policies Do Not Yet Help Women

The lack of federal government leadership on childcare from 2006, until the most recent federal election in October 2015 is clear. While the federal government under the leadership of Prime Minister Harper from 2006-2015 claimed it was addressing the issue, actions to date amount to small increases in cash payments to families, increased tax deductions, and a regressive income-splitting program.[179] This program, the Universal Childcare Benefit (UCC), is highlighted in Canada's state report to the Committee, as the report was submitted to the Committee in 2012, before the formation of a new Liberal federal government in October 2015.[180]

The UCCB does not create a childcare system that addresses the needs of Canadian women, families and children. And it disproportionately benefits higher income families, standing in direct contradiction to CEDAW's recommendation to prioritize Indigenous communities and low-income women and the Committee's 1998 recommendation to prioritize low-income women.[181]

At the provincial level, the patchwork continues and services vary from province to province. Quebec's early leadership on childcare has been followed – albeit on a much smaller scale – by some recent progress in two provinces, namely Manitoba and Prince Edward Island. On the other hand, inflation-adjusted public investment in childcare has actually dropped in recent years in two provinces, Newfoundland and Labrador and British Columbia, and in the Yukon Territory.[182]

Childcare staff – predominantly women and frequently college-educated – continue to earn poverty-level wages. According to the Moving Childcare Forward Project, "[i]n 2012 the median wage for Childcare program staff was only 69% of the average wage in Canada."[183]

Across Canada, a broad range of civil society groups[184] are united in their call for a different approach – one that:

- Substantially increases access to quality, affordable Childcare for all who want or need it;
- Prioritizes social, physical and cultural inclusion of children and their families, ensuring that the needs of the most vulnerable are prioritized; and
- Values and respects the early childhood work force with fair compensation, decent working conditions and professional development opportunities.

With federal leadership and funding in place, Indigenous peoples and provincial and territorial

177 J. Beach et al, *The state of early childhood education and care in Canada 2010: Trends and analysis* (Toronto: Childcare Resource and Research Unit, 2013) at 2, 14, Table 14, online: <http://www.childcarecanada.org/sites/default/files/state_ecec_canada_2010_CRRU.pdf>.

178 K. Jamieson et al, *An environmental scan of public policy and programs for young* Aboriginal *children in BC: A cold wind blows* (West Vancouver: BC Aboriginal Childcare Society, 2014) at ii, online: <https://www.acc-society.bc.ca/files_2/documents/BCACCSENglobalscanFINAL.pdf> [Jamieson et al, *An environmental scan*].

179 See, for example, Kate Bezanson, "Mad Men family policy The Harper record on taxation and Childcare" in *The Harper Record 2008-2015* (Ottawa: Canadian Centre for Policy Alternatives, 2015) at 217, online: CCPA <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2015/10/The_Harper_Record_2008-2015.pdf>.

180 Committee on Economic, Social and Cultural Rights, *Sixth periodic reports of States parties due in 2010, Canada,* UN Doc E/C.12/CAN/5 (23 April 2013), online: OHCHR <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fCAN%2f6&Lang=en>.

181 Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights, Canada*, UN Doc EC.12/1/Add.31 (10 December 1998) at para 54.

182 Ferns et al, *The state of early childhood education and care supra* note 176 at 2.

183 *Ibid* at 3.

184 CCAC et al, *A Tale of Two Canadas supra* note 163.

governments can develop “high quality programs, which have a strong focus on early learning and development” knowing they “are most effective in combatting inequality in early childhood.”[185]

The recognition that childcare quality is not a static or singular idea is of paramount importance in any policy response. While appropriate staff training and compensation are essential elements, the BC Aboriginal Childcare Society clarifies that “[h]igh quality in an Aboriginal ECDC context means that programs for Aboriginal children must be culturally appropriate, reinforce pride in identity, be grounded in an Aboriginal world view and spirituality, and include Aboriginal knowledge, values, and ways of being and ways of caring for young children.”[186] These vital understandings and different needs must be accommodated within federal funding parameters.

Finally, building an effective Childcare system promotes equality for women and children. Done well, childcare advances social and income equality, reduces poverty and improves health. Childcare that is developed by and for Indigenous communities helps to close the gaps in outcomes for Indigenous peoples. Childcare helps mothers achieve their education and career goals. It helps families stay together by supporting them during times of crisis. Childcare builds communities.

Next Steps Under New Federal Leadership

The new majority government has promised to eliminate income-splitting and to make the Universal Childcare Benefit non-taxable for families earning less than $150,000 annually.[187] The federal government also made an election promise to engage in provincial and territorial discussions on Childcare as part of the “Greater Economic Security for Middle Class Families” package.[188]

The Liberal Party has not committed itself to a national, affordable childcare program. This is a disappointment that falls short of a meaningful universal childcare plan[189] and pales in comparison to the childcare plan that was advanced by another political party, the New Democratic Party, during the 2015 federal election campaign.[190]

The Canada Child Benefit being promised by the Liberals is an improvement over the UCCB;[191] however, it does not come close to meeting the average annual childcare fees in Canada's urban centres and will not meet the significant childcare needs of Canadians.”[192] The Liberals have promised to work with provinces, territories and Indigenous communities to create a National Early Learning and Childcare Framework. This Framework promises to build on provincial, territorial and Indigenous policies and programming already in place and support such activities so that more affordable, accessible, quality and inclusive Childcare services are available across Canada.[193]

Canada needs universal, affordable Childcare services. We do not have a clear commitment from the

---

185 Jamieson et al, *An environmental scan supra* note 178 at ii.

186 Ibid at 10.

187 Liberal Party of Canada, “Helping Families” (4 Jan 2016), online: <https://www.liberal.ca/realchange/helping-families/> [“Helping Families”].

188 Liberal Party of Canada, “Real Change Greater Economic Security for Middle Class Families” (4 Jan 2016), online: <https://www.liberal.ca/files/2015/09/Greater-economic-security-for-Canadian-families.pdf> [“Real Change”].

189 Seth Klein and Shannon Daub, “We have a new federal government. What now?” (23 October 2015), CCPA, online: CCPA < http://behindthenumbers.ca/2015/10/23/we-have-a-new-federal-government-what-now/ >; also see Martha Friendly, “A national child-care system: 'Because it's 2015'” (6 November 2015), rabble.ca (blog), online: <http://rabble.ca/blogs/bloggers/child-care-canada-now/2015/11/national-child-care-system-because-its-2015>.

190 See NDP, “Mulcair's PLAN Affordable childcare” (4 Jan 2016), online: NDP <http://www.ndp.ca/childcare>.

191 ”Real Change”, *supra* note 188.

192 ”Helping Families”, supra 187; compared to annual childcare costs in major urban cities that greatly supersede this benefit, see Friendly et al, *The Parent Trap: Childcare fees in Canada's big cities* (Ottawa: Canadian Centre for Policy Alternatives, 2014), online: CCPA <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2014/11/Parent_Trap.pdf> [*The Parent Trap*].

193 See *The Parent Trap, ibid*; “Childcare costs highest in Toronto, lowest in Quebec, study finds”, *Canadian Press* (10 Dec 2015), online: CBC <http://www.cbc.ca/news/canada/toronto/daycare-costs-1.3358681>.

new federal government on this point.

Recommendations
The Government of Canada should:

- **Fulfill its election promise to eliminate the Universal Child Care Benefit (UCCB) by replacing it with the more progressive Canada Child Benefit;**
- **Fulfill its election promise to initiate discussions on the National Early Learning and Childcare Framework. The Framework should guide collaboration between the federal government and Quebec, other provinces and territories, and Indigenous peoples, as well as provide adequate, sustained funding support for provinces, territories and Indigenous communities to build public childcare systems that will ensure universal access to high quality programs and meet the care and early education needs of both children and parents.**

Trade Union Rights (Article 8)

5) *Trade union women (Issue 14)*

In 2006, the Committee strongly recommended that all restrictions in federal, provincial and territorial jurisdictions on the right to strike be eliminated in accordance with the interests of national security, public order, public health and the protection of basic rights and freedoms.[1]

While the Supreme Court of Canada has recently released a new "labour trilogy" of judgments applying an expansive interpretation of trade union rights under section 2(d) of the *Charter*,[2] the right to strike and bargain collectivey continues to come under attack in Canada with both federal and provincial governments legislating in ways that circumscribe these fundamental rights.[3] Since 1982, federal and provincial governments in Canada have passed over 200 pieces of legislation that have restricted, suspended or denied collective bargaining rights for Canadian workers.[4] This has included back-to-work legislation, the suspension of bargaining rights, and restrictions on the right to organize and collectively bargain.[5] Many of these changes have direct and disproportionate impacts on women workers.

Unionization Enhances Equality for Women

Unionization is crucially important to women. Unionization reduces women's wage inequality, and improves working conditions in ways that enhance their equality. Restrictions that governments place on union organizing, the right to strike and collective bargaining constrain women's enjoyment of trade union rights under Article 8, as well as their right to equality and non-discrimination under Article 3.

- Unionization is consistently associated with higher wages for women.[6] Unionized women in

1 Committee on Economic, Social and Cultural Rights, C*oncluding Observations of the Committee on Economic, Social and Cultural Rights*, UN Doc. E/C.12/CAN/CO/4-5, 22 May 2006, at paras 48, 51 [*CESCR 2006 Concluding Observations*].

2 Mary Thibodeau, "The BC Government vs Freedom of Association in British Columbia Teachers' Federation v British Columbia", *The Court* (4 September 2015), online: <http://www.thecourt.ca/2015/09/04/the-bc-government-vs-freedom-of-association-in-british-columbia-teachers-federation-v-british-columbia/>.

3 Andrew Jackson, "Up against the Wall: The Political Economy of the New Attack on the Canadian Labour Movement" (2013) 20 *Just Labour* 51, online: <http://www.justlabour.yorku.ca/volume20/pdfs/04_jackson_press.pdf>.

4 *Ibid* at 70; Canadian Foundation for Labour Rights, "Restrictive labour laws in Canada" (2015), online: CFLR <http://labourrights.ca/issues/restrictive-labour-laws-canada> [CFLR, "Restrictive"].

5 *Ibid.*

6 Parliamentary Information and Research Service, *Wage Gap Between Men and Women*, by Julie Cool, Publication No 2010-30-E (Ottawa: Library of Parliament, 2010) at 3 (for commentary on wage inequality and collective bargaining see Dirk Antonczyk, Bernd Fitzenberger & Katrin Sommerfeld, "Rising Wage Inequality, the Decline of Collective Bargaining, and the Gender Wage Gap" (2010), Discussion Paper No. 4911, Institute for the Study of Labor (IZA), online: <http://ftp.iza.org/dp4911.pdf>) [Parliamentary Information, *Wage Gap*].

Canada earn on average $6.89 an hour more than non-unionized workers.[7]

- In sectors that have high unionization, such as the public sector in Canada, the gender wage gap is significantly narrowed. For example, in the private sector, university educated women between the ages of 40 and 45 are paid 27% less than men.[8] That gap closes to 17% in the highly unionized public sector.[9] Unions are especially strong as a wage equalizer for women in the lowest paid occupations.
- In 2008, non-unionized women earned 21% less than their male counterparts, whereas unionized women earned about 6% less than unionized men.[10]
- Unionized women benefit from clauses in collective agreements that prohibit sexual harassment and discrimination, provide for maternity leave, and for accommodation of caregiving responsibilities.[11] Unionized women are also entitled to holiday, scheduling, sick leave, maternity leave, leaves for family responsibilities, health and pension benefits, job security, training and other benefits and entitlements that are significantly better than the minimums provided by law.
- Unionized women can file grievances[12] and act collectively in other ways, with the support of their union. This is an effective method to solve gender-based work place problems, including workplace health and safety issues that affect women, with the protections afforded by a collective agreement-based process. Unionized women can also use the grievance and arbitration system to enforce human rights laws, which are understood to be "written into" the collective agreement and grievable, and unions represent members at human rights commissions/tribunals, providing legal expertise and other resources that generally unavailable to individual workers acting on their own.
- Unions offer a democratic institution where women gain a stronger "voice", advance their rights, and secure better working conditions.[13]
- When unions' rights to bargain are suspended or constrained, so too are women's rights. Women lose their right to bargain for pay equity, and for benefits and working conditions that are of special significance to them. Back-to-work legislation, and other legislatively imposed constraints on collective bargaining and striking often roll back benefits and protections that women have fought for.[14]
- Privatization, funding cuts and restructuring in the public sector are worsening the quality of jobs and work environments, triggering structural violence, harassment and mental injuries.[15] Women, especially marginalized women, suffer the brunt of these changes, and unions are a vital counter-balance to the growing power of employers in this context.
- Unions play a key role in advancing women's equality society-wide, by joining with civil society organizations to support advocacy for women's rights. This makes constraints on unionization a concern beyond the workplace.

---

7 PressProgress, "These numbers will blow your mind and make you want to join a union" (18 August 2014), online: <http://www.pressprogress.ca/en/post/these-numbers-will-blow-your-mind-and-make-you-want-join-union>.

8 Kate McInturff & Paul Tulloch, *Narrowing the Gap: The Difference Taht Public Sector Wages Make* (Ottawa: Canadian Centre for Policy Alternatives, 2014) at 7, online: CCPA <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2014/10/Narrowing_the_Gap.pdf>.

9 *Ibid*.

10 Parliamentary Information, *Wage Gap supra* note 6 at 3.

11 Hans Rollmann, "Disproportionately disenfranchised: Gendered impacts of interference in collective bargaining in Canada" (2011) 17 & 18 *Just Labour: A Canadian Journal of Work and Society* 70 at 73 [Rollmann, "Disproportionately disenfranchised"].

12 Public Service Alliance of Canada, *PSAC works for women*, September 2014, online: <http://psacunion.ca/sites/psac/files/attachments/pdfs/psac-works-for-women.pdf> [PSAC, *PSAC works*].

13 Christopher Schenk, *Unions and Democracy* (Ottawa: Canadian Centre for Policy Alternatives, 2014), online: <https://www.policyalternatives.ca/sites/default/files/uploads/publications/2014/04/unions_and_democracy.pdf>.

14 Rollmann, "Disproportionately disenfranchised" *supra* note 11 at 70, 73.

15 Canadian Union of Public Employees, *Workplace harassment and mental injuries: Examining root causes* (Ottawa: CUPE, 2014), online: CUPE <http://cupe.ca/workplace-harassment-and-mental-injuries-examining-root-causes>.

