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Committee on the Elimination of Discrimination Against Women  
January 18, 2008

Dear CEDAW Committee Members,

The Canadian Feminist Alliance for International Action (FAFIA) has learned that the CEDAW Committee will review Canada's 6<sup>th</sup> and 7<sup>th</sup> reports at the 42<sup>nd</sup> session in October 2008, and that a Pre-Sessional Working Group (PSWP) will meet between February 4 and February 8, 2008 at which time questions for Canada will be prepared.

We have serious concerns about Canada's 6<sup>th</sup> and 7<sup>th</sup> reports and wish to bring these concerns to your attention, as well as suggest questions that should be asked.

**Date of report and subsequent retrogressive measures**

The 6<sup>th</sup> and 7<sup>th</sup> reports cover the period from April 1999 to March 2006. This is a convenient time period for the current federal government, which was elected on January 23, 2006. The 2006 election resulted in a minority government led by the Conservative Party with Stephen Harper becoming the 22nd Prime Minister of Canada.

Since March 2006, a number of decisions have been made that have extremely negative consequences for women in Canada. Unless the Committee asks for an update to the time of the review, the cut-off date of March 2006 for the 6<sup>th</sup> and 7<sup>th</sup> reports means that recent changes and cuts to programs that have grave implications for the exercise and enjoyment of women's human rights will not be reviewed by the CEDAW Committee until 2011. In order for treaty body reviews to be useful, it is imperative that they address current conditions.

**Post-March 2006 Retrogressive Measures**

In order to inform the Committee of the rationale for requesting an update, FAFIA provides this summary of post-March 2006 retrogressive measures. Since March 2006, the Government of Canada has:

- ***Cancelled federal-provincial agreements that had been put in place to develop a national child care system.*** In 2003, the previous federal government took the long-overdue step of dedicating federal funds for early learning and child care programs and the building of a national child care system through bilateral agreements with provinces and territories that provided an additional \$5 billion commitment over five years.

The current federal government cancelled these bilateral agreements as of March 31, 2007. This resulted in an immediate cut of \$1.2 billion that was committed to provinces and territories to invest in their own communities, families, and children. Instead of funding child care services in communities, the current federal government introduced a taxable family allowance of \$100 dollars per month and announced \$250 million incentive-based child care spaces initiative - an approach tried and abandoned by other governments because it simply doesn't work. (Please note paragraphs 104 and 105 of Canada's 6<sup>th</sup> and 7<sup>th</sup> reports. Canada does not inform the Committee that the federal-provincial agreements referred to in paragraph 104, which were the foundational structure for a pan-Canadian child care program, were cancelled).

Quality child care has been called the "ramp" to women's equality. Without it, women can not participate fully in economic, social, political and cultural life. That's why Canadian women need - and deserve - a publicly-funded and publicly accountable, pan-Canadian child care system.

The recent study by the Organization for Economic Co-operation and Development on twenty participating countries<sup>1</sup> shows that Canada is well behind other countries when it comes to early learning and child care services. **While Canada is one of the wealthiest countries within the OECD, it rates at the very bottom when it comes to investing in child care, spending only .2% of GDP. More Canadian mothers with young children work outside the home than in almost any other country (72%), but Canada invests less than half of what other developed nations devote on average to early-childhood education.**

While growing numbers of countries are putting in place publicly funded systems of early learning for all children, Canada has only enough regulated child-care spaces for about 20 per cent of children under 6 with working parents. Only Quebec has a coherent, accessible, regulated child care system.

Canadian women have been lobbying for more than 30 years for a national, publicly funded, high quality child care program. It seemed as though the beginning of such a program was being put in place between 2003 and 2006, but the current federal government has abandoned that crucial beginning.

- ***Refused to improve the federal pay equity law, despite strong and repeated recommendations from the government's own Pay Equity Task Force and the Parliamentary Committee on the Status of Women.*** In September 2006, the federal government announced that it would not introduce a new pay equity law, although the current complaint-based provision in the *Canadian Human Rights Act* is not working.

Canadian women still earn less than men regardless of their occupation, age or education. According to Statistics Canada, on average, women working full-time full-year earn 72 cents for every dollar earned by their male counterparts.

