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Report of the Income Security Advocacy Centre

United Nations Committee on Economic, Social and Cultural Rights

Canada's Sixth Periodic Review

Geneva, February 24-25, 2016

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Introduction

Poverty is an insidious social harm. It impacts on every aspect of life, from birth to death, causing poor health, lower educational attainment, more dangerous and lower paid work opportunities, and shorter lives. It undermines the enjoyment of all other essential human rights. In a wealthy country such as Canada, all of these harms can be avoided, and yet 4.6 million people (13.5% of the population) lived in poverty in 2013.¹ Particularly marginalized groups such as persons with disabilities, Indigenous peoples, migrants, racialized communities, women and older persons are more likely to live in deep poverty and to remain poor over longer periods.²

¹ Based on the percentage of the population living below the “after-tax low income measure”: Statistics Canada (December 17, 2015), “Income of Canadians, 2000 to 2013”, The Daily (Catalogue No. 11-001-X) at p. 3.

² Statistics Canada (2012), “Low Income in Canada” at pp. 7-8, 29-42; Canadian Labour Market and Skills Researcher Network (2012), “Macroeconomic impacts of Canadian immigration” at p. 2.

The Committee on Economic, Social and Cultural Rights has made similar observations about Canada before, most recently in its concluding observations in 2006.³ Yet, almost a decade later Canada has yet to implement most of the Committee’s poverty-related recommendations.

Canada is still failing to comply with its obligations under the International Covenant on Economic, Social and Cultural Rights. Social security programs in Canada are grossly inadequate and do not ensure an adequate standard of living, contrary to articles 9 and 11 of the Covenant. Canada does not have standards of accountability to ensure adequate social assistance. Unemployed workers have serious difficulties in accessing employment insurance benefits. Since the last periodic review, Canada has also moved to deny migrants access to several social security programs in a discriminatory manner contrary to article 2 of the Covenant.

Canada must take steps to develop an effective national poverty-reduction strategy that ensures that all Canadians, including those disabilities, can live without poverty. As part of that strategy, Canada must consider new and changing needs resulting from shifts in the labour market and considers the gaps left by complex and intersecting income-security programs.

The Income Security Advocacy Centre

The Income Security Advocacy Centre (ISAC) is a community legal clinic located in Toronto and funded by Legal Aid Ontario. We were established in 2001 with a provincial mandate to

³ Committee on Economic, Social and Cultural Rights, (22 May 2006), “Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada” (E/C.12/CAN/CO/4; E/C.12/CAN/CO/5) [“Concluding Observations: Canada (2006)”], at para. 11.

advance the systemic interests and rights of low-income Ontarians with respect to income security programs through test-case litigation, policy advocacy, and community organizing.

ISAC works closely with Ontario's 60 geographically-based community legal clinics, which assist low-income Ontarians in their local areas to resolve the problems they encounter with accessing benefit programs and services in their daily lives. We also work with community and advocacy groups and organizations across Ontario and Canada on provincial and national issues.

Since inception, ISAC has advocated for improvements to the income security of all low-income people in Ontario through reform of benefit programs and systems, rate increases in income security programs, the adoption and implementation of provincial poverty reduction strategies, and improvements in the labour market.

A. The Right to Social Security: Article 9

The right to social security requires State Parties to have programs that alleviate poverty. It is closely linked to the right to an adequate standard of living in article 11 of the Covenant. The right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights.⁴

⁴ Committee on Economic, Social and Cultural Rights (4 February 2008), "General Comment No. 19: The right to social security (art. 9) (E/C.12/GC/19)" ["General Comment No. 19"], at para. 1.

The right to social security includes the right to adequate social assistance.⁵ At minimum, social assistance must provide a level of benefits that enables individuals and families to acquire basic housing, food and clothing.⁶

(i) Canada has no standards to ensure adequate social assistance

The Committee’s 2006 periodic review of Canada raised a host of concerns relating to the right to social security, including that “federal transfers for social assistance and social services to provinces and territories still do not include standards in relation to some of the rights set forth in the Covenant, including the right to social security.”⁷

As part of this periodic review, the Committee has asked Canada to “indicate if accountability provisions exist in the Canada Social Transfer for social assistance and social services, so as to ensure that social assistance levels as decided by each province and territory are sufficient for the realization of adequate standards of living for all beneficiaries.”⁸

The short answer is that Canada has no accountability mechanism or standards to ensure that social assistance programs allow recipients to meet their most basic needs, and indeed, that Canada has eroded what little protection previously existed in a manner that discriminates against migrants.

