

CANADIAN FEMINIST ALLIANCE FOR INTERNATIONAL  
ACTION

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS  
COUNCIL

on the occasion of the second universal periodic review of  
Canada

OCTOBER 2012

## **Canadian Feminist Alliance for International Action (FAFIA)**

Founded in February 1999, the Canadian Feminist Alliance for International Action (FAFIA) is a national alliance of more than seventy Canadian women's equality-seeking organizations. FAFIA's goals are to:

- develop the capacity of women's organizations to work at the international level;
- make links between international instruments and agreements and domestic policy-making;
- hold Canadian governments accountable to the commitments to women that they have made under international human rights treaties and agreements.

Since it was founded, FAFIA has made submissions regarding women's human rights to United Nations treaty bodies reviewing Canada's human rights performance, including the Committee on the Elimination of Discrimination Against Women, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and the Committee on Economic, Social and Cultural Rights. FAFIA also made a submission to the Human Rights Council for the 2009 UPR of Canada. FAFIA representatives regularly appear before Parliamentary and Legislative Committees.

Thanks to Shelagh Day for preparation of this submission and to members of the FAFIA Steering Committee. The text of this submission, excluding cover page, introduction to FAFIA and endnotes, is 5,543 words.

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## **Implementation of Women's Human Rights**

1. FAFIA submits that Canada has not implemented recommendations made by United Nations treaty bodies over the last fifteen years regarding the equality of women.<sup>1</sup> Canada has also not implemented the recommendations which it accepted during the 2009 UPR, a number of which have particular relevance for women, including recommendations 44 and 45, and recommendations 33 through 38.<sup>2</sup>
2. FAFIA urges the Human Rights Council to ensure that the 2013 UPR holds Canada to account for its general and nation-wide failure to implement fully and effectively its human rights obligations to women. The Human Rights Council made a commitment to ensure that the issues of women's equality would be thoroughly canvassed and attended to during the Universal Periodic Review process.
3. Canada has the resources, institutions and infrastructure to ensure that women enjoy their human rights equally with men, and that women advance to political, legal, economic, social and cultural equality. In this time of global recession, Canada's economy is relatively healthy. However, while Canada ranks 6<sup>th</sup> on the United Nations Development Program's Human Development Index, it ranks 20<sup>th</sup> on the Gender Inequality Index.<sup>3</sup> Governments in Canada have not put in place the measures necessary to address and overcome the deeply embedded and long-standing structural and systemic inequalities that women face. In fact, over the last decade, Canada has been moving backwards on implementation of the rights of women in important ways.<sup>4</sup>

## **Women's Inequality**

4. Women's inequality in Canada<sup>5</sup> is characterized by:
  - higher poverty rates and lower incomes for women;<sup>6</sup>
  - deep social and economic disadvantage experienced by particular groups of women, including single mothers, Aboriginal women, women of colour, women with disabilities, and older women;<sup>7</sup>
  - unequal representation in political office – Canada's Parliament has only 25% representation of women and one province, Manitoba, has the highest representation in Canada at 31% women.<sup>8</sup>
  - lower employment earnings, underemployment, gendered division of labour,<sup>9</sup> and inadequate measures to overcome sex, race, and disability discrimination in the labour force, including sex and race discrimination in pay<sup>10</sup> and inadequate protections for migrant workers;<sup>11</sup>
  - inadequate access to quality, affordable child care;<sup>12</sup>
  - housing insecurity and inadequate access to safe, affordable housing;<sup>13</sup>
  - inadequate social assistance rates,<sup>14</sup> and punitive rules and policies for recipients, particularly lone mothers, and women who are victims of violence;

- high rates of child apprehension, particularly from low income and Aboriginal mothers;
- lack of access to justice and effective remedies for violations of rights, due to inadequate civil legal aid<sup>15</sup> and the cancellation of the Court Challenges Programme;
- constraints on women's ability to participate in policy development and democratic interaction with governments, because of denial of funding for women's non-governmental organizations for research and advocacy;
- male violence, accompanied by failures of the justice system (police, prosecutors, and judges) to respond in ways that effectively assist women and keep them safe,<sup>16</sup> and inadequate shelters, housing, and income supports for women who experience male violence;
- overincarceration of Aboriginal women and girls,<sup>17</sup> overclassification, discriminatory and harmful treatment of women prisoners.<sup>18</sup>

### **Women's Poverty and Income Inequality**

5. Historically poverty rates for women have always been higher for women than men. In 2010, one in ten women in Canada was living in poverty (10.3%).<sup>19</sup> High as this rate is in such a wealthy country, the overall poverty rate masks much higher rates of poverty for particular groups of women.<sup>20</sup> In 2010, 34.7% of unattached women under 65 and 15.6% of unattached women over 65 were living in poverty, as were 21.8% of women-headed lone parent families.<sup>21</sup> Rates of poverty in women-headed lone-parent families are three times higher than for male-headed lone-parent families.<sup>22</sup>

6. Statistics Canada reports that 37% of First Nations women living off-reserve, and 23% of Métis and Inuit women are living below Low-Income Cut-Offs.<sup>23</sup> Aboriginal women are more likely than non-Aboriginal women to be lone parents, which exacerbates their economic disadvantage. In 2006, 18% of Aboriginal women aged 15 and over were heading families on their own, compared with 8% of non-Aboriginal women.<sup>24</sup>

7. 22% of women "in a visible minority" are living below Low-Income Cut-Offs,<sup>25</sup> as are 15% of immigrant women.<sup>26</sup> The low income rate for immigrant women rises to 32% for those who arrived in Canada recently.<sup>27</sup> In 2000, 26% of women with disabilities were living below the Low-Income Cut-Offs.<sup>28</sup>

8. Women, and particular groups of women, face high rates of poverty, but also, above the poverty level, they experience significant and long-standing income inequality. The average total income of women from all sources, including employment earnings, government transfer payments, investment income, and other money income, was 64% of men's total income in 2008.<sup>29</sup> This gap has changed little in thirty years.

9. Social assistance (welfare) is a basic social program of profound importance to women because women need it when they have no other means, and rely on it when they leave violent partners. In its 2008 review of Canada, the CEDAW Committee recommended that Canada “establish minimum standards for the provision of funding to social assistance programmes, applicable at the federal, provincial and territorial levels, and a monitoring mechanism to ensure ...that funding decisions meet the needs of the most vulnerable groups of women...”

10. Today welfare incomes remain profoundly inadequate and the Government of Canada has set no standards. Although the Government of Canada until 1995 attached conditions to its transfers of funds for social assistance and social services to the provinces and required them to meet some standards, it does so no longer. Funds are transferred under the Canada Social Transfer to the provinces and territories without any conditions attached. This permits the provinces and territories to spend the money on anything they choose, including not on social assistance or social services at all. Because there are no national standards, provinces can choose to set social assistance rates so low that they do not fulfill Canada’s human rights obligations.

11. In 2006, women and girls were relying on welfare rates so low that the National Council of Welfare called them “cruel.” In 2011, there are some improvements. Welfare rates for lone parents with one child, who are overwhelmingly women, were approaching adequacy in four jurisdictions. However, welfare rates for lone parents, and for most household types in most jurisdictions, remained far below adequacy.<sup>30</sup>

12. Women’s poverty and income inequality has far reaching, gender-specific consequences, which affect women’s life chances and their safety. Women living in poverty are less able to protect themselves from sexual exploitation, and more likely to turn to prostitution as a means of survival. The level of violence and psychological damage which women experience in prostitution is extreme.