This wage gap is not the result of lower educational levels. Women with university degrees still earn 74% of what university educated men earn. Women earn less than men working in the same sectors, or even in the same jobs. **Canada has one of the largest wage gaps out of the world's 29 most developed countries - only Spain, Portugal, Japan and Korea have larger wage gaps.**

In 2001 the federal government established the Pay Equity Task Force. After extensive consultation and research the Task Force recommended a new proactive pay equity law in May 2004. Employers, unions and women's groups all agreed that a new effective, accessible law, which requires positive employer action, provides clear standards, and allows access to an expert independent adjudicative body is needed.

The federal government in September 2006 decided that women will have to live with a *status quo* that does not work. The federal government's message is that women should rely on education, more mediation and wage rate inspections, although these methods of closing the wage gap have failed.

- ***Defunded the Court Challenges Program.*** On September 25, 2006, the Harper government announced that it would immediately end all funding for the Court Challenges Program of Canada. The Court Challenges Program has provided the only means of access to the use of the constitutional equality rights for women in Canada, and for other disadvantaged groups. Constitutional challenges to laws and policies are simply too expensive to undertake, particularly when such challenges are rarely resolved before they reach the Supreme Court of Canada. In the absence of a funded Court Challenges Program, equality rights in Canada are available only to the rich. The Harper government's decision to cancel this program stands in stark contrast to this Committee's recommendation that the Government of Canada "[f]ind ways for making funds available for equality test cases under all jurisdictions" (CEDAW review of Canada, 2003, para 356)

The Court Challenges Program (CCP) was established in 1985 to fund test cases initiated by individuals and groups to challenge federal laws and

policies that violate the constitutional right to equality, guaranteed by section 15 of the *Canadian Charter of Rights and Freedoms*. With the help of modest CCP funding, for about twenty years, women's organizations and other equality-seeking groups have been able to access the Canadian court system to challenge unconstitutional laws and to argue for substantive interpretations of Canada's new equality guarantee.<sup>2</sup>

An example of the importance of the Court Challenges Program for the advancement of women's equality is the case of *Mclvor v. Canada*. Sharon Mclvor, an Aboriginal woman, challenged the continuing sex discrimination in the *Indian Act*. Despite amendments made in 1985, the *Indian Act* still gives preference with respect to determining Indian status to male Indians and those who are descendants of male Indians. Sharon Mclvor took the challenge to the *Indian Act* forward with the support of the Court Challenges Program. Without it, her case would never have emerged.

On June 7, 2007, in *Mclvor v. Canada*, the British Columbia Supreme Court ruled that the federal government must remove sex discrimination from the determination of Indian status and restore equal Indian status to First Nations women and their descendants. This is a ground-breaking judgment that may affect the Indian status more than 200,000 Aboriginal women and their descendants.

The federal government has announced its decision to appeal this decision, and because of the defunding of the Court Challenges Program, Sharon Mclvor now faces the federal government, using taxpayers' money to carry on its legal defence, while she has no public resources to turn to.

The Court Challenges Program must be restored, not just so that Sharon Mclvor's appeals can be funded, but so that new cases and interventions that serve to advance women's equality in Canada can be supported. There is little point in having a constitutional right to equality - which the Government of Canada claims is a key means of meeting its obligations under Article 2 of CEDAW - if, in fact, women cannot use that right. That is the situation now.

- ***Changed the guidelines for funding women's organizations under the Status of Women Canada (SWC) Women's Program.*** For more than thirty years, the SWC Women's Program has provided modest resources to women's organizations so that they can analyze government policies, develop proposals that reflect the needs of women in their communities, and advocate for change. In the absence of a critical mass of women in either Parliament or the Cabinet (20.7% in Parliament; 21.8% in the federal Cabinet), successive federal governments have provided modest public funding to support participation by women's groups in the democratic process through vigorous community-based advocacy. This has been a hallmark of Canada's democracy.

However, under 2007-2008 guidelines for the Women's Program<sup>3</sup>, women's organizations cannot receive funds for domestic advocacy activities, for lobbying of federal, provincial and municipal governments, or for research related to advocacy and lobbying activities. In addition, only *incorporated* non-profit societies are now eligible for these funds. This requirement means that SWC can no longer be a resource for new or *ad hoc* women's organizations that do not have the capacity to incorporate legally. Also, for the first time, for profit organizations are eligible to receive funds from the Women's Program.

