

the POVERTY and HUMAN RIGHTS PROJECT

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Professor Virginia Dandan
Chairperson
Committee on Economic, Social and Cultural Rights
c/o Alexandre Tikhonov, Secretary to the Committee
Office of the United Nations High Commissioner for Human Rights,
Office 1-025, United Nations Office at Geneva,
8-14 avenue de la Paix,
1211 Genève, Switzerland

Dear Professor Dandan,

We are writing as advisors to a coalition of non-governmental organizations that deal with social rights issues, and issues of poverty, in the province of British Columbia in Canada. These organizations have recognized expertise as front-line service providers, legal advocates, community advocates, and social policy analysts.

Our organizations are writing to you urgently to bring to your attention a massive assault on the social and economic rights of the poorest people by the Government of British Columbia. On January 17, 2002, the Government of British Columbia announced that it will cut rates for social assistance recipients, thereby deepening the poverty of people who already live well below the poverty line. The Government will also narrow the rules governing eligibility for social assistance. This will result in many people who are currently eligible for social assistance being disentitled.

The announced changes to social assistance and social services clearly do not comply with the Government of British Columbia's obligations to respect, protect and fulfill the rights set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Government of British Columbia has also ignored the Committee's concerns regarding Canada's compliance with the ICESCR, which were expressed in the Committee's 1998 Concluding Observations on Canada's 3rd periodic report (E/C.12/1/Add.31, 10 December 1998).

In light of Canada's recent record of adopting retrogressive measures, and as a follow-up to the Committee's 1998 recommendations, the undersigned non-governmental organizations

poverty is a human rights violation

request that the Committee on Economic, Social and Cultural Rights give urgent attention to the actions of the Government of British Columbia.

The changes to social assistance and to social services announced on January 17, 2002 by the Government of British Columbia will have a drastic effect on the groups in British Columbia who are the most vulnerable to poverty and social exclusion. These groups include Aboriginal people, women, single mothers, people of colour, recent immigrants, refugee claimants, people with disabilities, older people, youth, and children.

The Committee expressed particular concerns about these groups in its 1998 Observations. It noted that there is a gross disparity between Aboriginal people and the majority of Canadians with respect to the enjoyment of Covenant rights. It also noted that cuts to social assistance and social services are having a particularly harsh impact on women in Canada, and that reductions in provincial social assistance programmes, combined with the unavailability of affordable housing, create obstacles to women escaping domestic violence. The Committee expressed concern that homelessness among youth and young families is at a crisis level. The Committee also observed that cuts to home care, attendant care and special needs transportation, as well as tightened eligibility rules for social assistance, are increasing the social and economic vulnerability of persons with disabilities (paras. 17, 18, 23, 28, 35, 36).

The Committee recommended that Canada consider re-establishing a legally enforceable right to adequate assistance for all persons in need, a right to freely chosen work, a right to appeal and a right to move freely from one job to another (para. 40). The Committee also recommended that a greater proportion of federal, provincial and territorial budgets be directed specifically to measures to address women's poverty and the poverty of their children (para. 54). Further, the Committee recommended that the federal, provincial and territorial governments, address homelessness and inadequate housing as a national emergency by increasing social housing programmes for those in need, increasing shelter allowances and social assistance rates to realistic levels, and improving protection of security of tenure for tenants (para. 46). The Committee also expressed its concerns about workfare programmes which violate the right to freely chosen work and other labour standards, including minimum wage (paras. 30 and 55).

Income Assistance

Without regard for the Committee's concerns and recommendations, the Government of British Columbia has announced a new B.C. Employment and Assistance regime, with the following planned changes:

- Shelter allowances for families with two or more children will be reduced.
- Shelter allowances will be eliminated for adult recipients living with an adult relative. This will increase the risk of homelessness for vulnerable individuals whose lives are improved through sharing accommodation with a relative.

