



Via Online Submission

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Select Standing Committee on Finance and Government Services
Room 224, Parliament Buildings
Victoria, BC, V8V 1X4

Submission to the Standing Committee on Finance and Government Services Budget 2019 Consultations

The West Coast Legal Education and Action Fund (West Coast LEAF) urges the Select Standing Committee on Finance and Government Services (the Finance Committee) to make investing in gender equality a budget priority for 2019. Investing in women and other people who experience gender based discrimination is a matter of fairness, equality, and human rights, and it makes good fiscal sense.¹

West Coast LEAF is a BC-based legal advocacy organization. Our mandate is to use the law to create an equal and just society for all women and people who experience gender based discrimination. In collaboration with community, we use litigation, law reform, and public legal education to make change. In particular, we aim to transform society by achieving: access to healthcare; access to justice; economic security; freedom from gender based violence; justice for those who are criminalized; and the right to parent. We have a particular expertise in equality and human rights and we have done in-depth research on the impacts of BC's laws and policies on women.

Gender and poverty

Women are disproportionately impacted by poverty, which results in other adverse impacts that create greater challenges for particular groups of women. According to the most recent data from Statistics Canada, the poverty rate for BC women is about 13%.² These figures very likely underestimate the real rates of BC women's poverty since Statistics Canada does not include Indigenous people living on reserve in its provincial assessment, despite deep inequalities impacting Indigenous communities.³

¹ While these submissions focus primarily on women, many of the recommendations would address inequality faced by all those impacted by gender-based discrimination.

² Statistics Canada, CANSIM 206-0041: Low income statistics by age, sex and economic family type, Canada, provinces and selected metropolitan census areas (CMAs), (5 October 2018) (2016 data) <https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=1110013501>.

³ Seth Klein, Iglia Ivanova and Andrew Leyland. *Long Overdue: Why BC Needs a Poverty Reduction Plan* (Canadian Centre for Policy Alternatives, Vancouver: 2017) [Klein, Ivanova and Leyland] at 22.

Trans and gender non-conforming people are also over represented among low income Canadians; for example, in Ontario 50% of trans people are living on \$15,000 or less a year.⁴

In these submissions, we consider three areas that contribute to poverty in BC for women and other people impacted by gender-based discrimination: the gender wage gap, lack of appropriate child care, and restricted access to social assistance. We urge the government to adopt our recommendations in each of these four areas to address poverty and ensure gender equality in BC.

1. The Gender Wage Gap

Overall, women in BC earn 22.6% less than men.⁵ British Columbia is the third worst province in Canada when it comes to the gendered earnings gap,⁶ and one of the only three provinces without pay equity legislation.⁷ Indigenous and racialized women experience even more profound gendered pay discrepancies on average, with Indigenous women earning 23% less per year than white women,⁸ and university-educated, Canadian-born racialized women earning 12% less per year than similarly educated white women.⁹ The wage gap is a significant barrier to economic security for women of all ages across the province, with both short-term and long-term negative consequences.

The implications of the pay gap are significant. Women account for 58% of low-wage workers.¹⁰ About half of people living in poverty in BC are either the working poor or their children.¹¹ Older women often experience inequalities in pension entitlements driven by a lifetime of lower pay: BC women tend to receive 20% less than their male counterparts in Canada Pension benefits and almost 50% less in private retirement

⁴ Poverty Reduction Coalition, *Queer and Trans Poverty in BC Factsheet*. 2014. Online:

http://bcpovertyreduction.ca/wp-content/uploads/2014/08/2013_prc-lgbqt-poverty-factsheet.pdf

⁵ Calculated using median weekly earnings; women earn 17.2% less than men when using median hourly earnings, but hourly figures obscure the precarity of so-called women's work that is disproportionately part-time, casual, or temporary (Statistics Canada; The Conference Board of Canada: <goo.gl/Hb7cii>.

⁶ *Ibid.*

⁷ *Pay Equity Act*, CCSM c P13 ([MN](#)); *Pay Equity Act*, RSO 1990, c P.7 ([ON](#)); *Pay Equity Act*, RSQ c E12.001 ([QC](#)); *Pay Equity Act*, SNB 2009, c P-5.05 ([NB](#)); *Pay Equity Act*, RSNS 1989, c 337 ([NS](#)); *Pay Equity Act*, RSPEI 1988 ([PE](#)).