While the guidelines are relatively new, women's groups that do not provide direct services to individual women are already having difficulty securing funding through the Women's Program for their core activities. The National Association of Women and the Law, one of Canada's foremost women's organizations, founded in 1974, closed its doors in September 2007 because its core functions of law reform, advocacy and research cannot be funded under the new guidelines. FAFIA, which since the late 1990s has been the leading Canadian women's organization working to ensure that Canada fulfills its international human rights obligations, has SWC funding to the end of April 2008. However, by the time the 6<sup>th</sup> and 7<sup>th</sup> reports of Canada are reviewed in October 2008, FAFIA will not be permitted to receive or use federal funds to carry out its core function of advocating with governments for the full implementation of Canada's human rights obligations, or, more specifically, to advocate for the implementation of recommendations of the CEDAW Committee.

Since under CEDAW, the government is obliged to ensure that women can, on equal terms with men, participate in the formulation of government policy (Article 7), in our view, the federal government's changes to SWC conflict with its international human rights obligations and commitments.

- ***Eliminated SWC's policy research fund.*** In the cuts and changes to SWC, the policy research fund was eliminated. This modest fund supported the production and publishing of cutting-edge policy research on issues of concern to women in Canada by academics and community researchers. SWC was the only agency producing solid research specifically focussed on issues pertaining to women's equality. This research provided incentive and support for gender-based analysis inside government.

Because of the research articles and studies produced with the support of SWC's policy research fund - which are still posted on SWC's website<sup>4</sup> - SWC has established an international reputation for producing quality, timely research on women, that is relied upon by many women's organizations, human rights organizations, academics and government officials in countries around the world. Women in other countries who have learned of the elimination of SWC's policy research fund consider this a loss, not just to Canadian women, but to the global movement for women's equality.

Since 2003 FAFIA and other women's organizations have campaigned actively for the implementation of the 23 recommendations to Canada which were set out in CEDAW's 2003 report (General Assembly, Fifty-eighth Session, Supplement No. 38 (A/58/38)). During the 2006 federal election FAFIA asked all candidates, including all party leaders, to sign a pledge that, if elected they would "support women's human rights" and "take concrete and immediate measures, as recommended by the United Nations, to ensure that Canada fully upholds its commitments to women in Canada." Stephen Harper, the current Prime Minister, and all other party leaders, signed this pledge.

However, as noted here, recent actions of the federal government are not consistent with this publicly made commitment. Nor are they consistent with specific recommendations made by the CEDAW Committee (as well as other UN treaty monitoring bodies). The Committee recommended to Canada in 2003 that it: make funds available for equality test cases in all jurisdictions (paras. 355-356); accelerate its efforts regarding equal pay for work of equal value at the federal level (para. 376); and expand affordable child care facilities under all governments (para. 380). These recommendations have been directly flouted.

The Committee also encouraged Canada to enhance participation of women in government (paras. 371-372) and to make gender-based analysis mandatory for all governments (paras. 353-354). Changing the SWC guidelines and eliminating the SWC policy research fund are decisions which conflict with the thrust of these recommendations, which is to give women, and women's equality issues, a greater presence in the work of government.

When considering Canada 6<sup>th</sup> and 7<sup>th</sup> reports, and preparing questions for Canada, FAFIA requests Committee members to include questions about these issues, and to ask Canada for an update for the period between March 2006 and October 2008.

### **Quality of Canada's Report**

At a recent meeting of representatives from women's organizations from every part of Canada, convened by FAFIA, Canada's 6<sup>th</sup> and 7<sup>th</sup> reports were reviewed. Participants at this meeting were dismayed by the shallowness of the reports and by Canada's failure to provide a candid, detailed and analytical account to the Committee of the situation of women in Canada.

FAFIA will provide further commentary for the Committee prior to the 4 February PSWG. In the meantime, we wish to draw your attention to some examples of inadequate reporting.

- At para. 59, Canada reports that in September 2005, the Government of Canada established a three-member Expert Panel on Accountability Mechanisms for Gender Equality. It does not report that the Government of

Canada has not followed the recommendations of this report, nor have they informed this Committee that the report has been simply set aside.

- At para. 60, Canada reports that the Standing Committee on the Status of Women issued a report with recommendations regarding Gender-Based Analysis. This report recommended, among other things: 1) development of legislation that would ensure the systematic application of gender-based analysis (GBA) to all federal policy and program activities; 2) the establishment of a Privy Council Office secretariat with responsibility for ensuring the development and eventual implementation of effective gender equality legislation; and annual reporting in Parliament on progress toward the legislation. This was rejected by the Government of Canada in September 2006 in favour of maintaining the *status quo* of uncoordinated departmental efforts.
- At para. 103, Canada reports on changes made to maternity and parental benefits in 2000. The Committee had this information before it in 2003, and noted then that the central problem regarding employment insurance was that fewer women than men were eligible for employment insurance benefits because of their non-standard employment patterns. This is still true in 2008. The difference between men's and women's EI coverage is significant: 40 percent of unemployed men received EI benefits in 2004 while only 32 percent of unemployed women did.<sup>5</sup> Two in every three working women who pay into EI do not receive any benefits if they lose their jobs.

