

**Civil and Political Rights in  
British Columbia 2005**

**The Poverty and Human Rights Centre**

**submission to the**

**United Nations**

**Human Rights Committee**

**on the occasion of its review of Canada's 5<sup>th</sup> report on compliance with  
the *International Covenant on Civil and Political Rights***

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# TABLE OF CONTENTS

	Page
<b>The Poverty and Human Rights Centre .....</b>	<b>1</b>
<b>Introduction.....</b>	<b>1</b>
<b>I. Article 2 and 6: Right to Covenant Rights and Right to Life .....</b>	<b>2</b>
A. Impact of Economic Inequality on Civil and Political Rights .....	2
B. B. British Columbia Poverty Rates Highest in Canada .....	2
C. Homelessness .....	3
<b>II. Article 26: Right to Non-Discrimination.....</b>	<b>4</b>
A. Women’s Disproportionate Poverty.....	4
B. Social Assistance Rates Cut and Eligibility Rules Narrowed .....	5
C. National Child Benefit Supplement .....	10
<b>III. Articles 6, 7 and 26: The Right to Life and the Right Not to be Tortured....</b>	<b>11</b>
A. Violence Against Women: The Impact of Cuts to Social Services .....	11
B. Violence Against Women: Changes to Spousal Assault Policy .....	12
C. Missing and Murdered Women.....	13
<b>IV. Articles 2, 3 14 and 26: Access to the Justice System.....</b>	<b>15</b>
A. Reduced Access to Legal Aid .....	15
B. Courthouse Closures .....	17
C. Abolition of the Human Rights Commission.....	17
D. Elimination Of the Ministry of Women’s Equality .....	18
E. Elimination of Funding for Women’s Centres .....	19
<b>V. Articles 2, 3, 23, and 26: Right to Family .....</b>	<b>20</b>
A. Cuts to Child Care .....	20
<b>VI. Articles, 2, 3, 8, 22 and 26: Right to Association and Labour Freedoms .....</b>	<b>23</b>
A. Reduced Labour Protections .....	23
B. Equal Pay for Work of Equal Value.....	27
C. Employment Equity.....	28
D. Contracts Broken and Right to Strike Denied.....	29

<b>VII. Articles 1 and 27: Aboriginal Right to Self-Determination .....</b>	<b>32</b>
A. Referendum on Aboriginal Self-Determination.....	32
B. Diminished Environmental Protection of Indigenous Cultural Life .....	33
<b>VIII. Articles 25 and 26: Political Equality .....</b>	<b>34</b>
A. Women’s Political Equality .....	34
<b>IX. Articles 7, 9, 10, 14, and 24: Young Girls and Women and the Administration of the Criminal Justice System. ....</b>	<b>35</b>
A. Economic and Social Marginalization.....	35
B. Article 10 and 14: The Essential Aim of the Penitentiary System Treatment in Prisons .....	36
C. Article 7 and 10: Treatment in Prisons .....	39
D. Article 24: Discrimination .....	41
E. Article 9: The Execution of Justice .....	43

# The Poverty and Human Rights Centre

1. The Poverty and Human Rights Centre has a mandate of promoting compliance with the human rights commitments that Canada has made and of advancing interpretations of rights to take into account social and economic inequality and disadvantage. The Centre works through research, analysis, writing, and public education, and collaborates with community groups, scholars, lawyers and students.

## Introduction

2. During the period under review, the Government of British Columbia made drastic cuts to social programmes and to social and labour protections. This has had the harshest effects on those groups in the *BC*. population that are already the most disadvantaged: women, single mothers, Aboriginal peoples, elderly women and men, people with disabilities, people of colour, recent immigrants and refugee claimants. The Government of British Columbia's multi-pronged strategy to diminish *BC*'s social safety net brings the province into contravention of Articles 2, 3, 6, 8, 9, 14, 17, 22, 23 and 26 of the *International Covenant on Civil and Political Rights*, as the following documentation shows.

3. The erosion of services and protections has weakened the social foundations that permit residents of this province to enjoy their civil and political rights – to enjoy liberty and security of the person, to participate fully in public affairs, to be equal in their access to justice and the courts, and to be equal persons, treated with equal respect and worth in society. The Poverty and Human Rights Centre requests that the Human Rights Committee pay urgent attention to the diminishment of the enjoyment of basic human rights in the Province of British Columbia.

4. This alternative report has a particular emphasis on the civil and political rights of women in British Columbia, because women have been particularly hard hit by the recent erosion of social services and protections. The last five years in particular have been a time of going backwards, and women, particularly single mothers, Aboriginal women, disabled women, elderly women, women of colour and immigrant women, have been further marginalized and subordinated.

5. In its 2003 Concluding Comments, after reviewing Canada's Fifth Report, the United Nations Committee on the Elimination of Discrimination Against Women stated:

The Committee is concerned about a number of recent changes in British Columbia which have a disproportionately negative impact on women, in particular aboriginal women. Among these changes are: a cut in funds for legal aid and welfare assistance, including changes in eligibility rules; ...the incorporation of the Ministry of Women's Equality under the

Ministry of Community, Aboriginal and Women's Services; the abolition of the independent Human Rights Commission; the closing of a number of courthouses; and the proposed changes regarding the prosecution of domestic violence as well as a cut in support programmes for victims of domestic violence.

**The Committee, through the State party, urges the government of British Columbia to analyse its recent legal and other measures as to their negative impact on women and to amend the measures, where necessary.** (emphasis added)

6. The Government of British Columbia was subsequently urged by women residents of the province to undertake the recommended review and to make the necessary changes. The Government, through the Attorney General, refused to do so.

Committee on the Elimination of Discrimination against Women, Twenty-eight session, 13-31 January 2003, Consideration of Reports submitted by States Parties under Article 18 of the Convention, Concluding Observations of the Committee: Canada, (A/58/38), paras. 359-360.

Letter from the Hon. Geoff Plant, Attorney General of British Columbia, to the BC. CEDAW Group (17 November 2003).

## **I. Articles 2 and 6: Right to *Covenant* Rights and Right to Life**

### **A. Impact of Economic Inequality on Civil and Political Rights**

7. The full realization of an individual's civil and political rights is related to, and dependent upon, their economic and social well-being. Economic disadvantage acts as a barrier to the exercise of civil and political rights. Poverty implicates the rights to life, to liberty and security of the person, to full social citizenship and to participation in the political life of one's society as a full and equal member. To be meaningful, the full realization of civil and political rights in British Columbia must be viewed as inextricably linked with the ability of persons to enjoy full access to their economic and social rights.

### **B. British Columbia Poverty Rates Highest in Canada**

8. British Columbia has the highest average personal wealth in Canada.

9. Despite being a wealthy province, *BC.* has the greatest wealth gap in Canada. The wealthiest 10 percent of families have over 54 percent of the province's wealth; the poorest 10 percent of families in *BC.* have a collective debt of nearly 1.4

billion dollars. The wealthiest 50 percent of families have 95.7 percent of the total wealth, while the poorest 50 percent of families have only 4.3 percent.

Canadian Centre for Policy Alternatives, Steve Kerstetter, *Behind the Numbers: B.C. Home to the Greatest Wealth Gap in Canada*, November 28, 2001, online: CCPA  
<[http://www.policyalternatives.ca/documents/BC\\_Office\\_Pubs/btn\\_bcwealthgap.pdf](http://www.policyalternatives.ca/documents/BC_Office_Pubs/btn_bcwealthgap.pdf)> (date accessed: 15 June 2005).

10. BC. had a rural poverty rate of almost 15 percent in 2000. Its urban poverty rate was even greater, at over 18 percent. Over 35 percent of Aboriginal people living off-reserve are poor in BC.; more than 20 percent of those who live on-reserve are also poor.

National Anti-Poverty Organization, *The Face of Poverty in Canada: An Overview*, 2003, online: NAPO <[http://cafb-acba.ca/documents/Face\\_of\\_Poverty\\_Canada\\_2003\\_Napo\\_Report.pdf](http://cafb-acba.ca/documents/Face_of_Poverty_Canada_2003_Napo_Report.pdf)> (date accessed: 15 June 2005).

Ministry of Management Services, BC Stats, 2001, online: Ministry of Management Services  
<<http://www.bcstats.gov.bc.ca/data/cen01/facts/cff0113.PDF>> (date accessed: 15 June 15).

## C. Homelessness

11. Recent studies demonstrate that homelessness is on the rise in British Columbia. In the Greater Vancouver Region, homelessness has more than doubled since 2002, up from 1049 visible homeless persons to 2112. More and more homeless persons are finding themselves on the street; in 2002, 719 were in shelters and 330 were living on the streets, as compared to the 2005 data, which demonstrates that 1007 are in shelters and 1105 are on the street. In 2001, over 126,000 people in 56,000 households in Greater Vancouver were at risk of homelessness; experts believe recent volatility in the housing markets has driven those rates up, though concrete data is not yet available. Those who are at risk for homelessness are predominantly women, Aboriginal people, seniors, immigrants, lone parents (predominantly mothers) and persons with a disability.

Greater Vancouver Regional District, *Growing Homelessness in Greater Vancouver*, April 28, 2005, online: Greater Vancouver Regional District <<http://www.gvrd.bc.ca/homelessness/pdfs/NewsRelease-GrowingHomelessness-April2005.pdf>> (date accessed: 15 June 2005).

Greater Vancouver Regional District, *Homeless Count 2005: Preliminary Results*, online: Greater Vancouver Regional District, <<http://www.gvrd.bc.ca/homelessness/>> (date accessed: 15 June 2005).

Greater Vancouver Regional District, *Research Project on Homelessness in Greater Vancouver*, July 2002, online: Greater Vancouver Regional District <[http://www.gvrd.bc.ca/homelessness/pdfs/research\\_project.pdf](http://www.gvrd.bc.ca/homelessness/pdfs/research_project.pdf)> (date accessed: 15 June 2005).

12. In 1999, the Committee issued the following recommendation:

The Committee is concerned that homelessness has led to serious health problems and even to death. The Committee recommends that the State party take positive measures required by article 6 to address this serious problem.

Human Rights Committee, *Concluding Observations*, at para. 12.

13. The numbers of British Columbia's most disadvantaged residents who are homeless or on the brink of homelessness demonstrate that the province is not complying with its *Covenant* obligations.

Canadian Centre for Policy Alternatives, Steve Kerstetter, *Behind the Numbers: B.C. Home to the Greatest Wealth Gap in Canada*, November 28, 2001, online: CCPA <[http://www.policyalternatives.ca/documents/BC\\_Office\\_Pubs/btn\\_bcwealithgap.pdf](http://www.policyalternatives.ca/documents/BC_Office_Pubs/btn_bcwealithgap.pdf)> (date accessed: 15 June 2005).

## **II. Article 26: Right to Non-Discrimination**

### **A. Women's Disproportionate Poverty**

14. Women in British Columbia continue to be disproportionately poor, experience deeper levels of poverty than men, and be more vulnerable to becoming poor. Single mothers, senior women, Aboriginal women, visible minority women, immigrant women and disabled women are particularly vulnerable to poverty. Factors contributing to women's poverty in British Columbia include: inadequate social assistance rates and tightened eligibility rules; women's greater likelihood of performing unpaid caregiving duties for children, the sick, and the elderly; lack of affordable and accessible childcare; the sex-based wage gap and failure to implement equal pay for work of equal value; occupational segregation and women's greater likelihood of holding non-standard jobs, with no benefits or job security; and recent cuts to female-dominated public sector jobs, such as health and education services, that resulted in disproportionate job loss for women.

N. Iyer, *Working through the Wage Gap: Report of the task force on pay equity* (28 February 2002) Ministry of Attorney General at 88-9 and 154, online: Ministry of Attorney General

[http://www.ag.gov.bc.ca/public/working\\_through\\_the\\_wage\\_gap.pdf](http://www.ag.gov.bc.ca/public/working_through_the_wage_gap.pdf) (date accessed: 16 June 2004).

Canadian Centre for Policy Alternatives, Sylvia Fuller and Lindsay Stephens, "Women's Employment in BC: Effects of Government Downsizing and Employment Policy Changes, 2001-2004" December 2004.

