

PIVOT LEGAL LLP

November 25, 2009

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Commission/Sub-Commission Team (1503 Procedure)
Support Services Branch
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10, Switzerland

UN High Commissioner for Human Rights, Navanethem Pillay

Dear Commissioner Pillay:

We act for the complainants in the following complaint against the Government of Canada and the Province of British Columbia regarding human rights violations under the International Covenant on Economic, Social and Cultural Rights. We submit this complaint as per the Section 1503 complaint mechanism.

The attached complaint describes how the Governments of Canada and British Columbia have failed to meet their international human rights commitment to ensure that higher education is equally accessible to all. We say that both levels of government have failed to:

- control tuition fees,
- provide sufficient financial support to students in need, and
- provide adequate funding to the post secondary sector.

In these ways, the Governments of Canada and British Columbia have created a system of higher education that is inaccessible to many capable students. We ask that the UN Office of the High Commission of Human Rights take a proactive approach to investigating Canada's failure to live up to its human rights commitments.

Yours truly,
Pivot Legal LLP



Katrina Pacey
Barrister & Solicitor

Enclosures

**Human Rights Council 1503 Procedure
November 25, 2009**

**University of British Columbia Alma Mater Society &
Tristan Markle**

- v -

**Government of Canada
Province of British Columbia**



***Alma Mater Society - University of British
Columbia
6138 SUB Boulevard
Vancouver, BC
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I. Information on the complainants

Names: Alma Mater Society – Blake Frederick, President
Tristan Markle – University of British Columbia graduate

Nationality: Canadian

Place of birth: The Alma Mater Society ("AMS") is the Student Society of the University of British Columbia ("UBC"). The Society is incorporated as a non-profit society in the Province of British Columbia under the *Society Act*.

Tristan Markle is a Canadian citizen and a UBC graduate.

The complainants respectfully submit that date of birth is not relevant for the purposes of this complaint.

Address for correspondence on this complaint:

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Submitting the communication:

The AMS is submitting this complaint on behalf of their membership.

Tristan Markle submits this complaint on his own behalf.

Please provide the following personal details of that other person:

The AMS is an elected body that represents UBC students. Therefore, in its role as a student union, the AMS submits this complaint on behalf of all UBC students and on behalf of students at affiliated colleges.

Appropriateness of submitting on behalf of these other people

The AMS represents over 45,000 UBC students as well as students at affiliated colleges. A council of directors directs the non-profit organization and the day-to-day operations are overseen by a 5-member group of executives.

The mission statement is “to improve the quality of the educational, social, and personal lives of the students of UBC.” The AMS operates student services, student owned businesses, resource groups, and clubs. The AMS advocates for students’ issues and ensures that the needs of students are presented to the University administration and the federal, provincial, and municipal governments.¹

II. State concerned/Articles violated

Canada is the state concerned with this complaint. In 1976, Canada became a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which is the relevant human rights document with which this complaint is concerned.

The complainants allege that Governments of Canada and British Columbia (the “Governments”) have violated the following article of the ICESCR:

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) 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;

¹ For further information, please refer to the UBC Alma Mater Society website at <http://www.ams.ubc.ca/>.

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

III. Exhaustion of domestic remedies/Application to other international procedures

Steps taken to obtain redress

Since 2001, the AMS has been involved in a campaign to encourage the Governments to reduce and control tuition fees and increase the accessibility of post-secondary education in BC.

At the provincial level, the AMS has:

- i. ***Led a provincial election awareness campaign on student issues:*** This education campaign involved two components. First, there was a public education component aimed at encouraging students to vote for politicians and parties that supported the AMS position on tuition fee reduction and university funding. Second, there was a lobbying component encouraged students to meet with political candidates to explain to them the AMS position on a number of issues. They described the AMS position which is that the government should: increase post-secondary funding, commit to providing more accessible housing, provide more childcare spaces, increase provincial funding for public transit, and establish better student representation on government bodies.
- ii. ***Met with candidates that were running for political office during Provincial election to discuss tuition issues:*** These meetings were part of the two-part campaign described above. These meetings occurred between March 2009 and May 2009.
- iii. ***On an annual basis, lobbied provincial politicians directly on tuition issues:*** From 2007 to 2008, the AMS hosted events called "Lobby Days" where UBC students meet government and opposition MLAs in Victoria to discuss government post-secondary funding. Lobby days were not held in 2009 because it was an election year. The AMS Council intends for Lobby Days to continue in 2010. During the 2009 election year, AMS also met with provincial candidates to discuss tuition funding. Throughout May and

November of 2009, the AMS also arranged for students to meet with government ministers and opposition critics responsible for childcare, transportation, the 2010 Olympics and advanced education. The AMS also arranged for students to meet with staff at the Residential Tenancy Office to discuss student housing issues.

- iv. *On an annual basis, made presentation at hearings and written submissions during pre-budget consultation:* The AMS presented to the Select Standing Committee on Finance and Government Services on October 15, 2008 and October 23, 2009. The AMS also made submissions in 2006 and 2007 for the subsequent federal budgets. See the sample submissions that are attached as appendices to this submission.

At the federal level, the AMS has employed a range of lobbying strategies in an attempt to persuade the federal government to make post-secondary education more accessible. For example, the AMS has:

- i. *Carried out a federal election awareness campaign on student issues, including high tuition rates:* From September 2008 to October 14, 2008, the AMS conducted an awareness campaign on student issues and directly lobbied all political candidates on the AMS position on access to education, as described above. In addition, the AMS position at the federal level included a position on immigration, to encourage the government to address the problem of accreditation of foreign training and degrees.
- ii. *Met with candidates for political office during Federal election to lobby directly on tuition issues:* this occurred September 2008 to October 14, 2008 as part of the awareness campaign described above.
- iii. *Lobbied federal politicians and bureaucrats annually in Ottawa as part of the Canadian Alliance of Student Associations (CASA):* From 2006 - 2007, the AMS worked with CASA to lobby politicians who were running in Vancouver ridings regarding accessibility of education. The AMS did not lobby in 2008 because it was an election year. CASA continued these lobbying activities in 2009.
- iv. *On an annual basis, presented oral and written submissions during pre-budget consultation:* See the sample submissions that are attached as appendices to this submission.

Why a remedy has not been sought through the court process

At this time, there does not appear to be a remedy available through the Canadian legal system. The complainants have explored possible arguments based on Canadian law. In the field of contract law, the case *MacDonald v.*

*University of British Columbia*² is instructive. In that case, an action was brought by two former UBC students against the University for damages representing the difference between the tuition fees originally quoted, and the tuition fees ultimately charged following the lifting of the provincial government statutory tuition freeze. The students alleged a breach of contract between the parties. The action was dismissed as it was found that UBC had, as an express term of its contract, a provision that permitted the university to change its tuition fees without notice.

