

National Association of
Women and the Law



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**CANADIAN WOMEN AND THE SOCIAL DEFICIT:
A PRESENTATION TO THE INTERNATIONAL
COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS**

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*on the occasion of the Consideration of Canada's Third Report on the
Implementation of the International Covenant on Economic, Social and
Cultural Rights*

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Table of Contents

I. THE NATIONAL ASSOCIATION OF WOMEN AND THE LAW	1
II. PURPOSE OF THE SUBMISSION	1
III. INTERPRETIVE PRINCIPLES	1
IV. ARTICLES 2(2) AND 3 OF THE COVENANT	5
V. THE NEGATIVE IMPACT ON WOMEN OF FEDERAL/PROVINCIAL RESTRUCTURING OF SOCIAL PROGRAMS	8
a. Women's Poverty	8
b. The <i>Budget Implementation Act</i> and the Canada Health and Social Transfer ..	10
(i) Elimination of Key Rights	11
(ii) Elimination of 50-50 Cost Sharing	11
(iii) Move to Block Funding	13
(iv) Reduction in Federal Transfer Levels	13
c. Impact of the <i>Budget Implementation Act</i> and Provincial Restructuring of Social Programs	13
(i) Increase in Women's Unpaid Responsibilities	13
ii) Reduction of Provincial Funding of Social Programs and Services Puts Women at Risk	14
(iii) Reduced Access to Legal Aid for Women	14
(iv) The Effect of Program Reduction on Women With Disabilities	17
(v) Poor-Bashing and Stigmatization of Single Mothers on Welfare	18
(vi) Reduction in Women's "Good" Jobs	20
d. Women's Equality and the Deficit	21
VI. ARTICLE 7 AND THE NEGATIVE IMPACT ON WOMEN OF DISCRIMINATION, STRUCTURAL INEQUALITY IN THE WORKPLACE, AND WEAK PROTECTIVE MECHANISMS	22
a. Women's Wage and Employment Gap	23
b. Inadequacy of Governmental Response to Structural Inequalities	24
c. Changes to Unemployment Insurance Disentitle Many Women Workers	26
d. Unfavourable Working Conditions of Foreign Domestic Workers	29
e. Impact of Globalization	28
VII. MATRIMONIAL PROPERTY AND THE EQUAL RIGHT TO SECURE HOUSING ..	29
VIII. EDUCATIONAL ACCESS: ARTICLE 13 OF THE <i>COVENANT</i>	31
IX. PROTECTION FROM DISCRIMINATION ON THE BASIS OF SOCIAL CONDITION	31
X. CONCLUSION	32

I. THE NATIONAL ASSOCIATION OF WOMEN AND THE LAW

1. The National Association of Women and the Law (NAWL) is a national, non-profit organization dedicated to advancing women's equality through law reform advocacy, research and education. NAWL was founded in 1974 and currently has 19 local chapters, in addition to its national office. Members include lawyers, law professors, students and others who share NAWL's goal of improving the status of women in Canada. NAWL's work involves a wide number of areas of the law, including criminal law, family law, health law, equality and human rights law.

2. The general objectives of the work NAWL does are:

- the achievement of equality for all women within law and the legal system;
- the elimination of violence against women;
- the guarantee of a decent standard of living for all women;
- the provision of guaranteed employment and equitable pay for all women;
- the removal of social and economic barriers to women's equality;
- the establishment of an equitable family law system, in particular, one that provides fairly for women and their children in the event of divorce or separation;
- the guarantee of reproductive choice.

3. NAWL is regularly consulted on matters involving women's equality by the federal Ministries of Finance, Justice, the Status of Women, and the Solicitor General, as well as by a number of Parliamentary and Senate committees. NAWL is well-regarded by the media, government, and other non-government organizations as an important source of expertise and advocacy regarding issues involving women and the law.

II. PURPOSE OF THE SUBMISSION

4. This presentation seeks to bring to the attention of the Committee the impact on Canadian women of Canada's failure to realize the social and economic rights guaranteed by the *International Covenant on Economic, Social and Cultural Rights* (hereinafter "the *Covenant*"). It is the submission of NAWL that Canada is failing to take the necessary steps to progressively realize the rights set out in the *Covenant*, to the maximum of its available resources, and that this is starkly evident when the conditions of Canadian women are examined.

International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XX), 21 UN GOAR, (Supp. No. 16) UN Doc. A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46

III. INTERPRETIVE PRINCIPLES

5. We submit that the assessment of Canada's compliance with its *Covenant* undertakings must include consideration of the impact of its laws, policies and practices on women. National averages reveal little about the circumstances of specific groups, particularly those vulnerable groups likely to suffer rights violations. It is essential to examine the specific living conditions of all Canadian women.

6. The need to consider and analyze the content of human rights and the effectiveness of their implementation from the perspective of women has been acknowledged within the United Nations system. We are aware that the Chairpersons of the six treaty bodies made detailed recommendations in their 1995 and 1996 reports regarding the “integration of gender perspectives into their work.” We also note that in 1996 the Commission on Human Rights adopted a resolution welcoming the Chairpersons’ recommendations and recommended to all the treaty bodies that their reporting guidelines should be amended to reflect a greater emphasis on gender-specific information. *General Recommendation No. 9* of the Committee on the Elimination of Discrimination Against Women notes that sex differentiated data is extremely useful in assessment of compliance under the Covenant’s nondiscrimination and equality of treatment provisions. As well, in the *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* of January 1997, NGO experts recognized that certain groups, among them women, are more likely to be disadvantaged in relation to economic, social and cultural rights. The implication of this recognition is that a gender-specific perspective on monitoring compliance with the *Covenant* is essential.

“Human Rights Questions: Implementation of Human Rights Instruments: Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations Under International Instruments on Human Rights”, UNGA A/50/505, 4 October 1995, para 34, 58

“Human rights Questions: Implementation of Human Rights Instruments: Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations Under International Instruments on Human Rights”, UNGA A/51/482, 11 October 1996, para. 31, 34

United Nations High Commissioner for Human Rights, “Question of Integrating the Human Rights of Women Throughout the United Nations System”, *Commission on Human Rights Resolution 1996/48*, para. 3

Report of the Committee on the Elimination of Discrimination Against Women: General Recommendation No. 9, 8th Sess. 1989), adopted 3 March 1989, U.N. GAOR, 44th Sess., Supp. No 38 para. 392, U.N. Doc. A/44/38 (1990)

Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, 22-26 January 1997, para. 20

7. To not recognize the necessity of gender-specific analysis and data to the assessment of human rights compliance is to discriminate against women as part of human rights discourse itself.

8. It is also consistent with Canada’s own laws and policies to evaluate its implementation of the *Covenant* in light of Canada’s national and international commitments to women’s equality and its policy of analyzing the impact of laws, policies and practices on women. Canada acknowledges the importance of eliminating women’s social and economic inequality and over the last thirty years has enacted statutory prohibitions against sex discrimination and a constitutional guarantee of sex equality. Canada is also a signatory to

Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter *CEDAW*).

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982 (UK)*, 1982, c. 11 ss. 15, 28

9. In recent years, the federal government has recognized the importance of policy analysis of the impact of federal laws, policies and practices on women. In 1995 and 1996, the federal government released a *Federal Plan for Gender Equality* and an accompanying document, *Gender-Based Analysis: A Guide for Policy-Making*. The *Plan* is the cornerstone for the implementation in Canada of the *Beijing Platform for Action*. The two federal documents note that policies and legislation “affect women differently because [women’s] social, political, physiological and economic circumstances are different from those of men”, and they commit the federal government to analyzing the impact of its policies and legislation on women.

Status of Women Canada, News Release, No. 11, “New Guide To Achieve Equality To Be Launched During International Women’s Week”, 4 March 1996

Status of Women Canada, *Setting the Stage for the Next Century: Federal Plan for Gender Equality* (Ottawa: Status of Women Canada, 1995)

Status of Women Canada, Working Document, *Gender-Based Analysis: A Guide for Policy-Making* (Ottawa: Status of Women Canada, 1996)

10. Statements of commitment by Canada are not in and of themselves evidence of Canada’s fulfillment of its obligations. Rather, the substance of Canada’s actions must be primary evidence of this. However, these statements are confirmation of the norms against which Canada’s record of performance should be judged.

11. The right to equality is an essential interpretive lens for assessment of any particular country’s realization of *Covenant* rights. If women, or Aboriginal peoples, or members of racial minorities, or people with disabilities are more socially and economically disadvantaged, have less access to the exercise and enjoyment of their social and economic rights, this must be a central concern. The realization of the right to equality is a necessary element to the full realization of every other right.

12. The centrality of equality as a principle for assessment is indicated by the *Covenant* itself (Articles 2 and 3), and by the fact that the concept of the equal enjoyment of rights is a unifying theme in the scheme of international human rights law. For instance, and by way of illustration of this point, we bring to the Committee’s attention the *International Covenant on Civil and Political Rights (ICCPR)* which provides in its preamble for the “equal and inalienable rights of all members of the human family”. Articles 2(2) and 3 of the *ICCPR* are more specific recognitions of the right of women to equal enjoyment of protected rights. In *CEDAW*, the subordination of women as a group is acknowledged, and the obligation to eliminate the many manifestations of that subordination is addressed, as it is in subsequent international agreements including the *Forward-Looking Strategies*, the *Declaration on Violence Against Women*, and, most recently the *Platform for Action*.

