

# CANADA **Canada**

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## Introduction

It has been almost two decades since Canada ratified the international *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), in 1981. Since that time Canada has also undertaken a range of other international commitments relating to women's human rights, and has had a very high profile in international fora as an advocate for women's rights. At the domestic level, women's human rights are addressed in numerous laws, including the *Charter of Rights and Freedoms*, human rights statutes, and employment statutes. However, Canadian women's non-governmental organisations (NGOs) have become increasingly concerned that these formal legal protections have not been adequately implemented, and that material conditions for women in Canada are worsening.<sup>1</sup>

Canadian women's NGOs are also struggling to find ways to engage with a political and economic climate that has changed drastically since CEDAW was ratified in 1981. Government restructuring and budget cutbacks, with ensuing cuts to funding and programs directed to women, are seriously undermining the gains the Canadian women's movement has made.<sup>2</sup> It is in this context that Canadian women's NGOs have begun to look to CEDAW with increasing interest, in the hope that the international process can assist them in their efforts to make the Canadian government accountable for its numerous formal commitments to women's equality.

A recent study<sup>3</sup> indicates that women remain among the poorest of the poor in Canada. Nearly 19 per cent of adult women in Canada are poor. The percentage of women

living in poverty has been steadily escalating; and recent government policies have contributed to this impoverishment of women. There has been no improvement in poverty rates of women since the Royal Commission on the Status of Women in Canada released its report 30 years ago. Almost half of all women aged 65 or older have low incomes. Fifty-six per cent of women heading single parent families have incomes below the poverty line, and most poor people live thousands of dollars below the poverty line.

Although there has been some progress in the last two decades, violence against women is still a significant problem in our society.<sup>4</sup> Over a quarter (29 per cent) of Canadian women have been assaulted by a spouse.<sup>5</sup> In Canada, four out of five people murdered by their spouses are women murdered by men.<sup>6</sup> In six out of ten spousal murders, police had previous knowledge that violence characterized the relationship.<sup>7</sup> Note that this study did not include the northern territories and hence is not reflective of systemic violence against Aboriginal women in Canada.

Statistics Canada conducted their fourth Transition Home

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Survey in 1997/1998. Between April 1, 1997 and March 31, 1998, a total of 90,792 women and children were admitted to 413 shelters that responded to the survey question. The majority of the women, who sought refuge in the shelters, were previously abused by their spouse or partner.<sup>8</sup> However, it must be noted that under-reporting is endemic, and the research conducted by feminist based front line organisations such as rape crisis centres and women's shelters would be more instructive of the situation of violence as experienced by Canadian women and children.

Women's roles as unpaid and underpaid caregivers, contribute to the income gap between women and men.<sup>9</sup> Current home care policies and practices, increase women's risk of becoming impoverished. Home care has little public funding, which leads to barriers in access to subsidised care due to eligibility requirements, inadequate assessments of the hours needed for some clients, and limits of hours and types of services. Some recipients, therefore, receive fewer hours of care than are needed. The majority of those not receiving the care they needed are women.

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### PART ONE

#### *CEDAW and the Canadian Government*

##### **CEDAW Ratification**

Canada signed CEDAW on July 17, 1980 at the World Conference of the United Nations Decade for Women, and ratified CEDAW the following year on December 10, 1981. The decision to ratify was reached through the Continuing Federal-Provincial-Territorial Committee of Officials Responsible for Human Rights. The Continuing Committee was created in 1975, as part of the procedures for ratifying, implementing and reporting on international human rights instruments which were adopted by the Federal-Provincial-Territorial Conference of Minis-

ters Responsible for Human Rights. Also included in these procedures is the agreement that federal, provincial and territorial governments would undertake extensive consultations prior to the ratification of any international human rights instrument; and that provincial and territorial governments would be entitled to prepare their own reports on their own human rights activities, which would be combined with the federal government's own section to constitute Canada's reports. The Canadian federal government obtained the agreement of all other senior levels of government before ratifying CEDAW; and prior to ratification all senior levels of government agreed to take the measures necessary to implement the *Convention* in the areas under their jurisdiction.

Canada's ratification of CEDAW was reported in two of the major daily newspapers, the Winnipeg Free Press and the Montreal Gazette.<sup>10</sup> Both reports noted that the Canadian United Nations Permanent Mission issued the statement that "ratification of the *Convention* emphasizes the importance all levels of government in Canada attach to improvement of the status of women in Canada". The Winnipeg Free Press also quoted the federal Secretary of State as announcing that the federal and provincial governments had agreed to take "appropriate measures" to eliminate discrimination against women in employment and other areas.

The Canadian government attached the following statement of understanding to the instrument of ratification:

The Government of Canada states that the competent legislative authorities within Canada have addressed the concept of equal pay referred to in article 11(1)(d) by legislation which requires the establishment of rates of remuneration without discrimination on the basis of sex. The competent legislative authorities within Canada will continue to implement the object and purpose of article 11(1)(d) and to that end have developed, and where appropriate will continue to develop additional legislative and other measures.

This statement was entered to facilitate provincial consent to ratification. While pay equity legislation had been introduced in several provinces by that time, many provinces had no immediate plans to pass such legislation. In 1986 the federal government began discussions with the provinces about the possibility of withdrawing the statement. Canada was at that time taking a strong position in international fora against the entry of inappropriate reservations to international human rights conventions, and there was some concern that Canada's own statement of understanding regarding CEDAW could be seen as undermining this position. Canada notified the United Nations Secretary-General of its decision to withdraw the statement on May 28, 1992.<sup>11</sup>

#### Canada's Reports to the CEDAW Committee

Canada has submitted four reports to the CEDAW Committee since ratification in 1981, and the fifth report was scheduled for submission in 1999. Although the report is now overdue, a new date for its submission has not been formally announced. In the earlier reports, the Canadian government addressed the question of how CEDAW would be implemented in Canada. Two points were stressed in this regard. The first was that the constitutional division of powers between the federal and provincial governments would shape CEDAW implementation, as the federal government did not have jurisdiction regarding many of the substantive areas in which CEDAW imposes obligations. Second, it was anticipated that the primary means through which CEDAW would be implemented is the application of existing domestic human rights entitlements relating to women, as found in the *Charter of Rights and Freedoms*, human rights statutes, and employment statutes.

The first Canadian CEDAW report covered the period 1980-82. In the report's introduction the Canadian government outlined its position on the effect the constitutional division of powers between levels of government has on CEDAW implementation in Canada. According to the *Constitution Act* of 1982,

the federal government has legislative authority regarding banking, Indians, naturalisation and aliens, marriage and divorce, and criminal law. The provincial governments have legislative authority regarding hospitals and charities, education, the solemnisation of marriage, property and civil rights, and matters of a merely local or private nature. According to the report, provincial powers regarding property and civil rights, and local or private matters "have been interpreted broadly by the courts so as to include such matters as labour law, family law and anti-discrimination legislation."<sup>12</sup> In Canada international treaties do not automatically become part of domestic law, so that implementation is dependent upon legislation passed by the Canadian parliament and the provincial and territorial legislatures, for matters that fall under their jurisdictions.

