CHAPTER 5

New Directions

Introduction

Women's aspirations to be accorded equal consideration and respect in economic policy matters are not satisfied by the change from the CAP to the CHST. Underlying this attack on the social safety net are the deeply sexist assumptions that women's economic inequality is natural, that women will be looked after inside the family, and that the poverty of women who are not connected to men can be ignored. Women's fight for social programs and services that will support our aspirations for equality, including economic autonomy, must be redoubled. And women must resist fiercely the placement of economic decision making outside the equality rights framework.

In the face of economic decision making that ignores the needs and aspirations of women and treats economic policy as unrelated to the rights of women, women need to be prepared with a new articulation of the meaning of equality. We need to insist on connection, not disconnection. We believe that for women to move forward, connections must be made: between civil and political rights, and economic, social, and cultural rights; between the future of social programs and the future of national unity; between economic policy and Canada's commitments to equality.

Here we suggest some general strategies for approaching our current problems, some ways of using and making political spaces where women can continue to press for the fulfilment of Canada's commitments to equality and for a more generous future for all Canadians.

Courts and Equality Rights

In recent decades, women have made significant legal gains ranging from the attainment of rights to vote and hold office to the removal of explicit barriers to employment opportunities. It has become extremely rare to see legislation that discriminates against women overtly. But these advances towards formal equality do not mean that women have achieved equality in fact. The ongoing challenge is to close the gap between the promise of equality and the realities of women's lives. Government policies have a major role to play. Some legislative choices promote the equality of women. Others do not. Governments in Canada are bound by the *Charter* and by human rights treaties to choose equality-promoting measures.

One of the ways that women have been able to push governments to live up to their equality commitments is by taking them to court, using the *Charter*'s equality rights guarantees. Before the advent of the *Charter*, women took governments to court, using the equality guarantee under the *Canadian Bill of Rights*. From the earliest days of feminist activism, women have been concerned about issues of economic inequality. However, because of shifts in economic policy directions that are extremely threatening to women, there are new and more urgent pressures to ensure that equality rights guarantees are interpreted in ways that respond to concerns about the material conditions of women's lives. Equality rights jurisprudence is at a critical juncture.

Recent s. 15 decisions suggest a tendency for judges to recoil from challenges to legislative schemes that fail to take the needs of disadvantaged groups into account. This tendency can be more pronounced if it is thought that there are social or economic issues at stake.

During a period when governments are having considerable success in their efforts to persuade courts to bob and weave when economic issues come along, and familiar patterns of defeating legal reasoning are repeated, it is reasonable for feminists to ask whether it is worthwhile to continue to invest energy in the courts. Our answer to this question is yes. But our response is positive because of the way we think about strategic litigation. We think of it as one element of a long-term struggle to overcome ideologies of dominance, and to establish understandings of equality that can actually speak to the material conditions of women's inequality.

Litigation can also be a means of protesting against laws, such as the CHST, which have the effect of reinforcing the inequality of women.

In our view, feminists should use all the spaces that are available for feminist advocacy, and should also push for spaces to be created and expanded. Sometimes the courts are a useful place to be because they provide an opening to address an issue of inequality. Other times the opening they provide may be small, but the reason for going there is precisely to object to the smallness of the opening. Clearly, neither the law nor equality discourse were invented with women in mind. Sometimes the courts are a place where this can be illustrated and protested.

Also important to our thinking about the issue of litigation is what is rejected. We reject a conception of litigation as a tool that can accomplish great things in isolation from other strategies. The most important legal victories of the past decade — in cases such as *Brooks*,[1] *Janzen*,[2] and *Morgentaler*[3] — were achieved because they were preceded and accompanied by an enormous swell of activism, which created favourable conditions for litigation. And it is for the same reason that the outcome of those cases was and continues to be culturally significant. Activists have used these cases as elements of broad-based strategies to shift public opinion.

We also reject the naive hope that any one legal case could bring an end to inequality. Sexism, homophobia, racism, anti-Semitism, able-bodyism, and complacency about poverty are values that are so entrenched in the society that the battle against them does not get finally won in a single legal case. No one initiative, whether it be litigation or new legislation, could ever be expected to carry the burden of displacing a powerful ideology. However, a well chosen legal case can make a contribution to a long-term struggle to change attitudes and beliefs.

Nor do we claim that the courts are best suited to the performance of all law-related tasks. One of the compelling reasons for calls for judicial restraint is that most of us actually do want our governments to govern. But what recourse do women have when legislators are not listening? Regarding the *BIA*, and the importance of national standards, women have made their concerns known to government committees, individual politicians, senior government bureaucrats, the media, and international human rights bodies, so far, to little avail. There are times, such as this, when litigation can be useful to open up an alternative forum when other spaces controlled by governments and the media seem to have closed

down, even though the ultimate goal is to prompt government action.

It is important to note that there are important ways of influencing the content of rights besides being a plaintiff or a plaintiff's lawyer in a court case. Feminist interventions in cases initiated by others, such as those sponsored by the Women's Legal Education and Action Fund (LEAF) and by other equality rights groups, are an extremely important vehicle for women's participation in litigation. Outside-the-courtroom commentary and activism are important avenues of participation in the shaping of rights. Approving references to feminist scholarship that figure prominently in many Supreme Court of Canada decisions indicate that this kind of commentary from outside the courtroom can also make a difference.

There are strengths, weaknesses, and highly situational strategic considerations associated with each model of litigation involvement. Perhaps the most important role of proactive *Charter* litigation, by which we mean commencing a challenge rather than intervening in a case initiated by others, is that it can be a way of gaining legitimacy and public sympathy for an issue to which elected officials have not been responsive. *Thibaudeau*[4] is a case in point. The issue of discriminatory tax treatment of child support payments had long been the subject of women's movement lobbying efforts, but not of government reform. However, when the tax treatment of child support payments became the subject of a *Charter* challenge, the wheels of legislative reform began to turn, and, interestingly, the momentum was not lost even though the Supreme Court ruled against Suzanne Thibaudeau.

It is also important to note that the *Thibaudeau* challenge consisted not only of the argument advanced by Ms. Thibaudeau and her lawyers. The challenge included legal interventions by LEAF, the Charter Committee on Poverty Issues (CCPI), the National Action Committee on the Status of Women (NAC), and th National Association of Women and the Law (NAWL), feminist writing in academic literature and women's media, and a sustained lobbying effort by women's organizations and individual women, all of which influenced federal government decision makers and the climate of public opinion.

A central characteristic of the proactive litigation model is the tension that exists between the narrower goal of securing a legal outcome that will provide immediate benefits to the claimant, usually an individual, and the broader goal of securing an outcome, including helpful reasons for judgment, which can assist women as a group, both by providing immediate benefits and by pushing the jurisprudence forward in directions favourable to women. This tension can be significantly mitigated by the participation of feminist intervenor groups. The role of the intervenor is precisely to articulate the legal principles on which the case should be decided, in light of the broader impact that it is likely to have. The intervenor group may even define success in terms of the principles adopted by the court, which will be applied as precedent in subsequent cases. The individual plaintiff, on the other hand, acting without broad-based organizational support, may not even be aware of the broader concerns surrounding an issue, even though the outcome of the case stands to have widespread effects.

Another factor, in any litigation, can be the cautious lawyerly disposition that sees any move away from established legal precedent as a threat to legal victory. Whereas lawyers are trained to make legal arguments based on precedent, the challenge of feminist advocacy, quite often, is to take a court

in a direction that departs significantly from precedent. The bedrock of feminist advocacy is not only legal precedent; it is also feminist principles. However, the tension between “winning” and “winning the right way” can also be softened if it is recognized that the hope of securing an immediate legal victory is not the only reason for litigating. Even when the prospects of securing a legal victory are poor, litigation can be an effective means of registering serious protest, thereby helping to shift the terms of a debate. Furthermore, the *Charter* is still a relatively new instrument, and there are a lot of areas in which precedent is either very thin or non-existent. This means that there may be a greater requirement and opportunity for the development of effective arguments than is sometimes thought to be the case.

We recommend against decontextualized decisions for or against litigation. Proactive litigation should always be regarded as an option, with the choice to pursue it or not being based on highly situational considerations, such as resource availability and capacity to mount a litigation support campaign among women and in the media. On the other hand, we are strongly of the view that legal interventions to shape the course of equality jurisprudence are crucial. Women do not control which cases get before the courts. Cases that will have widespread effects on women, institutions, and jurisprudence have been, and will continue to be, brought into the courts by various groups and individuals. Women's presence in these cases is essential.

Particularly since 1985 when the equality guarantee of the *Charter* came into force, women have gained considerable experience in using the courts as a forum in which to press women's rights claims. The record shows that the feminist advocacy work of women's rights organizations can have a significant influence on the outcome of legal decisions. Decisions such as *Andrews*[5] strongly reflect the influence of arguments advanced by feminist intervenor groups.

There are other cases in which feminist perspectives have not prevailed. In Supreme Court of Canada *Charter* decisions, the influence of feminist intervenors' arguments is often reflected in dissenting opinions. But, the power of dissenting opinions should not be underestimated. A dissenting opinion can be used to criticize majority decisions and to mobilize public support for an alternative position. The fact that in numerous equality rights decisions, the two women judges on the Supreme Court of Canada have written eloquent dissents has sent a strong public message concerning the gendered character of some key points of disagreement on the Court, and underlined the importance of appointing more women to the bench.

The history of legal decision making shows that, over time, courts can be persuaded to change their minds, reversing earlier decisions that are inconsistent with equality values. One of the reasons that the decision of the Supreme Court of Canada in *Brooks*[6] stands out as such an important victory is that it represented the culmination of a decade-long protest against the Court's earlier holding in *Bliss*[7] that discrimination based on pregnancy is not sex discrimination. Women fought long and hard for this reversal. In *Brooks*, Dickson C.J. said on behalf of a unanimous Supreme Court, “With the benefit of a decade of hindsight and ten years of experience with claims of discrimination and jurisprudence arising therefrom, I am prepared to say that *Bliss* was wrongly decided, or in any event, that *Bliss* would not be decided now as it was decided then.”