International Covenant on Civil and Political Rights, GA Res. 2200A (XXI), 21 UN GAOR, (Supp. No. 16) 52, UN Doc. A/6316 (1966), Preamble, Articles 2(2), 3

Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace (Nairobi Forward-Looking Strategies For The Advancement of Women), Nairobi, 15-26 July 1985

UN Res. 48/104, *Declaration on the Elimination of Violence Against Women*

Report of the Fourth World Conference on Women, Beijing, China, 4-15 September 1995, A/CONF.177/20, 17 October 1995 [*Beijing Platform for Action*]

13. The prescription that all persons must enjoy human rights on a footing of equality to satisfy the standards of human rights compliance set by the international community is buttressed by specific protections against discrimination contained in every one of the six human rights treaties. Again, by way of example, Article 26 of *ICCPR* provides a broad guarantee of non-discrimination, requiring States Parties to provide effective protection against discrimination wherever it arises. Such protection is also contained within the *Convention on the Elimination of Racial Discrimination* and *CEDAW*.

International Covenant on Civil and Political Rights, GA Res. 2200A (XXI), 21 UN GAOR, (Supp. No. 16) 52, UN Doc. A/6316 (1966), Article 26

Convention on the Elimination of All Forms of Racial Discrimination, GA Res. A/RES/2106A (XX) (1969), 660 U.N.T.S. 195, Can T.S. 1970 No. 28

Convention on the Elimination of Discrimination Against Women, GA Res. 34/180, UN GAOR, 34th Sess. (Supp. No. 46), 19 I.L.M. 33, Can. T.S. 1982 No 31, (concluded 18 December 1979m; in force for Canada 9 January 1982), Article 2

14. Formally neutral treatment has now been widely rejected as an inadequate and false conception of equality. Neutrality on the face of laws is a discredited formula for creating equality for women. It is necessary to consider women's real social and economic conditions and to design laws, policies and programs that can address and ameliorate women's real inequalities. This can only be done by looking to the effects laws, policies and practices have on women. It is, therefore, necessary to give women's right to equality a substantive and contextual reading.

15. This necessary commitment to a substantive analysis of equality has been stated in domestic Canadian documents and in international agreements. For instance, Canadian courts have repeatedly ruled that Canadian governments' constitutional and legislative commitments to gender equality are not satisfied by mere formal equality. Equally, *CEDAW* cannot be read as a commitment merely to formal equality for women.

Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143

Convention on the Elimination of Discrimination Against Women, GA Res. 34/180, UN GAOR, 34th Sess. (Supp. No. 46), 19 I.L.M. 33, Can. T.S. 1982 No 31, (concluded 18 December 1979m; in force for Canada 9 January 1982)

Shelagh Day and Gwen Brodsky, *Women and the Equality Deficit: The Impact of Restructuring Social Programs in Canada* (Ottawa: Status of Women Canada, 1998) at 49-51

16. The *Covenant* must be given a broad and purposive reading, one which promotes its underlying values, commitments and aspirations. The *Covenant* must be read as a whole so that its goals are consistent across all of its provisions. Its reading must support the principle that all human rights are indivisible, interdependent and interrelated. By this is meant, for example, that Articles 2(2) and 3 of the *Covenant* must be read with all of the other substantive provisions of the treaty. Thus, States Parties will fail to satisfy any substantive provision where women do not enjoy equal realization of the right provided for under the provision in question.

IV. ARTICLES 2(2) AND 3 OF THE COVENANT

17. NAWL requests that the Committee analyze Canada's performance during this reporting period in light of Canada's obligations under Articles 2(2) and 3 of the *Covenant*.

18. Articles 2 and 3 of the *Covenant* provide as follows.

1. Each State Party to the present *Covenant* undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present *Covenant* by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present *Covenant* undertake to guarantee that the rights enunciated in the present *Covenant* will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The States Parties to the present *Covenant* undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present *Covenant*.

International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XX), 21 UN GOAR, (Supp. No. 16) UN Doc. A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, Articles 2 and 3

19. NAWL submits that the undertakings made by Canada pursuant to Articles 2(2) and 3 are fundamental to the question of Canada's compliance under the *Covenant* and that the obligations imposed by the two Articles are integrally connected. In order to fully address

women's economic, social and cultural rights, Articles 2(2) and 3 of the *Covenant* must be read together. Women are not a homogeneous group, and among the poorest and most vulnerable women in Canada are Aboriginal women, women of colour, immigrant and refugee women, women with disabilities, single mothers, and elderly women. These women experience not just the disadvantage of their gender, but also discrimination and inequality based on their race, colour, national origin, disability, marital status and age.

20. The overarching obligation not to discriminate, which is articulated in Article 2(2), must be implemented immediately and is not, therefore, subject to the standard of progressive implementation.

21. Article 3 of the *Covenant* clarifies and emphasizes the right of women to enjoy their economic and social rights at levels comparable to men. *General Comment No. 3* of the Committee on Economic, Social and Cultural Rights declares that budgetary limitations or financial constraints do not remove a State Party's immediate obligation of nondiscrimination.

The Nature of States Parties' Obligations, General Comment No. 3, adopted 13-14 Dec. 1990, U.N. ESCOR, Comm. On Econ., Soc. & Cult. Rts., 5th Sess., 49th and 50th mtgs, at para. 9, U.N. Doc. E/C.12/1990/8 (1990).

22. As already submitted, actual social and economic conditions are the subject matter of the *Covenant*. Consequently, it would be perverse to give Article 3 of this *Covenant* a formal equality interpretation, one that would, for example, permit Canada to satisfy its obligations merely by providing the same laws and programs for men and women without regard to whether those laws and programs have the effect of delivering to women equal enjoyment of the *substance* of their social and economic rights.

23. Discrimination against women in relation to the rights protected by the *Covenant* must be understood in light of the standard of equality for women established under *CEDAW*. That standard requires the elimination of all forms of discrimination against women, including gender discrimination arising out of social, cultural and other structural disadvantages.

Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, Maastricht 2-6 June 1986, para. 40

Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, 22-26 January 1997, para. 12

24. Further, the obligation of the States Parties to the *Covenant* to continuously improve living conditions cannot be met unless the States Parties pay specific attention to the conditions of women. Many women in Canada and many women around the world are poor. They are poorer than men in every society, and they are poor for different reasons. Women's persistent poverty and economic inequality are caused by a number of interlocking factors: the social assignment to women of the unpaid role of caregiver and nurturer for children, men, and old people; the fact that in the paid labour force women perform the majority of the work in the "caring" occupations and that this "women's work" is lower paid than "men's work"; the lack of affordable, safe child care; the lack of adequate recognition and support for child care and parenting responsibilities that either

constrains women's participation in the labour force or doubles the burden they carry; the fact that women are more likely than men to have non-standard jobs with no job security, union protection, or benefits; the entrenched devaluation of the labour of women of colour, Aboriginal women, and women with disabilities; and the economic penalties that women incur when they are unattached to men, or have children alone. In general, women as a group are economically unequal because they bear and raise children and have been assigned the role of caregiver. Secondary status and income, and - for millions of women - poverty, go with these roles.

Judith L. MacBride-King in *Work and Family: Employment Challenge of the '90s* (Ottawa: Conference Board of Canada, 1990)

Statistics Canada, *General Social Survey, Initial Data Release from the 1992 General Social Survey on Time Use* (March 1993), (Ottawa: Statistics Canada)

Statistics Canada, *1990 General Social Survey, Cycle 7: Time Reports*, (Ottawa: Statistics Canada) at 12-13

25. NAWL submits that poverty has a gendered character, and any assessment of economic and social conditions must acknowledge this. Women will not enjoy equality, or the continuous improvement of their living conditions, until the gendered nature of their poverty is addressed.

26. NAWL submits further that pervasive sexism is a barrier to women's access to the enjoyment of their rights to food, housing, health, and education. This sexism places men's needs first, structures society in terms of those needs and shapes women's lives in relation to those needs. Assumptions about women's secondary importance in society and stereotypes about women's appropriate roles impede women's access to basic care, supports and advancement.

27. NAWL submits that there are three ways in which States Parties can fail to satisfy their obligations under Article 3:

1. A State Party cannot satisfy Article 3 if it takes retrogressive measures that have a disproportionately negative impact on women;

2. A State Party cannot satisfy Article 3 if, when women and men are compared as groups in relation to a particular right, women are more disadvantaged. The undertaking to progressively realize the rights in the *Covenant* cannot be interpreted to mean that men will realize these rights sooner or more fully than women. In light of Articles 3 and 2(2), the progressive realization of *Covenant* rights requires an egalitarian distribution of social and economic benefits at any point in time;

3. A State Party cannot satisfy Article 3 unless it specifically works to identify the inequalities in women's economic and social conditions and takes steps to address those inequalities.