13. Because of Canada’s nation-wide housing crisis, many women face housing insecurity, homelessness, and lack of access to safe, affordable housing.<sup>31</sup> Many women in Canada have problems finding affordable housing, particularly lone mothers and unattached women.<sup>32</sup> Poor women can, too easily, become homeless, or they live in unsafe housing, such as squats and shelters, where they are more vulnerable to rape and sexual harassment.<sup>33</sup> The federal government estimates the homeless population at 150,000.<sup>34</sup> But homeless women and children are not necessarily included in this figure, as their homelessness is not accurately captured by “street counts.” The Homeless Hub, which is a centre for information on homelessness in Canada, recently changed its definition of homelessness<sup>35</sup> to include the over 100,000 women and children who live temporarily each year in Canada’s 593 Violence Against Women shelters.<sup>36</sup>

14. In the North, where weather conditions are harsh, housing shortages and overcrowding present severe problems for women.<sup>37</sup> For Inuit and First Nations women, crowded and inadequate housing is a significant barrier to their overall well-

being. In 2006, 31% of Inuit women and girls and 14% of First Nations women and girls lived in crowded dwellings.<sup>38</sup>

15. Adequate housing is also a significant issue for women with disabilities – 15% (compared to 6% of women without disabilities) live in homes that need major repairs, such as repairs to defective plumbing or electrical wiring, or structural repairs to walls, floors or ceilings.<sup>39</sup>

16. As the Special Rapporteur on Adequate Housing noted in his 2009 report on Canada: “The lack of adequate and secure housing particularly impacts women who are disproportionately affected by poverty, homelessness, housing affordability problems, violence and discrimination in the private rental market.”<sup>40</sup>

17. Poor women, especially poor Aboriginal women, are more likely to have their children taken away by the state, often on the grounds of “neglect.” In British Columbia, for example, physical harm or abuse accounts for only about 10% of child apprehensions. The rest are due to failure to provide for a child's basic needs: food, clothing, adequate shelter, supervision and medical care, which is, almost by definition, poverty. 41% of child apprehensions are from families in receipt of social assistance.<sup>41</sup>

18. The high rate of child apprehensions from Aboriginal women and families perpetuates the colonial policy of cultural erasure. The First Nations Family and Caring Society reported in 2005 that “[o]ne in ten Status Indian children in three sample provinces were in child welfare care as of May 2005 compared to one in two hundred non-Aboriginal children.”<sup>42</sup> National data suggests there are three times more Aboriginal children in care now than there were at the height of residential school operations.<sup>43</sup> Child welfare policies for Aboriginal children and families are in crisis, and the federal government’s under-funding of child welfare services on reserves is being challenged by the First Nations Family and Caring Society in a human rights complaint that is currently before the Canadian Human Rights Tribunal.<sup>44</sup>

19. For vulnerable mothers and families, child welfare policies in Canada do not provide the supports needed so that they can care for their own children.<sup>45</sup>

20. In addition, the last decade has seen drastic cuts to legal aid, which have created a crisis in access to justice. Restrictions in eligibility for legal aid and a narrowing of legal aid coverage have a direct impact on women who disproportionately have low incomes.<sup>46</sup>

21. While men are the principal users of criminal law legal aid, women are the principal users of civil legal aid.<sup>47</sup> In many jurisdictions, civil legal aid for family law and poverty law matters is either unavailable or has been significantly eroded. Studies show that, when denied counsel and faced with representing themselves, women often give up pursuing their share of family assets, or resign from contesting variations in custody or support orders.<sup>48</sup> Also the lack of access to legal services for poverty law matters, such as the denial of social assistance, or disability benefits, or when they face housing issues, affects women’s security and enjoyment of their social and economic rights.

22. The Canadian Bar Association states that “legal aid should be recognized as an essential public service, like health care; public funding should ...ensure access to justice for low-income people; ... national standards for criminal and civil legal aid coverage and eligibility criteria are required; and the federal government should revitalize its commitment to legal aid.”<sup>49</sup>

23. An additional blow to women’s access to justice was the 2006 cancellation by the Government of Canada of the Court Challenges Programme. The Court Challenges Program (CCP) was established in 1985 to provide modest federal funding for test cases initiated by individuals and groups to challenge federal laws and policies that violate the constitutional right to equality. Individual women, women’s organizations and other equality-seeking groups were able, with this funding assistance, to access the Canadian court system to assert constitutional equality rights. In the absence of CCP funding, women cannot exercise their equality rights in Canada unless they are wealthy.

24. Women also face inadequate child care. There are only regulated early care and learning spaces, other than kindergarten, for about 20% of children under six in Canada. Further, the spaces that are available are expensive for families: generally, the second highest cost of living, next to housing, and frequently exceeding the cost of post-secondary education.<sup>50</sup> In December 2008, a UNICEF report card on early childhood education and child care ranked Canada last among 25 developed nations.<sup>51</sup>

25. Poverty and income inequality, lack of affordable housing and child care, and lack of access to legal aid have a connected and systemic impact on the equality of women. Canada has moved backwards on implementing the rights of women because of federal withdrawal from social policy and provincial cuts to social programs. There is a ‘vicious circle’ of events which happen to women, often because of the combined effects of sex and race discrimination. Once a woman experiences one event, the likelihood of other harmful events occurring is greatly increased.<sup>52</sup>

26. The connected events include: male violence, lack of adequate housing, welfare that is insufficient to meet basic needs, lack of access to legal aid, child apprehension, and depression/addiction.

27. For Aboriginal women the vicious circle is described this way: intergenerational impacts of colonialism, including forced removal of children to abusive residential schools, adoption outside of the community, suppression of language, religion and culture; sexual abuse and violence in childhood; addictions; male violence; inadequate welfare; loss of housing; loss of children.

28. The circle can also be described this way: A woman seeks to leave a violent relationship, but there are few adequate supports. Often a woman needs social assistance so that she can support herself and her children independently from the violent partner. Once she is receiving social assistance, inadequate rates mean finding and maintaining adequate housing for herself and her children is difficult, if not impossible. Children may be apprehended because they have witnessed male

violence, or because living conditions are considered poor enough to constitute “neglect”. Once children are apprehended, it is often hard for women to get them back. Foster parents are paid more and therefore are able to offer better food and shelter and better recreational opportunities than parents or grandparents on welfare.<sup>53</sup>

29. Lack of civil legal aid to deal with separation matters, representation *before* children are taken away, welfare entitlements, and poor housing, makes it difficult to break out of the circle.

30. What creates the ‘vicious circle’ is the absence of adequate, basic social programs – affordable housing, affordable child care, civil legal aid, and income security. The CEDAW Committee, the Parliamentary Committee on the Status of Women, and the 2009 UPR recommendations all recommend dealing with the patterns of women’s disadvantage in a holistic way.<sup>54</sup> FAFIA submits that a strategic approach to eliminating women’s poverty and inequality is essential. Canada’s piecemeal approach, which supports some services, especially short-term training and counseling for women and girls,<sup>55</sup> without supporting adequacy and access in basic social programs, is not effective and does not fulfill its human rights obligations.

**Recommendation: Canada design and implement comprehensive and multi-faceted strategies for addressing women’s poverty and disadvantage, with specific attention to the particular conditions of poverty and disadvantage experienced by Aboriginal women, racialized women, women with disabilities, and lone mothers.**

### **Women’s Inequality in the Labour Force**

31. In 2010, full-time, full-year women workers earned 73.6% of their male counterparts.<sup>56</sup> As the Conference Board of Canada reports, the gender income gap in Canada persists, and Canada ranks 12th out of 17 peer countries.<sup>57</sup>

32. Canada accepted the 2009 UPR recommendation that Canada implement the recommendations of CEDAW and take the necessary measures to end discrimination against women in workplaces and implement ILO and CESCR recommendations to ensure equal remuneration for work of equal value in public and private sectors.

33. However, no steps forward have been taken. Canada still does not have laws requiring that women be paid equal pay for work equal in value to work performed by men for both public and private sectors in all jurisdictions.<sup>58</sup>

34. In addition, far from moving ahead, in 2009 Canada took a step backwards on pay equity when the Government of Canada introduced the *Public Sector Equitable Compensation Act*. This new law takes away the right of women employed in the federal public sector to submit pay equity complaints under the *Canadian Human Rights Act*, and restricts the scope of pay equity in the federal public service. The *Public Sector Equitable Compensation Act* adds “market forces” as a legitimate criteria for



assessing “equitable compensation” thus re-injecting sex discrimination into pay practices for women federal public servants. The legislation makes pay equity into an issue that must be discussed at the bargaining table, without guarantees that what is bargained will actually provide pay equity.<sup>59</sup> The *Public Sector Equitable Compensation Act* is not compatible with Canada’s obligations under international human rights law.

35. Also, there is still a deeply-entrenched gendered division of labour. Women are still mainly employed in teaching, nursing, clerical, and sales and service occupations. They remain a minority in senior management positions, in professional positions in the natural sciences, engineering and mathematics, and in the trades.

36. Racialized women, including Aboriginal women, have higher rates of unemployment and lower earnings than other women and than men. Women of colour, who, as a group, have higher education levels than other women, have lower employment incomes.<sup>60</sup> Aboriginal women living off-reserve earn just two thirds what their male counterparts earn and half as much as men in Canada overall.<sup>61</sup>

37. Women with disabilities report about 25% lower personal incomes than women without disabilities; their income is 42% lower than that of men with disabilities and half that of men in Canada overall. They are more dependent on non-employment income.<sup>62</sup>

38. Canada has no concerted strategies for changing sex, race, and disability-based structural inequalities in the labour force. Employment equity programs, where they exist, are weak.<sup>63</sup> Individual women can challenge sex, race, and disability discrimination in employment using statutory anti-discrimination laws, but this is increasingly difficult, as not all human rights commissions provide complainants with legal representation, and procedures are often complex.<sup>64</sup> The lack of safe, affordable child care also constrains women’s earning capacity.