Also the current eligibility rules require women to work more hours than was necessary before 1997 in order to qualify for maternity benefits. Those who now qualify for maternity benefits tend to be better paid women workers, with more standard employment patterns, not lower paid, more vulnerable women workers.<sup>6</sup>

Canada did not respond to the concerns that the Committee set out in 2003 in paras. 381 and 382.

These are just a few examples of places where Canada's reports are uninformative, or unresponsive to the Committee's concerns. How can these inadequacies be addressed through the written questions?

Canada reports that the views of non-governmental organizations were sought with respect to the issues to be covered in Canada's 6<sup>th</sup> and 7<sup>th</sup> reports. Only five organizations responded. FAFIA advised Heritage Canada that, in our view, Canada should, in its next report, outline in detail, any steps that it has taken to respond to the 23 recommendations made in 2003, on a recommendation by recommendation basis, and the impact of those steps.

FAFIA recommends that in its written questions to Canada, Canada be asked for direct and complete answers to each of the concerns raised in 2003, and an

easily understandable account of what steps have been taken to respond to the Committee's recommendations, and the impact of these steps.

### **Response to Treaty Body Recommendations**

As noted, between 2003 and today, FAFIA, with its many allies, has made many efforts to secure from Canadian governments open and practical responses to the 2003 CEDAW recommendations, in the belief that a concerted, coordinated and good faith engagement with these recommendations would make a substantial improvement to the lives of women.

However, FAFIA has encountered both political unwillingness and an institutional vacuum. Canada has not implemented the 2003 recommendations of the CEDAW Committee, nor has it implemented the recommendations of other United Nations treaty bodies to which Canada reports. There are no institutional spaces, at the federal, provincial, territorial, or intergovernmental levels, where genuine review, open public examination, and engagement with the recommendations takes place.

Other treaty bodies have recently expressed explicit impatience with Canada because of its failure to take the substance of the treaty body process seriously. For example, the United Nations Human Rights Committee in the fall of 2005 after its 5<sup>th</sup> review of Canada's compliance with the *International Covenant on Civil and Political Rights* said this:

The Committee notes with concern that many of the recommendations it addressed to the State party in 1999 remain unimplemented. It also regrets that the Committee's previous concluding observations have not been distributed to members of Parliament and that no parliamentary committee has held hearings on issues arising from the Committee's observations, as anticipated by the delegation in 1999.

It recommended:

The State party should establish procedures, by which oversight of the implementation of the Covenant is ensured, with a view, in particular, to reporting publicly on any deficiencies. Such procedures should operate in a transparent and accountable manner, and guarantee the full participation of all levels of government and of civil society, including indigenous peoples.<sup>7</sup>

The Committee on Social, Economic, and Cultural Rights, which reviewed Canada in 2006, made a similar observation. It said:

The Committee regrets that most of its 1993 and 1998 recommendations have not been implemented, and that the State party has not addressed in an effective manner ...principal subjects of concern, which were stated in



relation to the second and third periodic reports, and which are still relevant...<sup>8</sup>

Because of this, FAFIA recommends that in its written questions, the Committee ask Canada about its treaty monitoring processes, the steps it has taken to review CEDAW recommendations since 2003, what institutional forums exist, or will be created, for review of treaty body recommendations, and what steps Canada intends to take in the future in order to review and implement CEDAW Committee recommendations.

### **Questions for Canada**

Because of the foregoing, FAFIA suggests that Canada be asked:

1. To provide nationwide figures, on demand, availability and affordability of child care in all jurisdictions (CEDAW 2003, para. 380);
2. To explain the rationale for the cancellation of the bilateral child care agreements as of March 31, 2007;
3. To provide the Committee with all reports and resolutions of Parliamentary Committees regarding the cancellation of the Court Challenges Program;
4. To provide the rationale for the cancellation of the Court Challenges Program;
5. To explain what other public sources of funding are available to women who seek to exercise their constitutional equality rights in Canada;
6. To provide the rationale for refusing to follow the recommendations of the Pay Equity Task Force and the Parliamentary Committee on the Status of Women regarding improvement to the federal law on pay equity;
7. To explain the rationale for the changes to the guidelines for the SWC Women's Program, and, in particular, for the exclusion of domestic advocacy, lobbying and research from fundable activities for women's organizations;
8. To provide direct and complete answers to each of the concerns raised in 2003 by the Committee;
9. To provide an account of what steps have been taken by each government, and by federal, provincial and territorial governments acting in concert, to respond to the Committee's recommendations;
10. To provide an account of the impact of those steps;
11. To document any review or consideration of the 2003 CEDAW recommendations by Parliamentary Committees, legislative committees, or territorial government committees;
12. To explain what Canada's approach to treaty body recommendations is, and to identify what Minister, public servant, or agency in each government is responsible for ensuring that treaty body recommendations are responded to and implemented;

13. To identify what bodies are responsible for monitoring compliance with Canada's international human rights obligations on an ongoing basis;
14. To explain fully the authority of the Federal-Provincial-Territorial Committee of Officials Responsible for Human Rights, including any restrictions on the authority of that Committee, with respect to implementing recommendations of the United Nations treaty bodies.
15. To explain what steps will be taken to implement future recommendations of the CEDAW Committee.

## Attachments

Attached please find copies of documents, which may be useful to the Committee. The first documents the consensus on Canada among the treaty bodies to whom Canada reports. The second documents the steps that have been taken by FAFIA and the B.C. CEDAW Group since 2003 to secure the implementation of the 2003 CEDAW recommendations.

- 1) *Human Rights Treaty Implementation: The Consensus on Canada* (Vancouver: Poverty and Human Rights Centre, 2007) (Shelagh Day and Gwen Brodsky).
- 2) "Minding the Gap: Human Rights Commitments and Compliance" in M. Young, S. Boyd, G. Brodsky and S. Day, eds., *Poverty: Rights, Social Citizenship and Legal Activism* (Vancouver: UBC Press, 2007) 201.

FAFIA will be providing further information to the CEDAW Committee for use by the Pre-Sessional Working Group, prior to February 4<sup>th</sup>. Also a FAFIA representative, Leilani Farha, will be present on February 4<sup>th</sup> in Geneva to speak with Committee members. FAFIA appreciates your consideration of these submissions. Please reply directly to Shelagh Day.

Sincerely,

Shelagh Day  
Chair  
Human Rights Committee  
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## Endnotes

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<sup>1</sup> This report can be found at:

[http://www.oecd.org/document/63/0,3343,en\\_2649\\_39263231\\_37416703\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/63/0,3343,en_2649_39263231_37416703_1_1_1_1,00.html).

Commentary on the OECD report can be found at:

<http://www.ccsd.ca/subsites/childcare/globe.pdf>

<sup>2</sup> More information about the Court Challenges Program is available at [www.savecourtchallenges.ca](http://www.savecourtchallenges.ca)

<sup>3</sup> See the guidelines at [http://www.swc-cfc.gc.ca/funding/wp/wpguide\\_e.html](http://www.swc-cfc.gc.ca/funding/wp/wpguide_e.html).

<sup>4</sup> [http://www.swc-cfc.gc.ca/pubs/pubspr/index\\_e.html](http://www.swc-cfc.gc.ca/pubs/pubspr/index_e.html)

<sup>5</sup> Monica Townson and Kevin Hayes, Women and the Employment Insurance Program, (Ottawa: Canadian Centre for Policy Alternatives, November 2007).

[http://www.policyalternatives.ca/documents/National\\_Office\\_Pubs/2007/Women\\_and\\_the\\_EI\\_Program.pdf](http://www.policyalternatives.ca/documents/National_Office_Pubs/2007/Women_and_the_EI_Program.pdf)

<sup>6</sup> Ibid. at 16.

<sup>7</sup> Review of 5th periodic report: *Concluding Observations of the Human Rights Committee: Canada*, UN CCPR, 2006 UN Doc. CCPR/C/CAN/CO/5, para. 6.

Online: Office of the High Commissioner for Human Rights

[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/\\$FILE/G0641362.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/$FILE/G0641362.pdf)

<sup>8</sup> Review of 4th and 5th periodic reports: *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, UN CESCR, 2006, UN Doc. E/C.12/CAN/CO/4, E/C.12/CAN/CO/5, para. 11. Online: Office of the High Commissioner for Human Rights

[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/87793634eae60c00c12571ca00371262/\\$FILE/G0642783.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/87793634eae60c00c12571ca00371262/$FILE/G0642783.pdf)