

RACIAL DISCRIMINATION IN CANADA
The Status of Compliance by the Canadian Government with the
International Convention on the Elimination of
All Forms of Racial Discrimination

Compiled by the

NATIONAL ANTI-RACISM COUNCIL OF CANADA

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Introduction

About NARCC

The National Anti-Racism Council of Canada (NARCC) is a coalition of community based organizations and individuals who came together in May 2000, with a view to ensuring that there was wide community input both in the development of Canada's contributions to the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR), and in local community capacity building and commitment implementation work in the years following the global gathering.

Between May 2000 and September 2001, NARCC was busy outreaching to various communities of colour, immigrant and refugee advocacy groups and other anti-racist/anti-discrimination organizations across Canada in order to best organize our communities around the WCAR process. Many of the NARCC members attended the WCAR as representatives of their respective communities. Collectively as well, NARCC released a report entitled "The Two faces of Canada: A Community Report on Racism", in order to assist the Canadian NGOs attending the WCAR in telling the truth about Canada's record on racism.

Within one year, NARCC has grown from a small group of primarily locally based organizations to a truly national network of Canadian community-based non-governmental organizations committed to anti-racism and opposing related intolerance, to the sharing of anti-racism related information and resources, and to building and supporting local, regional, national and international strategies to effectively address racism and related intolerance.

Our membership includes national organizations representing immigrants and refugees or ethno-racial groups, such as the Canadian Council for Refugees and the Chinese Canadian National Council, provincial networks such as the Council of Agencies Serving South Asians, and local advocacy organizations and community based legal clinics like Urban Alliance on Race Relations, African Canadian Legal Clinic and the Metro Toronto Chinese & Southeast Asian Legal Clinic.

We also have community groups representing the various regions of Canada ranging from the Multicultural Association of Fredericton in the East, to the Vancouver Association of Chinese Canadians in the West.

About this Report

Building upon our experiences at the WCAR, members of NARCC have come to recognize the important role of international human rights instruments in the development of domestic anti-racism and anti-oppression agenda. While Canada is recognized internationally as a humanitarian country and while policies of the Canadian Government are routinely adopted by other countries as model policies for promoting equity, Canadian NGOs are all too aware of the real struggles we face within our country. Despite the official rhetoric, racism is alive and well in Canada, and is indicative of the failure of our Government to address this fundamental problem. Even more troubling, is the fact that often times racism is born out of the laws and policies of the Government of Canada towards persons of colour, immigrants and refugees.

While numerous Canadian NGOs advancing environmental justice, gender equality, or rights of the indigenous peoples have long been active players on the international stage, informing discussions at the UN level on Canada's record in addressing their concerns, the same cannot be said of the Canadian community-based anti-racism organizations. A lack of familiarity with the UN process, inadequate resources and expertise, and skepticism about the effectiveness of the international human rights system, are among the reasons for our lack of participation at the UN CERD Committee process. As a result, reports submitted by the Canadian Government to the CERD Committee are by and large left unchallenged. The absence of community participation is perhaps also one of the reasons why the Canadian Government has been able to get away with its late filing of the compliance report.

NARCC welcomes the opportunity to provide the CERD Committee with a community perspective on the status of compliance with the Convention by our government. The submissions that we have prepared are the product of a collective effort and consultative process, whereby members of NARCC and several outside experts were invited to help put together a document which covers a wide range of issues, including immigration, employment and human rights, etc. Because this is the first attempt by NARCC - and indeed by many of the NARCC members - to compile a shadow report on CERD, and because of the time constraint, we are unable to explore all the issues in all parts of Canada that are relevant to our communities. What the submission attempts to achieve is a snapshot of the problem of racism - systemic and otherwise - in our country, and the success, if any, on the part of our Government in addressing the issues.

While much of our submission focuses on the compliance with CERD by the Canadian Government, we have dedicated two chapters to address the specific issues within the provinces of Ontario and British Columbia. These two provinces are among the largest in Canada, and they also have the highest proportion of racialized people, immigrants and refugees in our country. We also decided to highlight these two provinces as they have each gone through dramatic political changes over the last few years, leading to significant implications for the protection and advancement of human rights.

As Canada is five years behind its reporting schedule, much has changed since 1997. In particular, as a result of the aftermath of the September 11 event, we need more than ever a strong commitment from our political leaders and international bodies to stand up against racism. We need to be even more vigilant in stopping the spread of hate and intolerance. The Convention on the Elimination of All Forms of Racial Discrimination is becoming most relevant, and the need to comply with the provisions therein is becoming most pressing at this critical moment.

Throughout the report, we use different terminology interchangeably to describe our constituencies: racialized communities, communities of colour, and visible minority communities. While we prefer the first two terms, the latter term is used when we are quoting from another source.

Finally, representatives from NARCC will be attending the Committee meeting as observers when Canada presents its report. We look forward to the probing and informative discussions at this critical meeting.

Chapter I: Human Rights

Introduction

Canada has an international reputation as a promoter and protector of human rights. But under that facade lie many problems, particularly for those individuals and groups who are vulnerable targets of discrimination.

On paper, Canada has a well-established human rights protection system. Our Constitution contains a *Charter of Rights and Freedoms* (the "*Charter*") which, among other things, grants every individual in Canada equal protection and equal benefit before and under the law.¹ The Canadian *Charter* applies to all laws and government actions. Apart from the *Charter*, individual victims of discrimination can also seek protection and redress under federal and provincial human rights laws.

For reasons that will be outlined below, it is our position that the human rights system in Canada is both ineffective and inadequate. The system itself has become, in some instances, a barrier for people facing racial discrimination and other forms of discrimination to access justice. In this chapter, we will be focusing on the federal human rights system which is embodied in the *Canadian Human Rights Act (CHRA)*, and which in turn is administered and enforced by the Canadian Human Rights Commission (CHRC) and an independent Tribunal.

Nowhere does the *CHRA* refer to Canada's international obligations, including its obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*. Nor does it expressly state the connection between the *Act* and Canada's international obligations.²

In December 1998 the UN Committee on Economic, Social and Cultural Rights reminded Canada of its obligation to ensure that its human rights machinery comports with its treaty commitments, stating in its Concluding Observations on Canada's Report:

...enforcement machineries provided in human rights legislation need to be reinforced to ensure that all human rights claims are not settled through mediation and be promptly determined before a competent human rights tribunal, with the provision of legal aid to vulnerable groups.³

¹Section 15 of the *Canadian Charter of Rights & Freedoms, The Constitution Act, 1982*

²"*Promoting Equality: A New Vision 2000*" Published by the Canadian Human Rights Act Review Panel under the authority of the Minister of Justice and the Attorney General of Canada, at p.12

³United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights (Canada)*, 10 December 1998, E/C, 12/1/Add.31 at para 51.

In April 1991, the Human Rights Committee, in its concluding observations on Canada's fourth report on its implementation of the *International Covenant on Civil and Political Rights* stated:

The Committee is concerned with the inadequacy of remedies for violations of articles 2, 3 and 26 of the Covenant. [These are the anti-discrimination articles.] The Committee recommends that the relevant human rights legislation be amended so as to guarantee access to a competent tribunal and to an effective remedy in all cases of discrimination.⁴

Since then, the Canadian human rights legislation has not been strengthened. On the contrary, in some provinces, including Ontario and British Columbia, there have been serious setbacks in terms of progress and advancement of human rights. The latest political regimes in these provinces, each of which has a distinctively anti-equity agenda, have moved the provinces back at least 20 years in the area of human rights.

In British Columbia, for instance, the government has just announced its plan to completely dismantle the Human Rights Commission. In Ontario, while the Human Rights Commission is still in operation, the inadequate funding support and the change in directions as a result of change in political leadership, has severely undermined the effectiveness of the Commission in carrying out its legislative mandate. The issues arising in British Columbia and Ontario will be discussed in the chapters on specific provinces in our report.