But the progress of equality struggles is not steady. It is uneven. Looking to the future, there are particular areas of equality rights law that should be the focus of concentrated attention by feminist organizations. The *Charter*'s equality rights guarantees are in danger of being degraded and gutted by arguments advanced in courts by governments, arguments designed to effectively eliminate the right to equal benefit of the law. These arguments involve three basic manoeuvres:

- constructing hurdles that make it impossible for equality rights plaintiffs to prove that legislation that is gender neutral on its face may nonetheless have adverse effects on women (adverse effects are either blamed on extraneous factors such as nature, or adverse effects are ignored);
- erecting a wall between "socio-economic" issues (social justice claims by members of disadvantaged groups) and "rights" issues (claims that seem to fit more easily within a formal equality framework); and
- reducing the burden of proof that governments must meet in order to prove that a *Charter* violation is justified, and therefore permissible under s. 1 of the *Charter*.

Women must resist these government efforts and push equality rights law to accept and understand women's material inequality as a sex discrimination issue. Sustained efforts are needed to displace same treatment, or formal equality, as a normative equality goal. Equality rights analysis must be concerned with eliminating the pattern of unequal results experienced by women.

It has been recognized in equality rights case law that the amelioration of group disadvantage is a goal of s. 15 of the *Charter*. Moreover, courts have repeatedly recognized that discrimination is primarily a question of adverse effects. However, in practice, some claims have failed because the inequality complained of was not seen as being *based on personal characteristics*.

When tested against the problem of the *BIA*, the pitfalls of the requirement that the alleged discrimination be shown to be based on personal characteristics become apparent. We have argued that the *BIA* is discriminatory because it targets poor people for negative treatment, and the *impact* of that negative treatment has *adverse effects* on women, contrary to the sex equality guarantees of the *Charter*, and contrary to Canada's international human rights obligations under *CEDAW*, the *ICESCR* and the *Platform for Action*. The *BIA* removes protections and threatens services on which women are disproportionately reliant. And, although it is clearly possible to reach the conclusion that the *BIA* is discriminatory in that it "treats women differently based on personal characteristics," this formula sounds superficial, individualistic, and biologically reductionist. It can also distract adjudicators so that the potential of the challenged law to contribute to the inequality of the group is not seen.

Concluding that the *BIA* is discriminatory requires inferring adverse treatment from the evidence of adverse effects. The *BIA* has a disproportionate impact on women, and that impact results from a complex interaction of social, economic, and legal factors, including the gendered division of labour and the persistent assumption that women should live in domestic circumstances of economic dependence on men.

The *BIA* does, in effect, treat women adversely. Economic inequality is a social consequence of being designated a woman. The *BIA* exacerbates this reality.

In situations of adverse effect discrimination, the “personal characteristics” formula can work, but only if the personal characteristics of women are understood to include the socially constructed indices of inequality that characterize the group, including the economic inequality to which women are subject.

Women must insist upon judicial recognition that lack of economic autonomy is a central reality of women's lives. It is pervasive, persistent, structural, reinforced by legislative choices, and intimately connected to women's lack of power in fora where economic policies are being established. Economic issues are difficult for women to address politically because decision-making processes about economic policy are heavily influenced by those with economic clout, and, increasingly, they are private. Women are excluded from them. This too is indicative of women's unequal status in the society.

Equality rights law took a big step forward when judges on the Supreme Court of Canada decided to endorse adverse effect analysis as appropriate to s. 15. It is a settled principle of equality rights jurisprudence that discrimination is a question of harmful effects, and that an intention to discriminate need not be proven. However, the issue now is actually applying adverse effect analysis to women's group-based circumstances. This issue is the new challenge.

Judges are having a big problem with the issue of causality. Feminist advocacy must expose the weaknesses of a mono-causal theory of discrimination that requires the rights claimant to prove that a challenged law is the sole cause of the inequality complained of. Such a requirement could defeat an equality rights challenge to the *BIA* on the basis that this legislative scheme is not the only cause of women's inequality. However, this is not the claim. The claim, rather, is that the *BIA* worsens conditions for women, in light of a social, legal, and economic context of inequality in which the CAP was especially important to women. Sex equality jurisprudence needs a twentieth century theory of multiple causation that allows women to challenge the various layers of factors that create the economic inequality of the group.

There is more to say about the question of effects. Women need courts to be able to deal with the fact that a given piece of legislation may hurt men and women, and yet still raise a sex equality issue for women, but not for men. Regarding the *BIA*, it is clear that some men are also hurt by the loss of the CAP because they are poor, and further, that some women are economically prosperous. This picture of multiple effects should not be considered a detraction from the validity of the claim that the *BIA* has a disproportionate impact on women.

In a 1992 case dealing with mandatory retirement, Madam Justice L'Heureux-Dubé recognized that a provision may raise gender issues, because of socio-economic patterns, notwithstanding that the provision has the appearance of gender neutrality. She wrote: “Women are penalized, in particular, [by mandatory retirement] because they tend to have lower paying jobs which are less likely to offer pension coverage, and they often interrupt their careers to raise families. (These socio-economic patterns, combined with private and government pension plans which are calculated on years of

participation in the work force, in some ways make mandatory retirement at age 65 as much an issue of gender as of age discrimination.)"[8] Similarly, the *BIA* should be understood as a problem of poor people, including poor men, but also as a gender issue.

Women must build on recognitions, such as that of L'Heureux-Dubé J. regarding the impact of mandatory retirement on women, to establish an understanding of adverse effect discrimination that goes beyond the notion that adverse effects are simply a matter of unintended side effects on a minority of the population that can be adequately mitigated by means of a little bit of fine tuning.[9] The narrow focus of much adverse effect analysis means that it cannot properly address or even perceive the systemic problems of women's economic inequality.

As part of the endeavour of protecting equality rights from degradation, women must expose the choices that underlie economic decisions, rather than allowing governments to sustain the myth that just because a decision involves money it does not involve choices. In short, economics must be exposed as politics. The causal link between laws like the *BIA* and women's inequality becomes more visible and less easy for governments to justify, when economic policy is revealed as a product of political choices. Analyzing the political nature of economic policy is a task for which feminist advocacy is exceptionally well suited, as has been demonstrated by the cogency of feminist critiques that challenge the myth that legal reasoning is neutral and therefore not political.

Also central to a feminist agenda for meaningful equality rights must be the matter of judges' tendency to reject claims for distributive justice. From the time of *Bliss*,[10] women have resisted the view that rights are only about removing penalties and not about sharing benefits. However, these efforts must be redoubled because governments are taking benefit schemes away and persistently arguing in litigation that courts should defer to governments in such matters. In turn, this fuels judicial uncertainty about the democratic legitimacy of court involvement in cases where discrimination manifests as material inequality. And yet, judicial abdication of responsibility to deal with the economic dimensions of women's equality rights threatens democratic values in a way that is far more profound than judicial involvement in economic policy, which government lawyers allege is such a danger. Women's capacity to participate as full citizens in Canada's social and political life is vastly diminished if governments can take steps that undermine women's economic autonomy without any fear of judicial review. It is crucial that equality rights jurisprudence be expanded to recognize that, in relation to women's equality aspirations, economic autonomy interests are no less fundamental than liberty interests, and that for women, these interests are actually inseparable from one another.

Finally, for women to pursue this agenda, there is a practical stumbling block that must be removed. Women's participation in the interpretation of the *Charter's* equality rights guarantees has been made possible by the Court Challenges Program. The Court Challenges Program[11] was established by the federal government as a result of concerted lobbying by equality rights groups who pointed out that the equality guarantees of the *Charter* would have little meaning for disadvantaged groups in Canada unless funds were provided that would allow them to actually use their rights and participate in their interpretation.

The Court Challenges Program has provided access to *Charter* rights since 1985. For test cases of

national significance, individuals or organizations representing disadvantaged groups can receive $50,000 to cover legal costs for trials, and a further $35,000 for each level of appeal, or for interventions. However, under the contribution agreement between the federal government and the Program, the Program can only fund challenges to federal laws, programs, and policies. No money is available to support challenges to provincial laws or policies through the Program, and no provinces have made similar funds available, with one limited exception.[12]

Health, education, social assistance, and social services are provincial matters because of the constitutional division of powers. As the federal government abandons national standards, and more responsibility for social programs and services is devolved to the provinces, this restriction is increasingly problematic. Women's ability to use their rights to challenge discrimination in the design and provision of social programs and services is barred by the restriction in the mandate of the Court Challenges Program. Now, persuading federal and provincial governments to expand the mandate of the Court Challenges Program is essential so that women and other disadvantaged groups can have access to the use of their equality rights when there is discrimination in provincial laws, programs, and policies.

International Instruments and Fora

As in the domestic sphere, in the international sphere there is also much work to be done. Strategically, women must have dual aspirations: to begin to use international instruments and fora more extensively and effectively now and, simultaneously, to work on shaping them so that they can serve the interests of advancing women's equality better. We believe that Canadian women have not exploited the full potential of international instruments and international fora to advance their claims for equality. But we also believe that the strength of these instruments and the usefulness of the fora must be built by women, and they can only be built by putting concerted and organized energy into them. It is time to devote attention here because Canadian women need to develop a larger, global understanding of the dimensions of women's oppression, need the lever of international human rights law, and need extra-national fora in which to make rights claims.

