

**Complaint against the Federal Government of Canada
and the Provincial Government of British Columbia**

For violations of The International Covenant on Economic, Social and Cultural Rights

Filed by the Simon Fraser Student Society (Canadian Federation of Students Local 23)

Overview

The United Nations International Covenant on Economic, Social and Cultural Rights contains a clause specifically concerning higher education. Article 13 of the agreement calls for the progressive introduction of free education as a means to achieving equal access for all. We, the Simon Fraser Student Society (SFSS), a member of the Canadian Federation of Students (CFS), argue that the actions of both the Federal Government of Canada and the Provincial Government of British Columbia (BC) over the last decade have constituted an egregious violation of international law. This document elaborates on the interpretations of the covenant as articulated by the Committee on Economic, Social and Cultural rights. It details the obligations of the governments of Canada and BC under this agreement, and lastly, demonstrates how they have failed to live up to them.

The Covenant

The United Nations International Covenant on Economic, Social and Cultural Rights (hereafter the Covenant) came into force on January 3, 1976. Today it has been signed by over 144 countries worldwide, including Canada, which signed on August 19, 1976. The pretext of the agreement states that “equal and

inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”¹ The Covenant was signed as an agreement between all parties to work toward the goal of equality and justice among all members of the human species.

Although there is no mechanism in the international courts by which this Covenant can be enforced, by signing on, states agree to take legislative measures to bring domestic law into alignment with the Covenant. Article 2.1 to the Covenant states that

each state will take steps, “with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including

particularly the adoption of legislative measures.”² In the fifth session of the Committee On Economic, Social and Cultural Rights, a general comment was issued interpreting this clause, where it was stated that, “steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the states concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.”³ Although ‘a reasonably short time’ is never clearly defined, 29 years has elapsed since the Government of Canada signed onto the Covenant. Canada has therefore had ample time to meet the various goals outlined in the Covenant, but sadly, some of these goals have not been met.

“Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.”

The International Covenant on Economic, Social and Cultural Rights

Specifically, article 13 of the Covenant concerns education. 13.1 stipulates that by signing onto the agreement, states recognize the right of everyone to education, ensured through various economic and social mechanisms. In 13.2 (c) it states, “higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.”⁴

User fees for education, by contrast, are clearly viewed as a barrier to the exercise of the right to education. In general comment 11, the Committee on Economic,

Social and Cultural Rights interprets the call for free education as follows: “fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to

the enjoyment of the right and may jeopardize its realization. They are also often highly regressive in effect.”⁵ By signing onto this agreement, the Government of Canada has explicitly agreed that fees for higher education constitute a barrier to the right to education. As such, the Government of Canada has agreed to introduce free higher education, and further agreed to use legislative measures for this end. With 29 years having been elapsed since this agreement was

made, we should expect that student costs to education in Canada should at least be on the decline if not eliminated all together. This, however, has not happened, and we therefore call upon the governments of Canada to honour International Law.

Government Non-Compliance

Failure to comply with the Covenant by both the Federal Government of Canada and the Provincial

Government of BC has a long and complex history. Higher education in Canada is administered by the provinces, but funding for social services including higher education depends on transfer payments from the Federal

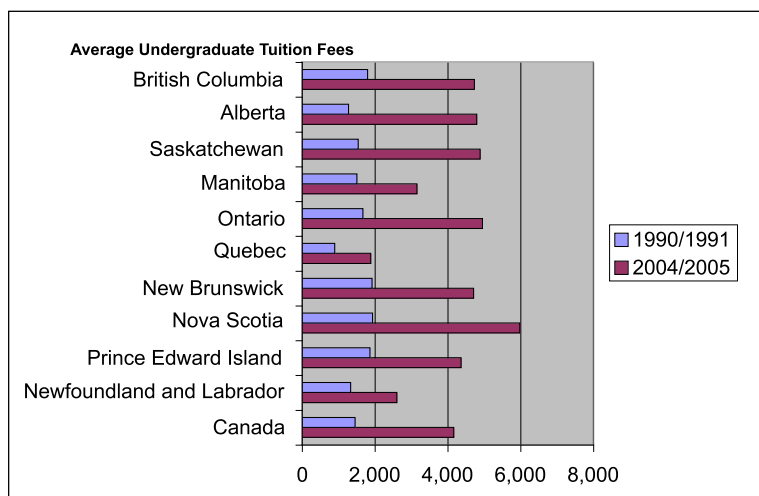


Figure 1 - From Statistics Canada, "University Tuition Fees." (www.statcan.ca)

Government. Starting in 1993, the Federal Government began the trend of decreasing these payments to the provinces. As a result, higher education today receives \$3 billion less than it did 10 years ago before the cuts to transfer payments began.⁶ This decrease in federal funding for higher education has resulted in a ripple effect all the way down to students. Provinces have often been unable or unwilling to fully fund universities

and so in turn the universities have had to resort to increased user fees to cover operating costs. According to Statistics Canada, in the time between the 1990/1991 and 2004/2005 school years, average tuition fees across Canada increased by 185%, with the rates of increase growing consistently over the last 4 years.⁷

Looking Further into the past, we can see that the trend of rising tuition fees has not been limited to the past decade. Tuition fees have been rising steadily in Canada since the 1970s, and aggressively so since the 1980s. In fact, after adjusting for inflation, average Canadian tuition fees have more than tripled since 1980. Canada has not simply forgotten about its obligations over time. Since the time of signing onto the Covenant, the Government of Canada has systematically ignored and violated the demands of article 13.2(c) of the Covenant.