⁵ General Comment No. 19, at para. 22.

⁶ General Comment No. 19, at para. 59(a).

⁷ Concluding Observations: Canada (2006)”, at para. 20.

⁸ Committee on Economic, Social and Cultural Rights (31 March 2015), “List of Issues in relation to the sixth periodic report of Canada” (E/C.12/CAN/Q/6) [“List of issues”], issue 15.

In Canada, federal and provincial governments have divided responsibility over rights protected by the Covenant. With respect to social security, the federal government is responsible for income security programs such as Employment Insurance, social insurance for persons with disabilities (Canada Pension Plan - Disability) and benefits for older persons. Provinces are responsible for social assistance programs, such as welfare and disability support programs, although funding for these programs is provided by the federal government through the Canada Social Transfer.

Regardless of which level is responsible for a particular income-security program, it is ultimately the federal government that bears the responsibility for ensuring compliance with the Covenant. The federal government must ensure that provincial authorities effectively monitor and implement necessary social security programs.⁹

Canada used to have national standards for welfare and social services. The precursor of the Canada Social Transfer, the Canada Assistance Plan, had an overall objective to ensure that provincial social assistance programs provided adequate support to all persons in need. As a 50/50 cost-sharing program, provincial budgetary allocations were matched with federal funds.¹⁰ One of the federal conditions for payment was provincial agreement to provide financial assistance to persons in need, taking into account their ability to adequately provide for their and

⁹ General Comment No. 19, at para. 73.

¹⁰ Jennifer D. Mussell (2015), “The Harper Government and the Canada Social Transfer” (Canadian Centre for Policy Alternatives) at p. 2 (Accessed January 26, 2016 at: https://www.policyalternatives.ca/Harper_Record_2008-2015/15-HarperRecord-Mussell.pdf).

their family's basic needs.¹¹ In 1995-1996, the Canada Assistance Plan was eliminated and it was eventually replaced with the Canada Social Transfer. Four of the five conditions on federal funding, including the abovementioned condition, were eliminated.¹²

While the Canada Social Transfer contains requirements for the use of funds for social programs, these are far from robust. Unlike the Canada Assistance Plan, the Canada Social Transfer does not require social assistance levels to be adequate to meet basic needs.¹³ Despite recommendations made by the Committee in 2006¹⁴ Canada still does not have a legally enforceable right to adequate social assistance.

Recommendation 1: Canada should amend the Canada Social Transfer to require as a condition of funding that provinces provide adequate social assistance that ensures access to basic shelter, food and other essential needs.

(ii) Social assistance levels are grossly insufficient to ensure an adequate standard of living

When the Canada Assistance Plan was eliminated, the funding Canada provided to provinces was drastically reduced and has continued to be eroded from where it stood under the Plan.¹⁵ The

¹¹ *Canada Assistance Plan*, R.S.C. 1985, C-1: Section 6(2)(a) (... the province) will provide financial aid or other assistance to or in respect of any person in the province who is a person in need ... in an amount or manner that takes into account the basic requirements of that person". See also section 2, "person in need".

¹² *Supra*, note 10, "The Harper Government and the Canada Social Transfer", at p. 2.

¹³ *Federal-Provincial Fiscal Arrangements Act*, RSC 1985, c F-8, s. 25.1 (version in force December 15, 2014).

¹⁴ Concluding Observations: Canada (2006), at para. 11.

¹⁵ *Supra* note 10, "The Harper Government and the Canada Social Transfer" at p. 2.

predictable result is that social assistance levels have declined precipitously and do not meet the minimum standards required by the Covenant.