The report also indicated the government's assessment that CEDAW's principles were already being implemented through domestic law in Canada, and that these laws might not require any further revision:

All governments in Canada have undertaken to give effect to the provisions of the *Convention* by amending domestic law to make it consistent with the convention if, after study, this proves to be necessary. It should be noted, however, that most of the rights recognised in Articles 1 to 16 of the *Convention* are already protected in Canada. Even before the *Convention* came into force in Canada, both levels of government had, each within the ambit of its jurisdiction, singly or in cooperation with each other, taken steps to implement the provisions of these articles and to protect these rights.<sup>13</sup>

In this regard the report also stated that "[t]he 'practical re-

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alisation' of the principle of the equality of women and men is provided by the enforcement measures contained in the *Charter*, the Canadian and various provincial Bills of Rights and the eleven human rights acts."<sup>14</sup> According to the report, human rights tribunals in Canada had adopted a definition of "discrimination" that is comparable to the definition provided by Article 1 of CEDAW. More importantly, sections 15 and 28 of the *Canadian Charter of Rights and Freedoms* embodied the principle of equality between men and women in the constitution. Section 15 would not come into effect until 1985, and at the time the report was written all levels of government were conducting reviews of their legislation to ensure *Charter* compliance, with many passing omnibus legislation to amend multiple statutes at once. The report concluded its assessment of Canada's compliance with Article 3 of CEDAW by stating "it bears repeating that the passing of the *Constitution Act*, 1982 has placed the principle of equality between the sexes squarely at the foundation of the nation's legal, judicial and social systems."<sup>15</sup>

**A procedure for requesting NGO input into Canada's reports has recently been formalized. When any report under a human rights convention to the United Nations is in preparation, Heritage Canada has sent letters to the NGOs it understands to be interested.**

At the outset of Canada's second report to the CEDAW Committee, the government again stressed that while the federal government has exclusive authority to enter into international treaty obligations "many of these obligations can only be implemented by legislation enacted by provincial legislatures."<sup>16</sup> The position that the *Charter of Rights and Freedoms* and human rights legislation were primary means of implementing CEDAW in Canada is also repeated. The third and fourth reports contain much less in the way of explanatory material, but appear to proceed on the assumptions set out in the first two reports. These reports include extensive reviews of the jurisprudence that was developing under section 15 of the *Char-*

*ter*, and extensive reports prepared by the individual provinces. No initiatives undertaken for the express purpose of CEDAW implementation were identified.

Heritage Canada is the federal government department responsible for the preparation of Canada's reports to United Nations bodies, including the CEDAW Committee. To this end it co-ordinates the preparation of the federal, provincial and territorial sections of Canada's reports. In addition, it organises twice yearly meetings of the Federal-Provincial Committee of Officials Responsible for Human Rights. At these meetings matters relating to all of the international human rights treaties and conventions to which Canada is a signatory are discussed. The federal, provincial and territorial governments have independent responsibility for reporting in the areas under their jurisdiction, and these meetings serve to provide information and the opportunity for consultation.

In addition to the implementation mechanisms employed by Heritage Canada, the Status of Women Canada works collaboratively with international organisations such as the UN, to ensure that legislation, policies and programs advance women's equality.

According to Heritage Canada, a procedure for requesting NGO input into Canada's reports has recently been formalized.<sup>17</sup> Since 1994, when any report under a human rights convention to the United Nations is in preparation, Heritage Canada has sent letters to the NGOs it understands to be interested. These letters ask the NGOs to indicate the issues and concerns they feel should be addressed, while emphasising that the government retains complete authority to determine the contents of the report. The letters also state that the Canadian government will forward any material received from NGOs to the relevant United Nations committee. Prior to 1994 these requests were also frequently made, and it appears that an effort was made to contact women's NGOs in relation to Canada's third report to the CEDAW Committee.

That report states:

Prior to the preparation of Canada's third report on the *Convention on the Elim-*

*nation of All Forms of Discrimination Against Women*, 42 national women's organisations were invited to submit comments related to the federal section of the report. Responses have been received from three organisations and these are being sent with this report to the attention of the *Committee on the Elimination of All Forms of Discrimination Against Women*.<sup>18</sup>

According to Heritage Canada's Senior Officer for International Instruments, such requests made to NGOs for input into Canada's reports usually generate a very low level of response (requests relating to the *Convention on the Rights of the Child and the Convention on Economic, Social and Cultural Rights* being exceptions to this general rule).<sup>19</sup>

#### CEDAW and Canadian Law

Canada has not passed legislation for the express purpose of implementing CEDAW. The one place where reference to CEDAW is found in Canadian law is in the decisions of courts and human rights tribunals. It should be noted that in Canada courts and tribunals cannot enforce CEDAW directly as domestic legislation. However they may use international human rights instruments such as CEDAW as aids to interpretation where the precise meaning or scope of domestic legal protections is unclear. CEDAW has occasionally been considered in this context by Canadian courts.

In the case of *Andrews v. Law Society of British Columbia*,<sup>20</sup> the Supreme Court of Canada upheld a challenge to the requirement that one must be a Canadian citizen to be a member of the bar in British Columbia. A unanimous court concluded that this requirement infringed section 15 of the *Charter*,<sup>21</sup> and a majority of the Court rejected the argument that it was justified under section 1. *Andrews* clarified the meaning of "equality" for the purposes of section 15 of the *Charter*. The Court rejected a formal approach to equality, and instead preferred a substantive model. The Court stated that the principle of formal equality is "seriously deficient"<sup>22</sup> and it "does not afford a realistic test for a violation of equality rights."<sup>23</sup> The principle of formal

equality treats like cases alike and unlike cases alike. *Andrews* affirmed that equality does not necessarily require equal treatment<sup>24</sup> that not every classification in legislation violates equality<sup>25</sup>; and that equality is a comparative concept.<sup>26</sup>

In *Andrews*, CEDAW and its definition of "discrimination" was referred to by the British Columbia Court of Appeal,<sup>27</sup> however, CEDAW was not mentioned as an authority at the Supreme Court of Canada. Furthermore, the Women's Legal Education and Action Fund intervened at the Supreme Court of Canada, to advance their own meaning and scope of section 15 of the *Charter*.

In the 1995 decision of *Chan v. Canada (Ministry of Immigration and Employment)*, the Supreme Court of Canada considered the appeal of the Immigration and Refugee Board's dismissal of a Chinese man's refugee claim.<sup>28</sup> The claim was based, in part, on his fear of sterilisation under China's one-child policy. The dissent in this decision referred to CEDAW and other international instruments, to conclude that the right to freely and responsibly decide the number and spacing of one's children should be considered a fundamental human right in the context of refugee determinations. However, the majority of the court dismissed the appeal on factual grounds.

In the 1998 decision of *R. v. Ewanchuk*, the Alberta Court of Appeal heard the appeal of a sexual assault acquittal in which the trial judge had found there had been "implied consent."<sup>29</sup> The majority dismissed the appeal, but the dissenting appeal court judge would have allowed it. The dissenting judge took the position that the understanding of implied consent the trial judge utilised was no longer acceptable in Canadian law. He stated that as a result of the revision of the *Criminal Code's* provisions relating to consent in 1992, courts should not presume that implied con-

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sent exists unless and until a woman overtly signals her non-consent. He continued, to state that “the unfairness of this approach and its breach of women’s equality rights under the *Charter* and Canada’s international human rights obligations cannot be seriously challenged: *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), December 18, 1979, Can T.S. 1982 No. 31; see also the Declaration on the Elimination of Violence Against Women, February 23, 1994, 33 I.L.M. 1049.”<sup>30</sup>

On appeal, in the 1999 decision of *R. v. Ewanchuk*, the Supreme Court of Canada allowed the appeal of a sexual assault acquittal in which the trial judge had found there had been “implied consent.”<sup>31</sup> L’Heureux-Dube J., asserted that this case was about myths and stereotypes, stereotypes that “denies women’s sexual autonomy and implies that women are in a state of constant consent to sexual activity.”<sup>33</sup> There were three intervenors in this case, and the Women’s Legal Education and Action Fund was among them. CEDAW played a determinative role in this case and was referred to throughout the Court’s judgment. The Court addressed the systemic problem of violence against women, and asserted that “violence against women is as much a matter of equality as it is an offence against human dignity and a violation of human rights.”<sup>34</sup> L’Heureux-Dube J. stated that Canada was indeed a party to CEDAW, and highlighted Canada’s requirement to respect and observe the human rights of women. The Court refers to CEDAW’s definition of “discrimination against women” and the measures required by State Parties to fulfill the goal of eliminating discrimination against women.<sup>35</sup>