Attacks on Unions and Bars to Unionization in Canada

In 2007, when the Supreme Court of Canada handed down its decision in *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*[16] it held that the right to freedom of association in section 2(d) of the Charter of Rights and Freedoms protects the right to bargain collectively over workplace issues. This decision overturned twenty years of jurisprudence in which the Court had denied that section 2(d) protected union rights.[17]

Notably in recent months, the Supreme Court has made two ground-breaking rulings in which it has found that public employers have breached the right to freedom of association by denying or constraining the right to bargain collectively and the right to strike.

Although the Supreme Court of Canada is providing new and welcome responses, unions are engaged in a long, repetitive and expensive battle with governments over the right to strike and to bargain collectively, and victories come at a cost to the unions and individual workers, because often before a court victory finally arrives, ground is lost that is difficult to regain.
Below are some recent examples of legislation which has restricted the rights of unionized employees, or barred them from exercising those rights:

- Pursuant to the *Public Service Labour Relations Act*[18] and accompanying regulations[19] the Royal Canadian Mounted Police were not permitted to organize or engage in collective bargaining. In 2015, the Supreme Court of Canada struck down the law.[20] This has important implications for women members of the RCMP because they will be able to advance their rights as a collective, including enforce their right to non-discrimination through the grievance and arbitration system. Female RCMP officers recently filed a civil suit[21] against the RCMP for systemic gender-based harassment that their employer has failed to address.[22] A union would have provided these female employees with a structure and process that are democratic and a grievance system that is independent and transparent, in contrast to the RCMP internal complaint procedures, which, demonstrably, failed.

- In 2015, the Supreme Court of Canada also struck down a Saskatchewan statute, *The Public Service Essential Services Act*, S.S. 2008, c. P-42.2 (*PSESA*) that limited the ability of public sector employees, who perform essential services, to strike.[23] Under the Act, an employer had the unilateral power to designate which employees were essential, and thus unable to strike.[24] The Supreme Court of Canada's decision relies on Canada's obligations under international

16 2007 SCC 27, online: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2366/index.do>.
17 Judy Fudge, "The Supreme Court of Canada and the Right to Bargain Collectively: The Implications of the Health Services and Support case in Canada and Beyond" (2008) 37:1 *Industrial Law Journal* 25.
18 *Public Service Labour Relations Act*, SC 2003, c 22, s 2 (see para (d) of s 2(1) where members of the RCMP are prevented from collective bargaining due to their exclusion from the *Act's* definition of an "employee").
19 *Royal Canada Mounted Police Regulations, 1988*, SOR/88-361, s 96 (since the appeal, the regulations were repealed and replaced; they similarly provide for the Staff Relations Representative Program in dispute, see *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-81, s 56).
20 *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1 at para 5, 380 DLR (4th) 321, online: CanLII <https://www.canlii.org/en/ca/scc/doc/2015/2015scc1/2015scc1.html?autocompleteStr=2015%20scc%201&autocompletePos=1> [*Mounted Police Association*].
21 *Merlo v Canada (Attorney General)*, 2013 BCSC 1136, online: CanLII <http://www.canlii.org/en/bc/bcsc/doc/2013/2013bcsc1136/2013bcsc1136.html> (this decision sets dates for the process of certifying the class of plaintiffs).
22 "Sexual-harassment claims against RCMP reach 336", *The Globe and Mail* (18 July 2014), online: <http://www.theglobeandmail.com/news/british-columbia/sexual-harassment-claims-against-rcmp-reach-336/article19669218/>; also see Jason Proctor, "RCMP officer Shelley Whitelaw claims harassment on force", *CBC News* (12 January 2015), online: <http://www.cbc.ca/news/canada/british-columbia/rcmp-officer-shelley-whitelaw-claims-harassment-on-force-1.2896034>.
23 *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4 at paras 96-7, 380, DLR (4th) 577, online: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14610/index.do>.
24 *Ibid* at para 87.

human rights instruments, including Article 8 of the *ICESCR*, to support its conclusion that the guarantee of freedom of association in section 2 of the *Canadian Charter of Rights and Freedoms* includes the right to strike.[25] In its decision, the Court clearly articulated the importance of protecting strike action:

> The right to strike is essential to realizing these values [[h]uman dignity, equality, liberty, respect for the autonomy of the person and the enhancement of democracy] and objectives through a collective bargaining process because it permits workers to withdraw their labour in concert when collective bargaining reaches an impasse. Through a strike, workers come together to participate directly in the process of determining their wages, working conditions and the rules that will govern their working lives (Fudge and Tucker, at p. 334). The ability to strike thereby allows workers, through collective action, to refuse to work under imposed terms and conditions. This collective action at the moment of impasse is an affirmation of the dignity and autonomy of employees in their working lives.[26]

In Canada, the majority of workers in the public sector are women, and some vital service jobs - such as health care workers - tend to be held by predominantly racialized and immigrant women. Consequently, restrictions on the right to strike for public sector workers is a key restriction on women's human rights.

- The *Employees' Voting Rights Act* makes it more difficult for workers in the federal sector – workers in the federal public service, and in banks, transportation, shipping, rail, pipelines, canals, telephone and telecommunications, and on reserves - to unionize. The Act removes the automatic certification of a union when the majority of workers sign union cards.[27] A certification vote is now required even if all of the workers sign union cards. Workers who claim to represent 40% of the bargaining union can trigger a decertification vote.[28] The federal sector includes workplaces, like the federal public service, where women are a majority, and other workplaces, like transportation which are male-dominated. In both types of workplaces, strong unions are needed to provide protections for women.

- The Nova Scotia *Health Authorities Act, 2014,*[29] would have restricted the right of health care workers, the majority of whom are women, to choose the union they want to represent them by allowing for only four bargaining units—nursing, clerical, health care and support bargaining units – and assigning one union to represent each unit.[30] After unions protested that the legislation was unconstitutional, and unions joined together in calling for reform, the Government of Nova Scotia agreed to modify the legislation to allow for four councils of unions, with each council composed of the different unions that represent employees in the four bargaining units.[31]

---

25 *Ibid* at paras 33-75.
26 *Ibid* at 54.
27 Canada, Bill C-525, *An Act to Amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act and the Public Service Labour Relations Act (Employee's Voting Rights Act)*, 2nd Sess, 41st Parl, 2014, online: <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6836511&File=4> [Bill C-525].
28 *Ibid* at s 28 (also see Public Service Alliance of Canada, "Backgrounder on Bill C-525" (3 December 2013), *PSAC*, online: <http://psacunion.ca/backgrounder-bill-c-525>).
29 Bill No 1, *Health Authorities Act* (*An Act to Provide for Health Authorities and Community Health Boards*), 2nd Sess, 62nd Leg, Nova Scotia, 2014, online: <http://nslegislature.ca/legc/PDFs/annual%20statutes/2014%20Fall/c032.pdf>.
30 "Nova Scotia bill to ban health-care strikes until 2015", *CBC News* (29 September 2014), online: <http://www.cbc.ca/news/canada/nova-scotia/nova-scotia-bill-to-ban-health-care-strikes-until-2015-1.2781341>; and Michael Gorman, "Nova Scotia passes controversial health bill amid protests", *The Chronicle Herald* (3 October 2014), online: <http://thechronicleherald.ca/novascotia/1241046-nova-scotia-passes-controversial-health-bill-amid-protests>.
31 Bill No 69, *An Act to Amend Chapter 32 of the Acts of 2014, the Health Authorities Act*, 2nd Sess, 62nd Leg, Nova Scotia, 2014, online:

- Domestic workers, who are predominantly female, are barred from forming unions in several provinces including Ontario[32] and Alberta.[33] Domestic workers are a particularly vulnerable group who could benefit from a union as many live in the same home as their employer and have precarious status as migrant workers and, in the majority, racialized workers.

In 2011, after a decade of litigation, the B.C. Supreme Court ruled that restrictions on collective bargaining and the right to strike introduced by the Government of British Columbia in 2002 were unconstitutional. Specifically, the BC Court ruled that provisions in the *Public Education Flexibility and Choice Act*, S.B.C. 2002, c. 3 [*PEFCA*] (Bill 28) and the *Education Services Collective Agreement Amendment Act, 2004*, S.B.C. 2004, c. 16 [*Amendment Act*] violated section 2(d) of the *Charter* because it was enacted without consultation with the employees, invalidated collective agreement terms with respect to class size and class composition and prohibited future collective bargaining on these subjects, even though they had previously been the subject of bargaining.[34]

Despite this ruling by the Court, and without appealing, the Government of British Columbia enacted the *Education Improvement Act*[35] in 2012, which removed school teachers' right to strike between the coming into force of section 3 of the *Act* and 31 August 2012;[36] imposed a wage freeze during mediation;[37] and re-introduced[38] into law provisions that had already been declared unconstitutional by the BC Supreme Court.[39] In 2014, the B.C. Supreme Court issued a second decision, finding parts of the *Education Improvement Act* - the ones that reintroduced the same restrictions on teachers' collective bargaining rights - to be in violation of section 2 of the *Charter*.

The Government of British Columbia appealed this decision, and was successful in the B.C. Court of Appeal. That Court overturned the decision of the B.C. Supreme Court on April 29, 2015, finding in a 4-1 decision that the Government of British Columbia's legislation did not infringe section 2 of the *Charter*.[40] The B.C. Teachers' Federation subsequently appealed the decision,[41] and on January 14, 2016, the Supreme Court of Canada granted the appeal.[42]

The Supreme Court of Canada's decision to hear the B.C. Teachers' Federation appeal is an important step in this more than decade-long history, which illustrates time and again the stubborn refusal of the BC government to respect teachers' collective bargaining rights. The majority of

---

<http://nslegislature.ca/legc/PDFs/annual%20statutes/2015%20Spring/c001.pdf>.

32 *Labour Relations Act*, SO 1995, c 1, Schedule A, s 3(a), online: CanLII <https://www.canlii.org/en/on/laws/stat/so-1995-c-1-sch-a/latest/so-1995-c-1-sch-a.html?autocompleteStr=labour%20relations%20act%20&autocompletePos=1>.

33 *Labour Relations Code*, RSA 2000, c L-1, at s 4(2)(f), online: CanLII <https://www.canlii.org/en/ab/laws/stat/rsa-2000-c-l-1/latest/rsa-2000-c-l-1.html?autocompleteStr=labour%20relations%20code&autocompletePos=2>.

34 *British Columbia Teachers' Federation v British Columbia*, at 2011 BCSC 469 at paras 28-9, 381-3, 234 CRR (2d) 220, online: CanLII <https://www.canlii.org/en/bc/bcsc/doc/2011/2011bcsc469/2011bcsc469.html?autocompleteStr=2011%20BCSC%20469&autocompletePos=1> [*BCTF* 2011 SC].

35 Bill 22, *Education Improvement Act*, 4th Sess, 39th Leg, British Columbia, 2012, online: <http://leg.bc.ca/39th4th/3rd_read/gov22-3.htm>.

36 *Ibid* at s 3(1).

37 *Ibid* at s 6(2)(b).

38 *Ibid* at s 13. *British Columbia Teachers' Federation v British Columbia*, 2014 BCSC 121 at paras 440-1, 447-50, 456, 54 BCLR(5th)286, online: CanLII <https://www.canlii.org/en/bc/bcsc/doc/2014/2014bcsc121/2014bcsc121.html?autocompleteStr=2014%20BCSC%20121&autocompletePos=1>.

39 *BCTF 2011* SC *supra* note 34 at paras 28-9, 381-3, 234.

40 *British Columbia Teachers' Federation v British Columbia*, 2015 BCCA 75, online: <http://www.courts.gov.bc.ca/jdb-txt/CA/15/01/2015BCCA0184.htm>.

41 Andrea Woo "B.C. Teachers' Federation case will likely reach Supreme Court of Canada: expert", *The Globe and Mail* (7 May 2015), online: <http://www.theglobeandmail.com/news/british-columbia/bc-teachers-federation-case-likely-headed-to-supreme-court-says-expert/article24323744/>.

42 Supreme Court of Canada, News Releases, "Judgments in Leave Applications" (14 January 2016), online: <http://scc-csc.lexum.com/scc-csc/news/en/item/5140/index.do>.

teachers in BC, and Canada, at both the elementary and secondary school levels, are women.[43] Such attacks on teachers' collective bargaining rights disproportionately impact women, their working conditions and their income security.

Recommendation
The Government of Canada, as both an employer and legislator, as well as provincial and territorial governments, should:

- **Ensure that women fully enjoy their right to strike and to bargain collectively without constraints or interference; and**
- **Restrictions on the right of teachers to bargain class size and composition, and on the right of domestic workers and other temporary migrant workers, to unionize should be removed.**

43 Statistics Canada, *Women in Canada: A Gender-based Statistical Report Women and Education*, by Martin Turcotte, Catalogue No 89-503-X (Ottawa, ON: StatstCan, December 2011), online: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11542-eng.pdf>.

6) *Violence against Women (Issue 17)*

(a) Domestic Violence Legislation

Both the CEDAW Committee in its 2008 recommendations,[1] and the Human Rights Committee in its list of issues for the sixth review of Canada's compliance with the *International Covenant on Civil and Political Rights*[2] asked for information regarding specialised domestic violence legislation. This Committee also recommended to Canada in 2006 that domestic violence be included as a specific offence in the *Criminal Code*.[3]

With respect, women in Canada do not identify the problem of domestic violence as stemming from a legislative gap. Women in Canada identify the problem as failures to enforce existing law, failures of police to respond to women appropriately, failures to prosecute and provide appropriate remedies and penalties, and failures to provide adequate social programs and services that will prevent and remedy the violence. Violence against women in intimate relationships is an on-going and serious problem. However, Canadian women do not seek specialised legislation. Instead, they seek efficient and prompt enforcement of existing criminal law, and adequate social and economic supports that will decrease their susceptibility to male partner violence and increase their ability to escape it.

(b) Vulnerabilities to Violence: Women's Social and Economic Conditions

Women's social and economic inequality makes then vulnerable to male violence.[4] Women from all income groups experience violence in Canada,[5] but being poor, under or unemployed, racialized, or disabled makes it more difficult for women to leave an abusive situation,[6] or to protect their children from violence.[7]

i) Lack of adequate income assistance

Alongside inadequate police and justice system response, a second key problem is inadequate social programs and services for women facing violence.[8] Far from working to prevent vulnerability to violence and remediating its effects, social programs and services are often inadequate to protect women, and in fact have the effect of punishing women for being subjects of violence.

