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Feminist Alliance for
International Action

L'Alliance Féministe pour
l'Action internationale

CANADA

Reply to Issues 3, 4, 7, 8, 11, 12 & 13:

Report to the Committee on the Elimination of Discrimination against Women on the Occasion of the Committee's Eighth and Ninth Periodic Review of Canada

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Canadian Feminist Alliance for International Action (FAFIA)

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Introduction

For Canadian women, the last decade has been shocking. The Harper Conservative government was hostile to women's non-governmental organizations, human rights advocates, and to women's equality claims, creating fear and silence.¹ It made new and deeper cuts to programs and benefits that are crucial to women.² Shrinking social programs and services, which are the building blocks of women's equality, moved women backwards. These actions hit Indigenous women, racialized women, women with disabilities, Muslim women, immigrant women, and single mothers especially hard. Twenty years ago, Canada was number one on UN gender equality indexes. In 2014, Canada ranked 25th.³

This CEDAW review happens at an important moment for Canadian women. Canada has a new federal Liberal government and a Prime Minister who says he is a feminist. The tone of government has changed and a national inquiry into missing and murdered Indigenous women and girls has been launched. These are welcome shifts.

Facts demonstrate, however, that there is a lot to do and to undo and many steps must be taken by federal, provincial and territorial governments in Canada to fulfill the rights set out in the *Convention on the Elimination of All Forms of Discrimination against Women*. Canadian women need new, ambitious and transformative plans with adequate resource allocations in order to move forward. This review can help Canada begin to move toward the development of a new national equality plan for women, a plan that will work to dismantle women's structural inequality, and address the diverse needs of Canada's most marginalized women.

1. Canada's Failure to Recognize Social and Economic Rights

At the February 2016 review of Canada by the Committee on Economic, Social and Cultural Rights (CESCR), CESCR criticized Canada for failing to recognize social and economic rights as justiciable rights and failing to provide domestic remedies for their violation.⁴ This failure by Canada is a serious concern for women. Canadian women have rejected a thin, formal version of women's equality, and fought for a full, substantive version of equality, with material conditions at its centre. While the Government of Canada claims to embrace this understanding of equality, that claim is not credible when Canada does not recognize social and economic rights as real rights, on the same footing and indivisible from civil and political rights.

In the language of international human rights, a substantive version of equality means that social and economic rights are an integral part of the "substance" of substantive equality. Women who are materially disadvantaged, many of whom are Indigenous, racialized, or have a disability, do not enjoy equality, and their sexual autonomy, security, political participation, and liberty are all constrained.

FAFIA submits that Canada cannot achieve equality for women unless it recognizes social and economic rights as justiciable rights, and accepts that in women's lived experience, the civil, political, social, economic, and cultural dimensions of their inequality are inseparable.

I. A Holistic Approach and a Comprehensive Plan (Reply to Issues 3, 4, 7, 8, 11, 12, and 13)

In Issue 4 of the List of Issues the Committee asks for information regarding "any plans to develop a comprehensive national gender equality policy to address the structural factors leading to gender inequality."⁵

In March 2016, the CESCR made a critical recommendation to Canada, calling on the State to:

Develop and implement a comprehensive national gender equality plan to address the structural factors leading to gender inequality, in close cooperation with provinces and territories, as well as in consultation with civil society organizations.⁶

The Committee recommended that the plan should include: implementing effective pay equity laws in all jurisdictions; repealing discriminatory provisions in the *Indian Act*; providing affordable childcare services across the country; improving income supports and employment opportunities for women with disabilities; and intensifying efforts to eliminate gender-role stereotypes and prejudices.⁷

FAFIA submits that it is time to address the structural inequality of women in Canada in a holistic way, and seeks the assistance of the CEDAW Committee in urging Canada to take a new comprehensive national approach. Rather than dealing with the manifestations of deeply rooted systemic discrimination as disconnected factors that can be corrected in isolation from each other, FAFIA recognizes that poverty and income inequality, inadequate social programs (social assistance, housing, childcare, and legal aid), employment discrimination, male violence against women, failures to address women's health, and barriers to education interact with each other to create a structure of inequality for women that is entrenched in the society and economy. Indigenous and racialized women, women with disabilities, single mothers, and refugee and immigrant women experience the most harmful effects of this structural inequality.

In order to dismantle women's inequality, and give effect to the intent and substance of the Convention, FAFIA proposes that more concerted, collaborative and holistic strategies be developed. FAFIA notes that the CEDAW Committee urged Canada to implement its recommendations on missing and murdered Indigenous women and girls as a whole, because it is only the implementation of all the recommendations together that can correct the human rights violations.

Similarly, FAFIA submits that women's inequality cannot be ameliorated or ended by partial, disparate and siloed government interventions, with no consistency across jurisdictions. Therefore, FAFIA submits that it is time for Canadian governments to work with Canadian women's organizations and with the CEDAW Committee, in a new way, to devise strategies and interventions that will address the structural dimensions and components of women's inequality and build towards a national gender equality plan.

In order to lay the groundwork for the consideration of new strategies, FAFIA's submission provides summary information on six components, which respond in particular to Issues 3, 4, 7, 8, 11, 12 and 13 in the List of Issues. In the short space allowed, this report can only highlight a few issues in each area, in order to demonstrate what a national strategy needs to address.