## **B. Social Assistance Rates Cut and Eligibility Rules Narrowed**

15. A new *BC. Employment and Assistance Act* made sweeping changes to the social assistance system. The changes include: (1) lower rates of income assistance; and, (2) new restrictions on eligibility for income assistance.

16. In 2002 welfare rates were cut. The welfare regime is now less able than before to lift those depending on it out of poverty. Those living on social assistance do not have adequate food or shelter. Changes to welfare rates include the following:

17. The basic support portion of the social assistance benefit was cut. The reduction for single parents affected 21,823 families. The vast majority of single parents are single mothers, and they are the largest group of families receiving social assistance.

18. On top of this, shelter allowances for families of 3 or more were reduced.

Seth Klein and Andrea Long, *A Bad Time to be Poor: Analyzing BC's New Welfare Policies* (Spring 2003) Canadian Centre for Policy Alternatives at 20, online: CCPA <http://www.policyalternatives.ca> (date accessed: 4 May 2005).

Type of recipient	2001 benefit rate	2002 benefit rate	Monthly income loss	2002 benefits as a percentage of the poverty line (LICO)
single "employable" adult age 55-59	\$557	\$510	\$47	32%
single "employable" adult age 60-64	\$608	\$510	\$98	32%
single parent, one child	\$1004	\$961	\$43	48%
single parent, two children	\$1201	\$1,111	\$47	43%
"employable" couple, two children	\$1266	\$1221	\$45	40%

19. Experts estimate that social assistance benefits in British Columbia meet only 44-60% of minimum living costs. Individuals who live on income assistance in British Columbia survive at a level far below an adequate standard of living, indeed far below all measures of the "poverty line". Greater reliance on food banks, a rise in food insecurity, and increased homelessness has accompanied the government's changes to welfare legislation.

G. Creese and V. Strong-Boag, "Losing Ground: The Effects of Government Cutbacks on Women in British Columbia, 2001-2005," March 8, 2005, online: The BC Federation of Labour <<http://www.bcfed.com/BFNews/News+Releases/Archives/iwd-2005-losing-ground.htm>> (date accessed: 13 June 2005).

Andrea Long and Michael Goldberg, *Falling Further Behind: A Comparison of Living Costs and Employment and Assistance Rates in British Columbia* (2002) Social Planning and Research Council of British Columbia at ii, online: SPARC BC [http://www.sparc.bc.ca/research/falling\\_further\\_behind.pdf](http://www.sparc.bc.ca/research/falling_further_behind.pdf) (date accessed: 4 May 2005).

20. Other changes to benefit rates include the following:

- **The Family Maintenance Exemption**, which previously permitted a single parent receiving child support payments from a spouse to keep 100 dollars per month, has been eliminated. All child support paid is now deducted dollar for dollar from income assistance benefits;
- The **Earnings Exemption** has been eliminated for “employable” recipients. This exemption allowed people on welfare to work and keep \$100 if they were single, or \$200 if they had children or a partner;
- **Crisis grants** for individuals have now been limited to a maximum of \$20 per month for food and \$100 per year for clothing. The limits for families are \$400 per year for clothing and one month’s shelter allowance per year.

21. Also, *BC*. continues to claw back the National Child Benefit Supplement from families on social assistance, dollar for dollar.

22. For some single parents, mostly mothers, the combination of the rate cuts and the loss of exemptions means that they lost as much as \$380 dollars per month.

### **Eligibility Rules**

23. Changes to welfare eligibility rules in British Columbia include the following.

- Refugee claimants, although not allowed to work without special authorization, are no longer eligible for social assistance.
- Before being able to start the application process, individuals, following their initial contact with the welfare office, are required to undertake a “three-week self-directed job search”, during which income assistance benefits are not available. Moreover, once the job search period is over, applicants typically wait another three weeks before they receive benefits. In practice, therefore, there is a waiting period of approximately six weeks, during which extremely needy people receive no financial help. This waiting period causes severe hardship, including food insecurity and loss of housing.
- Most income assistance applicants without children must now show that they have been in the paid workforce for two consecutive years in order to be eligible for income assistance.
- Single parents are considered “employable” after their youngest child reaches 3 years of age, reduced from the prior threshold of 7 years of age. This change affected approximately 8,900 single parents, the vast majority of whom are single mothers, who are now expected to seek paid employment despite a lack of affordable child care.

- The government introduced flat time limits for receipt of welfare. “Employable” people without children may only receive welfare for two years during any five-year period. In response to strong criticism from the public, the government recently introduced a series of exemptions that lessen the impact of this time limit. However, as long as it remains on the books, this arbitrary time limit is the only one of its kind in Canada.
- People with disabilities are now covered by the same legislation as general welfare recipients, a change that ignores the unique needs of people with disabilities. It has also caused great anxiety that claimants will be deemed “employable”, thus losing their eligibility, even though performing regular work is not possible for them.
- In addition to any civil or criminal penalty imposed by the courts, those found guilty of welfare “fraud” (which may include failure to report a gift) are now banned from receiving income assistance for periods ranging from 3 months to lifetime.
- Young adults (19 and over) are now required to demonstrate that they have lived independently of their parents for two years before they are eligible for welfare.
- Individuals who leave jobs “voluntarily” or are fired for cause are ineligible for assistance. Advocates are concerned that individuals may be considered ineligible for welfare even if they have left jobs because of sexual harassment, unsafe working conditions, or labour standards violations.
- A new more restrictive appeals procedure has been introduced to achieve “maximum efficiency”. Individuals cannot appeal various decisions, such as those regarding travel allowances, requests for a new worker, or access to employment programs.

*BC Employment and Assistance Act S.BC. 2002, c. 40, s. 8, online: Ministry of Management Services [http://www.qp.gov.bc.ca/statreg/stat/E/02040\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/E/02040_01.htm) (date accessed: 4 May 2005).*

*BC. Reg. 263/2002, s. 3, 29, and 27 online: Ministry of Management Services [http://www.qp.gov.bc.ca/statreg/reg/E/263\\_2002.htm](http://www.qp.gov.bc.ca/statreg/reg/E/263_2002.htm) (date accessed: 4 May 2005).*

*Employment and Assistance Appeal Tribunal of the Province of British Columbia, [Basis for Appeal to the Tribunal](#), online: Employment and Assistance Appeal Tribunal of the Province of British Columbia*

[http://www.gov.bc.ca/eaat/popt/basis\\_for\\_appeal.htm](http://www.gov.bc.ca/eaat/popt/basis_for_appeal.htm) (date accessed: 4 May 2005).

24. The changes to social assistance made by the Government of British Columbia have had a debilitating effect on the groups in British Columbia who are already most vulnerable to poverty and social exclusion. These groups include Aboriginal people, women, single mothers, people of colour, recent immigrants, refugee claimants, people with disabilities, youth, and children. The majority of persons reliant on social assistance are women. The Committee expressed particular concern about some of these groups in its 1999 Observations. It noted:

Many women have been disproportionately affected by poverty. In particular, the very high poverty rate among single mothers leaves their children without the protection to which they are entitled under the *Covenant*. While the delegation expressed a strong commitment to address these inequalities in Canadian society, the Committee is concerned that many of the programme cuts in recent years have exacerbated these inequalities and harmed women and other disadvantaged groups.

Human Rights Committee, Sixty-fifth session, CCPR/C/79/Add.105, 7 April 1999, Consideration of reports submitted by States parties under article 40 of the *Covenant*, Concluding observations of the Human Rights Committee on Canada, at paras. 8 and 20.

**25. The changes described above were implemented by the government of British Columbia after the Committee issued its 1999 observations.**

26. The Government of British Columbia sought to justify its new welfare scheme, as well as cuts to other social services and protections, on the grounds that it was facing a “structural” deficit. However, at the same time that it cut social spending, the Government also cut taxes, reducing its revenue base.

27. No matter what its assessment of its financial position in 2002, introducing measures that imperil the rights of the most disadvantaged people to food, shelter, clothing, and access to justice is not defensible as a deficit-cutting strategy. By slashing social expenditure in the way that it did, the government of British Columbia did not pay sufficient attention to the adverse consequences for the enjoyment of civil and political rights by the *BC*. population as a whole, and by vulnerable groups, such as women, in particular.

28. Further, in 2005 the province has a surplus, and a booming economy. But the measures that have harmed the most vulnerable people are not slated for reversal.

### **Children on Welfare Obligated to Work**

29. Children of families on welfare are also subject to regulations other children are not. Children whose parents receive welfare can be required to seek

employment as soon as they reach age 16. This requirement can be made a condition of their family's receipt of social assistance, such that the family is penalized by \$100 if the youth fails to comply. Thus, while other youths are encouraged to concentrate on their education, youths who rely on social assistance are pressured to seek paid employment. This policy reveals the discriminatory treatment endured by those on social assistance, and is a violation of Article 24 of the *Covenant*

*BC Employment and Assistance Act* S.B.C. 2002, c.40, s. 9, online: Ministry of Management Services  
[http://www.qp.gov.bc.ca/statreg/stat/E/02040\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/E/02040_01.htm) (date accessed: 24 June 2004).

*BC Employment and Assistance Regulation* BC. Reg. 263/2002, s. 30, online: Ministry of Management Services  
[http://www.qp.gov.bc.ca/statreg/reg/E/263\\_2002.htm](http://www.qp.gov.bc.ca/statreg/reg/E/263_2002.htm) (date accessed: 24 June 2004).

### **C. The National Child Benefit Supplement**

30. In March 2003, 4.8% of children in British Columbia relied on social assistance payments for their families to provide for their basic needs. (This figure does not include children in the home of a relative nor children whose families rely on disability payments or payments to people with persistent multiple barriers to employment.) These children and their families are among those in greatest need. However, the government of British Columbia does not provide these children with the same degree of protection and assistance that it provides to other children, despite their greater need.

BC Stats, Basic Income Assistance Recipients as a Percent of Population, March 2003, online: BC Stats  
<http://www.bcstats.gov.bc.ca/data/lss/iaui/iaui1.pdf> (date accessed: 24 June 2004).

31. The federally-administered National Child Benefit Supplement (NCBS) pays families a monthly allowance calculated according to the number of children in the family. One of the stated goals of the NCBS is to alleviate child poverty. However, the British Columbia provincial government claws back the amount of the NCBS from the payments made to social assistance recipients. In other words, low-income working families receive this benefit, but families on social assistance do not. By penalizing "non-working" parents, the NCBS clawback, which the federal government permits, reinforces biased notions that poor people are lazy and unworthy of support, and that poverty is caused by private and individual responsibility, rather than socio-economic inequalities, baseline unemployment, discrimination, and a sexist definition of work.

32. In 1999 the Committee expressed concern that the clawback of the NCBS resulted in the denial of this benefit to low-income children. Still, the Government of

British Columbia continues to deny this benefit to the most impoverished families and their children.

National Child Benefit website, online: National Child Benefit  
<http://www.nationalchildbenefit.ca/ncb/thenational2.shtml> (date accessed: 14 May 2004).

Wanda A. Wieggers, “The National Child Benefit: Social Inequality Under the New ‘Social Union,’” (2001-2002) 33 *Ottawa L. Rev.* 25 at 82.

### **III. Articles 6, 7 and 26: The Right to Life and the Right Not to be Tortured**

#### **A. Violence Against Women: The Impact of Cuts to Social Services**

33. Critics have noted that while provinces across Canada have cut social spending during the decade being reported on, “BC. has the distinction of having implemented the deepest cuts.” And they have made these cuts in spite of British Columbian women reporting the highest rates of violence in the country.

Marina Morrow, Olena Hankivsky, and Colleen Varcoe, “Women and Violence: The Effects of Dismantling the Welfare State” (2004) 24 *Critical Social Policy* 358.

34. Cuts to social assistance rates and narrowed eligibility rules have curtailed women’s ability to leave abusive partners. Social policy experts in Canada have found in a number of studies that if adequate levels of social assistance are not available, women do not leave abusive partners, or they return to them because of economic need. Particularly troubling in BC.’s new rules is the requirement that social assistance applicants demonstrate two prior years of financial independence. For young women, particularly those who are homeless and as such increasingly vulnerable to abuse, this requirement ensures that they remain in the cycle of violence. The implementation of the “training wage” also constrains the ability of women and their children to escape abuse.