In 2006, this Committee expressed concern that social assistance rates in Canada are insufficient to ensure the “realization of the right to an adequate standard for all” and that “poverty rates remain very high among disadvantaged and marginalized individuals and groups such as Aboriginal peoples, African Canadians, immigrants, persons with disabilities, youth, low-income women and single mothers”.¹⁶ Low social assistance rates were preventing women from leaving abusive relationships.¹⁷ More than half of food bank users were social assistance recipients.¹⁸ The Committee urged Canada to establish social assistance at levels that would ensure the realization of an adequate standard of living for all.¹⁹

The Committee’s List of issues for this review has asked Canada to indicate “if social assistance levels have been revised in all jurisdictions since 2009 and, if so, please explain whether the current rates allow individuals and families to meet their basic needs, including housing and food.”²⁰

Social assistance recipients are amongst those facing the deepest levels of poverty. A useful measure of poverty in Canada is the low-income cut-off – a measure defined by Statistics

¹⁶ Concluding Observations: Canada (2006), at paras. 11(f), 15.

¹⁷ Concluding Observations: Canada (2006), at para. 21.

¹⁸ Concluding Observations: Canada (2006), at para. 28.

¹⁹ Concluding Observations: Canada (2006), at paras. 53, 62.

²⁰ List of issues, issue 16.

Canada and relied on by Canada in its submissions to this Committee. Across Canada, single non-disabled recipients receive between a low of 38.2% (in Manitoba) and a high of 64.7% (in Newfoundland) of the low-income cut-off. In other words, social assistance recipients live far below the poverty line.²¹

Using Ontario as an example, in 2014 the annual income for single persons in receipt of Ontario Works was only \$8,507 CDN, approximately 42% of the low-income cut-off.²² Despite a series of small annual benefit rate increases since 2004 and new tax-delivered benefits and credits, current incomes received by people on Ontario Works are grossly inadequate to meet the basic cost of living and allow people to live in health and dignity.

People receiving Ontario's social assistance programs make up a significant proportion of those who are forced to rely on food bank charity to feed themselves and their families. In 2015, nearly 70% of people using food banks were receiving social assistance as their primary source of income.²³ Given that public income assistance programs were set up in part to prevent exposing people to the vagaries of charitable assistance, this growing reliance is a stinging indictment of the lack of attention that has been paid in Ontario to ensuring income adequacy.

²¹ Caledon Institute (November 2015), "Welfare in Canada, 2014" at pp. 41-42 (Accessed January 15, 2016 at: www.caledoninst.org/Publications/PDF/1086ENG.pdf).

²² *Supra*, note 21, "Welfare in Canada, 2014", at p. 41

²³ Ontario Association of Food Banks (2015), "Hunger Report 2015: A Snapshot of Hunger in Ontario" at pp. 5-6 (Accessed January 14, 2016 at: http://www.oafb.ca/tiny_mce/plugins/filemanager/pics/cms/3/303/FINAL_-_2015_OAFB_Hunger_Report_updated.pdf).

The problem will only get worse. Statistics Canada's Consumer Price Index for November 2015 found that food prices were up 3.4% compared to a year earlier, due in large part to the higher costs of meat and fresh vegetables.²⁴ The Food Institute of the University of Guelph predicts that food inflation in 2016 will continue to exceed the general inflation rate, with the average household spending up to \$345 more on food.²⁵ The increase in the average rent for bachelor apartments was 3.3% from October 2014 to October 2015.²⁶ These real costs are not taken into account when social assistance rates are set.

With social assistance rates too low to cover even basic needs, Canada is in violation of the right to social security.²⁷

Recommendation 2: Canada should ensure that provinces increase social assistance rates to reflect the real cost of living and ensure that people are able to acquire basic shelter, food and other essential needs. Social assistance rates should be indexed to rising costs of living.

²⁴ Statistics Canada (December 18, 2015), "Consumer Price Index, November 2015", *The Daily No.* 11-001-X at p. 2 (Accessed January 14, 2016 at: <http://www.statcan.gc.ca/daily-quotidien/151218/dq151218b-eng.pdf>).

²⁵ Food Institute of the University of Guelph (2015), "Food Price Report 2016" (Accessed January 14, 2016 at: <https://www.uoguelph.ca/foodinstitute/system/files/Food%20Price%20Report%202016%20English.pdf>).