In the 1990 decision of *Leroux v. Co-operators General Insurance Co.*,<sup>36</sup> The High Court of Justice considered the definition of “spouse” in a standard automobile insurance policy. “Spouse” was interpreted as including a common law spouse. The Court referred to Article 1 of the International *Convention on the Elimination of All forms of Discrimination Against Women*, cited in Bayefsky, “Defining Equality Rights,”<sup>37</sup> which states that “for the purposes of the present conven-

tion, the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>38</sup>

In the 1987 decision of *Schachter v. Canada et al.*,<sup>39</sup> the Federal Court of Canada dismissed an application by the Canadian Human Rights Commission to intervene in an action commenced by Schachter. Schachter sought to have certain provisions of the *Unemployment Insurance Act, 1971* declared unconstitutional as it allowed for mothers to receive maternity benefits, but not fathers. Schachter also filed a complaint with the Commission alleging discriminatory practice. The Court held that the current state of the complaint puts the Commission in an awkward position, thus, the Commission’s application was denied for the time being. The Women’s Legal Education and Action Fund, however, was given the authority to intervene.

In the 1991 decision of *Gould v. Yukon Order of Pioneers*, the Supreme Court of the Yukon Territory heard the appeal of a human rights tribunal’s finding of discrimination on the basis of sex.<sup>40</sup> The tribunal had found that the Yukon Order of Pioneers discriminated on the basis of sex by maintaining a male-only membership rule. The Yukon Status of Women Council was an intervenor in this case, and argued that the Court should interpret the *Human Rights Act* in the light of the provisions of CEDAW. The Court recognised that reference to international human rights instruments may be made for the purpose of interpretation, but stated: “while the objectives of the *Human Rights Act* and CEDAW are entirely compatible, as an aid to interpretation I find CEDAW to be of little assistance.”<sup>41</sup> The Court set the tribunals’ decision aside, and ordered a rehearing.<sup>42</sup>

Human rights tribunals have also made reference to CEDAW on occasion. CEDAW is relevant in this context not simply as a generally recognised aid to interpretation, but also because

the preambles to many of Canada's human rights statutes mention Canada's international human rights commitments. For example, the preamble to the Yukon *Human Rights Act* includes the following statement:

Recognising that respect for human rights is a fundamental part of Canada's heritage,

That Canada is a party to the United Nations' Universal Declaration of Human Rights and other international undertakings having as their object the improvement of human rights in Canada and other nations of the world,

That the Yukon Government has a responsibility to encourage the understanding and recognition of human rights that is consistent with Canada's international undertakings and with the initiatives taken by Canada and the provinces, and

That it is just and consistent with Canada's international undertakings to recognise and make special provision for the unique needs and cultural heritage of the aboriginal peoples of the Yukon....<sup>43</sup>

An Ontario Human Rights Tribunal has, for example, made reference to CEDAW in *Roberts v. Ontario (Ministry of Health)*, as part of a survey of authorities which conceptualise affirmative action programmes as necessary undertakings for the achievement of equality.<sup>44</sup> A Quebec human rights tribunal made reference to CEDAW in the course of determining whether common-law relationships ought to be included within the definition of "civil status."<sup>45</sup> A federal human rights tribunal has mentioned CEDAW in the course of determining a claim of sex discrimination in housing accommodation, as part of a review of the history of the federal *Indian Act*.<sup>46</sup> The tribunal noted that the federal government's ratification of CEDAW demonstrated its intention to amend the *Indian Act* to eliminate its discriminatory provisions.

With the exception of the *Ewanchuk* case, it should be stressed that in the decisions

which have been released to date by Canadian courts and human rights tribunals, CEDAW had not played a determinative role in the result; and CEDAW has not been relied upon to expand the meaning and requirements of women's equality beyond the parameters provided by existing domestic human rights standards. Reference to CEDAW is most frequently made for the purpose of providing further authority for conclusions that are already adequately supported by domestic law.

#### PART TWO

#### *CEDAW and Canadian Women's NGOs*

#### Introduction

Awareness of CEDAW within the Canadian women's movement has, until very recently, been quite low.<sup>47</sup> Certainly, not all women working at the grassroots level would recognize the term "CEDAW"; and for many members of the executives of Canadian women's NGOs understanding of CEDAW is limited to the fact of its existence as the international human rights convention for women. Not all members of the executives would be aware, for example, of the convention's contents, of Canada's obligations under CEDAW, or of the reporting mechanism. However, among the organisations contacted for this report, it would be usual for several members of the executive to have a broader understanding of CEDAW, and to have begun thinking about how CEDAW might be integrated into their organisation's advocacy strategies. The Beijing Conference, as well as the other recent international women's human rights conferences, was identified by many women's NGOs as having stimulated their interest in CEDAW. The work of committed Canadian women's human rights activists, especially that of Shelagh Day, was also identified as being crucially important in the development of awareness and knowledge of CEDAW among women's NGOs.

There has been a significant increase in women's NGO interest in CEDAW over the past several years. It is, for example, becoming more common for women's NGOs to include reference to CEDAW as part of the relevant normative framework in their communica-

tions with government, and a number of women's NGOs have decided to integrate CEDAW into specific actions and interventions they are currently developing.<sup>48</sup> One of the primary obstacles to women's NGO engagement with CEDAW that activists have identified is a lack of understanding of how this international convention may be relevant to Canadian women's domestic issues. For this reason, attention is now being focussed on education—not just in terms of distributing information about CEDAW, but also in terms of working with women's NGOs to help them make the links between Canada's commitments under CEDAW and their own domestic priorities.

The pages that follow highlight some of the recent NGO engagements with CEDAW. Of particular interest is the work that the Canadian Research Institute for the Advancement of Women has done, to facilitate the creation of a coalition of women's NGOs that will develop strategies linking Canadian women's immediate concerns with international conventions and mechanisms.<sup>49</sup>

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### 1990 NAC Parallel Report

The National Action Committee on the Status of Women (NAC) submitted a parallel report to the CEDAW Committee in January 1990, regarding Canada's second CEDAW report.<sup>50</sup> NAC is the largest feminist organisation in Canada, with a membership of approximately 600 groups that in turn has represented over three million Canadians.

The parallel report included statistical information on women in Canada, and highlighted specific areas in which the Canadian government had failed to meet its obligations under CEDAW. For example, regarding CEDAW article 2, the report noted: that the Canadian *Human Rights Act* did not prohibit discrimination on the basis of sexual orientation;

that Quebec women were concerned the Meech Lake Constitutional Accord might be adopted in a form that would adversely affect women; and that despite the recent revision of the *Indian Act*, discrimination continued in the government's process for reinstating women as 'Status Indians'. Other issues raised by NAC in the parallel report included: the treatment of female offenders in the prison system; the weak enforcement provisions of the federal employment equity bill; the inadequacy of legal measures directed at prostitution; budget cuts to funding for women's NGOs; the effect that limitations to education opportunities and the restructuring of the Canadian economy were having on women's ability to freely choose their profession; the failure to implement equal pay measures; proposed cuts to the unemployment insurance programme; lack of access to quality child care; continuing restrictions on access to abortion; conditions facing rural women; and the failure to provide adequate funding for the provision of services to battered women.