⁸ Aboriginal Affairs and Northern Development Canada, "Aboriginal Women in Canada,"

<www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/ai_rs_pubs_ex_abwch_pdf_1333374752380_eng.pdf> at iii (2006 national figures; provincial figures not

available).

⁹ Statistics Canada; The Conference Board of Canada, "Racial Pay Gap":

<www.conferenceboard.ca/hcp/provincial/society/racial-gap.aspx> (2010 national figures; racialized women in BC earn 14.2% less).

¹⁰ Dr. Jean-Charles Le Vallée, Cameron MacLaine, Melissa Lalonde and Michael Grant. *Canada's Food Report Card 2016: Provincial Performance*. (Conference Board of Canada, Ottawa: 2017) at 32.

¹¹ Klein, Ivanova and Leyland *supra* note 2 at 4.

income.¹² For this reason and many others, poverty affects about a third of BC senior women who live alone.¹³ These impacts continue through the lifespan of women, as they accumulate less wealth and make fewer pensionable earnings, resulting in disproportionate rates of poverty in older women.

The gender wage gap persists despite the fact that direct gender-based pay discrimination has been prohibited in BC for decades.¹⁴ BC uses a reactive, complaint-based system that is not working.¹⁵ The current system places the onus of ensuring equal pay for work of equal value on individuals and unions, rather than employers, to bring forward a complaint and spend their limited resources to pursue lengthy litigation. Most victims of pay discrimination reasonably fear retaliation for making a complaint, or for even raising the issue with a superior. They cannot risk a disruption in earnings, and instead must prioritize day-to-day concerns.

We urge the BC government to address the gender wage gap by shifting to a proactive system authorized by standalone pay equity legislation.

Recommendation #1: invest in a proactive pay equity system to ameliorate the gender wage gap.

- i. Enact pay transparency legislation that applies to the entire provincially regulated sector. The legislation should require employers to report anonymous data about the composition of their workforce. The legislation should also provide for the publication of the data online, organized by employer, while maintaining employee anonymity. This legislation will entail minimal financial investment beyond setting up an office to monitor it and ensure publication of the results.
- ii. Enact stand-alone proactive pay equity legislation that applies to the entire provincially regulated sector and recognizes equal pay for work of equal value as a human right. The legislation should clearly place the onus on employers to ensure pay equity is achieved and require employers, unions and workers' representatives to examine pay systems to make sure they are based on the principle of equal pay for work of equal value. This step will require investment from the Province as a large employer to ensure that it is not

¹² Igluka Ivanova, *Poverty and Inequality Among British Columbia's Seniors* (Canadian Centre for Policy Alternatives, Vancouver: 2017) at 6.

¹³ Klein, Ivanova and Leyland *supra* note 6 at 5.

¹⁴ BC's first pay equality legislation was *An Act to ensure Fair Remuneration to Female Employees*, which came into force in 1953. Section 3(1) read: "No employer and no person acting on his behalf shall discriminate between his male and female employees by paying a female employee at a rate of pay less than the rate of pay paid to a male employee employed by him for the same work done in the same establishment." Over time this provision was absorbed by human rights legislation, specifically section 12(1) of the Human Rights Code, RSBC 1996, c 210: "An employer must not discriminate between employees by employing an employee of one sex for work at a rate of pay that is less than the rate of pay at which an employee of the other sex is employed by that employer for similar or substantially similar work."

¹⁵ Ontario Equal Pay Coalition <http://equalpaycoalition.org/the-gender-pay-gap-across-canada/> not effective plagued by protracted litigation

discriminating against employees and entrenching pay inequity in its employee compensation structure.

- iii. Establish independent oversight to ensure effective implementation and accountability. There should be ongoing and adequate financial and human resources for the administration of pay equity legislation and for oversight agencies to support the achievement of pay equity.

2. Lack of Universal Child Care

West Coast LEAF's research on the state of child services in BC and its human rights implications for women and children was published in the *High Stakes: The Impacts of Child Care on the Human Rights of Women and Children* report.¹⁶ Our report found that the current state of child care in BC results in serious adverse impacts for the human rights of women and children.