With respect to a human rights argument, Canada has not incorporated a "right to post-secondary education" in its federal, provincial or municipal laws. Further, the Supreme Court of Canada has previously held that economic rights are not included in Canada's *Charter of Rights and Freedoms*.³ Legal experts have noted the emerging *Charter* jurisprudence where poverty-related claims have been unsuccessful because of their characterization as 'social and economic' rights claims.⁴ At this time, Canadian constitutional and human rights law does not appear to open the door for an argument that could result in an order compelling government to ensure the affordability of post-secondary education.

Submitting to other organizations

This matter has not been submitted to any other international investigation or settlement groups.

² *MacDonald v. University of British Columbia* [2004] B.C.J. No. 2106 (BCSC)

³ *Gosselin v. Quebec (AG)*, [2002] 221 D.L.R. (4th) 257 (S.C.C.); *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

⁴ Gwen Brodsky and Shelagh Day, "Beyond the Social and Economic Rights Debate: Substantive Equality Speaks to Poverty." Poverty and Human Rights Centre, Vancouver, 2002. Available online: <http://povertyandhumanrights.org/2002/08/beyond-the-social-and-economic-rights-debate-substantive-equality-speaks-to-poverty-2002/>

IV. Facts of the complaint

We submit that the Governments have engaged in a consistent pattern of gross human rights violations. The facts set out in this complaint demonstrate a sequence of legislative and policy changes that have resulted in a post-secondary education system that is inaccessible to a very significant population of Canadians. In particular, post-secondary education has become increasingly unavailable for individuals from low-income or disadvantaged backgrounds. As such, Canada has failed to comply with its commitments pursuant to the ICESCR.

Governments' shared jurisdiction over education

Canada's *Constitution Act, 1867* specifies that the provincial governments are responsible for the delivery of post-secondary education.⁵ In fact, both the provincial and federal governments have significant influence over the funding and administration of education. The federal government maintains considerable power through transfer payments to the provinces, while also controlling the following relevant programs:

- the national student financial assistance program,
- Aboriginal post-secondary education,
- research, copyright and minority language education,
- Tri-council funding through the Canadian Institutes of Health Research (CIHR),
- the Natural Sciences and Engineering Research Council (NSERC),
- the Social Sciences and Humanities Research Council (SSHRC) grants, scholarships and fellowships,
- funding for the Canada Research Chair program,
- oversight of StudentAid BC, and
- control of federal tax benefit programs for students.

Given the fact that tuition fees and university funding are directly related to policy at the provincial and federal level, both levels of government are named in this complaint.

Violations of international obligations

The complainants allege that, by rapidly increasing tuition fees without creating sufficient financial supports for students in need, the Governments have violated Article 13(2) of the ICESCR. While the Convention recognizes that access to

⁵ *The Constitution Act, 1867* (U.K.), 30 & 31 Victoria, c. 3, s. 93

higher education will be limited based on individual capacity, Article 13(2) requires that signatories ensure “availability, accessibility, acceptability and adaptability which are common to education in all its forms at all levels.”⁶ The complainants allege that the Governments have failed to fulfil their commitment to ensure availability and accessibility of higher education.

This is not the first time this issue has been brought to the attention of the United Nations (the “UN”). On two previous occasions, the Committee on Economic, Social and Cultural Rights has expressed concerns about Canada’s non-compliance with Article 13. The Committee considered a periodic report of Canada in November 1998 and its concluding remarks urged the Canadian government “to develop and expand adequate programmes to address the financial obstacles to post-secondary education for low-income students, without any discrimination on the basis of citizenship status. In 2006, the Committee recommended “that the State party ensure by every appropriate means that higher education be made equally accessible to all, on the basis of capacity.”⁷ The following submissions detail the Governments’ ongoing failure to follow through with its commitments to higher education, and its failure to act upon the UN’s past recommendations.

FAILURE TO ENSURE ACCESSIBILITY OF HIGHER EDUCATION TO ALL QUALIFIED PERSONS

Article 13 2(c) of the ICESCR requires that affordable higher education is made available for all persons with the necessary capacity. Furthermore, signatories must endeavour to meet this commitment by every appropriate means, and in particular through the progressive introduction of free education.

In their report on “Implementation of the International Covenant on Economic, Social and Cultural Rights”, the UN Economic and Social Council described the criteria for an accessible system of higher education:

Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:

Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (see paras. 31-37 on non-discrimination);

⁶ UN Economic and Social Council, “The Right to Education (Art. 13)”: 08/12/99. E/C.12/1999/10. (General Comments).

⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), “UN Committee on Economic, Social and Cultural Rights: Concluding Observations, Canada, 22 May 2006”, E/C.12/CAN/CO/4; E/C.12/CAN/CO/5 (10).

Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a "distance learning" programme);

Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available "free to all", States parties are required to progressively introduce free secondary and higher education⁸

Increasing tuition fees and decreasing financial support for students in British Columbia

Over the past thirty years, Canadians have witnessed the erosion of public funding to post-secondary education. During the 1960s, tuition rates were very low. Nearly all university funding came from government as opposed to student tuition fees. The low tuition rates caused a significant increase in enrolment in post-secondary education, with a particularly notable increase in demographic groups who had not previously had access to higher education. During that time, the Governments' commitment to creating accessible post-secondary education was further demonstrated by the signing of the ICESCR in 1976.

However, government support for higher education began to wane in the 1980s. A Canadian Federation of Students ("CFS") report on tuition fees in Canada explains how:

...a value shift began to take root in governments in Canada and most other western countries, as most jurisdictions began cutting funding for public programs. Post-secondary education was an easy target for these funding cuts. Because universities and colleges are funded through a combination of both federal and provincial grants plus user fees, governments were able to cut funding by forcing students and their families to subsidise the difference. For various reasons, this option was not available for governments looking to cut public investment in health-care or primary and secondary education. Between the early 1980s and the early 1990s, average tuition fees at Canadian universities more than doubled. Average tuition fees at colleges, excluding those in Québec, more than tripled.⁹

⁸ UN Economic and Social Council, "The Right to Education (Art. 13)": 08/12/99. E/C.12/1999/10. (General Comments)

⁹ Canadian Federation of Students, "Tuition Fees in Canada: A Pan Canadian Perspective on Paying More and Getting Less." (2007), p. 1.

