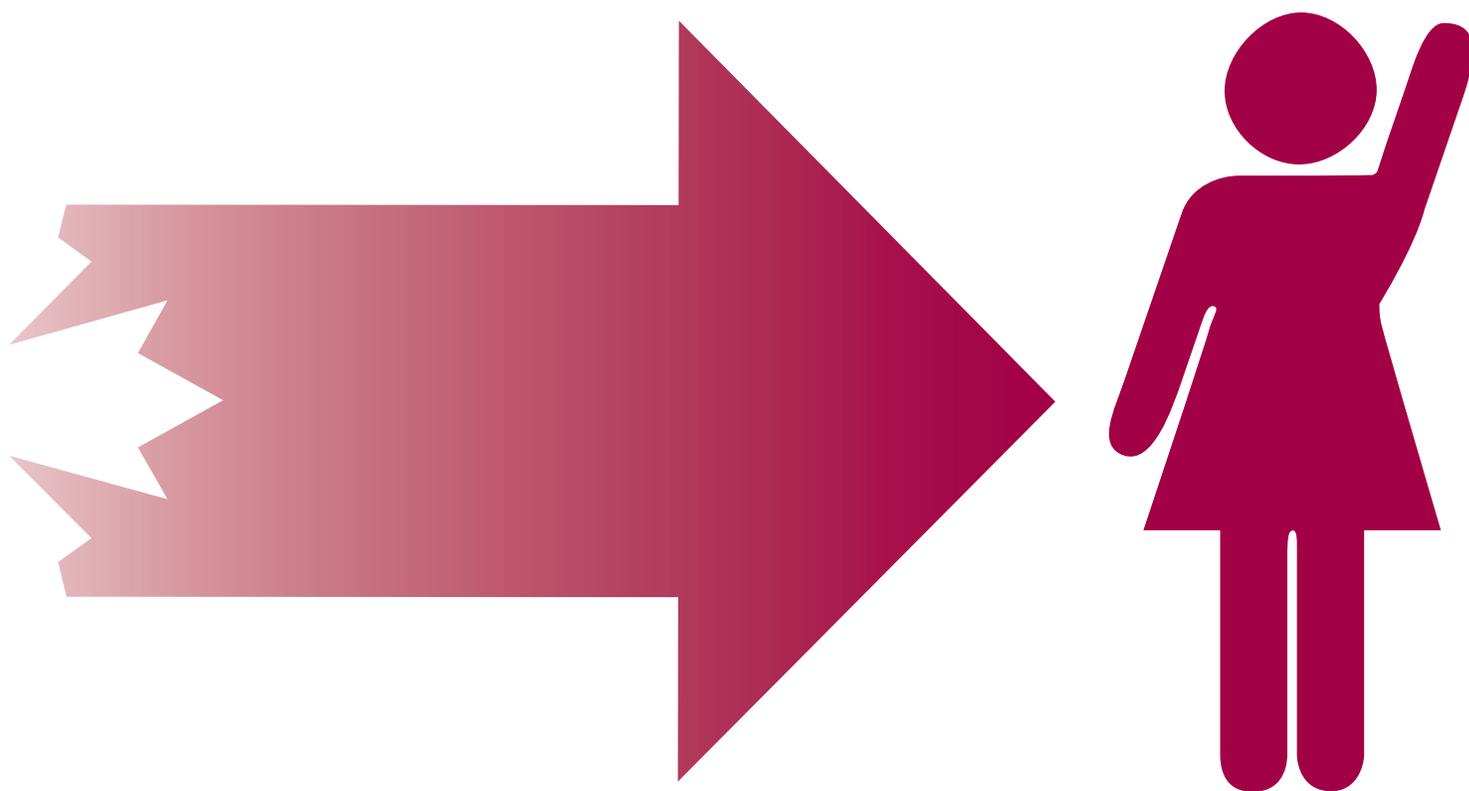


Strengthening the Canada Social Transfer

A Call to Account

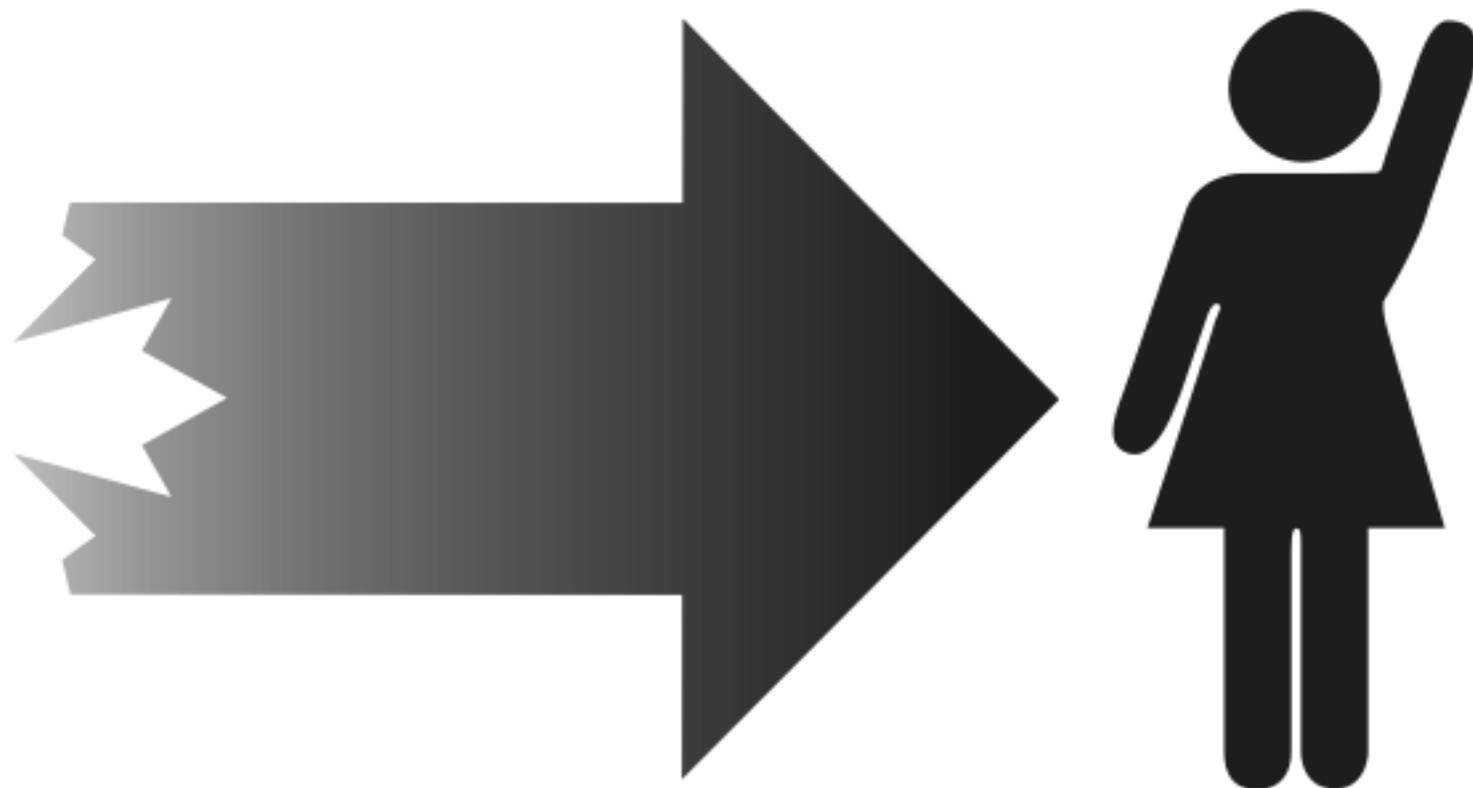


Prepared for FAFIA
By Shelagh Day and Gwen Brodsky

April 2006

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The paper reflects the consensus of FAFIA members and CST Roundtable participants, and draws from background information in *Women and the Equality Deficit* (Day and Brodsky 1998), as well as on FAFIA's submissions to international human rights treaty bodies.

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I. Introduction

Women's disproportionate poverty and reliance on social programs, including social assistance and related social services, are well-documented. For women, and particularly for women whose race, disability, age or single motherhood deepens their disadvantage, access to adequate social programs is integrally linked to human rights. Legislation and transfers that establish social programs, and determine funding levels for them, are indispensable practical vehicles that give life to women's human rights.