²⁶ CMHA Rental Market Report – Ontario Highlights- Fall 2015, http://www.cmhc-schl.gc.ca/odpub/esub/64507/64507_2015_B02.pdf?fr=1452099334245 p. 11

²⁷ Daily Bread Food Bank (2014), "Who's Hungry: 2014 Profile of Hunger in the GTA" at pp. 7-9, 15, 19, 23-30.

(iii) Federal accountability for provincial social assistance standards has eroded: discrimination against refugee claimants and migrants

Until recently, the only remaining national standard relating to social assistance was a provision in the Canada Social Transfer that prohibited the setting of a period of residence in a province as a condition for eligibility for or the amount of social assistance.

Since the last periodic review, Canada introduced legislative changes to erode even this modest level of accountability for social assistance programs. As of December 2014, provinces are free to create residency requirements for social assistance eligibility for those without regularized immigration status, without any transfer funding consequences.²⁸ Two groups are particularly impacted: refugee claimants awaiting determination of their claim for protection and those who have had their claim denied. Many failed refugee claimants are either going through an appeal process, seeking an alternative route to residency in Canada or are in limbo awaiting arrangements for their removal from the country.

While Canada takes the position that the change was made to give provinces more flexibility, the fact is that it gives provinces free rein to deny social assistance to refugee claimants and others without regularized immigration status.

²⁸ *Federal-Provincial Fiscal Arrangements Act*, RSC 1985, c F-8, ss. 25.1-25.2 (<<http://canlii.ca/t/52hcr>>).

Canada is obligated under article 2(2) of the Covenant to guarantee “the right of “everyone to social security” to be exercised without discrimination. This protection extends to non-nationals such as asylum seekers and refugees.²⁹ The amendments to the Canada Social Transfer allow provinces to discriminate against certain groups of people based solely on their immigration status, even though the vast majority of persons in those categories are lawfully residing in Canada and many of them will eventually be granted the right to remain in the country. The federal government is in effect promoting or condoning the imposition of residency requirements on particular groups of migrants.

Without social assistance, refugee claimants with no means of support will become destitute, facing hunger and homelessness. Failed refugee claimants are not permitted to work in Canada and, with no access to social assistance could be in desperate circumstances. Taking away the critical lifeline of social assistance is harmful, cruel and inhumane.

While to date, no provinces have imposed a residency requirement, the only barrier to doing so has been removed by Canada. If provinces take this opportunity, the result will be to increase rather than reduce poverty in Canada. Rather than further eroding national standards in the delivery of social programs and discriminating against protected groups, the federal government should be strengthening standards equitably.

²⁹ General Comment No. 20, “Non-discrimination in economic, social and cultural right (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)” (2 July 2009) E/C.12/GC/20, at para. 30

Recommendation 3: Canada should amend the Canada Social Transfer standards to prohibit residency requirements that would limit eligibility for social assistance and to ensure that social assistance programs provide income for all those in a manner that is equitable and non-discriminatory.

(iv) Social security has eroded for older migrants

In Canada, social security for the elderly is primarily protected through two federal programs: the Canada Pension Plan (CPP), which is a contributory retirement pension scheme, and Old Age Security (OAS), which is funded from general tax revenue and provides base income support to anyone over the age of 65 who has resided in Canada for at least 10 years.

The CPP and OAS are augmented for low-income seniors and their families through three supplement allowances:

1. The Guaranteed Income Supplement, which provides a monthly benefit to OAS recipients who have low income;
2. The Spousal Allowance, which provides benefits to the spouses of individuals receiving the GIS who are between the ages of 60-64; and
3. The Survivor Allowance, which provides a benefit to low-income seniors whose spouse or common-law partner is deceased.

Each of these allowances is available to any individual who has lived in Canada for at least 10 years since the age of 18.

In 2014, the Canadian government passed the *Economic Action Plan 2014 Act, No. 1* (Bill C-31).³⁰ This Act included specific changes for eligibility to these allowances that would have an adverse impact on sponsored immigrants to Canada.