V. THE NEGATIVE IMPACT ON WOMEN OF FEDERAL/PROVINCIAL RESTRUCTURING OF SOCIAL PROGRAMS

28. Article 11 of the *Covenant* provides, in part, as follows.

Article 11

1. The States Parties to the present *Covenant* recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

29. NAWL submits that Canada is not fulfilling its obligations under Articles 2, 3, and 11 of the *Covenant*. Current federal and provincial restructuring of social programs has had a regressive impact on the living standards and conditions of many Canadians. Canada's failure to progressively improve living conditions has been experienced disproportionately and particularly harshly by Canadian women. This failure is a product of both federal and provincial actions.

30. NAWL thus submits that Canada has violated Articles 2, 3 and 11 of the *Covenant* by deliberately retarding or halting the progressive realization of the right to an adequate standard of living and to continuous improvement of living conditions for women, and, indeed, for the poorest and most disadvantaged women, including Aboriginal women, visible minority and immigrant women, women with disabilities, single mothers and elderly women.

International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XX), 21 UN GOAR, (Supp. No. 16) UN Doc. A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, Articles 2(1), 2(2), 3, 11

The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights., Maastricht 2-6 June 1986

a. **Women's Poverty**

31. The higher rate of poverty among women in Canada, and women's higher vulnerability to poverty is, in and of itself, evidence of Canada's contravention of Articles 2, 3 and 11.

32. A disproportionate number of the poor in Canada are women. The latest statistics show that, using Statistics Canada's Low-income Cut-offs (LICOs) as a measurement of poverty, 17.9 percent of Canadians live in poverty. In 1995, 57 percent of all persons living in low-income situations in Canada were women. In absolute numbers, this is 2.059 million women. At all ages and stages of their lives but one, women's poverty rates are higher than men's; however the differences between the sexes are most pronounced in the youngest and oldest groups.

Single mothers and other "unattached women" are most likely to be poor, with poverty rates for these groups reaching as high as 57.2 percent for single mothers under 65, and 43.4 percent for unattached women over 65. The poverty rates for single mothers are

much worse when the figures are disaggregated by their ages and the ages of their children. Single mothers with children under seven had poverty rates as high as 82.8 percent in 1995, and single mothers under age 25 had a poverty rate of 83 percent. Poor single mothers are also living in the deepest poverty, with incomes \$8,851 below the poverty line in 1995.

Poor mothers have poor children. In 1995, 20.5 percent of all Canadian children under 18 were poor, the highest rate in 16 years. Roughly, two-thirds of poor children live in families on welfare. The poverty rate among children with single mothers was 62.2 percent.

Aboriginal women, immigrant women, visible minority women, and women with disabilities are more likely to be poor than other women. In 1990, 33 percent of Aboriginal women, 28 percent of visible minority women, and 21 percent of immigrant women were living below the low-income cut-off. As well, 25.2 percent of all adult women with disabilities were poor in 1991.

More adult women than men receive social assistance. National data show that at least 54 percent of adult welfare recipients are women. Single mothers account for 27 percent of adult welfare recipients, more than double the number of other family types (single father and couples with children) on welfare.

National Council of Welfare, *Poverty Profile 1995*, (Ottawa: Supply and Services Canada, 1997) at 2, 34, 52, 75, 76, 84, 85,

Women in Canada: A Statistical Report, 3d. Ed. (Ottawa: Industry, 1995) at 153, 123, and 138

National Council of Welfare, *Welfare Income 1995* (Ottawa: Supply and Services Canada, 1997) at 44,

National Council of Welfare, *The 1995 Budget and Block funding* (Ottawa: Supply and Services Canada, 1995) at 4-5.

Gail Fawcett, *Living with a Disability in Canada: An Economic Portrait*, (Ottawa: Human Resources Development Canada, 1996) at 131

Government of Canada, National Council of Welfare, Arnold Brun, Vice-Chairperson, "Notes for a Presentation to the Standing Committee on Finance, 28 April 1998.

National Council of Welfare, *Profiles of Welfare: Myths and Realities*, (Ottawa: Spring, 1998) at 8

33. As well as being poorer than men, and more reliant on social assistance and other government transfers, women are more vulnerable to becoming poor. Women's income from all sources is about 58 percent of men's income, and there is an equivalent gap in pension benefits, with women receiving only 58.8 percent of the Canada Pension

Plan/Quebec Pension Plan pension benefits that men receive. As of 1994, 40 percent of women, compared to 27 percent of men, held non-standard jobs, that is, they were self-employed, had multiple jobs, or jobs that are temporary or part-time. Many of these jobs are minimum wage jobs. These jobs are unlikely to be unionized and unlikely to provide pensions or benefits. Also, at the time of marriage breakdown, women become poorer, while men's income increases. This means that many women are one non-standard job, or one marriage breakdown, away from needing welfare.

Statistics Canada, *The Daily*, October 9, 1998

Statistics Canada, The Daily, August 25, 1998

Women in Canada: A Statistical Report, 3d. Ed. (Ottawa: Industry, 1995) at 153, 123, and 138

Canadian Advisory Council on the Status of Women, *Work in Progress: Tracking Women's Equality in Canada* (Canada: Canadian Advisory Council on the Status of Women, 1994) at 44

Monica Townson, "Non-Standard Work: The Implications for Pension Policy and Retirement Readiness" (unpublished paper prepared for Women's Bureau, Human Resources Development Canada, 1996) at 11

b. The *Budget Implementation Act* and the Canada Health and Social Transfer

34. The federal *Budget Implementation Act (BIA)* and *Federal-Provincial Fiscal Arrangements Act*, along with federal and provincial government responses to the new arrangements and funding levels the Act establishes, have exacerbated this pre-existing condition of women's disproportionate poverty. This offers further important evidence of Canada's neglect of its obligations under the *Covenant*.

International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XX), 21 UN GOAR, (Supp. No. 16) UN Doc. A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, Articles 2(1), 2(2), 3, 11

The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights UN Doc.E/CN.4/1987/17.

Budget Implementation Act 1995, S.C. 1995, c. 17

Federal-Provincial Fiscal Arrangements Act, R.S.C. 1985, c. F-8, as amended

35. NAWL submits that this current restructuring of social programs and services done in conjunction with and in response to the *BIA* does not comply with the *Covenant's* requirement that women's right to an adequate standard of living, and to the continuous improvement of living conditions, be progressively realized. The federal and provincial

governments in Canada have deliberately retarded or halted the progressive realization of these rights for all Canadian women.

International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XX), 21 UN GOAR, (Supp. No. 16) UN Doc. A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, Articles 2(1), 2(2), 3, 11

The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights UN Doc.E/CN.4/1987/17.

36. In 1995, the Charter Committee on Poverty Issues (CCPI), the National Anti-Poverty Organization (NAPO), and the National Action Committee on the Status of Women (NAC) provided the Committee with information regarding the implications of proposed legislation (Bill C-76) which would have the effect of repealing the *Canada Assistance Plan* (CAP) and replacing it with the Canadian Health and Social Transfer. Since that time that proposed legislation has been enacted in the form of the *Budget Implementation Act* 1995.

37. There are four problems with the Canada Health and Social Transfer, as legislated by the *BIA*:

1. it eliminates key rights;
2. it ends 50-50 cost-sharing for social assistance and social services;
3. it rolls funds for health care, post-secondary education, social assistance and key social services into one undifferentiated block transfer;
4. it cuts the total amount of the transfer from the federal government to the provincial governments.

(i) Elimination of Key Rights

38. The repeal of the (*CAP*) eliminated important national guarantees for poor people. Provinces were required to respect and protect certain rights as a condition of receiving federal funds to share the costs of social assistance, legal aid for family law matters, and designated social services. These rights included the right of any person in need to receive welfare, the right to an amount of welfare sufficient to meet basic needs, the right to appeal when social assistance is denied, and the right not to have to work for welfare. Of the national guarantees imposed under *CAP*, only the prohibition against provincial residency requirements remains in force under the CHST. These were essential rights that women relied on because of their vulnerability to poverty. They were Canada's most explicit guarantees in domestic law of economic and social rights, and were of particular importance to women, given women's poverty rates. The National Council of Welfare, a citizen's advisory group to the federal Minister of Human Resources Development established by federal law, has called the Canada Health and Social Transfer (*CAP*'s replacement) "the worst social policy initiative undertaken by the federal government in more than a generation."

National Council of Welfare, *Another Look at Welfare Reform*, (Ottawa: National Council of Welfare, Autumn 1997)

(ii) Elimination of 50-50 Cost Sharing

39. The *BIA* eliminated 50-50 cost-sharing between the federal government and the provinces. The federal government no longer provides 50 percent of the real cost to provinces of providing welfare, legal aid for family and non-criminal matters, and designated social services. Now, all of the services traditionally funded under *CAP* compete for provincial funding priority, along with health care and post-secondary education. The federal government transfers money in one block fund to the provinces for all of these social programs to be spent however each province chooses.