The Canadian Feminist Alliance for International Action has written a number of submissions to United Nations treaty bodies that set out the linkage between access to adequate social programs and women's enjoyment of their human rights. The United Nations Committee on the Elimination of Discrimination Against Women in 2003 found that cuts to social programs, made since 1995, are inconsistent with the *Convention on the Elimination of All Forms of Discrimination Against Women*. The United Nations Human Rights Committee in 1999, and again in 2005, expressed concern about the discriminatory impact on women of cuts to social assistance and other social programs. The Committee on Economic, Social and Cultural Rights has also criticized Canada repeatedly for failing to meet its obligation to ensure that everyone enjoys an adequate standard of living, a human rights norm set out in the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* from which women are entitled to benefit.

However, domestically, there is an implementation gap between the human rights commitments that Canada has made, and the practice of designing, delivering and monitoring social programs. On the one hand, as Canada itself has recognized, social programs are a central means by which human rights obligations are fulfilled. On the other hand, the means to ensure that, on a day-to-day basis, our social programs actually comply with human rights norms are lacking.

In 1995, the *Canada Assistance Plan Act (CAP)* was repealed and replaced by the Canada Health and Social Transfer. On its face, the CAP was neither gender-specific nor a human rights-promoting instrument. It was a vehicle for setting the terms of federal/provincial cost-sharing for social assistance and related social services. However, in effect, the CAP was a mechanism through which governments protected the right of everyone to an adequate standard of living, as set out in the *ICESCR*. When Canada reported to the UN Committee on Economic, Social and Cultural Rights, it claimed the CAP as a means of implementing its *ICESCR* obligations. The CAP promoted women's human rights by mandating the provision of adequate social assistance and related services, which are essential to women's enjoyment of their rights to equality, security of the person and an adequate standard of living. The repeal of CAP left a vacuum that has not been filled by any other mechanism.

The recent creation of the Canada Social Transfer (CST) provides a new opening to revisit what CAP offered and how it can be improved upon. New ways of ensuring that social programs comply with human rights norms, including appropriate accountability mechanisms, are needed.

Domestically, there is an implementation gap between the human rights commitments that Canada has made, and the practice of designing, delivering and monitoring social programs.

II. The Canada Social Transfer and Women's Human Rights

The Canada Social Transfer is a block transfer of funds from the federal government to the provinces and territories, ostensibly for the support of post-secondary education, social assistance and related social services. The cash value of the federal transfer in 2005 – 2006 is \$8.4 billion.

To understand the Canada Social Transfer, it is important to understand its history.

The *Canada Assistance Plan*, the Canada Health and Social Transfer, and the Canada Social Transfer

From 1966 to 1995, the *Canada Assistance Plan* (CAP), a federal statute, was the principal vehicle for federal-provincial-territorial cost-sharing for social assistance and related social services, including civil legal aid.

The CAP authorized the federal government to make payments to provincial governments so that they could finance and administer social assistance programs and other poverty-related services, subject to contractual conditions, or in other words, standards. The standards specified in CAP, and included in intergovernmental cost-sharing agreements, were:

- **accessibility:** provide financial aid or other assistance to any person in need.
- **adequacy:** provide an amount that is consistent with a person's basic requirements.

The CAP defined basic requirements as "food, shelter, clothing, fuel, utilities, household supplies and personal requirements." In other words, CAP established a minimum national standard of substantive adequacy for provincial social assistance programs.

- **universality:** impose no residency requirement as a condition of eligibility to receive or to continue to receive assistance.
- **right of appeal:** provide a procedure for appeals for applicants for assistance from decisions of welfare agencies.
- **right to refuse work:** impose no requirement that recipients of assistance provide labour in a federal-provincial cost-shared work project.

Although the standards were significantly incomplete, they provided basic entitlements. Because of these standards, residents anywhere in Canada were entitled to social assistance in an amount sufficient to meet basic needs. Also, applicants were entitled to appeal decisions of the welfare-granting agency. Finally, CAP, while not barring it completely, put a definite chill on workfare.