There are a number of practical reasons for working at the international level now. First, international bodies regularly scrutinize Canada's compliance with its human rights treaty obligations. This provides occasions when attention can be drawn to the gap between Canada's human rights commitments and its performance. For example, the United Nations Development Programme's (UNDP) *Human Development Report 1997* ranks Canada first, as the best country to live in.[13] Canada falls to sixth place, however, when women's access to professional, economic, and political opportunities are taken into account, behind Norway, Sweden, Denmark, Finland, and New Zealand.[14] Even this sixth place ranking must be interpreted. The UNDP points out that no society treats its women as well as its men. So Canada ranks sixth among other countries, all of which treat women less well than men.[15] There is no acceptable justification for the difference in men's and women's conditions in Canada, one of the world's wealthiest and, it claims, most progressive countries.

It should be difficult for Canada to ignore critical observations of UN oversight bodies on its compliance with its treaty obligations, or rulings under UN complaint procedures. While UN bodies

cannot force compliance with human rights treaties, Canada is particularly vulnerable to pressure to honour its obligations because in the international arena it holds itself out to other countries as a leader with respect to human rights, and it advocates for respecting treaty commitments.

Secondly, the international arena is fertile ground for activism about women's economic inequality. Globally, the link between being female and being poor is startlingly clear. Seventy percent of the world's women are poor, and women own 1 percent of the world's wealth.[16] Given this global data, it is difficult for UN bodies, interpreting equality commitments, to place women's economic inequality outside their boundaries. Yet UN treaties are still young, and international jurisprudence is still in need of development. Because of this, it is time to build, with women's NGOs from around the world, a feminist interpretation of the *ICESCR*'s guarantees of social and economic rights that will ensure that the diverse and particular dimensions of women's poverty and economic disadvantage are identified, acknowledged, and addressed as an integral part of Covenant commitments. Similarly, it is important to press for the application of *CEDAW* to economic policy and, in particular, to policies that exacerbate women's poverty and economic inequality, or fail to redress them. And, as we have argued, it is essential for these instruments to be applied together to illuminate fully the nature and range of government obligations with respect to women's economic inequality.

Building these interpretations of the central human rights instruments is important for all women. In Canada, it can make the instruments more useful for women because human rights treaties can be called upon as aids to the interpretation of *Charter* equality rights. Applications of the treaties by UN bodies to the real economic inequality of women can influence the approach to the economic content of domestic guarantees. Using international human rights instruments and the UN system must be viewed as a long-term strategy. It provides women with another political space in which to pursue the development of the feminist and substantive content of rights, and the internationalization of human rights claims can provide assistance in pursuing women's goals, just as strategic *Charter* litigation can.[17]

There is a third reason for looking to the international level. Women are being affected by a global restructuring, corporatist agenda. It is essential to organize against the manifestations and impacts of this inside Canada. But it is also important to organize against the manifestations and impacts of it globally with other women from all parts of the world, and, in particular, to build the strength of human rights treaties and commitments as a platform from which to attack the sexism of this agenda. Human rights activists in Canada, with women prominent among them, have, through years of work, established that human rights laws are of a special nature and are not subject to contracting out by governments, employers, or unions, except by explicit legislative provision. Human rights legislation takes priority over contradictory provisions in ordinary domestic legislation. However, governments are in fact contracting out of international and domestic human rights obligations, by entering into agreements such as NAFTA and the new Multilateral Agreement on Investment (MAI) that diminish the powers of governments to regulate the conduct of corporations, and that permit the erasure of human rights protections and the further exploitation of women's unpaid and underpaid labour. It is important now to identify such agreements as a kind of contracting out that should be understood as impermissible.[18] At the international level, women can address the contradiction between the global, corporatist agenda and women's human rights.[19]

It is important to remember that until recently, violations of women's human rights have not even been recognized as coming within the human rights paradigm. Because women's concerns have been seen to belong to the spheres of the family or culture, spheres where governments should hesitate to interfere, it has been difficult to persuade the members of the UN, the treaty bodies, rapporteurs, and UN officials that human rights should be applied to women's circumstances. Women achieved a breakthrough at the Second World Conference on Human Rights in Vienna in 1993. The *Vienna Declaration and Program of Action* calls for attention to be given to the violation of women's human rights in all UN activities. In particular, women were successful at the Vienna Conference in establishing that violence against women is a form of sex discrimination and that it contravenes human rights standards.[20]

The first strategy of the American-based international women's human rights organizations has been to link women's rights to civil and political rights. Charlotte Bunch notes that it was necessary to dispel the "insidious myth about women's rights … that they are trivial or secondary to the concerns of life and death."[21] Women were successful in Vienna because they brought forward individual women's stories of torture, mutilation, and abuse, as well as graphic reports of mass rapes, sexual slavery, and executions of women. They proved that far from being trivial, "sexism kills."[22] They proved that women's civil and political rights to life, to security of the person, to freedom from torture and arbitrary detention, are being violated on a massive scale.

It is time, we believe, to make similarly concerted efforts to expose and protest the massive violations of women's economic, social and cultural rights, and to ensure that women's right to equality is understood to embrace the spectrum of civil, political, economic, social, and cultural rights.

However, to use the international instruments and fora effectively and to build them into better tools for advancing equality, women must contend with some practical problems. First of all, using international instruments and fora is not easy. UN human rights bodies do their work in New York and Geneva, their procedures are bureaucratic and technical, and women's groups in Canada do not yet have routine access to information about events and schedules pertinent to their interests. In the Canadian NGO community there is a lack of information about, and experience in using international treaties and the UN system. The best informed NGOs are those that deal with development issues; they are mainly focused on how Canada deals with human rights in other countries. The women's organizations that are focused on women's inequality in Canada still have little expertise in using international instruments and mechanisms.

This problem is not confined to Canada. There are a number of United States–based international women's NGOs that are sophisticated in their knowledge of UN instruments, mechanisms, and how to use them.[23] But, in general, domestic women's NGOs are not.[24] In Canada there is no women's organization specifically devoted to using international instruments and fora to advance Canadian women's interests, and government support for women's participation in this level of rights elaboration and rights claiming has not been sufficient to permit women's NGOs to consolidate expertise and have a consistent presence.[25]

Also, instruments that are of central importance to women, *CEDAW* and the *ICESCR*, have inadequate enforcement mechanisms.[26] Unlike the *ICCPR*, the *Convention Against Torture (CAT),*[27] and the *Convention on the Elimination of All Forms of Racism and Racial Discrimination (CERD),*[28] neither *CEDAW* nor the *ICESCR* has a complaint procedure attached to it. The *ICCPR* has an Optional Protocol[29] that allows individuals in countries that are signatory to the Covenant and the Protocol to make complaints that their rights have been violated.[30] The same Committee of experts (the Human Rights Committee) that receives periodic reports from States Parties on their compliance adjudicates these complaints. *CERD* permits its oversight Committee to consider complaints from individuals or groups against States Parties that have agreed to this procedure,[31] as does *CAT*.[32] *CAT* also includes a separate inquiry procedure that allows the *CAT* Committee to investigate allegations of systematic violations.[33] However, under *CEDAW* and the *ICESCR*, States Parties are required only to submit reports to the *CEDAW* Committee and the *ICESCR* Committee on their compliance with the treaty obligations.[34]

The failure to provide complaint mechanisms for *CEDAW* and the *ICESCR* has a significant sexist dimension. Inside the UN system, the monitoring and enforcement of women's rights, so far, lack resources and mechanisms comparable to those attached to other human rights instruments. While the *ICCPR* is intended to address the civil and political rights of women as well as men, and the Human Rights Committee has dealt with some important complaints regarding women's loss of citizenship and other rights through marriage, the many dimensions of women's inequality are not the specific focus of the instrument or of the Committee's work. The lack of parallel and adequate enforcement machinery for *CEDAW* accords women's rights a second class status. Also, when 70 percent of the world's poor people are women, the lack of an Optional Protocol for the *ICESCR* means that there is no adequate mechanism to vindicate rights that are crucial to women, and their interests are devalued. Complaint mechanisms for *CEDAW* and the *ICESCR* are essential.

In addition, however, if there were more NGO involvement, the report-reviewing procedure could be much more useful than it currently is. Too often, Canada's own reports on its compliance with the UN instruments are the only source of information that UN oversight bodies have. These reports, written by Canadian governments, are self-congratulatory in the main, and do not provide UN bodies with the alternative information and perspectives necessary to make critical assessments of Canada's performance. At the current time, the UN review procedures are not set up to give NGOs a clear participatory role. This puts women in all countries around the world, not just Canada, in the position of trying to provide information about their conditions to oversight committees through brief written "shadow reports," often without interaction either with their governments, or with the members of the oversight body.

Consequently, there are a number of practical changes for women to press for. First, it must be acknowledged inside the UN system, and by Canada, that women's NGOs can be, and should be, important players when international human rights instruments are being developed and when compliance with them is being monitored. While the instruments are treaties among governments, people are the intended beneficiaries, and women should benefit from them on an equal basis. The human rights treaties can only be given their full vitality if NGOs have access to effective processes for vindicating the rights that are in them.

This means, first of all, pressing for the development of effective Optional Protocols to *CEDAW* and the *ICESCR* that will permit women to bring complaints of rights violations into the UN system for adjudication. After the Vienna Conference on Human Rights, at which women pushed for the development of an Optional Protocol to *CEDAW*, the *CEDAW* Committee in 1994 recommended that the Commission on the Status of Women (CSW)[35] begin drafting an optional protocol. This work began at the fortieth session of the CSW in March 1996, continued in 1997 and 1998, and will proceed in 1999, with a goal of implementation in the year 2000.[36] There is currently a document, full of brackets,[37] which is the working draft of the Optional Protocol.[38] Most of the important issues that will determine whether the complaint procedure will be an effective one are as yet unresolved. They include:

- Will groups and organizations be able to make complaints, as well as individuals who are the victims of rights violations? A purely individual complaint procedure will preclude complaints being made by women who lack information, are in danger, illiterate, or poor.

- Will there be, in addition to the complaint procedure, an adequate inquiry procedure that is binding on all signatories that will allow the Committee to investigate allegations of systematic, not just individual, violations, similar to the inquiry procedure for the *CAT*?