When a Canadian sponsors a family member to immigrate to Canada, they must give an undertaking that they will provide for that family member financially for a given period of time. The length of that undertaking varies depending on the type of family member being sponsored. For example, spouses must undertake to provide financially for their partner for a period of three years. The required undertaking for sponsored parents and grandparents is now 20 years.³¹

The legislative changes will bar sponsored immigrants from receiving the three benefits outlined above for the length of their sponsorship undertaking even if they have lived in Canada for more than 10 years. This means that sponsored parents and grandparents will have to wait 20 years (ten years longer than any other resident) before they can qualify for the allowances. While Bill C-31 was passed into law in 2014, the government of Canada has not yet brought these changes into effect.

³⁰ *Economic Action Plan 2014 Act, No. 1* (S.C. 2014, c. 20), at ss. 371 – 374.

³¹ *Immigration and Refugee Protection Regulations*, SOR/2002-227, section 132(1)(b)(iv).

These changes are fundamentally unfair and discriminate against elderly migrants. Depriving sponsored immigrants of access to these programs will undermine the health and well-being of some of Canada's most vulnerable residents. It is crucial that these changes not be instituted.

Recommendation 4: Canada should assure the Committee that the proposed changes to eligibility for the Guaranteed Income Supplement, the Spousal Allowance and the Survivor Allowance contained in Bill C-31 will not be brought into effect.

B. Persons with disabilities: Article 9 (the right to social security) and article 11 (the right to an adequate standard of living)

The Covenant places an obligation on States to ensure that they provide adequate income supports to persons with disabilities. They must ensure that persons with disabilities have access to adequate food, accessible housing and other basic material needs. As a result of their disabilities, the Committee has recognized that the costs of basic needs are often greater and supports are often required for caregivers and family members.³²

The Committee has asked Canada to provide an update on the measures taken to reduce poverty amongst persons with disabilities.³³ While Canada has taken several measures since the last

³² General Comment No. 19, at para. 20; Committee on Economic, Social and Cultural Rights, "General Comment No. 5: Persons with Disabilities" (E/1995/22), at paras. 28, 33.

³³ List of Issues, issue 19.

periodic review, including a new Registered Savings Disability Plan, poverty remains a significant problem for persons with disabilities in Canada.

Canada has seven major disability income-support programs. Four of these are “employer-triggered” programs that are available to those who have engaged in regular work: injured workers’ compensation, social insurance-based disability benefits, veterans’ disability pensions and employment insurance sickness benefits. While not a government program, some workers have access to private disability insurance through their employer or that they pay for on their own. The remaining three government programs do not require a history of employment: disability-based social assistance, disability tax credits and the registered disability savings plan.³⁴

Employment-based programs are not a solution to poverty experienced by persons with disabilities. The Organization for Economic Co-operation and Development (“OECD”), in its 2010 report on disability support programs in Canada, found that “more than one in five Canadians with a disability are neither employed nor receiving any public benefit” – a figure much higher than in other OECD countries.³⁵ The OECD found that “the biggest challenge in Canada is the high risk of relative income poverty of persons with disabilities, one-third of who

³⁴ John Stapleton (December 2013), “The ‘Welfareization’ of Disability Incomes in Ontario” (Metcalf Foundation) at pp. 5-6 (Accessed January 14, 2016 at: <http://metcalfoundation.com/wp-content/uploads/2013/12/Welfareization-of-Disability-Incomes-in-Ontario.pdf>).

³⁵ Organization for Economic Co-operation and Development, “Sickness, Disability and Work: Breaking the Barriers: Canada. Opportunities for Collaboration”, 2010, p. 21, at <http://www.oecd.org/dataoecd/16/13/46093870.pdf>.

have incomes below 60% of the household-size-adjusted median disposable income. This is one of the highest proportions in the OECD”.³⁶

In a context in which persons with disabilities face lifelong barriers to social inclusion and access to the labour market, social assistance programs are critical to ensure that persons with disabilities can live with independence, dignity and freedom from poverty. The role of such programs should be to provide an alternate means of financial support in light of the social and environmental barriers to economic security that people with disabilities experience.