Marina Morrow, Olena Hankivsky, and Colleen Varcoe, “Women and Violence: The Effects of Dismantling the Welfare State” (2004) 24 *Critical Social Policy* 358.

35. Cuts to legal aid funding have also increased women’s vulnerability to domestic violence. Employees in transition houses, sexual assault services, and violence counseling agencies have noted that more and more victims of abuse are asking for advice on complex legal problems that the workers are not equipped to deal with. These service providers also note that “abusive men are known to use the courts as a way of harassing their spouses/partners” and fear that more victims of

abuse will be forced to represent themselves in court “to counter these challenges.” Further, cuts to community-based Women’s Centres have ensured that women who are too afraid to report spousal abuse to the police remain isolated, and survivors of abuse are left with no community support network.

Marina Morrow, Olena Hankivsky, and Colleen Varcoe, “Women and Violence: The Effects of Dismantling the Welfare State” (2004) 24 *Critical Social Policy* 358.

## **B. Violence Against Women: Changes to Spousal Assault Policy**

36. In May 2003, the government revised the Criminal Justice Branch Spousal Assault Policy. Prior to the revisions, prosecutors were required to lay charges in almost all reported incidents of spousal assault where there is a reasonable likelihood of conviction. However, under the new policy, crown counsel has been directed to allow more perpetrators of spousal assault to avoid prosecution through the use of Alternative Measures, which are provided for in the Canadian Criminal Code, and are forms of diversion from the criminal justice system, which may result in alternative sentencing practices. Under the old policy, Alternative Measures were only to be used in exceptional cases; now, they are available to any abuser who falls within the “low-risk” categorization. Because so many spousal abuse cases involve reluctant witnesses, critics of the new policy fear that “if the accused believes that she (the victim) can have the charges dropped or stayed or have alternative measures used, there's a possibility that he's going to coerce her in a variety of different ways to have that happen - which happens all the time.”

37. In most provinces that have an Alternative Measures program, spousal assault cases are expressly excluded. Only the Northwest Territories, Prince Edward Island, and British Columbia allow perpetrators of spousal assault access to this program. Prince Edward Island restricts access to exceptional circumstances only. Prosecutors in British Columbia have effectively been told to be more tolerant of spousal abuse.

BCPolitics, *Impact of BC Government Cutbacks on Women*, July 9, 2002, online: BCPolitics <[http://www.bcpolitics.ca/left\\_impact.htm](http://www.bcpolitics.ca/left_impact.htm)> (date accessed: 30 May 2005).

BC Coalition of Women’s Centres, “Gordon Campbell, Geoff Plant, In Breach of Public Trust, Charges BC Coalition of Women’s Centres, May 30, 2002, online: <[http://www3.telus.net/bcwomen/archives/breach\\_of\\_public\\_trust\\_may\\_02.html](http://www3.telus.net/bcwomen/archives/breach_of_public_trust_may_02.html)> (date accessed: 30 May 2005).

Ministry of Attorney General, *Crown Counsel Spousal Assault Policy Discussion Paper*, 2002, online: Ministry of Attorney General

<<http://www.ag.gov.bc.ca/legislation/spousal-assault/discussion.htm>>  
(date accessed: 14 June 2005).

Leneen Robb “Liberals look at Changing how Spousal Assault Cases are Handled” *The Now*, August 31, 2002, online: The Now  
<<http://www.thenownews.com/issues02/083102/news/083102nn1.html>>  
(date accessed: 14 June 2005).

Department of Justice, *Spousal Abuse: Policies and Legislation*, prepared for Federal-Provincial-Territorial Ministers Responsible for Justice, online: Department of Justice  
<<http://canada.justice.gc.ca/en/ps/fm/reports/spousal.html>> (date accessed: 14 June 2005).

38. The Crown Victim Witness Services program, which assisted prosecutors in preparing victims of domestic violence to testify, as well as providing women and children who have been abused with counseling and other resources, has been eliminated. This service provided essential support to victims of spousal assault and strengthened the likelihood of convictions. The Greater Victoria Police Victim Services reports “the services that were provided by this program have been significantly reduced and are now the responsibility of the Police Victim Service Programs.” Changes to domestic violence policy, the diminishment and elimination of key services for victims of spousal assault, cuts to legal aid and courthouse closures have reduced vital protections for women who are victims of domestic violence, increased their vulnerability and threatened their safety.

Vancouver Status of Women, Cuts, online: VSW  
<<http://www.vsw.ca/cuts.HTM>> (date accessed: 15 June 2005).

Greater Victoria Police Victim’s Services, History of Victim’s Services, online: GVPVS <<http://www.gvpvs.org/main.php?content=history>> (date accessed: 15 June 2005).

### **C. Missing and Murdered Women**

39. Since 1983, more than 65 women have gone missing from the Downtown Eastside of Vancouver, British Columbia, which is Canada’s poorest urban neighbourhood. There is evidence that, for many years, these disappearances were not adequately acknowledged or investigated by the police and government. Police discounted concerns expressed by women’s organizations and by relatives of the missing women that a serial killer was at work, though women continued to disappear. In 2002, a Vancouver area man was charged with 15 counts of first degree murder. More charges have been filed since then. The families of the missing women say that the disappearances were not dealt with by the police because many of the missing women are prostitutes and drug addicts, and the majority are Aboriginal and poor. The lack of protection available to the most vulnerable women shows the lack

of social value accorded to these women, particularly poor Aboriginal women. These women are deprived of adequate social supports, and then left without adequate police protection. They are overpoliced, and criminalized for infringements of the law that are poverty-related, and underpoliced when they need protection from racism, sexual exploitation and violence.

K. Bolan and L. Kines, "Police review missing-women investigation" *The Vancouver Sun* (27 July 2002), online: MissingPeople.net <  
[http://www.missingpeople.net/vancouver\\_police\\_review\\_missing\\_women-july\\_27,\\_2002.htm](http://www.missingpeople.net/vancouver_police_review_missing_women-july_27,_2002.htm)> (date accessed: 13 August 2002).

P. Saunders, "The Missing Women of Vancouver" *CBC News Online* (23 May 2002), online: Canadian Broadcasting Corporation <  
<http://www.cbc.ca/news/features/bc.missingwomen.html>> (last modified: July 2002).

MissingPeople.Net, website, online: MissingPeople.Net <  
<http://www.missingpeople.net/>> (date accessed: 13 August 2002).

Vancouver Rape Relief and Women's Shelter, Press Release "Vancouver Rape Relief and Women's Shelter in Solidarity with Native Women on Call for Inquiry into Missing Women" (12 April 2002), online: Vancouver Rape Relief and Women's Shelter <  
[http://www.rapereliefshelter.bc.ca/issues/eastside\\_women\\_pr.html](http://www.rapereliefshelter.bc.ca/issues/eastside_women_pr.html)> (date accessed: 13 August 2002).

40. Since women were first identified as missing from the Downtown Eastside of Vancouver, other women, also mainly Aboriginal and poor, have been identified as missing and murdered in other parts of Canada as well. The Native Women's Association of Canada has launched a 'Sisters in Spirit' campaign to document and identify all the missing women, whose numbers are now estimated to be in the hundreds.

41. These missing and murdered women are blatant evidence that there is a lack of adequate social supports and police protection for women who are the targets of sex and race-based violence in Canada.

## IV. Articles 2, 3 14 and 26: Access to the Justice System

### A. Reduced Access to Legal Aid

42. Since 2002, the government of British Columbia has reduced funding for legal aid by approximately 40 percent, and restricted the legal problems for which legal aid is available. While legal representation is still available for criminal law matters, legal aid for poverty law, family law and immigration and refugee matters has been drastically cut.

#### Poverty Law

43. All services for “poverty law”, that is, for matters dealing with landlord/tenant, employment insurance, employment standards, welfare, and disability pension claims or appeals, have been eliminated. In the past, the *Legal Services Society Act* provided that the legal aid system was obliged to provide legal assistance for “a legal problem or situation that threatens the individual’s family’s physical or mental safety or health, the individual’s ability to feed, clothe and provide shelter for himself or herself and the individual’s dependents, or the individual’s livelihood.” These services are currently unavailable.

*Legal Services Society Act, S.BC. 2002, c. 30, repealing Legal Services Society Act, R.S.BC. 1996, c. 256, online: Ministry of Management Services [http://www.qp.gov.bc.ca/statreg/stat/L/02030\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/L/02030_01.htm) (date accessed: 24 June 2004).*

Legal Services Society, “Legal Aid Services and Tariffs: Summary of Cuts”, online: Legal Services Society [http://www.lss.bc.ca/whats\\_new/Archived\\_noninclude-asp/backgroundner\\_summary\\_of\\_cuts.asp](http://www.lss.bc.ca/whats_new/Archived_noninclude-asp/backgroundner_summary_of_cuts.asp). (date accessed: 18 May 2004).

Legal Services Society, *Annual Service Plan Report 2002-2003* (2003) at 4-5, online: LSS [http://www.lss.bc.ca/legal\\_info/pubs\\_pdf/sec\\_a/annualreports/AR02-03.pdf](http://www.lss.bc.ca/legal_info/pubs_pdf/sec_a/annualreports/AR02-03.pdf) (date accessed: 18 May 2004).

44. The cuts have had a severe impact on rural communities where 60 legal aid offices have closed, replaced by seven regional centres with two satellite offices.

#### Family Law

45. Legal representation is no longer available in family law matters, except where one of the parties can show that violence is involved. Family law legal aid is crucial to women, as at the time of relationship breakdown they are likely to be the poorer partner. Lawyers and community groups have expressed concern at the

dramatic increase in unrepresented litigants in family law matters. Particularly affected are rural women, who are likely to give up their claims to child custody or access rather than face prepared legal teams alone.

Chris Tenove “Small-town Justice Steps Back into the Past” *The Tyee* (12 February 2004), online: The Tyee  
<http://www.thetyee.ca/News/current/Small-town%20Justice%20Steps%20Back%20into%20Past.htm> (date accessed: 10 June 2004).

## **Immigration and Refugee Law**

46. The Canadian Bar Association (CBA) notes that cutbacks to legal aid disproportionately impact refugees. Since September 11, 2001 the procedural requirements in immigration and refugee matters have increased and the process has become lengthier, yet the funding and accessibility of legal aid services continues to diminish.

The Canadian Bar Association, *Refugees Left out in the Cold with Funding Cuts*, February 6, 2004, online: CBA  
<[http://www.cba.org/BC/Public\\_Media/news\\_2004/news\\_02\\_06\\_04.aspx](http://www.cba.org/BC/Public_Media/news_2004/news_02_06_04.aspx)  
> (date accessed: 16 May 2005).

47. Widespread concern about the current lack of access to the justice system in British Columbia led to the Law Society of British Columbia to pass an unprecedented resolution which stated that it had lost confidence in the Attorney General as a result of the legal aid cuts. Commenting specifically on the elimination of poverty law services, the President of the Law Society of British Columbia said: “How cynical is it to create legal rights and then deny the poor any means to assert those rights? The government is making a mockery of equality before the law.”

Law Society of British Columbia, *Benchers Bulletin*, “BC lawyers pass vote of non-confidence in the Attorney General,” resolution passed 22 May 2002, online: Law Society of British Columbia  
<http://www.lawsociety.bc.ca>.

Law Society of British Columbia, News Release, “Law Society Condemns Sacking of Legal Society Board” (22 February 2002), online: Law Society of British Columbia <http://www.lawsociety.bc.ca>.

48. The Canadian Bar Association (CBA) has launched a test case to challenge BC’s legal aid cutbacks and to establish a constitutional right to civil legal aid in Canada. The President of the BC branch of the CBA has noted that “Time and again, we have seen how cuts to civil legal aid target people who are already disadvantaged – women and children in family law cases and low-income Canadians, especially those from racial minorities, and those in poverty law disputes.”