1. Women's Poverty and Income Inequality

About 13.5% of women in Canada live in poverty according to Statistics Canada's 2011 figures.⁸ Particular groups of women have much higher rates of poverty:

- 37% of First Nations women (off reserve);⁹
- 23% of Metis and Inuit women;¹⁰
- 20% of immigrant women;¹¹
- 28% of racialized women;¹²
- 27.5% of women with severe disabilities;¹³
- 28.3% of single women;¹⁴
- 23% of single mothers;¹⁵ and
- 34% of single women over 65.¹⁶

Further, women's average incomes are about two-thirds of men's in Canada.¹⁷ 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.¹⁸

Women are poorer than men in Canada, are more likely to be poor, and more likely to live in deeper poverty.¹⁹ As the data shows, particular groups of women are even more likely to be poor, and to have lower incomes, such as racialized, immigrant women or women with disabilities.

This income inequality has deep 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 women 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.²⁰

For women, poverty and economic inequality have gendered, harmful consequences. 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.²¹

2. Inadequate Social Programs

a. Inadequate Social Assistance

In Canada, welfare (social assistance) 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.²² The effect of below poverty line welfare rates is that recipients cannot afford adequate food and shelter.

The new Government of Canada has promised a national “poverty reduction” plan but little information is currently available about its development and content.²³ The federal government could immediately improve the adequacy of social assistance in all jurisdictions by reattaching conditions to the money it transfers to the provinces and territories for social programs and, as recommended by the CEDAW Committee in 2008, “establish minimum standards for [...] social assistance programs [...] and a monitoring mechanism to ensure that [social assistance programs] meet the needs [...] of women and do not result in discrimination [...]”²⁴

Recommendations

The Government of Canada should:

- Design and implement a lasting and meaningful national plan to combat poverty

that uses a human rights framework and takes the particular and diverse realities of women's lives into account.

- **Immediately establish national standards for social assistance across the country, and reinstate conditions regarding the adequacy of assistance that will ensure welfare incomes for all household types in all jurisdictions provide for adequate food, shelter and clothing, and assist recipients to get out of poverty.**

b. Homelessness and Lack of Affordable Housing

In March 2016, the CESCR Committee expressed concern about the persistence of a housing crisis in Canada. The Committee stated particular concern about a) the absence of a national housing strategy; b) the insufficient funding for housing; c) the inadequate housing subsidy within the social assistance benefit; d) the shortage of social housing units; and e) increased evictions related to rental arrears. It also expressed concern about the criminalization of homeless women and men.

Data from the last Census show that in 2011, 1.6 million or 12.5% of households experienced core-housing need. According to Canada Mortgage and Housing's definition, this means that these households are paying more than 30% of their household income on housing, or housing is inadequate or unsuitable.²⁵ Female lone-parent households and female one-person households had the highest incidences of core-housing need in 2011.²⁶

Housing inadequacy in Canada is a continuum that runs from housing that is unaffordable, substandard in condition, overcrowded or dangerously located, to homelessness. Women are particularly likely to face housing crises because of male violence and at the time of relationship breakdown.²⁷

235,000 people are homeless in Canada every year.²⁸ Homelessness in Canada is now considered a public health emergency.²⁹ Fewer women are counted in homeless shelters and in street counts, but women are more likely to be among the hidden homeless, living in overcrowded or dangerous situations, in order to avoid the violence and exploitation they experience in shelters and on the street.³⁰ As the CAEFS/Chair in Indigenous Governance/FAFIA report documents to CEDAW state, women with mental health issues are more likely to be homeless and to cycle between prisons and the streets.

Lack of adequate housing is a crisis for Indigenous peoples, living on and off reserve, and severely impacts the safety and equality of Indigenous women and girls.³¹

The federal government has been criticized for reducing its role in supporting and funding housing since the 1990s. In the mandate letter for the Minister of Families, Children and Social Development, issued in November 2015, Prime Minister Trudeau directed Minister Duclos to re-establish the federal role in housing by, among other things, "prioritizing infrastructure investments in affordable housing and seniors' housing, [...] providing support to municipalities

to maintain rent-geared-to-income subsidies in co-ops” and “providing [...] money [...] for] housing First initiatives that help homeless Canadians find stable housing.”³²

This renewed focus on housing is welcome, but Canada urgently needs a coordinated national housing strategy that will eliminate homelessness, radically improve affordability and address the particular needs of women, including Indigenous, disabled, Northern and immigrant women and single mothers.

Recommendations

The Government of Canada should:

- **Implement a national housing strategy, in collaboration with the provinces, territories and municipalities, 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 and market rental housing.**
- **Implement a specially focused housing strategy for Indigenous peoples, living on and off reserve, that fully addresses the needs of Indigenous women.**

c. Lack of Affordable, Safe, Public Childcare

77% of mothers with children between 3 and 5 years old are in the labour force.³³ Yet, Canada still does not have a national childcare program. Canadian women scramble to find safe childcare and struggle to pay for it. Eight years ago the CEDAW Committee expressed its concerns with Canada’s “lack of affordable quality childcare spaces”, particularly for low-income women raising children,³⁴ and urged Canada “to step up its efforts to provide a sufficient number of affordable childcare spaces.”³⁵ Forty-six years ago the Royal Commission on the Status of Women called for a national childcare program, describing it as the “ramp” to women’s equality. But today regulated childcare is available for only 24% of Canadian children under five.³⁶

Canada (outside of Quebec) is assessed poorly on childcare by Canadian³⁷ and international experts. At 0.25% of GDP, Canada’s public investment in childcare is about one-half of the OECD average and one-third of the minimum recommended level.³⁸ As a result, Canada has among the lowest levels of access to childcare and the highest parent fees in the OECD.

