



**FAFIA-AFAI**

Feminist Alliance for  
International Action

L'Alliance Féministe pour  
l'Action Internationale

**CANADA**

# List of Issues for United Nations Human Rights Committee Review of Canada

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## **Introduction**

The Canadian Feminist Alliance for International Action (FAFIA) is a coalition of over sixty women's organizations in Canada. The Alliance was founded after the Fourth World Conference on Women in Beijing in 1995. The mission of the Canadian Feminist Alliance for International Action (FAFIA) is to defend the human rights of women in Canada, and to advance women's equality through working to secure the domestic implementation of Canada's international and regional human rights commitments. FAFIA submits this information to assist the Human Rights Committee's consideration of issues to be examined in the upcoming Review of Canada.

## **Acknowledgements**

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This submission contains 9,559 words.

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## I. Articles 2, 6 and 26 of the Covenant on Civil and Political Rights Require Canada to Respect, Protect and Fulfill Social and Economic Rights

Canada's refusal to recognize social and economic rights as justiciable rights, giving rise to remedial obligations,<sup>1</sup> is a serious obstacle to the achievement of women's equality, and, FAFIA submits, violates the civil and political rights of women to equality, life,<sup>2</sup> political participation, and to effective remedies when rights are violated.

Canadian women have rejected a thin, formal version of women's equality, and fought for a full, substantive version of equality, with material conditions at its centre.<sup>3</sup> While the Government of Canada claims to embrace this understanding of equality, that claim is not persuasive when Canada does not recognize social and economic rights as real rights, on the same footing and indivisible from civil and political rights.

In the language of international human rights, a substantive version of equality means that social and economic rights are an integral part of the "substance" of substantive equality.<sup>4</sup> Women who are materially disadvantaged, many of whom are Indigenous, racialized, or have a disability, do not enjoy equality, and their sexual autonomy, security, political participation, and liberty are all constrained, as is their right to life with dignity.

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<sup>1</sup> The Committee on Economic, Social and Cultural Rights criticized Canada for refusing to recognize social and economic rights as justiciable rights and failing to provide domestic remedies for their violation at its 2016 review of Canada. See Committee on Economic, Social and Cultural Rights, UN Doc E/C.12/2016/SR7 (2016) at para 41, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/037/75/PDF/G1603775.pdf?OpenElement>>.

<sup>2</sup> FAFIA notes para. 26 of General Comment 36 in which the Committee states: "The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity."

<sup>3</sup> Canadian women have been successful in establishing substantive equality as the interpretive norm for Canadian courts and tribunals. See, for example, *Fraser v. Canada (Attorney General)*, 2020 SCC 28, at 42. Abella J. writing for the majority, states "... substantive equality is the 'animating norm' of the s. 15 framework."

<sup>4</sup> See, for example, CEDAW Committee, 1999, General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures.

Women cannot achieve equality unless Canada recognizes social and economic rights as justiciable rights that place essential obligations on all levels of government. Canada must accept that in women's lived experience, the civil, political, social, economic, and cultural dimensions of their inequality are inseparable.

Canada has repeatedly insisted in litigation that the right to equality does not engage any positive obligation of government to provide remedies for violations of social and economic rights.<sup>5</sup> Despite having ratified international treaties that guarantee equality for women, and social and economic rights, the position of governments in Canada appears to be that the right to equality does not require the provision of equality-enhancing benefits, programs and services, even when it is proven that their absence perpetuates women's inequality and disadvantage. Rather, in their view, the right to equality merely requires that *if* a government provides a benefit, program or service, it must do so in a non-discriminatory way. This is not substantive equality.

In 2016, after expressing concerns about the Government of Canada's repudiation of Charter challenges which invoked s. 7 and s. 15 to seek remedies for violations of social and economic rights, the CESCR Committee recommended that Canada "review its litigation strategies in order to foster the justiciability of the economic, social and cultural rights."<sup>6</sup> Subsequently, the Attorney General of Canada undertook a review, mandated by the Prime Minister of Canada. However, the *Principles guiding the Attorney General of Canada in Charter Litigation*,<sup>7</sup> resulting from the review, do not engage with the issue raised by CESCR regarding Canada's stance on social and economic rights, and do not contain any commitment to ensuring that positions advanced by the Government of Canada in Charter litigation are consistent with the obligation to *fulfill* treaty rights.<sup>8</sup>

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<sup>5</sup> See, for example, Factum of the Attorney General of Canada in *Tanujadja et al v. Attorney General of Canada and Attorney General of Ontario*, Court File No.: C57714, at paras. 54 – 57, online at:

<http://socialrightscura.ca/documents/legal/motion%20to%20strike/AG%20Canada%20Factum%20OCA.pdf>

<sup>6</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on the sixth periodic report of Canada*, E/C.12/CAN/CO/6, 4 March 2016, at para. 6, online at:

<http://www.socialrightscura.ca/documents/international/CESCR%20COs%202016.pdf>

<sup>7</sup> Attorney General of Canada, *Principles guiding the Attorney General of Canada in Charter Litigation*, online at: <https://www.justice.gc.ca/eng/csj-sjc/principles2-eng.pdf>

<sup>8</sup> For more detailed comment on this point, please see the submission from the National Housing and Homelessness Network and the Centre for Equality Rights in Accommodation.

FAFIA submits that the insistence of Canada on treating social and economic rights as merely aspirational, not encompassed by ss. 15 and 7 of the Charter, is evidence of intent *not* to fulfill the right to equality and non-discrimination set out in Article 26 of the ICCPR, and *not* to ensure that there is a means of seeking an effective remedy for violations of rights as required by Article 2. It is also evidence of intent *not* to perform the terms of the *Covenant on Civil and Political Rights*, the *Covenant on Economic, Social and Cultural Rights*, and the *Convention on the Elimination of Discrimination against Women*, in good faith, contrary to Article 26 of the *Vienna Convention on the Law of Treaties*.<sup>9</sup>

The problem for women in Canada, however, is not only that governments treat social and economic rights as non-justiciable, unenforceable rights, not subject to determination by competent courts or tribunals, but also that they treat the programmatic fulfillment of the right to equality, which necessarily entails fulfillment of social and economic rights, as optional. Thus governments have not taken the steps necessary to realize the right to substantive equality by implementing the necessary laws, programs, and measures, and allocating the necessary resources, to address and remedy women's long-standing structural and systemic inequality.

The COVID-19 pandemic has exacerbated the inequality of women in Canada, and exposed the harms, including loss of life, that it causes. Canada's failures to implement the rights to an adequate standard of living, to adequate housing, to health, and to just and favourable conditions of work have especially devastating effects on women in a time of crisis, and particularly on those women who are most disadvantaged, including Indigenous women, Black women, racialized women, newcomer women, women living with disabilities, single mothers, and LGBTQ2S communities.<sup>10</sup> FAFIA, along with many women's organizations in Canada, has echoed the call of UN Secretary-General António Guterres, urging our governments to design a new gender and social pact, rooted in core human

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<sup>9</sup> *Vienna Convention on the Law of Treaties*, 23 May 1969, Article 26 states: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith, online at: [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

<sup>10</sup> See Canadian Feminist Alliance for International Action, with YWCA Canada, *A Feminist Economic Recovery Plan for Canada: Human Rights Approach*, December 10, 2020, online at: <https://static1.squarespace.com/static/5f0cd2090f50a31a91b37ff7/t/5fd17ce4a9eaf43bd84b44e1/1607564520499/Feminist+Economic+Recovery+Plan+-+Human+Rights+Approach.pdf>

rights principles, that will fulfill women's economic and social rights and women's right to equality.<sup>11</sup>

### **1. A New Gender and Social Pact and a Comprehensive Plan**

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

Develop and implement a comprehensive national gender equality plan to address the structural factors leading to gender inequality, in close cooperation with provinces and territories, as well as in consultation with civil society organizations.<sup>12</sup>

In November 2016, the CEDAW Committee recommended that Canada:

Develop a comprehensive national gender strategy, policy and action plan addressing the structural factors that cause persistent inequalities with respect to women and girls, including intersecting forms of discrimination, with a special focus on disadvantaged groups such as women and girls with disabilities, those who are single parents, indigenous, Afro-Canadian, migrant, refugee, asylum-seeking, lesbian and bisexual women and girls, and transsexual and intersex persons.<sup>13</sup>

These recommendations have not been acted on by Canada.

FAFIA submits that, particularly in light of the harms exposed by the COVID-19 pandemic, it is time to address the structural inequality of women in Canada in a holistic way. Rather than dealing with the manifestations of deeply rooted systemic discrimination as disconnected factors that can be corrected in isolation from each other, FAFIA recognizes that poverty and

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<sup>11</sup> UN Secretary-General António Guterres, *Tackling Inequality: A New Social Contract for a New Era*, online at: <https://www.un.org/sustainabledevelopment/a-new-social-contract-for-a-new-era/>; FAFIA, *ibid*.

<sup>12</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth report of Canada, E/C.12/CAN/CO/6, 4 March 2016, at para. 22, online at: <http://socialrightscura.ca/documents/international/CESCR%20COs%202016.pdf>

<sup>13</sup> CEDAW, Concluding observations on the combined 8<sup>th</sup> and 9<sup>th</sup> periodic reports of Canada, CEDAW/C/CAN/CO/8-9, 25, November 2016, at para. 21(b), online at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/03/PDF/N1640203.pdf?OpenElement>

income inequality, systemic discrimination in employment, inadequate social programs (social assistance, housing, childcare), lack of access to justice, male violence against women, and police failure to provide women with equal protection of the law are factors that interact with each other to create a structure of inequality for women. Its most harmful effects are experienced by Indigenous women, Black women and racialized women, women with disabilities, single mothers, refugee and immigrant women, and LGBTQ2S communities.

This submission addresses some key components that must be addressed if women in Canada are to enjoy the equality they are guaranteed by Article 26 of the Covenant, and related guarantees in international human rights law.