**Recommendation: Canada implement the recommendations of the Pay Equity Task Force and establish effective pro-active pay equity laws for all women workers in federal jurisdiction, and in all jurisdictions in Canada. Canada design a coherent labour force strategy that will address long-standing structural inequalities experienced by women, and support their full and equal participation in work.**

### **The Absence of the Federal Government<sup>65</sup>**

39. For women to enjoy equality and security in every part of Canada, nation-wide social programs, and funding agreements between federal and provincial/territorial governments to support them, are necessary. Through the use of its spending power, the Government of Canada has the capacity to implement nation-wide standards and programs. It also has the capacity to be a leader among governments in Canada and to ensure that there are co-ordinated programs in all jurisdictions to solve long-standing problems of poverty, lack of adequate housing, child care and early childhood education, and adequate civil legal aid. Currently, however, Canada has no national

anti-poverty strategy, no national standards of adequacy for welfare, no national child care program, no national housing strategy, and no nation-wide standards for eligibility and adequacy for civil legal aid, and it has abandoned attaching national standard to transfer payments as a means of achieving effective national social policy and the fulfillment of human rights.

40. The National Council of Welfare conducted research and produced a report in 2007 called *Solving Poverty*. The Council concluded that “if there is no long-term vision, no plan, no one accountable for carrying out the plan, no resources assigned and no accepted measure of result, we will continue to be mired in poverty for generations”<sup>66</sup> The Council urged the federal government to adopt and lead a national strategy “as one of the most important initiatives” it could undertake.<sup>67</sup> FAFIA submits that federal leadership and national strategies are needed to ensure that Canada has the social programs and systems in place that are the foundation for women’s equality in every part of the country.

**Recommendation: Canada design and implement a national anti-poverty strategy as recommended by the National Council of Welfare, and pass Bill C-233, *An Act to Eliminate Poverty in Canada*; Canada design and implement co-ordinated national strategies for housing, child care, and civil legal aid to ensure that women in Canada, wherever they live, can have access to adequate social programs that fully realize their rights to security and equality.**

## **Aboriginal Women<sup>68</sup>**

### **Murders and Disappearances of Aboriginal Women and Girls**

41. Canada accepted UPR recommendations 33 – 38 regarding violence against women, and against indigenous women in particular.<sup>69</sup> Canada has not implemented these recommendations.

42. Canada has been urged repeatedly by United Nations treaty bodies to take effective action to address the failed justice system and governmental responses to the hundreds of murders and disappearances of Aboriginal women and girls.

43. Two facets of this problem have been identified by Aboriginal women, families, and non-governmental organizations, These two facets are:

- the failure of police to protect Aboriginal women and girls from violence and to investigate promptly and thoroughly when they are missing or murdered; and
- the disadvantaged social and economic conditions in which Aboriginal women and girls live, which make them vulnerable to violence and unable to escape from it.

44. Both of these issues have been highlighted by United Nations treaty bodies after reviews of Canada, including the Committee on Economic, Social and Cultural Rights

in 2006,<sup>70</sup> the Committee on the Elimination of Racial Discrimination in 2007 and in 2012<sup>71</sup> and most recently the Committee Against Torture.<sup>72</sup>

45. In 2008, after its periodic review, the CEDAW Committee urged Canada to “examine the reasons for the failure to investigate the cases of missing or murdered Aboriginal women and to take the necessary steps to remedy the deficiencies in the system...to urgently carry out thorough investigations of the cases of Aboriginal women who have gone missing or been murdered in recent decades [and]...to carry out an analysis ...to determine whether there is a racialized pattern...and take measures to address the problem if that is the case.”<sup>73</sup>

46. At the same time, the CEDAW Committee recommended that Canada “develop a specific and integrated plan for addressing the particular conditions affecting aboriginal women, both on and off reserves, ...including poverty, poor health, inadequate housing, low school-completion rates, low employment rates, low income and high rates of violence...”<sup>74</sup>

47. The United Nations Special Rapporteur on Violence Against Women has also taken note of the hundreds of murders and disappearances of Aboriginal women and girls in Canada and the “multi-level oppression that culminates in violence.” Rapporteur Manjoo names among the causes “the disadvantaged social and economic conditions in which aboriginal women and girls live, which make them vulnerable to such violence.”<sup>75</sup>

48. The CEDAW Committee asked Canada to report back on this issue in one year,<sup>76</sup> and it concluded in August 2010 that its recommendation had not been implemented. At the request of the Canadian Feminist Alliance for International Action (FAFIA) and the Native Women’s Association of Canada (NWAC) the CEDAW Committee initiated an Inquiry under Article 8 of the Optional Protocol into the murders and disappearances of Aboriginal women and girls in Canada in October 2011.<sup>77</sup> The CEDAW Committee’s inquiry is welcomed and awaited by many Aboriginal, women’s and human rights organizations.

**Recommendation: Canada immediately implement the recommendations of treaty bodies, invite the CEDAW Committee to visit Canada, and fully assist the Committee by facilitating access to officials and information.**

49. In addition to the CEDAW inquiry, a national inquiry in Canada is needed in order to address the many issues affecting the families of murdered and disappeared Aboriginal women and girls; to review police policies and procedures on searches and investigation; to examine communications between officials, police and the families of missing and murdered women; to review police oversight and disciplinary procedures and address the culture of racial and sexual harassment inside police forces; and, to examine the social and economic disadvantages that contribute to the vulnerability of Aboriginal women and girls to violence. National Aboriginal organizations, women’s and human rights organizations are calling for a national inquiry.

**Recommendation: Canada establish a national inquiry, with terms of reference agreed to by the Native Women’s Association of Canada and other organizations representing and supporting the interests of Aboriginal women so that the causes and consequences of the violence, and the steps necessary to end the murders and disappearances, can be fully examined.**

### **NWAC Database and Advocacy**

50. Through its ground-breaking project Sisters In Spirit, NWAC documented disappearances and murders of almost 600 Aboriginal women and girls in Canada, the majority over the last twenty years. It developed a national database of information, the only one of its kind. However, in October 2010, the Government of Canada gave 4 million dollars to the Royal Canadian Mounted Police to develop a national database of missing women. At the same time, NWAC was denied further funding to maintain its Sisters in Spirit research and database. NWAC was denied funding because under Status of Women Canada’s new funding guidelines for women’s NGOs, no research, policy development or advocacy can be funded. The RCMP database is not functional yet, and it is not likely to ever be a substitute for NWAC’s work.<sup>78</sup>

**Recommendation: Canada restore funding to the Sisters in Spirit project so that NWAC can maintain its database of information regarding murders and disappearances of Aboriginal women and girls.**

### **Access to Justice and Legal Aid for Aboriginal Women**

#### **i) Missing Women Commission of Inquiry – British Columbia**

51. On September 27, 2010, the Government of British Columbia (British Columbia) established the Missing Women Commission of Inquiry, with the former Attorney General of British Columbia, Wally Oppal, Q.C., as the Commissioner.<sup>79</sup> This was an Inquiry into the facts, police investigations and official decisions involved in the disappearances and murders of over 33 women from Vancouver’s Downtown Eastside between the years 1997 and 2002. A disproportionate number of the women who disappeared from the Downtown Eastside were Aboriginal.

52. The Inquiry is the first and only official Inquiry appointed in Canada that is mandated to examine some of the disappearances and murders of Aboriginal women and girls, as well as police responses to these incidents.

53. NWAC applied for standing at the Inquiry, and was granted full standing. Standing permits participation as a party with the right to cross-examine witnesses, present evidence and make submissions. Commissioner Oppal granted standing to a number of groups because of their expertise and direct interests. He also determined that some of these groups would not be able to participate unless public funding was provided for legal counsel, and he recommended to the Attorney General of British Columbia that funding be provided as appropriate.

54. On July 22, 2011, the Attorney General refused to provide funding for legal counsel, except for one lawyer representing some of the families of the women who were murdered by serial killer William Robert Pickton. The Attorney General, in effect, overturned the independent Commissioner's ruling on standing, since without funding for legal counsel, NWAC and other groups, could not exercise the standing they were granted.