Yet, Canada’s social assistance programs for persons with disabilities are woefully inadequate, ranging between 49.6% (Alberta) and 69.9% (Ontario) of the low-income cut-off.³⁷ Ontario’s social assistance program for persons with disabilities, the Ontario Disability Support Program (“ODSP”), is comparatively generous by Canadian standards. Nevertheless, incomes available through this program have steadily declined in real terms over the past 20 years.³⁸ Typical of last resort welfare programs, ODSP is plagued by complex and punitive rules, including earnings and asset rules based on the assumption that people should exhaust or greatly reduce other sources of income before accessing benefits. The rule bound nature of ODSP creates many barriers to employment and education and often forces people with disabilities to choose between a secure income and activities that would lead to greater independence and participation in community life.

³⁶ Ibid, “Sickness, Disability and Work: Breaking the Barriers: Canada. Opportunities for Collaboration”, p.18

³⁷ *Supra*, note 21, “Welfare in Canada, 2014”, at pp. 41-42.

³⁸ *Supra* note 34, “The ‘Welfareization’ of Disability Incomes in Ontario”, at p. 15.

As with other social assistance recipients, recipients of Ontario's disability program struggle to buy food and pay the rent. Rapidly increasing food and housing prices mean that recipients are falling further and further behind each year. A survey conducted by Toronto's food banks found that that 34% of their clients receive provincial disability benefits, a percentage that has almost doubled since 2005. The length of time that people receiving provincial disability benefits have been relying on food banks has increased significantly since 2008: up from two to an average of three years.³⁹

Across Ontario, food banks have seen 10,000 more visits in 2015 than the year before. Recipients of provincial disability benefits made up 31.5% of food bank users in the province.⁴⁰

Making matters worse, for the past several years, Ontario has discriminated against households that rely on disability benefits when it has implemented meagre 1% social assistance increases. Since 2013, Ontario has not applied the 1% increases to the amounts intended to support the family members of people with disabilities on social assistance. Benefit levels for family members have effectively been frozen, as families lose ground each year to inflation.

This practice ignores Ontario's obligation under the Covenant to ensure that it supports the families and caregivers of persons with disabilities⁴¹ and the increased costs of disability that the

³⁹ Daily Bread Food Bank (2015), "Who's Hungry: A Tale of Two Cities, 2015 Profile of Hunger in Toronto", p. 17-19 (Accessed January 15, 2016 at: www.dailybread.ca/wp-content/uploads/2015/09/2015-WH-FINAL-WEB.pdf).

⁴⁰ *Supra*, note 23, "Hunger Report 2015: A Snapshot of Hunger in Ontario" at pp. 5-6.

whole family of a person with a disability faces, such as increased housing and transportation costs, as well as the costs associated with providing primary caregiving.

Increasingly, even those persons with disabilities who have been able to access the labour market cannot rely upon the employment-based programs to ensure that they do not live in poverty.

Changes in the economy and labour market have resulted in a decline in the quality of work in Canada. Good quality jobs with fair wages, benefits and working conditions are becoming increasingly unavailable to many. Outsourcing, temporary work, erratic scheduling, discrimination, and unfair and insufficient wages, are experienced by a growing number of workers.⁴² Precarious work is increasingly becoming the standard.⁴³

The impact of these negative labour market conditions is felt more by historically disadvantaged groups such as persons with disabilities.⁴⁴ People with disabilities are much less likely to be employed than those without disabilities,⁴⁵ are impacted by the lack of accommodations in the

⁴¹ General Comment No. 19, at para. 20; Committee on Economic, Social and Cultural Rights, “General Comment No. 5: Persons with Disabilities”, at paras. 28, 33 (E/1995/22).