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

About 14.7% of women in Canada live in poverty according to Statistics Canada's 2017 figures.<sup>14</sup> This is the same percentage of women who were living in low income in Canada in 1976.<sup>15</sup> Women are poorer than men in Canada, are more likely to be poor, and more likely to live in deeper poverty.

Particular groups of women have much higher rates of poverty:

- 34% of First Nations women<sup>16</sup>
- 21.9% of 'visible minority' women<sup>17</sup>
- 29.7% of women with disabilities;<sup>18</sup>
- 30.3% of single women;<sup>19</sup>
- 34.5% of lone mothers;<sup>20</sup> and
- 33% of single women over 65.<sup>21</sup>

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<sup>14</sup> Statistics Canada, *Women in Canada: A Gender-based Statistical Report*, "The Economic Well-Being of Women in Canada", May 16, 2018, online at: <https://www150.statcan.gc.ca/n1/pub/89-503-x/2015001/article/54930-eng.htm>

<sup>15</sup> *Ibid.* Chart 6.

<sup>16</sup> Canadian Women's Foundation, *The Facts About Women and Poverty in Canada*, online at: <https://canadianwomen.org/the-facts/womens-poverty/>

<sup>17</sup> The Economic Well-Being of Women in Canada, *supra* note 13.

<sup>18</sup> Canadian Human Rights Commission, *Report on Equality Rights of Persons with Disabilities*, at 29, online at:

<https://www.homelesshub.ca/sites/default/files/attachments/Report%20on%20Equality%20Rights%20of%20People%20with%20Disabilities.pdf>

<sup>19</sup> Statistics Canada, *The Economic Well-Being of Women in Canada*, *supra* note 13.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*



Further, women's median incomes are 73% of men's in Canada in 2018.<sup>22</sup>

Women's poverty and income inequality has deep roots. Women are poorer than men because they have been assigned the role of unpaid caregiver and nurturer for children, men and old people; because in the paid labour force they perform caregiving and support work which is devalued and lower paid; because there is a lack of safe affordable childcare and this constrains women's participation in the paid work; because women, particularly Indigenous, racialized, and immigrant women and women with disabilities, are devalued workers, and more likely to be in precarious work; and because women incur economic penalties when they are not attached to men and when they have children alone.<sup>23</sup>

### 3. Inadequate Social Assistance

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

The Maytree Foundation reports that in 2018 even in the provinces where welfare incomes were highest, they fell short of the poverty threshold, according to Statistics Canada's measurements.<sup>24</sup> The effect of below poverty line welfare rates is that recipients cannot afford adequate food and shelter.

The federal government could immediately improve the adequacy of social assistance in all jurisdictions by attaching conditions to the money it transfers to the provinces and territories for social programs and, as recommended by the CEDAW Committee in 2008, "establish minimum standards for "social assistance programs ...and a monitoring mechanism to ensure that [social assistance programs] meet the needs ...of women and do not result in discrimination...."<sup>25</sup>

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<sup>22</sup> Statista, Median total income in Canada from 2000 to 2018, by gender, online at: <https://www.statista.com/statistics/464242/median-total-income-in-canada-by-gender/>

<sup>23</sup> Shelagh Day, "The Indivisibility of Women's Human Rights" (2003) 20:3 *Can Wom Stud* 11 at 12; see also The Economic Well-Being of Women, "The proportion of women in low income has been consistent for four decades", supra note 11.

<sup>24</sup> Maytree Foundation, *Welfare in Canada 2018*, at 68, online at: [https://maytree.com/wp-content/uploads/Welfare\\_in\\_Canada\\_2018.pdf](https://maytree.com/wp-content/uploads/Welfare_in_Canada_2018.pdf)

<sup>25</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination Against Women, UN Doc CEDAW/C/CAN/CO/7, (7 November 2008) at para 22 [CEDAW 2008 Concluding Observations].

The CEDAW Committee made a similar recommendation in 2016, again urging the Government of Canada to use its federal spending power to improve conditions for women living in poverty in all jurisdictions.<sup>26</sup> In the past, the Government of Canada has successfully used conditional transfers to the provinces and territories to establish threshold standards for social programs. In neo-liberal economic times, this practice was abandoned, to the detriment of women.

For women, poverty and economic inequality have gendered, harmful consequences. Women living in poverty are less able to protect themselves from being treated as sexual commodities and nothing more. They lose sexual autonomy in relationships. Their vulnerability to rape and assault is magnified. Their ability to care for their children is compromised, and they are more likely to have their children removed in the name of “protection,” often because women lack adequate housing and cannot supply proper food or ensure safe conditions. Without adequate incomes, women cannot secure stable housing and become homeless, increasing their exposure to violence. They have no political voice or influence. They are both over-policed and under-protected by police. Without access to adequate social programs, including adequate social assistance and social services, such as shelters and transitional housing, women are much less able to resist or escape subordination and violence. The interaction, interrelatedness, and indivisibility of civil, political, economic, social and cultural rights is manifest in the lives of women who live in poverty.

#### **4. Women in the Care Economy and Service Sector**

In paragraph 7 of the 2015 Concluding Observations on Canada, the Human Rights Committee expressed concern about the persistent inequalities in employment between women and men, and in particular about the high level of the pay gap and the “failure to enforce or ensure employment equality in the private sector across the country.” The Committee urged Canada to implement an effective legislated framework on equal pay in all jurisdictions.

Since 2015 there has been no meaningful change. Comparing annual earnings, women earn 74 cents for every dollar earned by men; comparing hourly earnings,

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<sup>26</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the 8<sup>th</sup> and 9<sup>th</sup> periodic reports of Canada, CEDAW/C/CAN/CO/8-9. 18 November 2016, at para. 47c), online at: <https://digitallibrary.un.org/record/3802136?ln=en>

women earn 82 cents for every dollar earned by men.<sup>27</sup> Racialized women, Indigenous women, and women with disabilities all earn less than the average for women overall.<sup>28 29</sup>

The federal *Pay Equity Act* was passed in 2018, but it will not be in effect until associated regulations come into force later in 2021. Then employers in the federal sector will have three years to put their proactive pay equity plans in place.<sup>30</sup> Apart from this, equal pay, pay equity and employment equity legislation has not changed. Ontario and Quebec continue to be the only two provinces with proactive pay equity legislation that applies to both public and private sector employers.

The inequalities between women and men persist not only because there is no effective legislated pay equity regime in all jurisdictions, but also because current equal pay laws are designed to rely on a male comparator and rarely touch the most pernicious employment and pay discrimination faced by women, which occurs in the care economy and service sector where women are the predominant workers.

Statistics Canada reports that “female-dominated occupations tend to be compensated at lower wage rates than male-dominated occupations—even when they involve the same skill level.”<sup>31</sup> And most women are employed in traditionally female occupations – health care and social services, educational services, and accommodation and food services.<sup>32</sup> According to Statistics Canada in 2015 “around 56% of women were employed in occupations involving the

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<sup>27</sup> Women also do more part-time work than men, are the majority of workers earning minimum wage, and stay out of the work force to care for children and family members more than men.

<sup>28</sup> Sheila Block, Grace-Edward Galabuzi, Ricardo Tranjan, *Colour-Coded Income Inequality*, at 13, online at:

<https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2019/12/Canada%27s%20Colour%20Coded%20Income%20Inequality.pdf>

<sup>29</sup> Canadian Women’s Foundation, *The Facts About the Gender Pay Gap in Canada*, online at: <https://canadianwomen.org/the-facts/the-gender-pay-gap/>

<sup>30</sup> Employment and Social Development Canada, “Government of Canada moves forward on pay equity to help address wage gaps in federally regulated workplaces”, November 15, 2020, online at: <https://www.newswire.ca/news-releases/government-of-canada-moves-forward-on-pay-equity-to-help-address-wage-gaps-in-federally-regulated-workplaces-868759309.html>

<sup>31</sup> Statistics Canada, *Women in Canada: A Gender-based Statistical Report, Women and Paid Work*, online at: <https://www150.statcan.gc.ca/n1/pub/89-503-x/2015001/article/14694-eng.htm>

<sup>32</sup> *Ibid.*

'5 Cs': caring, clerical, catering, cashiering and cleaning. This is little changed from 1987, when 59.2% of women were employed in these occupations."<sup>33</sup>

Precisely because of their location in these industries and occupations, women account for almost 2/3 of the jobs lost due to the COVID-19 pandemic, as many of the services they work in have closed. Armine Yalnizian, a Canadian economist calls it a "she-cession" which shows no signs of coming to an end, and will affect women's incomes and security over the long term.<sup>34</sup> While there is some recovery of women's jobs at the time of reporting, many women have simply left the labour market.<sup>35</sup>

The women in these sectors who remain employed are in the most dangerous work in pandemic times because they are performing front-line service work; at the same time they are among the lowest paid workers, with the fewest benefits, sick days, and other protections. Many of the women working in these sectors are racialized, immigrant, migrant, or undocumented.

As the Canadian Women's Foundation reports, racialized and immigrant women "are concentrated in the lowest paying and most precarious of caring jobs—jobs that carry a high risk of exposure to coronavirus infection and are less likely to offer important protections such as paid sickness leave or health benefits. Only 21% of women workers in Canada are racialized women, yet they make up roughly 30% of home support workers and housekeepers, kitchen workers, and light duty cleaners. Statistics Canada reports that "[a]lmost one-third of employed Black women (31.7%) worked in health care and social assistance in January 2021, and over four-fifths (81.2%) of these women were immigrants."<sup>36</sup> Indigenous women are also over-represented in low-wage service occupations.<sup>37</sup>

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<sup>33</sup> *Ibid*, Table 7.