Simply put, inadequate welfare rates are massive barriers to women attempting to leave abusive relationships.[9] Without adequate social assistance and supports, poor or underemployed women cannot feed or house themselves and their children. Any woman who cannot afford to forego the

---

1 Committee on the Elimination of All Forms of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women*, Canada, UNCEDAW, November 2008, UN Doc CEDAW/C/CAN/CO/7, at para 30 [CEDAW, *Concluding Observations*].

2 Human Rights Committee, *International Covenant on Civil and Political Rights: List of issues in relation to the sixth periodic report of Canada*, UNOHCHR, 2014, UN Doc CCPR/C/CAN/Q/6 at 12 (online: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCAN%2fQ%2f6&Lang=en>).

3 CEDAW, *Concluding Observations*, *supra* note 1 at para 58.

4 Canadian Network of Women's Shelters and Transition Houses, *A Blueprint for Canada's National Action Plan on Violence Against Women and Girls* (CNWSTH: 18 February 2015) (online: <http://endvaw.ca/our-work/blueprint-for-canadas-national-action-plan-on-violence-against-women>).

5 *Ibid.*

6 Step it Up Ontario, "End Poverty NOW" (2014) (blog) online: <http://stepitupontario.ca/the-10-steps/step-4-end-poverty-now/>.

7 Mary Ellen Turpel-Lafond, *Not Fully Invested: A Follow-Up Report on the Representative's Past Recommendations to Help Vulnerable Children in British Columbia* (Victoria, BC: Representative for Children and Youth, 2014) at 25 [RCY, Not Fully Invested].

8 Janet Mosher et al, *Walking on Eggshells: Abused women's experiences of Ontario's Welfare System* (Toronto: Women Abuse and Welfare Research Project, 2004) at 13.

9 *Walking on Eggshells*, *supra* note 8 at 16.

economic support of her abuser is at risk of continued violence, something the Committee noted in its last concluding observations of Canada's compliance with the *ICESCR*.[10] Women stay trapped in abusive relationships, or returning to abusers because they cannot look after themselves and their children on the amount of income that social assistance provides.[11]

ii) Lack of affordable housing

Coupled with lack of adequate social assistance, homelessness and under housing contribute to women's vulnerability to violence,[12] forcing many women to accept accommodation and economic support from abusive male partners in order to sustain themselves and their children.[13] While the Committee recommended to Canada in 2006 that government programs adequately support housing options for women trying to leave abusive relationships,[14] the specific needs of homeless women escaping violence are not addressed in the current federal Homelessness Partnering Strategy.[15]

iii) The Vicious Circle

Social programs and services are not only inadequate to protect women facing violence, but sometimes penalize women for being subjects of violence by placing them at risk of having their children removed from their care due to the violence of their male partners.

Child protection legislation can put women survivors of violence at risk if they are unable to escape or stop violence by their male partners.[16] When violence against women occurs in families with children, it is often considered abuse or neglect by child welfare agencies.[17] Authorities will remove children who witness violence in their mothers' care.[18] For women on social assistance, losing their children can mean that they also lose their housing because they no longer qualify for a family housing allowance.[19] Child protection services will not return children to their mothers unless they have safe and adequate housing to receive them.[20]

A recent study by the Poverty and Human Rights Centre in British Columbia concluded that "…male violence, inadequate welfare, lack of adequate housing, lack of legal aid, and child apprehension are all integrally connected in the experiences of poor women, and… effective intervention requires dealing with these events and conditions simultaneously and holistically**."**[21]

iv) Women's shelters

The number of shelters in Canada has increased slightly since 2008,[22] and there are 627 shelters as of April 16, 2014.[23] A recent snapshot study showed that 7,969 women and children use shelters each night in Canada with the majority there (78%) to escape violence.[24] However, in 2015, in one day, due

10 RCY, *Not Fully Invested supra* note 7 at 25; CEDAW, *Concluding Observations supra* note 1 at para 26.
11 *Walking on Eggshells supra* note 8 at 16.
12 *Ibid*; Gwen Brodsky et al, *Advancing the Rights of Poor Women: the Vicious Circle* (Vancouver: Poverty and Human Rights Centre, 2010), at 17 (online: <http://povertyandhumanrights.org/wp-content/uploads/2012/11/The-Vicious-Circle-Report.pdf>).
13 Pamela Cross, "It shouldn't be this hard" (Centre for Research & Education on Violence Against Women & Children, 2012) at 54.
14 CEDAW, *Concluding Observations, supra* note 1 at para 59.
15 Stephen Gaetz, Tanya Gulliver & Tim Richter, The State of Homelessness in Canada 2014 (Toronto: The Homeless Hub Press, 2014), at 15 (online: <http://www.homelesshub.ca/sites/default/files/SOHC2014.pdf>).
16 Cross,"It shouldn't be this hard", *supra* note 13 at 28; *Walking on Eggshells, supra* note 8 at 66.
17 Brodsky et al, *Advancing the Rights, supra* note 12 at 22.
18 *Ibid*.; *Walking on Eggshells, supra* note 8 at 66.
19 Brodsky et al, *Advancing the Rights*, *supra* note 12 at 26.
20 *Ibid.*
21 Brodsky et al, *Advancing the Rights, supra note 12* at 4.
22 Statistics Canada, *Measuring violence against women*, catalogue no 85-002-X (Ottawa, ON: StatsCan 2013) at 104.
23 Statistics Canada, *Shelters for abused women in Canada, 2014*, by Hope Hutchins & Sara Beattie, Catalogue No 85-002-X (Ottawa, ON: StatsCan, 2015) (online: <http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14207-eng.htm>) [Statistics Canada, Shelters for abused women].
24 *Ibid*.

to lack of resources, shelters were forced to turn away 302 women and 221 children seeking shelter.[25] Shelters for women and children who are experiencing violence are a crucial life-saving, emergency resource. Every province and territory needs more. Shelters are, however, an after-violence stop gap measure and should not be understood to replace systemic, coordinated reforms designed to improve police and justice system response, and to address women's disadvantaged social and economic conditions.

In the 2015 Canadian Network of Women's Shelters and Transition Houses' report, the Network calls for better funding for basic in-shelter resources such as food, counselling, service providers and schooling services for children.[26] The report also notes an urgent need for post-shelter resources for women such as decent affordable housing, adequate income assistance and second-stage houses.[27]

v) National Action Plan against Gendered Violence

A national coalition of women's groups have outlined a national action plan against gendered violence that is well funded and coordinated, and that includes adequate means of addressing women's disadvantaged social and economic conditions.[28] The Canadian Network of Women's Shelters and Transition Houses has drafted a blueprint outlining the kinds of legal and social steps required to end gendered violence in Canada. The blueprint highlights key issues and approaches which are outlined below. The blueprint does not call for new, specialized legislation.

The Prime Minister has tasked the Minister of Status of Women to prioritize developing a national action plan on violence against women. The Prime Minister's November, 2015, mandate letter to the Minister asks her to:

> work with experts and advocates to develop and implement a comprehensive federal gender violence strategy and action plan, aligned with existing provincial strategies.[29]

Recommendation

- **The Government of Canada should follow the Blueprint for Canada's National Action Plan (NAP) on Violence against Women and Girls to develop a coherent, coordinated, well-resourced plan that meets international human rights standards, incorporates recommendations by treaty bodies and women's non-governmental organizations, and takes into account the experiences and needs of diverse Canadian women.**

25 The Canadian Network of Women's Shelters and Transition House, "Shelter Voices 2015" (April 2015) online: <http://endvaw.ca/sites/endvaw.ca/files/shelter_voices_2015-_eng_0.pdf>.
26 *Ibid.*
27 *Ibid.*
28 Canadian Network of Women's Shelters and Transition Houses, *A Blueprint for Canada's National Action Plan on Violence Against Women* (2015) at 3, 9, online: <http://endvaw.ca/sites/endvaw.ca/files/blueprint_for_canadas_nap_on_vaw.pdf> [CNWHSTH, A Blueprint].
29 Prime Minister of Canada, "Minister of Status of Women Mandate Letter" (Ottawa, ON: PMO, 13 November 2015) online: <http://pm.gc.ca/eng/minister-status-women-mandate-letter>.

7) Child Welfare (Issue 18)[1]

Indigenous children are dramatically overrepresented in the child welfare system in Canada, with a significantly disproportionate number of Indigenous children being taken from their homes and placed in non-Indigenous homes. Recent studies indicate that 48% of the 30,000 children and youth in the foster care system across Canada are Indigenous, notwithstanding that Indigenous peoples account for only 4.3% of the Canadian population.[2] In fact, there are more Indigenous children in foster care today than at the height of the residential school era.

The effects of residential school and the Sixties Scoop have adversely affected parenting skills and the success of many Indigenous families. As recently noted by the Truth and Reconciliation Commission: "These factors, combined with prejudicial attitudes towards Aboriginal parenting skills and a tendency to see Aboriginal poverty as a symptom of neglect, rather than as a consequence of failed government policies, have resulted in grossly disproportionate rates of child apprehension among Aboriginal people".[3]

The primary justifications given by child welfare authorities for the apprehension of Indigenous children are 'physical neglect' and the 'failure to supervise', which are highly correlated with poverty, poor housing and caregiver substance misuse.[4] The result is that Indigenous children are being forcibly removed from their families because their families are poor.

The removal of Indigenous children also has devastating effects on their mothers. The apprehension of children is often part of a vicious circle of harmful events experienced by poor Indigenous women. The vicious circle includes inadequate income assistance, male violence, loss of housing, lack of access to timely and appropriate legal aid, removal of children, and depression/addiction.[5] Once an Indigenous woman is caught in this circle, one harmful event is likely to lead to another.

The Intersection of Violence Against Indigenous *Women and Girls and the Child Welfare System*

Indigenous women and girls are significantly overrepresented as victims of crime. Indigenous women and girls are more likely than other women to experience risk factors for violence and are disproportionately young, poor, unemployed, and have likely been involved with the child welfare system.[6]

On August 17, 2014, the body of 15 year old Tina Fontaine was found in the Red River in Winnipeg, Manitoba. Her death put a spotlight not only on the need for an inquiry into missing and murdered Indigenous women and girls, but also on the failure of the child welfare system to protect girls being cared for outside of their homes. Tina was being cared for by Manitoba's Child and Family Services and had been placed in a foster home before going missing. Police reports indicate that she had a

1 FAFIA thanks Sarah Clarke, M.S.W, LL.B, for her analysis and staunch commitment to advocate on behalf of Indigenous children. Further information about Sarah's law practice can be accessed here: http://www.childandfamilylaw.ca/.

2 Statistics Canada, *National Household Survey: Selected Demographic, Income and Sociocultural Characteristics, Income Statistics in 2010 and Income Sources for the Population Aged 15 Years and Over in Private Households of Canada, Provinces, Territories, Census Metropolitan Area and Census Agglomerations* (Ottawa, ON: StatsCan, 2011), as cited by: Aboriginal Children in Care Working Group, *Aboriginal Children in Care*; Report to Canada's Premiers, (July 2015).

3 Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Ottawa, ON: TRCC, 2015) at 138.

4 Nico Trocmé, Della Knoke and Cindy Blackstock, "Pathways to Overrepresentation of Aboriginal Children in Canada's Child Welfare System" (2004) 78:4 Soc Sci Rev 577 at 578.

5 Gwen Brodsky et al, *Advancing the Rights of Poor Women: The Vicious Circle* (Poverty and Human Rights Centre, April 2010) at 4, online: <http://povertyandhumanrights.org/wp-content/uploads/2012/11/The-Vicious-Circle-Report.pdf>.

6 Truth and Reconciliation Committee, *Honouring the Truth, supra* note 3 at 180.

history of running away from her foster home and media reports suggest that the child welfare agency in charge of her care did not know of her whereabouts for periods prior to her murder.

Tina's story underscores the reality for many Indigenous girls in care: they are taken from their families as a result of poverty and the intergenerational impacts of the residential school era and the Sixties Scoop. They are placed in non-Indigenous homes, where foster parents and child welfare agencies have an inability to provide them with an appropriate cultural context or culturally appropriate services. They are alienated from their culture and from who they are. Inevitably, these girls flee (indefinitely or for periods of time) and become involved in high risk behaviour and activities, including drugs, sex work, and trafficking:

> Many [Indigenous] first point of entry into the criminal justice system is a charge for an offence committed within a care facility. Girls may be charged with assault on a staff member or other 'violent' offence and are then remanded to detention centres, where they come into contact with sexually exploited youth and recruiters… Given the high rate of apprehension of [Indigenous] children, their over representation in the child welfare system leads to their over representation in the criminal justice system, which in turn facilitates their entry into prostitution.[7]

Indigenous kin placements are often not an option. In some provinces kin do not receive the same level of financial support as foster parents, making it difficult for already marginalized communities to support their children. Moreover, many Indigenous peoples do not want to engage with the child welfare system as foster parents, given their experiences with residential school and the Sixties Scoop. More research is needed to explore and understand the intersection of violence against Indigenous women and girls but existing research suggests a devastating link between the large numbers of missing and murdered Indigenous women and girls and the many harmful background factors in their lives, including their overrepresentation in the child welfare system.[8]

The Lack of Culturally Appropriate Prevention Services

The federal government funds First Nations child and family services on reserve through the Department of Indigenous and Northern Affairs [INAC] (previously the Department of Aboriginal Affairs). INAC requires that First Nations child and family services agencies on reserve comply with provincial/territorial child welfare laws as a condition of funding. Pursuant to its own stated objectives, the First Nations Child and Family Services Program is to provide for child welfare services on reserve that are reasonably comparable to those provided off reserve and are culturally appropriate.

The Enhanced Prevention Focused Approach (EPFA) is the most recent attempt by the federal government to address the inadequacies in the funding formulae and the failure to equitably fund First Nations Child and Family Service Agencies. The EPFA was developed in 2006 and first implemented in the Province of Alberta in 2007. It is currently administered in Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia and Prince Edward Island. The EPFA has an additional funding stream specifically for prevention based services. According to the federal government, the development of the EPFA reflects the underlying shift in social work practice, placing a greater focus on prevention services, as opposed to protection services.