Although the Federal Government bears a large portion of the blame for the widespread underfunding and resulting increased costs of higher education, the Provincial Government of BC since 2001 has also neglected its duties under the covenant. From

1995 to 2001, the Government of BC instituted a freeze on tuition fees for higher education. During this time, tuition fees remained stable, and predictable. In 2001, however, a newly elected government eliminated the freeze, allowing unchecked fee increases. This, coupled with an unwillingness to fully fund post-secondary institutions necessitated increased fees to meet the budgetary requirements of individual institutions. For universities, fees have increased upwards of 70% on average, and for colleges, the increases have amounted

to over 150%. Should fees have remained the same, students entering a degree program in 2001 could have expected to pay an average of \$10,368 for a four-year degree program, whereas today, students can expect to pay upwards of \$18,940 for the same program.⁸

In conjunction with raising fees for higher education, it is clear that Canadian governments are shying away from public funding and towards private sources of revenue for higher education. In 1986, government grants to Canadian Universities constituted 81% of operating revenues for universities.⁹ Today, that figure has slipped to 56%. In the meantime, private

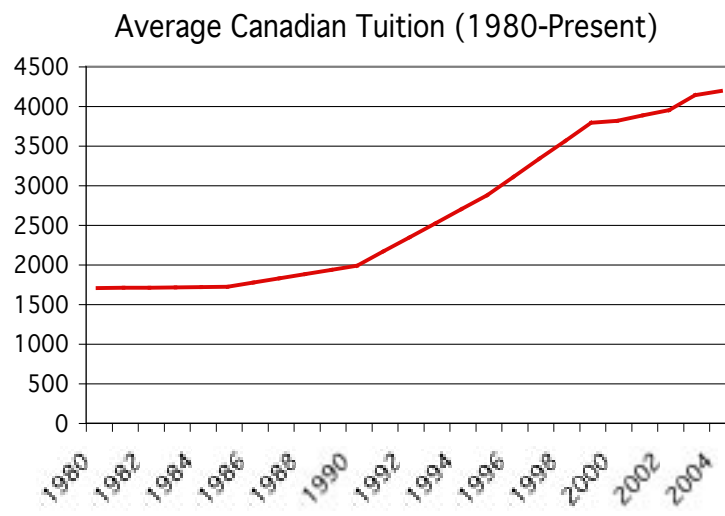


Figure 2 - All numbers collected from Statistics Canada and adjusted for inflation constant to 2004 dollars.

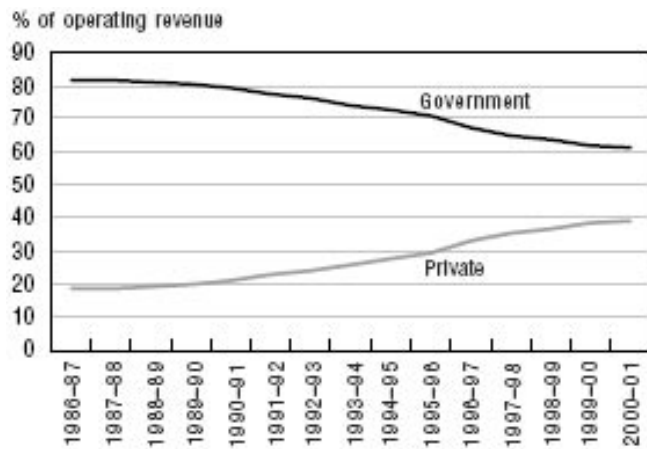


Figure 3 - From Statistics Canada, "Changing Patterns in University Finance."

sources of revenue, including tuition fees, donations, contracts, and investment have ballooned from 19% in 1986 up to 44% in 2002. It is clear that contrary to the demands of the Covenant for free, public education, Canada has been moving in the direction of a user-pay, privately funded model of education, a model that raises serious concerns about accountability, access and academic freedom.

All evidence points to continued increases into the foreseeable future. BC government budget predictions forecast revenues from tuition fees in disparity with predictions about enrolment for the next four years. Since revenue from user fees is expected to rise more steeply than enrolment, the only explanation is an expectation of further increases in fees. Indeed, in October 2004, the University of British Columbia announced it anticipated yet another fee increase for the 2005/2006 year, and similar announcements are expected from institutions across the country.