<sup>34</sup> Armine, Yalnizian, Financial Post, "The 'She-cession' is real and a problem for everyone", October 23, 2020, online at: <https://financialpost.com/opinion/opinion-the-she-cession-is-real-and-a-problem-for-everyone>

<sup>35</sup> RBC Thought Leadership, "Canadian Women Continue to Exit the Labour Force - RBC Economics", 19 November 2020, online at: <https://thoughtleadership.rbc.com/canadian-women-continue-to-exit-the-labour-force/>

<sup>36</sup> Statistics Canada, The Daily, "Study: A labour market snapshot of Black Canadians during the pandemic", February 24, 2021, online at: <https://www150.statcan.gc.ca/n1/daily-quotidien/210224/dq210224b-eng.htm>

<sup>37</sup> Canadian Women's Foundation et al, *Resetting Normal: Women, Decent Work and Canada's Fractured Care Economy*, July 2020, online at: <https://canadianwomen.org/wp-content/uploads/2020/07/ResettingNormal-Women-Decent-Work-and-Care-EN.pdf>

The pandemic has exacerbated and exposed the systemic misogyny and racism that structure the care economy and the service sector where the majority of women work. The women who were already the most disadvantaged and in the most precarious, lowest paid and least protected employment are the hardest hit.

The sexist and racist structure of these industries, and of the conditions of work in them, violate women's right to equality and non-discrimination guaranteed by Article 26, as does the failure of Canada to address and remedy this systemic discrimination.

FAFIA recommends that the Human Rights Committee ask Canada to:

- ***Revise the "Principles guiding the Attorney General of Canada in Charter Litigation", in consultation with civil society organizations as recommended by the Committee on Economic, Social and Cultural Rights, in order to ensure that positions in litigation taken fully reflect Canada's obligations to fulfill the rights set out in Article 2, 6, and 26 of the ICCPR.***
- ***Describe the steps Canada is taking to design a comprehensive strategy, policy and action plan, informed by intersectional analysis, that will address the structural factors that cause the persistent inequalities of women and girls, and ensure that pandemic recovery measures advance women's equality, particularly the equality of the most marginalized and disadvantaged women and girls.***
- ***Explain why it has not implemented recommendations of United Nations treaty bodies to raise social assistance rates in all jurisdictions, in light of Articles 6 and 26 of the Covenant, and the constraint that poverty imposes on the enjoyment of every right.***
- ***Provide details of laws, programs, and resource allocations that will be introduced to eliminate persistent inequalities in pay and conditions of work that are experienced by women workers in the care economy and the service sector in all jurisdictions, and in particular by Indigenous, Black and racialized women and women with disabilities.***
- ***Provide information regarding any steps being taken to ensure that there is proactive pay equity legislation in all jurisdictions.***

- **Provide information regarding any steps being taken to increase unionization of women in the care economy and service sector, and to improve protections for women who are precarious and/or part-time workers.**

## **II. Articles 2, 6 and 26: Access to Justice, the Right to an Effective Remedy, and Equal Protection of the Law**

Canada provides various legal protections to women, as well as guarantees of equality and non-discrimination in statutory human rights laws in all jurisdictions and guarantees of equal protection and equal benefit of the law in its Constitution. However, women do not enjoy equal protection and equal benefit of the law. They face profound and persistent sex and race bias in policing and in the administration of justice, and encounter many obstacles to obtaining effective remedies for violations of their rights.

### **1. Legal Aid**

The former Chief Justice of the Supreme Court of Canada, the Right Honourable Beverley McLachlin, stated almost a decade ago that “lack of access to civil justice represents the most significant challenge to our justice system”.<sup>38</sup> The Canadian Bar Association (CBA) called it a “crisis” in 2015, noting that civil legal aid services are almost non-existent in some provinces.<sup>39</sup> Justice Canada statistics show that the number of self-represented litigants involved in civil and family law cases has risen to between 50 and 80 per cent of all such cases over the past decade.<sup>40</sup> Self-represented litigants are usually those who do not qualify for legal aid, and cannot afford a lawyer.

In January 2019, an external review of legal aid services conducted for the Attorney General of British Columbia, entitled *Roads to Revival*, concluded that: “Legal aid is not broken in BC. It has simply lost its way. Years of underfunding

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<sup>38</sup> McLachlin, Beverley, “Foreward”, in M. Trebilcock, A. Duggan, L. Sossin, eds. *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012).

<sup>39</sup> Canadian Bar Association, “Legal Aid in Canada”, July 2015, online at: <<http://www.cba.org/Sections/Legal-Aid-Liaison/Resources/Resources/Legal-Aid-in-Canada>>.

<sup>40</sup> Olivia Stefanovich, CBC News, “‘We’re in trouble’: Advocates urge Ottawa to help close the access-to-justice gap”, April 18, 2021, online at: <https://www.cbc.ca/news/politics/access-to-justice-federal-budget-2021-requests-1.5989872>

and shifting political priorities have taken their toll on the range and quality of legal aid services, and especially on the people who need them.”<sup>41</sup> The review also found that: “Women suffer disproportionately from inadequate access to family legal services. In January 2018, the Legal Services Society confirmed that approximately 70 percent of family legal aid applications are made by women; however, 55 percent of all family legal aid applications are refused. Access to family legal aid is clearly an equality issue.”<sup>42</sup>

In 2019, the Government of Ontario cut the legal aid budget by 30%, and the catastrophic effects of this cut are being felt during the pandemic. Many more people are facing evictions, job loss, and domestic violence issues, without access to advice and legal representation.<sup>43</sup> Women, Indigenous and racialized communities, immigrants, and refugees are disproportionately affected.<sup>44</sup>

Again, in 2021, former Supreme Court of Canada Chief Justice Beverly MacLachlin states that access to justice in Canada is in crisis,<sup>45</sup> particularly with respect to civil and family law.

There is a marked gender difference in legal aid usage: men are the primary users of criminal law legal aid,<sup>46</sup> while women are the primary users of civil law legal aid, especially for family law matters. The Canadian Bar Association has reported that the lack of access to civil legal aid disproportionately affects women, people with disabilities, recent immigrants, members of racialized communities and Indigenous people.<sup>47</sup> Women's lack of access to legal aid affects their ability to

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<sup>41</sup> Jamie, McLaren, *Road to Revival*, Executive Summary, January 2019, online at: [https://s3.amazonaws.com/tld-documents.lnassets.com/0010000/10759/roads\\_to\\_revival-maclaren\\_legal\\_aid\\_review-25feb19.pdf](https://s3.amazonaws.com/tld-documents.lnassets.com/0010000/10759/roads_to_revival-maclaren_legal_aid_review-25feb19.pdf)

<sup>42</sup> *Ibid.* at 31.

<sup>43</sup> Alyshah Haslam, The Toronto Star, “Legal Aid Ontario facing up to \$70 million funding drop amid COVID-19 ‘perfect storm’”, July 13, 2020, online at: <https://www.thestar.com/news/canada/2020/07/13/legal-aid-ontario-facing-up-to-70-million-funding-drop-amid-covid-19-perfect-storm.html>

<sup>44</sup> Colour of Poverty, Colour of Change, “30% Cuts to Legal Aid Are an Attack on Racialized Communities, Immigrants and Refugees”, April 15, 2019, online at: <http://www.globenewswire.com/en/news-release/2019/04/15/1804187/0/en/30-Cuts-to-Legal-Aid-Are-an-Attack-on-Racialized-Communities-Immigrants-and-Refugees.html>

<sup>45</sup> Olivia Stefanovich, CBC News, *supra* at 11.

<sup>46</sup> Canada Department of Justice, *Legal Aid in Canada, 2017-2018*, online at: <https://www.justice.gc.ca/eng/rp-pr/jr/aid-aide/1718/p1.html>, Table 14: The highest proportion of legal aid clients were male, and accessed criminal legal aid services

<sup>47</sup> Buckley, Melina. *The Legal Aid Crisis: Time for Action* (Ottawa: Canadian Bar Association, 2000), online at: <<http://www.cba.org/cba/Advocacy/PDFfiles/Paper.pdf>>.

deal with family violence, division of property issues, child custody, and poverty law issues such as housing protections, social assistance and other social security benefits.

Legal aid in Canada has never fully recovered from changes to the federal transfers that fund legal aid that were made in the 1990s. Currently, the Government of Canada provides a direct transfer to the provinces and territories for criminal legal aid, but civil legal aid is simply one option in a basket of programs that provinces and territories can fund from the Canada Social Transfer (CST).<sup>48</sup> When requirements on provinces and territories to spend federal transfer money on civil legal aid were removed in 1995, their expenditures fell drastically.<sup>49</sup> From 1993 to 2012, the number of approved civil legal aid applications fell by two-thirds.<sup>50</sup>

The Canadian Bar Association has called on the Government of Canada to fund both criminal and civil legal aid through a direct, designated transfer (not the CST) and to establish a National Public Legal Assistance System that is sustainably-funded and that “provides comprehensive, people –centered legal services ...to meet essential legal needs and contribute to the health and well – being of disadvantaged and low-income Canadians.”<sup>51</sup> A National Public Legal Assistance System is necessary to provide equal and non-discriminatory access to justice for women.

FAFIA recommends that the Human Rights Committee ask Canada to:

- ***Describe the steps it will take to ensure that women in all jurisdictions have equal and non-discriminatory access to justice.***
- ***Describe the steps it will take to establish a national public legal assistance system that can ensure comprehensive legal services, in all***

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<sup>48</sup> Alison Brewin, Canadian Centre for Policy Alternatives, *Legal Aid Denied: Women and the Cuts to Legal Services in BC*, September 2004 at 9, online at: [http://www.policyalternatives.ca/sites/default/files/uploads/publications/BC\\_Office\\_Pubs/legal\\_services.pdf](http://www.policyalternatives.ca/sites/default/files/uploads/publications/BC_Office_Pubs/legal_services.pdf).

<sup>49</sup> Currie A, Canadian Forum on Civil Justice, *The State of Civil Legal Aid in Canada: By the Numbers in 2011-2012*, May 13, 2013, online at: <http://www.cfcj-fcjc.org/a2jblog/the-state-of-civil-legal-aid-in-canada-by-the-numbers-in-2011-2012> - sthash.a29I51Pw.dpuf.