- Will all the rights articulated in *CEDAW*, whether they are categorized as civil and political rights, or economic, social, and cultural rights, be subject to the same enforcement procedure? There is the very present danger that rights that are understood to place positive obligations on governments to act, and those that require governments to refrain from acting, will be treated differently by a new Optional Protocol. If such an approach were to prevail, it would serve to perpetuate the damaging perspective that commitments that create obligations for governments to actually do things are not real rights, and to perpetuate those aspects of women's inequality to which such rights are intended to apply. For women, this is a key issue. It will affect whether the Optional Protocol, and *CEDAW*, can be effective instruments for women.

How these central issues are resolved may be determined at the 1999 session of the CSW.

We believe that women should also be concerned about the lack of an Optional Protocol to the *ICESCR*. As we have pointed out, this Covenant contains explicitly articulated rights to economic benefits and protections, the enjoyment of which are fundamental to women's equality. Notwithstanding that an Optional Protocol for the *ICESCR* was also strongly lobbied for at the Vienna Conference on Human Rights in 1993, work on it has not moved steadily forward as it has on the Optional Protocol to *CEDAW*. The longer the *ICESCR* remains without an Optional Protocol, the longer the division of civil and political rights from economic, social, and cultural rights, and the domination of civil and political rights,

are maintained. This reinforces the outmoded view that economic policy need not be congruent with human rights.

NGO participation in the review of country reports must be enhanced, which means achieving standing for NGOs to appear before oversight bodies and participate at both the preparatory meetings, at which questions on country reports are prepared, and at the meetings where country reports are presented. NGOs should also have timely access to Canada's reports so that they can prepare commentary and alternative reports for the relevant UN bodies. Without NGO participation, these monitoring and accountability procedures lack usefulness and credibility.

Recently the *ICESCR* Committee has made efforts to make its process more accessible to NGOs. Canadian NGOs have appeared on two occasions before the Committee and have been allowed to make presentations regarding social and economic conditions in Canada that are relevant to the Committee's assessment of Canada's compliance. In May 1993, the Charter Committee on Poverty Issues and the National Anti-Poverty Organization were allowed by the *ICESCR* Committee to make a presentation at the time of Canada presenting its second periodic report concerning the rights covered in Articles 10 to 15 of the *ICESCR*, including the right to an adequate standard of living. The Canadian NGO presence had a marked impact on the *ICESCR* Committee's assessment of Canada's compliance. In its concluding observations on Canada's report, the Committee issued the harshest criticism ever levelled at a developed country because of unacceptable levels of poverty among vulnerable groups, in particular, single mothers.[39]

The subsequent interventions of the coalition with the *ICESCR* Committee to bring to its attention the introduction of the *BIA* are an example of strategic and proactive use of the UN system.

At its January 1997 meeting, the *CEDAW* Committee considered a report regarding improved access for NGOs.[40] Both the *CEDAW* Committee and the *ICESCR* Committee need support and pressure from NGOs to more space for the participation of NGOs. NGO participation is vital, and women should demand that they be allowed to participate in such a way that the international rights treaties afford some protection from real threats, and the oversight bodies can provide a venue for addressing women's real inequality.

There are other possible kinds of interventions. The CSW can receive communications about systematic violations of the rights of women.[41] The thematic rapporteurs appointed by the Commission on Human Rights can receive information from women about various kinds of violations of human rights.[42] Also women can foster feminist interpretations of human rights treaties by lobbying the Committees to produce general comments on a particular issue, or on principles for interpreting the treaties. For example, the *CEDAW* Committee recently produced a general recommendation on violence against women. General Recommendation No. 19 on gender-based violence is important because violence against women is not expressly mentioned in the text of *CEDAW* itself.[43] Following this precedent, women could encourage the Committee to produce a general recommendation on women's poverty and economic inequality that would incorporate key elements of the *Platform for Action*.

Finally, it is clear that Canadian governments must provide women's groups with the means to participate in the development and vindication of rights at the international level. At other levels

where equality commitments have been made in law, such as in human rights legislation and in the *Charter*, governments have recognized that these rights are empty if, for purely monetary reasons, the most disadvantaged people do not have access to the use of them. When Canadian human rights legislation was conceived, commissions were given the power to investigate complaints because the vindication of the right to equality was understood to be in the public interest, and that lack of money should not be a barrier to exercising rights.

Similarly, when s. 15 of the *Charter* was proclaimed in 1985, the federal government was persuaded to ensure that disadvantaged Canadians would have some access to the exercise of their rights through the Court Challenges Program, which provides funds to individuals and groups to engage in the litigation of test cases that have national importance. It is just as important, we believe, that governments, and the federal government in particular, provide funding to women's groups so that they can engage in organized and strategic work at the international level that will allow them to use their treaty-based rights and participate in the development and interpretation of international human rights instruments.

Women's organizations need to begin to incorporate the use of international instruments and fora into the range of tools they deploy for advancing women, to make decisions about when internationalizing a human rights claim is appropriate and strategic, to have a long-term and planned view of this international work, to create coalition-based task forces or networks for organizing international work in Canada, and to demand that funding and other resources are to be available to support the participation of women's NGOs.

A Post-Beijing Commission on Women's Equality

Canada last engaged in a public participatory process to measure the status of women and develop recommendations for change more than a quarter of a century ago when the Royal Commission on the Status of Women did its groundbreaking work. Some aspects of Canadian women's lives have improved since then; some have not. Women's inequality persists, and some of the forms that it takes now are different and differently experienced by diverse groups of women. Women are dealing now with new threats, such as the impacts of globalization, restructuring, and cuts to Canada's social programs and services. Canadian women are experiencing “backlash,” the blood-drawing cut of anti-egalitarian policies and ideology. They are facing cuts to, and closures of, the very services and institutions that they created to move women forward — transition houses, day care centres, women's health services, and women's advocacy organizations. These cuts and closures are being justified on the grounds that feminism, like Marxism, is “over”; there is no more need for it — there is no problem of women's inequality still to be solved. Efforts to bring equality to women, the argument runs, have gone overboard, have resulted in unfairness, and in too much government interference with individual liberty. Formal equality must be reasserted; women should now be treated just the same as men, opponents of substantive equality contend.[44]

We believe that it is time for a new and tougher inquiry into women's conditions, for an up-to-date identification of the obstacles to women achieving equality in Canada, and for a new plan that can carry women into a new millennium with confidence. Canadian governments have made commitments to

equality at every level of law, and through diverse programs. They belie these commitments when they indulge in anti-egalitarian conduct, and permit anti-egalitarian ideology to infect the Canadian political environment. We believe that Canadian governments have a responsibility to seriously and publicly engage, with the full participation of women, in an examination of their own conduct, and to reformulate policy and practice to reflect their long-standing and deeper commitments.

Though Canada has made new commitments in the *Platform for Action*, there is no mechanism for monitoring government progress in complying with those commitments. The *Platform for Action* identifies as key features of today's sexism the adverse effects on women of restructuring agendas and liberal market economic policies, and the exclusion of women from participation in decision making. In this post-Beijing era, it is essential that governments take stock of women's real conditions as the century closes, abandon outmoded conceptual frameworks, and develop comprehensive, innovative and sophisticated approaches to implementing their equality obligations.

We believe that a Post-Beijing Commission on Women's Equality should be tasked to examine broadly the dimensions of Canadian women's inequality today and the forces that perpetuate it. We also believe that first priority should be given to examining the impact of current economic and social policies on women, and the conformity of these policies with equality commitments. At the Beijing World Conference on Women, the participating nations, including Canada, agreed that governments should "review and modify, with the full and equal participation of women, macroeconomic and social policies with a view to achieving the objectives of the *Platform for Action*." We agree.

It is time to review economic policies, social policies, and human rights commitments together, in light of the importance of economic and social policies to the realization of human rights. It is time to set aside the assumption that economic policy goals can be conceived and pursued in complete isolation from, and complete indifference to, their impact on women. Rather, new economic policy frameworks are needed that can acknowledge that greater equality for women is necessary.

While we do not purport to provide an exhaustive list here, there are many issues that urgently need investigation so that there is a solid basis for the development of new policies that will be suited to Canadian women entering a new century.[45] These include a detailed examination of the impact on women's equality and economic autonomy of the restructuring of social programs, globalization, international trade agreements, the tax system, family-based policies and income testing, and the devolution of increased responsibility for social policy to the provinces. More extensive inquiry is also urgently needed into the implications of women's poverty for *women*, as well as for children, and for society as a whole. Investigation of the current reformulations of social assistance policies and their impact on women is also urgently needed.

It is essential now to engage in a public exercise that will allow us to analyze the policies that are setting women back, and to design new economic policies that can advance women's equality.[46]

We also believe that while other levels of government should also be drawn into the exercise, the federal government has a responsibility to take the lead. A Commission tasked with a review of this kind must be independent from government. Appointments to it must be made not by government alone, but

through a negotiated partnership with women's organizations. Only this way will women actually enjoy full and equal participation and will the Commission have the credibility with women necessary to do effective work.[47]

It is clear that there must be a renewed commitment to women's substantive equality, and that a new mechanism is needed to examine, in detail, the impact of social and economic policies on women's equality and to develop equality promoting strategies that match women's needs and aspirations for the twenty-first century.

The Future of Social Programs and "National" Standards

Shrinking Canada's social programs has been a wholly ideological exercise, designed to shift Canadians' expectations and values, to convince us that smaller government is necessary, and that a collective sense of responsibility for everyone's economic security, education, and health is simply outmoded.