In preparing this chapter, we have reviewed a number of reports, including one entitled "Promoting Equality: A New Vision 2000," prepared by the Canadian Human Rights Act Review Panel under the authority of the Minister of Justice and the Attorney General of Canada. We have examined specific submissions made by NGOs to the Review Panel. We are also drawing from the collective experiences of Canadian NGOs, which advocate for equality and which have assisted or represented individual victims of racial and other discrimination.

⁴See International Covenant on Civil and Political Rights, Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding Observations of the Committee, (Canada)*, 7 April 1999, CCPR/C/79/Add. 105, para. 9

Relevant Convention Provisions

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons, or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

Specific Violations/Concerns

Article 2

In 1992, the National Capital Alliance on Race Relations (NCARR) filed a complaint against Health Canada alleging discrimination against visible minorities contrary to section 10 of the *CHRA*. The complaint alleged that Health Canada deprived visible minorities of employment opportunities in management and senior professional jobs. The matter went to a Tribunal in 1995. The Tribunal found in favour of the complainants and an extensive employment equity scheme was ordered.

But since that decision was made, substantial statistical and other evidence continues to show that, as one of the largest employers in Canada, the Canadian Government has not ceased to engage in employment practices which result in systemic discrimination against racial minorities and other marginalized groups, contrary to Article 2 of the Convention.

As pointed out in the findings of the *CHRA* Review Panel, a report on visible minorities in the Public Service, *Embracing Change in the Federal Public Service: Report of the Task Force on the Participation of Visible Minorities in the Federal Public Service*, states, “From visible minority employees, the Task Force heard numerous charges of systemic discrimination along the lines of ‘old boys’ club.”⁵

The Review Panel report continues:

Visible minorities across the country expressed dismay about the lack of recognition of foreign degrees and credentials and about the scarcity of visible minorities on selection boards. Visible minority employees were concerned that the delegation of authority to departments for implementing employment equity has not been accompanied by appropriate provisions for accountability and that, as a result, systemic discrimination may remain embedded.⁶

Similarly, the report of the Defence Minister's Advisory Board on Canadian Forces Gender Integration and Employment Equity, *Successes and Opportunities: 1999 Annual Report*, stated, “The Board notes that according to the first Equity Plan for the Canadian Forces, all designated groups are substantially under-represented.”⁷

While systemic discrimination remains rampant within the federal public sector, its victims find little recourse under the *Canadian Human Rights Act* and its enforcement mechanism. The reasons for the failure of the federal human rights system to provide effective remedy will be discussed in greater detail in the following sections.

⁵*Promoting Equality* at 17

⁶*Ibid.*, at 17

⁷*Ibid.* at 17

In its concluding remarks on Canada's compliance with the International Covenant on Civil and Political Rights, the Human Rights Committee in 1999 welcomed the implementation of the *Employment Equity Act* (the "EEA") by the Canadian Government. The *EEA* was seen as evidence that the government was "establishing a compliance regime that requires federal departments to ensure that women, persons belonging to aboriginal and visible minorities and disabled persons constitute a fair part of their workforce."⁸ The government, however, did not brief the Committee on the actual rate of compliance with the *EEA*.

The Federal *EEA* was enacted at the recommendation of Rosalie Abella (as she then was before her appointment to the Ontario Court of Appeal) in the *Royal Commission Report on Equality in Employment*. The *EEA* underwent substantial amendment in 1995.

In its 1999 Annual Report, the Canadian Human Rights Commission shows that only a few (4) employers were actually in compliance of the *EEA*. While there has been progress for some designated groups, the Commission reports that "movement towards an equitable federal workplace continues at a snail's pace." Aboriginals, visible minorities and disabled persons simply are not making any progress.⁹

One barrier to enforcement lies in the fact that information from an Employment Equity audit cannot be used in a human rights complaint by the CHRC. As well, there are concerns about the scope of tribunal orders and time spent in negotiating undertakings and following up.¹⁰ This is so, even though it is well recognized that the individually based complaint process will not be sufficient by itself to achieve equality.¹¹

The *EEA* also does not allow for the participation of community groups in the process. The 1995 amendments to *EEA* result in even greater limits imposed on the ability of the community groups to file complaints under the *Act*, even though these groups could provide invaluable sources of information about the various communities whose members' equality is supposed to be advanced by the *Act*.¹² Therefore, while on its face Canada is in compliance with Article 2(e) by virtue of the *EEA*, in reality the targeted groups have yet to benefit from this mostly powerless piece of legislation.

⁸*Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee (Canada)*, *supra*, note 4, at para. 6

⁹*Promoting Equity* at 20

¹⁰*Ibid.* at 21

¹¹*Ibid.* at 35

¹²*Ibid.* at 21

Article 5

The *CHRA* does not apply to the *Indian Act*.¹³ It is the only exception in the *Act* that affects individuals mainly on the basis of race. Moreover, it prevents not only status Indians from making a complaint about discrimination authorized under the *Indian Act*, but also their families (if not given status), other Aboriginal people, Inuit, Metis and anyone else who might wish to challenge any matter authorized by that *Act*.¹⁴ Effectively, many Aboriginal peoples are left with no redress when their rights are being violated by virtue of the authority granted under the *Indian Act*.¹⁵

Aboriginal peoples are not the only group excluded from the *CHRA*. Pursuant to section 40 of the *CHRA*, only those "lawfully present" in Canada may file a complaint.¹⁶ Individuals who are potentially excluded include immigrants who are applying to enter Canada, as well as non-status immigrants and rejected refugee claimants who are present in Canada without any lawful status. Many immigrant and refugee advocates have long decried the discriminatory practices which are prevalent both in overseas visa offices at various Canadian embassies or in domestic immigration offices (see our chapter on immigration and refugees). Non-status immigrants are especially vulnerable to such practices given their lack of status, and hence their lack of political power and influence. Most of them would never even dream of raising their concerns about unfair treatment for fear of being removed from Canada or face other severe consequences that put their lives and their families at risk. Those who might dare to speak out would be barred from doing so by this discriminatory provision.

As the CHRA Review Panel says, human rights protection should be available to all individuals present in Canada, including those who are not lawfully present.¹⁷ The denial of equal access to the federal human rights system for Aboriginal Peoples and non-status immigrants constitutes a clear violation of Article 5.

¹³Section 67 of the *CHRA* states:

Nothing in this Act affects any provision of the *Indian Act* or any provision made under or pursuant to that Act.

¹⁴*Promoting Equality* at 127

¹⁵ There are some disagreements within the Aboriginal communities as to whether or not the *CHRA* applies to band councils, an issue which is often debated in the context of Aboriginal self government.

¹⁶Section 40(5) of the *CHRA* states:

- (5) No complaint in relation to a discriminatory practice may be dealt with by the Commission under this Part unless the act or omission that constitutes the practice
- (a) occurred in Canada and the victim of the practice was at the time of the act or omission either lawfully present in Canada or, if temporarily absent from Canada, entitled to return to Canada

¹⁷*Promoting Equality* at 136

Article 6

It is not sufficient to have a human rights complaint system. To ensure true protection for victims of discrimination, the system must also be effective. Unfortunately, the Canadian Human Rights Commission and the Tribunal are far from able to provide effective remedies for their intended constituents.