- Support allowances for “employable” welfare recipients between age 55 and 64 will drop by between \$47 and \$98 per month. This amounts to a 20 – 35% cut in the non-shelter portion of social assistance for elderly recipients.
- Low-income seniors (those over 65) will also see cuts in their small incomes because subsidized transit passes will be taken away, and their medical prescription subsidies will be reduced due to cuts to the Pharmacare program.
- Welfare benefits for employable single parents will be cut by \$70 a month. This 18% reduction in the support portion of social assistance will affect families in which approximately 60,000 children live. The overwhelming majority of the members of this group are single women with children.
- The Family Maintenance Exemption will be eliminated. All child support paid will be deducted dollar for dollar from income assistance benefits. Until now, if a single parent on social assistance was receiving child support payments from a spouse, they were entitled to keep up to \$100 per month of these payments.
- The Earnings Exemption will be eliminated for “employable” recipients. This exemption allowed people on welfare to work and keep \$100 if they were single, or \$200 if they had children or a partner.

In total, these measures mean that some single mothers could see a drop of as much as \$370 per month. In the income of a single mother with one child, this would represent a 46% cut to the support allowance available to her.

The Social Planning and Research Council in its December 2001 report on living costs and income assistance in British Columbia concluded that, before the cuts announced January 17, 2002, social assistance met only 45 – 65% of the minimum monthly costs of single parent families and single adults for food, clothing, household supplies, personal care, transportation, child care, shelter, and other basic costs.

- Single parents will now be considered “employable” after their youngest child reaches 3 years of age (down from 7). Advocacy organizations for children and youth report that this change will affect the care of approximately 15,000 young children. This change comes just after the Government of British Columbia repealed legislation whose goal was universal access to affordable, safe child care.
- The government will introduce welfare time-limits. “Employable” people without children will only be allowed to receive welfare for two years during any five year period. After two years they will simply be cut off.
- Similarly, “employable” parents (with children older than 3 years), will only receive full benefits for two out of five years, after which time they will see their support allowance cut by 25%.

To our knowledge, no government in Canada has ever before imposed flat time limits on eligibility for social assistance. This will mean that some British Columbians will simply be refused social assistance, regardless of need.

- Full-time post-secondary students will no longer be eligible for welfare. They will have to turn exclusively to student loans, which are not adequate to support full time study.
- In addition to the criminal penalty for fraud, those found guilty of welfare “fraud” (which may include failure to report a gift) will be banned from receiving welfare.
- Before even being able to apply for assistance individuals will have to undertake a “three-week self-directed job search.” This will apply to everyone, including families with children. Most people exhaust all other avenues of survival before turning to welfare and appear at welfare offices having no income, assets or other means of support. Many are on the verge of losing their housing. The three-week rule increases the risk of homelessness, illness, and extreme psychological stress.
- The Government intends to start the welfare application process with an assessment of whether or not an applicant is “expected to work.” An individual’s entitlement and treatment by the Ministry will depend on this assessment. Experts are concerned about the quality of these assessments and concerned for the “hidden unemployable” who will fall through the cracks, for example, survivors of abuse or trauma in residential schools, refugees, and adults who have undiagnosed mental illness, intellectual impairment, fetal alcohol syndrome and learning disabilities.
- Young adults (19 and over) will have to demonstrate that they have lived independent of their parents for two years before being eligible for welfare. This means that youth escaping from abusive family homes will be without support.
- Individuals who have left jobs “voluntarily” will be ineligible for any assistance. Experts are concerned that individuals may be considered ineligible for welfare even if they have left jobs because of sexual harassment, unsafe working conditions, or labour standards violations.
- Refugee claimants, who are not currently allowed to work without special authorization, will no longer be eligible for assistance. Refugee claimants, whose status has not been determined, are a particularly vulnerable group – poor, and socially isolated.
- The Disability Benefits Program Act will be repealed. This legislation has provided a separate benefit scheme for people with disabilities, which recognized some of the unique needs of this group. People with disabilities will now be included within the general welfare system, and they fear that when new eligibility rules are applied they will be defined as “employable”, even though they are unable to work on a regular basis. The Government of British Columbia has stated its view that too many recipients are classified as “disabled” and that in order to meet its fiscal target those numbers must be reduced.

On February 19, 2002, when it brings down the next budget, the Government of British Columbia, may identify other categories of individuals who will be ineligible for assistance.

Reduced shelter allowances for families with two or more children, combined with reduced support allowances, and time limits on eligibility for social assistance will predictably result in increased numbers of homeless people in British Columbia, and increased numbers of people living in overcrowded, inappropriate and desperate conditions.