But cuts to social programs are not necessary to solve Canada's financial problems. Moreover, we are now in a "post-deficit" era. The "post-deficit" era has been announced by the Liberal government and by economic analysts, with the Liberals promising to divide each billion dollars of surplus among tax cuts, social spending, and paying down Canada's debt.[48] The question now is whether government surpluses will be used to assist the poor or to increase the privileges of the rich, to further widen the gap between rich and poor, or to narrow it. When, even by their own calculations, governments can no longer plead lack of money as the justification for shrinking commitments to social and economic justice, the battle over values will have to be out in the open.[49]

In this post-deficit era, a concerted campaign is needed to challenge the premises of deficit hysteria, to ensure that it is not simply replaced by debt hysteria, and to ensure that women advance. Though deficits have been wiped out with astonishing (and harmful) speed, there remains a fervent commitment among some policy makers to continued fiscal restraint. Some provincial and territorial governments have enacted laws to cap future spending, freeze taxes, or require a balanced budget. In Alberta and Manitoba, deficits are now legally prohibited. In Alberta, the law requires that surpluses be used only to pay down debt. Laws such as these attempt to entrench a permanently inadequate level of social spending, even in times of relative prosperity. When future recessions occur, as they inevitably will, such laws threaten to put Canadians through the trauma of severe cutbacks all over again because they place governments in a fiscal straitjacket. The reality, acknowledged by a vast majority of economists, is that temporary deficits are not always harmful, and indeed can be essential to maintaining a stable economy. Spending restraint during an economic downturn simply aggravates and prolongs recessionary trends by further reducing employment, personal incomes, and consumer demand levels. Besides imposing terrible social costs, a no-deficit policy during recessions is simply bad economic policy. If we are to avoid a repetition of painful budget cutting, Canadians must overcome the unreasonable fear of deficits that has been cultivated in recent years.[50]

In present times, when funds are available for reinvestment in Canadians, governments must focus on redressing the equality deficit that has been exacerbated by recent budgets. We must now ensure that

women advance. This means ensuring two things: that money is reallocated to social programs and services, and that social programs and services are designed so that they will actually improve women's conditions.

The change from the CAP to the CHST has not only diminished crucial programs and services that women need. It has also cut off democratic avenues for women to participate in decision making about social programs. The shift to block funding and the removal of conditions on transferred funds are part of a devolutionary strategy that, far from increasing democratic participation in decision making, or increasing the accountability of governments to the public, reduces both.

It is important to remember that debate about the nature of changes that should be made to Canada's social programs was scooped out of the public realm, transformed into a non-debatable issue, and decided by the Liberal government in the context of the 1995 budget. The conclusion is inescapable that this approach was taken in order to characterize cutbacks to social programs and the loss of CAP rights as a simple and indisputable matter of available dollars rather than as a highly political choice of direction with respect to social policy.

As a result of the budget decision to repeal CAP and move to block funding, national standards for social programs, if there are to be any, are now being dealt with by provincial and federal officials and First Ministers in closed door sessions that are all too reminiscent of the Meech Lake Constitutional Conference. This form of decision making lost any credibility with Canadians, as private negotiations among First Ministers as a way of making constitutional change was simply not seen as legitimate.[51]

At their December 1997 meeting, First Ministers announced that they will negotiate a new framework agreement for Canada's social union. The changes to social programs that are occurring now are as significant as any constitutional reform. There are major shifts in allocations of power and responsibility between federal and provincial levels of government. The shape of the nation is being altered. That shape shifting is accompanied by an increasing importance assigned to intergovernmental bodies — working groups, task forces, ministerial conferences — whose decisions affect all Canadians, but whose work is done behind closed doors and without accountability. Power is being shifted, without public agreement, to forums that are, so far, impenetrable.

Executive federalism is an increasing threat to women's participation in decision making.[52] By executive federalism we mean decision making by politicians and government officials that is carried on outside legislative and parliamentary processes among federal, provincial, territorial, and municipal levels of government through ministerial councils and conferences, and intergovernmental working groups and task forces. These meetings are important venues for decision making, and what happens in them is a key, but unacknowledged, form of governance. Intergovernmental meetings are not only the venue into which the matter of developing new national standards for Canada's social programs has been dropped. They are also the venue for decision making on many other matters affecting the equality of women in Canada. We take no exception to intergovernmental consultation and negotiation to arrive at pan-Canadian approaches to particular problems. What is not acceptable is that this form of governance is private. It happens behind closed doors, out of public view. Decisions are taken without

public knowledge or input, and delivered as *faits accomplis*.

This is a diminution of democracy, of particular significance to women whose representation on governing bodies is already inadequate, and whose ability to participate in decision making is already curtailed. Women must find new ways to intervene here, to insist on representation, on public access, and on participation. The working out of the future of Canada's social programs, including the question of national standards, cannot be done in closed-door meetings of Ministers and officials.

Nor, however, should women be satisfied with more of the current form of “consultation” by governments. It is not an acceptable form of participation. When women's groups are consulted, governments too often do not provide adequate notice, or adequate resources to conduct the research and policy development that would make consultation meaningful. Sometimes in consultation processes, women are faced with set questions, workbooks with the desired answers built into them, and invitation lists constructed by governments. Too often, the consultation process is a cynical one, and, at the end of the day, what women say is ignored.[53]

Finally, the future of Canada's social programs is also connected to the national unity debate. Quebec's insistence on making autonomous decisions regarding matters within its jurisdiction is being used by the federal government and by other provincial governments as an excuse for having no national standards for social programs and services in the rest of Canada. We reject this reasoning. While a substantial proportion of the Quebec population has expressed its belief that decision making on matters affecting Quebecers should be in the hands of the Quebec government, no such desire is expressed by the residents of the other provinces. On the contrary, in the rest of Canada, there is a desire for a strong central government,[54] and strong social programs are a key part of Canadian identity. Quebec is not a block to new national standards. The federal government and other provincial governments are. They use Quebec to legitimize a devolutionary strategy that erodes social responsibility at the expense of the poorest people in Canada.

We also believe that the future of Canadian unity is connected to the future of social programs. Canadians, including Quebecers, have a strong investment in Canada's social programs, both as a practical foundation for a shared community life, and as an element of Canadian identity. Quebec voters, who are strong advocates of a progressive “social project” have less incentive to stay in Canada if Canada abandons its commitments to a strong social union. Even if one does not believe, as we do, that the path to national unity lies in respecting Quebec's desire for autonomy in key areas of decision making, it is clear that strengthening social programs is a necessary step. Progressive Quebecers will not vote to stay in a Canada whose social vision they cannot share.

Consequently, we believe that weakening Canada's social programs weakens the ties that bind the diverse regions and peoples of Canada together. The strength of the union depends on the strength of Canada's social programs.

It is essential, then, that the future of Canada's social programs be worked out in a new way. We believe that there are five requirements:

- New national, or common, standards for social programs must be developed;

- The funding formulas that determine the level of transfer payments to the provinces for social programs and services and the level of provincial spending on social programs and services must be developed in a public and accountable forum; and

- A new monitoring body, through which governments are publicly accountable, must be designed to permit public participation in the development of new common standards and to monitor the compliance of governments with them. This body must be accessible, and it must operate in public, so that women's groups, and others, can intervene, and so that Canadians can understand what decisions are being made regarding social programs and services, when, and by whom.

- There must be a means of enforcing common standards and adherence to funding formulas when governments do not comply.

- Quebec must be allowed to choose whether it will participate in this process and comply with new common standards, or whether it will develop its own parallel standards. However, we believe that there is the possibility of a "social partnership" between Quebec and the rest of Canada based on the adoption of a common set of standards for social programs.[55]

The Content of New Standards

Clearly, enforceable standards are essential for health, as well as social assistance. Because we are concerned here principally with the impact of the *BIA* on social assistance and social services, we comment only on the necessary content of new standards in these areas.

In the area of social assistance and social services, new common standards should obligate all governments:

- to provide assistance to any person in need. There should be no limitations or restrictions based on the reasons for need;[56]

- to provide assistance without imposing a residency requirement;[57]

- to meet a standard of adequacy for the level of assistance provided. This standard of adequacy could be set as a percentage of the Statistics Canada Low-Income Cut-Off for an area,[58] or by the cost of a "market basket" of goods and services available in the community.[59] Whatever the methodology, the level of social assistance should "ensure the health, personal security, and dignity of the recipients and their families, as well as their ability to participate as full and equal members in their communities and in Canadian society";[60]

- to provide assistance without imposing work requirements, particularly for

caregivers;[61]

- to ensure that there is no discrimination in the design or delivery of programs or services on the grounds of sex, sexual orientation, race, national or ethnic origin, colour, religion, age, mental or physical disability, or other analogous grounds;[62]

- to ensure that programs and services are designed to enhance the equality of all women, fully recognizing their diversity, and to eliminate their social and economic disadvantage;[63]

- to provide a guaranteed right to appeal any decision denying, reducing, restricting or terminating social assistance or a service;[64]

- to ensure that women participate in the design and reform of social programs and services so that they will meet the needs of the women using them, and be accountable to them;[65]

- to provide specified social services, including public child care, transition houses, and legal aid for family law matters;

- to ensure that social programs and services realize the commitments made in Canada's human rights treaties, including *CEDAW*, and the *ICESCR*.

Funding Formulas

In addition to standards to govern content and procedural fairness for social programs, there should be a negotiated standard, binding on all levels of government, that will ensure the adequacy of the funding base for social programs in order to conform to s. 36 of the Constitution. When the federal government's financial contributions to social programs are cut unilaterally, or when a provincial government, like Alberta, decides to limit its funding for social assistance when it has no financial need to do so,[66] a general standard giving specific content to the promise of s. 36 is clearly required.

This standard of adequacy for the funding base for social programs should be able to take into account fluctuating needs, because, for example, people's need for social assistance rises and falls depending on the availability of work. Given the nature of this program in particular, the standard should be formulated in such a way as to allow for variations in use. In any case, the standard of adequacy should provide certainty and predictability.

The call of the provinces for stability in the federal government's levels of contributions to social programs should be heeded. The federal government should not be the only party bound, however. The provinces should also be prohibited from allocating social program funding received from the federal government to other purposes, or from allowing social program funding to fall below a reasonable threshold within their own budget allocations.