Findings of the Auditor General of Canada show serious concerns about the delay, dismissal, and backlog problems with the Commission. Some of these concerns were highlighted in the CHRA Review Panel report:

- of the approximately 6,550 complaints decided between 1988 and 1998, 67% were dismissed or not dealt with and 6% were sent to Tribunal
- the Commission took about two years on average to make a decision on a complaint (excluding equal pay complaints)
- much of the time delays were within the Commission's control, though others resulted from the inability of the Commission to enforce deadlines, such as for the respondent's responses to the complaint
- in 1997, almost one-half of the Commission's case-load was considered to be in "backlog" (where the investigation was going on more than nine months after the complaint was signed) and about the same number of cases was still under investigation one year after the complaint was signed
- between 1991 and 1995, the backlog ranged from 62% to 72% of the total number of complaints
- several times since 1989, the Commission received extra funds from Treasury Board to reduce the backlog
- at the time of the Auditor General's Report, the Commission was going to have to make yet another request for extra funding for this purpose
- the Tribunal took an average of one year to dispose of a complaint
- the decisions themselves took about five months after hearings were finished
- complaints that were sent to conciliation after investigation took 45 months before the Commission's final decision
- stakeholders told the Auditor General they were concerned about a conflict of interest; the investigations were too cursory; the delays were unfair; the Commission dismissed cases without reasons

-the Commission did not use its power to initiate complaints because it had been challenged by respondents when it had previously attempted to initiate complaints on the basis of an apprehension of bias; third parties usually file complaints

-the Auditor General estimated that since 1996, 18% of cases were settled, 11% in early resolution or in investigation and 7% in conciliation after investigation, adding an average of 11 months to the time for the investigation resulting in a 45 month period for the processing of complaints.¹⁸

Community groups have also expressed similar concerns. In their submission to the CHRA Review Panel, Shelagh Day and Gwen Brodsky - two well known Canadian human rights advocates - sum up the issue as follows:

The extensive delays discourage people with legitimate discrimination claims from filing complaints, dishearten and disempower those who do, and often have the effect of denying human rights claimants the appropriate remedy. . . . Delays have also resulted in some complaints being dismissed by courts on application by respondents.¹⁹

As pointed out by Day and Brodsky, the concern regarding the high rejection rate is intensified by the fact that the only recourse available to a person whose complaint has been dismissed is to make an application in Federal Court for judicial review of the Commission's dismissal decision. Because of the 1981 decision of the Supreme Court of Canada in *Seneca College of Applied Arts and Technology v. Bhadauria*, [1981] 2 S.C.R. 181, (1981), 2 C.H.R.R. D/468 (S.C.C.), a person who believes his/her human rights have been violated cannot go directly to court to seek a remedy.

The court's review process is not without its own limitations:

The Federal Court can review the Commission's decision to dismiss complaints for correctness on a question of law or jurisdiction, but principally these reviews consider only whether the Commission was procedurally fair in the manner in which it investigated and made its decision to dismiss. Most judicial review applications are unsuccessful. Even the successful ones only refer the case back to the Commission, not the Tribunal.

. . . The goal of the Commission inevitably becomes that of managing human rights law enforcement when the Commission lacks expert staff, lacks adequate resources, and does not enjoy the overt support of government for more ambitious and riskier challenges to the status quo of inequality.²⁰

¹⁸*Ibid.* at 46-52

¹⁹S. Day & G. Brodsky. *Improving Canada's Human Rights Machinery - A Report Prepared for Canadian Human Rights Review Panel* (October, 1999) at 6-7

²⁰*Ibid.* at 9-10

Indeed, it is quite ironic that the report by the Canadian Government to the CERD Committee refers to the case of *Pitawanakwat v. Canada (Secretary of State)* (1992), 19 C.H.R.C. D/110 as an example of how well the human rights system - including the review system - is working.²¹ In reality, this case highlights the principle of "justice delayed is justice denied." The Tribunal, in its decision, blamed Mary Pitawanakwat for allowing herself to be a victim of discrimination. It took further legal action on the part of the complainant, namely, a judicial review to the Federal Court to correct that inexcusable error. Ms. Pitawanakwat passed away not long after the Court's decision was released.

In addition to the problems stated above, the Canadian Human Rights Commission does not handle or initiate systemic cases even though it has statutory power to do so. It is complaint driven and hence ineffective.²² The record of the Commission demonstrates its relative failure to achieve potential or broad systemic steps to change patterns of inequality.²³

The combined result of all of the above is a system which is in serious need of revamping. While the CHRA Review Panel report has been completed for almost two years, the Canadian Government has yet to respond to the Panel's 165 recommendations for reform.

Article 6 and the Head Tax Redress

Canada has a history of racist legislation that discriminated against immigrants of colour, including Chinese Canadians, but it refuses to acknowledge its history of racial discrimination or to redress the ongoing impact of this legislation. In the 1800s Canada wanted Chinese labourers to work to build the railroad across the country, but after completion of the railroad it enacted a racist "Head Tax" to limit immigration by Chinese immigrants. This Head Tax was initiated at the rate of \$50 but was raised to \$500 in 1903, the equivalent of two years' wages.²⁴ The Head Tax caused great financial and emotional hardship on Chinese Canadians. Most Chinese immigrants spent their lives in the equivalent of indentured servitude in order to pay off the loans they obtained to pay the Head Tax. It is estimated that the government raised approximately \$23 million from this racist tax (in 1923 Canadian dollars).²⁵ The hardship experienced by Chinese Canadians increased with the implementation of the Chinese *Exclusion Act* in 1923, which was aimed at barring immigration of any Chinese person to Canada. The *Exclusion Act* meant that fathers in Canada were separated from their families in China

²¹Canada's 13th-14th Report submitted under the terms of the International Convention on the Elimination of All Forms of Racial Discrimination, Federal Report, at paragraph 67

²²*Promoting Equality* at 13

²³*Ibid.* at 16

²⁴ Peter Li, *The Chinese in Canada* (2nd Edition) (Oxford University Press, Toronto, 1998) at 48

²⁵ *Ibid.* at 41

for decades, until the Act was repealed in 1947. This separation was devastating to families. Many children grew up without knowing their parents.

The Chinese Canadian community has been advocating for redress for years through community organizing, demonstrations, lobbying and legal action, but the Canadian government has refused to negotiate a resolution to redress this history of discrimination and its contemporary impact. Most recently, a number of Head Tax payers and their widows and descendants have launched a class action suit against the federal government in order to obtain damages for the impact of the federal government's discriminatory policies. Canada's response has been to attempt to have the case dismissed, despite the fact that they have provided redress to other survivors of discrimination, including Japanese Canadians who were interned during World War II. As well, in its 11th report to the CERD Committee, the Canadian Government referred to the Japanese Canadian Redress as an example of its commitment to the "spirit of social justice". It reported that the Prime Minister of Canada announced in November, 1990, that the Government would "extend a formal apology to other Canadian ethnocultural communities whose members have been mistreated by past Canadian governments".²⁶ To date, the Government of Canada has yet to extend any apology to Chinese Canadians. In fact, in December, 1994, the Secretary of State announced in the House of Commons that no redress would be given to Chinese and other ethno-racial groups seeking redress.

Canada's refusal to redress the ongoing impact of the racist Head Tax and *Exclusion Act* constitutes a violation of its obligations under Articles 2 (eliminating racial discrimination) and 6 of ICERD, which requires that Canada provide "effective protection and remedies" against any act of racial discrimination. The right to seek "just and adequate reparation" guaranteed by Article 6 should be not simply a procedural guarantee, but one of substance by which the victims of discrimination have a real opportunity to obtain a real remedy for the impact of racial discrimination.

Article 7

In the context of human rights education, the cutbacks to the Canadian Human Rights Commission in the mid-1990s have gravely affected its ability to carry out its educational role.²⁷

²⁶ The 11th and 12th periodic reports of Canada, at para 26

²⁷ *Promoting Equality* at 39

Chapter II: Employment & Poverty

Introduction

In a 2000 report entitled “Unequal Access,” the Canadian Race Relations Foundation (CRRF) contends that Aboriginal and other racialized persons face enormous barriers to equality in employment with other Canadians. Some revealing statistics accompany this claim. This chapter employs these facts in exploring the remaining barriers to full, equitable employment and fair incomes for central racialized groups in Canada.