<sup>50</sup> Canadian Bar Association, *Study on Access to the Justice System – Legal Aid*, December 2016, at p. 7, online at: <https://www.cba.org/CMSPages/GetFile.aspx?guid=8b0c4d64-cb3f-460f-9733-1aaff164ef6a>

<sup>51</sup> *Ibid.* at 8.



***jurisdictions, that meet standards of adequacy and non-discrimination.***

- ***Provide information on the current criteria for access to criminal law legal aid and civil law legal aid, and the number of legal aid service hours provided in each jurisdiction, by area of law – criminal, civil, refugee, immigration, prison, poverty – and disaggregated by sex, race, and disability of users.***
- ***Provide information regarding the financial resources allocated by each government - federal, provincial and territorial - for criminal legal aid and civil legal aid.***
- ***Describe in detail its plan for meeting Goal 16 of the 2030 UN Sustainable Development Goals (SDGs) which calls on governments to “provide access to justice for all and build effective, accountable and inclusive institutions at all levels”.***

## **2. Policing: Misogyny, Racism and the Royal Canadian Mounted Police**

The Royal Canadian Mounted Police (RCMP) is Canada’s national police force. It provides policing services in eight provinces (except Ontario and Québec) and three territories, as well as in approximately 200 municipalities and 600 Aboriginal communities.<sup>52</sup> The RCMP is the principal police service in most of rural and northern Canada.

As of 2021, thousands of women have reported gender-based, sexuality-based, and/or race-based discrimination and harassment by male officers in the Royal Canadian Mounted Police (RCMP). Class action suits have been launched by women who are members of the RCMP and have been sexually harassed and discriminated against by their male colleagues.

In addition, numerous reports have documented sexualized abuse, brutality and assault experienced by women whom the RCMP is expected to ‘serve and protect’, particularly Indigenous women.

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<sup>52</sup> OSCEPOLIS, online at: <https://polis.osce.org/country-profiles/canada>

There is also extensive documentation of sexist and racist bias in RCMP policing. A study of the “unfounding”<sup>53</sup> of sexual assault complaints by police forces in Canada showed that the RCMP has an unacceptably high rate.<sup>54</sup> There are also reports, including from Indigenous women, of failures to respond appropriately to violence against women by intimate partners,<sup>55</sup> as well as the documented neglect and indifference of the RCMP to family reports of disappearances of Indigenous women and girls, and failures to investigate.

In addition, there is no effective oversight of the RCMP. There is a Civilian Review and Complaints Commission (CRCC).<sup>56</sup> However, its authority is limited.

Sexualized, racialized and homophobic harassment, discrimination and violence against women is systemic and institutionalized in the culture and regular practices of the RCMP.

#### **a) RCMP Sexual Harassment of Female Officers**

On November 11, 2020, the Honourable Michel Bastarache, former Justice of the Supreme Court of Canada, issued the *Final Report on the Implementation of Merlo-Davidson Settlement Agreement - Broken Lives, Broken Dreams: The Devastating Effects of Sexual Harassment On Women in the RCMP* (Bastarache report).<sup>57</sup>

The Bastarache report was prepared following a settlement agreement in a class action suit filed by two former RCMP officers, Janet Merlo and Linda Gillis Davidson, who were subjected to sexual harassment<sup>58</sup> by other RCMP male officers. They filed the suit for the harm suffered by themselves and other women who had worked for the RCMP since 1974. The suit was joined by 3,086 women

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<sup>53</sup> ‘Unfounding’ refers to a police determination that an alleged sexual assault did not occur.

<sup>54</sup> The Globe and Mail, “Unfounded: Police dismiss 1 in 5 sexual assault claims as baseless, Globe investigation reveals”, February 3, 2017, online at: <<https://www.theglobeandmail.com/news/investigations/unfounded-sexual-assault-canada-main/article33891309/>>.

<sup>55</sup> This concern is reported in the Human Rights Watch reports and Nunavut Legal Service Board report, all cited below.

<sup>56</sup> Civilian Review and Complaints Commission for the RCMP, online at: <https://www.crcc-ccetp.gc.ca/>

<sup>57</sup> Royal Canadian Mounted Police Government of Canada, *Final Report on the Implementation of the Merlo Davidson Settlement Agreement*, 19 November 2020, online at: <https://www.rcmp-grc.gc.ca/en/final-report-implementation-merlo-davidson-settlement-agreement>

<sup>58</sup> Harassment was defined broadly in the final report and encompassed sexual assaults.

RCMP Officers. Bastarache's report was prepared after assessing the compensation claims and conducting 644 interviews with current or former female employees of the RCMP who had experienced sexual harassment and discrimination based on their sex or sexual orientation.<sup>59</sup>

Bastarache's findings are shocking. He wrote:

I have concluded, based on everything I was told over the past 3 years, that the culture of the RCMP is toxic and tolerates misogyny and homophobia at all ranks and in all provinces and territories. This culture does not reflect the stated values of the RCMP, and it is found throughout the organization. RCMP members and officers are forced to accept that they must function in the context of this culture to succeed...

...a fundamental restructuring may be necessary to resolve entrenched issues of misogyny, racism and homophobia...[C]ultural change is highly unlikely to come from within the RCMP. It has had many years and many reports and recommendations and yet the unacceptable behaviours continue to occur. ...It is my belief the time has come for the Government of Canada to ask some hard questions about the structure and governance of federal policing.<sup>60</sup>

Many women that the assessors interviewed had experienced devastating impacts and live with serious psychological injuries including major depressive disorder, post-traumatic stress disorder, generalized anxiety disorder, panic attacks and substance dependence.<sup>61</sup> In the interviews conducted the women reported that they have experienced long-term, serious damage to their self-esteem and confidence including developing eating disorders, alcohol-abuse and self-blame. The impact of the continued bullying and harassment was so severe that one claimant committed suicide during the claims process<sup>62</sup>. The assessors described the reports of widespread forms of sexual assault and harassment within the RCMP as "shocking" and "overwhelming."<sup>63</sup> Over 130 claimants disclosed penetrative sexual assaults. Other claimants described a sexualized environment characterized by the frequent use of swear words and highly degrading expressions that reference women's bodies, sexual jokes, innuendos,

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<sup>59</sup> Bastarache Report.

<sup>60</sup> *Ibid.* Executive Summary.

<sup>61</sup> *Ibid.* at 50.

<sup>62</sup> *Ibid.* at 51.

<sup>63</sup> *Ibid.* at Executive Summary

discriminatory comments with respect to the abilities of women and unwelcome sexual touching.<sup>64</sup>

Following the findings of the report, the RCMP Commissioner Brenda Lucki responded that the RCMP will take a “holistic and meaningful” approach to changing the underlying factors that have contributed to the toxic culture that the women and 2SLGBT1+ members experienced within the RCMP.<sup>65</sup> However, she also stated that an external review was not necessary.<sup>66</sup>

Prime Minister Justin Trudeau responded to the report and its findings by noting the connection between harassment and discrimination inside the RCMP and the conduct of RCMP Officers with the public. He said: “If an organization cannot keep its own members safe from harassment and discrimination, how can Canadians have confidence in them, to keep them safe as they enforce the law? There is a need for a lot of work, moving forward to improve and reform the RCMP.”<sup>67</sup>

There is a well-documented pattern of gross neglect and lack of accountability in addressing gender-based, race-based and sexuality-based harassment and sexual assault within the RCMP which has been demonstrated from the many

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<sup>64</sup> The Merlo class action is only one of many suits against the RCMP for sexual and racial harassment and discrimination. In 2017, a class action alleging sexual harassment was filed by three women Cheryl Tiller, Mary-Ellen Copland, and Dayna Roach, who were non-policing employees of the RCMP, “Female Non-Policing RCMP Class Action”, online at: *Klein Lawyers* <https://www.callkleinlawyers.com/class-actions/current/female-non-policing-rcmp/>); in July 2020, former RCMP constable Margorie Hudson, an indigenous woman, who along with her fellow racialized colleagues were subjected to widespread systemic racism and racist acts by RCMP members and RCMP management, brought a class-action against the RCMP (“RCMP Racism Class Action”, online at: <https://www.callkleinlawyers.com/class-actions/current/rcmp-racism-class-action/>

<sup>65</sup> Royal Canadian Mounted Police Government of Canada, RCMP response to the report of the Independent Assessors regarding the claims made under the Merlo/Davidson settlement agreement, 19 November 2020, online at: <https://www.rcmp-grc.gc.ca/en/rcmp-response-the-report-the-independent-assessors-the-claims-made-the-merlodavidson-settlement>

<sup>66</sup> Samantha Beattie, Huffpost, “RCMP Perpetuates Misogynistic, Homophobic And Racist Culture: Report, But Commissioner Brenda Lucki said an immediate external review isn’t necessary”, November 20, 2020, online at: <[https://www.huffingtonpost.ca/entry/rcmp-racism-report\\_ca\\_5fb6c487c5b69969a6a323c8](https://www.huffingtonpost.ca/entry/rcmp-racism-report_ca_5fb6c487c5b69969a6a323c8)>

<sup>67</sup> Rachel Aiello, CTVNews “‘It shook me’: Report details ‘toxic’ and hateful culture within RCMP”, 19 November 2020, online at: <https://www.ctvnews.ca/politics/it-shook-me-report-details-toxic-and-hateful-culture-within-rcmp-1.5195954>

complaints and investigations over the years.<sup>68</sup> The Civilian Review and Complaints Commission for the RCMP (CRCC) in a 2017 “Report into Workplace Harassment in the RCMP” noted that in the past decade, there have been over 15 reviews conducted by the RCMP and there is no shortage of solutions proposed but very few have been implemented.<sup>69</sup> The CRCC concluded that the culture of workplace harassment is a serious issue in the RCMP. It said that “Abuse of authority remains a significant problem within the RCMP” and that “[g]iven the RCMP’s poor track record of implementing change, strong civilian oversight and government leadership are required to ensure sustained reform.”<sup>70</sup>

Despite this record, and despite Bastarache’s Report and recommendation, no external, independent and in-depth review has been put in place to determine how to eradicate misogyny, racism and homophobia from RCMP culture and to consider the future of the RCMP as a federal police organization.