All of these standards are required in our view in order to meet Canada's commitments to equality.

An Independent Monitoring Body for Social Program and Service Standards

We believe that there should be an independent monitoring body established, first to facilitate public participation in the development of new standards and funding formulas for social programs and services,[67] and secondly to monitor, on an ongoing basis, government compliance with them.[68] Such a body could oversee an open public process of consultation on the development of new standards for social programs and services, seeking input in particular from those non-governmental organizations that represent women and other disadvantaged groups. It could also oversee a parallel public process of consultation on the development of new formulas for funding social programs and social services. The members of the monitoring body could then participate in discussions and negotiations among federal, provincial, and territorial governments leading to the adoption of new standards and funding formulas.

Once new standards and funding formulas are set, the monitoring body would evaluate, on an ongoing basis, compliance with common standards and funding formulas, establishing social indicators for the purpose of evaluating compliance, and compiling statistical and other data relevant to this evaluation. It could also have a role in educating the public and government officials regarding the needs of particular groups. Most important, as a result of its monitoring work, it would identify non-compliance. Individuals and organizations representing disadvantaged groups would have standing to appear before this body to make submissions regarding non-compliance and its effects. The monitoring body would make recommendations to governments and legislative bodies regarding the steps necessary to achieve compliance with common standards.[69]

Enforcing Compliance

Though this public monitoring body would have the capacity to determine that a government was not in compliance with national standards, and to make recommendations regarding what would be necessary to achieve compliance, this process is not likely to be effective unless it is backed up by the threat or reality of financial penalties being imposed. This, of course, has been the strength of the federal spending power as a social policy instrument; it has allowed the federal government to set and enforce national standards. Despite the objections of the provinces and territories, we see no reason to abandon this. We believe that new common standards, once developed, should be adopted by the federal government as amendments to the legislation creating the CHST, and that the federal government, on the recommendation of the monitoring body, should enforce the standards by withholding funds from non-complying governments.

We acknowledge that the procedure we recommend here would not prevent the federal government from repeating its pattern of unilaterally cutting funds to the provinces, despite established funding agreements. It is our hope, however, that the public nature of the process of setting funding formulas, and the increased pressure from the provinces for control, will make it more difficult for the federal government to withdraw from publicly made commitments to established funding formulas.

Quebec

Because commitments to social programs are strong among both the people of Quebec and people in the rest of Canada, Barbara Cameron suggests that the development of a "social partnership" is possible.[70] A social partnership would be based on the development of a common set of standards for social programs,[71] but would "recognize both the sovereignty of Quebec in the area of social programs and a significant role for the federal government in social programs for the rest of Canada."[72] For the rest of Canada, "this would mean a confirmation of the role of the Canadian government in the establishment of `national norms' or rights without denying the provincial role in the administration and delivery of programs."[73] Responsibility for realization of the standards would rest with the Quebec government for residents of Quebec and with the federal government for residents in the rest of Canada.

With respect to monitoring Quebec's compliance with standards for social programs, it should be free to opt to have its performance scrutinized along with that of other governments, or to establish a parallel mechanism.

For women, the struggle over social programs is a triple one. It is a struggle to regain ground that is being cut away and to improve social programs and services so they can advance women's equality. It is also a struggle, once more, to force crucial decision making out of back rooms and into the public sphere so that women can participate and have a voice. The flimsy principles articulated by the Ministerial Council on Social Policy Reform and Renewal in its *Report to Premiers* cannot be allowed to stand as the framework for Canada's social programs, nor can the process through which they were formulated. Canadian women deserve, and must demand, more. Finally, it is a struggle for a nation that we can believe in because it stands for commonly held values of respect, caring, and equality.

Conclusion

We believe we are at a critical juncture — a defining moment for women. Will women move forward, as Canada's commitments indicate that they should; or will they, as Canada moves into a new millennium, move backwards and reveal that those commitments are hollow?

The biggest threat to women now is economic policy that, at best, ignores women, and, at worst, relies on and exploits women's inequality. The biggest threat is the seductiveness of the idea that economic policy is apolitical and unrelated to the rights of women.

The new challenge for women is to discredit this idea. In every forum women must insist on a social vision that connects social and economic policy to women's right to equality. There can be no equality for women without economic justice and economic autonomy.

Endnotes for Chapter 5

[1] *Brooks* v. *Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219, 59 D.L.R. (4th) 321, C.E.B. & P.G.R. 8126, 26 C.C.E.L. 1, 4 W.W.R. 193, 89 C.L.L.C. 17,012, 94 N.R. 373, 58 Man. R. (2d) 161, 10 C.H.R.R. D/6183, 45 C.R.R. 115 [hereinafter *Brooks*].

[2] *Janzen* v. *Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252, 59 D.L.R. (4th) 352, 95 N.R. 81, [1989] 4 W.W.R. 39, 58 Man. R. (2d) 1, 89 C.L.L.C. 17,011, 47 C.R.R. 274, 25 C.C.E.L. 1, 10 C.H.R.R. D/6205.

[3] *R.* v. *Morgentaler*, [1988] 1 S.C.R. 30, 44 D.L.R. (4th) 385, 82 N.R. 1, 26 O.A.C. 1, 37 C.C.C. (3d) 449, 62 C.R. (3d) 1, 31 C.R.R. 1.

[4] *Thibaudeau* v. *Canada*, [1994] 2 F.C. 189, [1994] 2 C.T.C. 4, 3 R.F.L. (4th) 153, 167 N.R. 161, 114 D.L.R. (4th) 261, 21 C.R.R. (2d) 35, [1994] W.D.F.L. 812 [hereinafter *Thibaudeau (F.C.A.)* cited to D.L.R.], affirmed *Thibaudeau* v. *Canada (M.N.R.)*, [1995] 2 S.C.R. 627 at 675–76, [1995] W.D.F.L. 957, [1995] 1 C.T.C. 382, 95 D.T.C. 5273, 12 R.F.L. (4th) 1, 124 D.L.R. (4th) 449, 182 N.R. 1, 29 C.R.R. (2d) 1 [hereinafter *Thibaudeau*].

[5] *Andrews* v. *Law Society (British Columbia)*, [1989] 1 S.C.R. 143, [1989] 56 D.L.R. (4th) 1, 91 N.R. 255, [1989] 2 W.W.R. 289, 34 B.C.L.R. (2d) 273, 25 C.C.E.L. 255, 36 C.R.R. 193, 10 C.H.R.R. D/5719.

[6] *Supra* note 1.

[7] *Bliss* v. *Canada (A.G.)*, [1979] 1 S.C.R. 183, 92 D.L.R. (3d) 417, [1978] 6 W.W.R. 711, 23 N.R. 527, 78 C.L.L.C. 14,175 [hereinafter *Bliss*].

[8] *Dickason* v. *University of Alberta*, [1992] 2 S.C.R. 1103 at 1191-1192, 95 D.L.R. (4th) 439, 141 N.R. 1, 6 W.W.R. 385, 4 Alta. L.R. (3d) 193, 127 A.R. 241, 92 C.L.L.C. 17,033 11 C.R.R. (2d) 1, L'Heureux Dubé J. writing in dissent; McLachlin J. concurring.

[9] This approach is inherent in the concept of “reasonable accommodation.” For a critique of this idea, see Shelagh Day and Gwen Brodsky, “The Duty to Accommodate: Who Will Benefit?” (1996) 75 *Canadian Bar Review* 433.

[10] *Supra* note 7.

[11] The Court Challenges Program was established in the Department of the Secretary of State in 1978 to assist official language minorities to assert their rights in the courts. In 1982 its mandate was expanded to support litigation clarifying a broadened range of language rights including those set out in s. 23 of the *Charter*. In 1985 there was a major expansion of this Program to permit support to be provided to individuals and groups using s. 15 of the *Charter* to challenge federal laws, programs, and policies. Because of the obvious conflict that would be involved in the government deciding which challenges to its own laws should be funded, the Program moved outside government and was administered at arm's length, first by the Canadian Council on Social Development, then by the Human Rights Centre at the University of Ottawa, and currently by a free-standing non-profit corporation. Decisions regarding the funding of test cases are made by two Panels, a Language Rights Panel and an Equality Rights Panel. The members of the panels are chosen for their language rights or equality rights expertise.

In 1992 the Program was cancelled by the Conservative government then in power, as a “budgetary measure.” It was reinstated in 1995 by the newly elected Liberal government. The Program has received accolades from United Nations Committees to whom Canada reports. For example, in 1993 the United Nations Committee on Economic, Social and Cultural Rights commended Canada for establishing the Court Challenges Program, noted its cancellation, and urged Canada to reinstate the Program and to expand its mandate so that funding could be provided for Charter challenges by disadvantaged Canadians to provincial legislation. See United Nations, Committee on Economic, Social and Cultural Rights, *Concluding Observations on Report of Canada Concerning the Rights Covered by Articles 10–15 of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/C. 12/1993/19 as reprinted in (1994) 20 *Canadian Human Rights Reporter* C/1 [hereinafter *Concluding Observations*].

[12] Ontario was the exception. In 1985 it provided financial support for women's equality litigation by giving the Women's Legal Education and Action Fund (LEAF) access to a $1 million fund. However, no other money has been provided.

[13] United Nations Development Programme (UNDP), *Human Development Report 1997* (New York, Oxford, Oxford University Press, 19 at 40.

[14] *Ibid.* at 39. The UNDP uses three measurements. The human development index (HDI) measures the average achievements in a country in three basic dimensions of human development — longevity, knowledge, and a decent standard of living. The HDI, a composite index, thus contains three variables: life expectancy, educational attainment (adult literacy and combined primary, secondary, and tertiary enrolment) and real GDP per capita. The gender-related development index (GDI) measures achievements in the same dimensions and variables as the HDI does, namely life expectancy, educational attainment, and income, but takes account of inequality in achievement between women and men. The greater the gender disparity in basic human development, the lower a country's GDI compared with its HDI. The GDI is simply the HDI discounted, or adjusted downwards, for gender inequality. The gender empowerment measure (GEM) indicates whether women are able to actively participate in economic and political life. It focuses on participation, measuring gender inequality in key areas of economic and political participation and decision making. It thus differs from the GDI, an indicator of gender inequality in basic capabilities.