Federal and provincial governments have made little substantive progress on the 2008 CEDAW recommendations regarding childcare, specifically:

- **Comprehensive cost/benefit analysis** – While the Canadian government has not carried out the analysis recommended by CEDAW, academics and economists have published childcare studies that consistently find that the benefits of quality, state-funded

childcare outweigh costs to the government³⁹ as well as substantially increasing the number of women holding jobs.⁴⁰

- **Changes to kindergarten programs do 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.⁴¹ However, these changes do not address the needs of the majority of mothers, who work or go to school and need before and after school care.

The new Government of Canada has promised to transfer funds to provinces, territories and Indigenous communities for some childcare programs under a National Early Learning and Childcare Framework.⁴² The 2016 Budget set aside funds for these transfers to start in 2017.

This promised funding, while welcome, is not, by itself, a national childcare program. Canadian women need the Government of Canada to develop and immediately implement a comprehensive national approach to childcare, so that its leadership, and funding, can ensure affordable, quality, accessible childcare for all families and decent wages for childcare workers.

Recommendation

The Government of Canada should:

- **Take immediate action to develop a comprehensive national approach to childcare that focuses on 1) affordability; 2) quality, 3) accessibility for all families, and 4) living wages for care providers. Such an approach should prioritize the needs of women most seriously impacted by a lack of access to childcare, including women living in poverty, women who have experienced violence, Indigenous women, women with disabilities, and single mothers.**

3. Access to Justice in Canada

In 2008, the Committee recommended that Canada:

[Ensure] that all women, particularly women belonging to vulnerable groups have access to remedies for discrimination on the basis of sex by making available to them adequate mechanisms and access to legal aid so as to enable them to have legal representation and to seek and obtain redress from courts and tribunals for violations of their rights. In this connection, the Committee encourages the State party to reconsider its cancellation of the Court Challenges Programme. The Commission also encourages the State party to consider ways and means of establishing minimum criteria relating to access to legal aid schemes, including in particular in the area of family and poverty law, that would be applicable in all provinces and territories, so as to ensure that women across Canada are able to access such schemes.⁴³

The Committee reiterated its concerns about access to legal aid in its 2015 inquiry report on missing and murdered Indigenous women and girls, noting concerns about Indigenous women's

need for legal services with respect to family law and division of matrimonial property, protection orders, and child custody to enable them to escape violent relationships.⁴⁴

a. Legal Aid

i. Chronic Underfunding

The Chief Justice of the Supreme Court of Canada, The Honourable Beverley McLachlin, has stated her belief that “lack of access to civil justice represents the most significant challenge to our justice system”.⁴⁵ Indeed, the Canadian Bar Association (CBA) considers the situation to be a “crisis”, noting that civil legal aid services are almost non-existent in some provinces.⁴⁶

There is a marked gender difference in legal aid usage: men are the primary users of criminal law legal aid, while women are the primary users of civil law legal aid, especially for family law matters.⁴⁷ The CBA asserts that the lack of access to legal aid disproportionately affects women, people with disabilities, recent immigrants, members of racialized communities and Indigenous people.⁴⁸ The shrinking funding for civil legal aid restricts access to legal protections for women in particular.

Legal aid in Canada has never fully recovered from the cuts that occurred in the 1990s. While the Government of Canada provides a direct transfer to the provinces and territories for criminal legal aid, civil legal aid is included in the basket of programs to be paid for by provinces and territories under the Canada Social Transfer (CST).⁴⁹ As requirements on provinces and territories to spend CST money on civil legal aid were removed in 1995, expenditures have fallen drastically. Between 1995 and 2012, there was a 21.2% drop in the level of per capita direct service expenditure on civil legal aid.⁵⁰ Similarly, between 1993 and 2012, the rate of approved applications for civil legal aid fell by 65.7%.⁵¹

The 2016 Federal Budget allocated \$88 million in new funding for criminal legal aid programs.⁵² There was no new funding for civil legal aid programs.⁵³ Women are the principal losers.⁵⁴

ii. Eligibility Requirements

In 2008, the CEDAW Committee recommended that there be standardized minimum criteria for eligibility for legal aid.⁵⁵ But there continues to be uneven access to legal aid services across provinces and territories, as well as narrow eligibility requirements, which severely curtail women’s access to assistance and representation.

Only low-income applicants receive legal aid funding. Yet, the income criterion for legal aid is often below the poverty line.⁵⁶ This denies many women access to legal aid, restricting access to only those who live in deep poverty.⁵⁷ Ontario Legal Aid, for example, will not accept a one-person family with an annual income over \$12,863 for full legal aid funding, or a four-person family with an annual income over \$28,664.⁵⁸ In 2014, the poverty line for a household of one in urban Canada was \$20,160; for a household of four, it was \$38,117.⁵⁹

Even where a woman meets the narrow poverty requirement, eligibility for family law legal aid is further restricted: in some jurisdictions family law cases will only be funded if there has been violence; in others, only cases involving children. Also, the hours of legal services allowed are often not sufficient to assist or represent women adequately. As a result, many women remain unrepresented in high-conflict family cases. This both encourages financial dependency on spouses and can cause women to abandon their rights.⁶⁰ Finally, only Ontario provides legal aid for sexual assault complainants.⁶¹

b. Court Challenges Program

In 2008, the Committee recognized the importance of the Court Challenges Program (CCP) in furthering women's enjoyment of the right to equality and asked Canada to reconsider its cancellation.⁶² Reinstatement of the CCP is currently under consideration by the Government of Canada, and modest funding (\$12 million over 5 years) was set aside for the CCP in the 2016 Federal Budget.⁶³

However, there are crucial issues outstanding about reinstatement of the CCP: will the renewed CCP be permitted to grant funds for equality rights challenges to provincial and territorial laws and policies, not just federal ones, as the Committee recommended in 2008? Will the renewed CCP retain its community-controlled non-profit structure and independence from government? The answers to these questions will determine whether the re-instated CCP will provide enhanced access for women to use their constitutional rights.