The Canadian Bar Association, CBA Announces Legal Team to Lead Court Challenge on Constitutional Right to Legal Aid, February 19, 2005, online: CBA <[http://cba.org/CBA/News/2005\\_Releases/2005-02-19\\_lacounsel.asp](http://cba.org/CBA/News/2005_Releases/2005-02-19_lacounsel.asp)> (date accessed: 27 May 2005)

49. The inadequacy of legal aid services, particularly for poverty and family law, exacerbate women's inequality in British Columbia. Further, because the inadequacies of British Columbia's legal aid system have the harshest impact on the province's most disadvantaged groups, the cuts to legal aid breach *Covenant* Articles 2 and 26.

## **B. Courthouse Closures**

50. In 2002, without consulting the Chief Justice of the Provincial Court or the bar, the British Columbia government closed 24 courthouses, representing about one-fourth of all provincial courts in the province. Many of the closures occurred in rural areas, resulting in the inaccessibility of the justice system for many British Columbians who now have to travel long distances to attend court. A large proportion of the cases heard in these courthouses involved child apprehension, young offender matters, and domestic violence. As such, the courthouse closures are particularly harmful to rural women and Aboriginal women who rely on court orders to protect themselves from spousal abuse. As their access to justice is diminished, the safety and legal rights of these women are jeopardized. For those women charged with offences, a disproportionate amount of whom are Aboriginal, they will be held further away from their communities and in harsher conditions.

The Law Society of British Columbia, *The Provincial Government's Cutbacks to Legal Aid and Courthouse Closures*, February 28, 2002, online: The Law Society of British Columbia <[http://www.lawsociety.bc.ca/publications\\_forms/notices/body\\_notices\\_02-02-27\(SGM-b\).html](http://www.lawsociety.bc.ca/publications_forms/notices/body_notices_02-02-27(SGM-b).html)> (date accessed: 15 June 2005).

Provincial Court of British Columbia Judiciary, "Preliminary Assessment of Proposed Courthouse Closures in Provincial Court" (2002) at ii and 14, online: Provincial Court of British Columbia <<http://www.provincialcourt.bc.ca/downloads/pdf/preliminaryassessmentofproposedcourthouseclosuresfeb18.pdf>> (date accessed: 30 May 2005).

## **C. Abolition of the Human Rights Commission**

51. In 2002, the government eliminated the Human Rights Commission, the only independent public body in British Columbia with a mandate to provide public education on human rights, and to undertake research, inquiries and litigation to eradicate systemic discrimination. The Human Rights Commission played a central role for individuals and groups who felt their human rights were being breached or

disregarded. The Commission used to conduct research, report to the legislature, promote education and awareness, intervene in cases of public interest that came before the Human Rights Tribunal, and provide legal help to complainants, including providing representation at hearings.

*Human Rights Code Amendment Act, S.B.C. c.62*, amending R.S.B.C. 1996, c.210, online: British Columbia Ministry of Attorney General [http://www.legis.gov.bc.ca/37th3rd/3rd\\_read/gov64-3.htm](http://www.legis.gov.bc.ca/37th3rd/3rd_read/gov64-3.htm) (date accessed: 30 May 2005).

52. British Columbia is now the only province in Canada without a Human Rights Commission. The Human Rights Tribunal continues to operate, adjudicating human rights complaints filed by mainly by individuals. However, discrimination impacts all British Columbians insofar as it jeopardizes community values of fairness and equality. Without the Commission, British Columbia has no public voice to uphold these values. In BC., discrimination is chiefly experienced by women, people with disabilities, Aboriginal peoples and visible minorities.

Shelagh Day, “Human Rights Plunge into the Past” (2002) Canadian Centre for Policy Alternatives, online: Canadian Centre for Policy Alternatives <http://www.policyalternatives.ca/bc/opinion89.html> (date accessed: 30 May 2005)

53. The abolition of the Human Rights Commission demonstrates the failure of the Government of British Columbia to make concerted efforts to eradicate discrimination.

#### **D. Elimination of the Ministry of Women’s Equality**

54. Before 2002 British Columbia was the only province with a full Ministry for Women’s Equality (MWE). In its 1998 submission to the CEDAW Committee, the Government of British Columbia emphasized the important role of this Ministry of Women’s Equality, stating:

As part of its central agency role in advocating for social reform, MWE provides expertise on gender inclusive analysis to other government decision makers so they may determine whether new legislative, policy and program recommendations support equality for women...MWE has become the leading agency in a major government strategy to address the issue of violence against women. The strategy has a three-pronged approach: to stop violence against women; to support women who have experienced violence; and to assist communities in preventing such violence...Finally, MWE was active in seeking a declaration of two province-wide weapons amnesties to bring attention to the misuse of firearms, spousal homicides, and the use of weapons in threats, coercion, and physical and sexual assaults

against women. In these two initiatives alone, nearly 5,000 firearms and more than 198,000 rounds of ammunition were voluntarily surrendered.

British Columbia's submission to *Canada's Fifth Report on the Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), para. 1011-1015.

55. In 2001, the government eliminated the Ministry of Women's Equality, and assigned responsibility for women to the Ministry of Community, Aboriginal and Women's Services, where it is a junior portfolio, dependent on other ministries to "maximize opportunities for women."

Ministry of Community, Aboriginal and Women's Services, Service Plan 2003/04-2005/06, online: Ministry of Community, Aboriginal and Women's Services, [http://www.llbc.leg.bc.ca/Public/PubDocs/bcdocs/352703/caws\\_srv\\_pln\\_03.pdf](http://www.llbc.leg.bc.ca/Public/PubDocs/bcdocs/352703/caws_srv_pln_03.pdf) (date accessed: 30 May 2005).

56. The elimination of the Ministry of Women's Equality demonstrates the government's failed commitment to women's equality.

## **E. Elimination Of Funding For Women's Centres**

57. One hundred percent of the provincial core funding for the 38 women's centres in British Columbia was cut on April 1, 2004. The government's own website describes the role of these centres: "Women's centres respond to the needs of their communities through a variety of services, such as information and referral, support groups, crisis counseling, job entry programs, child care services and housing registries."

58. The BC. Coalition of Women's Centres reported that in 2001, women's centres provided these and other services to 300,569 women, or 16% of all women and girls in the province. The majority of the women served were experiencing violence and/or living in poverty.

59. In BC. women's centres are regionally-based, so that there are women's centres in remote parts of the province, as well as in the heavily populated south. Some centres are also culture or community-specific. The Downtown Eastside Women's Centre serves women in Canada's poorest urban neighbourhood, which also has a high population of Aboriginal women. The Philippine Women's Centre serves women who have come to Canada from the Philippines as immigrants or migrant workers, including a significant number of domestic and home care workers.

60. Some of the centres may survive on other types of funding – research funding, or fee-for-service funding, for example. But the funding that has been removed from women's centres has been critical to empowering women in the

province to associate and organize in order to have a voice in the decision-making processes that affect their lives. The withdrawal of the core funding to women's centres silences British Columbian women.

British Columbia Ministry of Community, Aboriginal and Women's Services, *Service Plan Summary 2002/03 – 2004/05* at 3, online: British Columbia Ministry of Community, Aboriginal and Women's Services [http://www.gov.bc.ca/prem/down/core\\_review\\_02/community\\_aboriginal\\_and\\_women%27s\\_services.pdf](http://www.gov.bc.ca/prem/down/core_review_02/community_aboriginal_and_women%27s_services.pdf) (date accessed: 8 August 2002).

British Columbia Ministry of Community, Aboriginal and Women's Services, website, online: British Columbia Ministry of Community, Aboriginal and Women's Services <http://www.weq.gov.bc.ca/womens-centres/index.stm> (date accessed: 8 August 2002).

BC. Coalition of Women's Centres, Press Release "Woman's life not worth \$5.65 in British Columbia" (28 May 2002), online: BC. Coalition of Women's Centres [http://www3.telus.net/bcwomen/archives/womanslife\\_notworth\\_5\\_65.html](http://www3.telus.net/bcwomen/archives/womanslife_notworth_5_65.html) (date accessed: 8 August 2002).

## **V. Articles 2, 3, 23, and 26: Right to Family**

### **A. Cuts to Child Care**

61. The Government of British Columbia cut programs and funding for child care services in 2002, significantly reducing the ability of women in British Columbia to access high quality, reliable, and affordable child care and day care. The 1984 Royal Commission on Equality of Employment noted that: "child care is the ramp that provides equal access to the work force for mothers". Thus, the recent actions of the government will make it more difficult for women to participate in the labour force and in other areas of public life and result in women increasingly having to resort to cheaper, unsafe child care arrangements where the adult caregivers are untrained. Without access to affordable childcare, women face increased job insecurity, increased levels of stress, diminished access to educational opportunities, increased polarization based on socio-economic status, reduction in choices with respect to participation in the paid work force, and increased risk of child apprehensions.

Research Advisory on the Provincial Cuts and Violence Against Women, "Social Assistance and Other Social Programs: Anticipated Impact on Women who Experience Violence" (2002), British Columbia Institute Against Family Violence, online: British Columbia Institute Against Family Violence <[http://www.bcifv.org/cuts/social\\_assistance.pdf](http://www.bcifv.org/cuts/social_assistance.pdf)> (last modified: 10 April 2002).

Canada, *Report of the Royal Commission on Equality of Employment* (Ottawa: Supply and Services Canada, 1984) (Commissioner: Judge Rosalie Silberman Abella).

BC. Coalition of Women's Centres, Media Release, "Child care cuts – a huge blow to women's equality in BC." (7 November 2002).

62. The Child Care BC. Program, which provided before- and after-school care for children from kindergarten to age 12, was eliminated.

Caledon Institute of Social Policy, "A New Era in British Columbia: A Profile of Budget Cuts Across Social Programs" at 7, online: Caledon Institute of Social Policy <<http://www.caledoninst.org/>> (date accessed: 14 August 2002).

Research Advisory on the Provincial Cuts and Violence Against Women, "Social Assistance and Other Social Programs: Anticipated Impact on Women who Experience Violence" (2002), British Columbia Institute Against Family Violence, online: British Columbia Institute Against Family Violence <[http://www.bcifv.org/cuts/social\\_assistance.pdf](http://www.bcifv.org/cuts/social_assistance.pdf)> (last modified: 10 April 2002).

63. The government cancelled a \$16 million universal day care program launched but not implemented by the previous government. The results of the program cancellations detailed here is that women have less flexibility in obtaining work, and thus less flexibility in building financial independence. The consequences of such reductions in ability to access the labour market are particularly severe for women seeking to leave an abusive partner.

Caledon Institute of Social Policy, "A New Era in British Columbia: A Profile of Budget Cuts Across Social Programs" at 7, online: Caledon Institute of Social Policy <<http://www.caledoninst.org/>> (date accessed: 14 August 2002).

64. Programs providing financial support directly to day care and child care centres were also cut. For example, the British Columbia Ministry of Community, Aboriginal and Women's Services eliminated the daycare Contribution and Compensation program that provided salary top-ups to childcare workers with appropriate higher education. The One Stop Access Program, which provides childcare subsidies in the (rural) north of British Columbia was cut. The Ministry of Children and Family Development reduced supported childcare for developmentally delayed children by 28%.

BC. Coalition of Women's Centres, Media Release, "Child care cuts – a huge blow to women's equality in BC." (7 November 2002).

65. Cuts were also made to child care resource and referral services. These services provide both assistance to mothers looking for quality child care and training for child care providers. These cuts significantly decrease community access to assistance to apply for child care subsidies, as well as reducing access to child care information.

Caledon Institute of Social Policy, "A New Era in British Columbia: A Profile of Budget Cuts Across Social Programs" at 7, online: Caledon Institute of Social Policy <<http://www.caledoninst.org/>> (date accessed: 14 August 2002).

BC. Coalition of Women's Centres, Media Release, "Child care cuts – a huge blow to women's equality in BC." (7 November 2002).

Research Advisory on the Provincial Cuts and Violence Against Women, "Social Assistance and Other Social Programs: Anticipated Impact on Women who Experience Violence" (2002), British Columbia Institute Against Family Violence, online: British Columbia Institute Against Family Violence <[http://www.bcifv.org/cuts/social\\_assistance.pdf](http://www.bcifv.org/cuts/social_assistance.pdf)> (last modified: 10 April 2002).

