BC'S OFFICE OF THE
HUMAN RIGHTS
COMMISSIONER



LIST OF ISSSUES PRIOR TO REPORTING (LOIPR) FOR CANADA'S 7TH PERIODIC REVIEW

Present to:

Pre-Sessional Working Group of the Committee on Economic, Social and Cultural Rights
United Nations Office of the High Commissioner of Human Rights
February 4, 2020

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A: Introduction

1. BC's Human Rights Commissioner was re-established in 2019 by the provincial government of British Columbia. The province had been without a commission since 2002. This has left a gap in understanding and awareness of human rights in the economic, social and cultural context of B.C. but the creation of the Commissioner role signals a renewed provincial commitment to human rights and presents an important opportunity to address inequality and injustice in our communities.

2. BC's Office of the Human Rights Commissioner (BCOHRC) envisions a province in which everyone's human rights are realized and our responsibilities to one another are fulfilled, where we are all free from inequality, discrimination and injustice. We strive to address the root causes of these issues by shifting laws, policies, practices and cultures, and will do this work through education, research, advocacy, inquiry and monitoring. We acknowledge the homelands of the Indigenous Peoples of this place we now call British Columbia and honour the many territorial keepers of the Lands on which we work.

3. The recent amendments to the B.C. Human Rights Code to define the powers of the Commissioner include "promoting compliance with international human rights obligations."[1] This is the Commissioner's first submission to the United Nations review processes and we appreciate the consideration of the Working Group of the Committee on Economic, Social and Cultural Rights.

4. Canada ratified the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976. However, economic, social and cultural rights, such as adequate and meaningful access to basic necessities like food, water and housing are routinely violated. The Government of Canada is not fully honouring the commitment to take steps to apply the "maximum of its available resources" to achieve the full realization of these rights as outlined in Article 2.1.[2]

5. Article 28 of the ICESCR states that that Covenant's provisions "shall extend to all parts of federal States without any limitations or exceptions."[3] Thus, to protect and fulfill these rights, all levels of government within Canada must comply with the ICESCR. As the provincial

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[1] Human Rights Code, Section 47.12 (1)(i). Current to January 22, 2020. Available at: http://www.bclaws.ca/Recon/document/ID/freeside/00_96210_01
[2] International Covenant on Economic, Social and Cultural Rights. Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx
[3] Ibid.

government is a primary duty bearer under the Canadian constitution for fulfilling many of the subject matters covered by the ICESCR, this submission will outline key concerns within British Columbia and offer recommended questions to address to the State Party.

B: Building a Strong Foundation

6. On June 21, 2019, the Government of Canada enacted Bill C-97, which contained two historic foundations: within Division 19, the enactment of the *National Housing Strategy Act*, the preamble includes recognition that the housing strategy "would support the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights, to which Canada is a party";[4] and, within Division 20, the enactment of the *Poverty Reduction Act* includes the recognition that "poverty reduction contributes to meeting Canada's international human rights obligations."[5]

7. The Government of British Columbia has also made recent steps towards embedding international obligations within legislation, including the 2019 *Declaration on the Rights of Indigenous Peoples Act* and the accessibility legislation in development, which is informed by the UN Convention on the Rights of Persons with Disabilities.[6] However, the provincial *Poverty Reduction Strategy Act*, Bill 39 (2018), does not include a foundation in international human rights commitments, in particular, the ICESCR. This backs up the findings from an expert engagement process that the Canadian Human Rights Commission (CHRC) held in 2018, which found that:

    a. *"…there is an ongoing failure in Canada to take ESC rights seriously, to understand these rights as human rights, and to implement them in a meaningful way. The experts also noted that structural and institutional reform is necessary to ensure that systemic ESC rights issues are justiciable and can be effectively claimed, which could include possible legislative amendments…"*[7]

8. **Recommended question 1: Please provide details of efforts being undertaken to ensure that all levels of government within Canada are embedding international human rights**