This trend continued into the 1990s. Canadians were subjected to the deepest cuts to federal social spending in Canadian history, including a \$7 billion cut funding to provincial programs, including post-secondary education.¹⁰

In 1998 the rapid rise in tuition rates in Canada came to the attention of the UN Committee on Economic, Social and Cultural Rights (the "Committee"). At that time, the Committee received its third periodic report of Canada on the rights covered by Articles 1 to 15 of the ICESCR. The Committee expressed concern about Canadians' access to higher education and noted that it "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

While the UN was undertaking this review of the situation for Canadian students, the Government of British Columbia took a significant and progressive step to decrease financial barriers to entry into post-secondary education. The government introduced legislation that froze tuition rates in B.C.¹²

The legislation, which was in force from 1996 until 2002, protected students from further tuition increases. The government used its power to cap tuition at 1996 rates. The tuition freeze was a very important strategy to ensure that higher education was accessible to students from all backgrounds. Unfortunately, during this time, provincial government funding to universities and colleges (on a per-student basis) remained virtually unchanged.¹³

Then, in 2000, the BC government took further action to increase the accessibility of post-secondary education. They introduced legislation that reduced tuition fees for students at public colleges, university colleges, institutes and universities effective September 1, 2001.¹⁴ The legislation also ensures that post-secondary institutions would be compensated for the tuition fee reduction. University tuition fees would be reduced to \$2,166 per year, which amounts to a 5 percent reduction. The government also announced that, when finances permit, it was their intention to continue to reduce tuition fees.

¹⁰ Canadian Federation of Students, "Tuition fees in Canada: A Pan Canadian Perspective on Paying More and Getting Less" (2007).

¹¹ UN Committee on Economic, Social and Cultural Rights (CESCR), "UN Committee on Economic, Social and Cultural Rights: Concluding Observations: Canada, 10 December 1998", E/C.12/1/Add.31 (7).

¹² *Tax and Consumer Rate Freeze Act*, S.B.C 1996, c.17. (in force between Apr 21, 1997 and Dec 30, 2000).

¹³ Marc Lee & John Malcolmson, "Financing Higher Learning: Post-Secondary Education Funding in BC" Canadian Centre for Policy Alternatives, Vancouver. 2004.

¹⁴ *Tuition Fee Freeze Act*, S.B.C. 2000, c. 4. (in force between Apr 1, 2000 and Mar 31, 2001); *Access to Education Act*, S.B.C. 2001, c. 1. (in force between Apr 21, 1997 and Mar 31, 2002).

Following a provincial election in 2001, the newly elected government introduced legislation that lifted the freeze and deregulated tuition levels. The government of the day stated that it was "restoring post-secondary institutions' responsibility for determining their own tuition fee levels."¹⁵

Since the freeze on tuition fees was lifted in 2002, university tuition has skyrocketed while per-student government funding has decreased.¹⁶ Following the government's announcement that control over tuition fees would be returned to the universities, the UBC Board of Governors immediately raised tuition by 23%.¹⁷ That upward trend continued throughout the following years and by 2007, BC students saw undergraduate tuition fees double and graduate tuition fees rise by 184.4%.¹⁸ In comparison to other provinces, BC has experienced the fastest increase in tuition rates.¹⁹

Tuition for international students has been rising at a higher level than that for domestic students. Overall, international students face tuition fees 3 - 4 times higher than domestic students.

¹⁵ BC's Advanced Education Minister Shirley Bond, Gov of BC News Release, Institutions Have Autonomy Over Tuition Fees, Feb 11, 2002

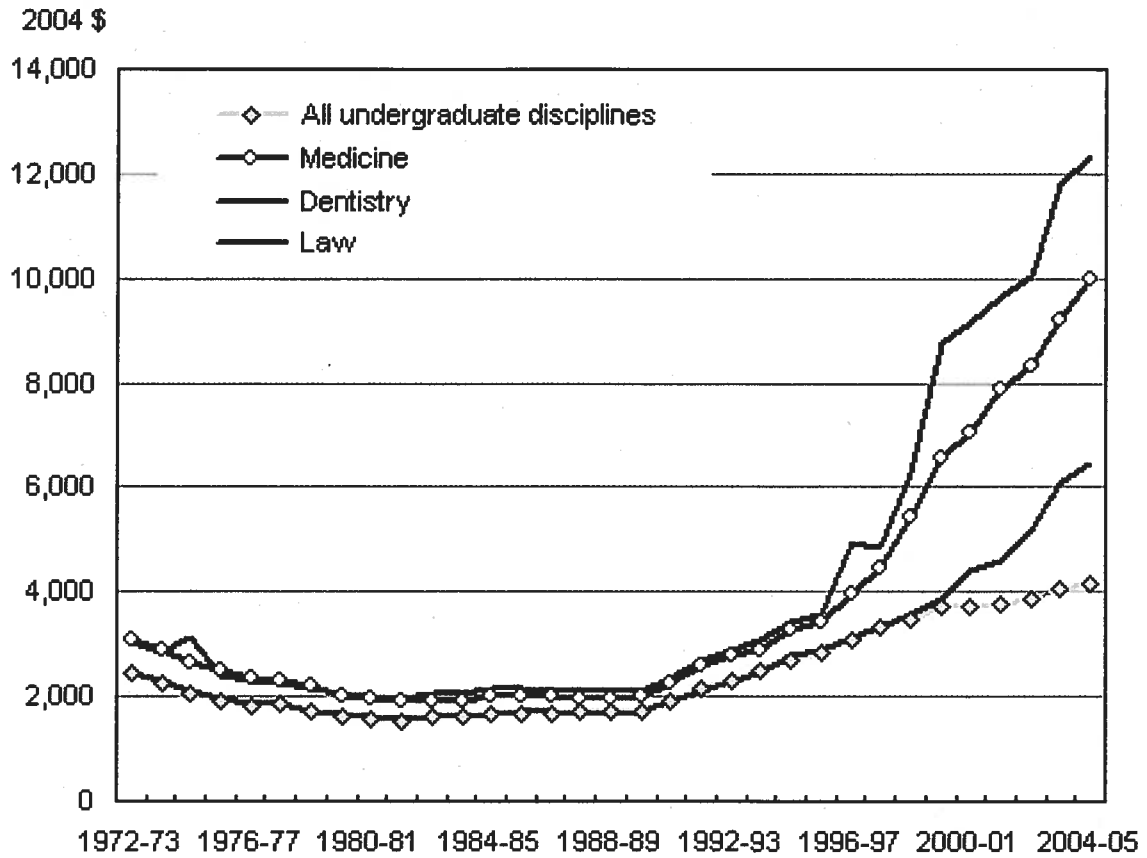
¹⁶ Marc Lee & John Malcolmson, "Financing Higher Learning: Post-Secondary Education Funding in BC" Canadian Centre for Policy Alternatives, Vancouver. 2004, p. 19.