⁴² Block, S. 2015. *A higher standard: The case for holding low-wage employers in Ontario to a higher standard*. Toronto: Canadian Centre for Policy Alternatives. https://www.policyalternatives.ca/sites/default/files/uploads/publications/Ontario%20Office/2015/06/Higher_Standard.pdf

⁴³ Law Commission of Ontario. 2012. *Vulnerable workers and precarious work: Final report*. Toronto: Law Commission of Ontario. <http://www.lco-cdo.org/en/vulnerable-workers-final-report>

⁴⁴ Block, S. and G-E Galabuzi. 2011. *Canada's colour coded labour market: The gap for racialized workers*. Toronto: Wellesley Institute. http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour_Coded_Labour_MarketFINAL.pdf

⁴⁵ Statistics Canada. 2008. *Participation and Activity Limitation Survey of 2006: Labour force experience of people with disabilities in Canada*. <http://www.statcan.gc.ca/pub/89-628-x/89-628-x2008007-eng.pdf>

workplace and poor enforcement of the duty of employers to accommodate,⁴⁶ and the lack of good quality part-time work, which people with disabilities are much more likely to rely upon⁴⁷, among other issues.

With this shift to part-time, temporary, and contract work, the “employer-triggered” disability programs are increasingly inaccessible. Even for those who can access such programs, low incomes associated with precarious work mean that the amounts they are entitled to receive as work replacement are not sufficient to meet their needs. Disability-based social assistance programs are all that are left to fill the gaps created by these trends.

Indeed, Ontario has seen significant increases in the number of people relying on its disability support program which has been described as the “welfareization of disability income”.⁴⁸

Thus, since the last periodic review, the living standards of persons with disabilities have come under increasing threat. Canada does not ensure that persons with disabilities have access to adequate social security and an adequate standard of living, contrary to articles 9 and 11 of the *Covenant*.

⁴⁶ Banks, K., R. Chaykowski and G. Slotsove. 2013. The disability accommodation gap in Canadian workplaces: What does it mean for law, policy, and an aging population? *Canadian Labour & Employment Law Journal*. 17:2. p.294-344. http://labourlawjournals.com/abstracts/pdf/CLELJ_17_2_Banks_Chaykowski_Slotsve.pdf

⁴⁷ Schur, L. 2003. Barriers or opportunities? The causes of contingent and part-time work among people with disabilities. *Industrial Relations: A Journal of Economy and Society*. 42:4. p.589–622, October. <http://onlinelibrary.wiley.com/doi/10.1111/1468-232X.00308/abstract>

⁴⁸ *Supra*, note 34, “The ‘Welfareization’ of Disability Incomes in Ontario”: As Stapleton has documented, “changing relationships between employers and employees combined with cuts in access and new tougher rules in some disability income systems – especially the employer-triggered ones – is expediting a shift of disability expenditures to the public purse.”, at pp. 22-23

Recommendation 5: Canada and the Provinces should ensure that persons with disabilities have income security programs that are provided in a dignified manner, that meet their disability-related needs and provides them, their families and their caregivers with an adequate standard of living.

**C. Barriers and discrimination in accessing Employment Insurance:
Article 9 (the right to adequate social insurance) and
article 7 (the right to just and favourable conditions of work)**

State parties are obligated to provide adequate benefits to the unemployed worker. This Committee has asked Canada to provide an update on the state of employment insurance benefits, and have asked whether unemployed workers have access to the program.⁴⁹

(i) Unemployed workers face serious barriers in accessing EI

Employment Insurance (EI) is a contributory program that provides income replacement to individuals who suffer a loss of their employment through no fault of their own or who are unable to work by reason of illness, pregnancy and childbirth or parental responsibilities for a newborn or newly-adopted child. To qualify for EI, an individual must work the sufficient number of hours of insurable work, and pay premiums on their income.

⁴⁹ List of issues, issue 12

The base amount of EI employment benefits is low –granting only 55% of average earnings over the previous six-month period. This can include periods of underemployment or unemployment, which drags down the amount of EI benefits owed. Accordingly, this method of calculation has a disproportionate impact on the precariously employed, and on women, who continue to suffer a considerable wage gap in Canada. From 2012-2014, women in Canada received about 14% less per week for EI employment benefits.⁵⁰

Additionally, qualification requirements vary nationally and are based on regional unemployment rates. Fewer hours are needed to qualify in regions with a high unemployment rate and claimants in those regions receive benefits for more weeks.