55. NWAC was forced to withdraw from the Inquiry because of the denial of funding, as were all other groups granted standing. The decision not to fund counsel for parties granted standing at an inquiry is unprecedented in Canada.<sup>80</sup>

56. The Vancouver Police Department, the Criminal Justice Branch of the Attorney General's Ministry, and the Royal Canadian Mounted Police - whose conduct was under scrutiny - were represented by twenty-five publicly-funded legal counsel.

57. The Inquiry is due to report to the Government of British Columbia on October 31, 2012. Recommendations from this inquiry will have no legitimacy for Aboriginal women, since they were excluded from an inquiry process so significant to their rights to life, equal protection of the law and security of the person.

58. NWAC made a complaint about its exclusion to three United Nations Special Rapporteurs.<sup>81</sup> NWAC submitted that Canada discriminated against Aboriginal women on the basis of sex and Aboriginality by refusing to fund counsel for NWAC after NWAC was granted standing.

**Recommendation: Canada ensure that Aboriginal women have access to legal representation of their choice and full participation in all legal fora where their rights are at stake.**

#### **ii) Cecilia Kell – Male Violence, Housing, Legal Aid**

59. On April 26, 2012, the CEDAW Committee issued its decision on a petition filed by Cecilia Kell, an Aboriginal woman and a victim of domestic violence.<sup>82</sup> When Ms. Kell escaped her violent partner to access a battered women's shelter, her partner persuaded the Northwest Territories Housing Corporation to remove her name from homeownership documents without her knowledge or consent, which rendered her and her three children homeless. Several lawyers and ten years later, Ms. Kell lost her case against the estate of her ex-partner and the Northwest Territories Housing Corporation. The Committee found that the Canadian legal system did not provide Ms. Kell with an appropriate remedy, and in particular, legal aid in the Northwest Territories was not adequate. The CEDAW Committee determined that Canada did not take the appropriate steps to protect Ms. Kell from discrimination on the basis of sex and Aboriginality, and recommended that, as well as providing direct compensation to Ms. Kell, Canada recruit and train Aboriginal women to provide legal aid to women from their communities; and review legal aid systems to ensure that Aboriginal women who are victims of domestic violence have effective access to justice. Canada is required to report back to the Committee on implementation of these recommendations on October 26, 2012. No action has been taken yet.

60. Ms. Kell's case reflects the experience of many Aboriginal women in Canada who face male violence, lose their housing as a result, and then cannot obtain adequate legal aid to secure appropriate remedies. Effective enjoyment of women's equal right to property depends on Aboriginal women being able to obtain adequate legal aid when it is needed.

**Recommendation: Canada ensure that adequate civil legal aid is available to women in all parts of Canada, and in particular to Aboriginal women who are victims of domestic violence.**

### **Indian Status**

61. The *Indian Act* still discriminates against Aboriginal women and their descendants with respect to Indian status.

62. In 2011, the *Gender Equity in the Indian Act* came into force.<sup>83</sup> This legislation was the outcome of a constitutional challenge to the *Indian Act* brought by Sharon McIvor, which was commenced in 1989.

63. The 2011 legislation corrected some of the sex discrimination and will newly permit an estimated 45,000 Aboriginal women and their descendants to be registered. But the *Indian Act* still excludes Aboriginal women and their descendants who would be entitled to register if sex discrimination were completely eradicated from the registration scheme. Examples of those still excluded because of sex discrimination include: the grandchildren of status women and non-status men who were unmarried; the female child of a status man and a non-status woman who were unmarried; and the grandchildren born prior to September 4, 1951 who are the descendants of women who married out. Male lineage counterparts are entitled to Indian status. It is estimated that more than 100,000 Aboriginal women and their descendants are still excluded from registration because of continuing sex discrimination.

64. In addition, the *Gender Equity Act* does not grant equal registration status to the Aboriginal women and their descendants whom it newly includes, because the legislated inability of one Indian parent to transmit status, known as the second generation cut-off, applies to the newly included female lineage descendants one generation earlier.

65. Because of this continuing sex discrimination, Sharon McIvor has filed a petition with the United Nations Human Rights Committee, continuing the more than 40-year-long struggle by Aboriginal women in Canada to eliminate sex discrimination from the status registration provisions of the *Indian Act*.<sup>84</sup>

**Recommendation: Canada immediately eliminate all residual sex discrimination from the status registration provisions of the *Indian Act*.**

## **Incarceration of Aboriginal Women**

66. Aboriginal peoples are 4% of the Canadian population. However a new report reveals that “[a]s of April 2010, Aboriginal women accounted for 32.6% of the total female offender population; this means that one out of every three women federally incarcerated is of Aboriginal descent”<sup>85</sup> The report also notes that “[o]ver the past 10 years, the representation of Aboriginal women in Federal Corrections has increased by nearly 90% as such they represent the fastest growing offender population.”<sup>86</sup>

67. Experts say that the “the federal government’s current plan [to increase mandatory sentencing and build more prisons] will only serve to further increase the numbers and worsen the already staggering injustice experienced by Aboriginal peoples as a whole.”<sup>87</sup>

68. The high incarceration rates are connected to the high rates of violence and poverty faced by Aboriginal women.<sup>88</sup> Further, the evidence is that in federal prisons in Canada, Aboriginal women’s serious mental health needs are not being addressed and that programming is inadequate to meet their needs for education, training, counseling, family and community connection. Even worse, their needs for supports and programming are equated to risk and result in Aboriginal women being disproportionately classified as higher security and therefore less likely to be released from prison when they are legally entitled to be.

**Recommendation: Canada implement the accountability measures recommended by the Arbour Commission and others; and provide access to adequate and effective community-based mental health care and culturally and gender appropriate programming for Aboriginal women in federal prisons.** <sup>89</sup>

## Endnotes

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<sup>1</sup> United Nations treaty bodies have commented repeatedly on key features of women's inequality in Canada, including:

- Women's higher rates of poverty and the worsening situation of Canadian women following post-1995 federal budgets and federal and provincial social service cutbacks that have had disproportionate negative effects on women. (CEDAW 2003, paras. 351, 352; CEDAW 1997, paras. 334, 342; CCPR 2006, para. 24, CPR 1999, para. 20; CESCR 1998, paras. 16, 23, 54). CEDAW especially noted the high and disproportionate poverty of Aboriginal women, elderly women living alone, single mothers, older women, women of colour, immigrant women and women with disabilities (CEDAW 2003, para. 357; CEDAW 2008, paras. 43, 44). CEDAW recommended national standards and a monitoring mechanism for social assistance because of inadequate social assistance incomes (CEDAW 2008, paras. 39-40).
- Women's inequality in the paid labour market, including reduced access to employment insurance benefits (CESCR 2006, para. 22), uneven and inadequate implementation of pay equity, and the inadequacy of protection provided by statutory human rights systems (CEDAW 2003, paras. 373, 374, 375, 376, 381, 382; CESCR 1998, para. 16), and exploitation of migrant domestic workers (CESCR 2006, para. 49; CEDAW 2003, paras. 365, 366; CEDAW 2008, paras. 37, 38).
- Lack of adequate, accessible, and affordable child care across Canada (with the exception of Québec) which limits women's economic and social participation (CESCR 2006, para. 46; CEDAW 2003, paras. 378, 379; CRC 2003, paras. 38, 39 ; CEDAW 2008, paras. 39, 40; CRC 2012, paras. 71, 72).
- Barriers to women escaping domestic violence resulting from cuts to social assistance, lack of affordable housing, and inadequate funding for women's crisis services and shelters (CESCR 1998, paras. 28, 42; CESCR 2006, para. 26; CEDAW 2003, paras. 369, 370; CEDAW 2008, paras. 29, 30.)
- Lack of access to adequate legal aid and cancellation of the Court Challenges Program (CESCR 1998, para. 42; CESCR 2006, para. 43; CEDAW 2003, paras. 355, 356; CEDAW 2008, paras. 21-22).
- Aboriginal women's inequality, marked by high levels of discrimination in employment (CEDAW 2003, paras. 361, 362), discrimination in matters relating to Indian status, band membership and matrimonial real property on reserve lands, and unequal participation in the governance of their communities (CERD 2007, para. 15; CESCR 2006, paras. 11(d), 17, 45; CCPR 2006, para. 22; CEDAW 2003, paras. 360, 361; CEDAW 2008 at 43-44).