After a discussion of Canada’s *Employment Equity Act*, the next sections report on the recent relative progress of key marginalized groups in the labour market as to their employment rates, based on work force availability. It is important to keep in mind that these rates are based on information available about the public service only. While a useful indicator, the public service does not provide a comprehensive barometer. It is also important to recognize that these employment figures do not account for a greatly increasing number of term and casual appointments; they cannot be assumed to indicate long term or secure work. And as will be discussed, the situation in individual provinces and various sectors of the workforce is much less consistent as to the progress of employment equity. For this reason, an overall picture of the challenges that remain for particular marginalized groups is provided, as is a general discussion of some central issues.

Relevant Convention Provisions

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

(ii) The right to form and join trade unions;

(v) The right to education and training;

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

Economic Racism

Article 2

Canada's Employment Equity Act

While the *Employment Equity Act* has been effective in securing greater employment in some areas, Canada's report on CERD does not contextualize these gains to provide a clearer picture of the quality of the employment increase. For instance, many people from racialized groups have yet to find employment that makes use of their training, and many are underemployed. Those from racialized groups are also underrepresented in the professional and managerial sector.

Canada's *Employment Equity Act* is, by international standards, fairly comprehensive. It does include enforcement measures and has attained the status of legislation. However, this does not preclude serious limitations and tenuous problems for minorities. The *Act*

applies only to larger corporations, federally regulated industries and governmental employers. It does not cover private or provincial organizations, among which the application of equity policies varies. A comprehensive study of employment equity across the provinces concludes:

We have discovered not only that the gap between employment equity policy and implementation is great, but that there is extensive and multi-layered variation among the provinces in this regard. Such variation occurs both in the formulation of employment equity policy, or in its absence, and in the governmental orientation concerning the policy options available and how they should be implemented. There is also a notable expression of what we refer to as systemic frustration among the supporters of employment equity. Though specific concerns vary widely, in no province could we identify a sense of confidence that employment equity policy was appropriately and securely implemented.²⁸

As will be seen in the report on Ontario, the last two consecutive provincial regimes have served to reverse ventures toward employment equity in Canada's largest province. In fact, employment equity legislation was repealed by the Conservative government before it could be officially applied. In British Columbia, the province with the largest percentage of racially visible minorities, reports have recently shown that the income gap is widening, giving this area the largest discrepancy in Canada between rich and poor.²⁹ Recent tax incentives in that province have also been shown to benefit the wealthy while providing little change for lower income groups. Racialized communities in the province of Quebec face the lowest employment rate, with almost half unemployed.

As the report cited above makes clear, the distinction between employment policy and employment legislation is a crucial one, particularly in terms of enforcement. Thus far, only the province of British Columbia has enforceable legislation; most have policy documents, which encourage the implementation of certain standards, to some degree. Only with legislation does employment equity stand as law. Quebec is the one province that extends its mandate beyond the public service.³⁰ Newfoundland and Alberta have failed to produce any policies, although the issue has been more widely debated in the latter.³¹ With regard to pay equity, research has shown that policies are ineffective unless they are mandatory for employers and overseen by governments.³²

²⁸ A. Bakan & A. Kobayashi. *Employment Equity Policy in Canada: An Interprovincial Comparison*. (Ottawa: Status of Women Canada, 2000) at 2 [hereinafter *Employment Equity*]

²⁹ Canadian Council on Social Development. *Unequal Access: A Canadian Profile of Racial Differences in Education, Employment and Income*. (Toronto: Canadian Race Relations Foundation, 2000) This report states that the average earnings of nonracialized persons in BC are about \$41 000; for Aboriginals, \$30 000 and for foreign born visible minorities, \$31 000. These are the largest gaps in Canada. (at 24) [hereinafter *Unequal Access*]

³⁰ *Employment Equity*. at 9

³¹ *Ibid.* at 10

³² C. Agocs, "On the Need for Effective Employment-Equity and Pay-Equity Policies in a Global Labour Market," presentation to Canadian Workplace Research Network, Roundtable: Globalization of the Economy: The Implications for Labour Markets, Society and the State, Toronto. (June 25 – 29, 2002) Canadian Industrial Relations Association/International Industrial Relations Association Conference. [hereinafter "Labour Market"]

Employment equity programs may challenge employment patterns without significantly changing attitudes. The recent backlash against affirmative action demonstrates that such incentives are understood by many dominant group members as the special and undeserved privileging of racial minorities. This should suggest to policy-makers that these programs need to be accompanied by education that provides some historical context and analysis of their necessity. It is also important to note that recruitment programs for racialized people are geared toward original employment and do not monitor patterns of promotion.

During the 1990s, federal government incentives, such as the Special Measures Programs which provided specific forms of support for persons with disabilities, women, and those from racialized groups, were formed and have since been re-evaluated. One noted flaw in such programs has been their tendency to concentrate on the distinct characteristics of the marginalized groups under question, rather than on systemic ways in which to change attitudes and behaviors in the workforce broadly. The new Special Measures Initiatives Program, begun in 1993, attempted to integrate both the specific needs of minority groups and the need to change the workplace environment. Its more recent replacement policy, the Employment Equity Positive Measures Program of 1998, is expected to integrate policies and departments and to encourage cooperation among departments on equity measures.

In 1995, the new *Employment Equity Act* was written, to be implemented late in 1996. This includes a requirement that ministers report on the progress of their departments. However, to the date of the Bakan and Kobayashi report, only one department, Status of Women Canada, had met the guidelines in hiring members of the designated groups.³³ It is crucial that NGOs and other outside organizations carry out analysis of this and other programs, particularly with regard to many of the qualitative issues indicated here.

Article 5

Racialized persons in the public service

People of colour, in 1998, represented 5.1 percent of the public service, compared to 10.4 percent of the work force. This has been the least amount of progress for all designated, marginalized groups. As Bakan and Kobayashi report:

This figure is explained only partially by the fact that because of immigration patterns, the proportion of visible minorities in Canadian society has increased significantly over the last decade, while that of the other designated groups has remained relatively constant. If current immigration trends continue, their proportion of the Canadian population will continue to rise, while their proportion of the work force will rise at a somewhat higher rate as the population ages and larger numbers enter the work force.³⁴

³³*Employment Equity* at 21

³⁴*Ibid.* at 16

Persons from racialized communities are strongly underrepresented in the executive category, at only 2.8 percent, and overrepresented in the field of administrative support 5.3 percent. They are strongly overrepresented in the scientific and professional category (10.1 percent). However, a recent Human Rights tribunal found that Health Canada failed to promote persons from racial minority groups according to their qualifications.³⁵

Canadian-born racialized persons

Racialized groups in Canada generally have higher education levels than non-racialized groups, yet their employment and income levels trail well behind. While they make up 12% of the Canadian population, they are only 5.9% of government employees and 3% of executives.³⁶ Blacks, South Asians and other people of colour generally have lower employment statuses than Canadians of English and French backgrounds, even when controlling for education level. About half of university graduates from racial minority communities find professional employment compared to two thirds of White graduates. Within this group, racialized persons earned approximately \$7 000 less than White graduates.

An exception to this pattern lies in the field of health, including nursing and applied sciences, in which Canadian-born people of colour tend to earn significantly higher salaries than non-racialized groups. In all other fields, racialized minorities earned less.