Under CAP any provincial government that violated a funding agreement was vulnerable to litigation. An individual could sue the federal government for failing to require the province to meet the conditions of CAP. The federal government could also withdraw funding if the standards were not being met. Thus the CAP gave Canadians a reasonable expectation that the CAP standards would be enforced by the federal government, and respected by all levels of government.

As well as providing 50-50 cost-sharing for social assistance, the CAP also provided 50-50 cost-sharing of related services, including:

- homemaker services for the elderly, to assist them with shopping, cooking, cleaning;
- attendant services for people with disabilities, to allow them to live independently;
- child care services to assist parents with the care of young children while they completed their education, got training, or worked;
- services to unemployed people to assist them to enter or re-enter the workforce, by paying for start-up costs, such as transportation and clothing, or tools;
- child welfare services to assist children who are neglected or abused;
- services for women fleeing male violence and abusive relationships, such as shelters and transition homes;
- counseling services for individuals, couples, families, and children, to assist them with personal, health-related or employment problems;
- information and referral services to direct people in need to counseling, training, shelters, or emergency support;
- respite services to assist parents caring at home for children with severe disabilities;
- assistance in covering the costs of medically-prescribed diets, wheelchairs, special eyeglasses, and prostheses for people unable to purchase these necessities; and
- civil legal aid in poverty law and family matters.

There was an incentive under CAP for provincial governments to provide the services that were eligible for 50-50 cost-sharing because for every 50 cents they spent, they could provide a dollar's worth of services for the residents of their province.

Additionally, the CAP regulations required that funds contributed by the federal government under the CAP were available only as reimbursement to the provinces for actual expenditures on social assistance and social services. That is, federal funds

Social assistance rates right across the country are at levels that the National Council of Welfare calls "cruel."

designated for social assistance programs and social services could not be diverted to support other initiatives that might be more popular among the less needy residents of a province.

In 1995 the CAP was repealed. The federal government then established the Canada Health and Social Transfer (CHST), which rolled together money for health, post-secondary education and social assistance and related social services into one unconditional block transfer without designations attached.

The loss of the CAP meant the loss of standards for social assistance; the removal of the designation of funds for social assistance and related services, which freed provinces to spend in more popular areas such as health care; and the end to federal-provincial 50/50 cost-sharing.

Simultaneously, the federal government significantly cut the amount of the transfer, despite protest from provinces and territories, as well as social policy groups.

These changes have had a significant negative impact on social assistance and related social services, such as civil legal aid. Social assistance rates right across the country are at levels that the National Council of Welfare calls “cruel.” Civil legal aid is broadly inadequate, and for family law and poverty law matters is virtually non-existent in many parts of Canada.

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In 2004, the federal government divided the Canada Health and Social Transfer into two parts: the Canada Health Transfer and the Canada Social Transfer. The monies for health are designated and governed by the principles in the *Canada Health Act*. In contrast, the monies in the Canada Social Transfer are undesignated and have no principles or standards attached to them.

Although the federal government intends the money in the Canada Social Transfer to support post-secondary education and social assistance and related social services, it can be spent by the provincial and territorial governments in any way they decide, including *not* on post-secondary education, social assistance and related social services at all.

The key problems that have emerged in the wake of the elimination of the CAP include:

- the deterioration of social assistance and related social services;
- the absence of any coherent or consistent provision of basic social programs across jurisdictions;
- the failure of governments to establish mechanisms to ensure that social assistance and related services comply with human rights norms, including women’s rights to equality, security of the person and an adequate standard of living;
- the intensification of the discourse of ‘equality of the provinces’, ‘provincial sovereignty’, ‘flexibility’, and ‘federal interference’ that has made governments unable to agree on either a distinct status for Quebec or national standards and the terms of a stable social union;
- the increasing lack of transparency of governmental decision-making regarding social program design and priorities.

The discourse of ‘equality of the provinces’, ‘provincial sovereignty’, ‘flexibility’, and ‘federal interference’ has made governments unable to agree on either a distinct status for Quebec or national standards and the terms of a stable social union.

Equality-Creating Programs and Services

Strong social programs, including adequate social assistance, civil legal aid, child care, home care, respite care, women's centres and shelters for battered women are equality-creating programs for women. All women need these programs to be available, and may use some or all of them at different points in their lives.