### **b) RCMP Sexual Violence and Exploitation of Women and Girls in Nunavut**

On June 13, 2019, the Legal Services Board of Nunavut asked for a systemic review of policing by the RCMP in Nunavut. The Board raised “significant concerns about the systemic issues regarding the policing of communities in Nunavut”.

The letter documented 32 cases of RCMP misconduct, abuse and inhumane treatment of Inuit, especially women, from across the territory.<sup>71</sup> The Board called on the CRCC<sup>72</sup> for a territory-wide systemic review of policing and said that “there appears to be a particular pattern of poor service when it comes to women in domestic and sexual assault matters.”

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<sup>68</sup> CBC News, “B.C. Mountie alleges years of sexual harassment”, 8 November 2011, online at: <https://www.cbc.ca/news/canada/british-columbia/b-c-mountie-alleges-years-of-sexual-harassment-1.1034369>

<sup>69</sup> Civilian Review and Complaints Commission for the RCMP, *Report into Workplace Harassment in the RCMP*, 21 January 2019, online at: <https://www.crcc-ccetp.gc.ca/en/report-workplace-harassment-rcmp>

<sup>70</sup> *Ibid.*

<sup>71</sup> Thomas Rohner, CBC News, “Inuit women in Nunavut suffer ‘unnecessary violence,’ racism from RCMP, legal aid board says”, 8 June 2020, online at: <https://www.cbc.ca/news/canada/north/inuit-nunavut-rcmp-allegations-violence-racism-1.5599557>

<sup>72</sup> Civilian Review and Complaints Commission, Civilian Review and Complaints Commission for the RCMP, online at: <https://www.crcc-ccetp.gc.ca/>

For example, a woman who had called the police many times to report her fear of being assaulted by her spouse was told by the RCMP to stop calling. She could not rely on the police for help and was sexually assaulted by her spouse. Another woman was found injured in a shipping container, but RCMP did not respond to any calls for assistance. Many Inuit women who were arrested were left in restraint chairs and/or suicide gowns for extended periods or left naked. In a case where a male accused was found in the act of penetrative sexual assault, the victim was left behind unclothed and not given any assistance. Women were struck, pinned on the ground, kicked, slapped, grabbed, and needlessly made to suffer violence at the hands of male RCMP Officers. The Board said that the degree of physical force used by the RCMP “appeared to be a casual and gratuitous practice of unnecessary violence against Inuit detainees and arrestees. And there is no oversight or accountability on the part of senior officers”.<sup>73</sup>

These were not the only incidents,<sup>74</sup> and members of the community have raised serious concerns in the past about the systemic nature and persistence of police violence in Nunavut. Overall, the Legal Resources Board identified these issues:

- RCMP’s inadequate response to domestic violence and sexual assault complaints
- Concerns with the RCMP’s handling of women victims and accused
- Strip-searching of women in Nunavut
- Systemic violence
- Warrantless entry of homes
- Failure to provide medical attention
- Operating outside of police role
- Racism and cultural insensitivity

In January 2020, in-depth interviews with 45 Inuit women and 40 service providers (including police officers) conducted in the four regions in Inuit Nunangat by Pauktutit Inuit Women of Canada and Dr. Elizabeth Comack found

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<sup>73</sup> Thomas Rohner, CBC News, “Nunavut leaders demand systematic review of RCMP in wake of allegations of misconduct against Inuit women” 10 June 2020, online at: <https://www.cbc.ca/news/canada/north/nunavut-leaders-systematic-rcmp-review-1.5603222>

<sup>74</sup> *Ibid.* The Board also brought attention to the “degrading and humiliating” treatment of women in prison by the police. It raised two incidents where women were forcibly strip searched by male Officers and left naked. RCMP misuse of strip-searching is a persistent issue despite the Supreme Court of Canada in *R v Golden* declaring strip searches to be “inherently humiliating and degrading” and prohibited its usage as “routine policy”.

evidence of the pervasiveness and severity of the violence that Inuit women experience including racialized policing in the area.<sup>75</sup>

This report also concluded that the violence is systemic, embedded in institutional policies and practices and not a matter of a few individual officers holding racist beliefs and stereotypes about the Inuit women. The report details RCMP's gross negligence and inadequacy of response measures in cases of domestic and gender-based violence being reported to them by women and girls, wherein they refused to act and "remove the male abuser."<sup>76</sup> The women shared their deep lack of trust in the police, recounting experiences where they or their family members were harassed, beaten, assaulted or arrested without due process. There is no reason for Indigenous women and girls to trust and seek help from the RCMP.<sup>77</sup>

### **c) RCMP 'Unfounding' of Sexual Assault Claims**

A Globe and Mail investigation in 2017 revealed that 1 in 5 cases of sexual assault is dismissed by the police in Canada as "unfounded".<sup>78</sup> "Unfounded" means that the allegation is dismissed as baseless. The RCMP's rate of "unfounding" of sexual assault cases was 17% overall, which is unacceptably high since true unfounded cases, which arise from malicious or mistaken reports, account for only about 2 to 8%. In some places, the RCMP police rates of 'unfounding' were much higher –

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<sup>75</sup> Pauktuutit Inuit Women of Canada and Dr. Elizabeth Comack, *Addressing Gendered Violence against Inuit Women: A review of police policies and practices in Inuit Nunangat*, 6 August 2020, online at: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rvw-plc-prctcs-pauk/index-en.aspx>

<sup>76</sup> *Ibid.* at 80.

<sup>77</sup> *Ibid.* at 65.

<sup>78</sup> The Globe and Mail, "Unfounded: Police dismiss 1 in 5 sexual assault claims as baseless, Globe investigation reveals", online at: <https://www.theglobeandmail.com/news/investigations/unfounded-sexual-assault-canada-main/article33891309/>

34% in Iqaluit, Nunavut, 29% in Whitehorse, Yukon,<sup>79 80</sup> and nearly 40% in Kelowna, British Columbia.<sup>81</sup>

When sexual assault allegations are incorrectly deemed baseless, women's right to equal protection of the law is violated.

#### **d) RCMP Inadequate Response to Violence Against Women**

In April 2020, a man posing as a member of the RCMP went on a murderous rampage across 16 locations in Nova Scotia for 13 hours, beginning in the rural community of Portapique, and killed 22 people.<sup>82</sup> Former neighbors of the gunman said that he had a history of beating and strangling his partner and that they warned police he was violent and had a collection of illegal firearms – but that little action was taken by authorities.<sup>83</sup> The woman had approached the neighbors for help, but according to them, the RCMP refused to take action against the abusive partner stating that they could not do anything until the woman filed a complaint.<sup>84</sup> The RCMP have been criticized for ignoring the misogynistic and gendered nature of this mass homicide, as well as attacks on women and children more generally.<sup>85</sup>

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<sup>79</sup> *Ibid.* Unfounding rates for different locations and different police services in Canada can be found by using the search functions on the website.

<sup>80</sup> In 2018, a Yukon Advocate Case Review Committee was started and provided with federal government funding and three years to look at unfounded sex assaults. However, the RCMP National Headquarters shut down the project and did not release the report; see Fakiha Baig, Kamloops This Week, "Women's groups in Yukon disappointed 'unfounded' sex assault project terminated", online at: <https://www.kamloopsthisweek.com/women-s-groups-in-yukon-disappointed-unfounded-sex-assault-project-terminated-1.24284668>

<sup>81</sup> Ian Holliday, "Kelowna RCMP reopening 12 sexual assault investigations after national review", 27 February 2020, online at: *Br Columbia* <https://bc.ctvnews.ca/kelowna-rcmp-reopening-12-sexual-assault-investigations-after-national-review-1.4831121>

<sup>82</sup> The Guardian, "Women's groups demand public inquiry of Nova Scotia shooting to expose police failures", 27 July 2020, online at: <http://www.theguardian.com/world/2020/jul/27/nova-scotia-shooting-police-failures-gunman-violence-domestic-abuse-record>

<sup>83</sup> The Guardian, "Nova Scotia shooting: ex-neighbours say they warned police about gunman", 13 May 2020), online at: <http://www.theguardian.com/world/2020/may/13/nova-scotia-shooting-ex-neighbours-warned-police-gunman>

<sup>84</sup> The Guardian, "Nova Scotia shooting: residents ask why authorities didn't send emergency alert", 23 April 2020, online at: <http://www.theguardian.com/world/2020/apr/23/nova-scotia-shooting-emergency-alert>

<sup>85</sup> Steve McKinley, thestar.com, "Why a feminist 'lens' could be key to understanding the Nova Scotia mass shooting", 21 July 2020, online at: <https://www.thestar.com/news/canada/2020/07/21/why-a-feminist-lens-could-be-key-to-understanding-the-nova-scotia-mass-shooting.html>



After intense lobbying from families and women's rights advocates,<sup>86</sup> a full public inquiry into the Nova Scotia mass shooting has been launched.<sup>87</sup>

### **e) RCMP and Indigenous women and girls: Brutality, discrimination and neglect**

In 2013, Human Rights Watch investigated police violence against Indigenous women in northern British Columbia<sup>88</sup> and documented stories of excessive force against girls<sup>89</sup>, forcible confinement<sup>90</sup>, and death threats by police officers.<sup>91</sup> Women and girls stated that they had their arms broken, were raped,<sup>92</sup> and were released in the middle of the night by police without appropriate clothing in arctic temperatures.