The difference in employment status between White Canadians and Canadian-born people of colour appears to be small, however, many people of colour in high status positions are self-employed. Among those employed by others, only half of racialized persons held management positions, compared to two thirds of Whites. It must also be remembered that Canadian-born persons of colour tend to be better educated than Canadian-born Whites. Of men belonging to racialized groups, only 46% have pensions, compared to 57% of other male workers.³⁷

Among those with equivalent education, 38 per cent of Canadian-born Whites ranked in the top income quintile, compared to 29 per cent of Canadian-born people of colour. In Toronto, over 50% of families in some racialized groups live below the official low income cut-off. Among White ethnic groups, the rate is less than 10%.³⁸ The current poverty rate for racialized persons is around 38%, compared to 21% for Canadians overall.³⁹

³⁵ *Ibid.* at 17

³⁶ A. Saidullah. *The Two Faces of Canada: A Community Report on Racism*. National Anti-Racism Council of Canada, 2001 [hereinafter *Two Faces*]

³⁷ R. Morissette. *Pensions: Immigrants and visible minorities* 3 Perspectives on labour and income 6 (June 2002)

Online: Statistics Canada http://www.statcan.ca/english/indepth/75-001/online/hi-fs_200206_02_a.html

³⁸ *Two Faces*, Chapter 4

³⁹ A. Jackson, *Poverty and Racism* 24 Perception 4 (Spring 2001)

Online: Canadian Council on Social Development <http://www.ccsd.ca/perception/244/racism.htm> [hereinafter *Poverty*]

Racialized Immigrants

Accreditation

Less than half of foreign-born racialized persons with a university education have high skill level jobs. While many get work, they are underemployed and their job satisfaction is low. With the exception of a few professional areas of specialization, even immigrants educated in Canada face lower employment rates than the Canadian-born population and tend to be concentrated in low-status jobs.

Accreditation is a particularly potent barrier for foreign-trained immigrants. Many strategies have been suggested to amend this problem, but they have been largely ignored. One overriding problem is that the system which attempts to define foreign accreditation standards remains incoherent. This is shaped by systemic racism which tends to devalue out-of-country training, particularly that from developing countries.

There are currently six formal credential assessment services, and a number of informal ones, many of which are used in gaining entry to post-secondary institutions.⁴⁰ Only Alberta, Quebec and British Columbia provide assessment services, and they are very expensive and time-consuming. Applicants are also responsible for paying for translation services for their documents, which employers frequently demand.⁴¹

Immigrants in a study of the Chinese in Canada reported that employers' requirement for North American experience was a particular barrier, and one that is, of course, impossible to fulfill. Another problem is the often-time long delay in attaining documents, while, in the meantime, the skills of professionals lie dormant rather than being honed and adapted to new workplaces. In fact, it is estimated that the net loss to the Canadian economy of under-utilization of immigrant skills is anywhere from \$10.5 billion to \$14.4 billion.⁴²

The devaluing of outside credentials is especially frustrating given Canada's stated preference for 'above average' immigrants, who are educated and experienced, and given that the majority of immigrants *are* better educated than Canadians.⁴³ As an Ontario Council of Agencies Serving Immigrants (OCASI) report states, of recent immigrants:

They all find employment one way or the other but not in field of their own specialty and ironically not for the skills for which they qualified to be an immigrant to Canada in the first place. So in one stroke "we" have de-skilled

⁴⁰ E. Kwan, *Devolution of Social Programs and Spending Cuts: Impact on Immigrants and Refugees* Canadian Labour Congress <http://www.clc-ctc.ca/policy/social/rp9.rtf> at 19 [hereinafter *Devolution*]

⁴¹ R. Ng & T. das Gupta, "Nation-builders? The captive labour force of non-English speaking immigrant women," 3 *Canadian Woman Studies* 1, 1989 at 83-89

⁴² H. Siddiqui. *Immigrants subsidize us by \$55 billion per year* (Toronto Star, 2001) Cited in U. Shakir, E. McIsaac. *Advocating for Access: Contradictions & Possibilities*. (Ontario Council of Agencies Serving Immigrants (OCASI) Newsletter, 2001)

⁴³ C. Budhu. *Research Project on Visible Minority Communities in Canada, National reference group on Visible Minorities – Voluntary Sector Initiative – Final Report, 2001* http://www.vsi-isbc.ca/eng/reference_groups/visible_minorities/index.cfm

those people who “we” chose as “suitable” immigrants for Canada while not resolving the issue of shortages of labour in those fields for which we chose them.⁴⁴

One might assume that, because the federal government is responsible for selecting immigrants on the basis of their professional qualifications, it might also be accountable for overseeing their settlement process, including their placement in appropriate employment. However, this process quickly becomes mired in bureaucratic red tape, as the federal government abdicates the task to provincial jurisdictions, which in turn refer new immigrants to their individual professional regulatory bodies. At this level, many professions require that applicants write licensing exams or enter long periods of retraining in the Canadian market before they are licensed. In this complex maze of jurisdictions, Shakir and McIsaac note:

Advocating generically for access to professions and trades means spreading yourself so thin across the jurisdiction chasm that you risk becoming vacuous. Advocating specifically within each profession and trade requires a high level of specialization and adroitness to juggle the different so-called jurisdictional “stakeholders” within.⁴⁵

They go on to discuss how the struggle to have accreditation considered seriously is undermined by media reports which take an ‘anecdotal’ approach, portraying only the odd, sad individual story, rather than attempting a useful analysis of the systemic problem. This also maintains the common notion that individual immigrants are solely responsible for their own adaptation to Canadian society, rather than the government being accountable to them for employment commensurate with the skills and experience for which they were selected in the first place. Shakir and McIsaac make many recommendations for amending this system, among them:

-the settlement sector that primarily deals with immigrant settlement issues must be seen as a legitimate player in the whole APT issue.

-settlement and employment issues must be seen as inextricably linked, thus, requiring positive coordination between Citizenship Immigration Canada (CIC) and Human Resources Development Ministry (HRDC).

-because immigrants settle in provincial jurisdictions, there must be a more focused dialogue between CIC, HRDC and the provincial government. . . there must be a meaningful dialogue between federal ministries, provincial government, relevant ministries and the regulatory bodies for the larger good.

-tax incentives [should be given] to employers to set up paid internships in order to provide Canadian experience and opportunity.

⁴⁴ U. Shakir, E. McIsaac. *Advocating for Access: Contradictions & Possibilities*. (Ontario Council of Agencies Serving Immigrants (OCASI) Newsletter, 2001)

⁴⁵ *Ibid.*

-the notion of “Canadian experience” [must be demystified] by providing standardized assessment tools across the board for regulatory bodies and employers to assess the skills and qualifications of immigrants.

-mechanisms [must be set up] for immigrants to have access to information on Canadian labour force requirements according to different professions/trades at the point of entry.

-co-op type training programs (which include on-the-job training) [must be] funded by federal, provincial and private funds in order to facilitate the entry of immigrants in to the Canadian labour force.⁴⁶

It is clear that there is tremendous need for a formal, fair and consistent policy on accreditation that is extended to all areas of the economy.

Other facts on immigrants

The wage gap between Canadian-born men and immigrant men from racialized groups is 16%. Among foreign-born immigrants, those who are racialized earn approximately 78 cents for every dollar earned by those who are White. Immigrant women have been shown to work longer hours for lower pay than Canadian-born women, and are more than twice as likely to be concentrated in administrative, clerical, sales and services jobs. Highly educated recent immigrant women are only about half as likely as Canadian-born women to hold professional employment.⁴⁷

Despite Canada’s establishment of a task force on the employment of visible minorities in the federal Public Service, their numbers are still small in light of an increasingly large percentage in urban centres. They account for only 1 in 17 of all positions in the Public Service, and 1 in 33 in management positions.

One in five non-racialized persons rate in the highest income quintile, compared to one in eight foreign-born minorities. According to Professor Michael Ornstein’s 2000 study of poverty in Toronto, Ghanaians experience the highest unemployment rate, at 45%.⁴⁸ They are followed closely by Afghans, Ethiopians, and Somalis. Among these groups, Ghanaians also suffered the highest poverty rate, at 87%. Nearly 70% of Ethiopian families lived in poverty, as did over 62% of Somalis. Sri Lankans, Aboriginals, Jamaicans and Filipinos hover around a 50% poverty rate.⁴⁹ In addition, Black families from the Caribbean had poverty rates up to four times higher than those of White, Northern European backgrounds. Families from Vietnam and Korea were about five times poorer than White Canadians.⁵⁰

⁴⁶ *Ibid.* Recommendations directly quoted.