¹⁷ University of British Columbia Media Release, Mar. 14, 2002, "UBC Board Approves First Tuition Fee Increases In Six Years" Available online:
<http://www.publicaffairs.ubc.ca/media/releases/2002/mr-02-20.html>

¹⁸ Canadian Federation of Students and UBC AMS, "Backgrounder: Recent Cuts at BC Post-Secondary Institutions". Available online:
http://www2.ams.ubc.ca/uploads/government/Cuts_background-1.pdf

¹⁹ Canadian Federation of Students, "Membership Advisory: 2009 BC Provincial Budget" 2009. Available online: <http://www.cfs.bc.ca/mysql/Mem%20Adv-2009%20BC%20Budget.pdf>; Statistics Canada, "The Daily: University tuition fees 2004/05" (September 2, 2004).

The following chart from Statistics Canada shows the rapid increase in undergraduate tuition fees in selected disciplines in Canada from 1972-1973 to 2004-2005:



The following chart sets out the increase in university tuition fees following the lift of the tuition freeze in British Columbia (undergraduate programs, by province, 1999/2000 - 2003/2004). It shows that British Columbia experienced the most significant increase in Canada (61%) since the tuition freeze was lifted in 2002.²⁰

	1999/2000	2003/2004	% increase
Canada	\$3,328	\$4,025	21
NL	\$3,373	\$2,606	-29
PEI	\$3,499	\$4,133	18
NS	\$4,262	\$5,557	30
NB	\$3,350	\$4,457	33
QC	\$1,813	\$1,862	3
ON	\$4,084	\$4,923	21
MB	\$3,488	\$3,155	-11
SK	\$3,367	\$4,644	38
AB	\$3,723	\$4,487	21
BC	\$2,568	\$4,140	61

Source: Statistics Canada, Centre for Education Statistics.

²⁰ Available online: <http://www.campaign2000.ca/>

Undergraduate tuition rates continued to rise between 2006 and 2009, as indicated in the following chart:

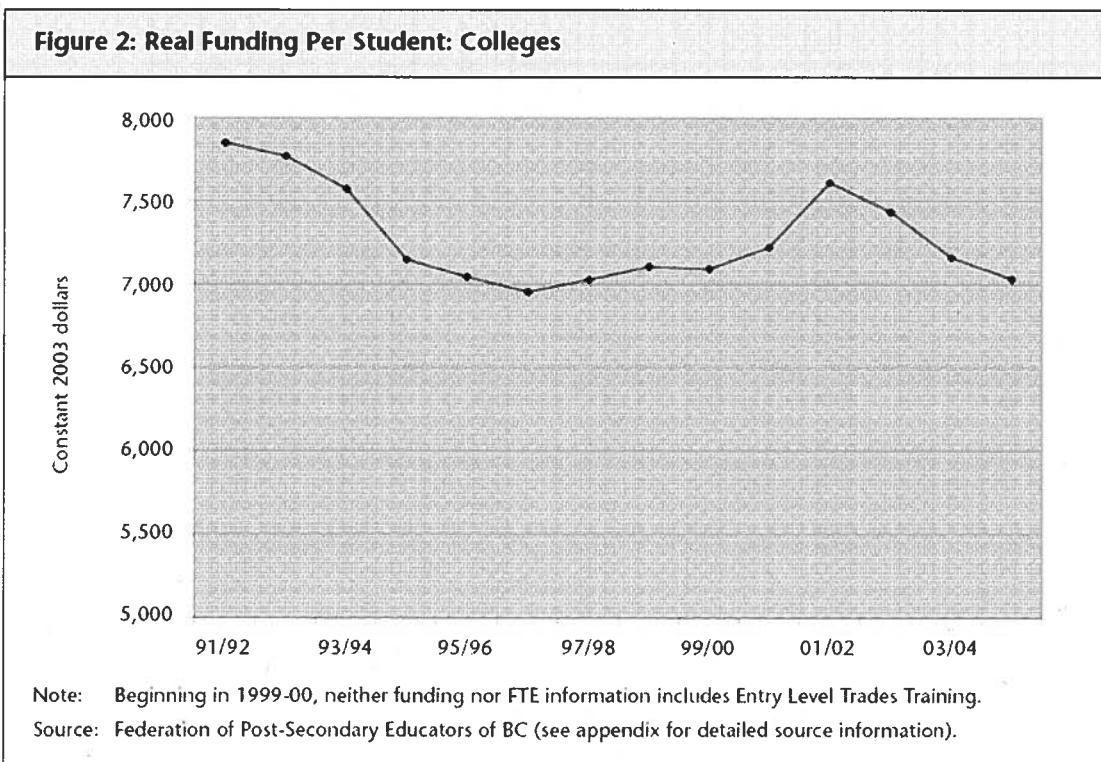
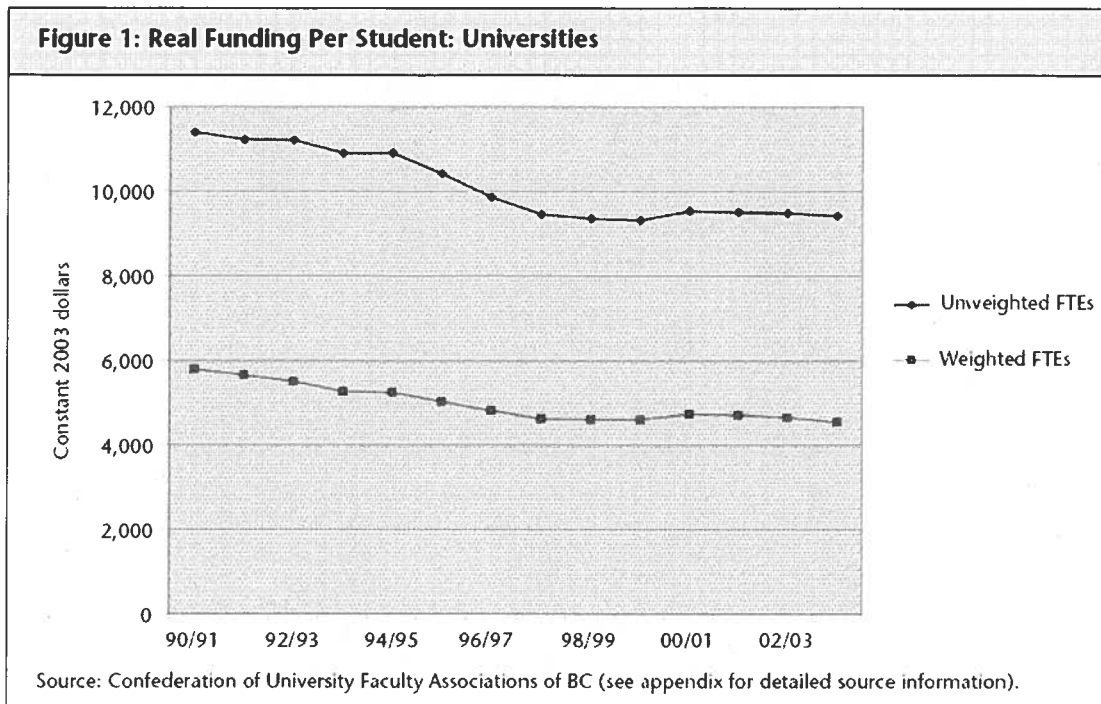
Average undergraduate tuition fees for full time Canadian students, by discipline, by province (British Columbia)