The programs and services funded by the CST are important to all Canadians, but they have a distinct importance for women because they play a central role in shaping a society in which women enjoy equality.

Because women are poorer than men, and because women are the principal unpaid caregivers for children, older people, and people with disabilities, social programs, including those that provide basic income security, are essential to women's well-being and autonomy. Social programs increase women's opportunity to participate in paid work, higher education, and public life. They also permit women to escape from abusive relationships with men.

The programs and services that historically have been paid for through federal-provincial transfers are part of the range of social programs that women require to enjoy equality and autonomy in Canadian society.

The Canada Social Transfer is not the only vehicle for delivering equality-creating programs to women in Canada, but it is an important one.

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The Implementation of Human Rights

The Canada Social Transfer is one means of implementing the human rights that Canada has committed itself to in the *Constitution Act, 1982*, the *Charter*, and in international human rights treaties. These rights include section 36 of the *Constitution*, which states that "Parliament and the legislatures, together with the government of Canada and the

The human rights that Canada has embraced impose positive obligations on governments to ensure that everyone can enjoy these rights...

provincial governments are committed to ...providing essential public services of reasonable quality to all Canadians." They also include sections 7 and 15 of the *Charter*, which guarantee life, liberty and security of the person and equal protection and benefit of the law, without discrimination, particularly on the basis of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability; Article 11 of the *International Covenant on Economic, Social and Cultural Rights*, which guarantees to everyone the right to an adequate standard of living; and the *Convention on the Elimination of All Forms of Discrimination Against Women*, which obligates governments in Canada "to take... all appropriate measures... to ensure the full development and advancement of women."

The human rights that Canada has embraced impose positive obligations on governments to ensure that everyone can enjoy these rights, and that budgetary allocations for social programs are sufficient to meet those obligations. They also require governments to ensure that programs are adequate and consistent across jurisdictions. These obligations may require senior levels of governments to require compliance with standards by municipalities and other entities involved in delivery of programs and services.

III. The National Context for the Canada Social Transfer

Because different groups of women in Canada have different relationships to federal, provincial and territorial governments, the Canada Social Transfer must be designed to respect and take these differences into account.

Aboriginal Women

The federal government has a special relationship to Aboriginal women, including First Nations, Metis and Inuit women, which includes a constitutional and moral responsibility to them. The federal government has a fiduciary relationship to First Nations women whether they live on or off reserves.

Because of Canada's history of imposing and enforcing patriarchal settler norms in Aboriginal communities, to the detriment of Aboriginal women, the federal government has a remedial obligation to Aboriginal women to ensure that they achieve equality within their own communities and in the broader society, and that programs and services are delivered to them in ways that will foster their equality and take account of the particular forms of discrimination and marginalization they experience.

The Canada Social Transfer directly affects the kind and quality of provincially-delivered social programs and services available to Aboriginal women who do not live on reserves, or in Metis or Inuit settlements. Nonetheless, the principles and standards set out here should also be applied to programs and services provided to Aboriginal women who are residents on lands under federal jurisdiction, or governed under Self-Government or Inuit Land Claims Agreements.

Quebec and the Rest of Canada

Quebec has a distinct status in the Canadian federation. Women in Quebec have a strong relationship with the Government of Quebec. It is appropriate for the Government of Quebec to play the leading role in designing and delivering social programs and services for residents of Quebec.

Women in the rest of Canada expect the federal government to play a strong role with respect to social programs and services in order to ensure that the human rights of women are respected and that there is consistency in basic social programs across the provinces and territories.

Both Quebec and the rest of Canada are multiracial and multiethnic communities, with many minority language groups, including an English-speaking minority in Quebec and a francophone minority in the rest of Canada. The design and delivery of social programs and services in both Quebec and the rest of Canada must take into account the diverse needs and conditions of women who are members of these groups, including the history and impact of racism.

...it is appropriate for the Government of Quebec to play the leading role in designing and delivering social programs and services for residents of Quebec.