The Government's approach rests on the assumptions that the majority of social assistance recipients are employable people who choose not to work, and that work is available for them. However, British Columbia is currently experiencing a downturn in its economy, due to various factors. The official unemployment rate is at 9.7 % and expected to go higher. At the same time, training programs across government, including some designed for young low-income people, are scheduled for termination. Many "employable" social assistance recipients may not be able to find training or work opportunities, for reasons that are not in their control.

Access to Justice and Remedies for Social and Economic Rights Violations

In its 1998 Concluding Observations, the Committee expressed serious concerns about the ability of people in Canada to seek and obtain effective remedies under domestic law for violations of their social and economic rights. It noted that provincial governments have urged upon their courts an interpretation of the Charter of Rights and Freedoms which would deny any protection of ICESCR rights and would leave the complainants without the basic necessities of life and without any legal remedy (para. 14, 15). The Committee also repeatedly expressed its concern about access to civil legal aid because of its importance to vulnerable groups seeking remedies for social and economic rights violations (paras. 16, 42, 51, 54).

Despite this central concern of the Committee, the Government of British Columbia has announced a number of cuts to the Attorney General's Ministry which will directly affect the capacity of low-income people to seek remedies when they are denied social benefits and protections. The budget for legal aid will be cut by 38.8% over the next three years. Coverage will be provided only for criminal law matters, Young Offender Act matters, mental health reviews, restraining orders, and child apprehensions. No services will be provided for family maintenance or custody disputes. Direct services for poverty law matters, that is for landlord/tenant, employment insurance, employment standards, welfare, disability pension claims or appeals, foreclosures, and disability trusts, will be eliminated.

Many Native and Community Law Offices are expected to be closed. Until now these Offices have provided legal assistance for "a legal problem or situation that threatens the individual's family's physical or mental safety or health, the individual's ability to feed, clothe and provide shelter for himself or herself and the individual's dependents, or the individual's livelihood" (s. 3(2)(d) of the Legal Services Society Act). Under this mandate, a legal aid lawyer would provide assistance in a case like this:

a woman and her children are locked out of their apartment because of a small amount of arrears in rent, due to a delay in the receipt of an Employment Insurance cheque. The landlord has removed all of her belongings and refuses to return them unless she pays the arrears. She has nowhere to go.

Until now an advocate from a Native or Community Law Office would help this woman to obtain the benefits to which she is entitled and to find immediate shelter for herself and her children. These services will no longer be available. The closure of Native Law Offices will also deprive Aboriginal people of services designed specifically to meet their needs.

There may also be a complete cut to legal aid services for those who file human rights complaints contesting discrimination in employment, tenancy and the delivery of services. The budget of the British Columbia Human Rights Commission will be cut by 32%, severely diminishing its capacity to provide protection from discrimination to vulnerable individuals and groups. Further, funding to all women's centres in the province, and to tenants' rights organizations, will be cut by 2004.

These changes to income assistance and to legal aid violate ICESCR rights, including:

- the general right to non-discrimination (Article 2(2)), and the right to equality between women and men (Article 3), with respect to the enjoyment of economic and social rights.

The new measures will have a disproportionately severe effect on women and other disadvantaged groups because they will exacerbate their pre-existing social and economic inequality. In addition, some reductions in rates and some disentanglements are targeted, directly or indirectly at specific groups of welfare recipients defined by age, sex, disability, and refugee status.

- the right to work that is freely chosen (Article 6) and to just and favourable conditions of work (Article 7).

The new regime is likely to have the effect of coercing individuals in need into accepting work and staying in jobs without regard for whether the conditions are non-discriminatory, safe and healthy, and without regard for whether the work provides a decent living. Individuals may be denied social assistance if they do not accept available work, no matter what the conditions of that work are, and they may be denied social assistance if they leave their employment "voluntarily", even if the reason for their leaving is unsafe or intolerable conditions.

- the right to special measures of protection and assistance to children and young persons without discrimination based on parentage or other conditions (Article 10(3)).

The new regime will be particularly punitive for children of social assistance recipients, denying them supports that they need precisely because of the poverty of their parents.