40. The welfare related services that were designated under *CAP* for cost-sharing included:

- homemaker services for the elderly;
- attendant services for people with disabilities;
- child care services;
- services to unemployed people to assist them to enter the workforce;
- child welfare services to assist children who are neglected or abused;
- shelters and other services for women fleeing male violence;
- counseling services;
- information and referral services;
- respite services to assist parents caring at home for children with severe disabilities;
- assistance in covering the costs of medically prescribed diets, wheelchairs, special eyeglasses, and prostheses for people unable to purchase these necessities on their own.

While the provinces may continue to provide some of these services, there is no certainty that they will do so. Under 50-50 cost-sharing, for every dollar they spent on these designated services, provinces (with some exceptions) were able to recover 50 cents from the federal government. Now, actual provincial spending has no effect on the amount of federal transfer. The transfer amount remains the same whether a provincial government reduces, keeps at the same level, or increases relevant service provision. An important incentive for enhanced provincial service levels has been removed by the federal government.

Sherri Torjman, *The Let-Them-Eat-Cake Law* (Ottawa: Caledon Institute of Social Policy, 1995)

(iii) Move to Block Funding

41. Instead of the previous cost-sharing scheme in use under *CAP*, the federal government now uses a block-funding formula. Federal monies are transferred to the provincial governments in block grants, with no stipulation as to what the money must be spent on. Thus, more stigmatized social programs, such as income assistance, compete for funding out of the same general pool of money with more popular programs such as health care and post-secondary education. In establishing such a funding formula, the federal government has abrogated its influence over provincial health, social service and post-secondary spending.

(iv) Reduction in Federal Transfer Levels

42. The *BIA* cut 6.389 billion dollars from the money transferred by the federal government to the provinces for health, post-secondary education and social assistance and social services. This is a reduction in payments by 35.1 percent between 1996 and 1999.

c. Impact of the *Budget Implementation Act* and Provincial Restructuring of Social Programs

43. The federal government of Canada bears direct responsibility for this new legislation and the new regime of federal funding it imposes. However, provincial governments are responsible for the ways in which they have chosen to restructure provincial programs, whether in response to the changes in federal cost-sharing or not. In general, provincial governments have chosen to cut or reduce funding to programs which benefit the most socially and economically vulnerable, a group, as we have already noted, that is disproportionately female in its composition. The federal government, through exercise of its spending power, and the provincial governments, through direct structuring of programs, both bear responsibility for reductions in service and program provision at the provincial level.

The Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K), Part VI, ss. 91, 92

44. The particularly harsh impact on Canadian women of the restructuring and cutback of federal and provincial programs is starkly evident in relation to a number of specific circumstances.

(i) Increase in Women's Unpaid Responsibilities

45. Cuts to social services of the kind traditionally funded under *CAP* negatively affect women both because they are services that low-income women need, and because, when these services are cut, women become the "shock absorbers" in their families, relied upon to fill the gaps with unpaid care-giving. Cuts in services thus mean that women's unpaid responsibilities increase. As a result, these cuts affect women more than men, in more ways.

Hollie Shaw, "Cuts Unfair to Women, Study Says: Friends, Family Expected to Fill Social-Service Gaps, Report Finds", *The Globe and Mail*, 4 December 1997.

(ii) Reduction of Provincial Funding of Social Programs and Services Puts Women at Risk

46. Provincial governments have responded to the reduction in federal transfer payments by cutting social programs and services. Welfare rates have been reduced in some provinces - in Ontario, for example - putting poor women at even greater risk of being unable to house and feed themselves and their families. A recent survey of women's shelters by the Ontario Association of Interval and Transition Houses found that workers in 66 percent of the shelters reported that some women are returning to abusive relationships because they cannot receive sufficient social assistance to meet the basic needs of themselves and their children.

Ontario Association of Interval and Transition Houses (OAITH), *Report to the Special Rapporteur on Violence Against Women*, (Toronto: OAITH, 1996) at 22

47. In addition, interval and transition houses for women in Ontario have lost provincial funding and been forced to cut jobs and services. The combined effects of these cuts to services with cuts to rates for welfare, which women rely on in order to have resources to leave abusive situations, means that more shelters are being used as a temporary escape rather than as a place to make a new beginning. Dramatic cuts in social assistance and services are jeopardizing women's safety.

Ontario Association of Interval and Transition Houses (OAITH), *Report to the Special Rapporteur on Violence Against Women*, (Toronto: OAITH, 1996) at 15 and 22.23

(iii) Reduced Access to Legal Aid for Women

48. Legal aid for family and non-criminal matters, also a designated service for cost-sharing under *CAP*, has suffered during this period of restructuring because of federal and provincial cutbacks. If legal aid is the recognition of the right of the poor to equal access to justice; then legal aid for family and non-criminal matters is the recognition of the right of poor *women* to equal access to justice. As the Law Society of British Columbia's 1992 Gender Equality Report noted in relation to its study of family law:

the most serious problem facing the justice system in British Columbia is the lack of equal access for women, many of whom are single parents who have custody of their children. These women see two different justice systems: one for those with sufficient economic resources to hire competent legal counsel, and another for those who do not. Aboriginal women, lesbians, immigrant women, and women of colour also face racial, gender or homophobic barriers to achieving equal access to justice.

Law Society of British Columbia Gender Bias Committee, *Executive Summary and Recommendations, Gender Equality in the Justice System: A Report of the Law Society of British Columbia Gender Bias Committee* (1992) at 2

49. The unique socio-economic vulnerabilities of women determine that women's legal aid needs lie disproportionately in the area of civil and family law. For example, women's traditional role as unwaged caregivers along with their historical reality as the poorer of the poor has meant that women have a significant need for legal aid to assist with poverty-related legal problems, such as landlord and tenant issues, discrimination and harassment claims, social assistance appeals, disability benefits, unemployment insurance benefits, and pension benefits.

Equally important, women have a disproportionate need for legal aid in family law matters to deal with divorce, child and spousal support, custody and access applications.

Mary Jane Mossman "Gender Equality and Legal Aid Services: A Research Agenda for Institutional Change" (1993) *Sydney Law Review* 30 at 35

Mary Jane Mossman "Gender Equality, Family Law and Access to Justice" (1984) 8 *International Journal of Law and the Family* 357

Shelley Gavigan "Poverty Law and Poor People: The Place of Gender and Class in Clinic Practice" (1995) 11 *Journal of Law and Social Policy* 165

Patricia Hughes "Domestic Legal Aid: A Claim to Equality" (1995) Vol. 11 No. 2 *Review of Constitutional Studies* 203

National Council of Welfare, *Legal Aid and the Poor* (Ottawa: Supply and Services Canada, Winter 1995) at 10-11

50. However, legal aid continues to be substantially reserved for criminal law matters and directed away from those areas of the justice system - civil and family law - used disproportionately by women. In 1993-94, for example, civil legal aid certificates are refused almost twice as often as criminal legal aid applications. Although coverage varies across the provinces it is fair to say that in most provinces there is no automatic entitlement to most matters of civil and family legal aid. While the federal government provides, through the Ministry of Justice, specific and targeted funding for provincial provision of criminal legal aid, which is primarily used by men, it does not do so for civil legal aid. The federal contribution to provincial spending on civil legal aid is, rather, part of the CHST undifferentiated block transfer out of which funding for a broad range of social programs and services must come. Simply put, federal and provincial governments continue to provide a stable and discrete allocation of money for criminal legal aid matters while failing to do so for civil legal aid.

Lisa Addario, NAWL Report (June 1997), "Getting a Foot in the Door: Women, Civil Legal Aid and Access to Justice at 25, 46.

The Women's Access to Legal Services Coalition, "Working Draft to the Legal Services Society of B.C.: The Impact of Cuts to Legal Aid on Women in British Columbia" 18 February 1998

Martha Jackman, "Women and the Canada Health and Social Transfer: Ensuring Gender Equality in Federal Welfare Reform", (1995) 8 *Canadian Journal of Women and the Law* 372, at 376

51. It is also true that even in relation to the criminal law needs of women, legal aid coverage discriminates against women. The offences women are more likely to be charged with are not ones for which incarceration is the penalty. Yet, it is the threat of incarceration which triggers entitlement to criminal legal aid. The penalties women tend to face--loss of their children, loss of ability to find work, and the prospect of almost certain incarceration if they come into conflict with the law again--can be as significant but do not result in entitlement.

Lisa Addario, NAWL Report (June 1997), "Getting a Foot in the Door: Women, Civil Legal Aid and Access to Justice at 25, 46.

52. Governments at both the federal and provincial levels justify their different treatment of criminal and civil legal aid, by pointing to the importance of the liberty interests at stake in criminal cases. Unrecognized are the equally serious consequences attached to civil cases typically faced by women. These consequences are made evident in the case of *J.G. v Minister of Health and Community Services et al*, currently before the Supreme Court of Canada. Ms G. was faced with a state-initiated proceeding seeking to remove her three children from her care and place them in temporary wardship with the Minister of Health and Community Services of New Brunswick. Ms G. applied for legal aid. She met the financial eligibility criteria since she was receiving social assistance. However, she was denied legal aid on the basis that legal representation was only available for permanent wardship hearings. Her children were removed temporarily from her care.