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[4] Budget Implementation Act, 2019, No. 1. Available at: https://www.parl.ca/DocumentViewer/en/42-1/bill/C-97/royal-assent#ID0E51MO
[5] Ibid. Available at: https://www.parl.ca/DocumentViewer/en/42-1/bill/C-97/royal-assent#ID0EBJOO
[6] British Columbia Framework for Accessibility Legislation. Available at: https://engage.gov.bc.ca/app/uploads/sites/543/2019/09/7006_Framework-for-Accessibility-Legislation_WebFinal.pdf
[7] Refer to the submission to this review process from CHRC, January 2020.

obligations within legislation and incorporating a rights-based approach to laws, policies and programs, including strong accountability mechanisms to ensure compliance.[8]

9. Some progressive measures within the purview of the ICESCR have been implemented in British Columbia, including a plan to increase the minimum wage to $15 per hour by 2021 (Article 7), substantial investment in the provision of affordable and accessible child care (Article 10), building temporary modular housing throughout the province to tackle homelessness (Article 11), and establishing a dedicated Ministry of Mental Health and Addictions and launching a mental health strategy (Article 12). However, these initiatives often lack coordination – while they may be grouped together nominally under the province's poverty reduction strategy, they do not feature proactive integration. The issues themselves are very much connected – for instance, poverty and access to housing and food are fundamentally interdependent. Thus, it is critical to develop strategies, policies and programs with a comprehensive approach and build in structures and processes that ensure coordinated communication, action and funding, both within and between governments.

10. **Recommended question 2: Please provide details of efforts being undertaken to ensure coordination between laws, policies and programs addressing issues within the ICESCR and between the various jurisdictions in Canada, in particular, including efforts to coordinate between provincial and federal governments.**

11. While the National Housing Strategy does include reference to international legal commitments, it does not ensure that the right to housing can be effectively claimed. The legislation does not include specific mechanisms for individuals to bring forward complaints. This gap, and the general lack of justiciability in relation to ESC rights issues, makes the *Optional Protocol to the ICESCR* of critical importance as it provides access to justice "by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that Sate Party" (Article 2).[9]

12. **Recommended question 3: When will Canada ratify the Optional Protocol to the ICESCR?**

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[8] This supports a similar recommended question in the CHRC's submission, as do some of the other recommendations included in this submission.
[9] Optional Protocol, 2008. Available at: https://treaties.un.org/doc/Publication/CTC/Ch_IV_3_a.pdf

Jurisdictional Issues

13. While much of the responsibilities for issues under the purview of the ICESCR are held by the provincial government, the federal government has a strong role to play in providing leadership and funding within these areas. However, the Government of Canada has shifted away from accountability frameworks over the last decades. For example, the National Council of Welfare was defunded in the 2012 budget and then closed, which eliminated an important national reporting and monitoring mechanism on the depth and breadth of poverty across Canada.[10]

14. Further, the Canada Assistance Plan, a social transfer program established in 1966, which created a cost-sharing arrangement for social assistance programs, included conditions for federal funding to ensure comparable quality across the country. The current version of the program, the Canada Social Transfer, does not include strong conditions, for instance, tying the adequacy of social assistance rates to the provision of funding. The Government of Canada has articulated that "[a]s these programs became more established, there was less necessity for the rigorous and comprehensive reporting and auditing required on the part of the federal government" and has allowed "greater flexibility in designing and administering programs."[11] However, the consequence of this flexibility is that all social assistance rates across the country remain below the poverty line, in many cases, more than 50% below that minimum threshold.[12]

15. **Recommended question 4: What measures is the Government of Canada taking to ensure significant leadership and funding in relation to fulfilling its commitment to the ICESCR, including strong accountability frameworks defining conditions upon which funding is provided?**

16. The National Housing Strategy Act creates strong accountability mechanisms to ensure the realization of the right to housing by creating a National Housing Council and a Federal Housing Advocate, whose mandate includes research on systemic housing issues— in particular, in relation to marginalized groups. The Federal Housing Advocate role is also strengthened by the