[15] For a brief summary of women's inequality compared to men measured worldwide according to these indices in 1997, see "The Global Gender Gap: Measuring Inequalities Between Men and Women," Press Release, United Nations Development Programme, 12 June 1997. In its 1995 Report, the UNDP also noted that in almost every country, women contribute at least as much labour as men but receive a much smaller share of the goods and services produced by total labour. The value of women's unpaid labour is ignored in national and international accounts. Also, the fact that women contribute so much unpaid labour to every country's economy is not taken into account by the UNDP's own human development indices. See *Human Development Report 1995* (New York and Oxford: Oxfor University Press, 1995) at 87–98.

[16] United Nations, Statistical Office, *The World's Women, 1970–1990: Trends and Statistics* (New York: United Nations, 1991).

[17] See Andrew Byrnes "Toward More Effective Enforcement of Women's Human Rights Through the Use of International Human Rights La and Procedures" in Rebecca J. Cook, ed., *Human Rights of Women: National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1994) [hereinafter "Toward More Effective Enforcement"] 189 at 193.

[18] For critical commentary on these agreements see: Marjorie Griffin Cohen, Presentation to the House of Commons Sub-Committee on International Trade, Trade Disputes and Investment, "The Social and Economic Implications of the Multilateral Agreement on Investment," 26 November 1997; Marjorie Griffin Cohen, *What To Do About Globalization* (Vancouver: Canadian Centre for Policy Alternatives, 1997); Tony Clarke, *Silent Coup: Confronting the Big Business Takeover of Canada* (Toronto: James Lorimer & Co., 1997); Tony Clarke and Maude Barlow, *MAI: The Multilateral Agreement on Investment and the Threat to Canadian Sovereignty* (Toronto: Stoddart, 1997).

[19] Our comments here are confined to the work that women can do internationally that is specifically related to the UN system and the use of human rights instruments. There is another whole sphere of endeavour at the international level, which is related and overlapping, but not at all dependent on UN fora and instruments — the building of an international women's movement and the development of coordinated and supportive political strategies between women of the North and the South. The work that we propose is one part of that larger project. For an account of international feminist alliances being formed to deal specifically with women's social and economic rights, see Joan Grant-Cummings, "Forging a feminist alliance" *Kinesis*, November 1997 at 5.

[20] Donna J. Sullivan, "Women's Human Rights and the 1993 World Conference on Human Rights" (1994) 88:1 *The American Journal of International Law* 152 at 152.

[21] Charlotte Bunch, "Women's Rights as Human Rights: Toward a Re-Vision of Human Rights" (1990) 12 *Human Rights Quarterly* 486 at 488.

[22] *Ibid.* Charlotte Bunch discusses different practical approaches to getting women's rights recognized as human rights. The first approach is linking women's rights to civil and political rights. This is the strategy followed at the Vienna Conference, and indeed it is the principal strategy of the international women's rights movement so far, or at least of the American-based organizations. It is essential to focus attention on the massive violence directed at women around the world, and the strategy has been successful in that it has elicited acknowledgements from governments of this widespread violence and commitments to eradicate it. The weakness of this approach, however, is that it appears to accept the dichotomy between civil and political rights, and economic, social, and cultural rights, and the subordination of economic, social, and cultural rights. It needs to be accompanied by equally forceful strategies to address the sexism inherent in macro-economic policies that take women's inequality for granted, and permit corporations to profit from it.

[23] These include the Centre for Women's Global Leadership, the International Women's Rights Action Watch, the International Human Rights Law Group, and the Women's Environment and Development Organization (WEDO).

[24] Many women's NGOs focused their whole attention at the Beijing World Conference on Women on the NGO Forum, rather than on t Official Conference. Also, many women's NGOs were not allowed to send representatives to the Official Conference to lobby governments because they did not meet the UN's requirements for attendance.

[25] The federal government has provided funds for women to attend some international meetings. Most recently, for example, the federal government provided funding for 40 women to attend the Fourth World Conference on Women in Beijing. It also supplied funds to support the Beijing Facilitating Committee, which provided Canadian women with information about the Conference and facilitated the attendance of NGO representatives. Women's NGO representatives have been included in some Canadian delegations to meetings of the UN Commission on the Status of Women. However, there is no permanent mechanism for women's ongoing participation in the UN process. Arrangements for NGO attendance at UN meetings are ad hoc, often last minute, and government controlled. Women's NGOs need ongoing access to information about Canada's positions on issues of interest to them, so that they can monitor Canada's interventions. Representatives of women's NGOs need training and preparation to be effective in UN fora. New methods of funding and coordinating international work are essential if it is to be effective for women's organizations, and if women are to enjoy genuine participation in this sphere of political life.

[26] The authors acknowledge the research assistance of Gillian Calder on international complaint procedures. Ms. Calder provided a useful summary of UN human rights complaint procedures and the development of an Optional Protocol for *CEDAW* in an unpublishec paper entitled, "Women's Rights are Human Rights: The Feasibility of an Optional Protocol to *CEDAW*." The authors gratefully acknowledge access to Ms. Calder's work.

[27] *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted 10 December 1984, ente into force 26 June 1987, GA Res. A/RES/39/46, UN GAOR, 39th Sess., (Supp. No. 51), UN Doc. A/39/51, at 197, reprinted in 23 I.L 1027 (1984) [hereinafter *CAT*].

[28] *Convention on the Elimination of All Forms of Racism and Racial Discrimination*, adopted 21 December 1965, entered into force 4 January 1969, UN GA Res. A/RES/2106A (XX) (1969), 660 U.N.T.S. 195, reprinted in 5 I.L.M. (1966) [hereinafter *CERD*].

[29] *Optional Protocol to the International Covenant on Civil and Political Rights*, adopted 16 December 1966, entered into force 23 March 1976, 999 U.N.T.S. 171, reprinted 6 I.L.M. 383 (1967).

[30] Canada is a signatory to both the Covenant and the Optional Protocol. This means that individual Canadians can make complaints to the Human Rights Committee after they have exhausted all domestic remedies.

[31] *CERD*, *supra* note 28, Article 14 (1). It is interesting to note that although *CERD* was used as a model for the development of *CEDAW*, *CERD* contains a complaint procedure but *CEDAW* does not. The reluctance of States Parties to be bound by complaint procedures is reflected, however, in the fact that, as of 1 September 1996, 148 States Parties had ratified *CERD*, but only 23 had agreed to be bound by Article 14. See *Convention on the Elimination of All Forms of Discrimination Against Women, Including the Elaboration of a Draft Optional Protocol to the Convention: Comparative Summary of Existing Communications and Inquiry Procedures and Practices under International Human Rights Instruments and Under the Charter of the United Nations: Report of th*

Secretary General, Commission on the Status of Women, 41st Sess., Agenda Item 5, Paragraph 12, UN Doc. E/CN.6/1997/4 (1997).

[32] Article 22 of *CAT, supra* note 27, provides for a complaint procedure that is similar to that in the Optional Protocol to the *ICCPR*. However, *CAT* allows complaints to be made on behalf of an individual by an NGO, not just by an individual. As of 1 September 1996, 99 States Parties had ratified *CAT*; 36 had declared themselves bound by the complaint procedures in Article 22.

[33] See *ibid.* at Article 20. This inquiry procedure is unique to *CAT*. All States Parties to the Convention are bound by this Article, unless they specifically opt out under Article 28.

[34] The *CEDAW* Committee faces further obstacles to doing its work effectively. By virtue of Article 20, the *CEDAW* Committee has been restricted to meeting for a period of not more than two weeks annually. The Committee cannot possibly carry out even the limited task of reviewing country reports in two weeks a year. It is the only treaty body whose meeting time is restricted by its Convention, and its meeting time is the shortest of all human rights treaty bodies. While the General Assembly has given the *CEDAW* Committee some latitude recently, allowing it to meet in 1996 and 1997 for two three-week sessions, for example, it is obvious that this Committee needs more time, resources, and status in the UN system to do its job effectively. See *Assessing the Status of Women: A Guide to Reporting Under the Convention on the Elimination of All Forms of Discrimination Against Women*, 2 ed. (Minneapolis: International Women's Rights Action Watch, 1996) at 5.

[35] The Commission on the Status of Women (CSW) is a body composed of governmental representatives, unlike the *CEDAW* Committe which is a committee of experts. The CSW prepares recommendations and reports to the Economic, Social and Cultural Council on the promotion of women's rights in political, economic, social, and educational fields. Established in 1946, it is the primary UN body responsible for women's issues. While the CSW ensures that women's issues are recognized at the UN's, the CSW does not have the same powers of other UN bodies. Although the powers of the CSW are limited, as in its inability to take action on complaints, it was actively involved in initiating a United Nations Decade for Women (1976–1985) and in moving the UN from its early emphasis on codifying equal rights for women to a recognition of the economic, cultural, and social realities of women's lives.

[36] *Convention on the Elimination of All Forms of Discrimination Against Women, Including the Elaboration of a Draft Optional Protocol to the Convention*, Commission on the Status of Women, Open-Ended Working Group on the Elaboration of a Draft Optiona Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 41st Sess., Agenda Item 5, at paragraph 8, UN Doc. E/CN.6/1997 WG/L.3 (1997).

[37] When new instruments are being drafted at the UN, text that is not yet agreed to appears in brackets. The goal in all drafting exercises is to elaborate a text based on a consensus. Text on which consensus has been reached appears without brackets.