While the EPFA does increase the level of funding for the delivery of prevention services by First Nations Child and Family Services Agencies on reserve, it incorporates some of the flawed

---

7 Anette Sikka, *Trafficking of Aboriginal Women and Girls in Canada, Aboriginal Policy Research Series* (Institute on Governance, 2009) at 9, online: < http://iog.ca/wp-content/uploads/2012/12/May-2009_trafficking_of_Aboriginal_women-1.pdf >.

8 Truth and Reconciliation Committee, *Honouring the Truth, supra* note 3 at 180.

assumptions of Directive 20-1, which have been well documented, and does not adequately account for the needs of children and families. While the EPFA is generally viewed as an improvement to the Directive, the Auditor General of Canada noted in both 2008 and 2011 that the formula remains inequitable.[9] For example (this list is not exhaustive):

- there is no funding in EPFA for the receipt, assessment or investigation of child maltreatment reports;
- there is no funding for child in care related legal expenses (eg. child removal, guardianship and inquests);
- the formula does not account for the higher needs of Indigenous children related to the multi-generational impacts of residential schools;
- although some items in the formula account for inflation when EPFA is implemented, there is no ongoing inflation adjustment;
- INAC says agencies are free to define what culturally based services are but EPFA does not include a budget line for the development, operation and evaluation of culturally based standard and programs;
- there is no funding in the formula for capital costs such as child friendly office buildings or vehicles; and
- there is no clear policy on how the EPFA would affect First Nation Child and Family Service Agencies serving fewer than 1000 children on reserve.[10]

Indigenous children living off-reserve face similar deficits in their ability to access meaningful and culturally appropriate prevention services. Research suggests that current child welfare practices focus more on separating families rather than keeping them together.[11] For example, in Manitoba there are approximately 11,000 children in care – 90% of them Indigenous children. Many families cannot access essential services from child welfare agencies unless they come into the system, as families who do reach out for help are often monitored, investigated and ultimately separated. The Métis Nation of Ontario, the Ontario Native Women's Association and the Ontario Federation of Indigenous Friendship Centres argue:

> In our view it has been amply demonstrated that it is functionally impossible to provide effective prevention and 'protection' services simultaneously. Based on years of experience, we know at-risk families are highly unlikely to access prevention supports from child protection agencies given that this is perceived as a fast track to irreversible state intrusion. Conversely, at-risk families are more inclined to reach out to Aboriginal service providers to receive supports in solution-oriented, strengths-based and cultural environments, leading to more positive outcomes.[12]

Update Regarding the Human Rights Complaint

On January 26, 2016, the Canadian Human Rights Tribunal released its decision on the Complaint

9 Office of the Auditor General of Canada, *Status Report of the Auditor General to the House of Commons: Chapter 4, First Nations Child and Family Services Program*, by Indian and Northern Affairs Canada (Ottawa, ON: OAG, 2008).; Office of the Auditor General of Canada, *Status Report of the Auditor General of Canada to the House of Common: Chapter 4, Programs for First Nations on Reserve*, by Indian and Northern Affairs Canada (Ottawa, ON: OAG, 2011).

10 First Nations Child and Family Caring Society of Canada, "Information Sheet: Federal Funding Formulas for First Nations Child and Family Services, 1965 Indian Welfare Agreement" (6 January 2016), online: <https://fncaringsociety.com/sites/default/files/1965%20Agreement%20description_0.pdf>.

11 Aboriginal Children in Care Working Group, *Aboriginal Children in Care: Report to Canada's Premiers*, (Ottawa, ON: Council of the Federation Secretariat, July 2015) at 23, online: <http://canadaspremiers.ca/phocadownload/publications/Aboriginal_children_in_care_report_july2015.pdf>).

12 Métis Nation of Ontario, the Ontario Native Women's Association, and the Ontario Federation of Indigenous Friendship Centres, *A Collaborative Submission Regarding the Child and Family Services Act, 2015*, as cited in: *Aboriginal Children in Care Working Group, supra* note 11 at 24.

filed against the federal government in relation to the FNCFS Program.[13] It found that the Canadian government is racially discriminating against 163,000 First Nations children and their families by providing flawed and inequitable child welfare services and failing to implement Jordan's Principle to ensure equitable access to government services available to other children. The key findings are the CHRT were:

- The FNCFS Program is discriminatory and promotes negative outcomes for Indigenous children and families.[14]
- The FNCFS Program provides an incentive to remove children from their homes as a first resort rather than a last.[15]
- The Government of Canada's "one-size fits all" approach to child welfare services does not work for children and families living on reserves.[16]
- The FNCFS Program contains no mechanism to ensure child and family services provided to Indigenous Peoples living on reserves are reasonably comparable to these provided to children in similar circumstances off reserve.[17]
- The FNCFS Program causes Indigenous children and families to be denied the opportunity to remain together or be reunited in a timely manner. [18]
- There is often a lack of coordination of services relating to health, safety and well-being on reserves which causes Indigenous Peoples to be denied services available to other Canadians and children to be placed into care unnecessarily.[19]
- The FNCFCS Program is not culturally appropriate and did not meet the real needs of Indigenous children and their families or take into account their historical, cultural and geographical circumstances.[20]

The CHRT ordered the Government of Canada to immediately cease discriminating against Indigenous children and their families and to ensure that Indigenous children are no longer denied services provided to other Canadians as a result of jurisdictional disputes between and within governments. The CHRT reserved its decision relating to systemic remedies and individual compensation for the children impacted by the discrimination.

The current reality across Canada is that culturally appropriate preventative services are not available or accessible for the majority of Indigenous children and families. This must change. The Truth and Reconciliation Commission of Canada named child welfare as its first Call to Action. Its call, along with the remedies granted by the CHRT, must be answered:

Recommendations

The federal, provincial, territorial, and Aboriginal governments should:

- **Commit to reducing the number of Indigenous children in care by:**
  - **Monitoring and assessing neglect investigations;**
  - **Providing adequate resources to enable Indigenous communities and child-welfare organizations to keep Indigenous families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside; and**
  - **Implement Jordan`s Principle so that all Indigenous children have access to the same services as all Canadian children.**

13 *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canad*a), 2016 CHRT 2 [Caring Society v Canada].
14 *Ibid* at para 344.
15 *Ibid.*
16 *Ibid* at para 315.
17 *Ibid* at para 334.
18 *Ibid* at para 349.
19 *Ibid* at para 391.
20 *Ibid* at para 465.

The federal, provincial, and territorial governments should:

- **Review all policies and practices to identify and eliminate the specific gender-based harms caused to Indigenous women and girls by current child welfare practice.**

The Right to Social Security and an Adequate Standard of Living (Articles 9 and 11)

8) Women in poverty: measures to reduce poverty among marginalized and disadvantaged women and girls (Issue 19)

Poverty

The CESCR recommended in 2006, hat the State party:

> eliminate gaps in the area of poverty as a matter of priority, bearing in mind the immediate nature of the obligations contained in articles 2 and 3 of the Covenant. The Committee further recommends that the State party assess the extent to which poverty is a discrimination issue in Canada, and ensure that measures and programs do not have a negative impact on the enjoyment of economic, social and cultural rights, especially for disadvantaged and marginalized individuals and groups.[1]

This recommendation has not been implemented. There has been no national assessment study of the gendered nature of poverty in Canada and its effects on the lives of women and girls, including particularly vulnerable groups of women and girls.

About 8.9% of women in Canada live in poverty according to Statistics Canada's 2011 figures.[2] Particular groups of women have much higher rates of poverty:

- 37% of First Nations women (off reserve);[3]
- 23% of Metis and Inuit women;[4]
- 20% of immigrant women;[5]
- 28% of women of colour;[6]
- 27.5% of women with severe disabilities;[7]
- 28.3% of single women;[8]

---

1 Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights, Canada*, UNCESCR, 36th Sess, May 2006, UN Doc E/C.12/CAN/CO/4-5 at para 44.

2 Statistics Canada, "Table 202-0802: Persons in low income after tax - in% 2007 to 2011" Catalogue No 75-202-X, (Ottawa: StatsCan, 27 June 2013), online: <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/famil41a-eng.htm>. [Statistics Canada, Persons in low income]

3 Statistics Canada, *Women in Canada: A Gender Based Statistical Report First Nations, Métis and Inuit Women*, by Vivian O'Donnell & Susan Wallace, Catalogue No 89-503-X (Ottawa: StatsCan, July 2011), online: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.pdf>. [Statistics Canada, First Nations, Métis and Inuit Women]

4 *Ibid.*

5 Statistics Canada, *Women in Canada: A Gender-based Report Immigrant Women*, by Tina Chui, Catalogue No 89-503-X (Ottawa: StatsCan, July 2011), online: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11528-eng.pdf>. [Statistics Canada, Immigrant Women]

6 Statistics Canada, *Women in Canada: A Gender Based Statistical Report Visible Minority Women*, by Tina Chu and Hélène Maheux, Catalogue No 89-503-X (Ottawa: StatsCan, July 2011), online: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11527-eng.pdf>. [Statistics Canada, Visible Minority Women]

7 DAWN Canada, "Factsheet: Women with Disabilities and Poverty" (Montréal, QC: DAWN-RAFH, 2015) online: <http://www.dawncanada.net/issues/issues/fact-sheets-2/poverty/>.

8 Statistics Canada, "Persons in low income", *supra* note 2.

- 23% of single mothers;[9]
- and, 34% of single women over 65.[10]

Further, women's average incomes are about two-thirds of men's in Canada.[11] The gender income gap has narrowed a bit over twenty years, but Canada is ranked 11th among 17 comparable countries by the Conference Board of Canada.[12]

Women are poorer than men in Canada, are more likely to be poor, and more likely to live in deeper poverty.[13] As the data shows, particular groups of women are more likely to be poor, and to have lower incomes.

This inequality has deep structural roots. Women are poorer than men because they have been assigned the role of unpaid caregiver and nurturer for children, men and old people; because in the paid labour force they perform caregiving and support work which is devalued and lower paid; because there is a lack of safe affordable Childcare and this constrains women's participation in the paid labour force; because women, particularly racialized, immigrant and women with disabilities, are devalued workers, and more likely to be in precarious work; and because women incur economic penalties when they are not attached to men and when they have children alone.[14]

For women, poverty and economic inequality have gendered, harmful consequences. For women, poverty enlarges every dimension of inequality, not just the economic dimension. Poor women are less able to protect themselves from being treated as sexual commodities and nothing more, and more likely to accept sexual commodification, prostitution and subordination in order to survive. They lose sexual autonomy in relationships. Their vulnerability to rape and assault is magnified. Their ability to care for their children is compromised, and they are more likely to have their children taken away in the name of "protection," often because they do not have adequate housing and cannot supply proper food or ensure safe conditions. Without adequate incomes, women cannot secure stable housing and become homeless, increasing their exposure to violence. They have no political voice or influence. They are over-policed and under-protected by police. Without access to adequate social programs, including adequate social assistance and social services, such as shelters and transitional housing, women are much less able to resist or escape subordination and violence.[15]

Welfare

(a) Conditions on the Social Transfer related to Social Assistance (Issue 15)

The Canada Social Transfer has only one condition that is set out in section 25.1 of the Federal-Provincial Fiscal Relations Act:

> "In order that a province may qualify for a full cash contribution…the laws of the

9 *Ibid.*
10 *Ibid.*
11 Statistics Canada, "Table 202-0407, Chart 1: Average total income of women and men, 1976 – 2008" Catalogue No 89-503-X, (Ottawa: StatsCan, 13 May 2013), online: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11388/c-g/c-g001-eng.htm>.
12 Conference Board of Canada, "Gender Income Gap" (January 2013), Conference Board of Canada, online: <http://www.conferenceboard.ca/hcp/details/society/gender-income-gap.aspx>.
13 Monica Townson, *Women's Poverty and the Recession* (Ottawa: Canadian Centre for Policy Alternatives, September 2009) (online: <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National_Office_Pubs/2009/Womens_Poverty_in_the_Recession.pdf>).; Canadian Centre for Policy Alternatives, "Canadian women on their own are the poorest of the poor", (8 September 2009), Monica Townson (commentary), online: <https://www.policyalternatives.ca/publications/commentary/canadian-women-their-own-are-poorest-poor> . [Townson, "Canadian women on their own"]
14 Shelagh Day, "The Indivisibility of Women's Human Rights" (2003) 20:3 Can Wom Stud 11 at 12.
15 Canadian Women's Foundation, "The Facts About Women and Poverty" (30 March 2013), online: <http://www.canadianwomen.org/sites/canadianwomen.org/files//FactSheet-EndPoverty-ACTIVE%20-%20May%2030.pdf>.

> province must not *in the case of persons described in subsection 2*, (*a*) require or allow a period of residence in the province or Canada to be set as a condition of eligibility for social assistance or for the receipt or continued receipt of social assistance; or (*b*) make or allow the amount, form or manner of social assistance to be contingent on a period of such residence." (*Federal-Provincial Fiscal Relations Act,* emphasis added).

This condition ensures that most individuals applying for social assistance from a province or territory are not subject to a minimum residency requirement for eligibility. However, recently this one basic condition was recently eroded. The protection from minimum residency requirements was lifted in the case of refugees.

This change was made through the October 2014 omnibus budget bill (section 172). This means now that the only remaining condition that protected universality of eligibility for welfare across the country no longer applies to all residents.

Equally troublesome is the complete lack of any other conditions or mechanisms for ensuring that a minimum standard for adequacy is met. Since the elimination of the Canada Assistance Plan, a conditional cost-sharing transfer that existed from 1966 until 1996, subsequent federal governments have shown no interest in reinstating conditions. Similarly, the provinces are not required to report back to the federal government on how the Canada Social Transfer funds are allocated and spent.

(b) Adequacy (Issue 16)

Welfare in Canada is a program of last resort. It is only available to persons who have no alternative income to rely on. Unfortunately, welfare rates in Canada are set so low that women who are reliant on social assistance are stuck in poverty rather than being helped out of it.

The Caledon Institute's report on welfare rates for 2013, shows that welfare incomes for all households in all jurisdictions fall well below the poverty line, as measured by Statistics Canada's after tax low income cut-offs (or LICOs).[16] The one exception is single-parent families with one child in Newfoundland and Labrador, who receive welfare incomes just slightly above the poverty line.[17] The effect of below poverty line welfare rates is that recipients cannot afford adequate food and shelter.

