

The Poverty and Human Rights Project

307 West 18th Avenue
Vancouver, B.C.
V5Y 2A8
604-872-0750

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Nadine Pinton
Human Rights Program,
Canadian Heritage,
15-7-B, Hull,
Québec K1A 0M5
Fax: 819-994-5252

Dear Ms. Pinton,

The Poverty and Human Rights Project is a new project of the Canadian Human Rights Reporter Inc. Its goal is to enhance understanding in Canada of rights to social and economic security, and to contribute to the development of policy, law and jurisprudence in this area.

We learned just after September 30 that you had invited input from non-governmental organizations into Canada's fourth report on its compliance with the *International Covenant on Economic, Social and Cultural Rights*. Nadine Pinton kindly informed us that a late submission would be acceptable. We appreciate the opportunity to provide comments and suggestions.

We believe that Canada's reports to United Nations expert bodies are extremely important. The reviews of Canada's compliance with its treaty obligations could provide an opportunity for open dialogue in Canada regarding progress, areas of deficiency, and measures needed to meet our human rights commitments. In order for the reviews to fulfill this democratic function, Canada's report must be candid, and must address central problems.

In this letter, we do not address what the federal government should report on under specific Articles of the *ICESCR*. Rather, we focus on four issues which are of critical importance to the overall approach taken by Canada as a State Party to the implementation of economic and social rights.

1. Factors impeding the implementation of this Covenant

The Committee on Economic, Social and Cultural Rights noted in its 1998 Concluding Observations on Canada (E/C.12/1/Add.31) at para. 12 that Canada's complex federal system presents obstacles to the implementation of the Covenant. As human rights advocates, we are keenly aware of the problems that the constitutional division of powers between federal, provincial and territorial governments poses for the implementation of human rights treaties. During the review process in 1998, Committee members expressed some impatience with Canada's apparent failure to find methods and mechanisms for ensuring that all levels of government are aware of their treaty obligations and discharge them. The Committee is correct that taking compliance with treaty obligations seriously requires that this problem be addressed.

Though Canada is a signatory to the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* as a "State Party", and Article 28 provides that the Covenant extends to all parts of federal States without any limitations or exceptions, nonetheless, Canada has no existing intergovernmental mechanism for reviewing the treaty and the Concluding Observations of the Committee and devising joint, collaborative steps that can be taken to ensure that rights are implemented effectively and that there is State Party-wide compliance. Government of Canada representatives who appear before the Committee on behalf of Canada tend to disavow any responsibility for non-complying conduct of a province or territory. In light of this, the Committee urged the Government of Canada "to take concrete steps to ensure that the provinces and territories are made aware of their legal obligations under the Covenant and that the Covenant rights are enforceable within the provinces and territories through legislation or policy measures and the establishment of independent and appropriate monitoring and adjudication mechanisms" (para. 52). Clearly, the Committee is looking to the Government of Canada to provide leadership.

Recommendation: We recommend that the Government of Canada report on concrete steps that have been taken to respond to the Committee's recommendations regarding 1) co-ordination with the provinces and territories to ensure that they are aware of their legal obligations; and 2) the development of mechanisms for the adjudication of economic and social rights and for monitoring the implementation of these rights on a pan-Canadian basis.

2. Responses to the Recommendations of the Committee on Economic, Social and Cultural Rights

In its 1998 Concluding Observations, the Committee on Economic, Social and Cultural Rights made 20 recommendations to Canada. These recommendations deal with, among other things, the loss of legal entitlement to social assistance in Canada; the need for an adequate land and resource base to support Aboriginal economy and culture; the National Child Benefit clawback from families receiving social assistance; diminished entitlements to unemployment insurance; the national emergency of homelessness and inadequate housing; the lack of entitlement of Aboriginal women living on reserves to the

division of matrimonial property at the time of marriage breakdown; the financial obstacles to post-secondary education for low-income students; the adoption by Attorneys General of positions in litigation that are not consistent with their obligation to uphold *ICESCR* rights; the omission of economic and social rights from human rights legislation; the need to take measures to ensure the realization of women's economic, social and cultural rights, including the right to equal remuneration for work of equal value; the need to spend a greater portion of budgets specifically on measures to address women's poverty and the poverty of their children, as well as on support for battered women, care-giving services, and women's non-governmental organizations; the need to extend the mandate of the Court Challenges Programme so that it can fund equality challenges to provincial and territorial laws as well as federal laws. Many of the 20 recommendations deal with matters for which the federal government is either fully or partially responsible.