This information is adapted from The Poverty and Human Rights Centre, *Human Rights Treaty Implementation: The Consensus on Canada*, 2007, online at:

[http://povertyandhumanrights.org/wp-content/uploads/2009/09/PHR\\_june07\\_v3.pdf](http://povertyandhumanrights.org/wp-content/uploads/2009/09/PHR_june07_v3.pdf)



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<sup>2</sup> UPR-info.org, *Responses to Recommendations, Canada*, online at: [http://www.upr-info.org/IMG/pdf/recommendations\\_to\\_canada\\_2009.pdf](http://www.upr-info.org/IMG/pdf/recommendations_to_canada_2009.pdf). See also: United Nations Human Rights Council, Review of the Working Group on the Universal Period Review: Canada, A/HRC/11/17, 5 October 2009, Recommendation 33 to 38, online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/152/99/PDF/G0915299.pdf?OpenElement>

<sup>3</sup> UNDP, *Human Development Report 2011*, Table 4: Gender Inequality Index and related factors, at 139, online at: [http://hdr.undp.org/en/media/HDR\\_2011\\_EN\\_Table4.pdf](http://hdr.undp.org/en/media/HDR_2011_EN_Table4.pdf).

<sup>4</sup> For example, since 2006, the Government of Canada has:

- Cancelled federal-provincial/territorial agreements that were the foundation for the development of a national child care system;
- Eliminated funding for the Court Challenges Program, which was the only program available in Canada providing women with *de facto* access to the use of the constitutional right to equality;
- Restricted the funding criteria for women's organizations under the Status of Women Canada (SWC) Women's Program so that women's organizations cannot receive funds for advocacy, or for research;
- Eliminated Status of Women's Independent Policy Research Fund that was the only government agency producing research on issues pertaining to women's equality;
- Rejected a Task Force report calling for a new federal pay equity law, and restricted the right to pay equity of women federal public sector workers.

See: Canadian Feminist Alliance for International Action, Letter to the CEDAW Committee, January 18, 2008, online at: [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/FAFIA\\_AFAI\\_Canada42.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/FAFIA_AFAI_Canada42.pdf)

<sup>5</sup> Women's conditions are documented in Statistics Canada, *Women in Canada: A Gender-Based Statistical Report*, Sixth Edition, 2010 – 2011, online at: <http://www.statcan.gc.ca/pub/89-503-x/89-503-x2010001-eng.htm>. This report provides an overall picture of women's status in Canada, and includes chapters (cited separately) on women's family status, education, employment, economic well-being, unpaid work, and health, as well as specific chapters on First Nations, Inuit and Metis women, immigrant women, senior women, women with activity limitations, and women in a visible minority.

<sup>6</sup> See paragraphs 5 through 8 below for detail.

<sup>7</sup> See *Women in Canada, A Gender-Based Statistical Report*, Sixth Edition, *supra* note 1.

<sup>8</sup> Canada ranks 40<sup>th</sup> out of 189 countries for representation of women in elected positions. See Equal Voice, online at: <http://www.equalvoice.ca/index.cfm>.

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<sup>9</sup> Statistics Canada, *Women in Canada, A Gender-Based Statistical Report*, Sixth Edition, Vincent Ferrao, "Paid Work", December 2010, online at:

<http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11387-eng.pdf>

<sup>10</sup> See paragraphs 32 through 34 below.

<sup>11</sup> Fay Faraday, *Made in Canada: How the Law Constructs Migrants Workers' Insecurity*, September 2012, online at: <http://metcalffoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf>

<sup>12</sup> See paragraph 24 below.

<sup>13</sup> Wellesley Institute, *Precarious Housing in Canada*, 2010, online at:

[http://www.wellesleyinstitute.com/wp-content/uploads/2010/08/Precarious\\_Housing\\_In\\_Canada.pdf](http://www.wellesleyinstitute.com/wp-content/uploads/2010/08/Precarious_Housing_In_Canada.pdf); United Nations Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in This Context, Miloon Kothari: Addendum Mission to Canada (9 to 22 October 2007)*, 2009, paras. 63 – 68, online at: <http://www.unhcr.org/refworld/pdfid/49b7af2c2.pdf>

<sup>14</sup> Canadian Feminist Alliance for International Action, *No Action: No Progress, Report on Canada's Progress in Implementing Priority Recommendations made by the United Nations Committee on the Elimination of Discrimination against Women in 2008*, online at:

[http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/NoActionNoProgress\\_CanadaFU.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/NoActionNoProgress_CanadaFU.pdf)

<sup>15</sup> The Canadian Bar Association states that "Years of cutbacks have left the legal aid system in crisis... The crisis in legal aid has four facets: underfunding, discrepancies in coverage among jurisdictions, fragmentation in coverage within a legal aid program, and disproportionate impact." See: Canadian Bar Association, *Legal Aid in Canada*, online at: <http://www.cba.org/CBA/Advocacy/legalAid/>

<sup>16</sup> Holly Johnson and Myrna Dawson, *Violence Against Women in Canada: Research and Policy Perspectives*, Oxford University Press, 2011.

<sup>17</sup> Statistics Canada, *Women in Canada, A Gender-Based Statistical Report*, Sixth Edition, Tina Hotton Mahony, "Women and the Criminal Justice System", April 2011, at 36, online at: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11416-eng.pdf>

<sup>18</sup> Canadian Association of Elizabeth Fry Societies, Submission of the Canadian Association of Elizabeth Fry Societies, *Canada's Record Re: UN Convention Against Torture*, online at: <http://www.elizabethfry.ca/un/torture.pdf>

<sup>19</sup> Statistics Canada, *Persons in low income after tax 2006 – 2010*, online at:

<http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/famil19a-eng.htm>

<sup>20</sup> For a description of Canada's low income measures – before tax Low-Income Cut-Offs (LICOs), after tax Low Income Cut-Offs and Market Basket Measure (MBM) - see:

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Statistics Canada, *Low Income Measures*, online at: <http://www.statcan.gc.ca/pub/75f0002m/2011002/lim-mfr-eng.htm>. Statistics Canada states that LICOs and MBM do not define poverty in Canada, since “poverty is a question of social consensus, defined for a given point in time and in the context of a given country.” FAFIA uses the terms “living below LICOs,” “living in low income” and “living in poverty interchangeably,” with references footnoted to Statistics Canada’s LICOs.

<sup>21</sup> Statistics Canada, *Persons in low income after tax 2006 – 2010*, online at: <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/famil19a-eng.htm>.

<sup>22</sup> Statistics Canada. *Women in Canada: A Gender-based Statistical Report: Sixth Edition*, Cara Williams, *Economic Well-being*, December 2010, online at: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11388-eng.pdf>

<sup>23</sup> Statistics Canada, *Women in Canada: A Gender-based Statistical Report, Sixth Edition*, Vivian O’Donnell and Susan Wallace, *First Nations, Inuit and Metis Women*, July 2011, at 34, online at: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.pdf>. Low-income data on Aboriginal women is incomplete because there is no low-income data for First Nations people living on reserves or for Inuit living in the Territories. The 57% of Inuit women who live in the Territories are not included in this calculation. Further, for Indian, Inuit and Metis women Statistics Canada only provides percentages of women who live below the *before-tax* Low-income Cut-Offs. All other figures cited in this paragraph are percentages of women living below *after-tax* Low-Income Cut – Offs.

<sup>24</sup> Ibid.

<sup>25</sup> Statistics Canada, *Women in Canada, Sixth Edition*, Tina Chui and Hélène Maheux, “Visible Minority Women”, July 2011, at 34, online at: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11527-eng.pdf>

<sup>26</sup> Statistics Canada, *Women in Canada, A Gender-Based Statistical Report, Sixth Edition*, Tina Chui, “Immigrant Women”, July 2011, at 31, online at: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11528-eng.pdf>

<sup>27</sup> Ibid.

<sup>28</sup> Statistics Canada, *Women in Canada, A Gender-Based Statistical Report, Fifth Edition*, at 297, online at: <http://www.statcan.gc.ca/pub/89-503-x/89-503-x2005001-eng.pdf>. Statistics Canada does not give a figure for women with disabilities living below LICOs in the Sixth Edition of *Women in Canada*; see also: Canadian Council of Persons with Disabilities, “What does poverty look like in the disability community?” online at: <http://www.ccdonline.ca/en/blog/what-does-poverty-look-like-in-the-disability-community>

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<sup>29</sup> Statistics Canada, *Women in Canada, A Gender-Based Statistical Report*, Sixth Edition, Cara Williams, "Economic Well-Being", online at: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11388-eng.htm#a2>

<sup>30</sup> National Council of Welfare, *Adequacy of Welfare Incomes 2011*. The Government of Canada has closed the National Council of Welfare and, as of September 28, 2012, its data reports could no longer be accessed, FAFIA downloaded this data on September 27, 2012.