In 2017, Human Rights Watch documented Indigenous women's accounts of police neglect when they reported domestic violence, as well as inappropriate and invasive body and strip searches, sexual harassment, and physical assault. The 64 Indigenous women, interviewed in Prince Albert, Regina, Saskatoon, and several smaller communities in northern and central Saskatchewan, reported a deep mistrust of law enforcement and fear that they would face retaliation if they filed a complaint against a police officer.<sup>93</sup>

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<sup>86</sup> Nicole Munro, Saltwire, "Hundreds join women's rights activists in rally for public inquiry into mass shooting", July 27, 2020, online at: <https://www.saltwire.com/atlantic-canada/news/canada/hundreds-join-womens-rights-activists-in-rally-for-public-inquiry-into-mass-shooting-478065/>

<sup>87</sup> Rachel Aiello, CTV News, "Government now launching full public inquiry into N.S. mass shooting", online at: <https://www.ctvnews.ca/politics/government-now-launching-full-public-inquiry-into-n-s-mass-shooting-1.5041933>

<sup>88</sup> Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*, February 13, 2013, online at: <https://www.hrw.org/report/2013/02/13/those-who-take-us-away/abusive-policing-and-failures-protection-indigenous-women>

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid* at 61.

<sup>91</sup> *Ibid* at 8.

<sup>92</sup> *Ibid* at 59-62

<sup>93</sup> Human Rights Watch, *Submission to the Government of Canada on Police Abuse of Indigenous Women in Saskatchewan and Failures to Protect Indigenous Women from Violence*, 19 June 2017, online at: <https://www.hrw.org/news/2017/06/19/canada-police-fail-indigenous-women-saskatchewan>

Examples of police brutality against Indigenous women are not limited to Northern British Columbia and Saskatchewan. Women have reported violence, harassment and sexual exploitation by police officers in Canada for many years.<sup>94</sup>

RCMP brutality, harassment, bias, and neglect in the policing and protection of Indigenous women and girls was one of the central issues for the National Inquiry into Missing and Murdered Indigenous Women and Girls.<sup>95</sup> But so far there is no discernible change in RCMP conduct, and no National Action Plan which includes steps to remedy the violations of Indigenous women's human rights that are occurring at the hands of Canada's national police force.

### **f) Bill C-3 (43-1) - An Act to amend the Royal Canadian Mounted Police Act**

In January 2020, Bill C-3 (43-1) was introduced in Parliament to amend the RCMP Act and the Canada Border Services Agency Act (CBSA Act).<sup>96</sup> The Bill proposes a new Public Complaints and Review Commission which would build on the Civilian Review and Complaints Commission (CRCC), which is the review and complaints oversight body for the RCMP, and extend its scope of review to the CBSA. This poses an immediate concern about effectiveness, since CRCC is currently under-resourced and has a significant backlog of complaints against the RCMP.<sup>97</sup>

The Bill does not address and change the systemic weaknesses of the CRCC.

Currently, the RCMP investigates complaints against itself; complainants who are not satisfied with the investigation can ask for a CRCC

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<sup>94</sup> A video showing a 19-year-old Indigenous woman being punched, knocked unconscious and dragged into a cell by community safety officers at an RCMP detachment in Thompson, Manitoba was circulated but not investigated. The RCMP officers pressured and bullied the woman to withdraw her complaint. See Kristin Annable, CBC News, "Video showing woman knocked out, dragged to RCMP cell prompts lawsuit, call for investigation", 9 November 2020, online at: <https://www.cbc.ca/news/canada/manitoba/video-rcmp-thompson-1.5792761>

<sup>95</sup> Pamela Palmater, "Shining Light on the Dark Places: Addressing Police Racism and Sexualized Violence against Indigenous Women and Girls in the National Inquiry"(2016), 26:2 CJWL253

<sup>96</sup> House Government Bill C-3 (43-1), online at:

<https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10613928>

<sup>97</sup> Latoya Farrell, Karla Lottini & Harsha Walia, BC Civil Liberties Association "'CBSA is Not a Fair or Accountable Agency': Why We Need Canada Border Services Agency Oversight" 12 March 2020, online at: <https://bccla.org/2020/03/cbsa-is-not-a-fair-or-accountable-agencywhy-we-need-canada-border-services-agency-oversight>

investigation.<sup>98 99</sup> The CRCC then investigates, submits a report to the RCMP, which the Commissioner is required to respond to, but there is no set time within which the Commissioner must reply.<sup>100</sup> The Commissioner's office has delayed responding to reports, sometimes for months, sometimes for much longer,<sup>101 102</sup> keeping them from public release.<sup>103</sup> When the CRCC decides on a complaint, there is little information on the procedures for the decision, thus lacking transparency.<sup>104</sup> Often, the people on the review bodies are former police officers.<sup>105</sup>

Approximately 2000 complaints a year are made against the RCMP.<sup>106</sup> Since 2017, 795 complaints were reviewed by the CRCC.<sup>107</sup> Some of these complaints, and ensuing reports, are not made public; the last report was

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<sup>98</sup> Complaint and Review Process Flowchart, 27 April 2014, online at: <https://www.crcc-ccetp.gc.ca/en/complaint-and-review-process-flowchart>

<sup>99</sup> Alex Ballingall, The Toronto Star, "Who investigates complaints about the RCMP? In '99.9%' of cases, it's the RCMP", June 17, 2020, online at: <https://www.thestar.com/politics/federal/2020/06/17/who-investigates-complaints-about-the-rcmp-in-999-of-cases-its-the-rcmp.html>

<sup>100</sup> Catharine Tunney, CBC News, "Time is right to update RCMP oversight bill, says former public safety minister", 2 July 2020, online at: <https://www.cbc.ca/news/politics/rcmp-oversight-goodale-lucki-1.5643272>

<sup>101</sup> Karin Larsen, CBC News, "Complaints commissioner says RCMP sitting on year-old report into alleged abuses of power", 20 February 2020, online at: <https://www.cbc.ca/news/canada/british-columbia/wet-suwet-en-rcmp-exclusion-zone-report-1.5469786>

<sup>102</sup> Kristy Kirkup, The Globe and Mail, "B.C. Civil Liberties Association launches lawsuit against RCMP Commissioner Brenda Lucki", November 10, 2020, online at: <https://www.theglobeandmail.com/politics/article-bc-civil-liberties-association-launches-lawsuit-against-rcmp/>

<sup>103</sup> Catharine Tunney, CBC News, "RCMP watchdog's misconduct reports caught in limbo, stalling their", 7 June 2020, online at: <https://www.cbc.ca/news/politics/rcmp-complaint-watchdog-1.5594861>

<sup>104</sup> Beatrice Britneff, Global News, "Complaints about RCMP conduct are mounting. But who holds them accountable?" 17 June 2020, online at: <https://globalnews.ca/news/7067010/complaints-accountability-rcmp-conduct/>

<sup>105</sup> *Ibid*

<sup>106</sup> Civilian Review and Complaints Commission for the RCMP, *Chairperson's Final Report After Commissioner's Notice on Chairperson-initiated Complaint and Public Interest Investigation regarding Policing in Northern British Columbia*, 25 January 2017, online at: <https://www.crcc-ccetp.gc.ca/en/chairs-final-report-after-commissioners-chair-initiated-complaint-and-public-interest-investigation>

<sup>107</sup> Thomas Rohner, CBC News, "RCMP civilian oversight agency has 'no teeth' and is 'fundamentally flawed' say lawyers", 2 July 2020, online at: <https://www.cbc.ca/news/canada/north/civilian-review-and-complaints-commission-weak-1.5633986>

posted in 2017.<sup>108</sup> Currently, the CRCC is mandated to conduct public interest investigations, but it rarely uses those powers. These weaknesses in the RCMP review system are not addressed by Bill C-3(43-1), and it will not bring robust and meaningful changes to RCMP oversight.

FAFIA recommends that the Human Rights Committee ask Canada to:

- ***Explain why it has not appointed an external review of the RCMP, as called for by the Bastarache Report.***
- ***Explain, in detail, what steps it is taking to eliminate the entrenched misogyny, racism and homophobia from the culture of the RCMP.***
- ***Provide the Committee with a detailed description of its plans to implement the recommendations of the Bastarache Report.***
- ***Provide the Committee with detailed information on specific measures taken to respond to reports and recommendations from the CRCC, Bastarache, Human Rights Watch, Legal Services Board of Nunavut, Pauktuitit, and any other reports and law suits regarding sexist, homophobic or racial harassment, biased policing, strip-searching of women, abuse or assault of women by the RCMP.***
- ***Provide information regarding the monitoring mechanisms that are in place, or will be put in place, to determine the effectiveness of any measures intended to end systemic discrimination and in and by the RCMP.***
- ***Provide detailed information on the RCMP's review of policies and procedures related to strip searches, and the measures it has taken to implement the recommendations of its own review of strip-search policy and practice.***
- ***Provide detailed information about the number of sexual assault cases the RCMP has re-opened and re-investigated that were originally classified as "unfounded."***

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<sup>108</sup> Pam Palmater, Canadian Dimension, "Canada should declassify, deconstruct and defund the RCMP", 15 June 2020, online at: <https://canadiandimension.com/articles/view/declassify-deconstruct-and-defund-the-rcmp>

- **Provide detailed information regarding Bill-3(43-1), and a description of additional provisions and steps Canada will take to cure the well-documented flaws in the oversight and review processes for complaints against the RCMP.**

### **III. Indian Act Sex Discrimination: Forced Assimilation (CCPR/C/CAN/CO/6, para. 17)**

On August 15, 2019, the Government of Canada brought into force amendments to the *Indian Act* that eliminated the core of the sex discrimination against First Nations women and their descendants that has been in place since 1876 (Bill S-3). At that time, Canada announced that removing this sex discrimination from the *Indian Act* newly entitled up to 450,000 First Nations women and their descendants to Indian status.<sup>109</sup> However, since 2017,<sup>110</sup> Canada has registered only 17,500 new Indians.<sup>111</sup> Until the First Nations women and their descendants are actually registered the discrimination continues.

Since its inception, the *Indian Act* has privileged 'Indian' men<sup>112</sup> and their descendants over 'Indian' women and their descendants. For more than 140 years being entitled to Indian status required being related to a male Indian by blood or marriage. There was a one-parent rule for transmission of status, and the one parent was male. In addition, Indian women who married non-Indian men lost their status, while Indian men who married non-Indian women endowed their Indian status on their wives.