Recommendations

The Government of Canada should:

- **Increase funding for civil legal aid.**
- **Attach conditions to the Canada Social Transfer to ensure that all provinces and territories provide civil legal aid services that ensure women can use legal protections and rights when necessary, and obtain effective remedies when their rights are violated, in particular, women experiencing male violence, Indigenous women and women with disabilities.**
- **Broaden the mandate of the Court Challenges Program to permit the CCP to fund test cases that arise in provincial and territorial jurisdiction, as well as federal.**
- **Ensure that the Court Challenges Program retains its non-governmental structure, with control of the Program operation held by the equality-seeking and minority language communities who are its principal users.**

4. Women and Employment

a. Wage Inequality

Canadian women are paid less than their male counterparts in nearly all sectors of the economy.⁶⁴ This occurs regardless of women's level of education.⁶⁵ Even those women with comparable levels of education, experience, and responsibilities to men are usually paid less.⁶⁶ Women who work in female dominated occupations typically have lower rates of pay than those who work in male dominated occupations.⁶⁷ For racialized women,⁶⁸ women with disabilities,⁶⁹ and Indigenous women,⁷⁰ the gender pay gap is even wider.⁷¹

- Comparing women and men who work full-time, full-year, women take home 20% less, on average, than men.⁷²
- The pay gap between men and women in Canada is double that of the global average;⁷³ is the 8th largest gender wage gap among OECD countries;⁷⁴ and the World Economic Forum ranks Canada's wage equality in 27th place.⁷⁵ This gender wage gap has changed little since 1977.⁷⁶
- Women are the majority of minimum wage workers (between \$10-\$13 across Canada);⁷⁷ are nearly twice as likely as men to work in minimum wage jobs;⁷⁸ and nowhere in Canada does working full-time for minimum wage earn a woman enough income to meet the poverty line, even for a single person.⁷⁹
- Women are more likely than men to hold multiple, part time jobs.⁸⁰ In 2013, 26% of women worked part-time, while only 11% of men worked part-time.⁸¹
- The wage gap is worse for women with disabilities and for Indigenous and racialized women. Women with disabilities earn 32% less than women overall, and 57% less than men.⁸² Racialized women earn 70.5% as much as racialized men.⁸³ Indigenous women who live off-reserve earn 68.5% as much as Indigenous men living off-reserve.⁸⁴ All of these groups earn less than non-racialized men.

b. Pay Equity

Laws requiring employers to pay equal pay for work of equal value (pay equity) are a key workforce protection for women. Pay equity laws require not solely that employers pay the same pay for men and women performing the same work, but that they pay 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 that requires comparable skills, responsibility and working conditions should be compensated equally regardless of the gender of the worker.⁸⁵

At the federal level, women have been seeking improved pay equity protection for many years. Making complaints under the pay equity provisions of the *Canadian Human Rights Act* has proven to be slow and cumbersome. A 2004 Pay Equity Task Force⁸⁶ recommended a proactive pay equity system that could also address pay inequities that are widened by race and

disability. Rather than enacting proactive pay equity legislation for the federal sector as a whole, in 2009 the federal government passed regressive legislation for its own employees, the *Public Service Equitable Compensation Act (PSECA)*.⁸⁷ Under the *PSECA* pay equity is to be dealt with through collective bargaining,⁸⁸ making pay equity for women a bargaining chip – placing women union members in a contest with male members over benefits that will form part of a bargaining package – rather than a human right.

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.⁸⁹ Women now hope that the new federal government will take steps forward, repeal the *PSECA*, and enact proactive pay equity legislation for the whole federal sector.

In most jurisdictions in Canada, there is no pay equity legislation that applies to both public and private sector employers. Only Ontario, Quebec and federal jurisdiction have legislation requiring equal pay for work of equal value that applies to both public and private sector employers. Some provinces and territories have pay equity policies or legislation that applies to public employers only. 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.⁹⁰

Looking at this picture overall, the fact is that women in Canada do not have strong legal guarantees of pay equity that is proactive, effectively enforced, and covers both the public and private sectors in all jurisdictions. Canada has not yet taken women's wage gap seriously, or viewed it as a human rights issue compelling attention by all governments.

c. Job Segregation by Sex

Women's participation in the labour force has continued to grow and women are now 47% of the labour force.⁹¹ But women still enter, and work in, a sex-segregated labour force where they do not enjoy equality with men in access to jobs, remuneration, or benefits. Canadian women hold only 0.6% of senior management jobs and continue to be streamed into 'women's work'.⁹² In 2009, 67% of women doing paid work were teaching, nursing or doing clerical or administrative work, compared to only 31% of men. Like the gender wage gap, this number has remained virtually unchanged for two decades.

The Honourable Rosalie Abella's Report on Equality in Employment was issued in the 1980s,⁹³ and Justice Abella urged the federal government to introduce an employment equity program and a federal contractors program with measures that would address job segregation by sex and the under-representation of women, Indigenous peoples, people with disabilities and racialized people in identified job sectors and levels of federal employment. The federal government has an *Employment Equity Act* and a Federal Contractors Program in place. However, in 2012 changes were made to the Federal Contractors' Program and the Minister is

no longer obliged to enforce employment equity standards covered by the *Employment Equity Act* against federal contractors.⁹⁴

Ontario briefly had the *Employment Equity Act*, but it was repealed in 1995.⁹⁵ In provincial and territorial jurisdictions, there are no programs comparable to the federal regime.