Canada has no national anti-poverty plan, in spite of the fact that it has been called for by a Parliamentary Committee, [18] many anti-poverty organizations, social policy experts and many Canadians. Canada Without Poverty and Citizens for Public Justice have developed a detailed national anti-poverty plan for Canada, outlining the measures and steps that must be taken, including the design and implementation of a national housing strategy.[19]

The Government of Canada must take the lead in efforts to eliminate poverty in Canada, as it controls and provides funds through the Canada Social Transfer that the provinces and territories rely on to support social programs, and only through federal government leadership can co-ordination and standards be established. But the Government of Canada refuses to do so.

---

16 Caledon Institute of Social Policy, *Welfare in Canada 2013*, prepared by Ann Tweddle, Ken Battle & Sherri Torjman (Ottawa, ON: Caledon Institute, 2014), at 48, online: <http://www.caledoninst.org/Publications/PDF/1057ENG.pdf>.

17 Caledon Institute, *Welfare in Canada, supra* note 16 at "Table 3, for welfare rates for each household type by jurisdiction compared to the poverty line", 49-52.

18 Canada, House of Commons, Standing Committee on Human Resources, *Skills and Social Development and the Status of Persons with Disabilities, Federal Poverty Reduction Plan: Working in Partnership Towards Reducing Poverty in Canada* (November 2010), online: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=4770921&Language=E&Mode=1&Parl=40&Ses=3>.

19 Canada Without Poverty & Citizens for Public Justice, *A National Anti-Poverty Plan for Canada* (CWP, 2015), online: <http://www.cwp-csp.ca/wp-content/uploads/2015/02/DignityForAll_Report-English-FINAL.compressed.pdf>.

Adequate income security and adequate housing are building blocks for women's equality. Welfare recipients as a whole are a vulnerable group, and women welfare recipients are a particularly vulnerable group for reasons set out above. FAFIA believes that Canada's failure to provide welfare at rates at or above the poverty line, so that recipients can secure adequate shelter and food, violates the *ICESCR* article 11 right to an adequate standard of living.

Recommendations
The Government of Canada should:

- **Design and implement a lasting and meaningful national plan to combat poverty that uses a human rights framework, includes a national housing strategy, and takes the particular realities of diverse women's lives into account;**
- **Establish national standards for social assistance across the country, and reinstate conditions regarding the level and adequacy of assistance that will ensure welfare incomes for all household types in all jurisdictions provide at least poverty level incomes, and assist recipients to get out of poverty; and**
- **Improve accountability in the Canada Social Transfer by setting out clear penalties for provinces that violate the existing condition banning minimum residency requirements in provincial social assistance programs, including for refugees.**

Adequate Housing

The right to adequate housing is well established at international law. Article 11 of the *ICESCR* is arguably the most comprehensive and important of these guarantees. As such, and given the critical nature of the housing crisis Canada faces, this periodic review offers a singular opportunity for accountability on this issue for Canadian governments.

In its 2006 review of Canada's periodic report, CESCR called upon:

> Federal, provincial and territorial governments to address homelessness and inadequate housing as a national emergency by reinstating or increasing where necessary, social housing programs for those in need, improving and properly enforcing anti-discrimination legislation in the field of housing, increasing shelter allowances and social assistance rates to realistic levels and providing adequate support services for persons with disabilities.[20]

None of these recommendations has been followed. The crisis of housing inadequacy in Canada has worsened since the UN Special Rapporteur on Adequate Housing, in 2009, detailed a long list of state failures that result in denial of the right to adequate housing for many Canadians.[21] Canada must be held to account for this persistent and willful failure.

Significant numbers of those resident in Canada face severe housing inadequacy—with a continuum that runs from homelessness to housing that is too expensive, substandard in condition, and inadequate in size, location, and facilities. Close to the homelessness end of the spectrum are those who, because of their poverty, live in single room occupancy hotels infested with vermin, without heat or hot water for periods of time, paying per square foot some of the most expensive rents for a tiny

20 CESCR, *Concluding observations 2006, supra* note 1 at para 62.
21 Human Rights Council, *Report of the Special Rapporteur on adequate housing: Mission to Canada*, by Miloon Kothari, GE.09-11502, UNOHCHR, 10th Sess, 3rd Add, UN Doc A/HRC/10/7/Add.3, (2007), online: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.7.Add.3.pdf>.

cell.[22]

Canada has no national housing strategy: for the last decade and a half, there has been no overall consistent government policy dealing with what has become a housing emergency.

i) Core Housing Need

Data from the last Census show that 12.45 percent of households in 2011 experienced core housing need.[23] Urban need is higher: core housing need for urban households in BC in 2012 was 16.1%, second highest to Ontario at 16.6%.[24] In Vancouver, the largest city in British Columbia and third largest in Canada, 20.1 percent live in core housing need, the highest incidence of core housing need in Canadian municipal areas.[25] Absolute numbers of households in core need has increased since 1991.[26] Renters are more likely to be in core housing need than home owners. For example, renters in British Columbia at 31.1% were the most likely to spend more than 50% of their income on housing.[27]

The impacts on children in families spending the majority of their income on rent are particularly severe, including a high risk of malnutrition and higher risk of respiratory and other diseases.[28] Significantly, female lone-parent households and female one-person households had the highest incidences of core housing need in 2011.[29] Women, already disproportionately affected by poverty, intimate partner violence, and sexual abuse, disproportionately bear the brunt of this housing inadequacy crisis.

ii) Homelessness

Homelessness is a significant issue across Canada. There are no reliable numbers, although local surveys show that it is a dire situation.[30] A study in 2013, estimated that there are at least 200.000 homeless across Canada each year.[31] In 2015, the Vancouver homeless point-in-time count found 1.746 homeless persons: 488 were unsheltered and 1,259 were sheltered. These numbers are certainly undercounts and methodology is limited as to representing the hidden homeless, among whom women may be more representative.

---

22 Matt Lee, *NewsTalk 980 CKNW – Vancouver's News*, "Poor living conditions still plague notorious Downtown Eastside SRO" (17 October 2015) online: <http://www.cknw.com/2015/10/17/103574/>.

23 The Canadian Mortgage and Housing Corporation (CMHC) defines core housing need as occupying housing that requires more than 30% of pre-tax household income and/or that fails to meet standards of adequacy and suitability. Numbers of households in core housing need exclude the homeless, household headed by full-time students between the ages of 15 and 29, and First Nations on-reserve households. Inclusion of these groups would significantly raise the percentage of households in core housing need. Moreover, the definition of core housing need is more restrictive than the international standard of adequate housing, with the consequence that it is likely that numbers for inadequate housing, according to the standards set in CESCR Comment No. 4, will be higher. *Report to the Special Rapporteur,* Kothari, *supra* note 21; Sarah Cooper and Ian Skelton, *Addressing Core Housing Need in Canada, Canadian Centre For Policy Alternatives—Manitoba Office* (Winnipeg, MB: CCPA, 2015), online: <https://www.policyalternatives.ca/sites/default/files/uploads/publications/Manitoba%20Office/2015/10/Addressing_Core_Housing_Canada.pdf>.

24 Canada Mortgage and Housing Corporation, *First Annual Estimate of Urban Households in Core Housing Need Based on Statistics Canada's New Canadian Income Survey*, (CMHC, 14 December 2015), online: <http://www.cmhc-schl.gc.ca/en/hoficlincl/observer/observer_026.cfm?utm_source=observer-en&utm_medium=link&utm_campaign=obs-20151214-core-housing-need-data>.

25 Canadian Mortgage and Housing Corporation, *Canadian Housing Observer 2014* (CMHC, April 2015), online: <http://www.cmhc-schl.gc.ca/odpub/pdf/68189.pdf?fr=1451379075805#page47>

26 Cooper and Skelton, *Addressing Core Housing Need, supra* note 23.

27 Inclusion BC, *Save Social Housing Coalition: First Meeting* (Vancouver: 12 September 2012), online: <http://www.inclusionbc.org/events/2012-09-12/save-social-housing-coalition>.

28 BC Poverty Reduction Coalition, "Cost of Poverty: Housing" (BCPRC), online: <http://bcpovertyreduction.ca/learn-more/cost-of-poverty/#housing>.

29 *Housing Observer, supra* note 25 at 1-7.

30 *Report to the Special Rapporteur,* Kothari, *supra* note 21 at 17.

31 Stephen Gaetz, Jesse Donaldson, Tim Richter, Tanya Gulliver-Garcia, *The State of Homelessness in Canada 2013*, Canadian Alliance to End Homelessness, (Toronto, ON: The Homeless Hub, 2013), online: <http://www.homelesshub.ca/resource/state-homelessness-canada-2013#sthash.3NeIVJDj.dpuf>.

iii) Federal Programs

The federal government, while largely reducing its involvement in housing provision, has two programs in place: the Investment in Affordable Housing and the Homelessness Partnering Strategy. Both are plagued by inconsistent and inadequate funding, have no long term guarantees attached to them, no explicit reference to adequacy, suitability, and affordability, and have resulted in a patchwork of partial responses across the country.[32] Critically, these programs are not designed to deal with the widespread incidence of core housing need, focusing primarily on the visible homeless and ignoring, largely, those precariously housed.[33]

Federal subsidies established in the 1990s for various forms of co-operative and social housing are coming to an end, with no replacement funds. The result, absent new federal funding, will be evictions and replacement of below market housing units with market rental or ownership units. Estimates from 2013 state that Ontario has 7,000 households are slated to lose their rental top-ups. In Quebec, it is nearly 6,000 and in British Columbia it is 4,200 households.[34]

iv) Indigenous Housing

Indigenous people are among the most vulnerable to homelessness, inadequate housing conditions, and housing discrimination. There are no specific programs for off-reserve Indigenous housing at the federal level. In 2009, the Special Rapporteur on adequate housing noted that Indigenous women face some of the most severe housing conditions, regardless of the communities in which they lived.[35] Off-reserve Indigenous households experience above average incidence of core housing need.[36] Researchers estimate that upwards of one-third of household's on-reserve were in core housing need in 2011.[37] On-reserve housing lies within federal jurisdiction; off-reserve housing for Indigenous peoples is within provincial jurisdiction.

Recommendations

The Government of Canada should:

- **Recognize adequate housing as a human right and support civil society efforts to have such a right recognized by the judiciary as implicit in rights to life and security of the person already recognized in the *Canadian Charter of Rights and Freedoms*;**
- **Implement a national housing strategy that prioritizes the housing needs of the most vulnerable, including the specific housing needs of women, and that gives effect to the right to adequate housing by ensuring the availability and adequacy of a wide range of housing/shelter options for different housing needs and preferences, such as emergency shelters, social housing, affordable homeownership options, and market rental and ownership housing;**
- **Implement a housing strategy for Indigenous peoples;**
- **Focus its efforts on supporting and expanding existing social housing, and developing new social housing, defining affordability according to income levels, rather than market prices; and**
- **Develop social housing in cooperation with provincial, territorial and municipal governments.**

32 Cooper and Skelton, *Addressing Core Housing Need, supra* note 23 at 17.
33 *Ibid.*
34 Erika Tucker and Vassy Kapelos, "Fears of evictions across Canada as feds end co-op housing subsidy", *Global News* (22 January 2014), online: <http://globalnews.ca/news/1100348/co-op-housing-subsidy-to-end/>.
35 *Report to the Special Rapporteur,* Kothari, *supra* note 21 at 77.
36 *Housing Observer, supra* note 25 at 1-10.
37 Cooper and Skelton, *Addressing Core Housing Need, supra* note 23 at 4.

Food Security: Compromised by Poverty and Housing Unaffordability

In 2012, the last year for which data are available, four million Canadians were food-insecure.[38] This number under-represents the hungry and malnourished as it leaves out First Nations on reserves and the homeless. The Special Rapporteur on food security in a 2012 report on Canada noted that lone women-led households are particularly vulnerable.[39] The UN Report concluded that a growing number of people across Canada remain unable to meet their food needs. In 2006, the Committee recommended Canada increase its efforts to respond to food insecurity, noting the federal government's core obligation to provide for the hungry.[40]

The inadequacy of social protection schemes to meet basic household needs has precipitated the proliferation of private and charity-based food aid.[41] The federal government has no poverty reduction plan, more specifically, no policy to deal with the hungry within its territory. Essentially and effectively, food security is outsourced to food charity.

Recommendation

- **The Government of Canada should formulate a comprehensive rights-based food strategy, identifying measure to be adopted, time frames, and attentiveness to most vulnerable populations. Included must be revision of social assistance levels and minimum wage levels to correspond to costs of necessities required to enjoy the human right to an adequate standard of food security.**

Food Insecurity and Northern Women

Food insecurity poses a particularly serious challenge in northern Canada due to the region's vast and sparsely populated geography, remote communities and cold climate. Preliminary research indicates that women in Canada's North are more vulnerable to food insecurity than men.[42] The following statistics illustrate the significant problem presented by food insecurity in Canada's North:

- In 2011, the food insecurity rate in Yukon households was 16.8%, in the Northwest Territories the rate was 15.2%, and in Nunavut the rate was 36.4%, compared to a Canadian average of 12%.[43]
- In 2011, off-reserve Indigenous households in Canada were about twice as likely as other Canadian households to be food insecure.[44]
- In 2011, 23.9% of the population in Yukon reported being First Nation, Inuit or Metis, compared to 51.9% of the population in the Northwest Territories, and 86.3% in Nunavut.[45]

---

38 Graham Riches, "Opinion: Doing a bit isn't enough", *The Vancouver Sun* (28 December 2015), online: <http://www.vancouversun.com/business/opinion+doing+enough/11617817/story.html>.

39 Human Rights Council, *Report of the Special Rapporteur on the right to food: Mission to Canada*, GE.12-18956, UNOHCHR, 22nd Sess, Add. 1, UN Doc A/HRC/22/50/Add.1 (2012), online: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC2250Add.1_English.PDF>.

40 *Ibid* at para 61.

41 *Report of the Special Rapporteur* 2012, *supra* note 39.

42 Council of Canadian Academies, *Aboriginal Food Security in Northern Canada: An Assessment of the State of Knowledge* (Ottawa: Council of Canadian Academies, 2014) at 47, online: <http://www.scienceadvice.ca/uploads/eng/assessments%20and%20publications%20and%20news%20releases/food%20security/foodsecurity_fullreporten.pdf> [Council of Canadian Academies, Aboriginal Food Security].

43 *Ibid* at 39.