- the right to an adequate standard of living, including food, clothing and housing (Article 11).

The new scheme will deepen the poverty of people who are already living well below the poverty line. The ability of social assistance recipients in British Columbia to provide adequate food, clothing and housing for themselves and their children is at serious risk.

- the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Article 12).

Ample data is available to show that increased poverty means increased health risks. The new measures will make access to adequate financial assistance and supports uncertain for persons with serious physical and mental health problems, and will have damaging effects on the health of individuals who already at risk because of inadequate nutrition and housing.

In addition, the targeted elimination of legal aid for most family law matters and for poverty law, as well as the elimination of funding to community advocates for women and low-income people, and the cut to the budget of the B.C. Human Rights Commission, deprives members of the most disadvantaged groups of the means to seek remedies for social rights violations. This contravenes a central Covenant obligation. The Committee's General Comment No. 9, The domestic application of the Covenant, (4 December 1998 E/C.12/1998/24), points out that it is the obligation of States parties to use all means at their disposal to give effect to the rights recognized in the Covenant, to provide appropriate means of redress for Covenant rights violations within their domestic legal schemes, and to ensure that remedies are available to any aggrieved individual or group. If members of the most socially and economically disadvantaged groups cannot effectively exercise their rights before human rights, tenancy, welfare, and other tribunals because they have no access to legal or community advocates, and if they have, in effect, no access to the courts to challenge rights violations because there is no legal representation available to them, the central obligation to give effect to the rights is contravened.

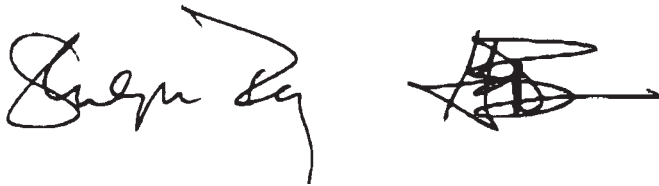
Conclusion

The changes that the Government of British Columbia has announced are only possible in a post-Canada Assistance Plan Act (CAP) era where there are no national standards for social assistance and social services that bind provinces and territories. In light of the Committee's concern that the repeal of CAP accorded "virtually unfettered discretion to provincial governments in relation to social rights" the Committee urged the Government of Canada in its 1998 Concluding Observations "to take concrete steps to ensure that the provinces and territories are made aware of their legal obligations under the Covenant and that the Covenant rights are enforceable within the provinces and territories through legislation or policy measures and the establishment of independent and appropriate monitoring and adjudication mechanisms" (emphasis added) (para. 52). To our knowledge, no steps have been taken to implement this recommendation, the importance of which is now painfully evident to the most vulnerable groups in British Columbia.

The Government of British Columbia seeks to justify its new welfare scheme on the grounds that it will face a “structural” deficit unless it makes deep cuts to its budget. However, cutting a deficit by introducing measures that imperil the rights of the most disadvantaged people to food, shelter, clothing, and access to justice is not defensible. The Committee noted in its 1998 Concluding Observations (paragraph 11) that by slashing social expenditure to address budget deficits, Canada “has not paid sufficient attention to the adverse consequences for the enjoyment of economic, social and cultural rights by the Canadian population as a whole, and by vulnerable groups in particular.” The Government of British Columbia has chosen to ignore this observation.

In closing, the undersigned non-governmental organizations ask again that the Committee give urgent attention to the introduction by the Government of British Columbia of retrogressive measures, contrary to its treaty commitments to the residents of this province. We appreciate your consideration of this request.

Sincerely,

Two handwritten signatures in black ink. The first signature on the left is cursive and appears to read 'Shelagh Day'. The second signature on the right is more stylized and appears to read 'Gwen Brodsky'.

Shelagh Day and Gwen Brodsky

ON BEHALF OF:

federated anti-poverty groups of B.C.
End Legislated Poverty
United Native Nations
B.C. Human Rights Coalition
B.C. Coalition of Persons with Disabilities
Seniors Network B.C.
Alliance for the Rights of Children
Justice for Girls
B.C. Coalition of Women's Centres
Social Planning and Research Council of B.C.
Working Group on Poverty
West Coast LEAF Association