Again, this means that there are no effective, consistent measures in place in all jurisdictions to address entrenched job segregation, or that require employers pro-actively to review and correct workplace policies and practices that are discriminatory.

d. Part-time, Casual, Precarious Work

Women are less likely to hold well paid, full time jobs compared to men⁹⁶ and are also more likely to hold multiple jobs.⁹⁷ 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, Indigenous women, and women with disabilities.⁹⁸ There are few effective protections for women workers, in precarious, part-time, temporary and low-paying jobs.⁹⁹

e. Temporary Foreign Workers/Live-In Caregiver Program

In 2014, the federal Live-in Caregiver Program was eliminated and replaced with the Caregiver Program,¹⁰⁰ a new branch of the federal Temporary Foreign Worker Program.¹⁰¹ Ninety-five percent of caregivers are women who are largely from the Philippines.¹⁰² 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.¹⁰³ They were the only group of low-wage temporary foreign workers who had universal access to permanent residency.¹⁰⁴ In 2014,¹⁰⁵ the Canadian Government placed a cap on the number of caregivers who could apply for permanent residency and added new requirements for qualification.¹⁰⁶ These changes increased the instability of this already vulnerable group.

The “live-in” requirement for caregivers has been removed, but they continue to experience exploitation,¹⁰⁷ and face new vulnerabilities:

- Caregivers are still tied to their employers, and 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 period¹⁰⁸ and are only allowed to work for the employer listed on their work permit.¹⁰⁹
- High living expenses in Canada combined with low wages¹¹⁰ encourage caregivers to

continue to choose the live-in option where working conditions are most exploitative, even though it is no longer mandatory.¹¹¹

- 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.¹¹²
- All caregivers who apply for permanent residency now must have at least one year of post-secondary education.¹¹³

Despite continuing demands for caregivers, the immigration system fails to accord sufficient recognition to the skills of these workers, thus preventing them from coming in under the regular admission system. The fact that caregivers come in through a special program, and as temporary foreign workers, is symptomatic of the longstanding failure of Canada's immigration selection process to appropriately value the skills and experiences of women and caregivers.

f. Trade Unions Benefit Women

Despite the Supreme Court of Canada's release of a new "labour trilogy" – three decisions that ruled that the freedom of association guarantee of the *Charter of Rights and Freedoms* protects the rights to strike and collectively bargain – the federal Government and provincial governments continue to work against trade unions.¹¹⁴ The overall unionization in Canada continues to decline.¹¹⁵

This decline in unionization negatively affects women. Unionized women have a smaller pay gap, with unionized women earning 94% of what men earn, compared to earning 79% what men earn in non-unionized work settings.¹¹⁶ Unions have championed issues that are important to women's equality, including issues of wage inequality,¹¹⁷ and occupational health and safety issues.¹¹⁸ They have been one of the most successful mechanisms for woman workers to hold their employers and governments accountable when facing discriminatory work practices.¹¹⁹

Examples of union's supporting women's equality include:

- Recently, the Canadian Union of Postal Workers have been fighting for pay equity for their predominately female rural and suburban mail carriers in their most recent collective bargaining round.¹²⁰
- In 2013, women at Canada Post began to receive at least \$150 million in payment for their pay equity case started by their union in 1983.¹²¹
- In 2016, the Supreme Court of Canada ruled in favour of women who had worked in laboratories at Mission Memorial Hospital in British Columbia and developed breast cancer. WorkSafeBC initially denied the claim saying that breast cancer was not an occupational disease but the women and their unions continued their fight for over a decade.¹²²

- In 2014, a female employee filed a human rights complaint against Canadian National Railway (CN) for their failing to accommodate her childcare obligations and subsequently terminating her.¹²³ After five years of fighting, she won her claim. By 2013 two other female CN employees have made successful discrimination claims based on family status.¹²⁴

Because of space limitations, this is the briefest snapshot. But the evidence is clear that women are not equal in the workplace in Canada and progress is stalled.

5. Violence Against Women: Issues 7 and 8

FAFIA refers CEDAW members to its joint report on Violence against Women with the Canadian Association of Sexual Assault Centres.

As FAFIA has noted previously, in the lived experience of women, risk of violence, and capacity to escape or recover from it, are integrally connected to economic and social marginalization and subordinate status. In order to address women's structural inequality all factors must be addressed simultaneously and strategically.

6. Education: Issue 11

In its 2008 Concluding Observations, CEDAW expressed concerns regarding Indigenous women and girl's barriers to education.¹²⁵ The Committee on Economic, Social and Cultural Rights also highlighted its concern with the lower academic achievements for both Indigenous and African-Canadian children.¹²⁶ It noted its concern with "increasing tuition fees in post-secondary education combined with decreasing governmental funding, which disproportionately impacts students and families with low income as well as indigenous peoples."¹²⁷

a. Barriers to accessing post-secondary education for female students

Despite Canadian women's high levels of post-secondary education attainment,¹²⁸ significant barriers remain which can prevent some women from attending. For racialized and Indigenous women, women with children needing childcare and women coming from more remote and rural communities, these barriers are more severe.