	2006/ 2007 ^r	2007/ 2008	2008/ 2009
	Dollars		
B.C.			
Agriculture, Natural Resources and Conservation	4,415	4,734	4,956
Architecture and Related Technologies	3,839	3,999	4,246
Humanities	4,610	4,838	5,058
Business Management and Public Administration	4,532	4,720	4,938
Education	4,589	4,816	5,039
Engineering	4,562	4,711	4,927
Law	9,328	9,539	9,977
Medicine	11,313	11,610	12,145
Visual and Performing Arts & Comm. Technologies	4,435	4,665	4,880
Physical and Life Sciences and Technologies	4,598	4,780	5,002
Math., Computer and information Sciences	4,562	4,706	4,924
Social and Behavioural Sciences	4,644	4,793	5,019
Other Health, Parks, Recreation and Fitness	4,562	7,603	7,995
Dentistry	--	17,761	18,578
Nursing	--	5,622	5,887
Pharmacy	--	4,686	4,900
Veterinary medicine	--	4,296	4,441
Total undergraduate	4,740	4,922	5,040
Source: Statistics Canada, Centre for Education Statistics. ²¹			

While tuition has increased, funding for universities on a per student basis has been declining in British Columbia because flat funding fails to keep pace with tuition. This spurs perpetual cuts in this sector, and further drives up tuition rates.

²¹ Available online: <http://www40.statcan.gc.ca/l01/cst01/educ50a-eng.htm>

The following graphs illustrate the rise of tuition with inflation taken into account:



In April 2007, the government of British Columbia released the *Campus 2020* report. The report examined BC's post-secondary education system with a view to providing advice and recommendations on a range of issues including "improved access and support for all students and, in particular, underrepresented groups." A series of targets were set out in the report, including goals to improve opportunity and equity:

By 2020, BC will:

- equalize public post-secondary participation and attainment rates across income quartiles
- equalize public post-secondary participation and attainment rates across the province's regions
- ensure rates of Aboriginal post-secondary participation and attainment are equal to the rates for the general population
- reduce by 50 per cent the proportion of adults in BC not achieving high school equivalency by age 30.²²

Despite these very important objectives, it is the perspective of the complainants that the *Campus 2020* recommendations are not helpful in bringing Canada into compliance with Article 13 of the ICESCR. For example, the report recommends a focus on student loan program as opposed to awards and bursaries. Further, the report illustrates how the government of British Columbia remains committed to the current user-fee model, which, either through complete exclusion or through unjust financial hardship, has a disproportionate effect on students from lower-income backgrounds. Little action has been made to implement this report's recommendations.

Increasing student debt

The barriers that are created by tuition fees could be addressed, in part, through funding programs to assist students in financial need. The Governments have traditionally relied on two forms of financial support to students: awards/bursaries and student loans. An award or bursary program can provide significant support to students who are in financial need and cannot afford to take on debt during their education. Unfortunately, the Governments have not strengthened British Columbia's student award and bursary programs. As mentioned above, the government has shifted student financial support towards a system of student loans.

For example, in 2002 the BC government cancelled the BC Student grant program, replacing it with the Debt Reduction in Repayment program. Then, in

²² Geoff Plant, "Access and Excellence: The *Campus 2020* Plan for British Columbia's Post-Secondary Education System" Government of British Columbia, 2007, p 15.

July 2009, the provincial government cut \$16 million dollars from a number of student subsidy programs, including the Debt Reduction in Repayment program, the B.C. Loan Reduction for Residential Care Aide and Home Support Worker Program, Nurses Education Bursary, Health Care Bursary, Early Childhood Educator Loan Assistance Program, and the Premier's Excellence Award program. These programs were designed to help former students avoid high levels of student debt and manage their debt loads after graduation. The cuts negatively affect students who cannot afford to take on student debt and create a further disincentive for people interested in pursuing these programs.²³

In addition to the lack of funding for post secondary education, the shift away from student awards and bursaries has resulted in average student debt in the province being one the highest in Canada (\$27,000/student).²⁴

As a result of increasing economic barriers to higher education, there is a growing population of capable individuals who do not have equal access to post-secondary education. Lori McElroy conducted research into the barriers and facilitators of access to post-secondary education in Canada. She notes that, in the Canadian university context, financial limitations are the most commonly cited barriers to achieving one's educational goals. She noted that half of the study's participants who delayed their entry into a college or university program did so to try to save up money for school and feared that lack of resources would prevent them from completing their education.²⁵

Economic disparity has an even greater impact on access to those professional programs that have seen the most drastic tuition increases since 2002. A Statistics Canada study demonstrated that during the tuition freeze, B.C. saw no change in enrolment based on socioeconomic background. In comparison to Ontario, where tuition was not subject to government controls, the rapidly increasing tuition caused a decrease in entry by students with parents who had postsecondary qualifications but were had not completed a graduate or professional program.²⁶

Canadian research has shown that high tuition fees have a significant impact on access to post-secondary education for students from lower-income backgrounds. Students from lower-income backgrounds are less than half as

²³ New Democratic Caucus, "Student Aid Falls Victim to Post-Election Campbell Cuts: Bursaries for students pursuing health careers among programs to get the axe" (Media Release)(3 July 2009).

²⁴ Report on Student Debt: Canadian College Student Survey and Canadian Undergraduate Survey Consortium.

²⁵ Lori McElroy, "In Pursuit of Post-Secondary Education: Whether and When to Go." Montreal, 2008, p. 52.