NAC stated its broader concerns in the parallel report's introduction, which focused on the negative impact the Canadian government's change in economic priorities was having on Canadian women:

The Canadian government's diminishing commitment to providing financial support to Canadian women's organizations—at both federal and provincial levels—is a serious failure to ensure that discrimination in all its forms will be eliminated in Canada... Canadian women are just beginning to feel the adverse effects of the government's deficit reduction strategies and an export-led economic adjustment plan which privileges the market and proposes that social programs are irresponsible spending. The federal 1989-90 Budget clarified the government's intention to remove itself from its previous role as intervener in the social, regional and infrastructure gaps and imbalances created by "the market." This Budget has precipitated changes in the economy which will make it easier for some people to become wealthier and which will



ensure that many others, including middle class women, women with little education, or job skills, women of colour, immigrant women and native women, will find their lives much harder, more violent, and poorer.<sup>51</sup>

### The CACSW Monitoring Study

The Canadian Advisory Council on the Status of Women (CACSW) commissioned research on what the Canadian government had done to fulfil its obligations under CEDAW and the Nairobi Forward Looking Strategies (FLS), which was completed in 1993. The research was presented in a report entitled “Little But Lip-Service: Assessing Canada’s Implementation of its International Obligations for Women’s Equality”, co-authored by Deborah Stienstra and Barbara Roberts. The report measured compliance by consulting with women’s NGOs regarding their perception of the progress the government had made on 14 priority issues selected for the study. These issues were: women and decision-making, aboriginal women, child care, women with disabilities, women and the economy, women, education, and training, women and employment, women and the environment, women and health, women and the law, women and peace, women and poverty, women and racism, and violence against women. The federal, provincial and territorial Ministers Responsible for the Status of Women were also contacted, and asked to provide information regarding their progress in these areas.

The study concluded that very few of the government’s CEDAW and FLS commitments had been fulfilled, or even partially fulfilled. As a general rule, Canadian governments were willing to recognize women’s right to equality, and were willing to sign on to a range of commitments to advance women’s equality, but they failed to understand the profound changes they would need to initiate in order to implement these commitments. Worse, some governments, the federal government in particular, had implemented policies such as reductions to unemployment insurance coverage, cuts to funding for women’s programmes, and the termination of the Court Challenges Programme, that directly under-

mined women’s equality. The study raised concern that, despite this failure to meet its existing commitments, the Canadian government continued to enter into international agreements without it being clear that they would be implemented, and continued to play a leadership role regarding women’s equality on the international stage.

The study also noted a low level of CEDAW and FLS awareness on the part of both Canadian governments and women’s NGOs. On the basis of the responses that were received from the governments, it appeared that they had considerable difficulty assembling the requested information, and did not have internal reporting mechanisms in place to keep track of their obligations and actions in relation to CEDAW and the FLS. The study made the assessment that “provincial and territorial governments may not all be aware of their obligations under these agreements, nor that they extend beyond what are sometimes narrowly defined as ‘women’s issues’.”<sup>52</sup> At the same time, the study noted that “most of the (women’s) groups we contacted had not been aware of the commitments made by Canada in CEDAW and the FLS.”<sup>53</sup>

A revised version of this report was published under the title “Strategies for the Year 2000: a Woman’s Handbook,” and now includes suggestions as to how women’s NGOs can use the book in their own work. It is advertised on CRIAW’s Post-Beijing web site as a guide for women’s NGOs regarding Canada’s international commitments to women’s human rights.<sup>54</sup>

### The OAIH Brief

In May 1996 the Ontario Association of Interval and Transition Houses (OAIH) presented a brief to the federal government entitled “Crisis in Women’s Equality Rights in Ontario.”<sup>55</sup> OAIH is a networking and lobbying organisation that represents over 70 shelters

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and services to abused women and children in Ontario. The brief was intended to make clear to the federal government its own responsibility for and complicity in recent changes made to the funding and provision of services to abused women by the Ontario provincial government, and to demand that the federal government take action.

The brief described the effective destruction of decades of work by women's advocates that had taken place in Ontario in the eleven months following the election of a progressive conservative government. Social Assistance rates in Ontario were reduced by 21.6 per cent, with the result that shelters began receiving calls from women who were considering returning to violent partners, or giving custody of their children to violent partners, to make sure that their children would be fed. Second-stage shelters for abused women and their children were notified that funding for their counseling and support programmes would be eliminated. Legal aid funding was cut, with the result that access to legal representation in matters such as custody, restraining orders and access to assets

was drastically curtailed. Employment equity was abolished and pay equity was frozen. The provincial government announced that it intended to "get out of the business of subsidised housing." Women's advocates working in shelters and other services reported receiving threats that public opposition to the government would lead to the elimination of their funding.

The brief reminded the federal government that it had undertaken a positive obligation to take action to eliminate violence against women, by ratifying CEDAW and through its endorsement of other international women's human rights instruments. It noted that Canada is obliged to comply with the developing international standard, which recog-

nises state responsibility for violence against women, including the abuse of women by intimate partners. The brief quoted Radhika Coomaraswamy, the Special Rapporteur on Violence Against Women, on the subject of state responsibility: "a state which tolerates violence against women within families or communities and which does not take effective measures to prevent this violence or hold accountable those who are responsible for the violence is as guilty as the individual perpetrators."<sup>56</sup> The brief stated that there had been absolutely no response from the federal government to the Ontario provincial government's actions, and that a clear picture was emerging "of a Federal Government that makes commitments internationally to eradicate violence against women, and then, through the federal structure of government, can abdicate its responsibilities with impunity."<sup>57</sup> The brief also stressed that, in addition to its failure to engage in any way with the Ontario provincial government's actions, the federal cuts to transfer payments had encouraged provincial governments to cut all budget lines and especially those supporting the safety, freedom and equality of women and children.

An expanded version of this brief, entitled "Home Truths: Exposing the False Face of Equality and Security Rights for Abused Women in Canada,"<sup>58</sup> was submitted to the United Nations Special Rapporteur on Violence Against Women in November 1996. Again, the report focused on the impact of the cuts to social programmes in Ontario, in the context of the federal government's decision to reduce social spending, its elimination of national standards for the provision of social assistance, and its commitments under international human rights instruments. The OAIH brief also informed the Shadow Report on Canada that was presented to the CEDAW Committee in 1997.<sup>59</sup>

### The 1997 Shadow Report

In a meeting held at the University of Toronto Faculty of Law's International Human Rights Programme in October 1996, Canada's pending fourth report to the CEDAW Committee came up for discussion, and the women

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at that meeting realised that Canadian women's NGOs had not made any plans to present a Shadow Report. Susan Bazilli of the Metro Action Committee on Violence Against Women and Children, agreed to co-ordinate the writing of a Shadow Report and quickly contacted a number of women's NGOs for input, including the Disabled Women's Network, the Canadian Association of Sexual Assault Centres, the National Association of Women and the Law, the National Organisation of Immigrant and Visible Minority Women of Canada, the Canadian Association of Elizabeth Fry Societies, Action Ontarienne Contra la Violence Faites aux Femmes, and the Native Women's Association of Canada.

In January 1997 a group of Canadian women who were already present at the United Nations in New York for other reasons came together to plan the Shadow Report, which was written by Susan Bazilli, Shelagh Day, Gwen Brodsky and Lois Chiang.<sup>60</sup> NAC had agreed to endorse the report, which was then submitted to the CEDAW Committee.<sup>61</sup> The women who wrote the Shadow Report approached the Canadian government, asking for funding so that they would be able to stay in New York long enough to attend the CEDAW Committee session at which Canada's report would be considered, but the government declined to facilitate their attendance.

The introduction to the Shadow Report framed the problem of women's equality in Canada in the following way:

The United Nations Development Index for 1995 ranked Canada first for quality of life; but when women's equality was considered, Canada's ranking was dropped to ninth, noting that "inequality (for women) is entrenched in every facet of Canadian life." Not only has progress been too slow, but in the past few years the situation for women in Canada has been getting progressively worse in all areas of social, economic and political life. Every indicator shows that there has been a growth of women's *inequality*—as a direct result of policies and political choices made by the government

of Canada.