66. Cuts were made to the childcare subsidy program. Subsidies were already inadequate to allow women to access quality, affordable, safe child care, but cuts reduced further the number of women and families who were eligible. The income exemption level was lowered, making many mothers who are working but still living in poverty not eligible for childcare subsidies since their incomes were not low enough to qualify them for assistance. The consequences of these reductions were that 1) fewer families were able to access the income-tested child care subsidy, and 2) eligible families received fewer dollars to assist with monthly child care fees.

British Columbia Ministry of Human Resources, Fact Sheet "BC. Employment and Assistance Initiatives" (1 April 2002), online: British Columbia Ministry of Human Resources <[http://www.mhr.gov.bc.ca/factsheets/2002/April\\_Initiatives.htm](http://www.mhr.gov.bc.ca/factsheets/2002/April_Initiatives.htm)> (date accessed: 14 August 2002).

Coalition of Child Care Advocates BC., Press Release "Liberals Trade Quality And The Future Of BC.'s Children To Save A Few Bucks" (21 February 2002), online: Coalition of Child Care Advocates BC. <[http://action.weBCa/home/cccab/alerts.shtml?sh\\_itm=a5d0846013699e7e99c7588d221dccdb](http://action.weBCa/home/cccab/alerts.shtml?sh_itm=a5d0846013699e7e99c7588d221dccdb)> (date accessed: 14 August 2002).

67. Prior to the May 2005 election, the Government of British Columbia restored child care subsidies to their previous inadequate levels. No other child care programs were restored.

68. Starting in October 2005, the federal government will provide monies to the Government of British Columbia to support child care in the province as a part of a new national child care strategy. The Coalition of Child Care Advocates of BC noted that the federal money might begin to restore child care that the provincial government had cut. The Coalition said: "The patchwork of services we call a child-care system in BC. over the past four years has been so destabilized that this new money is extremely welcome."

BC. Child Care News, 12 September 2005,  
[http://action.weBCa/home/cccab/alerts.shtml?x=81504&AA\\_EX\\_Session=1cb944234481ef508a72d7e332522932](http://action.weBCa/home/cccab/alerts.shtml?x=81504&AA_EX_Session=1cb944234481ef508a72d7e332522932) (date accessed: 28 September 2005).

## **VI. Articles 2, 3, 8, 22 and 26: Right to Association and Labour Freedoms**

### **A. Reduced Labour Protections**

69. In 2001 and 2002, the government of British Columbia made significant changes to the *Employment Standards Act* and its accompanying regulations, changes that have had a negative and discriminatory impact on working women. Specifically, recent changes have introduced a "training wage" below the minimum wage, "negotiated" employee work schedules, reduced enforcement of labour standards protection, as well as the repeal of pay equity provisions in the *BC. Human Rights Code*.

70. The changes described in this section are particularly harmful to racialized and disabled women. As legal scholar Nitya Iyer states: "[b]ecause they are heavily overrepresented in the lowest wage sectors, Aboriginal women, women of colour and women with disabilities comprise a 'marginal' labour force that is especially vulnerable...." Immigrant women and domestic workers are also a part of this marginal and vulnerable sector of the labour force. These women are particularly reliant on effective public enforcement of employment standards.

N. Iyer, "Some Mothers are Better than Others: A Re-examination of Maternity Benefits," in S. Boyd ed., *Challenging the Public/Private Divide: Feminism, Law and Public Policy* (Toronto: University of Toronto Press, 1997) 168.

### **Training Wage**

71. According to regulations enacted in November 2001, all workers who are new to the labour force are now paid a \$6 per hour "training wage", instead of the regular \$8 per hour minimum wage, for the first 500 hours of work. The most obvious

impact of this change is on youth. In practice, however, it affects immigrants as well as women returning to the labour force after interruptions caused by child-bearing and child-caring. Because of women's work patterns, and because women are disproportionately minimum wage workers, this measure has a gendered impact.

BC. Reg. 261/2001, online: <<http://www.labour.gov.bc.ca/first-job/regulation.htm>> (date accessed: 20 October 2002).

Friends of Women and Children in BC., Report Card, April 15, 2002, Vol. 1 No.1, online: University of British Columbia Centre for Women's Studies and Gender Relations <<http://www.wmst.ubc.ca/FWCBCApr02.pdf>> (date accessed: 8 August 2002).

### **'Flexible' Overtime**

72. Further, the *Employment Standards Act* itself has been amended to allow employers and employees to negotiate a schedule that maintains a 40-hour work week, but "averaged" over two, three or four weeks. Thus, for example, employers are not required to pay overtime pay if they obtain the agreement of employees to work four 10 hour days or three 13 1/3-hour days in a week, or to work 30 hours one week and 50 hours another. An employee will only be paid overtime if the number of working hours exceeds 160 per month. This new standard also has a disproportionate impact on women who are now subject to employer pressure to accept irregular work hours, and required to negotiate on their own for hours that fit their family's schedule and their responsibilities. Overtime rules were designed to protect against economic coercion and exploitation. Low income, non-unionized workers, the majority of whom are women, cannot negotiate individually on a footing of equality with their employers regarding conditions of work. The harshest impact of this change will fall on the most vulnerable women.

British Columbia Ministry of Skills Development and Labour, Press Release "New Employment Standards Increase Workplace Flexibility" (13 May 2002), online: Ministry of Skills Development and Labour <<http://www.labour.gov.bc.ca/news/2002/2002-005.htm>> (date accessed: 13 August 2002).

73. The uncertainty created by the new rules makes it even more difficult for women to combine family obligations with work responsibilities. The government's claim that this change will help women manage their family lives relies on a false picture of the woman worker, and is a cynical denial of the real conditions under which women work in British Columbia. The worker for whom this "flexibility" will be an advantage is not a woman worker.

Friends of Women and Children in BC., Report Card, June 15, 2002, Vol. 1 No.3, online: University of British Columbia Centre for Women's

Studies and Gender Relations  
<<http://www.wmst.ubc.ca/FWCBCJun02.pdf>> (date accessed: 6 August 2002).

### **Reduced Minimum Shift**

74. Under the new rules, the minimum shift has been reduced from 4 hours to 2 hours. Women who are part-time and casual workers can be called out for less work and receive less pay, while still experiencing the same requirement to make child care and other family arrangements and incurring the same transportation cost. This change further complicates women's attempts to manage their jobs and their families at the same time. Also, the new legislation reduces employers' liability for unpaid wages from 2 years to six months. An employee's only means of recovering more than six months of unpaid wages is through the court system, which is more costly and less accessible, particularly now that legal aid is no longer available for poverty law matters.

British Columbia Ministry of Skills Development and Labour, Press Release "New Employment Standards Increase Workplace Flexibility" (13 May 2002), online: Ministry of Skills Development and Labour <<http://www.labour.gov.bc.ca/news/2002/2002-005.htm>> (date accessed: 13 August 2002).

### **Reduced Enforcement**

75. Under the new *Employment Standards Act*, workers' complaints about violations of the *Act* must be first dealt with using a "self-help kit," which directs the worker to approach her employer on her own. The Employment Standards Branch will only become involved after this process has been attempted. Moreover, the number of Employment Standards Officers available to undertake enforcement work has been reduced significantly. Vulnerable and marginalized women workers have lost an important source of protection. The Employment Standards Branch has also introduced mediation as a main way to resolve disputes. If the self-help kit does not work, the parties are offered mediation by an employment standards officer (who has minimal training in cross-cultural conflict resolution) to settle their cases. If the parties do not agree to mediation, the complaint is sent to adjudication. For vulnerable groups of employees, mediation with their employers will not provide a successful means of enforcing their rights unless the mediators are well-trained and employees are provided with adequate supports and advocates.

British Columbia Ministry of Skills Development and Labour, Press Release "New Employment Standards Increase Workplace Flexibility" (13 May 2002), online: Ministry of Skills Development and Labour <<http://www.labour.gov.bc.ca/news/2002/2002-005.htm>> (date accessed: 13 August 2002).

Friends of Women and Children in BC., Report Card, June 15, 2002, Vol. 1 No.3, online: University of British Columbia Centre for Women's Studies and Gender Relations  
<<http://www.wmst.ubc.ca/FWCBCJun02.pdf>> (date accessed: 6 August 2002).

76. Reduced enforcement of employment standards will have a particular impact on live-in caregivers, almost all of whom are women of colour who have come to Canada under a specific immigration program for domestic workers. These women arrive in Canada as temporary workers and must reside in their employers' homes. They are also only allowed to work for the employer named on their work permit. They are required to complete 24 months of full-time caregiving work within three years of coming to Canada in order to be eligible to apply for permanent resident status in Canada. Due to their temporary status and the live-in requirement, these women are especially vulnerable to abuse and exploitation. Immigrant live-in caregivers will now be expected to attempt to enforce their own rights using the self-help kit, and the Employment Standards Branch will have no obligation to intervene unless they do this. The cuts to Employment Standards personnel also mean less education about employment rights, which is particularly detrimental to domestic workers who are isolated, dependent on their employers, and often unaware of their employment rights in Canada. This change also has a particularly negative affect on agricultural workers, many of whom are women of colour. Their work environment is typically characterized by gross employment standards violations.

### **Child Labour**

77. Since 2002, children in BC aged 12 to 14 have been able to work with the consent of one parent or guardian. Previously, children in this age group could not work unless the Director of Employment Standards granted a permit. This age threshold is amongst the lowest in Canada for employment without permission of employment standards officers or school authorities. A permit continues to be required for employment of children under 12 years.

### **Lax regulations**

78. Children are allowed to work up to 35 hours per week when school is in session for four days or fewer per week (or up to 20 hours when school is in session for five days) This may have detrimental effects on school performance. No mechanism, other than the approval of one parent, now exists to ascertain academic standing before granting permission to work. In addition, very young workers may find themselves exposed to dangerous or inappropriate conditions.

79. British Columbia provides significantly less protection to child workers than other jurisdictions in Canada, the United States and the European Union. In particular, permitting children as young as 12 to work with the permission of only one

parent is unusual. It appears to contravene the International Labour Organization's Convention on Minimum Age.

Child and Youth Employment Standards: The Experience of Young Workers under British Columbia's New Policy Regime, by John Irwin, Stephen McBride, and Tanya Strubin, September 2005, Canadian Centre for Policy Alternatives.

## **B. Equal Pay for Work of Equal Value**

80. In 2001 the government of British Columbia repealed the section of the *BC. Human Rights Code* that prohibited paying women less than men for work of equal value, in spite of the following findings of the Human Rights Commission:

- traditional female-dominated job sectors continue;
- despite improvements in women's educational attainment, they still have lower earnings than men;
- most part-time jobs are occupied by women;
- women's income and earnings are improving but significant gender gaps remain;
- women's earnings vary to a greater extent than men's, especially when they have children;
- women face a higher risk of poverty than men;
- single mothers and senior women living alone are most liable to experience poverty;
- women who are Aboriginals, or members of a visible minority also have a higher risk of poverty than others.

*Pay Equity in British Columbia: A Response to the Ministry of Attorney General's Discussion Paper, BC. Human Rights Commission, March 21, 2001, online: Legislative Assembly of British Columbia* <<http://www.llbc.leg.bc.ca/Public/PubDocs/bcdocs/345977/PayEquityAGSubmission.pdf>> (date accessed: 14 June 2005).

81. The government has since conducted another review of pay equity provisions in general. The review reported the need for action on the part of the *BC.* government to address women's pay inequity:

82. [T]he gender wage gap [in *BC.*] has not changed much over the last few years, even when only full-time full year workers are considered, suggesting that systemic barriers continue. In 1997, the wage gap actually widened by almost 1%. Despite some gains in earnings, women continue to represent a much greater percentage of those who earn under \$25,000 (59.7% compared to 42.1% of men) than

of those who earn over \$50,000 (7.9% compared to 25.3% of men). The problem does not appear to be solving itself.

83. While general percentages may be less helpful because of variances across industries, the “gender gap” in BC ranges from 1% (utilities) to 29% (goods-producing sectors), with the overall gap at 19%.