⁴⁷ J. Chard, et al. *Women in Canada* (Ottawa: Statistics Canada, 2000) at 201-202

⁴⁸ M. Ornstein, *Ethno-racial inequality in Toronto: Analysis of the 1996 census*. City of Toronto: Access and Equity. 2000 [hereinafter *Ethno-racial inequality*]

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

Particularly disturbing in Ornstein's findings is the fact that some groups who have inhabited the city for generations, such as Jamaicans and Vietnamese, and who speak fluent English, still endure the same low-wage jobs, run-down living environments and poverty levels as poor, recent refugees. It is estimated that 800 refugee claimants utilize Toronto's shelter system at any given time.⁵¹

Overall, it has been shown that the poverty rate for immigrants is increasing. In the early 1980s, the poverty rate of recent immigrants was under 20%; by 1990 it had risen to 35%, and in the 1996 census it had grown to 52%.⁵²

Article 5

Canada has a particular responsibility to consider the needs of undocumented and contingent workers, who often migrate from countries with little economic opportunity and fulfill needs for low-wage labour in the service and manufacturing sectors. Such workers lack protection in their workplaces and of their basic human rights, often due to an undocumented status that they cannot help. In addition, some Canadian industries relocate their manufacturing operations to low-income areas where labour and safety standards are unregulated.

On top of these concerns, the manufacturing sector in Canada is decreasing in size and there is a growing trend toward non-standard work, including part time shifts and casual hours, which does not offer benefits. Technological change also decreases the need for blue collar labour and creates a greater need for literacy in English and computer skills. These changing demands are hardly well matched by cuts to social and training programs for immigrants and refugees.⁵³

⁵¹ *Devolution*

⁵² *Poverty*

⁵³ *Devolution*

Aboriginals

According to the federal standards drawn in the *Employment Equity Act*, Aboriginal peoples are somewhat overrepresented in terms of their availability in the work force. They were employed at 2.7 percent versus their workforce availability of 1.7, as of 1998. However, as the Bakan and Kobayashi report notes:

...these statistics need to be understood in light of several observations. First, the federal public service is a very important source of employment for Aboriginal peoples; many would argue that if more effective steps were taken to recruit, promote and retain Aboriginal employees, the level of representation could, and should, be much higher than work force availability. Second, like the other designated groups, Aboriginal peoples are not equitably distributed within the public service; they are overrepresented in administrative support and operational positions, and underrepresented in executive positions. They are concentrated in particular departments, especially Indian and Northern Affairs, and in particular jobs, especially those in health services (Canada 1998a: 52-59). Finally, they are overwhelmingly concentrated geographically within the Northwest Territories, where they make up 23.1 percent of the public service (Canada 1998a: 60).⁵⁴

Aboriginal peoples in Canada face the highest overall unemployment rate of any group, at 25%. One in seventeen Aboriginal persons is in the top quintile of income compared to one in five non-racialized workers. Only 13 per cent of Aboriginals with the same education as Whites had earnings in the top quintile. It has been shown that many university educated Aboriginals still earn in the bottom quintile, at a rate of 38% compared to 15% for non-racialized groups. Even though the health field is one in which racialized minorities tend to earn more than White Canadians, here, too, Aboriginals' earnings were lower, at \$16 000 below non-racialized Canadians' average.

It is estimated that 44% of Aboriginals living off reserves live in poverty.⁵⁵ On some reserves, as many as 95% of Aboriginals are forced to rely on welfare.⁵⁶ Over 61% of Aboriginal children under age 15 live in poverty. Not only are Aboriginal people much more likely to be poor than the average Canadian, they are also likely to be deeper in poverty.⁵⁷

Although the low income levels of Aboriginals are more fully explained by education levels than those of other groups, this too is a serious problem. Aboriginals' lack of access to education presents a major barrier.

⁵⁴ *Employment Equity*, at 16

⁵⁵ *Ethno-racial inequality*

⁵⁶ *Two Faces*

⁵⁷ K. Lee, *Measuring poverty among Canada's Aboriginal people*. Insight: an information series, for Canadian Council on Social Development [no date: uses 1996 census data]

Women

Women have made relatively fast progress in increasing their employment rates. While the actual number of women in the public service has declined due to a decade of major downsizing, their overall proportional representation has increased from 46.1 percent in 1993 to 50.5 percent in 1998. Women are currently overrepresented, considering their workforce availability, by almost two percent. However, they remain overrepresented at the lower rungs of the management scale, and are overconcentrated in administrative support roles, demonstrating that representation is only a preliminary step toward full equality.⁵⁸

As is the case in all other facets of oppression, gender and race function closely together as determinants of women's poverty, employment and income levels. The gap between racialized women's situations and those of non-racialized men is, of course, very wide. The gap between racialized and non-racialized women's employment positions is also substantial.

Women in general still earn only about 73 cents for every dollar earned by men.⁵⁹ Aboriginal women earn approximately 9% less than White Canadian women. Canadian born racialized women tend to earn slightly more than White women, possibly due to their overall higher levels of training, however, immigrant women from visible minority groups earn 7% less on average than Canadian-born women. This pattern, similar to differences among men, indicates that some of the most significant barriers to employment and competitive incomes lie in the inability of the Canadian system to accommodate those born outside of the country. (However, in almost every category, Aboriginal persons ranked even lower than foreign born immigrants.)

Other important issues for women's employment include the availability of publicly supported childcare and parental leave. Women in Canada still perform the bulk of childcare duties and are more likely than men to care for their children at home. Difficulties in finding affordable childcare or supporting oneself while at home with young children have the greatest impact on poor and racialized women, and on women attempting to leave abusive relationships.

Persons with Disabilities

Persons with disabilities work in the public service at about 81% of their numeric availability.⁶⁰ Here, a gender gap also exists, with men employed in somewhat greater numbers than women. However, men with disabilities, too, are overrepresented in lower

⁵⁸ *Employment Equity*, at 16

⁵⁹ *Labour Market*

⁶⁰ Public Service Alliance of Canada (PSAC) *Analysis: Employment Equity in the Federal Public Service 2000*. (May 2001)

http://www.psaac.com/H&S&E/EmploymentEquity/EE_PSAC_Analysis-e.htm

status positions. Eight out of ten hirings of persons with disabilities occur in the administrative support category, as do the greatest number of promotions.⁶¹

On the whole, employed persons with disabilities earn less than non-disabled persons. In 1990, 43% of people with disabilities earned less than \$15 000 a year, versus 37% of persons without disabilities.

Other impediments to economic equality

The Canadian Race Relations Foundation concludes that despite some improvements through employment equity programs, the gaps in employment and earnings according to race remain very significant, and the issue of racism in the workplace must be seriously addressed. After detailed labour market analysis, the Foundation notes that, consistently, “the higher the pyramid, the less diverse and the whiter it becomes.”

It is important to keep in mind that, while numbers and statistics are often good indicators of patterns, more analysis is usually needed to achieve a better picture of the situation. For instance, in employment patterns, are the jobs in question full time, are they commensurate with employees’ experiences and qualifications, do they include security and benefits, and are members of marginalized groups being adequately promoted, or simply hired? Further, have workplace cultures shifted to include persons from minority groups as more than ‘token hirings’ to preserve a company’s image? Will policies become legislation and will they be more widely applied and enforced?

Article 5

Other significant issues arise for persons from marginalized groups when looking for employment. Language barriers are important obstacles for recent immigrants, many of whom report that training programs are insufficient, and do not educate them adequately to function within corporate cultures.⁶² Chinese women in one study reported that the process of searching for work in Canada was unfamiliar and intimidating; they had few skills to help them research jobs, prepare applications, write letters, or interview successfully.⁶³ Accreditation standards for immigrants, too, need to be addressed, not only to benefit newcomers, but also to supply much-needed skills to particular sectors of the economy where worker shortages exist.⁶⁴ There also exists, of course, outwardly expressed racist sentiment in the workplace, in the form of harassment⁶⁵ or exclusion from workplace culture.