Women in Canada appear to have formal equality, given the constitutional rights as guaranteed in the *Charter of Rights and Freedoms*, and much of the legislation in Canada. However, the reality is something very different. It is this reality of women's lives, and their material conditions, that we want to convey to the CEDAW Committee in this brief report. We want the Committee to note the impact on women of the decreasing responsibility and accountability of the Canadian government for social programmes and economic well-being and the effects that cuts to social programmes and national standards for such programmes are having on the lives of women.<sup>62</sup>

In this context, the Shadow Report addressed the issues of women's poverty, the repeal of the Canada Assistance Plan (CAP), conditions affecting aboriginal women, bias in the justice system, legal aid, conditions affecting women in prison, family law, conditions affecting refugee and immigrant women, pay and employment equity, violence against women, prostitution and trafficking, racism, disability, sexual orientation, health, the exclusion of women from the international treaty process, the federal Plan for Gender Equality, and the Beijing Platform for Action.

The effect of the Canadian government's recent economic policies was a dominant theme in the Shadow Report. It explained that, with the repeal of CAP and the creation of the new Canada Health and Social Transfer Tax (CHST), the federal government had removed national standards and protections regarding social assistance and social services for persons in need. This dramatic policy change, as accompanied

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## Canada

by other social and economic governmental measures, had a considerable negative impact on women because of the prevalence of poverty among Canadian women and their reliance on social assistance programs and services. Among the other economic measures the report criticised were: the failure to provide funding to address Aboriginal women's justice concerns; the failure to provide legal aid funding to adequately support women involved in civil and family law matters such as custody, child support and divorce; the imposition of a \$975 "head tax" on all immigrants and the devolution of direct delivery services to immigrants to the provincial governments; the cutting of funds for services, programmes, education, prevention and justice system initiatives regarding violence against women, the reduction and elimination of funding for disabled women's organisations; and massive reductions in health care funding and devolution of responsibility to the provincial governments at a time when women's health care needs were already being inadequately addressed.

Another dominant theme in the Shadow Report, in addition to women's rising material inequality in Canada, was the government's failure to take action to support the commitments it had made on paper. The report noted that despite decades of reports documenting the justice system's bias against women, from women's organisations, government bodies, lawyers' associations, academics, journalists and researchers, the government had not implemented any real systemic change. While the *Charter of Rights and Freedoms* guaranteed women's equality rights, the federal and provincial governments had repeatedly advocated narrow and restricted interpretations of these equality rights in the courts, with the result that many women's equality rights claims had been defeated. Pay equity had not been implemented in many Canadian jurisdictions, and federal employment equity legislation was weak and did not have an effective enforcement mechanism. The federal government's gender equality plan, which was released just prior to the Beijing conference, did not contain any measurable objectives, time-lines or allocation of

resources. It also did not provide any mechanisms for monitoring or enforcement.

The Shadow Report was highly critical of the federal government's failure to engage with women's NGOs in the CEDAW reporting process:

It is of particular concern that Canada has not adequately engaged Canadian women in the process of monitoring its implementation of the CEDAW *Convention*. Specifically, Canada has not invited the participation of Canadian women's NGOs in the process of preparing the Canadian report to CEDAW or evaluating the adequacy of Canadian laws and practices, in light of the *Convention*, either prior to submission of the Canadian report to the committee or after the Committee has considered the report.<sup>63</sup>

The report also expressed concern that Canada's support for women's human rights in the international arena had not been reflected in domestic law and policy:

The women of Canada continue to express outrage at Canada's hypocrisy. In international fora, Canada is a vocal advocate for women's equality and is considered a leader in the development of many international human rights agreements. However, at home we experience silence on women's equality issues, and both a lack of effective action and the introduction of measures that are harmful to women.<sup>64</sup>

The Shadow Report concluded by noting that although Canada had ratified CEDAW, adopted the Forward Looking Strategies agreement, adopted the Beijing Platform for Action, as well as being a signatory to numerous other international agreements making commitments to end systemic discrimination against women, there had been a general failure to implement. "Not only has Canada not lived up to any of the commitments made in these international agreements and instruments, it is our position that Canada is also not in compliance with its own

domestic human rights instruments, most particularly the *Canadian Charter of Rights and Freedoms*.<sup>65</sup>

Many of the issues identified in the Shadow report were raised by the CEDAW Committee in its questioning of the Canadian government delegation, and these concerns were also reflected in the Committee's Concluding Comments on Canada's report. The Committee noted that economic restructuring appears to have had a disproportionate effect on women, and is threatening to seriously erode the progress that has been achieved by Canadian women. The Committee expressed its concern that there seemed to be little understanding of the impact economic restructuring can have on women. The Committee also expressed concerns about the privatisation of health care, deepening poverty among women and the weakening and withdrawal of social assistance programmes, the limitations and weak enforcement of the federal *Employment Equity Act*, potential discrimination in programmes directed at aboriginal women, and the effect of budget cutbacks on women's crisis centres. Among the Committee's suggestions and recommendations were that social assistance programmes directed at women be restored to an adequate level; that the federal Plan for Gender Equality be given specific time-frames, measurable goals and specific resource allocation; and that the government should study and assess the impact of economic changes on women's employment, existing measures to combat violence against women, progress in closing the gap in pay between men and women, the situation of aboriginal women and especially aboriginal women in prison, and the value of women's unpaid work.

Given the scarcity of resources in the Canadian women's movement at the time, little effort was made at the time to publicise the comments, and no one is aware of any government efforts made in relation to them. It should be noted that some of the same issues, including CAP, and the OAIH brief, were raised by the United Nations Committee on Economic, Social and Cultural Rights in December of 1998.

The United Nations condemned Canada

for failing to comply with the UN *Covenant on Economic, Social and Cultural Rights* Canada had signed and agreed to this covenant in 1976. The report made by the committee received great publicity, which may lead to another opportunity to raise CEDAW Committee's position again. As reported in the *Toronto Star*,<sup>66</sup> the Committee found that addressing budget deficits by slashing social expenditure, Canada has paid insufficient attention to the adverse consequences for the enjoyment of economic, social and cultural rights by the Canadian population as a whole, and by vulnerable groups in particular. The Committee also expressed its concern about the inadequate legal protection in Canada of women's rights, which are guaranteed under the Covenant, such as the absence of laws requiring employers to pay equal remuneration for work of equal value in some provinces and territories.

Furthermore, the Committee expressed its concern with the Government of Ontario decision to cut 21.6 per cent of its social assistance in spite of claims that it would force large numbers of people from their homes. As reported in *The Globe and Mail*,<sup>67</sup> the Committee suggested that Canada mandate a federal program similar to the former Canada-Assistance Plan, which imposed national standards on provinces for welfare and postsecondary education.

The concluding comments from the CEDAW Committee, with regard to the last State report, were raised at the Committee on the *Convention on Economic, Social and Cultural Rights*.<sup>68</sup> Hopefully this will increase public awareness of CEDAW and its commitment to women's human rights.

## References to CEDAW in Other Human Rights Reports

### NAWL's Reports

The National Association of Women and the Law (NAWL) submitted two very thorough and detailed reports to UN Committees on Canada's violations of human rights. These two reports,<sup>69</sup> *The Civil and Political Rights of Canadian Women on the Occasion of the Consideration of Canada's Fourth Report on*

the Implementation of the International Covenant on Civil and Political Rights, and Canadian Women and the Social Deficit: A Presentation to the International Committee on Economic, Social and Cultural Rights, On the Occasion of the Consideration of Canada's Third Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights, outline the impact on Canadian women of Canada's failure to realise the social, economic, civil and political rights as guaranteed by those two Covenants.

These two reports detail the negative impact on women of Federal/Provincial restructuring of social programs with regard to: women's poverty; the budget and the CHST;<sup>70</sup> increase in women's unpaid work; women at risk due to reductions of social programs; reduced access to legal aid; effect on women with disabilities; stigmatisation of single mothers on welfare; women's equality and the deficit; working conditions of foreign domestic workers; impact of globalisation; the right to secure housing; educational access; protection from discrimination on the basis of social conditions; immigrant women's rights; and aboriginal women's rights to property and the right to culture.