N. Iyer, *Working through the Wage Gap: Report of the task force on pay equity* (28 February 2002) Ministry of Attorney General at 88-9 and 154, online: Ministry of Attorney General  
[http://www.ag.gov.bc.ca/public/working\\_through\\_the\\_wage\\_gap.pdf](http://www.ag.gov.bc.ca/public/working_through_the_wage_gap.pdf) (date accessed: 16 June 2004).

84. Since repealing the existing pay equity law, the government has received the commissioned report but has not taken any action, instead allowing pay inequality to persist. This inaction directly contravenes the government’s obligations under Articles 2 and 26.

### **C. Employment Equity**

85. There is no employment equity legislation in British Columbia. However, prior to 2001, there was a legislative directive on employment equity in the public sector and the Equity and Diversity Branch of the Public Service Employee Relations Commission was required to gather statistics on employment equity in BC. Since 2001, any progress made to ensure equal employment in the public sector for women has been negated. The following changes have reinforced the systemic discrimination women workers encounter in BC:

The Directive [on employment equity] remains on the books, but the reporting process is inoperative. Indeed the government no longer collects self-identified equity data; employment equity positions and the Equity and Diversity Branch itself have been eliminated; and instead a ‘Merit Commissioner,’ without a commitment to equity, has been introduced.

G. Creese and V. Strong-Boag, “Losing Ground: The Effects of Government Cutbacks on Women in British Columbia, 2001-2005,” March 8, 2005, online: The BC Federation of Labour  
<<http://www.bcfed.com/BFNews/News+Releases/Archives/iwd-2005-losing-ground.htm>> (date accessed: 13 June 2005).

86. The abolition of the existing measures to monitor and eradicate inequality in public sector employment, combined with the repeal of the pay equity provisions in the *Human Rights Code*, reinforce discrimination against women in the workforce.

## D. Contracts Broken and Right to Strike Denied

87. The actions of the government of British Columbia consistently present direct challenges to the rights set out in Article 22 of the *Covenant*. Since the current government came to power in 2001, it has introduced several pieces of legislation to end strikes and enforce contract terms. For example, the *Health Services Continuation Act* forced health professionals and nurses to end lawful job action. The *Skills Development and Labour Statutes Amendment Act* made education an essential service so that striking would be illegal. Both the *Health Care Services Collective Agreements Act* and the *Education Service Collective Agreement Act* imposed the employers' last offer as the contracts for nurses and teachers.

Bill 2, *Health Services Continuation Act*, 1<sup>st</sup> Sess., 37<sup>th</sup> Parl., British Columbia, 2001, online: Legislative Assembly of British Columbia [http://www.legis.gov.bc.ca/37th1st/1st\\_read/gov02-1.htm](http://www.legis.gov.bc.ca/37th1st/1st_read/gov02-1.htm) (date accessed: 24 June 2004).

Bill 15, *Health Care Services Collective Agreements Act*, 2<sup>d</sup> Sess., 37<sup>th</sup> Parl., British Columbia, 2001, online: Legislative Assembly of British Columbia [http://www.legis.gov.bc.ca/37th2nd/1st\\_read/gov15-1.htm](http://www.legis.gov.bc.ca/37th2nd/1st_read/gov15-1.htm) (date accessed: 24 June 2004).

Bill 18, *Skills Development and Labour Statutes Amendment Act*, 2<sup>d</sup> Sess., 37<sup>th</sup> Parl., British Columbia, 2001, online: Legislative Assembly of British Columbia [http://www.legis.gov.bc.ca/37th2nd/1st\\_read/gov18-1.htm](http://www.legis.gov.bc.ca/37th2nd/1st_read/gov18-1.htm) (date accessed: 24 June 2004).

Bill 27, *Education Service Collective Agreement Act*, 2<sup>d</sup> Sess., 37<sup>th</sup> Parl., British Columbia, 2001, online: Legislative Assembly of British Columbia [http://www.legis.gov.bc.ca/37th2nd/1st\\_read/gov27-1.htm](http://www.legis.gov.bc.ca/37th2nd/1st_read/gov27-1.htm) (date accessed: 24 June 2004).

88. The International Labour Organization's Committee on Freedom of Association (I.L.O.) found that this type of legislation violates the *Convention on Freedom of Association and Protection of the Right to Organize*. The Committee admonished the BC. government to avoid resorting to such extreme measures in its union dealings and expressed grave concern about the many detrimental effects of imposing legislative restrictions on collective bargaining. The I.L.O. recommended that BC. amend (or in some cases repeal) the offending legislation to bring the province within the scope of its international obligations. Further, the Committee stressed that the BC. government is required to take its I.L.O. obligations more seriously, as "all governments are obliged to respect fully the commitments undertaken by ratification of I.L.O. Conventions."

*Convention on Freedom of Association and Protection of the Right to Organize* (C87), 1948, online: International Labour Organization <http://www.ilo.org/ilolex/english/convdisp1.htm> (date accessed: 16 June 2004).

I.L.O. Case(s) No(s). 2166, 2173, 2180, 2196, Report No. 330 (Canada): *Complaints against the Government of Canada concerning the Province of British Columbia*, at paras. 288 and 304, online: International Labour Organization <http://www.ilo.org/ilolex/english/newcountryframeE.htm> (date accessed: 16 June 2004).

89. Despite the I.L.O.'s stern reminder about *BC.*'s international human rights commitments, the *BC.* government maintained its position in a more recent labour dispute, when members of the Hospital Employees' Union (H.E.U.) were legislated back to work with a universal wage rollback of 15 per cent after a three-day strike. The H.E.U. was engaging in the collective bargaining process in the hope of undoing some of the damage inflicted by the *Health and Social Services Delivery Improvement Act* (one of the Bills condemned by the I.L.O. for violating workers' rights), which **effectively removed all statutory and collective agreement protections against contracting out.**

90. The H.E.U. reports that 8,000 jobs have been lost since January 2002 when the legislation was passed. The effects have been particularly devastating as the majority of H.E.U.'s 42,000 members are women (85%), immigrants, women of colour, and older workers. In light of the fact that ongoing privatization of health services has meant a 44% wage decrease for housekeepers from the old H.E.U. contract levels, one commentator noted:

The government's attack on health-care workers provides a precedent that will have far-reaching repercussions. When public sector wages and working conditions deteriorate significantly, it sets an example for the private sector. If the government reduces women's wages, it is a signal to the private sector that they can do the same. Actions to roll back pay-equity gains become endemic across the country.

91. The Government of British Columbia's privatization initiatives, such as the ones in the health care sector, appear to deepen an already disturbing trend towards greater social and economic insecurity for women. Not only will women's wages in some sectors deteriorate relative to men, but they are also likely to exacerbate an already large and growing gap between different classes of women workers.

Bill 29, *Health and Social Services Delivery Improvement Act*, 2d Sess., 37<sup>th</sup> Parl., British Columbia, 2001, online: Legislative Assembly of British Columbia [http://www.legis.gov.bc.ca/37th2nd/1st\\_read/gov29-1.htm](http://www.legis.gov.bc.ca/37th2nd/1st_read/gov29-1.htm) (date accessed: 24 June 2004).

Russ Francis “Contracting out Health Support: Documents Raise Doubts” *The Tyee* (21 May 2004), online: The Tyee <http://www.thetyee.ca/News/current/Contracting+out+Health.htm> (date accessed: 25 May 2004).

Marjorie Griffin Cohen “IWA Health Care Deal Betrays Women Workers” *The Tyee* (29 April 2004), online: The Tyee <http://www.thetyee.ca/Views/current/IWA+Health+Care.htm> (date accessed: 19 May 2004).

92. The H.E.U., currently in negotiations with, or on strike against, private corporations holding services contracts with public health authorities, is still attempting to address damage done by Bill 94, passed in December, 2003. Bill 94 exempted private corporations operating within the health care system from abiding by existing collective bargaining agreements and basic labour regulations that apply to other unionized workers.

Bill 94, *Health Sector Partnerships Agreement Act*, 4<sup>th</sup> Sess., 37<sup>th</sup> Parl., British Columbia, 2003, online: Legislative Assembly of British Columbia [http://www.legis.gov.bc.ca/37th4th/1st\\_read/gov94-1.htm](http://www.legis.gov.bc.ca/37th4th/1st_read/gov94-1.htm) (date accessed: 24 June 2004).

“‘Son of Bill 29’ gives corporations in health care more power” *Guardian* 22:1 (January 2004), online: Hospital Employees Union [http://www.heu.org/cgi-bin/pi.cgi?t:../pubs/past\\_article3\\_9.html+published\\_articles\\_list.FILE:/guardian/22-1/published\\_articles\\_list+published\\_articles\\_list.RECORD!Display:10010+publications\\_list.FILE:admin/database/publications\\_list+publications\\_list.RECORD:10001+published\\_dates\\_list.FILE:/guardian/published\\_dates\\_list+published\\_dates\\_list.RECORD:10018](http://www.heu.org/cgi-bin/pi.cgi?t:../pubs/past_article3_9.html+published_articles_list.FILE:/guardian/22-1/published_articles_list+published_articles_list.RECORD!Display:10010+publications_list.FILE:admin/database/publications_list+publications_list.RECORD:10001+published_dates_list.FILE:/guardian/published_dates_list+published_dates_list.RECORD:10018) (date accessed: 22 June 2004).

Bill 37, *Health Sector (Facilities Subsector) Collective Agreement Act*, 5<sup>th</sup> Sess., 37<sup>th</sup> Parl., British Columbia, 2004, online: Legislative Assembly of British Columbia [http://www.legis.gov.bc.ca/37th5th/3rd\\_read/gov37-3.htm](http://www.legis.gov.bc.ca/37th5th/3rd_read/gov37-3.htm) (date accessed: 24 June 2004).

93. The Poverty and Human Rights Centre submits that these legislative actions illustrate the precarious state of workers’ rights in the province, including rights guaranteed by the *Covenant*.

94. Further, the situation has provided an example of the *BC*. Supreme Court’s failure to pay due attention to international human rights. In a decision about the I.L.O.-condemned Bill 29, the Court chose to interpret the I.L.O. ruling as though “the committee did not otherwise comment on the substance of Bill 29 and whether it

violated international norms concerning freedom of association.” The Poverty and Human Rights Centre submits that international human rights should command the respect of domestic courts; narrow interpretations of I.L.O. rulings such as this one show blatant disregard for the violation of human rights. The obligations under the *Covenant* are not subject to the principle of progressive realization, and thus the government must immediately ensure the protection of a meaningful right to form and join trade unions and to participate freely in the collective bargaining process.

*Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia* [2003] BC.J. 2107 2003 BC.S.C. 1379 Vancouver Registry No. L020810 at paras. 122-123.

## **VII. Articles 1 and 27: Aboriginal Right to Self-Determination**

### **A. Referendum on Aboriginal Self-Determination**

95. In 2002, the government of British Columbia held a referendum on the principles the government should adopt in the treaty negotiation process. This referendum constituted a denial of First Nations’ inherent rights as guaranteed in the Canadian Constitution as well as in the *Covenant*, and indicated a willingness to subject the human rights of a minority to the will of the majority. A sample of the eight yes/no referendum questions include the following.

- Private property should not be expropriated for treaty settlement.
- Hunting, fishing and recreational opportunities on Crown land should be ensured for all British Columbians.
- Aboriginal self-government should have the characteristics of local government, with powers delegated from Canada and British Columbia.
- The existing tax exemptions for Aboriginal people should be phased out.

Centre for Research and Information on Canada, *Referendum on Aboriginal Treaties in British Columbia*, online: CRIC  
<[http://www.cric.ca/en\\_html/guide/referendum/referendum\\_bc.html#questions](http://www.cric.ca/en_html/guide/referendum/referendum_bc.html#questions)> (date accessed: 17 June 2005)

96. Many groups and individuals condemned the referendum as racist, and it generated major opposition, with tens of thousands of citizens spoiling their ballots in protest and sending them to First Nations organizations.

*First Nations Summit’s Views on the Province Wide Referendum on Treaty Negotiations*, online: First Nations Summit  
<http://www.fns.bc.ca/pdf/FNSReferendumPosition.pdf> (date accessed: 30 May 2005).