As most post-secondary institutions are located in major urban centres, students travelling from remote and rural communities, especially remote First Nations reserves, face additional cost barriers. Recent reports have found that a student who entered post-secondary education in 2011 and lived away from home could expect her 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.¹²⁹

The financial supports that have been put in place by the Canadian government, such as the Registered Education Savings Plan (RESP), have failed to increase accessibility to education for those who need it the most.¹³⁰ Lower earners such as women and members of racialized groups receive a lesser, more drawn out benefit, as they have less income to be offset by the credits.

b. Additional barriers for Indigenous students

Inadequate education at a young age creates a structural barrier to accessing post-secondary education for many Indigenous women.¹³¹ For those able to overcome the structural barrier of inadequate early education, they are then met with the additional barrier of inadequate financial aid to assist with the costs of post-secondary education. The Post-Secondary Student Support Program, (PSSSP) 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 for block funding, the annual increases in funding were capped at 2%. From 2006 to 2011 alone, PSSSP funding constraints led to over 18,500 qualifying students—roughly half of all eligible students—being denied funding.¹³² This funding shortfall is expected to continue, as Canada’s 2016 federal budget did not contain any commitments to lift the 2% funding cap on this program.¹³³

c. The long-term financial impacts of unaffordable post-secondary education

As public funding for higher education has been cut, these shortfalls have been passed on to students in the form of tuition and other fees, which are increasing at rates well above inflation every year.¹³⁴ As a result, student debt has significantly increased. Statistics Canada estimates that there is close to \$30 billion in total outstanding student debt, and that average total student debt for a bachelor’s degree is over \$26,000.¹³⁵

For young women, shouldering these high levels of debt, while experiencing a pay gap regardless of their level of education¹³⁶ and gendered social expectations, can be incredibly difficult. It can take longer to repay debts and this allows more interest to accumulate, effectively causing young women to pay more for their education than their male counterparts.

The wage gap increases for Indigenous, racialized, and immigrant women with university degrees. Indigenous women with a university degree earn 24% less than Indigenous men with a university degree and 33% less than non-Indigenous men with a university degree.¹³⁷ This demonstrates the limits of education as a tool to address the discriminatory distribution of wages and employment, but also shows that education costs are more burdensome for women than men.¹³⁸

Recommendations

The Government of Canada should:

- Eliminate the Registered Education Savings Plan (RESP) and redirect the funding into the needs-based Canada Student Grants Program (CSGP), which would provide up-front, non-repayable financial assistance to students who need it the most.
- Increase grant funding to reduce overall student debt and allow new graduates to obtain financial security sooner.
- Remove the funding cap on the PSSSP and ensure that all Indigenous students have access to funding for post-secondary education.

7. Access to Healthcare: Issues 13 and 14

In 2008, the CEDAW Committee expressed concerns over health care in Canada. Accessible health care and sexual education is essential in addressing women's sexual health needs in particular and promoting women's health in general.

It recommended then that Canada:

carefully monitor the delivery of health services in order that it may respond in a gender-sensitive and age-sensitive manner to all health concerns of women, and in this regard it invites the State party to utilize the Committee's general recommendation 24 as a framework [employing temporary special measures]¹³⁹ for action to ensure that a gender perspective is integrated into all health policies and programmes.¹⁴⁰

a. Access to Abortion

In Issue 13, the CEDAW Committee requested information about access to quality sexual and reproductive health services across all provinces and territories, including for women living in remote and rural areas. Access to abortion services is an issue of particular concern.

In March 2016, the Committee on Economic, Social and Cultural Rights stated its concern at disparities in access to legal abortion services and affordable contraceptives across Canada.¹⁴¹ The Committee recommended that Canada:

ensure access to legal abortion services in all provinces and territories. The Committee also recommends that the State party ensure that physicians' conscientious objection does not impede women's access to legal abortion services. The Committee also recommends that affordable contraceptives be made accessible and available to all, and in particular those living in remote areas and those living in poverty.¹⁴²

Abortion is still not an accessible service for all Canadian women. Although there have been no criminal law restrictions on abortion in Canada since 1989, when the Supreme Court of Canada struck down the Criminal Code provisions in *R. v. Morgentaler*,¹⁴³ many provinces and territories, particularly in Atlantic Canada place restrictions on abortions through denying medicare funding if abortions are performed in clinics; not requiring hospitals to perform abortions; placing gestational limits on when abortions can be performed; or failing to make abortion services geographically and financially accessible to women living in rural and remote areas. Abortions are covered by all provincial health plans to fund abortions performed in hospitals,¹⁴⁴ but only one in six hospitals in Canada performs abortions.¹⁴⁵ Some provinces (Ontario, Quebec, Newfoundland, Alberta, and British Columbia) fund abortions at free-standing clinics as well.¹⁴⁶

There are no freestanding abortion clinics in the northern territories or in Nunavut. In fact, there are only four providers throughout the entire Canadian north,¹⁴⁷ with varying gestational limits (ranging from 12 to 14 weeks).¹⁴⁸

Outside of urban areas, and in the northern, rural and remote parts of the country, women face challenges accessing reproductive healthcare. Abortion services remain extremely limited outside of urban centres, and women living in remote, rural and northern locations, many of whom are Indigenous women, have little access compared to their southern counterparts.¹⁴⁹

b. Conscientious Objection

Doctors in Canada are under no legal obligation to provide medical treatment if they feel it is inappropriate or unnecessary, provided they have acted in good faith and without discrimination.¹⁵⁰ The Canadian Medical Association *Code of Ethics* directs all physicians to practice non-judgmental care and discourages them from discriminating against patients on grounds such as gender, marital status, medical condition, or socioeconomic status.¹⁵¹