²⁶ Statistics Canada, "The Impact of Tuition Fees on University Access: Evidence from a Large-scale Price Deregulation in Professional Programs"

likely to participate in university than those from high-income families.²⁷ Statistics Canada examined the reasons why high school graduates do not continue on to post-secondary education. The most common answer was “financial reasons”.²⁸ When comparing graduation rates, McElroy found that students with little or no debt were more than twice as likely to finish a university degree. Graduation rates for students with less than \$1000 of debt was 71% and for those with over \$10,000, only 34% completed their degree.²⁹

In terms of the Governments’ human rights obligations, asking students to take on a high debt-load is unacceptable and inconsistent with the principles of accessibility and non-discrimination. It is also inconsistent with the commitments set out in the UBC Board of Governors policy relating to Access to the University of British Columbia. This policy, which was approved in July 2004 and revised in June 2005, states that:

No Eligible Student (as defined by Policy #72) will be prevented from commencing or continuing his or her studies at the University for financial reasons alone. Eligible Students and their families have the primary responsibility for bearing the individual cost of higher education. If an Eligible Student and his or her family exhaust the financial resources available to them, the University will ensure that financial support will be made available to them.³⁰

This policy makes it very clear that UBC is committed to ensuring students are not prevented from attending university for financial reasons. Unfortunately, the evidence indicates that the University is not living up to this commitment.

FAILING TO ENSURE AVAILABILITY OF HIGHER EDUCATION TO ALL QUALIFIED PERSONS

The UN Economic and Social Council has explained the use of the term “availability” in Article 13:

“functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and

²⁷ Statistics Canada, “Participation in postsecondary education and family income,” The Daily. Friday, December 7, 2001.

²⁸ Statistics Canada and Human Resources and Skills Development Canada, “At a Crossroads: First Results for the 18 to 20-Year-old Cohort of the Youth in Transition Survey”, January 2002.

²⁹ McElroy, Lori. Student Aid and University Persistence: Does Debt Matter? Montreal: Canada Millennium Scholarship Foundation, 2005.

³⁰ <http://www.universitycounsel.ubc.ca/policies/policy72.pdf>

programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology.”³¹

Operating Costs

Funding cuts to post-secondary education have reduced the ability of institutions to ensure the availability of higher education. In 2007/2008, UBC revealed a structural deficit of \$24 million.³² The University committed to eliminating this deficit over the following three years by continuing a hiring freeze, increasing tuition and imposing internal cutbacks. However, this effort was thwarted by an unexpected \$15.3 million decrease in the annual provincial government grant to UBC. At that time, the provincial government reported a \$3 billion surplus.

The Government of British Columbia announced the provincial budget on September 1, 2009. In the area of advanced education, the government announced a series of significant cuts. There is currently a funding freeze and federal and provincial grants have failed to keep pace with inflation, which means the annual grants decrease in value year over year, resulting in the need for continual and persistent cuts. In addition, the StudentAid budget was cut by \$17 million and the building repair and maintenance budget was cut by \$16 million. Additional costs associated with increase in medical user fees, the carbon tax newly applied to post secondary institutions, and the new proposed Harmonized Sales Tax will necessitate future cutbacks.

Teachers

Failing to ensure that an adequate number of highly trained and competitively employed teachers are available in post-secondary institutions represents another failure on the part of the provincial government. A backgrounder by the Canadian Federation of Students notes that faculty hiring was reduced or cut at the University of British Columbia, Malaspina University College, North Island College, Selkirk College and Vancouver Community College.³³

Institutions increasingly rely on term, sessional and contract employees who work at lower costs than tenured professors for core instruction, and more and

³¹ UN Economic and Social Council, “The right to education (Art. 13)”:. 08/12/99. E/C.12/1999/10. (General Comments)

³² March 31, 2008 - Report from the Vice President of Administration and Finance. University of British Columbia (2008).

³³ Canadian Federation of Students and UBC AMS, “Backgrounder: Recent Cuts at BC Post-Secondary Institutions”. Available online:
http://www2.ams.ubc.ca/uploads/government/Cuts_backgrounder-1.pdf

more core teaching is conducted by graduate students working as teaching assistants, rather than by full professors.

IMPACT OF TUITION RATES ON TRISTAN MARKLE – INDIVIDUAL COMPLAINANT

The affidavit of complainant Tristan Markle, attached as Appendix A to this complaint, describes how rising tuition rates have impacted his financial situation, his personal wellbeing and his opportunities for the future. While at the University of Toronto (“U of T”), Mr. Markle was able to complete his degree without incurring any debt. His family support, his ability to be involved in part-time work and his lack of previous debt or financial responsibilities made this possible.

Because Mr. Markle was debt-free upon completing his program at U of T, he was able to continue on with further education at UBC. However, he no longer received financial support from his parents and so Mr. Markle required other ways to finance his education. Mr. Markle was able to earn part of his living through paid employment and grants. However, financial aid was a primary source of funding and at the end of his degree, including credit card debt, he faced \$42,000 in debt.

Mr. Markle describes how his significant debt impacted his educational experience as well as his future opportunities. During university, he experienced stress in his struggle to balance work and school. Upon graduation, his debt impacted his ability to continue into graduate work. In his affidavit, Mr. Markle states:

When I graduated in May 2009, it was very difficult to find a job because of the difficult economic times. It was an extremely poor job climate. It took me four months to find a suitable job. If it had taken any longer, I don't know what I would have done to make a living.

Upon completion of university, I did not qualify for Employment Insurance, and I did not consider social assistance for personal reasons. I might have been forced to leave Vancouver to return to Toronto (my town of birth), even though my partner lives in Vancouver. Many of my peers have told me that they have been unable to find appropriate work, and are considering leaving Vancouver to go to other cities where work is more available.

My original plan was to pursue graduate work in HIV vaccine research upon graduation from UBC, but with such a large undergraduate debt-load, the prospect of taking on even more debt through a graduate degree was frightening. As a result, I decided to seek a job in my field of interest so that I could pay down my student loan. (paras 24 – 25)

Mr. Markle concludes his affidavit by describing the impact of the high cost of post-secondary education:

If there had been lower tuition fees throughout my undergraduate years, I would not have had to work such long hours, and would have been able to devote more of each day to studying. I would have been less stressed out because I would have had some time off as well as more time to sleep. The financial demands of attending university detracted from my education and my personal well-being.

If there was more affordable housing offered on campus, I would have spent less time commuting, and more time volunteering and getting involved in extra-curricular activities at school.

If there were more grants and more debt-forgiveness programs, it would allow me to choose my ideal post-graduate career path, rather than whichever one will cover loan payments.