⁶¹ *Ibid.* at 16

⁶² *Devolution*

⁶³ V. Preston. *Employment Barriers Experienced by Chinese Immigrant Women in the Greater Toronto Area*, 2001 <http://ceris.metropolis.net/Virtual%20Library/community/preston1.html>

⁶⁴ *Labour Market*

⁶⁵ *Ibid.*

Recent cuts to social programs in many areas have not bypassed Canada's employment insurance program. In 1995, a new federal transfer system to the provinces was established, under which monies for education, health and social assistance were all amalgamated into a singular Canada Health and Social Transfer (CHST) payment. The total of this amount was less than had been allotted formerly for the three areas. The new transfer system also allows the provinces more flexibility in how the monies are spent, thus they are not obligated to provide the same level of social assistance to those in need. A recent study found that standing gaps in service were exacerbated, and new ones created, under this system. The new policies failed to integrate the needs of refugees and immigrants, and their access to services was further limited as organizations designed to help them suffered under reduced resources.⁶⁶ Some particular effects of the cuts have been as follows:

-In Ontario, a sponsored immigrant on welfare receives at least \$100 less per month than a Canadian-born person on welfare

-Since 1997, Ontario's 'workfare' system requires that all employable welfare recipients must work for their benefits.

-Immigrant women's groups and shelters in Ontario received 6% cuts in their budget at a time when immigrant numbers and needs are increasing. This effects services such as language training and cultural adaptation assistance.

-Some immigrants rely on welfare due to the breakdown in their sponsorship relationship, for a variety of reasons. Often, the sponsor cannot support them adequately or experiences particular hardships. Many sponsors themselves are struggling recent immigrants who are attempting to support their family members. In Quebec, when welfare needs increase, the sponsor now incurs a debt equal to the amount paid the new immigrant.⁶⁷

Immigrant women have been shown to be at particular risk for poverty in the early stages after their arrival, when their income levels are about half of those of immigrant men. Although their earnings have been shown to catch up with those of the average Canadian population over a number of years,⁶⁸ this settlement stage is crucial, and makes them especially vulnerable as they rely on men's economic support. This also means that women's shelters and adaptation services are greatly needed.⁶⁹ Another study reports that some settlement service programs in Ontario have had their funding cut by 50%; others have been targets of changes whereby funding is given only for special projects, and some have been eliminated altogether.⁷⁰

⁶⁶ *Devolution*

⁶⁷ *Ibid.*

⁶⁸ Another report states, however, that this catch-up trend has been on the decline. See *Poverty*.

⁶⁹ *Ibid*

⁷⁰ H. Leung. "Settlement Service Policies and Settlement issues Among Chinese Canadian (*sic*) in Canada," 2000 <http://ceris.metropolis.net/Virtual%20Library/community/hleung1.html>

In addition to welfare cuts, since 1996 employment insurance payments themselves have decreased, and more weeks of work are now required to qualify for this assistance. The benefits period is also shorter, forcing those most effected by unemployment to search earlier and harder.⁷¹

⁷¹ *Devolution at 15*

Article 7

It is clear that people of colour in Canada face a wide variety of barriers when searching for work, making a living and supporting their families. Despite a notion that Canada is a 'tolerant' and welcoming country where overt forms of racism are unacceptable, there are many systemic ways in which racism operates under the guise of other issues, such as the consideration of credentials, exclusion in workplace networks, and more favourable treatment of people from the dominant group. Furthermore, the concept of 'tolerance' is rarely problematized as to its clearly condescending undertone. For to 'tolerate' others in no way establishes that they are one's equals, but maintains a notion that racialized persons are fortunate when the superior dominant group decides to put up with them. Governments need to work much harder to see that people of colour and Aboriginals are not merely included or 'permitted' to function in the national community. Rather, they must be *integrated* as full social participants whose rights of equal opportunity are axiomatic.

Chapter III: Immigration, Refugee and Migrant

Introduction

Intolerance of refugees and immigrants, xenophobia and racism are intricately linked. In Canada, where open expression of racist ideas is generally not tolerated, hostility towards newcomers serves as an outlet for the expression of underlying racist sentiments.⁷²

Canada has gained international recognition for its liberal immigration and refugee policies, but as pointed out by the Canadian Council for Refugees (CCR), racism and discrimination are nonetheless manifested at the systemic level, through the functioning of government bodies and through refugee and immigration policies that have a differential impact on racialized groups.⁷³

The CCR's report to WCAR summarizes the historical background to discrimination in Canada's Immigration Policy as follows:

Canadian immigration history is marked by racism and discrimination. The first immigrants from Europe brought with them the seeds of the racism that would have such a devastating impact on the Aboriginal peoples of what is now Canada, an impact that continues to be felt to this day.

Almost from the time when the Canadian government began to control immigration to Canada until 1960, racist laws and practices restricted the immigration of certain groups.⁷⁴

The CCR report goes on to document some of the historical facts of racism towards immigrants and refugees, including

- ❑ the imposition of a head tax on all Chinese immigrants from 1885 to 1923, followed by the *Chinese Exclusion Act* in 1923 which barred all but a few Chinese from entering Canada until 1947, whereupon the entry of Chinese remained restricted under more general rules relating to persons of "Asiatic race";
- ❑ the imposition of a "continuous passage rule" in 1908 which had the effect of excluding from immigration people who could not make a direct journey to Canada, with the main target of this measure being prospective immigrants from India;
- ❑ the anti-Semitic immigration policy during the era when the Nazis were in power in Germany, with the result that Canada's record for accepting Jews fleeing the

⁷² Canadian Council for Refugees, *Report on Systemic Racism and Discrimination in Canadian Refugee and Immigration Policies - In Preparation for the UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance* (Montreal, October 2000) at 1

⁷³ *Ibid.* at 1

⁷⁴ *Ibid.* at 1

Holocaust is among the worst in the Western world. Canadian policy towards Jewish refugees was summarized in the words of one official: "None is too many";

- the 1911 Order in Council prohibiting "any immigrant belonging to the Negro race, which race is deemed unsuitable to the climate and requirements of Canada." While the Order was never proclaimed, the same effect was achieved through measures such as penalties imposed on railway companies that distributed transportation subsidies to blacks, and the hiring of agents to actively discourage black Americans from coming to Canada.⁷⁵

In short, Canada's historical immigration policies have been overtly racist. It was not until the introduction of the point system in the 1960s that race officially ceased to be a relevant factor in the selection of immigrants. However, there are aspects of current policies that are reminiscent of earlier forms of exclusion, and the enforcement of seemingly neutral immigration requirements continues to discriminate against certain racialized groups.⁷⁶

In this chapter, we will highlight some of the modern day racially discriminatory laws, practices and policies of Canada towards immigrants, refugees and migrants.

Relevant Convention Provisions

Article 2

(1) States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and to this end:

- (a) Each State party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;*
- (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination whenever it takes*

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles

⁷⁵ *Ibid.* at 2

⁷⁶ *Ibid.* at 3

embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention, inter alia:

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) the right to equal treatment before the tribunals and all other organs administering justice;

(b) political rights, in particular the right to participate in elections-to vote and to stand for election - on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(e) Economic, social and cultural rights, in particular:

(iv) The right to public health, medical care, social security and social services

Concerns about Immigration and Racism

Article 2

When it comes to immigrant and refugee rights, Canada fails to comply with Article 2 of the Convention in a number of ways.

I. Policies with Differential Impact

ID Documents

There is a requirement that Convention Refugees produce "satisfactory identity documents" in order to be granted permanent residence. This requirement negatively affects certain groups of refugees:

- ❑ Refugees who come from countries where identity is not traditionally established through official documents (notably many African countries);
- ❑ Citizens of countries where there is no government authority that can issue the documents; and

- ❑ Groups who are less likely to possess such documents such as youth, women or people from rural areas

As a result, hundreds of refugees from Afghanistan and thousands of refugees from Somalia have been forced to wait years for permanent residence because there is no functioning government in their countries and such documents as the refugees do have are frequently discounted by immigration officials.