However, there are documented incidents of doctors refusing to provide women with abortions, or even referrals. In Saskatchewan, where doctors are still required to make timely referrals,¹⁵² women living in Saskatoon report a number of barriers, including doctors refusing referrals or threatening to fire them as patients if they seek an abortion. Some women deal with inadequate referrals and have to arrange their surgeries for themselves.¹⁵³

Recommendations

The Government of Canada should:

- **Use the powers of the Canadian *Health Act* to ensure that women in all parts of the country, including in rural and Northern Canada have safe and adequate access to abortion services.**

Provincial and territorial governments should:

- **Ensure access to abortion services by funding stand-alone clinics, making services accessible to women in rural and remote areas, and decreasing legislative and regulatory barriers.**

c. Conclusion – A Comprehensive National Gender Equality Plan

FAFIA concludes that the inequality of women in Canada will not be adequately addressed, and the requirements of the *Convention* will not be fulfilled, by piecemeal, partial and siloed improvements to some programs and services and not to others. Discrimination and inequality in one area exacerbate inequality in others and often create a vicious circle for women in which they become trapped. Without adequate income, and access to decent housing, women cannot escape violence; unless they can escape violence they cannot maintain guardianship of their children, earn a decent income, and have sexual autonomy; unless they have safe affordable childcare, they cannot pursue work or educational opportunities or participate in political life. The interconnections are many and known. For too long the assumption of Canadian governments has been that only minor adjustments to laws and policies are needed: a tweak here and there, not an overhaul.

Facts tell us otherwise. FAFIA submits that, almost 50 years after the Royal Commission on the Status of Women issued its report on steps necessary to advance women's equality,¹⁵⁴ it is time for a new and serious conversation between Canadian governments and Canadian women about mechanisms and measures needed to bring women to equality. Real engagement about women's equality matters is long overdue.

FAFIA also submits that Canada must take seriously its international human rights commitments and begin immediately to develop a plan for implementation of treaty body recommendations concerning women's human rights, especially the recommendations of the CEDAW Committee. As this submission demonstrates, there are many outstanding recommendations that need to be implemented if the *Convention* is to be fully realized in the lives of Canadian women.

Therefore, FAFIA recommends that the Government of Canada, in collaboration with the governments of the provinces and territories:

- **Immediately engage with women's organizations, and feminist experts, across the country, through in-person meetings, specialized task forces and working groups, to consider mechanisms and measures needed to address entrenched and interconnected factors that cause and perpetuate women's inequality.**
- **Review all recommendations of the CEDAW Committee including those emerging from this review, as well as recommendations from other treaty bodies regarding women's human rights, to identify outstanding and priority recommendations, and, with**

women's organizations, feminist experts, and sub-national governments, devise a plan for implementation.

- Review developing strategies to eliminate poverty, increase affordable housing and end homelessness to ensure that those strategies are also gendered and include an intersectional analysis.
- Report back to the CEDAW Committee in one year on progress made and actions taken.

II. National Machinery for the Advancement of Women: Issue 4

The need for a comprehensive plan is underscored by the fact that Canada has no national machinery for the advancement of women. Federal, provincial and territorial governments have different mechanisms; British Columbia has none, and some have assigned little authority or resources to this portfolio.¹⁵⁵ Discussion among governments on women's equality issues takes place at meetings of Status of Women Ministers, but there is no formal co-ordination.

1. Federal Machinery

a. Implementation of Gender Based Analysis in Policymaking

In preparation for the Beijing World Conference on Women in 1995, Status of Women Canada issued *Setting the Stage for the Next Century: A Federal Plan for Gender Equality*.¹⁵⁶ The first objective of this plan was to "implement gender-based analysis (GBA) throughout federal departments and agencies." Unfortunately, this objective has not been met.

A 2015 Report of the Auditor General of Canada found that only some federal departments had conducted GBA;¹⁵⁷ many departments had not done so thoroughly; and many departments, without thorough analysis, had concluded that policies had no particular impact on women.¹⁵⁸

In a 2016 study, the Parliamentary Committee on the Status of Women corroborated these findings, reporting that:

- Only 29 of 110 federal departments and agencies have committed to GBA;¹⁵⁹
- Departments that performed GBA were not always conducting complete or high-quality GBA; and
- Without a standardized and mandatory protocol, GBA was performed inconsistently or not at all.¹⁶⁰

The Parliamentary Committee recommended that:

- Legislation be introduced to require all departments and agencies to submit proposals to GBA before they arrive at Cabinet;

- The Privy Council Office and Treasury Board be authorized to return proposals if GBA was not performed or performed inadequately; and
- Legislation be introduced by June 2017 to create an Office of the Commissioner for Gender Equality, as an Agent of Parliament, in order to oversee the implementation of GBA.¹⁶¹

FAFIA supports these recommendations. However, there are significant issues that need to be addressed in the GBA process:

- **Only focused on new and existing policies, laws and practices.** GBA processes, as discussed in recent reports, appear to be forward-looking, focused on how proposals for **new** policy or legislation will be analyzed; however, GBA also needs to be applied to **existing** policies, laws, and practices, which may have discriminatory effects.
- **A cross-department plan for addressing priority areas.** A cross-department gender equality plan is needed that is based on a “big picture” analysis of what laws, policies and programs currently contribute to women’s inequality, or could be improved in order to advance it.
- **GBA of budgets or tax system.** The gender bias in Canada’s tax system needs to be studied and corrected because of its role in keeping women’s income inequality in place.¹⁶² Regular gender analysis of budgets is also required because budgets determine priorities and resources in many areas. For example, Budget 2016 has been criticized for allocating significant resources for infrastructure spending that will create jobs for men, but not for women.¹⁶³
- **GBA needs a human rights framework.** GBA needs a human rights framework, and should include consideration of whether a policy, law or program advances, or does not comply with, rights under the *Convention* and other treaties that Canada is signatory to.
- **Women’s civil society and feminist expert input.** There should be a regular process established for input from civil society organizations, and the feminist academic and research community.