44 *Ibid* at 36.

45 Statistics Canada, "Table 2, Number and Distribution of the population reporting an Aboriginal identity andpercentage of Aboriginal people in the population, Canada, provinces and territories", *National Graduates Survey 2011* (Ottawa, ON: StatsCan, 2011), online: <http://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-011-x/2011001/tbl/tbl02-eng.cfm>.

- The highest incidence of food insecurity in Canada has been reported in Nunavut where 56% of the Inuit population is classed as food-insecure.[46] Results from the 2007–2008 International Polar Year Inuit Health Survey show that the people of Nunavut had the highest food insecurity rate for any Indigenous population in a developed country (68%).[47]
- Across Canada, women are consistently more likely than men to be food insecure.[48]
- Participants in a study on food insecurity among Inuit women published in 2010 reported gendered dimensions to food insecurity, with women being typically the last to eat in the household to ensure that members of their family, especially children, eat enough. Some women, especially elders, reported allowing men to eat first if food is limited because of energy needed to hunt.[49]
- A 2009 study on food insecurity in Nunavut concluded that women were significantly more likely than men to reduce the size of their meals or skip meals, go hungry due to lack of food, or not eat for an entire day.[50]
- Households with children have a higher incidence of food insecurity.[51]
- Single mothers are more vulnerable to food insecurity due in part to the high cost of childcare, high rates of poverty among single mothers, and changing food sharing networks.[52]
- Unemployment, poverty, high food costs, the lack of affordable housing, high hunting costs, a decline in the practice of traditional activities, and a weakening of food sharing have all been cited as factors contributing to food insecurity in Canada's North.[53]

While a variety of multidisciplinary approaches to address food insecurity have been implemented at the grassroots, territorial and national levels, food insecurity remains a serious and growing challenge in Canada's northern communities.[54] Additional short-term mitigation and long-term responses are required to alleviate food insecurity and changes to some of the current approaches are also necessary. For instance, the federal government's Nutrition North food subsidy program has received criticism for being ineffective and difficult to access for many communities.[55] In order to develop effective strategies to alleviate food insecurity, it is important to recognize and understand the local realities of Canada's northern communities. Research initiatives such as the community food mapping project undertaken by the Yukon Anti-Poverty Coalition[56] are helping to fill the gaps in our current understanding of the context-specific factors that contribute to food insecurity at a local level.

An assessment of food insecurity in Canada's North conducted by an expert panel and published in 2014, recommends that in order to build food security in northern Canada, it is necessary that the responses be holistic, enabled by local traditional knowledge, paired with initiatives to tackle the closely related issue of poverty and that these responses receive stable funding.[57]

---

46 Beaumier, M.C. and Ford, J.D. "Food Insecurity among Inuit Women Exacerbated by Socioeconomic Stresses and Climate Change" Can J Pub Hlth, 101(3):196-201 at 196, online: <http://journal.cpha.ca/index.php/cjph/article/view/1864/2099>.

47 Council of Canadian Academies, *Aboriginal Food Security, supra* note 42 at 36.

48 *Ibid* at 48.

49 Beaumier & Ford, "Food Insecurity among Inuit Women", *supra* note 46 at 198.

50 Council of Canadian Academies, *Aboriginal Food Security, supra* note 42 at 47.

51 *Ibid* at 45.

52 Townsen, M., "A Report Card on Women and Poverty", (Ottawa, ON: CCPA, April 2000) at 1, online: <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National_Office_Pubs/women_poverty.pdf>; Council of Canadian Academies, *Aboriginal Food Security, supra* note 42 at 41, 80.

53 *Council of Canadian Academies, Aboriginal Food Security, supra note* 42 at 42; Beaumier & Ford, "Food Insecurity among Inuit Women", *supra* note 46 at 198-199; Leonard Linklater, "Interview of Kate Mechan and Jodie Crew", *CBC Radio* (13 October 2015).

54 Council of Canadian Academies, *Aboriginal Food Security, supra* note 42 at xiv and xxi-xxii.

55 Steve Rennie, "Nutrition North food subsidy program: what went wrong", *CBC News* (21 December 2014), online: <http://www.cbc.ca/news/canada/north/nutrition-north-food-subsidy-program-what-went-wrong-1.2880756>.

56 Yukon Anti-Poverty Coalition, "Our Food in Place" (Whitehorse, YK: YAPC, 2015), online: <http://yapc.ca/assets/files/OurFoodInPlace.pdf>.

57 Council of Canadian Academies, *Aboriginal Food Security, supra* note 42 at xxi-xxii.

Food insecurity takes a significant toll on the health and well-being of individuals and communities and the critical issue of food insecurity is experienced disproportionately by women in Canada's North. In addition to being critical to the health and well-being of all northerners, reducing food insecurity in Canada's North will improve women's social and economic equality.

Recommendation

- **The Government of Canada with the territorial governments should develop an effective food security strategy for the North that will address the disproportionate food insecurity of Northern women.**

The Right to Physical and Mental Health (Article 12)

9) *Women's Health*

(a) Refugee and migrant women's access to health care

In the UN Human Rights Committee's 2015 Concluding Observations, the Committee highlighted its concern about the 2012 cuts to to the Interim Federal Health Program (IFHP).[1] The Committee recognized that these cuts have "resulted in many irregular migrants losing access to essential health care services" and called on Canada to "ensure that all refugee claimants and irregular migrants have access to essential health care services irrespective of their status".[2]

Refugees are a particularly vulnerable group of people suffering from dislocation, language barriers, and trauma. Health services are critical as many refugees are fleeing from violence and have had little access to care in their country of origin.

Since 1957 the Government of Canada provided comprehensive health insurance coverage for refugee claimants under the IFHP.[3] However, in 2012, the Governor-in-Council passed two orders in council that significantly reduced the level of health coverage available for refugees.[4] Thousands of refugees and refugee claimants were left with no access to basic, emergency, and lifesaving health care. These cuts were successfully challenged as unconstitutional in 2014.[5] While the Government of Canada initiated an appeal of the decision, the new federal government has dropped the appeal and announced that it will restore the IFHP fully.[6]

However, the changes have caused great confusion in the health care system. Some refugee women, who were and are eligible for health care, have been denied care due to confusion around changes to the program.[7]

Until the IFHP is restored fully, the ability of refugee women to access health care in Canada remains

1 Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, GE.15-13296(E), UNOHCHR, 114th Sess, UN Doc CCPR/C/CAN/CO/6 (13 August 2015) at para 12 [Concluding observations, 2015].
2 *Ibid.*
3 *Canadian Doctors for Refugee Care v Canada (Attorney General),* 2014 FC 651 at paras 36-48, [2014] FCJ No 679.
4 Minister of Justice, *Order Respecting the Interim Federal Health Program*, SI/2012-26, P.C.2012-433, P.C.2012-945 (Ottawa: 25 April 2012), online: <http://laws-lois.justice.gc.ca/PDF/SI-2012-26.pdf>.; Citizenship and Immigration Canada, *Order Amending the Order Respecting the Interim Federal Health Program*, SI/2012-49, PC 2012-945 (Ottawa, ON: 28 June 2012), online: Archived Content Canada Gazette <http://canadagazette.gc.ca/rp-pr/p2/2012/2012-07-18/html/si-tr49-eng.html>.
5 *Canadian Doctors for Refugee Care* 2014, *supra* note 3 at paras 10-6, 26-7.
6 The Canadian Press, "Federal government formally drops lawsuit over refugee health care cuts", *Global News* (16 December 2015), online: <http://globalnews.ca/news/2404410/federal-government-formally-drops-lawsuit-over-refugee-health-care-cuts/>.
7 *Canadian Doctors for Refugee Care* 2014, *supra* note 3 at para 213; Adrienne Silnicki, "Refugee Health Care in Federal Court," *The Council for Canadians* (27 January 2014), online: <http://canadians.org/blog/refugee-health-care-federal-court#http://canadians.org/blog/refugee-health-care-federal-court>.

unstable. They have needs related to pregnancy and reproductive health, violence, and other health issues that are unique to women.

- Women experience high levels of sexual and domestic violence.
- Women who are fleeing war and violence are known to have higher need for health care services related to trauma, depression and chronic health conditions.
- Refugee women are doubly burdened with managing the health care of their children as well as their own.

The changes to the IFHP left many refugees without access to life saving medication[8] and care (see Table 1 below for classification changes).[9] The impact on women was devastating. For example, women who were seeking refuge from "Designated Countries of Origin" (DCOs), such as Mexico and Hungary, were denied funding for basic pre-natal, obstetrical and pediatric care.[10] Refugees under the DCO category were denied funding for all types of medical treatment unless it concerned public safety;[11] and women who needed health care in relation to reproductive health, domestic violence or sexual abuse were not covered.[12]

Refugee Class	**Eligible Care**
Government Sponsored	Basic and supplemental care
Privately sponsored	Urgent and essential care
Designated Countries of Origin and refused claimants	Treatment only if it concerns public safety
Rejected, ineligible or late to claim	No coverage

Table 1: Services offered to refugees from 2012-2014[13]

The changes to the program left medical care providers confused[14] about which services the IFHP covered and many simply refused treatment to refugees regardless of the classification.[15] Pregnant women were particularly vulnerable. The new system was a multi-tiered system where a refugee's eligibility for funded medical care could change as she moved through the system. Obstetricians were reluctant to take on women on IFHP because of the precarious and changing status of refugees.[16] Manavi Handa, a midwife working with refugee claimants in Ontario, reported that some refugee women were asked to pay for their hospital delivery fees up front, regardless of their classification and coverage.[17] In the Federal Court case challenging the changes to the IFHP, Handa submitted affidavits from two of her clients who were asked to pay for their health care costs up front, even though they were eligible for care.[18] One of her pregnant clients was asked to pay $2,600 per day.[19] She did not seek medical care at the hospital and later learned she was, in fact, covered under the program.[20] Most pregnant refugees cannot afford to pay thousands of dollars up front, leaving them without critical medical care.

Canadian Doctors for Refugee Care have documented cases of refugee women whose care was

8 *Canadian Doctors for Refugee Care* 2014, *supra* note 3 at para 2.
9 Silnicki, "Refugee Health Care" *supra* note 7.
10 *Canadian Doctors for Refugee Care* 2014, *supra* note 3 at para 3.
11 *Ibid* at paras 4, 64, 628, 648.
12 *Ibid* at paras 628, 652, 670.
13 Silnicki, "Refugee Health Care" *supra* note 7.
14 *Canadian Doctors for Refugee Care* 2014, *supra* note 3 at paras 133-41.
15 *Ibid* at para 136.
16 *Ibid* at paras 146-7.
17 *Ibid* 3 at paras 137, 248.; Canadian Council for Refugees, *Refugee health survey by province and by category* (Ottawa, ON: CCR, February 2015) at 6, online: <http://ccrweb.ca/sites/ccrweb.ca/files/ccr-refugee-health-survey-public.pdf>.
18 Canadian Council for Refugees, *Refugee health survey, supra* note 17 at paras 137, 247-9.
19 *Ibid* at para 248.
20 *Ibid*.

either delayed due to confusion about the IFHP or denied altogether. Below is a sampling of verified cases:

A refugee claimant, 36 weeks pregnant, was told to bring $3,000 to her next appointment to pay for her care because of changes to her insurance with the program. After a weeks-long investigation the IFHP admitted they made a mistake and that the woman would be covered.[21]

- A young refugee woman was pregnant as a result of a sexual assault while being used as a sexual slave. She had no coverage to address the pregnancy.[22]
- A pregnant refugee woman in her third trimester of pregnancy developed pre-eclampsia, a potentially lethal disease, but had no coverage for her condition.[23]
- A refugee woman in labour was asked to pay for the cost of her epidural because the anesthetist did not understand her IFHP insurance. She delivered the baby without pain control.[24]
- A woman requiring treatment of fibroids and heavy vaginal bleeding was denied coverage for a necessary pelvic ultrasound.[25]

The changes to the IFHP were opposed by at least 21 national medical organizations.[26] The changes were found to be unconstitutional by the Federal Court in 2014. The Government was admonished by the court for targeting "an admittedly poor, vulnerable and disadvantaged group for adverse treatment."[27] The Honourable Madam Justice Mactavish stated:

> With the 2012 changes to the Interim Federal Health Program, the executive branch of the Canadian government has intentionally set out to make the lives of these disadvantaged individuals even more difficult than they already are in an effort to force those who have sought the protection of this country to leave Canada more quickly, and to deter others from coming here.[28]

Since this decision some of the medical services to refugees were to be temporarily restored as of 4 November 2014, [29] including care for pregnant women. The new Government of Canada has announced that it would fully restore the IFHP and it currently in the process of doing so.[30]

Recommendation

- **The Government of Canada should act urgently on its commitment to restore the Interim Federal Health Program to its pre-2012 coverage levels for refugee claimants.**

(b) Incarcerated women and mental health

Correctional institutions in Canada have become the dumping grounds for those with disabling mental health issues. Cuts to social services, including social housing, increase the number of women

21 Canadian Doctors for Refugee Care, News Release, "Canadian Doctors for Refugee Care releases update on impact of federal cuts to health services" (27 September 2012), online: <http://www.doctorsforrefugeecare.ca/further-reading-survey.html>.
22 *Ibid.*
23 Canadian Doctors for Refugee Care, News Release, "Canadian Doctors for Refugee Care warns of more chaos, serious health risks to come" (4 December 2012), online: <http://www.doctorsforrefugeecare.ca/further-reading-survey.html>.
24 Canadian Doctors for Refugee Care, News Release, "Canadian Doctors for Refugee Care says Interim Federal Health Program in crisis on Refugee Rights Day" (4 April 2013), online: <http://www.doctorsforrefugeecare.ca/further-reading-survey.html>.
25 *Ibid.*
26 *Canadian Doctors for Refugee Care* 2014, *supra* note 3 at para 625.
27 *Ibid* at para 689.
28 *Ibid* at para 690.
29 *Ibid*: Point one at the end of the judgement declares the Orders in Council that triggered the IFHP changes are of no force and effect; Audra Ranalli, "Cuts to Refugee Health Care Found Unconstitutional: Canadian Doctors for Refugee Care v Canada," *The Court* (18 August 2014), online:<http://www.thecourt.ca/2014/08/18/cuts-to-refugee-health-care-found-unconstitutional-canadian-doctors-for-refugee-care-v-canada/>.
30 Janice Dickson, "Liberals drop Harper government's court battle over refugee health benefits", *iPolitics* (16 December 2015) (blog) online: <http://ipolitics.ca/2015/12/16/liberals-drop-harper-governments-court-battle-over-refugee-health-benefits/>.

incarcerated.