In the past, the Committee on Economic, Social and Cultural Rights has taken a hard stance against tuition fees. In 2002, the United Kingdom reported to the Committee that it had introduced fees for higher education, a move that was quickly condemned in the Committee's concluding observations. "The Committee notes with concern that the introduction of tuition fees and student loans, which is inconsistent with article 13 (2) (c) of the Covenant, has tended to worsen the position of students from less privileged backgrounds, who are already underrepresented in tertiary education."¹⁰ Similarly, Canada last reported to the Committee in 1998 at which time the Committee expressed a similar dissatisfaction over the situation of tuition fees in Canada: "The Committee views also with concern the fact that tuition fees for university education in Canada have dramatically increased in the past few years, making it very difficult for those in need to attend university in the absence of a loan or grant. A further subject of concern is the significant increase in the average student debt on graduation."¹¹ Since the time of that report, tuition fees have continued to rise at an increasing rate, especially in BC, pointing to the continuing disregard for international Human Rights among the Federal and Provincial governments of Canada.

CFS/SFSS Action

Since 2001, the Canadian Federation of Students (CFS) in BC has undertaken numerous projects and campaigns, demanding compliance with the Covenant.

On February 4 2004, tens of thousands of students across the province demonstrated peacefully to voice their opposition to rising fees. More recently, the CFS delivered a petition to the Legislative Assembly of BC calling for the reduction of tuition fees to 2001 levels and increased funding to post-secondary institutions. The petition was signed by over 37,000 individuals, but none of this has elicited a reversal of the continued violations of the Covenant.

Without any local legal mechanisms in place to ensure compliance with the Covenant, however, students in BC have struggled to find avenues for recourse. International law is seen as the last, but most viable option for securing the universal right to education.

Recourse

The United Nations Committee on Economic, Social and Cultural Rights has agreed that “[P]rogressive introduction of free education” means that states “have an obligation to take concrete steps towards achieving free secondary and higher education.”¹² Again, the parties to the Covenant agree that this objective is to be attained through every means possible including the implementation of legislative measures, meaning that the Government of Canada is obligated to step in and reverse the trend of rising fees. Considering that the Government of Canada has completely ignored the widespread problem of access to higher education, however, and

the Government of BC has actively precipitated it, it is clear that without pressure, Canada has no intention of honouring its obligations under international law.

As a minimum, therefore, compliance with the Covenant must begin with a legislative move by the BC government freezing tuition at current levels coupled with full funding for post-secondary institutions. A further ‘concrete step’ towards free education must also come from an increase in the payments from the Federal Government of Canada to the provinces for the purposes of funding post-secondary education. This increased funding would lessen then burden on institutions to meet budgetary requirements and promote a reduction of fees.

We therefore call upon the United Nations Committee on Economic, Social and Cultural Rights to investigate the widespread violation and disregard for international law in Canada, and further to employ all and every means available to pressure the governments of Canada and its provinces into compliance with the Covenant. In particular, we demand that the governments of Canada and BC live up to their obligations with regard to the implementation of free education in accordance with article 13.2 (c) of the United Nations International Covenant on Economic, Social and Cultural Rights.

Notes

¹The International Covenant on Economic, Social and Cultural Rights can be found here: http://www.unhchr.ch/html/menu3/b/a_ceschr.htm

²Office of the High Commissioner for Human Rights, *The International Covenant on Economic, Social and Cultural Rights* (http://www.unhchr.ch/html/menu3/b/a_ceschr.htm).

³Office of the High Commissioner for Human Rights, *Nature of States Parties Obligations, (Art.2 Part 1) CESCR General Comment 3* (Committee on Economic, Social and Cultural Rights, Fifth Session, 1990, [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+3.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument)).

⁴International Covenant on Economic, Social and Cultural Rights 13.2 (c).

⁵United Nations Economic and Social Council, *Plans of Action for Primary Education (Art.14) EC.12/1999/4* (Committee on Economic, Social and Cultural Rights, Twentieth Session, May 1999, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/9c6f685a5a919b8802567a50049d460?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/9c6f685a5a919b8802567a50049d460?OpenDocument)).

⁶BC Canadian Federation of Students, *Tuition Fee Hike History* (<http://www.reducefees.ca/CA30.php>, 2005).

⁷Statistics Canada, “University Tuition Fees,” *The Daily* (September 2, 2004, <http://www.statcan.ca/Daily/English/040902/d040902a.htm>).

⁸Statistics Canada - “Tuition and Living Accommodation Costs for Full-time Students at Canadian Degree Granting Institutions” - Survey ID 3123

⁹ Statistics Canada, “Changing Patterns of University Finance,” *Education Quarterly Review* (Vol.9 No.2, 2003) and Statistics Canada, “University Finances,” *The Daily* (August 19, 2004).

¹⁰United Nations Economic and Social Council, *Concluding Observations of the Committee on*

Economic, Social and Cultural Rights : United Kingdom of Great Britain and Northern Ireland (E/C.12/1/Add.79) (Committee on Economic, Social and Cultural Rights, Twenty-Eighth Session, May 2002, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.79.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.79.En?OpenDocument)).

¹¹United Nations Economic and Social Council, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada (E/C.12/1/Add.31)* (Committee on Economic, Social and Cultural Rights, Nineteenth Session, December 1998 [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.31.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.31.En?OpenDocument)).

¹²*International Covenant on Economic, Social and Cultural Rights* 13.2 (c).