2. CEDAW Implementation

Canada has no mechanism for overseeing, evaluating or ensuring domestic implementation of the *Convention on the Elimination of Discrimination against Women*. In 2008, the Committee reiterated its 2003 recommendation that the Government of Canada:

use its leadership and funding power to set standards and establish an effective mechanism aimed at ensuring accountability and the transparent, coherent and consistent implementation of the Convention throughout its territory in which all levels of government can participate.¹⁶⁴

Other treaty bodies, including most recently the Committee on Economic, Social and Cultural Rights, have urged the Government of Canada to use funding and other agreements with the

provinces and territories to “establish responsibilities for the implementation of [treaty] rights at the different levels”.¹⁶⁵

But there is no move to do this and no domestic inter-governmental mechanism to monitor the status of Canada’s implementation of its international human rights commitments, including recommendations made by CEDAW and other UN treaty bodies. While Canada is proud to have ratified CEDAW, it has taken no effective steps to make the *Convention* a known and widely understood instrument for evaluating government policies and conduct.

3. Importance of Non-Governmental Actors

The CEDAW Committee recognizes the “great importance of NGO advocacy, lobbying and research activities” for implementation of the *Convention*.¹⁶⁶

In its 2016 List of Issues for Canada, the Committee flagged concerns over the changes made to Status of Women Canada (SWC), specifically:

- Closure of 12 out of 16 regional offices;
- Cuts to SWC funding; and
- Barring funding by the Women’s Program for NGO advocacy and research activities.¹⁶⁷

In the 2016 federal budget, the Federal Government guaranteed an increase in SWC funding in the amount of \$23.3 million over five years, beginning in 2016.¹⁶⁸ There is no indication that regional offices will reopen. Press reports and communications to FAFIA indicate that SWC will restore some funding for NGO advocacy and research.¹⁶⁹ There are no known parameters or amounts for this funding yet.

Recommendations

The Government of Canada should:

- **Pass a Gender-Based Analysis bill to make gender-based analysis mandatory within the federal government.**
- **Develop a federal gender equality plan that sets priorities for change in existing policies and programs, including a review of Canada’s tax system, and establishes a pre-budget GBA process.**
- **Re-establish funding for women’s rights advocacy and research under the Women’s Program of Status of Women Canada by formally expanding the mandate to include advocacy and research in the 2017 federal budget.**
- **Restore the Status of Women Canada Independent Policy Research Fund for feminist research.**
- **Bring together federal, provincial and territorial Ministers with civil society representatives to design a new national mechanism for monitoring and implementing treaty rights and treaty body recommendations in a coordinated, effective and transparent way.**

Endnotes

¹ The silencing of advocacy in Canada, including attacks on many women's and human rights organizations, is documented by Voices-Voix, online: <<http://voices-voix.ca/>>.

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<http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT_CEDAW_NGO_CAN_42_8234_E.pdf> (for other commentary, see "For women, Harper's government has been a disaster", *ipolitics* (22 September 2015), online: <<https://ipolitics.ca/2015/09/22/for-women-harpers-government-has-been-a-disaster/>>).

³ UNDP, Human Development/Gender Equality Index, online: <<http://hdr.undp.org/en/composite/GII>>.

⁴ Committee on Economic, Social and Cultural Rights, 57th Sess, 7th Mtg, UN Doc E/C.12/2016/SR7 (2016) at para 41, online: <[https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/037/75/PDF/G1603775.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/G16/037/75/PDF/G1603775.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/037/75/PDF/G1603775.pdf?OpenElement)>; Committee on Economic, Social and Cultural Rights, *Concluding observations on the sixth report of Canada*, UN Doc.

E/C.12/CAN/CO/6 (4 March 2016) at paras 5-6, online:

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⁵ Committee on the Elimination of Discrimination against Women, *List of Issues in Relation to the Combined Eighth and Ninth Periodic Reports of Canada*, UNCEDAWOR, 65th Sess, UN Doc. C/CAN/Q/8-9 (10 March 2016) [CEDAW 2016 List of Issues].

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⁷ *Ibid.*

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¹⁰ *Ibid.*

¹¹ Tina Chui, *Women in Canada: A Gender-based Report Immigrant Women*, Statistics Canada, Catalogue No 89-503-X (July 2011), online: <<http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11528-eng.pdf>> [Statistics Canada, Immigrant Women].

¹² Tina Chu and Hélène Maheux, *Women in Canada: A Gender Based Statistical Report Visible Minority Women*, Statistics Canada, Catalogue No 89-503-X (July 2011), online: <<http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11527-eng.pdf>> [Statistics Canada, Visible Minority Women].

¹³ DAWN Canada, "Factsheet: Women with Disabilities and Poverty" (2015), online: <<http://www.dawncanada.net/issues/issues/fact-sheets-2/poverty/>>.

¹⁴ Statistics Canada, Persons in low income, *supra* note 8.

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¹⁶ *Ibid.*

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