In our research, we documented the extent to which unpaid caregiving responsibilities disproportionately fall on women and the corresponding impact on their economic security when they are parenting with a partner or parenting alone. Women's inability to secure affordable, safe childcare impedes their ability to increase their earning capacity. In particular, when combined with the gender wage gap, women often become financially dependent on their partner and are at risk of deep poverty should relationship breakdown occur.

These impacts have graver consequences for marginalized women and children in myriad ways and intersect with other challenges resulting from discrimination on the basis of race, indigeneity, mental and physical disability, addictions and homelessness. The lack of appropriate child care is particularly concerning for Indigenous communities, given that Indigenous children continue to be over-represented in the child protection system. Lack of access to appropriate child care undermines and interferes with the ability and right to parent and further perpetuates state interference with Indigenous communities and families through the child protection system.

We welcome the government's 2018 budget promises and allocation of funds towards creating universal child care for British Columbians. We note that the government has already begun to follow through on its budget promises by introducing the Fee Reduction Initiative and the Affordable Child Care Benefit, and by implementing universal child care prototypes across BC for 18 months starting in October 2018.¹⁷ We

¹⁶ *High Stakes: The Impacts of Child Care on the Human Rights of Women and Children*, online at <http://www.westcoastleaf.org/2016/07/12/high-stakes-impacts-child-care-human-rights-women-children/>.

¹⁷ Coalition of Child Care Advocates of BC and Early Childhood Educators of BC, *\$10aDay.ca Briefing Note: Child Care Affordability in BC – What's Working (and What's Worrying)* (fall 2018) [*\$10aDay.ca Briefing Note*], https://d3n8a8pro7vhmx.cloudfront.net/10aday/pages/2785/attachments/original/1537900237/10aDay_policy_briefing_note_Affordability_Sept_2018_print_web.pdf?1537900237

also appreciate the government's commitment to fund the creation of 22,000 new licensed child care spaces over the next three years.¹⁸

However, we urge the government to ensure that all of its actions contribute to the goal of establishing a universal child care system, or adopting the \$10aDay Plan. The Coalition of Child Care Advocates of BC reports that some parents experienced unexpected fee increases when the Fee Reduction Initiative was implemented.¹⁹ The Coalition also raises concerns regarding the Affordable Child Care Benefit, as it is an income-tested, individualized subsidy, rather than the type of direct funding that will support a universal system.²⁰

Furthermore, particular attention must be given to particular populations facing poverty and safety concerns. Specifically, child care services and supports must be available and prioritized for women fleeing violence and women who need support to parent, regardless of immigration status, and for children awaiting kinship care placement.

Given the critical role appropriate child care plays in the lives of women and children, we urge the BC government to continue to take immediate steps to adopt a universal child care system.

Recommendation #2: establish an accessible and appropriate universal child care system that priorities populations and their unique needs.

- i. Establish child care services that are available on both a full-time and part-time basis and accommodate work schedules that are outside of the usual Monday to Friday 9am to 5pm work week.
- ii. Establish child care services and supports that are available to all, regardless of immigration status, particularly for women fleeing violence.
- iii. Prioritize access to free care without delay for women fleeing violence, women who need support to parent and children awaiting kinship care placements.
- iv. Establish child care services that are fully accessible to children with disabilities so that they are not excluded or disadvantaged.
- v. Prioritize and expand initiatives that fund child care providers directly and achieve decreases in fees for all parents and guardians, so that providers cannot raise the rates in response to public funding. Avoid income-tested subsidies.

¹⁸ British Columbia, "22,000 new licensed child care spaces to help B.C. families," <https://news.gov.bc.ca/releases/2018CFD0050-001352>

¹⁹ *\$10aDay.ca Briefing Note supra* note 21 at 2.

²⁰ *\$10aDay.ca Briefing Note supra* note 21 at 2 and 3.

3. Restricted Access to Social Assistance and Inadequate Income Supports

A. Legislative Definitions

Currently, certain women in BC are found ineligible for social assistance because legislative definitions prevent them from being recognized as financially independent. In order to be eligible for income or disability assistance, a person must apply on behalf of their entire family unit, and legislative definitions of “dependent” and “spouse” govern who is or is not a member of a given family unit.²¹ The definitions of “dependent” and “spouse” in the *Employment and Assistance Act* (the “EAA”) and the *Employment and Assistance for Persons with Disabilities Act* (the “EAPWDA”)²² are thus critical to how the BC Ministry of Social Development and Poverty Reduction (the “Ministry”) determines eligibility for income and disability assistance.