Access to the system is even more difficult for new entrants to Canada’s work force. New entrants to the Canadian labour market, or anyone who has not worked in Canada for the previous two years, must work 910 hours insurable hours in order to qualify for EI benefits. (This comes to about 23 weeks of full-time work.) Workers who have been in the labour market longer than two years have to work between 420 and 700 hours, depending on their region’s unemployment rate. (This is between 11 and 18 weeks of full-time work.)⁵¹ Accordingly, those who are most in need of protection - such as new immigrants, temporary foreign workers and those individuals who work a series of temporary or precarious jobs - face a higher bar to receiving EI benefits at all.

⁵⁰ Government of Canada EI Monitoring and Assessment Report 2013/2014, Annex 2.2, at: file:///C:/Users/d_rohde/Downloads/MAR_201314-EN_09_2015.pdf

⁵¹ *Employment Insurance Act*, S.C. 1996, c. 23, at ss. 7(2) – 7(3)(b)

EI is not keeping up with the recent changes to Canada's job market. The fact of precarious work is quickly becoming the norm. Today, roughly 20% of jobs in Canada are part time and roughly 14% are contract or seasonal.⁵² It is difficult for workers in these circumstances to qualify for EI in the first place, and, when they do qualify, their benefits are often paid at a lower rate due to the way in which EI benefits are calculated.

This results in an increasing number of Canadian's being ineligible for EI benefits for at least a portion of the period in which they are unemployed. For example, about 25% of all EI claimants run out of benefits before they can find a new job.⁵³ Further, many unemployed workers simply never manage to qualify due to the precarious and intermittent nature of their employment. High qualifying requirements for new labour market entrants or re-entrants present an unfair barrier especially during periods of labour market slack.

For low income people, the barriers to EI are even more difficult to overcome. Because they experience more frequent periods of unemployment, they are much less likely to meet the required qualifying hours.

Recommendation 6: Canada should amend Employment Insurance eligibility requirements to remove barriers to ensure that unemployed workers have meaningful access to and receive a higher rate of EI benefits.

⁵² Canada Centre for Policy Alternatives, *Delivering the Good: Alternative Federal Budget 2015*, at p. 61

⁵³ *Ibid*, at p. 62

(ii) Migrant workers face discrimination in accessing EI benefits

The EI system also discriminates against many foreign workers in Canada. While temporary foreign workers in Canada pay into the EI system through premiums, they are routinely unable to access the benefits of those programs.

As long as a migrant worker (either under the Temporary Foreign Worker Program or the Live-In Caregiver Program) has worked sufficient hours to qualify for EI, then they can technically apply to receive EI benefits should they lose their employment. However, to receive EI benefits, an individual must show that they are ready and available for work. Generally, this can only be shown if the individual is currently in Canada, working under a valid work permit.⁵⁴ Accordingly, temporary foreign workers who are issued a temporary work permit for a restricted period or that restricts them to certain employers are often unable to access these benefits when they lose their jobs.

Additionally, as of December 9, 2012, Canada changed its regulations to expressly limit EI parental benefits to those individuals who are authorized to remain in Canada at that time.⁵⁵ This makes it even more difficult for migrant workers to qualify to receive EI. Migrant workers, such as seasonal agricultural workers, who have left Canada, no longer have access to parental benefits. Most migrant workers are no longer eligible for any

⁵⁴ Digest of Benefit Entitlement Principles, at s. 10.2.4:

http://www.esdc.gc.ca/en/reports/ei/digest/ch_10/proof.page#a10_2_4

⁵⁵ Employment Insurance Regulations, SOR/96-332, s. 55(4) <<http://canlii.ca/t/52hlc>> retrieved on 2016-01-26; New Release (December 6, 2012), at <http://news.gc.ca/web/article-en.do?nid=711069>

employment insurance benefits, even though they pay into the program with each pay cheque.

This is a violation of Canada's obligation to prohibit discrimination in the right to social security. This Committee has noted that "where non-nationals, including migrant workers, have contributed to a social insurance scheme, they should be able to benefit from that contribution ... if they leave the country."⁵⁶

Recommendation 7: Canada should amend the Employment Insurance regulations to provide temporary foreign workers with equal access without discrimination to employment insurance benefits that they have contributed to.

⁵⁶ General Comment No. 9, at para. 36