In order to fulfil my graduate school objectives, I will need to decrease my current debt load. Given my current income level and the lack of debt-forgiveness programs, I will not be able to attend graduate school as soon as I would like. (paras 30 – 33)

Mr. Markle submits this complaint in order to illustrate the ways in which the cost of education can personally impact students in BC. Given his personal supports and his willingness to incur debt, he was not barred from engaging in higher education. However, his decision to receive loans to pay for his post-secondary education will continue to impact him as he struggles to manage his debt. The reality is that his debt could take up to a decade to pay off and will continue to affect his work and educational choices. For many other students, we know that financial barriers make post-secondary education out of reach.³⁴

CONCLUSION

This complaint describes how the Governments have failed to meet their international human rights commitment to ensure that higher education is equally accessible to all. To summarize, both levels of government have failed to:

- control tuition fees,
- provide sufficient financial support to students in need, and
- provide adequate funding to the post secondary sector.

³⁴ Statistics Canada and Human Resources and Skills Development Canada, "At a Crossroads: First Results for the 18 to 20-Year-old Cohort of the Youth in Transition Survey", January 2002.

In these ways, the Governments have created a system of higher education that is inaccessible to many capable students. Instead of continuing to regulate tuition levels and invest in post-secondary education, the Governments have deregulated fees and made inadequate investments in university programs. The result is that students from low-income backgrounds face increasing financial barriers to post-secondary education. Further, the financial support that is available to students is primarily through loans, instead of grants or other forms of funding that do not result in large debt loads.

In light of the facts set out above, we ask that the UN Office of the High Commission of Human Rights take a proactive approach to investigating Canada's failure to live up to its human rights commitments.

REMEDY SOUGHT BY THE COMPLAINANTS

The complainants request that the Commission appoint an independent expert or Special Rapporteur to look in to the human rights situation in Canada.

We note that Canada has not acted on the previous recommendations of the Committee on Economic, Social and Cultural Rights concluding observations on Canada. We ask that the UN make special note of Canada's persistent failure to observe UN recommendations and set a timeline for Canada to live up to its human rights commitments pursuant to Article 13(2).

Signed November 18, 2009



BLAKE FREDERICK

President
Alma Mater Society



TRISTAN MARKLE
UBC graduate

V. Supporting Documentation

Appendix A: Affidavit of Tristan Markle, sworn November 24, 2009

Appendix B: Alma Mater Society, Building a Foundation: UBC AMS Pre-Budget Submission. 2007. Vancouver, British Columbia; Alma Mater Society, Competitiveness in the 21st Century, Investing in Canadians. 2009. Vancouver, British Columbia;

In these pre-budget submissions, the AMS makes a series of recommendations to the Governments regarding the development of education, the alleviation of student debt, effective representation at an administrative level, and working towards gaining dedicated funding from the federal government.

Appendix C: Alma Mater Society, Accountable Governance, AMS of UBC Pre-Budget Submission. 2008. Vancouver, British Columbia.

In their pre-budget submission, the AMS along with the Canadian Federation of Students called for the adoption of legislation that would establish conditions for federal post-secondary education transfers. The submission recommends a dedicated transfer of money from the federal government to the provinces for the specific purpose of funding post-secondary education. They suggest that the conditions of the transfer be set out in new federal legislation that specified how these federal funds must be spent.

Appendix D: Alma Mater Society, End the Education Tax, The AMS of UBC Pre-Budget Submission. 2008. Vancouver, British Columbia.

In their pre-budget submission to the province of British Columbia, the AMS called for an accessible and affordable post-secondary system where all qualified individuals are able to pursue a university education, particularly those individuals from lower-income backgrounds. In order to achieve that end, the AMS presented a series of recommendations:

- An end to tuition fees for BC students
- A re-investment in post-secondary education and skills training through a restoration of per-student funding; and indexed institution funding
- An end to government profit from student loan rates
- The establishment of a BC Grants program under which aid is not tied to loans
- Restoration of stable year-to-year funding.

Appendix E: Alma Mater Society, Building BC's Knowledge Economy, The

AMS of UBC Pre-Budget Submission. 2009. Vancouver, British Columbia.

In this pre-budget submission, the AMS described how public funding for post secondary education have not kept pace with demonstrated need, and BC's prohibitively high tuition fees take higher education out of reach for many students. To help British Columbians learn and train, the AMS recommended six initiatives:

- Re-invest in BC's Knowledge Economy with stable, inflation-indexed funding to institutions;
- Restore the multi-million dollar cut to infrastructure and Student Aid;
- Reduce student loan interest rates;
- Uncouple grant funding from the need to take on debt;
- Improve transit for students;
- Improve childcare for students.

Appendix F: Canadian Federation of Students, Tuition in Canada 2008/2009. Ottawa, Ontario.

This report provides a historical overview of tuition fees in Canada describes the ways in which the current tuition fees in Canada present a significant barrier to post-secondary education.

Appendix G: Canadian Federation of Students, Background: Recent Cuts at BC Post-Secondary Institutions. Ottawa, Ontario.

This document outlines the budget cuts affecting 13 different universities and colleges in British Columbia, and also identifies recent trends in post-secondary education funding in British Columbia. This Background outlines how government cutbacks have affected post-secondary institutions in British Columbia. The Background finds that average annual undergraduate tuition fees in BC doubled between 2002 and 2007. It also states that student debt in BC is the highest in Canada outside of the Maritime Provinces. Finally, student loan disbursements in British Columbia are budgeted to be reduced by 7.4% in 2008-2009, as participation by low and middle-income students decline.

Appendix H: Canadian Federation of Students, Strategy for Change: Money Does Matter. An alternative for accessible, high-quality post-secondary education. October 2007. Ottawa, Ontario.³⁵

In this report, the CFS recommends reforms to improve access to post-

³⁵ <http://www.cfs-fcee.ca/html/english/research/index.php>

secondary education. The report reviews the history of tuition fees in Canada, the current trends in post-secondary education, and then makes recommendations about positive directions for the future. The report notes that there are substantial benefits to post-secondary education, and argues that these benefits should be made more affordable and accessible.

The proposals of the CFS are summarized as follows:

- replace the Millennium Scholarship Foundation with a federal grant, reducing loans borrowed by \$2 billion each year
- expand eligibility to the Debt Reduction in Repayment program
- reduce tuition fees whilst increasing revenue for public universities and colleges
- meet Canada's obligations to First Nations and Inuit peoples by increasing support by \$197 million
- create a federal Department of Post-Secondary Education and Research with an advisory council
- increase data collection for accountability and evidence-based decision-making (p. 50-51).