*Indian Act* sex discrimination has been identified as an element of the Canadian genocide against Indigenous peoples,<sup>113</sup> because it is a form of forced

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<sup>109</sup> Crown-Indigenous Relations and Northern Affairs Canada, "Removal of all sex-based inequities in the Indian Act", 15 April 2019, online at: <https://www.newswire.ca/news-releases/removal-of-all-sex-based-inequities-in-the-indian-act-890690227.html>

<sup>110</sup> This is the date when the first provisions of Bill S-3 came into force, which removed some elements of the sex discrimination, as identified by the Quebec Superior Court in *R. v. Deschenaux*. Provisions of Bill S-3 that remove the core of the sex discrimination did not come into force until August 2019.

<sup>111</sup> This is the number registered between December 2017 and March 2021, provided to FAFIA by the Honourable Carolyn Bennett, Minister of Crown-Indigenous Relations.

<sup>112</sup> Note that we use the term 'Indian' in this particular context as this is the legal term in the *Indian Act*, while recognizing that it is an archaic, colonial term.

<sup>113</sup> National Inquiry on Missing and Murdered Indigenous Women and Girls, *A Legal Analysis of Genocide: Supplementary Report*, online at: [https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report\\_Genocide.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf)

assimilation. It has had the effect of defining thousands of First Nations women and their descendants out of the pool of legally recognized 'Indians,' disentiing them to recognition, belonging in their communities, political voice, and the benefits of treaties and inherent rights, in violation of Article 8 of the *Universal Declaration on the Rights of Indigenous Peoples*, as well as Articles 26 and 27 of the ICCPR. The fact that independent demographers estimate the number of First Nations women and their descendants who have been excluded because of sex discrimination at 270,000 to 450,000<sup>114</sup> highlights the effectiveness of *Indian Act* sex discrimination as a tool of assimilation.

The sex discrimination has had profoundly harmful effects on First Nations women, their descendants and their communities. It has been identified as a root cause of the violence against Indigenous women and girls by the UN CEDAW Committee, the Inter-American Commission on Human Rights, and the National Inquiry on Missing and Murdered Indigenous Women. The sex discrimination has defined First Nations women and their descendants as lesser Indians and lesser parents, and caused dislocation, banishment from community, loss of culture, language and identity, and social marginalization.

The United Nations Human Rights Committee ruled on January 11, 2019, when it decided the petition of Sharon McIvor and her son Jacob Grismer, that the sex discrimination in the *Indian Act* violated the rights of First Nations women to equal protection of the law and to equal enjoyment of their Indigenous culture, guaranteed by the *International Covenant on Civil and Political Rights*.

In its 2019 announcement that the pre-1985 sex discrimination is now eliminated from the *Indian Act*, the Government of Canada stated that this was a first step in responding to the National Inquiry's recommendations, as well as a response to the UN Human Rights Committee's ruling.

However, registering the First Nations women and their descendants, who have been excluded from status and its benefits for so long, has not been treated as an urgent priority. The registration process, which is notoriously slow and confusing, continues to be highly problematic. Applicants are told the registration process will take from 6 months to 2 years. During the pandemic, if the First Nations women and their descendants were registered they would be entitled to uninsured health benefits, special COVID-19 assistance, and priority

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<sup>114</sup> Office of the Parliamentary Budget Officer, *Addressing sex-based inequities in Indian Registration*, 5 December 2017, online at: [https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2017/Bill%20S-3/Bill%20S-3\\_EN.pdf](https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2017/Bill%20S-3/Bill%20S-3_EN.pdf)

vaccination. As long as they are not registered, they are denied access to urgently needed health care. FAFIA, in partnership with First Nations women leaders and allies, has repeatedly requested that *Indian Act* registration be deemed to be an essential service during the COVID-19 pandemic.<sup>115</sup> There has been no government response to these requests.

Further, many of those who are newly eligible are not aware of their new entitlement. In order for the Government of Canada to fulfill its obligations to end the discrimination and to provide an effective remedy, a pro-active and urgent information campaign is necessary to reach the First Nations women and their descendants who are entitled to status and its benefits.

Further, stripping First Nations women of status if they married non-status men caused numerous forms of consequential discrimination. The women lost band membership, and access to services and facilities extended to status Indians and band members, including the ability to hold land on reserve, to be buried on reserve, to access housing provided or supported by the band, to have children attend reserve schools, to access support for higher education for oneself or one's children, to access health care provided on or through the reserve/band. The children also suffered from the consequential discrimination affecting their mothers, for they too were denied membership, services and benefits. In addition, since for decades Canadian policy was that only a 'status' Indian could benefit from a Treaty, women and their descendants lost Treaty rights and benefits.

Without strategic action to unwind the deep consequences of the sex discrimination, First Nations women and their descendants will continue to suffer the ongoing effects of the discrimination.

Budget 2021 does not allocate resources to support an urgent, pro-active information campaign or a timely effective *Indian Act* registration process for First Nations women and their descendants, or for measures to address the residual discrimination.

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<sup>115</sup> See FAFIA and Dr. Pamela Palmater, *Impact of the COVID-19 Pandemic on Indigenous Women and Girls in Canada*, Response to the call for input by Jose Francisco Cali Tzay, Special Rapporteur on the rights of Indigenous Peoples for his report to the General Assembly on the Impact of COVID-19 on Indigenous Peoples, June 19, 2020, online at: <https://fafia-afai.org/wp-content/uploads/2020/06/P.-Palmater-FAFIA-Submission-COVID19-Impacts-on-Indigenous-Women-and-Girls-in-Canada-June-19-2020-final.pdf>

Registration of the First Nations women and their descendants who have been excluded from status because of sex discrimination must be a key element of Canada's promised National Action Plan on Missing and Murdered Women and Girls.

Canada's failure to actively remedy the sex discrimination leaves the effects of this legislated discriminatory assimilation in place and perpetuates the genocide.

FAFIA recommends that the Human Rights Committee ask Canada to:

- ***Provide detailed information regarding the plans of the Government of Canada, including the resources being provided, numerical goals and timetables, to ensure that the up to 450,000 First Nations women and their descendants who are newly entitled to status by the August 2019 amendments to the Indian Act can in fact be registered in a timely manner, and receive all the benefits of status, including statutory benefits, rights of belonging, and membership in First Nations.***
- ***Provide detailed information regarding the Government of Canada's plans to provide reparations, and to "take steps to address residual discrimination within First Nations communities arising from the legal discrimination based on sex in the Indian Act" as required by the United Nations Human Rights Committee in its decision in *Mclvor v. Canada*, CCPR/C/124/D/2020/2010.***
- ***Provide detailed information regarding the processing time for Indian Act registration since 2017, the numbers registered, the number of staff and officials assigned to carry out this work, any official policies and instructions for interpretation of the Indian Act used by registration officials, and standards for registration processing and timing that apply.***

#### **IV. A National Action Plan on Missing and Murdered Indigenous Women and Girls (CCPR/C/CAN/CO/6, para. 9)**

In June 2019, the National Inquiry on Missing and Murdered Indigenous Women and Girls issued its Final Report and called on federal, provincial, territorial,



municipal and Indigenous governments to develop and implement a National Action Plan to address the human rights crisis of murders and disappearances of Indigenous women and girls.<sup>116</sup> The Inquiry noted that this recommendation was made by both the CEDAW Committee<sup>117</sup> and the Inter-American Commission on Human Rights (IACHR),<sup>118</sup> and that the recommendations of CEDAW and the IACHR need to be implemented as a part of this Plan.

Prime Minister Justin Trudeau, in his response to the National Inquiry's report, in June 2019 agreed with the report's findings, including that the violence against Indigenous women and girls is part of a slow-moving genocide against Indigenous peoples, and promised that the Government of Canada would develop and implement a National Action Plan within a year.

At the date of this submission, there is still no Plan. Canada has promised to issue it on June 3, 2021.

The crisis is unchanged. Indigenous women and girls continue to be murdered and to disappear at alarming rates. Indigenous women and girls are only 4 percent of the Canadian population, but they were 28 percent of the victims of homicides perpetrated against women in 2019 and they are 12 times more likely to be murdered or missing than non-Indigenous women in Canada.<sup>119</sup> Indigenous women are also more likely to be affected by all types of violent victimization<sup>120</sup>.

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<sup>116</sup> Executive Summary, p. 62, Calls for Justice 1.1

<sup>117</sup> Committee on the Elimination of Discrimination against Women, "Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women", April 2015, CEDAW/C/OP.8/CAN/1 online at: <https://digitallibrary.un.org/record/836103?ln=en>

<sup>118</sup> OAS, Inter-American Commission on Human Rights, Missing and Murdered Indigenous Women in British Columbia, Canada, OEA/Ser.L/V/II.Doc.30/14 (2014) online at: <http://www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf>

<sup>119</sup> The National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place, The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, 29 May 2019, online at <https://www.mmiwg-ffada.ca/final-report>

<sup>120</sup> *Ibid.*

In addition, the 2014 General Social Survey on Victimization<sup>121</sup> shows that the rate of homicide among Indigenous women is 4.01 per 100,000 while the rate for non-Indigenous women is 0.55 per 100,000. The rate of homicide for Inuit women and Indigenous women in the North is even higher.<sup>122</sup>

The National Inquiry, along with the CEDAW Committee and the IACHR in their reports, have all agreed that there are multiple causes of the violence, and that these causes are deeply rooted in Canadian history and in the ordinary functioning of Canada's institutions. Massive and complex change is required to bring equality and safety to the lives of Indigenous women.

The Plan's adequacy will need to be assessed in light of Canada's obligations under the *Covenant on Civil and Political Rights*, as well as other international and regional human rights instruments.