J.G. v. Minister of Health and Community Services et al, 145 D.L.R. (4th) 349

53. As a task force, chaired by Madam Justice Bertha Wilson, former Supreme Court of Canada Justice, has stated:

The low status of family law pervades all facets of our justice system and is reflected in a lack of public resources devoted to resolving conflicts in this critical area... Our legal system is based on the standard of male life experience and exclusively male values and priorities, on the gendered division of labour inherent in our society which privileges male activities and denigrates women's work, and on the traditional separation of private and public spheres of action.

Task Force on Gender Equality in the Legal Profession *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa: Canadian Bar Association, 1993), p. 211

54. The result is that great numbers of women are technically ineligible for legal aid but without resources to pay for their own lawyers to deal with matters critical to their economic and social well-being, and to their safety. The consequences are extremely serious. Inadequate access to legal aid forces women in abusive relationships to remain in unsafe conditions. Women facing legal challenges from ex-spouses over maintenance enforcement forego entitlement so as to avoid retributive custody battles without legal representation. Women are forced to either forego applying for favourable variation of maintenance or face an intimidating procedure without assistance. Domestic workers whose exploitative working conditions are reasonable cause to leave their jobs are denied Employment Insurance benefits because of lack of legal representation at the appeal hearing. Immigrant women whose sponsorship is withdrawn by a spouse (often an abusive spouse) are denied coverage for an application to vary the terms of their immigration status and as a consequence are deported.

Federal/Provincial/Territorial Working Group of Attorneys General, *Gender Equality in the Justice System* (Ottawa, 1993)

The Women's Access to Legal Services Coalition, "Working Draft to the Legal Services Society of B.C.: The Impact of Cuts to Legal Aid on Women in British Columbia" 18 February 1998

(iv) The Effect of Program Reduction on Women With Disabilities

55. Cuts to services previously designated for cost-sharing, combined with cuts to social services jobs, and tightening of welfare eligibility rules are having a profoundly negative effect on women with disabilities, who have a higher rate of poverty than men with disabilities. Cuts in home care and home-making services are leaving women with their basic needs unmet. Women who depend on life support systems are being left alone for long periods of time, always with the risk of power failure. There is no help for child care, and very young children are performing services that were previously provided under government programs. Women with disabilities fear losing their position as parents as the roles reverse and children become the caregivers.

56. Also the lives of women with disabilities who are in institutions have become increasingly difficult. With cuts to staff there are incidents of abuse and neglect. Women wait long periods for care; this problem is worst for women who have communication difficulties. As psychiatric services in hospitals disappear, the care for women with psychiatric disabilities has been transferred to the community. Now community support services are being cut. Women in psychiatric institutions are being released with nowhere to go. Many of these women end up living on the street.

57. Women with disabilities report that they now live in fear of being cut off from welfare and welfare disability benefits. It is more difficult to qualify and in some provinces, for example in British Columbia, assessments are conducted annually to determine continued eligibility - even for such disabilities as cerebral palsy that are not going to change.

58. Cuts to social services affect the right of women with disabilities to an adequate standard of living, and to the enjoyment of the highest attainable standard of physical and mental health.

Shirley Masuda, *The Impact of Block Funding on Women with Disabilities* (Ottawa: Status of Women Canada, 1998) at vii-viii.
Articles 11, 12, *Covenant*

(v) *Poor-Bashing and Stigmatization of Single Mothers on Welfare*

59. As programs that are of particular importance to poor people are cut, criticism of governments is deflected by "poor-bashing," that is, by characterizing poor people as undeserving, unwilling to work, a drag on the society at large. Single mothers are a particular target for poor-bashing; they are characterized as socially and sexually irresponsible and as bad mothers. One example of this is Ontario's revocation on May 1, 1998 of the pregnancy and neo-natal allowance previously available under the provincial income assistance program. The Premier of Ontario, Mike Harris, in announcing the legislative change, stated: "What we're doing, we're making sure that those dollars don't go to beer...". Prior to this date, an allowance of up to an additional \$37 per month for six months was provided in benefits to pregnant women and new mothers. The purpose of these extra monies was to enable new and expectant mothers to meet expanded nutritional needs and other expenses associated with neo-natal care.

Subsection 2(1) of Ontario Regulation 138/98; Proclamation Order in Council repealing the *General Welfare Assistance Act*, 4 April 1998, Ontario Gazette, vol. 131-14 at 498.

Margaret Philp and Richard Mackie, "Beer Gibe Earns Harris a Blast", *The Globe and Mail*, 17 April 1998 A1

Paragraph 12(5)5 of Ontario Regulation 366, pursuant to the *Family Benefits Act*, R.S.O. 1990 c. F.2, paragraph 13(4)6 of Ontario Regulation 537 pursuant to *General Welfare Assistance Act*, R.S.O. 1990 c. G.6

60. By repealing this allowance, the Ontario government is in deliberate default of its obligations under Article 10(2) of the *Covenant* which provides that States Parties recognize that "[s]pecial protection should be accorded to mothers during a reasonable period before and after childbirth."

International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XX), 21 UN GOAR, (Supp. No. 16) UN Doc. A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46

61. The federal government provides a National Child Benefit for low and modest income families. Maximum benefits go to those with net family incomes under \$20,921. As a family's income increases, benefit payments are reduced correspondingly. The benefit is administered by Revenue Canada (individuals must file a tax form to apply) as a supplement to the National Child Tax Benefit. The stated objective of this program is the amelioration of child poverty and the provision of incentives to move from welfare to work. However, there are several reasons to question the program's efficacy, particularly as it deals with single mothers and their children.

Revenue Canada, "Your Canada Child Tax Benefit", T4114(E) Rev. (10/98) 3264

62. First, the National Child Benefit will do nothing to reduce poverty among the nearly two-thirds of poor children in welfare families (an estimated 1 million poor children live in welfare families, compared with about one-half million children in low-income working families). This is the case because provincial governments are permitted to reduce their monthly payments to welfare families by the amount of National Child Benefit received. The federal benefit can thus be clawed back from welfare families by provincial governments. In British Columbia, for example, the National Child Benefit Supplement is renamed and delivered as the B.C. Family Bonus and the B.C. Earned Income Benefit. Only working families are potentially eligible to receive the B.C. Earned Income Benefit and, while all families (both the welfare and working poor) receive the B.C. Family Bonus, families receiving welfare have the amount of their monthly social assistance benefit reduced by the amount of their Family Bonus payment. In effect, then, these two provincial benefits (which incorporate the federal benefit) are of value only to the working poor. Provinces have committed themselves to reinvest the money "freed-up" in this manner in programs aimed at improving work incentives and supporting families in low income, (mostly) working families. Thus, only the working poor directly receive and keep the federal benefit and the working poor will, as well, disproportionately benefit from the programs funded by the monies redirected away from families on income assistance. This new federal program, as administered by the provinces, is based on a work-test and disenfranchising parents and their children whose source of income is welfare.

The National Anti-Poverty Organization, "Poverty and The Canadian Welfare State: A Report Card", (Ottawa: National Anti-Poverty Organization) 27 January 1998

F. Stairs, "The National Child Benefit Clawback: An Update", (Oct. 1998) 21 *Social Safety News* 10

J. Pulkingham, G. Ternowetsky & D. Hay, "A New Canada Child Tax Benefit: Eradicating Poverty or Victimizing the Poorest", (1997)4 *The Monitor*

63. The second problem with this benefit scheme is that, even in the case of working poor families, the impact of the National Child Benefit in reducing poverty is likely to be minimal. The amount of funding is relatively small and the real value of the benefit will erode over time as the benefit is not fully indexed against inflation. Moreover, the program grants benefit levels which, for many families, are less than the government has committed itself to in previous budgets.

The National Anti-Poverty Organization, "Poverty and The Canadian Welfare State: A Report Card", (Ottawa: National Anti-Poverty Organization) 27 January 1998

F. Stairs, "The National Child Benefit Clawback: An Update", (Oct.1998) 21 *Social Safety News* 10

J. Pulkingham, G. Ternowetsky & D. Hay, "A New Canada Child Tax Benefit: Eradicating Poverty or Victimizing the Poorest", (1997)4 *The Monitor*

64. This benefit scheme, in its provincial administration, and due to the federal government's failure to set national standards with respect to provincial administration, discriminates against single mothers. Single mothers are, as already discussed, disproportionately represented among families on welfare and more likely to need income assistance to maintain their families. The impact of the provincial clawback of these federal benefits from welfare recipients is that single mothers are again stigmatized as undeserving and subject to financial disincentives as welfare recipients. The responsibilities of single mothers for child care go unrecognized or valued and they are denied desperately needed income supplements otherwise available to the working poor.