<sup>31</sup> Wellesley Institute, *Precarious Housing in Canada*, online at: [http://www.wellesleyinstitute.com/wp-content/uploads/2010/08/Precarious\\_Housing\\_In\\_Canada.pdf](http://www.wellesleyinstitute.com/wp-content/uploads/2010/08/Precarious_Housing_In_Canada.pdf)

<sup>32</sup> Statistics Canada, *Women in Canada, A Gender-Based Statistical Analysis*, Fifth Edition, March 2006, at 145; see also Statistics Canada, Willa Rea, Jennifer Yuen, John Engeland and Roberto Figueroa, "The Dynamics of Housing Affordability", online at: <http://www.statcan.gc.ca/pub/75-001-x/2008101/pdf/10511-eng.pdf>

<sup>33</sup> YWCA Canada, *When There's No Place Like Home: A Snapshot of Women's Homelessness in Canada*, March 2012, online at: <http://ywcacanada.ca/data/publications/00000058.pdf>

<sup>34</sup> See Citizens for Public Justice, *The Reality of Housing Insecurity: A CPJ Backgrounder on Housing and Homelessness*, Trixie Ling, 2008, online at: <http://www.cpj.ca/files/docs/PJ-Backgrounder-on-Housing-and-Homelessness3.pdf>

<sup>35</sup> Homelesshub.ca, *Definition of homelessness*, online at: <http://www.homelesshub.ca/ResourceFiles/05092012CHRNhomelessdefinition.pdf>

<sup>36</sup> Statistics Canada, *Transition Homes in Canada: National, Provincial and Territorial Fact Sheets*, 2009-2010, online at: <http://www.statcan.gc.ca/pub/85-404-x/85-404-x2011000-eng.pdf>

<sup>37</sup> See *Being Homeless Is Getting To Be Normal: A Study of Women's Homelessness in the Northwest Territories*, online at: <http://ywcacanada.ca/data/publications/00000011.pdf>

<sup>38</sup> Statistics Canada, *Women in Canada: A Gender-based Statistical Report*, Sixth Edition, Vivian O'Donnell and Susan Wallace, *First Nations, Inuit and Metis Women*, July 2011, online at: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.pdf>

<sup>39</sup> Council of Canadians with Disabilities, *Gender, Disability and Low Income*, online at: <http://www.ccdonline.ca/en/socialpolicy/poverty-citizenship/demographic-profile/gender-disability-low-income>

<sup>40</sup> United Nations, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in This Context*, Miloon Kothari: Addendum Mission to Canada (9 to 22 October 2007), 2009. para. 63, online at: <http://www.unhcr.org/refworld/pdfid/49b7af2c2.pdf>

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<sup>41</sup> B.C. CEDAW Group, *Inaction and Non-Compliance*, 2008, at 54, online at:

<http://povertyandhumanrights.org/wp-content/uploads/2010/04/CanadaBC2008final.pdf>.

<sup>42</sup> First Nations Family and Caring Society, *Wen:De. Coming to the Light of Day: The Journey Continues*, 2005, at 7, online at:

<http://www.fncaresociety.com/sites/default/files/docs/WendeJourneyContinues.pdf>

<sup>43</sup> *Ibid.*

<sup>44</sup> Information about this complaint can be found on the website of the First Nations Family and Caring Society at: <http://www.fncaresociety.com/fnwitness/tribunal-timeline>

<sup>45</sup> *Ibid.* at 7. See also: Darcie Bennett & Lobat Sadrehashemi, *Broken Promises: Parents Speak about B.C.'s Child Welfare System* (Vancouver: Pivot Legal Society, 2008), at 11, online:

[http://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/legacy\\_url/310/BrokenPromises.pdf?1345765642](http://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/legacy_url/310/BrokenPromises.pdf?1345765642) *Broken Promises*. A key finding in this report is that survivors of violence are poorly supported and, at times, re-victimized by the child protection system.

<sup>46</sup> When legal aid was established in Canada forty years ago, legal aid was paid for under cost-sharing arrangements between the federal government and the provinces. The cost of civil legal aid was shared under the *Canada Assistance Plan Act*, which also arranged for cost-sharing of social assistance and other social services. However, since 1995 all designations and conditions have been removed from the transfer payments for social services. The result has been a dramatic decline in the financial support for, and provision of civil legal aid, and inconsistencies in availability across provinces and territories. (See Canadian Bar Association, *History of Federal Funding for Legal Aid*, at: <http://www.cba.org/CBA/Advocacy/legalAid/history.aspx>) For example, in British Columbia in 2002, funding for civil legal aid was cut by almost 40% over three years, and although small increases have been made since then, funding is still not back to 2002 levels. See B.C. CEDAW Group, *Inaction and Non-Compliance: British Columbia's Approach to Women's Inequality, Submission of the B.C. CEDAW Group to the United Nations Committee on the Elimination of Discrimination against Women on the occasion of the Committee's review of Canada's 6th & 7th Reports*, at 18, online at:

<http://povertyandhumanrights.org/wp-content/uploads/2010/04/CanadaBC2008final.pdf>

<sup>47</sup> Alison Brewin and Lindsay Stephens, *Legal Aid Denied: Women and the Cuts to Legal Services in BC* (September 2004), at 9, online at:

[http://www.westcoastleaf.org/userfiles/file/legal\\_services.pdf](http://www.westcoastleaf.org/userfiles/file/legal_services.pdf)

<sup>48</sup> *Ibid.* at 5.

<sup>49</sup> Canadian Bar Association, *Legal Aid in Canada*, online at:

<http://www.cba.org/CBA/Advocacy/legalAid/>

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<sup>50</sup> Canadian Child Care Advocates of B.C., *A Tale of Two Canadas: Implementing Rights in Early Childhood*, February 2011, at 11, online at:

[http://www2.ohchr.org/english/bodies/crc/docs/ngos/Canada\\_CoalitionofChildCareAdvocatesofBC&ChildCareAdvocacyAssociationofCanadaCRC61t.pdf](http://www2.ohchr.org/english/bodies/crc/docs/ngos/Canada_CoalitionofChildCareAdvocatesofBC&ChildCareAdvocacyAssociationofCanadaCRC61t.pdf)

<sup>51</sup> Organisation for Economic Co-operation and Development (OECD), September, 2006, *Starting Strong II: Early childhood education and care*, online at:

<http://www.oecd.org/edu/preschoolandschool/startingstrongiiearlychildhoodeducationandcare.htm>

<sup>52</sup> This description of the 'vicious circle' is taken, with permission, directly from Gwen Brodsky, Melina Buckley, Shelagh Day, and Sharon McIvor, Poverty and Human Rights Centre, *The Vicious Circle: A Report from Advancing the Rights of Poor Women*, 2010, online at:

<http://povertyandhumanrights.org/wp-content/uploads/2012/10/The-Vicious-Circle.pdf> and from Remarks by Shelagh Day, *Challenges and Strategies*, Governor-General's Conference, Together for Women's Security, September 2010, online at: <http://povertyandhumanrights.org/wp-content/uploads/2012/10/Remarks-of-Shelagh-Day-Challenges-and-Strategies.pdf>

<sup>53</sup> There has been litigation before the British Columbia Human Rights Tribunal and the courts regarding lower payments for grandmothers looking after grandchildren, as opposed to foster parents. See *British Columbia v. McGrath*, 2009 BCSC 180, online: <http://www.courts.gov.bc.ca/jdb-txt/SC/09/01/2009BCSC0180.htm>. The grandmothers claimed that they were discriminated against because of family status by being paid less welfare for looking after a grandchild than a foster parent would be paid for the care of the same child. The grandmothers were unsuccessful.

<sup>54</sup> Committee on the Elimination of Discrimination against Women, CEDAW/C/CAN/CO/7, 7 November 2008, para. 44, online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/602/42/PDF/N0860242.pdf?OpenElement>, and Parliament of Canada, Standing Committee on the Status of Women, Interim Report, *Call Into the Night: An Overview of Violence against Aboriginal Women*, March 2011, 40th Parliament, 3rd session, online at:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5056509&Language=E&Mode=1&Parl=40&Ses=3>. These reports refer specifically to the need for a holistic approach to Aboriginal women. Comprehensive strategies are also needed to address women's disadvantage generally, as reflected in UPR 2009 recommendation 45.