While their focus is on the two covenants as described above, as well as the *Charter* and domestic legislation, reference is made to CEDAW and Canada's responsibility as a signatory to CEDAW.<sup>71</sup>

### The People's Reports

The Ontario People's Report to the United Nations on Violations of the *International Covenant on Economic, Social and Cultural Rights* in the Province of Ontario, Canada,<sup>72</sup> and The Ontario People's Report to the United Nations on Violations of the *International Covenant on Civil and Political Rights* in the Province of Ontario, Canada,<sup>73</sup> are both reports that detail the disman-

ting of social programs by the government of Ontario, Canada, and the resulting undermining of people's rights. Again, these reports are based on the two other Covenants, above, but also refer to CEDAW and Canada's commitment.<sup>74</sup>

### The CRIAW Initiative

The Canadian Research Institute for the Advancement of Women (CRIAW) organised the first national Post-Beijing meeting on May 31 and June 1 of 1997. The meeting brought together 45 women representing NGOs from across the country, and was intended to provide the Canadian women's movement with an opportunity to assess the progress that had been made on the Beijing Platform for Action since 1995. In addition, the meeting was seen as an opportunity to provide Canadian women's NGOs with training on working with United Nations documents, agreements and conventions.

Consensus was reached at this meeting on a number of points relating to engagement with international human rights mechanisms and processes. The group agreed that Canadian women's NGOs need to have greater input into the government positions that are presented in international fora. There must be access to decision-making that extends beyond responding to official government reports or serving as adjuncts to government delegations. The group therefore called for the establishment of a formal consultation mechanism between government and women's NGOs on United Nations related matters. The group also agreed that the shifting economic and political climate in Canada has made it imperative for women's NGOs to do the work of linking their domestic strategies with international work: "We are coming to a point where if we cannot figure out how to do things at the international level we may not be able to help the women of Canada."<sup>75</sup>

At the close of the meeting, an informal working group was created (the 'Ginger Group'), with the following mandate:

1. To develop a set of principles which will form the basis of unity with a focus on resisting the current economic and

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political agenda, as well as to develop a frame of reference and a structure for follow-up work; and

2. To develop a proposal which will have as its general objective to: a) organise efforts to ensure that Canadian governments live up to their international commitments; and b) to develop economic analyses that will focus on women in Canada but make use of ideas/sources in the international fora.<sup>76</sup>

The Ginger Group then developed a proposal, entitled “Making Connections: Canadian Women Act on Beijing”. This proposal stresses that Beijing +5 (the five year evaluation of progress made on the Platform for Action) must be understood as involving “the advancement of the Platform for Action goals in the fullest sense of the word, and in a wide variety of settings including the implementation of all international human rights instruments and agreements.”<sup>77</sup> The proposal is intended to ensure that Canadian women’s NGOs have the knowledge and tools necessary to hold the Canadian government accountable for the commitments it has made in the Platform for Action and related international instruments. The two main objectives stated in “Making Connections” are:

1. To assist women to develop strategies, methods of working, and means of coordinating their activism to strengthen the international dimension of the work of women’s NGOs for gender equality.
2. To ensure women’s NGOs understand and insist on the links between international agreements, and policy development and decision making in Canada.<sup>78</sup>

Several of the key components of the proposal relate to means of engaging with Canada’s commitments under international human rights conventions. The proposal states that a consultative mechanism must be devised for interaction between women’s NGOs and government, so that a dialogue can take place regarding international gender equality work. Education, training and capacity building are needed, to enable women’s NGOs to engage

effectively in United Nations fora and to ensure continuity and coherence in Canadian women’s NGOs international work. This sort of education is also needed to develop women’s NGOs ability to engage with Canada’s international commitments at the domestic level. A communications strategy must be developed. This strategy would be intended to share information and resources among women’s NGOs, but also to improve communication with the general public around Canadian international action on gender equality and human rights. Finally, a consultation process is required that would allow Canadian women’s NGOs to develop strategies regarding their domestic and international gender equality work.

#### FAFIA Initiative

The NGO consultations process as described in the proposal began with a National Consultation meeting that was held in February 1999. At this meeting, representatives of women’s NGOs who work at the national, regional and local levels agreed to provide direction for Canadian women’s priorities regarding the Platform for Action for the “Beijing +5” process, as well as Canada’s other international gender equality commitments. Issues specifically relating to CEDAW will be raised at this meeting, including consideration of the sorts of domestic monitoring mechanisms that should be developed, and of how education can be provided to the women’s movement regarding the content of the *Convention* and the international committee process. The development of the Optional Protocol to CEDAW will also be discussed, in the context of determining how Canadian women might make a contribution at the United Nations Committee on the Status of Women meeting that was held in March of 1999. The Feminist Alliance

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for International Action (FAFIA) is a national alliance of over 40 Canadian women's non-governmental organisations that resulted from this process. FAFIA seeks to facilitate the ability of Canadian women's NGOs to negotiate effectively at the United Nations. The alliance wishes to hold the Canadian government responsible to the international commitments and obligations signed by Canada. FAFIA is particularly concerned with CEDAW, and Canada's commitment to CEDAW's initiatives to protect women both through international mechanisms and domestic laws and policies.

### The IWRP CEDAW Strategies Meeting

In conjunction with the preparation of this study, York University's International Women's Human Rights Project (IWRP) facilitated the first "Canadian CEDAW Strategies Meeting" on November 22-24, 1998, during which the working paper on Canada for the CEDAW Impact Study was reviewed and suggestions were made. The meeting was attended by representatives from the following Canadian women's organisations: Voice of Women, the UN Platform for Action Committee, the Northwest Territories Status of Women Council, Table féministe francophone de concertation provinciale de l'Ontario, the National Action Committee on the Status of Women, the National Association of Women and the Law, the African Women's Health Network, the National Council of Women of Canada, the Canadian Association of Sexual Assault Centres, the Canadian Research Institute for the Advancement of Women, the Women's International League for Peace and Freedom, the DisAbled Women's Network, the Canadian Federation of University Women, and the Comité québécois de suivi de Beijing. Presentations were made by a number of experts on international human rights law, and by government officials. Two afternoon sessions during the meeting were devoted to discussions among the NGO representatives about the ways in which women's NGOs could be using CEDAW to support their domestic political work. These discussions were preceded by a responsive to a paper commissioned by the IWRP and written by Shelagh Day in collaboration with André Côté, entitled "CEDAW:

Strategies for Implementation."<sup>79</sup>

The "strategies" paper was extremely well received at the meeting, and formed the basis of productive exchanges. Some of the key suggestions regarding NGO engagement with CEDAW use are summarized here.

Regarding the analysis and work that Canadian women's NGOs need to begin, the paper suggests that:

1. NGOs need to generate analyses of specific Canadian laws and government policies that determine whether and how they contravene Canada's CEDAW commitments. These analyses could be part of the development of a body of information that could be drawn on when Shadow Reports are written.

2. Canadian NGOs should seek to exchange these analyses with women's NGOs from other countries, to assist in the development of an international discourse regarding CEDAW's meaning and application.

3. NGOs should explore the circumstances in which it would be useful to look at CEDAW in conjunction with other international human rights instruments.

4. NGOs need to explore the question of monitoring: "What is monitoring? Does it require establishing benchmarks for progress, thresholds for contravention? How should monitoring be done—by governments, by women's NGOs, by both but separately, by both co-operatively? What resources are available to support such monitoring? Will monitoring actually be useful to women?"