The National Anti-Poverty Organization, "Poverty and The Canadian Welfare State: A Report Card", (Ottawa: National Anti-Poverty Organization) 27 January 1998

F. Stairs, "The National Child Benefit Clawback: An Update", (Oct.1998) 21 *Social Safety News* 10

J. Pulkingham, G. Ternowetsky & D. Hay, "A New Canada Child Tax Benefit: Eradicating Poverty or Victimizing the Poorest", (1997)4 *The Monitor*

(vi) Reduction in Women's "Good" Jobs

65. The over 6 billion dollar cut in federal transfer payments has also resulted in cuts to jobs in the health and social service sectors. This hits women hardest because these are jobs that have traditionally been held by women and they tend to be women's "good" jobs,

that is full-time jobs with security, union protection, pensions and benefits (primary sector jobs). The effect of these job cuts is also to push more unpaid care-giving onto women. This increases women's workload, constrains their participation in paid work, and makes them more economically dependent.

Isabella Bakker, "Introduction: The Gendered Foundations of Restructuring in Canada" in Isabella Bakker, ed. *Rethinking Restructuring: Gender and Change in Canada* (Toronto: University of Toronto Press, 1996) at 13-14

Pat Armstrong, "The Feminization of the Labour Force: Harmonizing Down in a Global Economy" in Isabella Bakker, ed. *Rethinking Restructuring: Gender and Change in Canada* (Toronto: University of Toronto Press, 1996) at 29

Katherine Scott and Clarence Lochhead, "Executive Summary" *Are Women Catching Up in the Earnings Race?* (Ottawa, Canadian Council on Social Development, 1997)

d. Women's Equality and the Deficit

66. In short, federal and provincial restructuring has increased the social and economic vulnerability of Canadian women, who have a higher risk of poverty and rely on social programs and social services to counterbalance the powerful dynamics of patriarchy that keep them poorer, dependent and marginal to decision-making. Social programs and social services are a central means of assisting women to contend with conditions of social and economic inequality.

67. The 6 billion dollar cut to the federal transfer payments to the provinces has been justified on the grounds that social program costs were responsible for the deterioration of the country's fiscal health, and that cuts were necessary to reduce the federal deficit. This justification cannot withstand careful scrutiny.

68. Numerous economists, spanning a range of philosophical viewpoints, have concluded that the federal deficit was not caused by "excessive" social spending. Rather, high interest rates and the low employment and economic growth they helped bring about were by far the most significant causes of Canada's deficit. Nor were spending cuts primarily responsible for eliminating the deficit. Lower interest rates and the increased revenues flowing from stronger economic growth have been far more significant factors. These facts cast grave doubt on whether the degree of spending cuts made since 1995 was ever needed to balance government budgets. In fact, the Finance Minister's original goal of balancing the budget by 1999-2000 could have been achieved without any program cuts whatsoever.

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

I. W. Gillespie, *Tax, Borrow and Spend: Financing Federal Spending in Canada, 1867-1990* (Ottawa: Carleton University Press, 1991)

R.D. Kneebone, "Deficits and Debt in Canada: Some Lessons from Recent History" (1994) 20 *Canadian Public Policy* 152

I Bakker, "The Politics of Scarcity: Deficits and the Debt" in M.S. Whittington and G. Williams, eds. *Canadian Politics in the 1990's*, 4th ed. (Scarborough: Nelson Canada, 1995) 55

L. Osberg and P. Fortin, eds., *Unnecessary Debts* (Toronto: Lorimer, 1996)

J. Stanford, "Growth, Interest and Debt: Canada's Fall from the Fiscal Knife-Edge" in *Alternative Federal Budget Papers 1997* (Ottawa: Canadian Centre for Policy Alternatives, 1997) 275

Alternative Federal Budget Papers 1998 (Ottawa: Canadian Centre for Policy Alternatives/ Choices: A Coalition for Social Justice, 1998) at 13.

VI. ARTICLE 7 AND THE NEGATIVE IMPACT ON WOMEN OF DISCRIMINATION, STRUCTURAL INEQUALITY IN THE WORKPLACE, AND WEAK PROTECTIVE MECHANISMS

69. It is NAWL's submission that Canada is not fulfilling its obligations under Article 7 of the Covenant. Canadian women's involvements in the paid labour force are marked by structural inequalities and discrimination. This is particularly true for women with child care responsibilities, for aboriginal women, for women with disabilities, for immigrant women, for women of colour, and for lesbian women.

70. Article 7 provides as follows.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (I) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well remuneration for public holidays.

a. Women's Wage and Employment Gap

71. Though women have moved into the paid labour force in ever-increasing numbers over the last two decades, they do not enjoy equality in earnings, or in access to non-traditional jobs and managerial positions, or in benefits. The gap between men's and women's full-time, full-year wages, is, in part, owing to occupational segregation in the workforce that remains entrenched and to the lower pay that is accorded to traditionally female jobs.

Though the wage gap has decreased in recent years, with women employed on a full-time, full-year basis now earning about 72 percent of the amount earned by men in comparable jobs, part of this narrowing of the gap is due to a decline in men's earnings as a result of job restructuring, not to an increase in women's earnings.

72. Aboriginal women, women of colour and women with disabilities have much higher unemployment rates than women overall. They also earn less. Aboriginal women earn 15 percent less, women of colour earn 8 percent less, and women with disabilities earn 17 percent less than the average for all employed women. Immigrant women and women of colour are employed mainly in low-wage sectors (factories, domestic work, hotels restaurants, clerical work).

73. The average annual income of women from all sources is about 58 percent of men's income. This significant gap in annual income is due, in part, to the wage gap, but also to the fact that women work fewer hours in the paid labour force than men. They work fewer hours because they cannot obtain full-time work, and because they carry more responsibility for unpaid care-giving duties.

74. About one-third of all jobs in Canada are now estimated to be non-standard jobs. As noted earlier, 40 percent of women in Canada work in non-standard jobs - in temporary, casual, seasonal, or part-time jobs. In 1994 women were 69.4 percent of part-time workers. At the same time, 31.5 percent of part-time women workers said they wanted full-time work but could not find it.

Statistics Canada, *The Daily*, October 9, 1998

Statistics Canada, *The Daily*, August 25, 1998

Women in Canada: A Statistical Report, 3d. Ed. (Ottawa: Industry, 1995) at 64-70, 84, 89

Canadian Advisory Council on the Status of Women, *Work in Progress: Tracking Women's Equality in Canada* (Canada: Canadian Advisory Council on the Status of Women, 1994) at 44, 66

Monica Townson, "Non-Standard Work: The Implications for Pension Policy and Retirement Readiness" (unpublished paper prepared for Women's Bureau, Human Resources Development Canada, 1996) at 11, 98-100

Nancy G. Ghalam, *Women in the Workplace*, 2d ed. (Ottawa: Statistics Canada, 1993), cat. No. 71-534E, at 22

Isabella Bakker, "Introduction: The Gendered Foundations of Restructuring in Canada" in Isabella Bakker, ed. *Rethinking Restructuring: Gender and Change in Canada* (Toronto: University of Toronto Press, 1996) at 13-14

Pat Armstrong, "The Feminization of the Labour Force: Harmonizing Down in a Global Economy" in Isabella Bakker, ed. *Rethinking Restructuring: Gender and Change in Canada* (Toronto: University of Toronto Press, 1996) at 29

National Action Committee on the Status of Women, *Women in Canada: A 1998 Snapshot* (Toronto: NAC, 1998).

Margaret Philp, "Women Climbing Wage Ladder", *The Globe and Mail*, May 13, 1998, A4

75. NAWL submits that women still experience widespread discrimination, and structural inequality in the labour market because of sex segregation, the lesser pay accorded to "women's work," inadequate childcare to support women working in the paid labour force, and lack of employer recognition of the fact that women carry the major share of unpaid caregiving in their families. These are not just and favourable conditions of work.

b. Inadequacy of Governmental Response to Structural Inequalities

76. The current ineffectiveness of laws and programs designed to protect women from discrimination in the workforce, such as human rights legislation and employment equity programs mean that women are increasingly without adequate protections to address the discrimination and inequality that they encounter. Ontario repealed its employment equity legislation in 1995. A review of the federal *Employment Equity Act* by a Special Committee of Parliament in 1992 confirmed that the record of employment equity initiatives in the federal sector is distinctly lacklustre. Employers are reproducing the traditional patterns of inequality for women. Aboriginal women and women with disabilities have made no gains. Also, 1996 amendments to the *Employment Equity Act* broadened the scope of employers to whom it applies but weakened federal anti-discrimination legislation by taking away the power of human rights tribunals to order the implementation of an employment equity program as a remedy for systemic discrimination.

All human rights commissions have backlogs and are processing complaints slowly, and turning away many, including meritorious complaints.

Lum, Janet N. "The Federal Employment Equity Act: Goals vs. Implementation" (1995) *Can. Pub. Admin.* Vol. 38 at 45.