CBC News, *BC. Treaty Referendum*, July 2, 2004, online: CBC  
<[http://www.cbc.ca/news/background/aboriginals/bc\\_treaty\\_referendum.html](http://www.cbc.ca/news/background/aboriginals/bc_treaty_referendum.html)> (date accessed: 30 May 2005).

97. In addition, while in opposition, members of the current *BC.* government took legal action seeking to declare the Nisga'a Treaty unconstitutional and thus of no force and effect. The Nisga'a Treaty is a comprehensive agreement that took nearly twenty-five years of negotiations to complete. It includes self-government provisions and law-making powers. The successful completion of the Nisga'a Treaty provides the only example of how the federal and provincial governments can work with *BC.* First Nations to promote and facilitate Aboriginal self-determination and control over land, resources, and culture. The legal action protesting the treaty indicated antagonism and even hostility towards progress in Aboriginal self-determination.

*Campbell v. British Columbia (Attorney General)*, [2000] 4 C.N.L.R. 1.

## **B. Diminished Environmental Protection of Indigenous Cultural Life**

98. The Poverty and Human Rights Centre submits that indigenous cultural life exists in connection with the land. With respect to Aboriginal persons right to self-determination, the Committee has emphasized, "that the right to self-determination requires, inter alia, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (art. 1, para. 2). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP recommendations on land and resource allocation." The positions held by the *BC.* government in treaty-making, litigation, and policy decisions have impeded and denied *BC.* First Nations control over and sometimes access to their traditional territories. The protection of the right to pursue cultural development under Article 1(1) obliges the *BC.* government to make good faith efforts to protect and foster the relationship between Aboriginal people and the land.

Human Rights Committee, *Concluding Observations of the Human Rights Committee: Canada*, 7 April 1999, CCPR/C/79/Add.105 at para. 8.

99. *BC.*'s obligations include the responsibility to protect the land itself through sustainable development practices, yet the 2004/05 budget includes funding cuts to several ministries responsible for environmental protection, and the watchdog office of Commissioner for Environment and Sustainability has been terminated. In addition, the government is implementing massive deregulation schemes under what it calls "New Era" commitments. For example, the Ministry of Water, Land and Air Protection will reduce regulations by 38% over three years. The government continues to allow industrial development in unceded territory and has indicated it

will pursue offshore oil and gas development despite opposition from First Nations groups and the Canadian government, which continues to support a 33-year-old moratorium on oil and gas exploration. Such exploration poses known risks to BC.'s fragile marine ecosystems, risks particularly high in the proposed exploration sites because they are susceptible to sudden storms and earthquakes. The health of the oceans is a critical foundation of economic and cultural life for the hundreds of Aboriginal communities located in coastal areas. The government should ensure that effective and fair consultation with First Nations groups occurs throughout all stages of this and any other industrial development in BC.

Tim Howard "BC. Liberals Send the Bill to Nature: Why you didn't hear the word 'environment' in BC.'s brown budget" *The Tyee* (24 February 2004), online: The Tyee  
<http://www.sierralegal.org/media%5Farticles/ed04%5F02%5F24.html>  
(date accessed: 20 May 2004).

2004/05-2006/07 *Service Plan*, British Columbia Ministry of Water, Land and Air Protection, online: Government of British Columbia  
[http://www.bcbudget.gov.bc.ca/sp2004/wlap/wlap\\_initiatives.htm](http://www.bcbudget.gov.bc.ca/sp2004/wlap/wlap_initiatives.htm) (date accessed: 27 May 2004).

Chad Skelton and Jeff Rud "We will pursue oil: premier" *Vancouver Sun* (18 May 2004).

Ben Parfitt, "A Crude Solution: Should the Moratorium on Offshore Oil and Gas Development in BC be lifted?" (1999) Sierra Legal Defence Fund for The Living Oceans Society and Greenpeace at 5, online at:  
[http://www.sierralegal.org/reports/crude\\_solution.pdf](http://www.sierralegal.org/reports/crude_solution.pdf) (date accessed: 17 June 2004).

## **VIII. Articles 25 and 26: Political Equality**

### **A. Women's Political Equality**

100. Women in British Columbia continue to be underrepresented in the political sphere. While women constitute 52 percent of BC.'s population, at dissolution of Parliament in April 2005 women occupied only 18 of the 79 seats in the legislature, or 24 percent of the seats. The Premier had appointed 9 women Cabinet Ministers out of a possible 28 positions. The May 17, 2005 election resulted in a slight drop in women's numbers, with just 17 of the 79 seats, or 21.5 percent of possible seats, captured by women. The Premier appointed just 5 women to participate in his 23-member Cabinet. Women's political participation in elected office in British Columbia persists at less than one-fourth of possible seats. The full realization of women's equal exercise of *Covenant* rights has yet to occur.

Province of British Columbia, The Executive Council of the Government of British Columbia, online: Province of British Columbia <<http://www.prov.gov.bc.ca/prem/popt/exec/>> (date accessed: 15 June 2005).

## **IX. Articles 7, 9, 10, 14 and 24: Young Girls and Women and the Administration of the Criminal Justice System.**

### **A. Economic and Social Marginalization**

101. Civil and political rights are inextricably linked to the social, cultural and economic rights of girls and young women. It is not until economic, social and cultural marginalization is addressed that girls can exercise their full rights as citizens and be protected from civil and political discrimination. Factors such as poverty, male violence, colonization, and other social inequalities make Canadian girls vulnerable to criminalization/conflicts with the law. Canada has a long history of incarcerating girls on the basis of social inequality, especially sexism and racism. Historically, definitions of girls' deviance places a stronger emphasis on their violation of expected sexual and familial roles, with girls' sexual rebellion indicating more internalized, self-destructive behaviour. Feminist studies show that the sexualisation of female delinquency reveals biases in court dispositions. Judges often use criminal sanctions as a means of ensuring treatment of young female offenders for perceived psychological and social problems resulting in the offenders' revictimisation.

Catherine Kelly and Virginia Caputo, "Are federally Sentenced Women's Experiences with Family Violence a Factor in Their Contact with the Criminal Justice System? An Exploratory Study," (1998), Ottawa: Department of Justice Canada, Research and Statistics Division.

Meda Chesney-Lind, "What to do About Girls? Promising Perspectives and Effective Strategies," (1998), Arlington, VA: ICCA.

Mark Totten and Colleen Lundy, "Monitoring Agency Effectiveness: The Use of Outcome Measures," (1999), *Canadian Social Work Review*, 16 (1)

## **B. Article 10 and 14: The Essential Aim of the Penitentiary System**

102. The essential aim of the BC juvenile penitentiary system is seldom reformation and social rehabilitation. Rather young women are frequently placed in custody 'for their own protection.' Furthermore, there is evidence that criminal justice processing of Canadian girls is discriminatory and most often does not promote their rehabilitation back into society.

Reitsma-Street, Marge (2001) "Justice for Canadian Girls: A 1990s Update." *Youth InJustice: Canadian Perspectives (2<sup>nd</sup> Edition)*. Thomas Fleming, Patricia O'Reilly and Barry Clark, Eds. Canadian Scholars' Press Inc: Toronto, ON, pg. 283-311.

Sangster, Joan (2002a) *Girl Trouble: Female Delinquency in English Canada*. Between the Lines: Toronto ON.

103. While the Canadian *Youth Criminal Justice Act 2002* states that "all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons," the erosion of community services under the BC government program of restraint means that a youth court judge who is inclined to sentence a youth to a community alternative is faced with scarce community options to select.

*Youth Criminal Justice Act 2002*, s.38, d

104. Recent government cutbacks in BC have exacerbated the need for housing, and therefore place many young women at risk of homelessness, violence and criminalization. A 30 per cent budgetary cut to the BC Ministry for Children and Families in 2003, for example, caused the closure of 2 safe-houses for youth and a house for pregnant and parenting young women, highlighting the failure of the government to provide stable and secure housing for the most vulnerable young women. As a result, the penitentiary system is used in place of welfare to address social problems and inequalities faced by youth.

Amber Richelle Dean, *Locking Them Up to Keep Them "Safe": Criminalized Girls in British Columbia*, (April 2005), Justice for Girls. p.9

105. While youth crime is decreasing overall, the numbers of young women sentenced to custody has increased in Canada. For eight of the nine most common offences tracked in Canada, youth serve longer prison sentences than do adults. Youth are incarcerated at four times the rate of adults, and many times the rate in most states in the U.S. and European countries. Although young men are still more likely than

young women to be sentenced to custody, the proportion of female youth sentenced to custody is increasing at a faster rate than that for male youth.

106. Young women are more likely to be sentenced to prison for administrative breaches and child protection matters. Court orders specifying no contact with specific individuals, area restrictions, curfews and extensive lists of probation conditions are strategies used by the courts in order to protect girls from male violence, homelessness, and drug addictions. Numerous girls are incarcerated for breaches of probation rather than substantial criminal offences even when original charges are for minor offences. Yet, one study found that probation officers recommend a prison sentence based on the need to protect society from female youth only 4.5 per cent of the time. Furthermore, provincial law, such as the *BC Youth Justice Act* recently introduced to deal with trespassing, drinking under age, motor vehicle violations, and other minor offences, contributes to the over-incarceration of young women. The aforementioned piece of legislation increases the length of custodial sentences up to 30 days for certain offences, such as repeat failure to comply or trespassing on school property, and up to 90 days for other offences, including contravention of child protection orders or driving a motor vehicle with a suspended license.

Stevenson, Kathryn, Jennifer Tufts, Dianne Hendrick and Melanie Kowalski (1998). *A Profile of Youth Justice in Canada*. Ottawa: Canadian Centre for Justice Statistics

Raymond Corrado, Candice Odgers and Irwin Cohen, (2001), "The Incarceration of Female Young Offenders: Protection for Whom?" *Youth InJustice: Canadian Perspectives (2<sup>nd</sup> Edition)*. Thomas Fleming, Patricia O'Reilly and Barry Clark, Eds. Canadian Scholars' Press Inc: Toronto, Ontario. p. 426

Kim Pate, "Young Women and Violent Offences," (1997), online: The Canadian Association of Elizabeth Fry Societies <<http://www.elizabethfry.ca/violent/ywomen.htm>> (date accessed: 22 June 2005)

*BC Youth Justice Act 2003*

Doug Hillian, Marge Reitsma-Street and Jim Hackler, "Conferencing in the Youth Criminal Justice Act of Canada: Policy Developments in British Columbia," *Canadian Journal of Criminology and Criminal Justice*, 2004, Vol. 46, Issue 3.

107. Twenty-eight per cent of incarcerated girls in *BC* reported deliberately cutting or injuring themselves, and 18 per cent reported attempting suicide while in custody. This high rate of self harm by young women in prison appears symptomatic of the damaging impact of incarceration. The *BC Youth Custody Programs Policy Manual* sets out goals to "implement policies and provide programs and services that

are intended to afford society protection from the illegal behaviour of youth,” as well as to “afford youth optimal opportunities for their healthy growth, functioning and pro-social development”. However, prison is not a place of healing, health or safety for young women. The prison experience is dehumanizing, sometimes violent, and isolating. Kim Pate of the Canadian Association of Elizabeth Fry Societies writes: “In many young offender centres across the country, incidences of sexual assault and/or pregnancies during custody have led to the further segregation of young women in correctional facilities.” The environment and emotional response to incarceration inhibits the objectives of the *Covenant*, and further places young women at risk.

McCreary Centre Society, (2001), “Time Out: A Profile of BC Youth in Custody. McCreary: Vancouver BC

Ministry of Children and Family Development, Youth Custody Programs, Policy Manual, s. B, p.1.04

Kim Pate, “Young Women and Violent Offences,” (1997), online: The Canadian Association of Elizabeth Fry Societies <<http://www.elizabethfry.ca/violent/ywomen.htm>> (date accessed: 22 June 2005)

108. Incarcerated girls, as a group, experience a disproportionate level of violence, disruption and injustice in their lives. In one study of girls in prison, 72 per cent said they had been in state care at some time, 90 per cent said they had run away from home, and 54 per cent said they had been kicked out of their home. In this study, 41 per cent of the girls in prison said that they had deliberately cut or injured themselves prior to incarceration, 8 per cent said they had done so 10 or more times. An alarming 40 per cent of the girls had attempted suicide in the past year; 16 per cent of those had required medical treatment for the related injuries. Research conducted by Dr. Mark Totten concludes that young women’s aggression, violence and criminal activity only worsened after entering young offender custodial facilities. Subjecting young people to a multitude of residential child welfare placements is likely to make young women vulnerable to male violence, homelessness, school alienation, sexual exploitation through prostitution and criminal behaviour. Young women progress on to more serious crimes of violence after involvement in the young offender system.