The National Inquiry, the CEDAW Committee and the IACHR all agree that the National Action Plan must:

- include measurable goals and timetables for implementation
- be co-ordinated among federal, provincial, and territorial governments so that there is an agreed nation-wide plan for goals, timetables, measures, programs, and resources;
- be supported by resources dedicated to capacity building, sustainability, and long-term solutions, and by use of the federal spending power to incentivize and support action by provincial and territorial governments;
- have infrastructure that ensures that Indigenous women, their representatives and advocates, are centrally engaged in the design of measures and of implementation strategies;
- have infrastructure and process that provides independent and public oversight and evaluation of steps taken and their effectiveness.

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<sup>121</sup> Every five years, Statistics Canada conducts the General Social Survey (GSS) on Victimization, which asks Canadians to self-report victimization for eight offence types. Data from the GSS inform us on the victimization experiences of Canadians aged 15 years and older, including incidents not brought to the attention of the police.

<sup>122</sup> Status of Women Canada, About Gender-Based Violence, online at: <https://cfc-swc.gc.ca/violence/knowledge-connaissance/about-apropos-en.html#fn8>

Key components of the National Action Plan must address:

- the social and economic disadvantage of Indigenous women and girls;
- the legacy and continuation of *Indian Act* sex discrimination, and the need to bring First Nations women and their descendants back into their communities as equal members and participants;
- changes needed to child welfare systems in all jurisdictions;
- police violence against Indigenous women and girls, and police failures to protect Indigenous women and girls;
- bias in the justice system;
- overcriminalization and incarceration of Indigenous women and girls;
- lack of adequate services, including legal aid, and shelters;
- supports for families of murdered and disappeared Indigenous women and girls, including supports for re-opening cold cases, and prosecutions;
- resources for Indigenous women and their organizations so that they can participate, with stable support, in the transformation of institutional practices and policies.

FAFIA recommends that the Human Rights Committee ask Canada to:

- ***Provide its National Action Plan on Missing and Murdered Indigenous Women and Girls, and specify in detail how the measures respond to each of the National Inquiry's 231 Calls for Justice and to guarantees of life, equal protection of the law, and equal enjoyment of culture set out in Articles 6, 26 and 27 of the Covenant on Civil and Political Rights.***
- ***Delineate the specific measures that have been adopted, with the goals and timetables for implementation.***
- ***Describe in detail the tools and mechanisms that are in place to monitor and report on the effectiveness of the National Action Plan.***
- ***Describe how members of any monitoring bodies were chosen or appointed.***
- ***Provide a detailed description of resources allocated for implementation and monitoring.***

- ***Describe the co-ordinated plans and inter-governmental agreements regarding implementation and monitoring that are in place among federal, provincial and territorial governments.***

## **V. Prisons for Women**<sup>123</sup>

### **1. Over-representation and over-classification of Indigenous and racialized women in prison**

The makeup of the prison population reflects Canada's history of alienating Indigenous peoples from their traditional lands, territories and practices, and subordinating them socially, politically and economically. Canada's criminal justice system criminalizes women, especially Indigenous women and Two Spirit people, for the social inequities they experience, rather than changing the systems in which these inequities are rooted. When compared to the non-Indigenous population, Indigenous people in Canada are more likely to experience poverty, homelessness, physical, emotional or sexual abuse, violent crime, and incarceration.<sup>124</sup> Indigenous women and Two-Spirit people are particularly vulnerable to these conditions due to the intersecting inequities they experience, which further increase their likelihood of victimization and criminalization.

Victimization and criminalization, rooted in legacies of colonial oppression, are also experienced by Black, Muslim and other visible minority communities whose members are racially profiled and over-policed. The increased presence of police and security authorities in racialized communities results in elevated incarceration rates and overrepresentation in Canada's criminal justice system.

Since 2010, the incarceration rate of Indigenous women in federal institutions has increased by a shocking 72.3%.<sup>125</sup> Currently, 42% of all women incarcerated in

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<sup>123</sup> This section of the FAFIA submission was prepared with the Canadian Association of Elizabeth Fry Societies (CAEFS). Please see CAEFS submission for more detail on these issues.

<sup>124</sup> The Royal Society of Canada (RSC), 2021, "Correctional Services During and Beyond COVID-19", January 2021, at p. 21, online at: [https://rsc-src.ca/sites/default/files/images/Corrections%20PB\\_EN.pdf](https://rsc-src.ca/sites/default/files/images/Corrections%20PB_EN.pdf)

<sup>125</sup> Office of the Correctional Investigator (OCI), 2019, "2018-2019 Annual Report", at 106.

federal prisons are Indigenous.<sup>126</sup> Although Indigenous women are only 4% of the population. From 2005-2015, the Black population in federal institutions also increased by 69%.<sup>127</sup>

Approximately, 54% of those in federal prisons for women identify as Indigenous, Black, or racialized-- yet these groups make up less than 10% of the total Canadian population.<sup>128</sup>

In addition to over-representation, the CSC's classification system delivers higher security classifications for Indigenous and racialized individuals.<sup>129</sup> Higher security classifications impede access to culturally relevant programming and services, and adversely impact the completion of correctional plans, prolonging time spent in prison.

## 2. Solitary confinement

In 2019, the practice of segregation in Canadian federal prisons was deemed unconstitutional.<sup>130</sup> Despite a change in the law intended to respond to the Supreme Court decision, the practice of segregation in the prison system is ongoing and largely unchanged; it is simply being referred to by a variety of other names.<sup>131</sup> Structured Intervention Units (SIUs), which replaced administrative segregation, along with a myriad of other oppressive and punitive segregation tactics, continue to be used. Whether solitary confinement is called 'structured intervention', 'observation', 'lockdown', 'dry celling', a 'restricted movement routine', or detention in a maximum-security pod, these practices they

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<sup>126</sup> Office of the Correctional Investigator (OCI), 2019-20 Annual Report of the Correctional Investigator of Canada, at 20, online at: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20192020-eng.pdf>

<sup>127</sup> The Standing Senate on Human Rights, 2019, "Interim Report- Study on the Human Rights of Federally-Sentenced Persons: The Most Basic Human Right is to be Treated as a Human Being", pg. 43, online at: [https://sencanada.ca/content/sen/committee/421/RIDR/Reports/RIDR\\_Report\\_Prisoners\\_e.pdf](https://sencanada.ca/content/sen/committee/421/RIDR/Reports/RIDR_Report_Prisoners_e.pdf)

<sup>128</sup> OCI, "2018-2019 Annual Report", at 106.

<sup>129</sup> Tom Cardoso, The Globe and Mail, December 31, 2020, "For Indigenous women, systemic racial bias in prison leaves many worse off than men", online at: <https://www.theglobeandmail.com/canada/article-for-indigenous-women-systemic-racial-bias-in-prison-leaves-many-worse/>

<sup>130</sup> *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62, online at: <https://www.bccourts.ca/jdb-txt/sc/18/00/2018BCSC0062.htm>

<sup>131</sup> Adelina Iftene, Policy Options, November 19, 2020, "Solitary Confinement Continues Under a Different Name", online at: <https://policyoptions.irpp.org/magazines/november-2020/solitary-confinement-continues-in-canada-under-a-different-name/>

are still egregious violations of human rights and would be considered unconstitutional under Canadian law and in violation of international law.

### **3. Sexual abuse and assaults in federal prisons**

95% of federally sentenced women and gender diverse individuals have histories of physical and/or sexual victimization.<sup>132</sup> Advocates for the Canadian Elizabeth Fry Societies (CAEFS) have documented multiple allegations of sexual violence perpetrated by CSC staff against prisoners. These incidents have included unwelcome comments of a sexual nature; sexual assault incidents where the survivor was discouraged from disclosing details to investigators; demeaning and intrusive strip searches; and inappropriate viewing of prisoners by male CSC staff while prisoners are using the toilet in their own cells.

In his 2019-2020 Annual Report, the Correctional Investigator of Canada reported that he undertook an investigation of sexual violence in federal prisons, which confirmed that it is a “pervasive but underreported problem.” He reported that:

As it stands, the Correctional Service of Canada (CSC) is not required to publicly report on incidents of sexual abuse involving federal inmates. Surprisingly the investigation found that the agency has never conducted any national research or prevalence studies in this area of corrections. There is no stand-alone policy to guide how staff are expected to respond or prevent sexual victimization...[V]ictims do not report their experiences of abuse as there are too many disincentives and risks associated with disclosure. Many are afraid to report, fearing retaliation, retribution or re-victimization by the perpetrator(s), be it other inmates or staff. Further, they face the risk of not being believed, being ridiculed or even punished for reporting coerced sex. Most incidents are not investigated, and rarely or ever reach the courts. Significantly, CSC has not put in place a strategy to protect vulnerable groups or persons who are disproportionately victimized behind bars, including individuals who identify as LGBTQ+, women, those with a history of trauma and abuse, disability or mental health issue.<sup>133</sup>

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<sup>132</sup> RSC, “Correctional Services During and Beyond COVID-19”, supra, at p. 18.

<sup>133</sup> Government of Canada, Office of the Correctional Investigator, 2019-20 Annual Report of the Correctional Investigator of Canada Tabled in Parliament, *Report Shines Light on Sexual Coercion and Violence behind Bars*, October 27, 2020, online at: <https://www.oci-bec.gc.ca/cnt/comm/press/press20201027-eng.aspx>

FAFIA recommends that the Human Rights Committee ask Canada to:

- *Provide detailed information regarding planned steps to reduce incarceration by Indigenous and racialized prisoners, and to reduce their over-classification.*
- *Provide detailed information regarding any plans to redesign the classification system which has the documented effect of over-classifying Indigenous and racialized women.*
- *Provide detailed information about the use of SIUs, observation cells, lockdown, dry celling, restricted movement routines, maximum security pods, and any other form of solitary confinement in prisons for women - by prison, number of times used, length of time used per incident, justification, Indigeneity, race, disability, and LGBTQ2S status.*
- *Provide information regarding steps Canada will take to address and prevent sexual abuse and sexual assaults in prisons for women by staff and other inmates.*