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[10] Consideration of the List of Issues related to the Sixth Periodic Report of Canada for the CESCR's 55th Session, February 2015. Available at: http://www.cwp-csp.ca/wp-content/uploads/2015/05/CWP-UN-2015.pdf
[11] History of Health and Social Transfers. Available at: https://www.canada.ca/en/department-finance/programs/federal-transfers/history-health-social-transfers.html
[12] Welfare in Canada, Maytree, Nov. 2019. Available at: https://maytree.com/welfare-in-canada/canada/

administrative support of the CHRC. However, the mandate of the Advocate is limited to matters within federal jurisdiction, including the power to review systemic housing issues through a review panel. This curtails the impact of the role considerably given that housing funding and responsibilities are shared across levels of government within the State party.

17. **Recommended question 5: In order to broadly fill this important mandate, would the Government of Canada support, with leadership and funding, the appointment of provincial and territorial housing advocates that would work with the Federal Housing Advocate on systemic housing issues?** [13]

C: The Right to an Adequate Standard of Living

18. Within the ICESCR (1966), Article 11(1) recognizes: "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."[14]

19. However, Canada continues to have high rates of poverty and inequality, with 3.4 million Canadians living in poverty. 1 in 10 British Columbians live in poverty, the second highest poverty rate in the country using the Market Basket Measure, Canada's official poverty line.[15] B.C. also has one of the largest gaps between rich and poor with the top 20% of the population having 65% of the total wealth while the bottom 20% are in debt, an average of $725.[16]

20. According to the B.C. Poverty Reduction Coalition (BCPRC),

    a. *[t]he current income assistance system in B.C. is fundamentally broken. People in desperate need are being denied assistance, and if lucky enough to navigate all the structural and administrative barriers to welfare and have their application accepted,*

[13] In support of recommended question #10, CHRC submission, January 2020.
[14] International Covenant on Economic, Social and Cultural Rights. Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/
[15] Table 206-0041: Low income statistics by age, sex and economic family type, Canada, provinces and selected census metropolitan areas (CMAs), 2017 (the latest year available). Available at: http://www.statcan.gc.ca/daily-quotidien/180313/dq180313a-eng.htm?CMP=mstatcan
[16] Table 205-0004: Survey of Financial Security, 2016 (the latest year available). Available at: https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1110004901

they are subjected to a life of "survival," struggling to meet the most basic needs of shelter and food.[17]

21. The B.C. government has taken some small steps in the right direction with two increases to social assistance rates within the last few years: the first, an increase of $100 per month in 2017 after the basic income assistance amount had been frozen at $610 for over a decade; and the second, an increase of $50 in 2019. However, basic income assistance remains below 50% of the poverty line at $760 per month. Those receiving disability benefits are now provided with $1,235 per month including a transportation supplement of $52, which can be used towards a bus pass but, in reality, is most often needed for rent and food.[18]

22. **Recommended question 6: What is the Government of Canada and its subnational counterparts (provinces and territories) doing to ensure that social assistance rates under provincial and territorial jurisdiction do not remain below the poverty line and instead ensure the right to an adequate standard of living, including adequate food, clothing and housing?**

23. The Government of Canada defines household food insecurity as "the inability to acquire or consume an adequate diet quality or sufficient quantity of food in socially acceptable ways, or the uncertainty that one will be able to do so," adding that it "is often associated with the household's financial ability to access adequate food."[19] 4 million Canadians experience food insecurity (an underestimate as it excludes homeless people and those living on First Nations reserves).[20]

24. Within the B.C. government's poverty reduction strategy, food insecurity is identified as a critical issue that remains unaddressed. Since the launch of the plan, the provincial government has made an investment in a food rescue distribution centre in Victoria. However, Graham Riches,