The current definitions exclude financially unsupported women from receiving social assistance if they are legally married but separated, if they co-reside with a partner for only three months, or if they co-reside with a roommate who sometimes indicates a parental role for the applicant’s dependent child. In all of these situations, the partner, ex-partner, or roommate is under no obligation to provide financial support to the applicant, yet are assumed to do so. To meet the Ministry’s stated goal of capturing relationships in which both parties have equal access to each other’s income and assets during a relationship,²³ only relationships that exhibit significant financial dependence or interdependence (i.e., where significant access to income and assets is actually being provided) are relevant to the provision of income assistance or disability assistance. Otherwise, they should not be treated as a joint financial unit.

The current definitions of both “dependent” and “spouse” impose financial dependence on another person. By forcing this financial dependence, the definitions put women at heightened risk of relationship violence, undermine their independence, and prohibit them from entering new relationships that could eventually provide mutual support. Legal scholars and commentators have noted for some time that dependency eligibility rules regarding income and disability assistance, and particularly those that deem a

²¹ *Employment and Assistance Regulation*, BC Reg 263/2002, s 5(1) [“EAR”]; *Employment and Assistance for Persons with Disabilities Regulation*, BC Reg 265/2002, s 5(1) [“EAPWDR”].

²² *Employment and Assistance Act*, SBC 2002, c 40 and *Employment and Assistance for Persons with Disability Act*, SBC 2002, c 41.

²³ When the definition of spouse was amended in 2006, then Minister Richmond explained the Ministry’s goals in defining dependents: “For the Ministry, dependency is premised on the economic principle of a social unit where there is support or obligation and, if established, considers the income and assets of all parties as available to all members of a family unit.” British Columbia, Official Reports of the Legislative Assembly (Hansard) 38th Parl 2nd Sess, Vol 9 No 10 (26 April 2006) at 4049 (Hon C Richmond).

relationship to be spousal, disproportionately impact women.²⁴ In addition, courts have also concluded that such provisions discriminate against women.²⁵

The current definitions focus on whether or not a relationship between two people is spousal in nature, or whether a person is playing some aspect of a parental role for a dependent child. These definitions reflect an archaic and outdated understanding of families and spousal relationships as unions that are primarily economic in nature, an interpretation that has historically disadvantaged women. In contrast, family law has modernized significantly and it is now well-settled that financial dependence is not a determinative factor when deciding whether a relationship is marriage-like.²⁶

Family law in BC also allows for both married and common law spouses to separate while cohabitating if they are living their lives separately and at least one spouse has the intention to separate. In contrast, the current definition of “spouse” in the *EAA* and the *EAPWDA* does not leave room for the Ministry to recognize separations and the financial independence that flows from them for persons receiving income or disability assistance. This disproportionately impacts low-income applicants. It is more common for low income couples to continue residing in the same residence because they are unable to afford two homes, but they can separate their lives by not sharing things like meals, a bedroom and social activities

The *EAA* and the *EAPWDA* provide the only scheme in BC that uses three months of cohabitation to determine whether relationships are spousal in nature. Many statutory schemes in BC, including the modernized *Family Law Act*, use a period of two years of cohabitation to define spousal relationships.²⁷ The three-month cohabitation rule dissuades recipients from “trying on” relationships in a safe way that respects their independence. They are in turn less likely to form long-term, supportive spousal relationships without putting themselves at risk early in a relationship. Similarly, women with disabilities may be forced to forgo relationships that would support their dignity and independence such as a roommate that assists with household tasks. Single mothers experience serious financial consequences and forced dependence if they form relationships that support their parenting. They may be forced to forgo these kinds of supportive relationships, which would benefit women and children, to ensure they remain financially independent.

²⁴ See for example, Rebecca Crookshanks, “Marginalization Through a Custom of Deservingness: Sole-Support Mothers and Welfare Law in Canada” (2012) 17 Appeal 97; Shelley AM Gavigan & Dorthy E Chunn, “From Mothers’ Allowance to Mothers Need Not Apply: Canadian Welfare Laws as Liberal and Neo-Liberal Reforms” (2007) 45 Osgoode Hall LJ 733; Martha Jackman, “Women and the Canada Health and Social Transfer: Ensuring Gender Equality in Federal Welfare Reform” (1995) 8 Can J Women & L 371.