The process of filing reports and having them reviewed by the United Nations Committee on Economic, Social and Cultural Rights is only useful to governments and to members of the Canadian public if the Committee's recommendations are thoroughly and carefully considered and if they have some subsequent impact on government policies and conduct.

Recommendation: We recommend that the federal government in its 4th report provide detailed responses to the 20 recommendations made by the Committee in its 1998 Concluding Observations, explaining what measures it has taken to deal with each one. If the Committee's recommendation was not followed, an explanation should be provided for why it was not.

3. Definitions of Poverty

In its Concluding Observations at para 13, the Committee noted as a factor impeding the implementation of the Covenant that:

While the Government of Canada has consistently used Statistics Canada's "Low-income cut-off" as a measure of poverty when providing information to the Committee, it informed the Committee that it does not accept the low-income cut-off as a poverty line, although it is widely used by experts to consider the extent and depth of poverty in Canada. The absence of an official poverty line makes it difficult to hold the federal, provincial and territorial governments accountable with respect to their obligations under the Covenant.

The Committee urged Canada "to establish officially a poverty line and to establish social assistance at levels which ensure the realization of an adequate standard of living for all" (para. 41).

It appears that, at the request of the provincial and territorial Ministers of Social Services, Human Resources Development Canada (HRDC) is developing a "needs-based" measure of poverty, called the Market Basket Measure (MBM). If this becomes the preferred measure of poverty for social policy purposes, experts note that it is likely to result in

much lower measured rates of poverty among all groups. In *A New Poverty Line: Yes, No or Maybe?* the National Council of Welfare estimated that, “when the before-tax LICOs are compared with HRDC’s after-tax MBMs, poverty rates for all persons in 1996 would have increased by 4% in Newfoundland, but in all other provinces would have dropped by anywhere from 18% in Nova Scotia to 49% in Quebec.” Unfortunately, as Monica Townson points out in *A Report Card on Women and Poverty*, redefining poverty may turn out to be a means, not of improving the measurement of poverty in Canada, but of justifying a diminished government responsibility to provide for those who do not enjoy an adequate standard of living.

Recommendation: We recommend that the Government of Canada provide clear explanations of the measurements of poverty provided by both LICOs and MBMs, and indicate the numbers and percentages of people in Canada who are defined as living in poverty using each measure, by region, sex, family type, numbers of children, and any other usually measured factors. Further, we recommend that the Government of Canada indicate to the Committee how it defines and measures “an adequate standard of living” for persons resident in Canada.

4. Who is Poor?

The demographics of poverty matter. It is clear from the Committee’s 1998 Concluding Observations that they are concerned about the particular and differing situations of women, Aboriginal people, people with disabilities, children, and immigrants and refugees, who number disproportionately among the poor in Canada. A description of who is poor in Canada is essential information for the expert body evaluating Canada’s compliance, since social programs and services which give life to the rights in the *ICESCR* must be designed and delivered in ways that are effective for these most vulnerable groups. This information is needed by governments, policy analysts and non-governmental organizations. The Government of Canada could take this opportunity to consolidate the best available information.

Recommendation: We recommend that the Government of Canada provide in its 4th report the most complete picture possible of income distribution in Canada by race, sex, marital status, age, family type, Aboriginal status, immigrant and refugee status, and region, and that similar information be provided separately for those whose incomes are below the Statistics Canada Low-Income Cut-offs and the new Market Basket Measure.

We thank you again for the opportunity to make this contribution to your work on Canada’s 4th report. We would be pleased to discuss these issues with you at any time, and look forward to receiving the report when completed.

Yours sincerely,

Shelagh Day
Gwen Brodsky
Directors

Angela J. Cameron
Project Co-ordinator