<sup>55</sup> See, for example, *Canada, Combined 6<sup>th</sup> and 7<sup>th</sup> Periodic Reports to the Committee on the Elimination of Discrimination Against Women*, CEDAW/C/CAN/7, 17 August 2007, online at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/485/90/PDF/N0748590.pdf?OpenElement>

<sup>56</sup> Statistics Canada, *Average earnings by sex and work pattern (full-time workers)*, online at: <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/labor01b-eng.htm>



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<sup>57</sup> Conference Board of Canada, *The Gender Income Gap*, September 2009, online at: <http://www.conferenceboard.ca/hcp/details/society/gender-income-gap.aspx>

<sup>58</sup> In Canada, only Quebec and Ontario have pay equity legislation that applies to both public and private sectors. In federal jurisdiction, pay equity is included in the *Canadian Human Rights Act*, but this now does not apply to the public sector. There is pay equity legislation applying only to the public sector in Prince Edward Island, Nova Scotia, New Brunswick, and Manitoba. Newfoundland has some agreements regarding equal pay for equal value for public sector workers. In Saskatchewan, Alberta and British Columbia there is no pay equity legislation applying to either the public or private sector. See Canadian Feminist Alliance for International Action, *Women's Inequality in Canada, Submission of the Canadian Feminist Alliance for International Action to the United Nations Committee on the Elimination of Discrimination against Women, on the Occasion of the Committee's Review of Canada's 6th & 7th Reports*, at 66, and Appendix II at 114, online at:

[http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/FAFIACanadaCEDAW2008\\_2.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/FAFIACanadaCEDAW2008_2.pdf). The only change in pay equity legislation since FAFIA's 2008 report is a serious reduction in protection for federal public sector women employees, which is noted in paragraph 34.

<sup>59</sup> *Public Service Equitable Compensation Act*, S.C. 2009, c. 2, s. 394, online at: <http://laws-lois.justice.gc.ca/PDF/P-31.65.pdf>. If pay equity is not achieved during the bargaining process, workers can file individual complaints with the Public Service Staff Relations Board, but must do so without the help of their union. This legislation calls for a fine of \$50,000 to be levied against any union that assists or encourages its members to file a pay equity complaint or helps them do so.

<sup>60</sup> Statistics Canada, *Women in Canada*, Sixth Edition, Tina Chui and H  l  ne Maheux, "Visible Minority Women", July 2011, at 33, online at: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11527-eng.pdf>.

<sup>61</sup> Statistics Canada, *The Daily*, November 23, 2011, "Aboriginal People and the Labour Market", online at: <http://www.statcan.gc.ca/daily-quotidien/111123/dq111123b-eng.htm>; Statistics Canada, "Average Earnings by Sex and Work Pattern," CANSIM table: 202-0102, June 2011, online at: <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/labor01a-eng.htm>

<sup>62</sup> Statistics Canada, *Women in Canada, A Gender-Based Statistical Report*, Susan Crompton, December 2011, *Women with Activities Limitations*, at 21 – 24, online at: <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11545-eng.pdf>

<sup>63</sup> In federal jurisdiction and Quebec, there is employment equity legislation. The federal *Employment Equity Act* makes some requirements of federal sector employers with over 100 employees, and of federal contractors. In Manitoba, there is an employment equity policy for public employment. In B.C. in 2002, an employment equity policy for public employment was dropped. In Ontario, employment equity legislation that was introduced in 1994 was repealed, after a change in government, in

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1995. Because of this patchy coverage, there is no requirement on most employers in Canada to take conscious and pro-active steps to identify and correct discrimination and under-representation of women, and particular groups of women, in their workplaces. The burden for correcting discrimination lies on those who experience it. Women must use the statutory human rights system to make complaints.

<sup>64</sup> See *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471. In this case, a human rights complainant, whom the Canadian Human Rights Commission declined to represent, tried to obtain legal costs after she won her case in part. However, she was denied compensation for her legal costs on the grounds that the *Canadian Human Rights Act* does not permit human rights complainants to claim them. The current situation is that many human rights complainants have to pay for their own legal representation and cannot retrieve legal costs even if they win. Many represent themselves, and self-represented complainants have a high loss rate.

<sup>65</sup> The Canadian Centre for Policy Alternatives takes note of the harmful absence of the federal government with respect to child care in its 2012 Alternative Federal Budget (Canadian Centre for Policy Alternative, *Alternative Federal Budget 2012*, at 76, online at: <http://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2012/03/AFB2012%20Budget%20Document.pdf>. The Canadian Bar Association also notes the absence of the federal government and the need for federal leadership on legal aid (see above), as did the National Council of Welfare regarding poverty.

<sup>66</sup> National Council of Welfare, *Solving Poverty*, at 17, as cited by the Canadian Council on Social Development, *Poverty Reduction Policies and Programs: Canada*, at 18, online at: [http://www.ccsd.ca/Reports/Canada\\_Report\\_FINAL.pdf](http://www.ccsd.ca/Reports/Canada_Report_FINAL.pdf). The federal government eliminated funding for the National Council of Welfare in Budget 2012. The Council closed its doors and its website at the end of September 2012.

<sup>67</sup> National Council of Welfare, *Solving Poverty*, at 18, as cited by the Canadian Council on Social Development.

<sup>68</sup> 'Aboriginal Women' refers to First Nations, Metis and Inuit women.

<sup>69</sup> United Nations Human Rights Council, Review of the Working Group on the Universal Period Review: Canada, A/HRC/11/17, 5 October 2009, Recommendation 33 to 38, online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/152/99/PDF/G0915299.pdf?OpenElement>.

<sup>70</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada. UN Doc. E/C.12/CAN/CO/4, E/C.12/CAN/CO/5 (22 May 2006) at paras. 11(d), 15, 26.

<sup>71</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada, CERD/C/CAN/CO/18 (25 May 2007) at paras. 20-21; and Canada, CERD/C/CAN/CO/19-20, 9 March 2012, at para. 17, online at: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CAN.CO.19-20.pdf>



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<sup>72</sup> Committee Against Torture, 48<sup>th</sup> session, CAT/C/CAN/CO/6, 25 June 2012, at para. 21, online at: <C:\Documents and Settings\User\Local Settings\Temp\CAT.C.CAN.CO.6.doc>

<sup>73</sup> UN Committee on the Elimination of Discrimination against Women, CEDAW/C/CAN/CO/7, 7 November 2008, online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/602/42/PDF/N0860242.pdf?OpenElement>

<sup>74</sup> Ibid. at para. 44

<sup>75</sup> Human Rights Council, 20<sup>th</sup> Session, Report of the Special Rapporteur on Violence Against Women, its causes and consequences, Rashida Manjoo, A/HR/20/16, 23 May 2012, at paras. 62 and 65, online at: [http://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16\\_En.pdf](http://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16_En.pdf).

<sup>76</sup> NGOs also reported back to the Committee to inform it that Canada had taken no action. See: Canadian Feminist Alliance for International Action, *No Action, No Progress: FAFIA's Report on Canada's Progress in Implementing Priority Recommendations made by the CEDAW Committee in 2008*, February 2010, online at: [http://www.fafia-afai.org/files/Report.%20No%20Action%20No%20Progress.%20FAFIA.%202010\\_2.pdf](http://www.fafia-afai.org/files/Report.%20No%20Action%20No%20Progress.%20FAFIA.%202010_2.pdf); B.C. CEDAW Group, *Nothing to Report, A Report on Progress in Implementing Priority Recommendations made by the CEDAW Committee in its 2008 Concluding Observations on Canada*, January 2010, online at: <http://povertyandhumanrights.org/wp-content/uploads/2010/04/nothing-to-report.pdf>; Amnesty International, *Canada: Follow Up To Concluding Observations of the United Nations Committee on the Elimination of Discrimination against Women*, online at: [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AI\\_CanadaFU.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AI_CanadaFU.pdf)

<sup>77</sup> United Nations Committee on the Elimination of Discrimination, *Press Release by the Committee on the Elimination of Discrimination against Women concerning the inquiry regarding disappearances and murders of aboriginal women and girls in Canada*. 16 December 2011, online at: [http://www2.ohchr.org/english/bodies/cedaw/docs/CanadaInquiry\\_Press\\_Release.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/CanadaInquiry_Press_Release.pdf)

<sup>78</sup> Canadian Feminist Alliance for International Action, *Disappearances and Murders of Aboriginal Women and Girls, Submission to the Committee on the Elimination of Racial Discrimination*, 2012, at 13 – 16, online at: <http://www2.ohchr.org/english/bodies/cerd/cerds80.htm>