Regarding the organisational form Canadian women's NGO engagement with CEDAW should take, the paper observes:

Since for Canadian women's NGOs that have a domestic focus, international work is relatively new, we have the opportunity to think hard about the model of NGO participation we want to foster. A model that is inclusive, that is rooted in grassroots organisations and experience, that ensures that the most disadvantaged women have a voice, that fosters an egalitarian partnership between women's NGOs and women based in academia, and that does not make lack of UN expertise and experience a bar to



participation, is essential.<sup>80</sup>

Among the paper's specific suggestions regarding organisational structure:

1. NGOs need to develop a co-operative model for international work.
2. NGOs need to develop training resources for women dealing with UN bodies and attending UN meetings.
3. NGOs need a coordinated source of information on upcoming UN issues and events.
4. NGOs need more popular education regarding international human rights instruments and their implications for women.
5. NGOs need improved methods of consultation with Status of Woman Canada, the Department of Foreign Affairs and International Trade and other relevant departments about the positions Canada takes on international issues.
6. The Canadian government needs to provide women's NGOs with resources to adequately support their international work.
7. The Canadian government needs to encourage UN agencies and bodies to become more accessible to NGOs.
8. Canadian women's NGOs need to engage in a dialogue with international NGOs about methods of work and substantive positions.

In the discussions which followed the presentation of the CEDAW strategies paper, a wide range of questions and concerns were raised about the way in which Canadian women's NGOs should be approaching the use of CEDAW. Some of the matters discussed are indicated in the following paragraphs, but it should be noted that the group did not reach any formal conclusions or consensus at this meeting.

Regarding procedures for monitoring Canada's compliance with CEDAW, there is a need to ensure that women's NGOs have input into the Canadian government's reports to the CEDAW Committee, as well as producing their own Shadow Reports. This raises the question of which representatives from the women's NGO community the government should be consulting. Also, because cause and effect are difficult to establish regarding the CEDAW reporting process, it would be important not to focus too much on reporting when think-

ing about ways to ensure that CEDAW is implemented. An ongoing process and ongoing engagement will be required to improve implementation. Perhaps Shadow Reports should not become the main focus, in the sense that women's NGOs would be trying to produce the best possible shadow reports. These reports might be better approached as tools, which can be used to help build the necessary political will and stimulate the Canadian government to change. A shadow report is one of a number of available ways to embarrass the government about its record on women's issues as measured against its international commitments. Regarding the assembly and drafting of shadow reports, how might women's NGOs from across the country collaborate to assess Canada's compliance? The work of groups working at the provincial and territorial levels might be integrated into a national monitoring process, and other ways of delegating portions of the work could also be explored. Mentoring would be an important consideration.

The problem of developing an appropriate organisational structure for CEDAW related work in Canada was discussed at length. Individual women's NGOs do not have the resources to do this work on their own. Furthermore, there would be a need to coordinate different levels of intervention and specialisation. Channels of information should be established so that efforts would not be duplicated. It was noted that Canadian women's NGOs have already begun to rely on networking as a response to government cuts to funding. Concern was raised about the way in which different tasks and levels of involvement might be allocated and integrated. It would be important not to adopt a model that directed international work to the middle class academics and professionals, and left grassroots advocacy to working class women. The process should be controlled by the women's NGOs themselves, and women's NGOs should not be asked to hand their right to direct contact with the United Nations and the Canadian government over to academics and professionals acting as mediators. It was also felt that a widespread learning process about CEDAW would be required within the

women's movement, and care should be taken that this learning not be restricted to the NGO executives—information must be distributed to the NGO memberships. There is a pressing need for popular education on CEDAW, and to organise women in relation to CEDAW locally. If a centralized body were to be developed its primary role might be to provide information and co-ordination, and to allow strategy to be centralised. What is needed is a central depository and a central process that can help women's NGOs develop connections between CEDAW and their domestic work.

### Conclusion

CEDAW has not yet played a significant role in the development of Canadian law and policy regarding women's equality. To the extent that Canada is in compliance with its obligations under CEDAW, this is the effect of work that has been done in relation to domestic human rights standards and guarantees, including the equality rights provisions of the *Charter of Rights and Freedoms*. However, this situation seems to be poised for change, as Canadian women's NGOs look to CEDAW with increasing interest. Important initiatives are currently underway, exploring the questions of producing Shadow Reports to the CEDAW Committee, women's NGO involvement in the production of Canada's reports to the Committee, ways of monitoring Canada's CEDAW compliance, and providing CEDAW education, training and mentoring to Canadian women's NGOs. It can be anticipated that CEDAW's significance will increase over the course of the next few years within the Canadian women's movement, and within Canada as a whole, as a result of these efforts.

### Endnotes

<sup>1</sup>See the extremely detailed and thorough analysis of the present situation of women in Canada presented in *Civil and Political Rights of Canadian Women* on the Occasion of the Consideration of Canada's Fourth Report on the Implementation of the *International Covenant on Civil and Political*

*Rights*, New York, March 1999 and *Canadian Women and the Social Deficit: A Presentation to the International Committee on Economic, Social and Cultural Rights, On the Occasion of the Consideration of Canada's Third Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, Geneva, November 1998. Both these reports were submitted by the National Association of Women and the Law (NAWL) and are available through the NAWL web site at <http://www.nawl.ca>.

<sup>2</sup>Ibid. Also see *The Ontario People's Report to the United Nations on Violations of the International Covenant on Economic, Social and Cultural Rights in the Province of Ontario, Canada*, submitted by Josephine Grey and Low Income Families Together, (LIFT), Geneva, November 1998 and *The Ontario People's Report to the United Nations on Violations of the International Covenant on Civil and Political Rights in the Province of Ontario, Canada*, New York, March 1999. Submitted by Amani Oakley and Vincent Pang.

<sup>3</sup>Monica Townson, *Canadian Women Among the Poorest of the Poor* (based on *A Report Card on Women and Poverty*, produced for the Canadian Centre for Policy Alternatives, April 5, 2000).

<sup>4</sup>Morris, M., J. Robinson, *et al.* *The Changing Nature of Home Care and Its Impact on Women's Vulnerability to Poverty* (prepared for the Canadian Research Institute for the Advancement of Women. Ottawa. November 1999).

<sup>5</sup>Status of Women Canada, Report by the Government of Canada to the UN Commission on Human Rights: Special Rapporteur on Violence Against Women, December 1998.

<sup>6</sup>Statistics Canada, *Family Violence in Canada*. Ottawa: Minister of Industry, 1999 at p. 18.

<sup>7</sup>Statistics Canada, "Homicide statistics 1998", *The Daily*, October 7, 1999.

<sup>8</sup>Ibid.

<sup>9</sup>Statistics Canada. "Shelters for Abused Women", *The Daily*, June 11, 1999.

<sup>10</sup>Winnipeg Free Press, December 11, 1989, p.15; The Montreal Gazette, December 11, 1981, p.10.

<sup>11</sup>Telephone interview: Monique Charlebois, former director of legal policy, Status of Women Canada.

<sup>12</sup>Canada, *Convention on the Elimination of All Forms of Discrimination Against Women: First Report of Canada*, 1983, at p. xi.

<sup>13</sup>Ibid.

<sup>14</sup>Ibid., at p. 8.

<sup>15</sup>Ibid. at p. 42.

<sup>16</sup>Canada, *Convention on the Elimination of All Forms of Discrimination Against Women: Second Report of Canada*, 1988, at p.1.

<sup>17</sup>Telephone interview: Normand Duern, Senior Officer, International Instruments, Canadian Heritage.

<sup>18</sup>Canada, *Convention on the Elimination of All Forms of Discrimination Against Women: Third Report of Canada*, at p. 35.

<sup>19</sup>The Senior Officer offered the opinion that the low level of response might have to do with the timing of the requests, which are made in the early stages of a report's preparation. Each report takes approximately one year to assemble, and because of backlogs at the United Nations Committees it may not be heard until several years after submission; whereas, in his opinion, NGO interest in Canada's reports is greatest just before the Committees hear them.