Dr. Mark Totten, “The Special Needs of Females in Canada’s Youth Justice System: An account of some young women’s experiences and views,” (March 2000), Youth Services Bureau of Ottawa, Department of Justice Canada, p.36.

109. The Human Rights Committee states in its general comments on the *ICCPR* that juvenile offenders must be accorded treatment appropriate to their age and legal status in so far as conditions of detention are concerned. These conditions

include contact with relatives, with the aim of furthering young women's reformation and rehabilitation. Yet, in most custody centres across BC, visiting is severely restricted. Often only immediate family members are permitted to visit, and visiting hours are limited to specific periods of time that fit with the custody centre's schedule. In cases where family members are not supportive, visits from extended families, alternate families and friends are not permitted. Government cutbacks have exacerbated this situation so that many young women are incarcerated hundreds of miles from their home communities.

British Columbia Ombudsman, "Building Respect: A Review of Youth Custody Centers in British Columbia," (1996), online <[http://www.ombud.gov.bc.ca/reports/Public\\_Reports/PR34\\_Building\\_Respect/building\\_respect.html](http://www.ombud.gov.bc.ca/reports/Public_Reports/PR34_Building_Respect/building_respect.html)> (date accessed: 22 June 2005)

### **C. Article 7 and 10: Treatment in Prisons**

110. Inhuman, degrading treatment or punishment is experienced by girls in BC prisons where respect for the inherent dignity of the human person is compromised. In their general comments, the UNCHR (General Comment No. 3) emphasizes that Article 7 is designed to protect children in particular. The *ICCPR* imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in Article 7 of the *Covenant*. Not only may persons deprived of their liberty not be subjected to treatment that is contrary to Article 7, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons.

111. Girls in British Columbia prisons are subject to dehumanising conditions while in the prison system. Young women are placed in segregation in order to force them to "dry out" or "detox" without adequate medical supervision or support. Under the former *Youth Justice Act*, it was noted that youth were not to be jailed for issues of child protection, health, or other social measures. While this was often unheeded by the courts the new *Youth Criminal Justice Act* does not include "health" in this list, meaning that incarceration may be arguably used to substitute drug treatment for girls with addictions.

*Young Offenders Act, 1984*

*Youth Criminal Justice Act, 2002*

112. Regardless of the fact that the overwhelming majority of young women in prison pose no threat to the general public, girls are routinely shackled during transport, often for excessive periods of time. Girls are customarily subjected to

handcuffs and other restraints - which are especially egregious when we consider that most often girls are charged with non-compliance rather than actual criminal offences. Young women in custody are subjected to violence by authority figures and peers, in June 1994 the Ombudsman submitted a report suggesting that the government adopt a formal policy of zero-tolerance however no steps have been taken to implement this as of yet.

Amber Richelle Dean, *Locking Them Up to Keep Them "Safe": Criminalized Girls in British Columbia*, (April 2005), Justice for Girls. p.33

British Columbia Ombudsman, "Building Respect: A Review of Youth Custody Centers in British Columbia," (1996), online <[http://www.ombud.gov.bc.ca/reports/Public\\_Reports/PR34\\_Building\\_Respect/building\\_respect.html](http://www.ombud.gov.bc.ca/reports/Public_Reports/PR34_Building_Respect/building_respect.html)> (date accessed: 22 June 2005)

113. The prohibition in Article 7 not only relates to acts of physical pain but also includes mental suffering. (General Comment No. 20). Prolonged solitary confinement of the detained or imprisoned person may amount to a violation of the *Covenant*. Girls in BC are placed in solitary confinement or segregated from other prisoners as punishment, sometimes even for minor violation of prison regulations. Furthermore girls are only permitted sleep during certain hours, despite the sleep deprivation and insomnia that can result from life on the street. Strip searches are routine in city jails and prisons across British Columbia. Given that 63 per cent of girls in custody report histories of sexual abuse, routine strip searching should be prohibited not only on the grounds that is degrading, but also that it has the potential to re-traumatize young women.

The Canadian Association of Elizabeth Fry Societies, "Labelling Young Women as Violent: Vilification of the Most Vulnerable," online: <<http://www.elizabethfry.ca/vilifica/9.htm#abuse>> (date accessed: 22 June 2005)

114. Basic hygiene needs are difficult to access in prison. Often girls are held in city cells for several days without being allowed to shower and are refused soap to wash their hands. Regulations require that young women specifically request hygiene products such as menstrual products, even when this requires approaching male staff members, and these young girls often do not gain access to such products for days after they have asked.

115. More serious health risks in prison include delays in providing urgent medical care such as migraine headache treatment or pregnancy tests. Routine delays for minor medical care, such as a two day delay from the time cold or flu medication is requested until it is given, at which time the medicine is no longer needed. Furthermore practices include making young women do work that poses health risks,

such as treating others for lice or cleaning up blood spills, feces, or other bodily substances.

#### **D. Article 24: Discrimination**

116. Young women in BC are not adequately protected as minors on the part of society and the State in a manner that is free from discrimination from race, color and their sex.

117. The Committee notes in this regard that such measures, although intended primarily to ensure that children fully enjoy the other rights enunciated in the *Covenant* may also be economic, social and cultural. For example, every possible economic and social measure should be taken to prevent them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labour or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means. (General Comment No.17)

118. Canada's history shows that Aboriginal girls have often been removed from their families and communities - in the name of their own protection - on charges of promiscuity, absences from home, drinking alcohol, truancy and petty theft. Like most girls facing the courts, they came from families coping with internal conflicts, immense poverty and sometimes violence or addiction related to the devastating impact of colonization. Rather than dealing with the socio-economic and cultural dislocation facing these girls, the preferred solution of the Canadian courts has been to remove girls from their families and criminalise them. The treatment of Aboriginal girls was never simply a question of cultural misunderstanding, for subsuming the judgments made about them were the social relations of colonialism, interlocked with the gender and class biases already inherent in the juvenile justice system

Joan Sangster, "She Is Hostile to Our Ways: First Nations Girls Sentenced to the Ontario Training School for Girls, 1933–1960," *Law and History Review* Spring 2002, online: <<http://www.historycooperative.org/journals/lhr/20.1/sangster.html>> (date accessed: 31 August 2005).

Walter Tarnopolsky. *Discrimination and The Law in Canada*. Toronto: Richard De Boo, 1982.

James W. St. G. Walker. *"Race" Rights and the Law in the Supreme Court of Canada*. Osgoode Society for Canadian Legal History. Waterloo: Wilfred Laurier University Press, 1997. pp 12–50.

119. The *Covenant* requires that children should be protected against discrimination on grounds of race yet a recent study argues that racism is a significant

factor in the incarceration of young women in BC. While Aboriginal youth make up only 8 per cent of the population of young people in BC, one 2001 study found that 58 per cent of girls and 36 per cent of boys in custody identified themselves as Aboriginal. This over-representation of First Nations People in the justice system is a product of the legacy of colonialist oppression that continues to influence the current practices of the police, courts and child welfare officials.

Amber Richelle Dean, *Locking Them Up to Keep Them "Safe": Criminalized Girls in British Columbia*, (April 2005), Justice for Girls. p.3

120. Once they are imprisoned, young women face further marginalization and discrimination in a system that is inherently dehumanizing and damaging to them. Not only are young women and girls often all mixed together, whether they are remanded in custody, or serving a disposition of open or secure custody, they are often isolated and have more limited access to services and programs than their male counterparts. Women are increasingly being charged in circumstances where they have called the police in relation to assault and/or threats directed at them by abusive men, especially if they have managed to defend themselves or otherwise reacted to the violence perpetrated against them. This is especially true for Aboriginal and other racialised women. Furthermore, despite the high percentage of Aboriginal and Black girls in the youth custody, there is little opportunity to explore their cultural heritage or rely on their communities for support while in the system.

The Canadian Association of Elizabeth Fry Societies, "Youth Criminal Justice Act letter sent to the Senate Chair," (October 2001), online: <<http://www.elizabethfry.ca/YCJAltr/letter.htm>> (date accessed: 22 June 2005)

The Canadian Association of Elizabeth Fry Societies, "Labelling Young Women as Violent: Vilification of the Most Vulnerable," online: <<http://www.elizabethfry.ca/vilifica/9.htm#abuse>> (date accessed: 22 June 2005)

Dr. Mark Totten, "The Special Needs of Females in Canada's Youth Justice System: An account of some young women's experiences and views," (March 2000), Youth Services Bureau of Ottawa, Department of Justice Canada, p51.

121. Across Canada, while men and women are jailed separately, teenage girls are incarcerated in the same prisons with teenage boys, and are often monitored by male guards, making prison an even more unsafe place for girls who have experienced male violence. Young women usually end up being jailed in mixed youth centres, which results in many incidents of sexual harassment and rape, most of which go unreported. Totten's study concludes that young women are often no safer from abuse inside custodial facilities than outside of these settings. Sexual harassment

and sexual abuse becomes a part of daily life in penal facilities and occurs in the form of verbal abuse and threats of forced sexual encounters. Some participants asserted that sexual encounters between young women and men were frequent in the secure custody units, and that young women often felt pressured into sex. For some young women this unsafe situation was compounded by feelings of loneliness as a result of being one of the few females in the unit.

Dr. Mark Totten, "The Special Needs of Females in Canada's Youth Justice System: An account of some young women's experiences and views," (March 2000), Youth Services Bureau of Ottawa, Department of Justice Canada, pp 29-40.

### **E. Article 9: The Execution of Justice**

122. In General Comment No. 3 on Article 2 of the *ICCPR* the UNCHR outlines the importance of familiarizing both the authorities and individuals with the *Covenant* and its protocol. Many young women entering courtrooms in Canada have little knowledge of their rights or the judicial procedure, compromising their ability to participate in the legal system in a meaningful way. Because young people lack this basic information, their rights become easily compromised. And their status in society puts them at risk of being distanced from their own judicial process.

123. Young women are often subjected to unnecessary searches and detainment. The police can take advantage of the fact that young women may not be aware of their rights and correct procedure. This has resulted in many reports of police brutality directed at young women who are relatively vulnerable to this abuse of power by the authorities.

Pivot Legal Society, *To Serve and Protect: A Report on Policing in Vancouver's Downtown Eastside* (2002).

Amber Richelle Dean, *Locking Them Up to Keep Them "Safe": Criminalized Girls in British Columbia*, (April 2005), Justice for Girls. pp.3, 21-22.

124. In a snapshot study of youth apprehended by authorities in downtown Vancouver, one police unit increased the number of youth apprehended from 50 per month to 200 per month over three years. The second unit, studied in its first year of operation, averaged 80-100 apprehensions per month. In addition to the increasing number of 'youth at risk' who are apprehended, it was also apparent that some youth are frequently and repeatedly found to be apprehended for being "youth at risk". The majority were female (75 per cent), addicted to rock cocaine, and many were already in the care of the Province. Eight-two per cent of charges laid against youth are for non-violent crimes such as theft, drug possession and contempt of court.

125. Using the Justice System in such a way to address social and health problems is a process that does not promote the well-being and development of girls and young women. To the contrary, these girls and young women are frequently marginalized by the very institution that is designed to protect them from harm.

Vancouver Police Department, Youth at risk research findings, "An analysis of the high risk youth demographics and an analysis of the interventions involving youth cars 'Yankee 177' and 'car 27' between May 18, 2000 and July 5, 2000" by Sergeant Ken Frail (Vancouver Police Department) and Clayton Ross (Criminology Student, Simon Fraser University).