FAFIA endorses asymmetrical federalism, with the federal government playing a strong role in setting standards and conditions for social programs delivered in the provinces

and territories outside of Quebec, while the Quebec government plays the leading role in the design and delivery of similar programs in Quebec. Parallel but different delivery and accountability mechanisms for Quebec and the rest of Canada are appropriate.

Since 1995, the unconditional transfer of monies by the federal government to the provinces and territories has not lead to innovation and the development of stronger social programs, but rather to the erosion of basic social programs, such as social assistance and civil legal aid, and to unevenness in the availability of programs and services and in their quality. For the rest of Canada, national standards and conditions are necessary to satisfy the requirements of section 36 of the Constitution and Canada's human rights commitments to women.

IV. Funding Formulas, Designations and Standards

Funding Formulas and Designations for Expenditure

Adequacy of Funding

The amount of the transfer from the federal government to provincial and territorial governments must be sufficient to ensure adequate funding for programs and services for which the CST is intended to support. The amount of the transfer must also be stable and predictable for the recipient provinces and territories.

Funding Designations

The Canada Social Transfer funds must be designated for spending on specified programs and services. Monies from this transfer should be designated for post-secondary education, social assistance, civil legal aid, shelters for battered women, women's centres, and other specified social services. Expenditures on each program and service should be accounted for regularly and publicly by the recipient provinces and territories.

Because of the lack of public reporting by the provinces and territories, and the federal government's failure to track the funds it transfers, it is unclear what programs and services have been paid for since 1995 under the Canada Health and Social Transfer, and now under the Canada Social Transfer. Programs and services, such as home care, some child care, respite care, etc., which were cost-shared under CAP, may still be being paid for from the Canada Social Transfer. Greater transparency is needed regarding what is being paid for from the CST, and what standards are being applied to these other essential services.

Needs-Based Funding

Programs of "reasonable quality" cannot be delivered for the same cost in rural and northern Canada as in urban, southern Canada. Allocations to the provinces and territories that do not take into account the needs of women living in rural and northern communities, will not provide adequately for the delivery of services in these areas. Recognition of rural and northern realities is needed.

Standards and Principles for Social Assistance and Civil Legal Aid

National standards and principles for social assistance and civil legal aid are set out here. These standards and principles should be binding on whatever level of government is delivering the services, whether provincial, territorial, regional, or municipal, and on whatever agency or entity is delivering the programs or services.

Social Assistance

With respect to social assistance, new common standards for adequacy, eligibility and fair process are necessary. These must include the following obligations on recipient governments:

- to provide assistance to any person in need, without limitations or restrictions based on the reasons for need or duration of the need.
- to meet a standard of adequacy that reflects the right of every person to an adequate standard of living, including food, clothing and shelter.
- to provide shelter allowances that reflect actual local costs for decent housing.
- to provide assistance that respects women's unpaid caregiving work, and without imposing work requirements.
- to eliminate requirements to participate in work or training as a condition of receipt of adequate social assistance.
- to eliminate "spouse in the house" rules, temporary or permanent bans and time limits, which have been identified as discriminatory and punitive by courts and a coroner's inquiry.
- to publicly administer programs and services and ensure that they are not delivered by for-profit entities.
- to make rules and procedures understandable and fair, and access to benefits timely.
- to provide a guaranteed right to appeal any decision denying, reducing, restricting or terminating social assistance or a related service.
- to ensure that appeal procedures are fair and accessible, and that recipients and potential recipients have advocates available to assist them, including legal counsel where that is necessary to ensure meaningful access to justice.
- to ensure that social assistance and related services are designed to enhance the equality of all women, fully recognizing their diversity, and that rules and practices do not discriminate against social assistance recipients because they are reliant on social assistance, or because of their sex, marital status, family status, national or ethnic origin, colour, race, sexual orientation, mental or physical disability, age, or other analogous grounds.
- to involve women in the design and reform of social assistance and related services so that these programs will meet the needs of the women using them, and be accountable to them.

Civil Legal Aid

Standards for legal aid must be developed with respect to quality, eligibility, and coverage.

Receiving governments must be required to provide civil legal aid that is:

- adequate to ensure effective and meaningful access to justice

- to those who lack sufficient means to exercise their rights to obtain proper remedies and redress
- in all legal matters where the fundamental interests of women and their dependents are at stake
- including in the areas of family law, poverty law, immigration and refugee law, human rights, mental health, and prison law matters.