While the Committee did not address the institutionalization of those with mental health issues in its 2006 Concluding Observations or 2015 List of Issues, this is a pressing issue that has most recently been picked up by the Human Rights Committee. In the Human Rights Committee's 2006 Concluding Observations, it recommended that Canada:

> including all governments at the provincial and territorial level, should increase its efforts to ensure that sufficient and adequate community based housing is provided to people with mental disabilities, and ensure that the latter are not under continued detention when there is no longer a legally based medical reason for such detention.[31]

Most recently, in its 2015 Concluding Observations, the Human Rights Committee noted its concern about the "insufficient medical support to detainees with serious mental illness" and called on Canada to take appropriate measures to:

> limit effectively the use of administrative or disciplinary segregation [in prison] as a measure of last resort for as short a time as possible and avoid such confinement for inmates with serious mental illness. The State party should effectively improve access to, and capacity of, treatment cetnres for prisoners with mental health issues at all levels.[32]

The lack of services for women prisoners with mental health issues has created a "revolving door"[33] syndrome, where homeless women with mental health issues are more likely to be imprisoned, and once they are released they find it impossible to find housing and are incarcerated again.[34]

- Federally sentenced women are twice as likely to have a mental health disorder upon being admitted to prison than men;[35] and in 2012/2013 approximately 75% of women prisoners received a CSC mental health service.[36]
- The Office of the Correctional Investigator (OCI) has assessed that CSC cannot adequately deal with mental health issues, especially when it comes to federally sentenced women. The OCI found that CSC has an over reliance on force, physical restraints, restriction on movement, limitations on interaction with other prisoners, and limitations on access to transfers to appropriate psychiatric or mental health resources.[37]
- There are significantly fewer transition homes for discharged female prisoners.[38] Many of the services available are not specialized to work with women with mental health issues.

In his November, 2015, mandate letter to the Minister of Public Safety and Emergency Preparedness,

---

31 Human Rights Committee, *Consideration of reports submitted by states parties under article 40 of the covenant: Concluding observations of the Human Rights Committee, Canada*, GE.06-1(E)210406, UNOHCHR, 85th Sess, UN Doc CCPR/C/CAN/CO/5 (20 April 2006) at para 17.

32 *Concluding observations,* 2015 *supra* note 1 at para 14.

33 Stephen Gaetz & Bill O'Grady, "Homelessness, Incarceration, and the Challenge of Effective Discharge Planning: A Canadian Case" in J. David Hulchani et al, eds, Finding Home Policy Option for Addressing Homelessness in Canada (e-book, Toronto: Cities Centre University of Toronto 2009), at 2, online: <http://homeless.samhsa.gov/ResourceFiles/Documents/7.3%20Gaetz%20and%20O%27Grady%20-%20Homelessness%20%20and%20Discharge%20Planning.pdf>. [Gaetz et al, Homelessness, Incarceration]

34 Elizabeth Fry Toronto, *Housing Needs Assessment Facilitating Access to Housing for Criminalized Women in Toronto*, prepared by Snmanagement (Toronto, ON: EFryToronto, April 2014), online: <http://www.efrytoronto.org/userfiles/files/efry_Housing%20Needs%20Assessment_WEB.pdf>.

35 Correctional Services Canada, *File #394-2-88: Evaluation Report: Intensive Intervention Strategy for Women Offenders, Evaluation Branch: Policy sector* (Ottawa, ON: CSC, March 2011) at 21-2, online: CSC <http://www.csc-scc.gc.ca/publications/092/005007-2006-eng.pdf>.

36 Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2013-2014*, prepared by Howard Sapers (Ottawa, ON: OCI, 27 June 2014), online: <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20132014-eng.aspx#sV>.

37 *Ibid.*

38 Gaetz et al, *Homelessness, Incarceration, supra* note 33.

Prime Minister Trudeau recognized the need to improve services for incarcerated people with mental health issues. The Prime Minister called on the Minister to "address gaps in services to Indigenous Peoples and those with mental illness throughout the criminal justice system."[39]

Recommendations
The Government of Canada should:

- **Restrict the imprisonment of women, and develop new protocols to de-carcerate women who do not pose a risk to public safety and/or whose risk may be managed in the community;**
- **Increase income security, health and educational measures such as income assistance, adequate housing, and community supports for women with mental health issues to address the reality that women are being criminalized and incarcerated because of poverty, previous abuse, social disadvantage, racialization and disabling mental health issues;**
- **Put an end to the practice of employing male staff working in front-line contact with women in women's institutions;**
- **Establish an independent external redress body for federally sentenced prisoners; and**
- **Put an end to the practice of placing women prisoners in segregation or solitary confinement.**

(c) Access to abortion and sexual and reproductive health and information services (Issue 23)

In Canadian law, women's access to abortion is constitutionally protected by section 7 of the *Canadian Charter of Rights and Freedoms*.[40] Access to abortion is a key factor in establishing equality between men and women. A woman's right to decide when and with whom she will bear children is essential to her enjoying an equal place in employment, in political life, in the economy, and other public spheres, as well as in her private relationships.

Safe and timely access to abortion in Canada is a recognized part of a woman's section 7 *Charter* guarantee of security of the person.[41] While this is a constitutional right, abortion is not explicitly provided for in any federal statutory law, including the *Canada Health Act*.[42] Rather, it is broadly understood to be a "physician service" that is "medically necessary".[43] There are active pro-life advocates in Canada, however, who have increasingly made use of "women-protective anti-abortion" (WPA) claims to challenge access to abortion.[44] WPA claims assert that women are physically and mentally harmed by abortion or coerced into having abortions.[45] While there are currently no criminal laws regulating abortion, since the last review of Canada by the Committee on Economic, Social and Cultural Rights, two anti-abortion bills[46] have been tabled in Parliament that advance WPA

39 Prime Minister of Canada, "Minister of Public Safety and Emergency Preparedness Mandate Letter" (Ottawa, ON: PMO, 13 November 2015), online: <http://pm.gc.ca/eng/minister-public-safety-and-emergency-preparedness-mandate-letter>.
40 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, *1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, at s 7.; *R v Morgentaler*, [1988] 1 SCR 30 at para 64, [1988] SCJ No 1.
41 *Morgentaler, supra* note 40.
42 RSC 1985, c C-6.
43 *Ibid* at s 2.
44 Cara E. Davies, "Protecting Women or Peddling Stereotypes? Bill C-510 and the Influence of the Women-protective Anti-abortion Movement" (2011) 8 J L & Equality 26.
45 *Ibid.*
46 Bill C-484, *An Act to amend the Criminal Code (injuring or causing the death of an unborn child while committing an offense)*, 2nd Sess 39th Parl, 2007 (second reading, 5 March 2008; Bill C-484 did not pass parliamentary committee review before the dissolution of the parliamentary session); Bill C-510, *An Act to amend the Criminal Code (coercion),* 3rd Sess, 40th Parl, 2010 (defeated at second reading, 15 December 2010).

arguments.[47] Both failed to become law.

Lack of Access to Abortion in the Maritime Provinces

The restrictions on access to abortion that were previously in Canada's *Criminal Code* were struck down by the Supreme Court of Canada in 1988. However, many women living outside of large urban centres are facing restrictions on access to abortions, through referral rules and policies about where abortions can be performed that are very similar to those rules that were struck down as unconstitutional.[48] This is particularly true in the Maritime provinces,[49] where abortions continue to be less accessible than in the rest of Canada.

Currently, only four out of thirty hospitals in the province of Nova Scotia (NS) provide abortions.[50] There are no free-standing abortion clinics anywhere in the province. Access to abortion is difficult for anyone living outside of the Halifax area.

Prince Edward Island

There are no abortion services provided anywhere within the province of Prince Edward Island (PEI).[51] The Province has entered into a reciprocal billing agreement with the Queen Elizabeth II Hospital in Halifax, NS. PEI women can travel to Halifax to access an abortion in a hospital and have the abortion cost covered by PEI Medicare. However, in order to access an abortion under this agreement, within fifteen weeks of the start of a pregnancy, a woman must receive a referral from a doctor licensed in PEI, as well as a second referral from a licensed doctor in PEI or NS, as well as complete tests and an ultrasound.[52] Timely referrals and ultrasounds within fifteen weeks are not guaranteed.[53]

Because the regulations for hospital-based procedures are so onerous and difficult to meet, about 50% of abortions for PEI residents have historically been performed at the Morgentaler Clinic in Fredericton, New Brunswick (NB), which closed in July 2014.[54] The clinic space has reopened as Clinic 554 and provides private abortion services at a cost of 700 to 850 dollars.[55] Both the Queen Elizabeth II hospital in NS and Clinic 554 in NB are a considerable distance from PEI, and travel costs and logistics present a significant barriers for women. PEI Premier Ghiz has failed to address the access to abortion crisis on PEI.[56]

On January 5, 2016, Abortion Access Now PEI (AAN PEI) advised the PEI government that it will launch a legal challenge against the provincial government's abortion policy.[57] The challenge sets out that PEI's policy fails to provide local, safe abortion services and is thus a violation of women's section

---

47 Davies, “Protecting Women”, *supra* note 44.
48 Chris Kaposy, “Improving Abortion Access in Canada” (2010) 18:1 Hlth Care Anal 17 at 20.
49 *Ibid.*
50 Michelle Siobhan Reid, “Access by Province” (2013) *The Mortlanger Decision* (commentary), online: <http://www.morgentaler25years.ca/the-struggle-for-abortion-rights/access-by-province/>.
51 Colleen McQuarrie, Jo-Ann MacDonald and Catherine Chambers, *Trials and Trails of Accessign Abortion in PEI: Reporting on the Impact of PEI's Abortion Policies on Women* (Charlottetown, PEI: UPEI, 2014) at 4, online: <http://projects.upei.ca/cmacquarrie/files/2014/01/trials_and_trails_final.pdf>.
52 *Ibid* at 5.
53 *Ibid.*
54 “Abortions require anonymity, says PEI group”, *CBC News* (6 December 2010), online: <http://www.cbc.ca/news/canada/prince-edward-island/abortions-require-anonymity-says-p-e-i-group-1.912265>; “Morgentaler Clinic in Fredericton performs last abortions before closure”, *CBC News* (8 July 2014), online: <http://www.cbc.ca/news/canada/new-brunswick/morgentaler-clinic-in-fredericton-performs-last-abortions-before-closure-1.2710909>.
55 "Morgentaler's old Fredericton clinic to reopen as private abortion facility”, *CBC News* (6 January 2015), online: <http://www.cbc.ca/news/canada/new-brunswick/morgentaler-s-old-fredericton-clinic-to-reopen-as-private-abortion-facility-1.2912283>; and “Reproductive Health” (2015), *Clinic 554*, online: <http://clinic554.ca/Reproductive_Health.html>.
56 Kevin Bissett, “Debate over access to abortion in Prince Edward Island intensifies”, *The Globe and Mail* (27 May 2014), online: <http://www.theglobeandmail.com/news/national/debate-over-access-to-abortion-in-prince-edward-island-intensifies/article18877480/>.
57 LEAF, News Release, “LEAF Proudly Supports Abortion Access Now PEI's Legal Challenge to Prince Edward Island's Discriminatory Abortion Policy” (5 January 2016), online: <http://www.leaf.ca/leaf-proudly-supports-abortion-access-now-peis-legal-challenge-to-prince-edward-islands-discriminatory-abortion-policy/>.

15 and 7 *Charter* rights.[58] AAN PEI is supported in its challenge by the Women's Legal Education and Action Fund.

New Brunswick
Until July 2014, abortions in New Brunswick were available in at the Fredericton Morgentaler Clinic, and in a hospital setting at only three hospitals. The Morgentaler Clinic offered abortions on a self-referral basis, and made up close to 60% of the 1,000 abortions provided annually in New Brunswick,[59] as well as serving many women from PEI.

The closure of the clinic led to changes in the New Brunswick regulations, but there is still a lack of accessible abortions in the province. Effective January 2015, the New Brunswick government repealed the two-doctor certification rule and the specialist requirement, [60] but maintained the requirement that the procedure be provided in a hospital setting to qualify for Medicare funding[61] - even though abortions cost considerably less in private clinics than in hospitals and there is an avid demand to access abortions in private clinics.[62]

A crowd-funding initiative resulted in the reopening of the Morgentaler clinic as Clinic 554 in Fredericton. There are no statistics available on how many procedures are provided in the new clinic, but it should be noted that any procedures provided there are not covered by Medicare and so women who access the clinic's services will pay out of pocket. Without the ability to bill its services to Medicare, and notwithstanding patient service fees, it is likely that Clinic 554 will face the same financial difficulties that led to the closing of the Morgentaler clinic in 2014.

Recommendation

- **The Government of Canada should ensure that every province and territory funds and provides easy access to self-referral abortion services covered by Medicare in both private clinics and hospital settings.**

58 LEAF, "Draft Notice of Application" (accessed on 26 January 2016), online: <http://www.leaf.ca/wp-content/uploads/2016/01/AAN-PEI-050116-Draft-Notice-of-Application.pdf>.
59 Canadian Institute for Health Information, "Number of Induced Abortions Reported in Canada in 2012, by Province/Territory of Hospital of Clinic" (Toronto, ON: CIHI, 2013), online: <http://www.cihi.ca/cihi-ext-portal/pdf/internet/ta_11_alldatatables20140221_en>.
60 NB Reg 84-20, online: CanLII <https://www.canlii.org/en/nb/laws/regu/nb-reg-84-20/latest/nb-reg-84-20.html?autocompleteStr=regulation%2084-20&autocompletePos=1>.; New Brunswick, Office of the Premier, "Provincial government removes barriers to a woman's right to choose", (Fredericton, NB: GNB, November 2014), online: <http://www2.gnb.ca/content/gnb/en/news/news_release.2014.11.1334.html>; "New Brunswick abortion restriction lifted by Premier Brian Gallant", *CBC News* (27 November 2014), online: <http://www.cbc.ca/news/canada/new-brunswick/new-brunswick-abortion-restriction-lifted-by-premier-brian-gallant-1.2850474>.
61 NB Reg *supra* note 60 at Sched 2 (a.1); "Abortions won't be in clinics: Victor Boudreau", *CBC News* (28 November 2014), online: <http://www.cbc.ca/news/canada/new-brunswick/abortions-won-t-be-performed-in-clinics-victor-boudreau-1.2853291>.
62 "Morgentaler's old Fredericton clinic" *supra* note 55.