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[17] Submission for the development of a poverty reduction strategy for BC, BCPRC, March 2018. Available at: http://bcpovertyreduction.ca/wp-content/uploads/2018/03/BCPRC_SubmissionPRConsultation_Mar15_2018.pdf
[18] Sharing our Realities: Life on Disability Assistance in British Columbia, BCPRC, April 2017. Available at: http://bcpovertyreduction.ca/wp-content/uploads/2017/04/SOR-Final-for-Web.pdf
[19] Household Food Insecurity in Canada. Available at: https://www.canada.ca/en/health-canada/services/food-nutrition/food-nutrition-surveillance/health-nutrition-surveys/canadian-community-health-survey-cchs/household-food-insecurity-canada-overview.html
[20] PROOF Food Insecurity Policy Research citing data from the Canadian Community Health Survey, 2012 (most recent data available). Available at: https://proof.utoronto.ca/

renowned right to food academic and author, cautions that there is "little evidence that reducing food waste has anything to do with poverty reduction or food security for all."[21] He goes on to assert that "[h]ungry British Columbians need cash to shop for food in normal and customary ways: a living wage, adequate income benefits, real rent control. Income poverty is the cause."[22] In response to this issue, the B.C. Poverty Reduction Coalition launched the Stream Framework, which involves "defining and being intentional about how much of your activities will be focused upstream in tackling the root causes and how much will be downstream dealing with the immediate symptoms showing up in your community."[23]

25. **Recommended question 7: How will the Government of Canada and its subnational counterparts ensure that measures taken to realize the rights protected within the ICESCR are upstream and aimed at systemic change rather than downstream and merely focused on symptoms, such as investments in charitable food services?**

D: Equality and Non-discrimination

26. People in poverty face discrimination and stigma. Stories describing these experiences were heard throughout the poverty reduction consultation process undertaken by the provincial government in B.C. in 2018. The concluding report, *What We Heard About Poverty in B.C.,* identified stigma as a key theme: "[l]iving in poverty is hard enough without being judged for it. Many people told us how hard it is to not only have to deal with the effects of poverty on a daily basis, but to also have to deal with the stigma of being impoverished."[24] In particular, there has been an increase in stigmatizing stereotypes about homeless people within the public and political discourse, showing up in a range of venues, from media stories to municipal council

[21] Is 'Left Over' Food for 'Left Behind' People the Best We Can Do? The Tyee, May 2019. Available at: https://thetyee.ca/Opinion/2019/05/16/Left-Over-Food-Left-Behind/
[22] Ibid.
[23] Guide for Local Communities to Support Access to Provincial Government Funding for Municipal Poverty Reduction Strategies, BCPRC, Jan. 2020. Available at: http://bcpovertyreduction.ca/wp-content/uploads/2020/01/ToolkitLocalPRFunding.Final_.2020.pdf
[24] What We Heard About Poverty in B.C., Province of B.C., 2018. Available at: https://engage.gov.bc.ca/app/uploads/sites/242/2018/07/WWH_Report-PovertyReductionStrategy_FINAL.pdf

meetings.[25]

27. Despite this reality, people in poverty do not have comprehensive access to protection from discrimination under B.C.'s *Human Rights Code*: for example, "source of income" is only a prohibited ground of discrimination under the area of tenancy. As the Government of Canada has recognized in its acceptance of a recommendation in the most recent Universal Periodic Review, legal recourse for alleged violations of economic, social and cultural rights is often pursued in Canada through discrimination complaints to human rights commissions and tribunals.[26] Thus, this gap in protection for discrimination on the basis of economic or social disadvantage ("social condition") requires urgent remedy.

28. **Recommended question 8: When will the Government of Canada, and those subnational counterparts who have not done so already, add the protected ground of social condition to their human rights legislation?**

[25] The BC Non-Profit Housing Association, in partnership with the Homelessness Services Association of B.C., has launched a campaign and toolkit within the last year with the aim of countering this discrimination. Available at: http://buildhomesnotbarriers.ca/
[26] CHRC submission, January 2020.

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