[38] *Convention on the Elimination of All Forms of Discrimination Against Women, Including the Elaboration of a Draft Optional Protocol to the Convention, Revised Draft Optional Protocol Submitted by the Chairperson on the Basis of the Compilation Text Contained in the Report of the Commission on the Status of Women on its Forty-First session (E/1997/27) and Proposals made by th Commission at its Forty-Second session*, UN Doc. E/CN.6/1998/WG/L.2 12 March 1998.

[39] See *Concluding Observations, supra* note 11.

[40] *Ways and Means of Expediting the Work of the Committee, CEDAW*/C/1997/5, 6 December 1996.

[41] The CSW can receive communications, and under ECOSOC Resolution 1993/11, the CSW is authorized to make recommendations Economic, Social and Cultural Council on actions that should be taken in response to emerging trends and patterns of discrimination against women. The communications can be confidential or public, and must appear to reveal a consistent pattern of gross and reliably attested injustice against women. See "Toward More Effective Enforcement," *supra* note 17 at 205. See also Sandra Coliver, "United Nations Machineries on Women's Rights: How Might They Better Help Women Whose Rights Are Being Violated?" in Ellen. L. Lutz, Hurst Hannum, and Kathryn J. Burke, eds., *New Directions in Human Rights* (Philadelphia: University of Pennsylvania Press, 1989) 25. *Supra* note 26.

[42] Currently, for example, there is a Special Rapporteur on Violence Against Women. In March of 1994 "in view of the alarming growth in the number of cases of violence against women throughout the world," the Commission on Human Rights adopted resolution 1994/45 in which it decided to appoint the Special Rapporteur on Violence Against Women, with a mandate to collect and analyze comprehensive data and to recommend measures aimed at eliminating violence at the international, national, and regional levels. The mandate is threefold:

1. to collect information on violence against women and its causes and consequences from sources such as governments, treaty bodies, specialized agencies and intergovernmental and non-governmental organizations, and to respond effectively to such information;
2. to recommend measures and ways and means, at the national, regional and international levels, to eliminate violence against women and its causes, and to remedy its consequences; and
3. to work closely with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights.

Other special rapporteurs on issues relevant for women include those appointed to the following areas: extra judicial, summary or arbitrary executions; torture; the independence and impartiality of the judiciary; jurors, assessors, and the independence of lawyers; religious intolerance; the use of mercenaries; freedom of opinion and expression; racism and racial discrimination and xenophobia; and the sale of children, child prostitution, and pornography.

[43] General Recommendation No. 19, UN Doc. A/47/38 (1992).

[44] A recent media example of this rationalization can be found in Donna LaFramboise's article "You've come a long way, baby … and for what?" *The [Toronto] Globe and Mail* (26 July 1997) B1. Ms. LaFramboise argues that feminism has already triumphed because bars do not refuse to serve women, book reviewers do not refer to housewives, and it is legal to disseminate birth control information.

[45] Monica Townson, *Women and the Economy: Long-term Policy Research Issues* (Ottawa: Status of Women Canada, 1997).

[46] See Monica Townson, *ibid.* for more detailed descriptions of these issues.

[47] We note that the government's *Federal Plan For Gender Equality* was prepared for the Fourth World Conference on Women withou the participation of women's groups. Interestingly, it acknowledges the problems for women that are being created by economic restructuring, including government cuts in spending, but it provides no credible solutions. In many areas, the *Plan* appears to be a catalogue of what government departments are already doing under the rubric of "status of women" initiatives, rather than a plan that can bring change. See *Setting the Stage for the Next Century: The Federal Plan for Gender Equality* (Ottawa: Status of Women Canada, 1995).

[48] See Liberal Party Platform, May 1997.

[49] Alanna Mitchell notes in "Latest poll may give Klein pause" *The [Toronto] Globe and Mail* (28 July 1997) A4, that voters want to know what Klein intends to do now that the deficit has been slayed. She writes that
"… in the most prosperous province in Canada — where surpluses have been in the billions of dollars in the past couple of years and the accumulated debt is almost gone — people want to know what Mr. Klein thinks government is actually for. … The Klein government has made a meal of its determination to extricate the government from as many parts of Albertans' lives as possible. [But the latest Environics poll] speaks of a populace that wants … a government that won't opt out and leave Darwinian social justice to rule."

[50] We are indebted to Lisa Philipps for her insights about the impact of balanced budget laws on equality goals and the future of social spending. For a full description and analysis of these laws, see Lisa C. Philipps, "The Rise of Balanced Budget Laws in Canada: Legislating Fiscal (Ir)responsibility" (1996) 34:4 *Osgoode Hall Law Journal* 681.

[51] The fact that the First Ministers were all male and all white did not improve their credibility as lone constitution makers with the women of Canada.

[52] There is an increase in executive decision making at other levels of government also, including at the provincial level. Also, access to public decision making by democratically elected representatives is diminished by decisions like that of the Ontario government to abolish local municipal councils in favour of megacity government.

[53] A current example of poor consultation methodology can be found in British Columbia's questionnaire, entitled *B.C.'s Unity Talks*, mailed out to residents in mid-December 1997 (with a required return date of 31 December 1997). The questionnaire asks British Columbia residents to indicate whether they strongly agree, agree, disagree, strongly disagree, or have no opinion about the seven principles of the Calgary Framework. Any additional comments can be included on a separate sheet of paper, though the size of the return envelope does not encourage complex replies. This is a kind of contained, individualized polling that does not allow for full and complex responses from groups that are marginalized because of their lack of representation among elected officials.

[54] See *Rethinking Government 1994: An Overview and Synthesis* (Ottawa, 1994) and *Rethinking Government 1995: Final Report* (Ot 1995).

[55] Barbara Cameron makes this suggestion in “Social Citizenship in a Multinational State: The Social Charter Revisited” (Paper presented to Federal Constitutions in Comparative Perspective, A Conference in Honour of Douglas V. Verney, York University, 1996) [unpublished].

[56] This was the CAP standard of primary importance. It has been repealed under the CHST.

[57] This is the only CAP standard that remains in the CHST.

[58] See Frances Woolley, *Women and the Canada Assistance Plan* (Ottawa: Status of Women Canada, 1995) at 12; and Sherri Torjman Ken Battle, *Can We Have National Standards?* (Ottawa: Caledon Institute of Social Policy, 1995) at 8.

[59] Isabella Bakker and Janine Brodie, *The New Canada Health and Social Transfer (CHST): The Implications for Women* (Ottawa: Status of Women Canada, 1995) at 34.

[60] Martha Jackman, “Women and the Canada Health and Social Transfer: Ensuring Gender Equality in Federal Welfare Reform” (1995 8:2 *Canadian Journal of Women and the Law* 371 at 402.

[61] Woolley, *supra* note 58 at 12. The now-repealed CAP standard prohibited requiring recipients of social assistance to work on cost-shared work projects.

[62] Jackman, *supra* note 60 at 402.

[63] See Jackman, *ibid.* at 403, and Woolley, *supra* note 58 at 13.

[64] This CAP standard was repealed by the *BIA*. See Jackman, *ibid.* at 403.

[65] Jackman, *ibid.*

[66] Kevin Taft argues in an op ed article adapted from his new book, *Shredding the Public Interest* (Calgary: University of Alberta Press and Parkland Institute, 1997) that Ralph Klein knew when he became Premier that government spending had already been reduced by the Getty government in which he was a Cabinet Minister to levels at or below the average for Canadian provinces. “In other words, the severe cuts of the Klein government began on budgets that were already relatively low. As the government's own chart shows, the Getty cabinet, for all its bad publicity, fumbled deals and lousy luck, ran the tightest government in Canada. The Klein government has worked hard to rewrite history, portraying Mr. Getty's government as extravagant spenders who drove

Alberta to the brink of financial ruin. Playing on the public's memories of the highly subsidized failures of Novatel, Gainers, Magcan and other financial messes, the Klein government has convinced people that costs under Mr. Getty were climbing without restraint." *The [Toronto] Globe and Mail* (8 March 1997) D2. See also the reply by Jim Dinning, *The [Toronto] Globe and Mail* (24 March 1997) A19.

[67] We note that in Australia an external body of experts, called the Commonwealth Grants Commission, sets the levels of equalization payments paid by the central government to the states. Margaret Biggs writes in *Building Blocks for Canada's New Social Union* (Ottawa: Canadian Policy Research Networks Inc., 1996) at 25: "Another unique Australian institution is the Commonwealth Grants Commission, an arm's-length experts' body, which provides an in-depth appraisal of equalization needs. Although the Commission is only advisory, it has over the years developed a high level of expertise and credibility. … Since the mid-1980s, the Commonwealth has generally taken the Commission's recommendations as the basis for its offer to the states, which they have in turn accepted. … It serves to help depoliticize these most sensitive of intergovernmental issues and helps put intergovernmental negotiations and public discussion onto a more objective footing."

[68] At the time of the Charlottetown Accord, the New Democratic government in Ontario proposed entrenching in the Constitution a social Charter. In response to Ontario's proposals, a broad coalition of activists and scholars developed a Draft Social Charter, which incorporated economic and social rights set out in the *ICESCR*. The Draft Social Charter had two oversight bodies attached to it, a Social Rights Council and a Social Rights Tribunal. The body that we propose here is modelled on the Social Rights Council set out in the Draft Social Charter. For the complete text of the Draft Social Charter see: Joel Bakan and David Schneiderman, *Social Justice and the Constitution* (Ottawa: Carleton University Press, 1992) at 155.

[69] In order to oversee the process of setting and revising standards and funding formulas, and evaluating compliance, this oversight body would need the powers to:

- hold inquiries and require attendance by individuals, groups or appropriate government officials;
- require that necessary and relevant information, including documents, reports and other materials, be provided by governments;
- require any government to report on matters relevant to compliance;
- receive submissions from groups who have information relevant to government compliance with national standards and funding formulas.

[70] Cameron, *supra* note 55 at 24.

[71] Cameron, *ibid.*, suggests a social Charter.

[72] *Ibid.* at 24.

[73] *Ibid.* at 25.