Right to education (Articles 13 and 14)

10) *Women's Right to Education*

In its 2006 Concluding Observation, the Committee recommended that Canada "ensure by every appropriate means that higher education be made equally accessible to all, on the basis of capacity"[1]. There are significant financial barriers to pursuing post-secondary education in Canada. This burden is amplified for women, who are likely to carry their student debt longer as a result of structural barriers to women's participatory and economic equality in the paid workforce.

(a) Accessing Education: data

Since at least 1992 female participation and completion of post-secondary education has been higher than their male counterparts. As a share of total full-time enrollment in post-secondary education, female students accounted for 55% of all full-time students in 1992. As a share of the student population, female students accounted for roughly 53% of both full-time college students and full-time university students. Women's participation in post-secondary education has continued to rise and as of 2012, female students as a share of total full-time post-secondary enrollment had increased to nearly 58%. While participation in college and university has increased as apercentage of full-time students, enrollment in university has outpaced college enrollment. In 2012, women accounted for 57% of all full-time university students, compared to 56% of full-time college students.[2]

In terms of completion rates, the data show that not only are women more likely to enroll in post-secondary education, but also are more likely to complete their program. From 1999 to 2012, 58 to 60% of annual graduates of all post-secondary graduates were women.[3]

While detailed statistics around racialised groups and post-secondary education as difficult to find, studies have shown that in Canada individuals from minority backgrounds have higher levels of education aspirations than the general public. For example, a York University study examining the now cancelled Youth in Transition Survey (YITS) done by Statistics Canada found in 34% of university applications were from students of racialised groups, despite making up only 19% of Ontario's population. The study also found that racialised groups had university completion rates two to three times higher than the national average.[4]

These trends do not extend to Canada's Indigenous populations. Chronic, longstanding underfunding of elementary and secondary education for Canada's Indigenous populations has led to a large education gap when compared to the general public. In 2011, 29% of Indigenous Canadians did not have a high school diploma, compared to just 12% of the general population. Inadequate education at a young age creates a structural barrier to accessing post-secondary education.[5] For those able to overcome those hardships, an additional barrier, inadequate financeal aid to pay for the ever-increasing cost of education, meets them. The Post-Secondary Student Support Program (PSSSP)

1 Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights*, UNCESCR, 26 May 2006, UN Doc E/C.12/CA/CO/4-5 at para 65.

2 Statistics Canada, "Table 477-0019: Postsecondary enrolments, by registration status, Pan-Canadian Standard Classification of Education (PCSCE), Classification of Instructional Programs, Primary Grouping (CIP_PG), sex and student status – annual" (StatsCan: 2015), online: <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=4770019>.

3 Statistics Canada, "Table 477-0020: Postsecondary graduates, by Pan-Canadian Standard Classification of Education (PCSCE), Classification of Instructional Programs, Primary Grouping (CIP_PG), sex and student status – annual" (StatsCan: 2015), online: <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=4770020>.

4 Serena Cheung, "Education Decisions of Canadian Youth: A Synthesis Report on Access to Postsecondary Education" (2007) The Higher Education Quality Council of Ontario.

5 Canadian Federation of Students, *Public Education for the Public Good: A National Vision for Post-Secondary Education* (Ottawa, ON: CFS, 2012), online: <http://cfs-fcee.info/wp-content/uploads/sites/2/2013/05/Public_Education_for_the_Public_Good_2012.pdf>.

was originally designed to alleviate the financial barriers faced by Indigenous students. In 1996, after changing the structure of the program from allocating funding based on the number of students that qualified to block funding, the annual increases in funding were capped at two percent. Indigenous youth make up one of the fastest growing demographics in Canada. As a result, PSSSP funding constraints led to over 18,500 qualifying students – roughly half of all eligible students – being denied funding from 2006 to 2011 alone.[6] This short fall in funding has forced many local Band councils to prioritize applicants attending less expensive and shorter college programs. As female students are more likely to choose four-year university programs, this could be disproportionately impacting Indigenous women's access to post-secondary education.

The current 2% annual increase-funding cap on the PSSSP is resulting in a growing number of Indigenous Canadians being denied the ability to pursue an education. The lack of adequate funding contributes to the persistent education and earnings gaps Indigenous peoples experience, and limited access to education contributes to the social and health issues that disproportionately impact Indigenous peoples.

(b) Barriers to accessing post-secondary education

Despite Canada's high levels of post-secondary education attainment, significant barriers remain which can prevent some people from attending, and increase the stress of students that can attend. For women, individuals from racialised groups, and students coming from more remote and rural communities, these barriers can be more severe.

For women with children, access to childcare can be very difficult and costly. Childcare spaces, if available on campuses, are very limited. This means additional commuting for pick-ups and drop-offs. Additionally, the lack of childcare spaces and the typical operating hours of childcare facilities can impact degree completion. In some cases, a required course might only be offered at night. Limited childcare availability on campus, and the general 'day' operating of childcare facilities in the community can make it very difficult for care arrangements to be made for small children, which could force a parent to wait until the course is offered at a more traditional time in a future semester, or impact their ability to attend and participate in the course.

As most post-secondary institutions are located in major urban centres, students traveling from remote and rural communities, especially remote Aboriginal reserves, face additional cost barriers to attain post-secondary education. Recent reports have found that a student who entered post-secondary education in 2011 and lived away from home can expect their overall costs to increase by nearly $30,000 over the course of a 4-year degree when compared to a student who is able to remain at home.[7]

(c) Financial Barriers: The Long Term Financial Impacts of Unaffordable Post-Secondary Education

Spiraling student debt

Enrolling and completing post-secondary education is no longer a golden ticket to prosperity. As public funding for higher education has been cut, these shortfalls have been passed onto the individual students in the form of tuition and other fees that are increasing at rates well above inflation, every

6 Canadian Federation of Students, "Funding for Aboriginal Students" (Ottawa, ON: CFS, Fall 2013) online: <http://cfs-fcee.info/wp-content/uploads/sites/2/2013/11/Factsheet-2013-11-AborignalEd-EN.pdf>.

7 TD Economics, "Post-Secondary Education is the Best Investment You Can Make" (Toronto, ON: TD Economics, 2011) online: <http://www.td.com/document/PDF/economics/special/sf0911_education.pdf>.

year. From 1992 to 2015, average tuition fees in Canada have increased an inflation adjusted 199%, and now average $6,191 per year.[8] As a result, student debt has significantly increased. Statistics Canada estimates close to $30 billion in total outstanding student debt, and average total student debt for a bachelor's degree graduate is over $26,000.[9]

Student debt can be far more severe for students completing professional programs such as law, medicine, dentistry, and others. Professional programs in Canada are permitted to raise tuition and other fees at rates well above other programs, if they are regulated at all. Dentistry continues to be, on average, the most expensive undergraduate program in Canada; for the 2015-16 academic year average tuition for dentistry programs was just under $19,000.[10]

As a result, the student debt accumulated in these programs can be extremely higher than average. In 2012, it was found that 30% of medical students expect to graduate with over $100,000 in student debt and 13% expect to graduate with over $160,000.[11]

This level of student debt has been found to impact career choices. For young doctors, many choose to abandon the idea of entering general practice, in favour of more lucrative specialist positions, which will allow them to pay off their debt faster. These career decisions have an impact on Canadian society, as it is known there is a general shortage of family doctors – especially in rural communities.

For young professional degree holding women, shouldering these high levels of debt, while experiencing a pay gap and the gendered social expectations can be incredibly difficult. It can take longer to repay debts and this allows more interest to accumulate, effectively causing young professional degree holding women to pay more for their education than their male counterparts.

High levels of student debt are most likely to be accumulated by students from lower-income backgrounds. Studies have found that racialised groups, and Indigenous populations make up a disproportionate number of lower-income households.

Internships

As global economic conditions have changed, Canadian employers have backed away from their role in providing workplace training and development for their employees, instead lobbying and relying on educational institutions to provide them with specific job ready employees. Additionally, there has been an alarming increase in the number of people being forced to work for free to gain experience through unpaid internships – now estimated at 300,000 people in Canada.[12]

Underemployment

This new labour market, in which it is increasingly challenging to find what was once considered a "good job", privileges those who cannot only afford to obtain the education required, but those who can also afford to work for free in order to gain practical experience. For those with high levels of debt that need to be repaid, those in need of expensive childcare services, or other situations which require adequate income, this is not an option. As a result, they have a higher chance of entering a situation of underemployment, which is work an individual is overqualified to do, and is often low-paying,

8 Statistics Canada, *University Tuition Fees 2015/16,* Catalogue No 11-001-X (Ottawa: StatsCan, 9 Sept 2015), online: <http://www.statcan.gc.ca/daily-quotidien/150909/dq150909b-eng.htm>.

9 Statistics Canada, *National Graduates Survey, 2013* (StatsCan: 31 March 2014), online: <http://www.statcan.gc.ca/daily-quotidien/140331/dq140331f-eng.htm>.

10 Statistics Canada, *University Tuition, supra* note 8.

11 Lynda Buske, Canadian Collaborative Centre for Physician Resources, "Off to work I owe!: Results of the 2012 National Physician Survey of medical students and residents" (Canadian Medical Association: March 2013), online: <http://nationalphysiciansurvey.ca/wp-content/uploads/2013/03/C3PR-Bulletin-StudentResidentDebt-201303-EN.pdf>.

12 Carol Goar, "Why Canada's job market hasn't recovered," *Toronto Star* (13 March 2014).

precarious work. Being in a situation of underemployment for a prolonged period of time can lead to newly acquired skills eroding, a loss of networking opportunities which will make future entry into their chosen field more difficult, and significant career wage scaring.

Gender pay gap: compounding the problem

Generally and unsurprisingly, the pay gap can still be found across all levels of education in median earnings reported three years after graduation in 2010.[13]

1. College graduates:
    1. Men: $48,000
    2. Women: $39,000
2. Bachelor's graduates:
    1. Men: $57,200
    2. Women: $51,000
3. Master's graduates:
    1. Men: $76,000
    2. Women: $65,000
4. PhD graduates:
    1. Men: $76,000
    2. Women: $74,000

Earning less for the same job will exacerbate the issue of high student debt. A larger portion of a woman's income will be spent making student debt payments, meaning a larger impact on her life.

(d) Registered Education Savings Plan (RESP)

The high costs associated with obtaining a post-secondary education can have real, and negative impacts. As governments continue to reduce their roles and responsibilities around ensuring post-secondary education is accessible and affordable, these impacts will continue and get worse.

Even under self-imposed 'budget restraints', post-secondary education in Canada can be made more accessible and affordable, without increasing funding. For the 2014-15 academic year, the federal government expected to spend $2.97 billion on tuition and education related tax credits, and the Registered Education Savings Plan (RESP).[14]

The tax credits do not increase accessibility to education as they apply at the after the fact. Additionally, all students, regardless of need qualify for the same amount of credits, meaning it provides the biggest impact to those with little debt.[15] For women and members of racialised groups, post-graduation pay gaps also negatively impact the effectiveness of tax credits because they are non-refundable and can only be used to reduce owed income taxes. Lower earners receive a lesser, more drawn out benefit as they have less income to be offset by the credits.

The RESP is an expensive program that delivers the largest benefits to families that have the ability to save the most. Despite an expected cost over $1 billion, fewer than half of all eligible children have ever received benefits from an RESP.

13 Statistics Canada*, National Graduates Survey supra* note 9.

14 Canadian Federation of Students, "Post-Secondary Education Tax Credits: Billions in Misdirected 'Financial Aid'" (Ottawa, ON: CFS, Spring 2012), online: <http://cfs-fcee.ca/wp-content/uploads/sites/2/2013/05/Factsheet-2012-Tax-Bleed-En.pdf>.

15 Glenn Burley, "Harper's RESP boost helps the wealthy, not low-income families," (21 Sept 2015) *Rabble* (blog), online: <http://rabble.ca/blogs/bloggers/campus-notes/2015/09/harpers-resp-boost-helps-wealthy-not-low-income-families>.

(e) Women's involvement in the Science, Technology, Engineering and Math (STEM) fields

The current rhetoric about where to find good jobs is solely focused on Science, Technology, Engineering, and Math degrees (STEM). These fields have been traditionally male dominated, and largely remain so. In 2014, only 22% of people working in STEM fields were women; this is a disproportionately low figure as 39% of all STEM graduates were women. Even when women are successful in the STEM fields, they still face the pay gap. In 2010 women's wages in STEM fields ranged from 10-12% lower than their male counterparts.[16] In addition to pay inequality, women continue to face gendered issues in the workplace. A recent survey found that.[17]

- 34% felt pressure to take on dead-end "feminine" roles like scheduling meetings and fetching coffee
- 53% reported receiving backlash for displaying "masculine" traits like being assertive in meetings
- 64% felt they needed to provide more evidence of their capabilities than their male counterparts to get the same level of recognition
- 64% had their commitment to work questioned and opportunities dry up after having a child
- 35% reported being sexually harassed at work at least once

Conclusion

Despite Canadian women increasingly being able to access the education they need to succeed in today's economy, structural barriers and outdated and stereotypical attitudes around a woman's role in the workplace stubbornly remain. As the cost of education and the resulting high level of student debt increase; combined with the erosion of jobs with good benefits such as parental leave top-ups, pay inequality, and persistent negative attitudes towards women in the workplace remain; many women in Canada continue to face an uphill fight to remain on equal footing with their male counterparts.

Recommendations
The Government of Canada should:

- Eliminate the Registered Education Savings Plan (RESP) and redirect the funding into the need-based Canada Student Grants Program (CSGP), which would provide up-front, non-repayable financial assistance to the students who need it most;
- Increase grant funding to reduce overall student debt and allow new graduates to obtain financial security sooner; and
- Remove the funding cap on Post-Secondary Student Support Program (PSSSP), and ensure that all eligible Indigenous students have access to funding.

16 Amanda Shendruk, "Gender inequality in the sciences? It's still very present in Canada," *Maclean's* (18 June 2015).
17 Zane Schwartz, "Why there are still far too few women in STEM," *Maclean's* (21 April 2015).