<sup>79</sup> See terms of reference and complete information on the Missing Women Commission of Inquiry at: <http://www.missingwomeninquiry.ca/>

<sup>80</sup> Kent Roach et al., Letter to Attorney General Shirley Bond, September 7, 2011, online at: <http://www.amnesty.ca/files/MissingWomenLetterSeptember7,%202011.pdf>

<sup>81</sup> *Urgent Appeal by the Native Women's Association of Canada to United Nations Special Rapporteur on Violence Against Women, Rashida Manjoo, United Nations Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, and United Nations Special Rapporteur on the Independence of Judges and Lawyers, Mrs. Gabriela*

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*Knaul*, September 9, 2011, online at:

<http://www.nwac.ca/sites/default/files/download/yzhou/NWAC%20Request%20to%20UN%20Special%20Rapporteurs%20for%20Urgent%20Joint%20Appeal%20to%20Canada.pdf>

<sup>82</sup> Committee on the Elimination of Discrimination Against Women, Communication No. 19/2008, CEDAW/C/5/D/19/2008, 26 April 2012, online at:

[http://www2.ohchr.org/english/law/docs/CEDAW-C-51-D-19-2008\\_en.pdf](http://www2.ohchr.org/english/law/docs/CEDAW-C-51-D-19-2008_en.pdf)

<sup>83</sup> *Gender equity in Indian registration, An Act to promote gender equity in Indian registration by responding to the Court of Appeal for British Columbia decision in Mclvor v. Canada (Registrar of Indian and Northern Affairs)*, S.C. 2010, c. 18, Assented to 2010-12-15, online at: [http://laws-lois.justice.gc.ca/eng/AnnualStatutes/2010\\_18/page-1.html](http://laws-lois.justice.gc.ca/eng/AnnualStatutes/2010_18/page-1.html). FAFIA notes that this legislation was commented on favourably by the CERD Committee in its 2012 review without taking into account that the sex discrimination in the *Indian Act* status registration provisions has still not been completely eliminated, and that more generations of Aboriginal women and their descendants may be forced to bring legal challenges to correct it.

<sup>84</sup> *Sharon Mclvor and Jacob Grismer v. Canada, Communication submitted for consideration under the First Optional Protocol to the International Covenant on Civil and Political Rights*, November 24, 2010, online at: <http://povertyandhumanrights.org/wp-content/uploads/2011/08/MclvorApplicantsPetition1.pdf>

<sup>85</sup> Wesley Group, Mandy Wesley, *Marginalized, The Aboriginal Women's experience in Federal Corrections: A Report for Public Safety Canada*, 2012, at 1, online at:

[http://publications.gc.ca/collections/collection\\_2012/sp-ps/PS4-120-2012-eng.pdf](http://publications.gc.ca/collections/collection_2012/sp-ps/PS4-120-2012-eng.pdf)

<sup>86</sup> *Ibid.* at 47.

<sup>87</sup> *Ibid.* See also: Canadian Association of Elizabeth Fry Societies, *Facts Sheets on Federally Sentenced Women in Canada - Indigenous Women*, online at:

<http://www.elizabethfry.ca/eweek2011e/factsht.htm>.

<sup>88</sup> *Ibid.*

<sup>89</sup> These recommendations reflect findings and recommendations of Louise Arbour, Canada, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*. Report. Ottawa: Public Works and Government Services Canada, 1996, (Cat. No. JS42-73/1996E); The Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa, 2003; Office of Correctional Investigator, *Correctional Investigator's Response to the Canadian Human Rights Commission's Consultation Paper for the Special Report on the Situation of Federally Sentenced Women, January 2004*.

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## **Appendix I - Members of the Canadian Feminist Alliance for International Action**

- A Commitment to Training and Employment for Women (ACTEW)
- Action ontarienne contre la violence faite aux femmes
- Alliance des femmes de la francophonie canadienne (AFFC)
- Amelia Rising Sexual Assault Centre of Nipissing
- Antigonish Women's Resource Centre & Sexual Assault Services Association (AWRC & SASA)
- Association féminine d'éducation et d'action sociale (AFEAS)
- Rainy River District Women's Shelter of Hope.
- Canadian Association of Elizabeth Fry Societies
- Canadian Association of Sexual Assault Centres (CASAC)
- Canadian Council of Muslim Women (CCMW)
- Canadian Federation of Students – Women's Representative
- Canadian Federation of University Women (CFUW)
- Canadian Federation of University Women (CFUW) – Kanata
- Canadian Labour Congress – Women's Committee (CLC)

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- Canadian Research Institute for the Advancement of Women – National (CRIAW – Ottawa)
  - Canadian Research Institute for the Advancement of Women – Nova Scotia (CRIAW-Nova Scotia)
  - Canadian Voice of Women for Peace (VOW)
  - Canadian Women’s Community Economic Development Council
  - Canadian Women’s Foundation
  - Canadian Women’s Health Network (CWHN)
  - Centre for Equality Rights in Accommodation – Toronto (CERA – Toronto)
  - Centre for Northern Families / Yellowknife Women’s Society
  - Community Economic Development for Immigrant Women (CED)
  - Congress of Black Women of Canada
  - DisAbled Women’s Network – Canada (DAWN – Canada)
  - DisAbled Women’s Network – Ontario (DAWN – Ontario)
  - Fédération des femmes du Québec (FFQ)
  - Fédération des ressources d’hébergement pour femmes violentées et en difficulté du Québec
  - Feminists for Just and Equitable Public Policy (FemJEPP)
  - Girls Action Foundation
  - Intercede
  - International Women of Saskatoon (IWS)
  - Kaushee’s Place – Yukon Women’s Transition Home
  - Les EssentiElles
  - MATCH International
  - Memorial University of Newfoundland, Department of Women’s Studies
  - Métis National Council of Women
  - Mothers Are Women (MAW)

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- Mother of the Red Nations (MORN)
  - National Association of Women and the Law (NAWL)
  - National Council of Women of Canada (NCWC)
  - National Organization of Immigrant and Visible Minority Women of Canada (NOIVMWC)
  - Native Women's Association of Canada (NWAC)
  - Nobel Women's Initiative
  - Older Women's Network (OWN)
  - Ontario Association of Interval & Transition Houses (OAITH)
  - Québec Native Women Inc. (FAQNW)
  - Regroupement des maisons pour femmes victimes de violence conjugale
  - Regroupement québécois des CALACS (Centres d'aide et de lutte contre les agressions à caractère sexuel)
  - Relais-femmes
  - Riverdale Immigrant Women's Centre (RIWC)
  - The Convention on the Elimination of all forms of Discrimination Against Women – British Columbia (CEDAW-BC)
  - Toronto Women's City Alliance (TWCA)
  - Toronto Women for a Just and Healthy Planet
  - Transition House Association of Nova Scotia (THANS)
  - United Nations Development Fund for Women, (UNIFEM – Winnipeg Chapter)
  - United Nations Platform for Action Committee (UNPAC)
  - Vancouver Committee for Domestic Workers and Caregivers Rights (VCDWCR)
  - Vancouver Rape Relief & Women's Shelter
  - Vancouver Status of Women (VSW)
  - Vancouver Women's Health Collective
  - Victoria Faulkner Women's Centre

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- Women's Habitat
  - Women's Health in Women's Hands
  - Women's Inter-Church Council of Canada (WICC)
  - Women in Resource Development Corporation (WRDC)
  - Yellowknife YWCA
  - Yukon Status of Women Council
  - YWCA Canada National Office (YWCA)
  - YWCA of Moncton

**FAFIA Partners (Related equality-seeking organizations)**

- Action Canada for Population and Development (ACPD)
- Amnesty International Canada
- Assembly of First Nations (AFN)
- Campaign 2000
- Canada Without Poverty
- Canadians for Choice
- Canadian Union of Postal Workers (CUPW)
- Canadian Union of Public Employees (CUPE)
- Child Care Advocacy Association of Canada (CCAAC)
- Childcare Resource and Research Unit (CRRU)
- Coalition of Provincial and Territorial Advisory Councils on the Status of Women
- Manitoba Advisory Council of the Status of Women
- Manitoba Women's Advisory Council
- New Brunswick – Advisory Council on the Status of Women
- Nova Scotia Advisory Council of the Status of Women

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- PEI Advisory Council on the Status of Women
  - Provincial Advisory Council on the Status of Women (PACSW)
  - Status of Women Council of Northwest Territories
  - Yukon Advisory Council on Women's Issues