77. The Canadian Human Rights Act prohibits paying women less than men for work of equal value. In 1984, the Public Service Alliance of Canada (PSAC), on behalf of nearly 200,000 current and former federal civil servants, launched a pay equity complaint against the federal government. The Canadian Human Rights Commission ordered a tribunal hearing of the issue. On July 29, 1998, after 262 days of hearings during which extensive pay-equity and statistical expert testimony was heard, the Human Rights Tribunal ruled that the federal government, because of its discrimination against female-dominated job classifications, owes up to 13 years back pay to each of the complainants. The Tribunal specifically stated that equal pay for work of equal value is a fundamental human right. Affected civil servants are secretaries, clerks, data processors, hospital workers, librarians and education assistants, 80 percent whom earned under \$30,000 a year in the lowest-paid categories in the civil service. Eighty-five percent of the claimants are women. PSAC estimates that the average annual pension of workers from these groups is only \$10,000 per year. The pay equity settlement would make an important difference in the standard of living for affected workers.

Canada Human Rights Act, R.S., 1985, c. H-6 July, 1996

Daniel Leblanc, "Union Greets Liberal Appeal With Protests", *The Globe and Mail*, Friday, August 28, 1998 A4

Government of Canada, National Council of Welfare, "A Statement by the National Council of Welfare on Pay Equity for Federal Public Service Workers", November 1998

78. The Government has indicated that it is able to pay the costs of the pay-equity ruling. Estimates of the cost of the Tribunal's ruling range from \$C1 billion to \$C6 billion. In the Government's first official reaction to the Tribunal decision, Federal Treasury Board President Marcel Masse said: "I'm confident that if there is a conclusion that the award should be paid, the government will pay it without bringing undue hardship to its finances." Additionally, it is important to note that the Supreme Court of Canada has long held that violations of human rights cannot be justified on the basis of cost. The expense of guaranteeing human rights cannot justify their infringement or curtailment. Moreover, in 1993, Prime Minister Jean Chretien, then leader of the Official Opposition, pledged to abide by the Tribunal's decision.

"Pay Equity Ruling Costly for Ottawa", *The Globe and Mail*, August 1, 1998

Daniel Leblanc, "Union Greets Liberal Appeal With Protests", *The Globe and Mail*, Friday, August 28, 1998 A4

Government of Canada, National Council of Welfare, "A Statement by the National Council of Welfare on Pay Equity for Federal Public Service Workers", November 1998

79. Despite these reassurances, in August 1998, the federal government announced that it is appealing the Tribunal's decision to the Federal Court of Canada, thus continuing to obstruct the efforts of women civil servants to be paid equitably. The federal government has based its appeal of the Human Rights Tribunal ruling on the fact that a recent ruling in the *Bell Canada v. Communications, Energy and Paperworkers Union of Canada* supports a different wage assessment methodology than the one endorsed by the Tribunal. However, the Federal Court Trial Division which decided the *Bell Canada* case, in fact, heard no evidence regarding wage assessment methodology and may well be overturned on appeal. The decision to appeal simply prolongs the dispute and flouts long-standing commitments to equality for all women contained within federal law and within the *Covenant*. It pits the government of Canada with its substantial legal and financial resources against the ruling of the Canadian Human Rights Tribunal and the human rights of the poorest of its own employees.

Daniel Leblanc, "Union Greets Liberal Appeal With Protests", *The Globe and Mail*, Friday, August 28, 1998 A4

Treasury Board Secretariat of Canada, Press Release, "Government of Canada to Appeal Pay Equity Ruling and Move Quickly to Implement Pay Equity in the Public Service", August 1998

Treasury Board of Canada, Press Release, "Pay Equity: The Government's Response Press Conference", Speech by Marcel Masse, President of the Treasury Board, August 1998

c. Changes to Unemployment Insurance Disentitle Many Women Workers

80. In January 1997, the federal government introduced new unemployment insurance legislation, the *Employment Insurance Act*. One of the most significant changes in the legislation was the switch from eligibility based on weeks worked to eligibility based on hours worked. Under the old scheme, an individual needed only 20 weeks of insurable earnings to qualify for full benefits (including maternity benefits). A week of insurable earnings was a week in which at least 15 hours were worked (or a week in which the claimant had earned at least 20 percent of the maximum weekly insurable earnings). A claimant now needs a minimum of 700 hours of insurable earnings. This is equivalent to twenty 35-hour weeks or approximately 48 15-hour weeks. For individuals who work less than 35 hours a week, eligibility requirements are significantly more stringent than before. Indeed, the more part-time an individual's work is, the longer it will take for that worker to meet eligibility requirements. Whereas, previously, individuals working between 15 and 34 hours per week qualified for benefits after twenty weeks, these same individuals must now work between 20.5 and 46.6 weeks in order to accumulate the required 700 hours.

The only positive side to this change is that individuals working less than 15 hours a week are no longer formally disentitled from benefits. There is now no formal part-time cut-off. However, anyone working less than 14 hours a week cannot accumulate the required number of hours because it must be done within a maximum of 52 weeks.

Nitya Iyer, "A Re-examination of Maternity Benefits", in Susan Boyd, ed., *Challenging the Public/Private Divide: Feminism, Law, and Public Policy* (Toronto: University of Toronto Press, 1997) 168, at 171-172

81. This change in eligibility requirements has hit working women disproportionately hard. Women, more than men, work in those temporary, part-time, seasonal, and/or unstable work situations--the secondary labour sector--where meeting these eligibility requirements is most difficult. Yet, they are also those employees especially vulnerable to work reduction and lay-offs. Also overrepresented in the "marginal" labour force are aboriginal women, women of colour, immigrant women, and women with disabilities. Changes to unemployment insurance have exacerbated inequities already present in these women's involvement in the paid labour force.

Nitya Iyer, "A Re-examination of Maternity Benefits", in Susan Boyd, ed., *Challenging the Public/Private Divide: Feminism, Law, and Public Policy* (Toronto: University of Toronto Press, 1997) 168, at 171-172

National Association of Women and the Law, "Bill C-12: An Act Respecting Employment Insurance in Canada: The Impact on Women", (Ottawa: National Association of Women and the Law, 1996)

82. Statistics about who is claiming benefits under the new unemployment insurance scheme bear out these observations. Employment Insurance coverage has fallen from 83 percent to 43 percent (30 percent in Ontario) of those out of work between 1990 and 1997. Meanwhile, it is forecast that the Employment Insurance Account will have an accumulated surplus of \$20 billion by the end of 1998. These factors have placed a huge strain on provincial social assistance programs since individuals unable to collect unemployment insurance are forced to rely on provincial income assistance programs. These provincial programs are significantly less generous in benefit level and more stigmatizing of recipients than unemployment insurance.

Press Release, The National Anti-Poverty Organization, "Canada Gets a Failing Grade", 16 June 1998

Statistics Canada, The Daily, October 9, 1998

Statistics Canada, The Daily, August 25, 1998

d. Unfavourable Working Conditions of Foreign Domestic Workers

83. Foreign domestic workers are a particularly vulnerable group of women workers, whose circumstances should be considered by this Committee. Most of these workers are women of colour from countries which are severely hurt by globalization and economic

restructuring policies. Currently foreign domestic workers are admitted to Canada on renewable one-year “employment authorizations” and required to live in the homes of their employers for two years. After two years they can then make an application for permanent residence and their applications are evaluated on a modified “skills-based” assessment. The live-in requirement has been widely criticized because of the vulnerability of these women workers to abuse in the homes of their employers. A new paper on immigration issued by the federal government in 1998, *Not Just Numbers: A Canadian Framework for Future Immigration*, recommends that the live-in requirement be eliminated. However, it also recommends that foreign domestic workers be classified as temporary workers, creating a new barrier to their obtaining permanent residence. *Not Just Numbers* further recommends that employers of foreign domestic workers be required to pay for the cost of those workers’ health care, even though foreign domestic workers pay taxes in Canada while they are employed here. NAWL notes that only developing countries are permitted to determine to what extent they will guarantee the economic rights in the Covenant to non-nationals. Canada is not a developing country. NAWL submits that foreign domestic workers do not enjoy just and favourable conditions of work in Canada.

Not Just Numbers: A Canadian Framework for Future Immigration (Ottawa: 1998)

National Action Committee on the Status of Women, *Response to the Immigration Legislative Review Report* (Toronto: June 1998)

National Action Committee on the Status of Women, *A Critique: Not Just Numbers* (Toronto: June 1998)

International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XX), 21 UN GOAR, (Supp. No. 16) UN Doc. A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, Article 2(3)

e. Impact of Globalization

84. Agencies designed to enforce protections from workplace discrimination and inequality are already suffering from increasing demand, inadequate resources and diminished political commitment. In this climate, regional and bilateral agreements, and the proposed Multilateral Agreement on Investments, that enshrine protections for corporate actors and major investors, constitute a further threat to the ability and willingness of Canadian governments to intervene in the marketplace to protect women from discrimination, exploitation and structural inequalities.

Janine Brodie, *Politics on the Margins: Restructuring and the Canadian Women’s Movement* (Halifax: Fernwood Publishing, 1995)

VII. MATRIMONIAL PROPERTY AND THE EQUAL RIGHT TO SECURE HOUSING

85. NAWL submits that the current failure of the federal government to provide for fair division of matrimonial property and the possibility of temporary exclusive possession of the matrimonial home upon marriage breakdown for on-reserve Aboriginal women contravenes Articles 11, 2(2), and 3 of the *Covenant*. More specifically, the federal government has failed to ensure adequate housing for on-reserve Aboriginal women and their children by denying them protections available to off-reserve women and children.