Appendix I: Marc Lee & John Malcolmson, Financing Higher Learning: Post-Secondary Education Funding in BC. Canadian Centre for Policy Alternatives, Vancouver. 2004.³⁶

The authors reviewed the financing of post-secondary education in BC from 1990 – 2004 and came to the following conclusions in regards to the appropriate balance between public funding and tuition in financing post secondary education:

- Per-student funding, after accounting for inflation, has declined significantly for both colleges and universities since the early 1990s, and most of the decline can be attributed to the period before the introduction of the tuition freeze;
- During the tuition freeze, real per-student funding was essentially flat for universities and increased for colleges;
- Since the tuition freeze was lifted, tuition fees have skyrocketed, and are now the primary means by which post-secondary institutions are meeting their cost pressures;
- Funding relative to the 18-24 population has changed little from the early 1990s, a period when it was widely recognized that B.C. lagged most other provinces; and,
- Funding relative to GDP has declined, and, while not large in magnitude, has occurred at a time when post-secondary education is increasingly

³⁶ <http://www.policyalternatives.ca/index.cfm?act=news&do=Article&call=969&pA=4B59033D>

important to the provincial economy. (p. 18)

Appendix J: Lori McElroy, In Pursuit of Post-Secondary Education: Whether and When to Go (Montreal: 2008).³⁷

This study examines the reasons why students may or may not pursue post-secondary education. In her research McElroy reviews factors such as the level of parental educational achievement, distance from a post-secondary institution, financial security. The study participants are broken down into the categories of PSE intenders and non-intenders, and McElroy identifies particular characteristics and trends in each of these different groups. The author notes that, in the Canadian university context, financial limitations are the most commonly cited barriers to achieving one's educational goals. She noted that half of the study's participants who delayed their entry into a college or university program did so to try to save up money for school and feared that lack of resources would prevent them from completing their education

Appendix K: The Canadian Millennium Scholarship Foundation, PRA Inc. Report on Student Debt. May 2007

The results of this survey suggest that the amount of debt students are accumulating is increasing. The author also analyzed the factors that may be associated with higher student debt and found that living away from home and not receiving funding from family are strong predictors of student debt.

Appendix L: Statistics Canada, The Daily: University tuition fees 2004/05, September 2, 2004.

Statistics Canada reviews trends in university tuition fees in Canada. It finds that universities in British Columbia saw the largest tuition increase for the third year in a row. BC students will be paying 15.6% more, although this is only about half the increase of 29.0% the year before. It also found that British Columbia showed the greatest increase in average compulsory fees, up 28.1% to \$748. The report states that since 1999/00, fees have more than tripled in British Columbia.

Appendix M: Statistics Canada, The Daily: University tuition fees 2008/09, October 9, 2008.

This report indicates that Canadian full-time students in undergraduate programs paid 3.6% more on average on tuition fees in the 2008/2009 academic year compared with a year earlier. This follows a 2.8% increase in 2007/2008.

Appendix N: Statistics Canada, The Impact of Tuition Fees on University

³⁷ http://www.millenniumscholarships.ca/images/Publications/081103_In_Pursuit_of_PSE_Summ ary.pdf

Access: Evidence from a Large-scale Price Deregulation in Professional Programs. 2005. Ottawa, Ontario.

This study examined the impact of the deregulation of tuition fees in Ontario professional programs in the late 1990s. Tuition fees in Canadian undergraduate programs were found to have almost doubled over the last decade. The fee increases were not evenly distributed, being particularly large in professional programs: medicine, dentistry, and law. Overall, from 1995–1996 to 2001–2002, real tuition fees in Canada rose 132% in medicine, 168% in dentistry, and 61% in law, compared to 34% in all undergraduate disciplines. These increases were largely the product of trends in Ontario, where fees in professional programs were deregulated in 1998, resulting in dramatic increases for medicine (241%), dentistry (315%), and law (141%). In contrast, Quebec and B.C. continued to regulate fees over the same period. In B.C., tuition fees fell moderately in all three programs: between 10% and 12%. The study found that the enrolment gap between students from higher and lower socio-economic backgrounds rose substantially in Ontario, where the deregulation of professional programs was more prominent. Whereas in provinces like Quebec and British Columbia, where tuition fees remained stable, no change in the enrolment gap was noted.

Appendix O: Statistics Canada, Tuition fee deregulation, Who pays? 2008. Ottawa.

The author reviews the impact of tuition fee deregulation in Canada and notes that all forms of higher education will be available only for those whose families who can afford the costs themselves or for those who qualify for student financial assistance.

Appendix P: UBC. Committee on Tuition Policy: Final Report, 1999. Vancouver, British Columbia.

The Committee's report developed 15 principles to guide UBC in setting certain aspects of UBC tuition policy. These aspects include: the establishment of tuition levels in new programs; the reconsideration of tuition levels in existing programs; changes to tuition levels from year to year; and, the determination of levels of financial assistance. These principles were developed on the basis that the University of British Columbia is a public university that relies upon financial support from government. The Report also found that tuition will only supplement public funding to the extent that it is necessary to provide students with a quality education. On that basis, the first principle that the Report found was that: "No domestic student should be denied access to UBC programs because of inability to pay."

Appendix Q: UN Committee on Economic, Social and Cultural Rights (CESCR), UN Committee on Economic, Social and Cultural Rights: Concluding Observations: Canada, 10 December 1998, E/C.12/1/Add.31 (8).

Upon hearing Canada's report about its implementation of the CESCR, the Committee notes several areas of concern. One of the areas is funding for post-secondary education:

"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."

Appendix R: UN Committee on Economic, Social and Cultural Rights (CESCR), UN Committee on Economic, Social and Cultural Rights: Concluding Observations, Canada, 22 May 2006, E/C.12/CAN/CO/4; E/C.12/CAN/CO/5 (10).

Upon reviewing Canada's submissions about its compliance with the CESCR, the Committee recommends that Canada "ensure by every appropriate means that higher education be made equally accessible to all, on the basis of capacity."

Appendix S: UBC Board of Governors, Access to the University of British Columbia. June 2005. Vancouver, British Columbia.

This documents sets out UBC policy regarding access to the university. In particular, s. 1.1 of the policy states

"No Eligible Student (as defined by Policy #72) will be prevented from commencing or continuing his or her studies at the University for financial reasons alone. Eligible Students and their families have the primary responsibility for bearing the individual cost of higher education. If an Eligible Student and his or her family exhaust the financial resources available to them, the University will ensure that financial support will be made available to them."

Appendix T: University of British Columbia, Report from the Vice President of Administration and Finance, March 31, 2008. Vancouver, British Columbia.

The Report finds that the University had prepared a balanced budget for 2008/2009. However, the provincial government announced in March that the government would be granting \$15.3 million lower than previously projected. This placed the balanced budget in deficit by \$12 million. The Report calls for a

strategic review of operations to identify what areas are necessary to cut to balance the budget in the future.