<sup>20</sup>[1989] 1 S.C.R. 143., aff'g 2 B.C.L.R. (2d) 305[hereinafter *Andrews*].

<sup>21</sup>*Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being schedule B of the Canada Act 1982, c. 11.

<sup>22</sup>*Supra* note 19 at 166.

<sup>23</sup>*Supra* note 19 at 167.

<sup>24</sup>*Supra* note 19 at 164.

<sup>25</sup>*Supra* note 19 at 168.

<sup>26</sup>*Supra* note 23.

<sup>27</sup>*Supra* note 19 at 315 (Appeal level).

<sup>28</sup>(1995), 128 D.L.R. (4<sup>th</sup>) 213.

<sup>29</sup>(1998), 13 C.R. (5<sup>th</sup>) 324.

<sup>30</sup>Ibid., at p. 335

<sup>31</sup>[1999] 1 S.C.R. 330.

<sup>32</sup>Ibid., at p. 335.

<sup>33</sup>Ibid., at p. 362.

<sup>34</sup>Ibid.

<sup>35</sup>Ibid., at p.362-363.

<sup>36</sup>(1990), 71 O.R. (2d) 641.

<sup>37</sup>Bayefsky and Eberts eds., *Equality Rights and the Canadian Charter of Rights and*

*Freedoms* (1985), p.10

<sup>38</sup>ibid. at p. 652 of *Leroux*.

<sup>39</sup>14 F.T.R. 239.

<sup>40</sup>(1991), 14 C.H.R.R., D/176

<sup>41</sup>Ibid., at p. D/189.

<sup>42</sup>For further references to CEDAW by Canadian courts, see: *Andrews v. Law Society of British Columbia* [1989] 1 S.C.R. 143., aff'g 2 B.C.L.R. (2d) 305; *Schachter v. Canada* (1988), 52 D.L.R. (4<sup>th</sup>) 525 (F.C.T.D.); and *Leroux v. Co-operators General Insurance Co.* (1990), 65 D.L.R. (4<sup>th</sup>) 702 (Ont.H.C.J.)

<sup>43</sup>*Human Rights Act*, S.Y. 1987, c.3. See also: references to the Universal Declaration of Human Rights in the preambles to Ontario's *Human Rights Code*, Manitoba's *Human Rights Code*, the Northwest Territories' *Fair Practices Act*, Nova Scotia's *Human Rights Act*, and Prince Edward Island's *Human Rights Act*.

<sup>44</sup>(1989), 10 C.H.R.R., D/6353.

<sup>45</sup>(1992), 19 C.H.R.R., D/97.

<sup>46</sup>(1995), 23 C.H.R.R., D/259; *Indian Act*, R.S.C. 1970, c.I-6.

<sup>47</sup>The information that follows regarding NGO awareness of CEDAW was provided by telephone interviews with: the Ontario Association of Interval and Transition Houses, the National Association of Women and the Law, Voice of Women, the Women's International League for Peace and Freedom, the DisAbled Women's Network, the African Women's Health Network, the Canadian Research Institute for the Advancement of Women, Mothers Are Women, Table feministe francophone de concertation provinciale de l'Ontario, the Canadian Association of Elizabeth Fry Societies, and the National Council of Women of Canada.

<sup>48</sup>See for example: work in development by the African Women's Health Network regarding the restriction and denial of healthcare to refugee women, by the Canadian Association of Elizabeth Fry Societies regarding women's segregation units in male maximum security units, and by Mothers Are Women regarding remuneration and benefits for women's unpaid work in connection with Beverly Smith's complaint to the Commission on the Status of Women.

<sup>49</sup>The Canadian Institute for the Advancement

of Women is at the forefront of this work. It should also be noted that Voice of Women is in the process of developing a proposal for providing training to women's NGOs on United Nations mechanisms and international women's human rights instruments.

<sup>50</sup>A copy of the NAC parallel report is attached to this paper.

<sup>51</sup>National Action Committee on the Status of Women, *Parallel Report to the Second Report of Canada to the U.N. Committee on the Elimination of All Forms of Discrimination Against Women*, January 1990, p. 1.

<sup>52</sup>Deborah Stienstra and Barbara Roberts, *Little But Lip Service: Assessing Canada's Implementation of its International Obligations for Women's Equality* (prepared for the Canadian Advisory Council on the Status of Women, June 1993), at p. 6.

<sup>53</sup>Deborah Stienstra and Barbara Roberts, *Strategies for the Year 2000: A Woman's Handbook* (Halifax, Fernwood Publishing, 1995), at p. 9.

<sup>54</sup>It should be noted that the *Lip-Service* report was not released by CACSW, and its findings and conclusions were not significantly incorporated into the 1994 report CACSW did publish on women's equality in Canada. The federal government disbanded CACSW soon after the completion of the report. A revised version of *Lip-Service* was published by Fernwood Publishing in 1995, under the title *Strategies for the Year 2000: A Woman's Handbook*.

<sup>55</sup>Ontario Association of Interval and Transition Houses, "Crisis in Women's Equality Rights in Ontario: a Brief Concerning Canada's Responsibilities to Abused Women and their Children," May 1996.

<sup>56</sup>*Ibid.*, at p. 3.

<sup>57</sup>*Ibid.*, at p. 4.

<sup>58</sup>OAITH, November 1996. To obtain a copy of the report, email: oaith@web.net.

<sup>59</sup>A copy of the OAITH brief was also included with the National Association of Women and the Law's recent submissions to the United Nations Committee on Economic, Social and Cultural Rights.

<sup>60</sup>A copy of the 1997 Shadow report is attached to this paper.

<sup>61</sup>Submitted along with the Shadow report

were a copy of the OAITH brief, a report written by Lee Lakeman for by CASAC on the provision of services to victims of sexual assault, and a paper on affirmative action written by Shelagh Day which had been presented at a recent IWRAW meeting.

<sup>62</sup>National Action Committee on the Status of Women, *Canada: Alternative Report to CEDAW*, January 1997, at p. 1.

<sup>63</sup>*Ibid.*, at p.7.

<sup>64</sup>*Ibid.*

<sup>65</sup>*Ibid.*, at p. 8.

<sup>66</sup>"U.N. Committee Finds Us Lacking." *The Toronto Star*, December 8, 1998.

<sup>67</sup>"UN Committee lambastes Canada on human rights. Ottawa urged to target homelessness, reassert national standards on welfare and education." *The Globe and Mail*, December 5, 1998: 7.

<sup>68</sup>Shelagh Day, one of the key authors of the Shadow Report, had also submitted a report to this Committee on behalf of NAWL.

<sup>69</sup>Op cit. Note 1.

<sup>70</sup>The Budget Implementation Act and the Canada Health and Social Transfer

<sup>71</sup>For details, see the 2 reports, op cit. 1.

<sup>72</sup>Josephine Grey and Low Income Families Together, (LIFT), Geneva, November 1998

<sup>73</sup>Amani Oakley and Vincent Pang, New York, March 1999.

<sup>74</sup>Op. Cit. 73 and 74.

<sup>75</sup>Canadian Research Institute for the Advancement of Women, *Report from the First Post-Beijing National Meeting: from Beijing to the Millenium*, May 1997, at p. 8.

<sup>76</sup>*Ibid.*, at p. 9.

<sup>77</sup>Canadian Research Institute for the Advancement of Women (CRIAOW), *Making Connections: Canadian Women Act on Beijing*, 1998, at p. 1.

<sup>78</sup>*Ibid.*

<sup>79</sup>Shelagh Day, "CEDAW: Strategies for Implementation." Paper presented at the Canadian CEDAW Strategies Meeting, York University, Toronto, Canada, November 1998, at p. 10.

<sup>80</sup>*Ibid.*, at p. 18.