86. Under the Canadian Constitution, provincial law governs the division of marriage assets upon marriage breakdown. However, section 91(24) of the *Constitution Act, 1867* confers exclusive legislative authority on the federal government in all matters coming within the subject "Indians, and lands reserved for the Indians." Thus, with respect to the division of on-reserve property upon marriage breakdown, a court is governed not by provincial family law but by the federal *Indian Act*, which contains no provisions for distribution of matrimonial property upon marriage breakdown. While the land possession system in the *Indian Act* does not prohibit women from possessing reserve property, the cumulative effect of a history of federal legislation which has denied Aboriginal women property and inheritance rights has created the perception that women are not entitled to do so. Moreover, most aboriginal women live on their husbands' reserves (until recently this was mandatory by federal law). Thus, it is a matter of historical and current fact that it is more likely to be the male partner who, under law, possesses on-reserve properties. The consequences of this for Aboriginal on-reserve women are significant and twofold.

The Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K), Part VI, ss. 91, 92

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

87. Provincial family relations statutes typically provide that each spouse is entitled to an undivided half-interest in all family assets, regardless of which spouse holds title to such assets, upon an order for dissolution of marriage. Property used for a family purpose, for example, the matrimonial home, is such a family asset. These provisions, however, are not applicable to reserve lands. In 1986, the Supreme Court of Canada held that, as a result of the federal *Indian Act*, a woman cannot apply for one-half of the interest in the on-reserve properties for which her husband holds Certificates of Possession. At best, a woman may receive an award of compensation to replace her half-interest in such properties. Since possession of on-reserve land is an important factor in individuals' abilities to live on reserve, denial of interest in family on-reserve properties upon dissolution of a marriage is a serious disadvantage to aboriginal women.

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

Derrickson v. Derrickson, [1986] 1 S.C.R. 285

Report of the Royal Commission on Aboriginal Peoples, volume 4, *Perspectives and Realities* (Ottawa: Government of Canada) at pp. 51-53

88. Provincial family relations statutes also allow for interim exclusive possession of the matrimonial home by one of the spouses. Such a provision recognizes the importance of temporary exclusive possession to women, many of whom also retain primary custody of children, seeking to escape an abusive relationship. However, again because of the federal *Indian Act*, such provincial provisions are inapplicable to women whose matrimonial home is on-reserve. The result is that aboriginal women living on-reserve are significantly disadvantaged, denied protections widely recognized as essential to women and children upon marriage dissolution. Land and housing are in short supply on many reserves. On-reserve aboriginal women in abusive domestic situations who do not hold the certificate of possession to the matrimonial home often face either remaining in the abusive situation or seeking housing off-reserve, away from support networks of community, friends, and family.

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

Paul v. Paul [1986] 1. S.C.R. 307

Report of the Royal Commission on Aboriginal Peoples, Volume 4, *Perspectives and Realities* (Ottawa: Government of Canada) at pp. 51-53

89. The federal government, to date, has failed to provide legislative protection for married aboriginal women facing these situations. More recently, in ongoing negotiations to turn over land management to select aboriginal bands, the federal government has refused aboriginal women's requests to ensure that the resulting agreements provide for the protection of the equality rights of on-reserve married women with respect to matrimonial property. The land management framework agreement resulting from these negotiations simply states that bands must "within a year" enact provisions with respect to the division of matrimonial property on marriage breakdown. There is no requirement that this must be done in a way that respects on-reserve women's domestic and international equality rights. The Federal Government has thus refused to meet its constitutional and international responsibilities for the equality of aboriginal women.

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

Framework Agreement on First Nation Land Management Between the Following First Nations: Westband, Musqueam, Lheit-lit'en, N'quatqua, Squamish, Siksika, Muskoday, Cowessess, Opaskwayak Cree, Nipissing, Mississaugas of Scugog Island, Chippewas of Mnjikaning, Chippewas of Georgina Island and the Government of Canada, 1997

International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XX), 21 UN GOAR, (Supp. No. 16) UN Doc. A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, Articles 11, 2(2), 3

VIII. EDUCATIONAL ACCESS: ARTICLE 13 OF THE *COVENANT*

90. It is NAWL's submission that Canada is not fulfilling its obligations under Article 13 of the *Covenant* with respect to Aboriginal Peoples, and that this failure has compounded the already difficult life circumstances of many Aboriginal women.

91. Article 13 reads, in part, as follows.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.

92. School completion rates for Aboriginal children and youth are much lower than they are for non-Aboriginal children and youth. For example, in British Columbia 28 percent of all students leaving elementary school do not graduate from secondary school within 6 years. However, 68 percent of Aboriginal youth do not graduate within 6 years. In 1995-96 about 15 percent of Aboriginal youth were university-eligible as compared to about 45 percent of non-Aboriginal youth. This is very disturbing since the Aboriginal population is the only population group in Canada that is growing. It is also a population group that is disproportionately a young one, with approximately 70 percent of the population now under 15 years of age. Unless the education needs of Aboriginal students are met successfully, the pattern of poverty and unemployment among Aboriginal people will be perpetuated. Aboriginal women, who are the group with the highest poverty rate in Canada - 33 percent - need successful school completion to change their futures.

How Are We Doing? An Overview of Aboriginal Education Results in BC
(Victoria: B.C. Ministry of Education, 1998) at 4 and 11.

International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XX), 21 UN GOAR, (Supp. No. 16) UN Doc. A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, Articles 13

IX. PROTECTION FROM DISCRIMINATION ON THE BASIS OF SOCIAL CONDITION

93. NAWL submits that the federal and provincial governments are in breach of Article 2(2) and 3 of the *Covenant* in their failure to provide domestic human rights protection against discrimination on the basis of social condition--a form of discrimination to which women are particularly vulnerable. Federal government inaction on this issue persists despite the statement by the Canadian Human Rights Chief Commissioner Michelle Falardeau-Ramsey in March 1998 that Parliament needs to consider amending the Canadian *Human Rights Act* to include poverty as a prohibited ground for discrimination. In January 1998, British Columbia's Chief Human Rights Commissioner, Mary-Woo Sims similarly stated that "protection from discrimination because of social condition" needed to be included in the British Columbia *Human Rights Code*. To date, only Quebec provides

for protection against social condition discrimination. Other provinces and territories have only partial protection against discrimination for the poor. Newfoundland protects against discrimination on the basis of “social origin”; Alberta, Manitoba, and Nova Scotia prohibit discrimination on the basis of “source of income”; Saskatchewan and Ontario prohibit discrimination on the basis of “receipt of public assistance”. The Federal Government, Alberta, British Columbia, New Brunswick, the Northwest Territories and the Yukon provide no protection.

Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, Maastricht 2-6 June 1986, para. 40

1997 Annual Report Opening Remarks by Michelle Falardeau-Ramsay, Q.C. Chief Commissioner, Canadian Human Rights Commission, March 24, 1998

Human Rights for the Next Millennium: Recommended B.C. Human Rights Code Amendments for British Columbians by British Columbians, British Columbia Human Rights Commission, January 1998, p.12

94. The federal Justice Minister opposed the passage of a Bill originating in the Canadian Senate (Bill S-11), scheduled for second reading in the House of Commons on November 17, which would amend the Canadian *Human Rights Act* to include social condition as a prohibited ground of discrimination under federal human rights law.

The Justice Minister’s and federal government’s refusal to support Bill S-11 was despite compelling evidence from witnesses who appeared before the Senate that poor people continue to face severe discrimination based on social condition in their dealings with banks, the media, and other federally regulated industries, and under laws and policies pursued by the federal government itself.

Bill S-11, An Act to Amend the Canadian Human Rights Act to Add Social Condition as a Prohibited Ground of Discrimination

“Minister Won’t Support Bill”, *Daily Gleaner*, Fredericton, N.B. 98-05-13, A11

X. CONCLUSION

95. NAWL requests that the Committee direct Canada in Canada’s future reports to the Committee to provide gender specific data and specific information regarding women’s enjoyment of their economic, social and cultural rights. NAWL further requests that the data on women be further disaggregated to delineate the conditions of women with disabilities, Aboriginal women, immigrant women, women of colour, and lesbian women.

96. NAWL requests that the Committee confirm in its final report on Canada the need for and importance of such data and specific information regarding all women’s enjoyment of their economic, social and cultural rights.

97. NAWL requests that the Committee recognize in its final report on Canada that poverty and social deprivation have a specific gendered character and that States Parties' compliance with the *Covenant* requires specific governmental attention to this fact.

98. NAWL requests that the Committee recognize in its final report on Canada that a substantive equality analysis is an important interpretive principle in assessing compliance with the *Covenant*.

99. NAWL requests that the Committee find that Canada is not in compliance with its obligations under the *Covenant* to progressively realize the economic, social and cultural rights of Canadian women.



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