²⁵ *Falkiner v Ontario (Ministry of Community and Social Services, Income Maintenance Branch)* (2002), 212 DLR (4th) 633 (OCA) [*Falkiner*]; *R v Rehberg* (1994), 127 NSR (2d) 331 (SCNS).

²⁶ *Falkiner*, *supra* note 23 at para 96.

²⁷ *Cremation, Internment and Funeral Service Act; Family Compensation Act; Family Law Act; Forest Act; Home Owner Grant Act; Land (Spouse Protection) Act; Land Tax Deferral Act; Members’ Remuneration and Pensions Act; Notaries Act; Pension Benefits Standards Act; Property Transfer Tax Act; School Act; Utilities Commission Act; Wills, Estates and Succession Act; and Workers Compensation Act.*

Given the above, we urge the BC government to amend the *Employment Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act* to ensure that both schemes support the financial independence of women.

Recommendation #3: amend the definitions of “dependent” and “spouse” to ensure eligibility for social assistance is based on real financial need, and provide financial support to the Ministry to implement the change

While we understand that legislative amendments are not within the purview of the Finance Committee, we also recognize that the likely obstacle to these amendments is funding. Therefore, we urge the government to further invest in social assistance in the 2019 Budget, with particular attention paid to amending these definitions that unfairly exclude certain applicants.²⁸

B. Income Supports

We also urge the BC government to increase social assistance rates, including welfare and disability rates. We echo the recommendations of the BC Poverty Reduction Coalition in this area. Although BC raised the welfare and disability rates as recently as 2017, the current welfare rate of \$710 is only 43% of the Market Basket Measure in BC.²⁹ The Market Basket Measure reflects the measure of income needed to cover the costs of a basic basket of goods and services, including food, clothing, transportation, and shelter.³⁰ Unless BC addresses the gap between social assistance rates and the province’s Market Basket Measure, British Columbians on social assistance will continue to struggle to pay for shelter, food, and any other basic needs.

Another income support in need of reform is the BC Early Childhood Tax Benefit. Currently, families with a child under six years old can receive up to \$660 per year for each child. This amounts to only \$55 per month. The government has announced its aim to reduce child poverty by 50% in the next five years.³¹ A larger childhood tax benefit that applies to families of children of *all* ages would help to reduce child poverty.

Recommendation #4: increase income supports by raising welfare and disability rates and by expanding the childhood tax benefit.

²⁸ See our 2016 briefing note for specific suggestions on what needs to be changed in the definitions of “dependent” and “spouse” in the *Employment Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act*: http://www.westcoastleaf.org/wp-content/uploads/2016/09/West-Coast-LEAF_Dependency-Briefing-Note_Sept-26-2016.pdf.

²⁹ BC Poverty Reduction Coalition, *Submission for the Development of a Poverty Reduction Strategy for BC* (BC Poverty Reduction Coalition, Vancouver: March 2018), http://bcpovertyreduction.ca/wp-content/uploads/2018/03/BCPRC_SubmissionPRConsultation_Mar15_2018.pdf at 9

³⁰ Statistics Canada, “Market Basket Measure (MBM),” updated September 13, 2017, (October 15, 2018) <https://www12.statcan.gc.ca/census-recensement/2016/ref/dict/pop165-eng.cfm>.

³¹ British Columbia, “Historic legislation sets targets, timelines to reduce poverty,” <https://news.gov.bc.ca/releases/2018SDPR0051-001912>

- i. Increase social assistance rates, including raising welfare and disability rates to 75% of the poverty line (Market Basket Measure) immediately and to 100% of the MBM in 2 years.
- ii. Redesign the BC Early Childhood Tax Benefit into a benefit that covers children up to the age of 18, and increase the maximum benefit to \$1,320 per year for each child.

Conclusion

The above recommendations make financial sense and will improve the security and dignity of women and all people who experience gender based discrimination in BC. The issues explained above exacerbate poverty and violate the legal rights of women, gender-diverse people, and children in BC. The provincial government must do more, as a matter of urgent priority, to respect, protect and fulfill equality rights.

We call on the Finance Committee to urge government to make investing in gender equality a focus of the 2019 BC Budget. Thank you for considering our submission.

Yours truly,



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