V. Implementation, Monitoring and Accountability

Legislation

A new *Canada Social Programs Act*, similar to the *Canada Health Act*, is needed. Such legislation should set out the purposes of the Canada Social Transfer, identifying the transfer as a vehicle for implementing section 36 of the *Constitution Act, 1982*, and rights to equality, security and an adequate standard of living. It should also set out funding formulas and standards, specify the programs and services that the CST is intended to support, and establish monitoring and accountability procedures.

Monitoring and Accountability

An independent monitoring and accountability body must be established with several functions:

- to facilitate public participation in the further elaboration and articulation of funding formulas and standards for funded programs and services and making recommendations to governments;
- to monitor, on an ongoing basis, governments' compliance with funding formulas and standards;
- to identify when obligations with respect to funding formulas, or designations or standards are not being met by federal, provincial or territorial governments;
- to recommend changes that are necessary to achieve compliance;
- to recommend withdrawal of funding by the federal government in the case of non-compliance with standards;
- to report regularly to Parliament and legislatures on social programs and services funded through the Canada Social Transfer and on compliance with funding formulas, designations and standards;
- to report regularly to United Nations treaty bodies regarding compliance of social programs and services with human rights norms;
- to hear and make recommendations regarding submissions from individuals or groups regarding whether or not social programs and services are not provided in ways that meet funding formulas, live up to the designations or common standards, or that seek a review of these standards in the event that they are inadequate and in need of revision.

Enforceability

There should be two means of enforceability: 1) withdrawal of funds by the federal government from a contravening province or territory when recommended by the monitoring body; 2) legal action. These are the means of enforceability that existed under the CAP, and that continue to be available under the *Canada Health Act*.

With respect to legal action, individuals or groups should be able to bring forward challenges claiming that 1) a government (federal, provincial, territorial, municipal) is not meeting the funding formulas, designations or standards and therefore is violating

the terms of the *Canada Social Programs Act* and/or 2) programs or services do not satisfy the rights that they are intended to fulfill under the *Constitution Act, 1982*, the *Charter* and international human rights treaties.

Quebec

Because the standards and principles set out here are related to human rights norms accepted historically by governments of Quebec, they may be acceptable to Quebec. Quebec may wish to devise its own implementation, monitoring and accountability systems.

VI. Conclusion

The 50 member groups of the Canadian Feminist Alliance for International Action consider strong social programs essential to women's equality in Canada. An extensive analysis commissioned by FAFIA of federal budgets from 1995-2004 documented the degree to which federal funds had been withdrawn from supporting many of these services and programs (Yalnizyan 2005). This withdrawal meant that in many cases, social programs have been significantly eroded, with recognized detrimental effects on women (see the *Report of the UN Committee on the Elimination of Discrimination against Women Twenty-eighth session, 13-31 January 2003: Concluding Comments*).

FAFIA looks forward to a revitalization of the Canadian social union and to re-engagement by governments in the work of developing and sustaining social programs and services that meet Canada's human rights commitments.

Appendix

The following organizations and individuals participated in a national roundtable on the Canada Social Transfer hosted by FAFIA in Ottawa in November 2005:

- Alliance des femmes de la francophonie canadienne
- Antigonish Women's Resource Centre
- Barbara Cameron, York University
- Canadian Council on Social Development
- Canadian Federation of Students
- Canadian Labour Congress
- Canadian Union of Public Employees
- Canadian Research Institute on the Advancement of Women
- Centre for Northern Families
- Women's Legal Education and Action Fund
- Linda Christiansen-Ruffman, St. Mary's University
- Martha Jackman – University of Ottawa
- National Anti-Poverty Organization
- National Association of Women and the Law
- National Organization of Immigrant and Visible Minority Women
- Native Women's Association of Canada
- Newfoundland & Labrador Status of Women Council
- Poverty & Human Rights Centre
- Shelagh Day, FAFIA
- Regroupement provincial des maisons d'hébergement et de transition pour femmes victimes de violence
- Ruth Rose, UQAM et la Fédération des femmes du Québec (FFQ)
- Sherrie Tingley