Alarm was raised by the UN Committee on Economic, Social and Cultural Rights in its 1998 report about Canada with regard to this issue. The Committee expressed its concerns about "the plight of thousands of 'Convention refugees' in Canada, who cannot be given permanent resident status for a number of reasons, including the lack of identity documents, and who cannot be reunited with their families for a period of five years."⁷⁷

\$975 Right of Landing Fee - The new Head Tax

As of February 1995, all adult immigrants coming to Canada must pay a \$975 "Right of Landing Fee" ("ROLF") in order to be granted permanent residence. Initially, the policy was applied to refugees as well; the imposition on refugees was repealed only after years of protest from the communities. The ROLF, or the new Head Tax as it is sometimes called, disproportionately affects immigrants from the South because of the differential income and living standards among the 'have' and 'have-not' nations. In addition to the \$500 processing fee, the new head tax creates a financial barrier for many prospective immigrants from the South who wish to migrate to Canada. A family of four, for instance, would have to pay \$3,150 in total fees just to be accepted, an amount that is equivalent to the annual salary of an accountant in El Salvador and three years wages for a nurse in Sri Lanka.

Imposition of visa requirements on nationals of some countries wanting to travel to Canada

Southern countries account for 81% of countries whose citizens require visas in order to enter Canada, while predominantly "white" countries represent only 19% of countries requiring visas.

Since the events of September 11, 2001, the restrictions have increased, with more countries from the developing world subjected to visa requirements.

⁷⁷ United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights (Canada)*, 10 December 1998, E/C.12/1/Add.31 at para 37.

Family reunification

Historically, family class immigrants made up a significant portion of the overall immigrant population in Canada. The 1978 *Immigration Act* made "family reunification" one of the core objectives of our immigration policy. From that time on, until about 10 years ago, the majority of the immigrants who came to Canada every year entered as family class immigrants. Since the early 1990s, when the current Government came into power, however, the percentage of family class immigrants began to drop. Last year, the percentage of family class immigrants dipped to less than 30%. Increasingly, our immigration selection policy is geared towards attracting the so-called 'best and brightest', including wealthy businesspeople and entrepreneurs who are perceived to be of greater economic benefit to Canada than are family class immigrants.

The overall changes in immigration patterns have included specific changes to the definition of "family class" in both the regulations and processing of such applications by overseas visa offices. In the first place, more stringent requirements are being imposed on those who wish to sponsor their families. In addition, "family class" immigration has become more and more narrowly defined. The Canadian Government's retreat from its commitment to "family reunification" is most evident in the new *Immigration & Refugee Protection Act* which came into effect on June 28, 2002. For instance, for the first time in our history, the law prohibits anyone who is receiving social assistance to act as a sponsor.

Traditionally, the family class concept under immigration law is limited to reflect the nuclear family model, including only one's spouse, dependent children and parents. It does not include members of the extended family network that is commonly embraced by many different cultures and societies, particularly by cultures of racialized communities.

Coincidentally, the movement away from family class immigrants happens at a time when shifts in the source countries of immigration to Canada are also occurring. Since the 1990s, the top source countries of Canada's immigration are found in Asia, Africa, the Caribbean, and Latin America, in contrast to the early times when most of our immigrants came from Great Britain and other European countries. These new immigrants are more likely to embrace an extended family structure than were the early pioneers. Yet, they are also faced with more barriers when they attempt to bring their families over to Canada.

To start, there is a requirement for a sponsor to present official documents (e.g., marriage certificates, adoption papers) in order to establish family ties. This requirement negatively affects people who come from societies where marriage and birth are not recorded through documents. The inability to produce documents can prohibit family reunification. In some cases, Immigration requires the sponsor and his/her family to undergo DNA testing in order to prove their relationship. Requests for DNA tests are disproportionately made of applicants from countries in Africa and Asia. The high costs involved in DNA testing, in effect, create barriers to family reunification for immigrants from these countries.

Practically speaking, Canadians who wish to bring their families from abroad must demonstrate that their loved ones fit into the definition of "family class members"; often they must also satisfy the visa officers processing their applications that the relationship in question is a "genuine" relationship.

"Who are family members" and "is their relationship a *bona fide* one"? On the surface, these are relatively straightforward questions with equally straightforward answers. In reality, however, what is considered a "family member" may defy one's common sense understanding of the term. Moreover, the process for assessing these applications is extremely complicated and exceedingly intrusive. With almost unchecked discretion, immigration officers are free to consider almost any factor in determining whether or not a particular relationship is "*bona fide*", i.e., whether it has been entered into for the purpose of immigration. They can ask the applicant any question or request any information to prove his/her relationship with the sponsor. Just as troubling is the fact that the lack of guidelines and/or accountability means that the determination process is often fraught with the prejudices of officers who most likely do not share the cultural, racial, social and/or economic background of the applicants. The result is a biased, intrusive and frustrating process for both the Canadian sponsor and his/her loved ones overseas.

Another problem is found in the way that immigration officials deal with cases of adoption. Canadians can sponsor their adopted children to enter Canada, so long as they meet all the requirements as a sponsor and can prove both that the adoption has not taken place for the purpose of immigration and that there exists a genuine parent-child relationship.

Every year, hundreds, if not thousands, of Canadians go abroad to adopt infant children from countries like China, Vietnam, and Romania. Most of these parents (who are most likely to be Caucasians) do not share the same cultural or racial background as their adopted child. Apart from going through the process to legally adopt these children, the Canadian parents must also bring applications to sponsor these children to Canada. Routinely, once the adoption is approved by the relevant agency, the immigration approval will follow suit.

The situation is drastically different, however, for Canadians who wish to adopt children who are already known - and in fact related - to them. This type of adoption is more common among Canadians of certain ethno-racial background (for example, Chinese and South Asians). Often they adopt the children of their close family members, e.g., their nieces and nephews, and then proceed to sponsor these children to enter Canada.

The latter type of adoption is subject to scrutiny that a white parent adopting a Chinese girl would never even dream of encountering. Partly this is a problem with the legal requirements, especially one that requires that the parent-child relationship be established at the time of adoption. Given that the adoptive parents and the adopted child were in fact related to each other, and given that the child is often still under the care of his/her own natural parents until the immigration application is approved, it is inherently

contradictory to expect a "parent-child" relationship to exist before it has been given the chance to develop. At least one Federal Court decision⁷⁸ has pointed out the inherent problem with this requirement and has adopted a forward-looking test in assessing the genuineness of the relationship in question.

But the problem does not end there. There is a double standard that Canada Immigration imposes between the two types of adoption as listed above - the inter-cultural adoption and inner-cultural adoption. The former is subject to a much more lenient assessment because of the presumption that these Caucasian Canadians are "genuine" about their desire to adopt a child, whereas the latter is put through a stringent examination as the application is presumed to have been made to assist the immigration of a relative.

Racial Profiling

While it is never admitted and rarely discussed, the Canadian immigration authority engages in racial profiling when implementing various laws and policies.

First of all, racial profiling is used in the deportation of immigrants. In 1994, during the robbery of a trendy restaurant in Toronto called *Just Desserts*, a white female patron was shot. The suspects involved in the shooting were four masked black men. The incident immediately hit the front pages of newspapers across the country. In the following months, numerous African Canadian men reported being stopped and harassed by police without just cause. Eventually, four men were arrested; one was an immigrant who had once received a deportation order from Canada, which had later been stayed. The fact that an immigrant was "implicated" in the *Just Desserts* crime was enough to send the public into a frenzy. In response, the Canadian Government introduced Bill C-44, the so-called "Just Desserts Bill" whose purpose was to make it easier to deport all immigrants who have committed a serious criminal offence. Ironically, the only accused who was later acquitted of all charges in this crime was the immigrant himself.

Under Bill C-44, a permanent resident may now be stripped of the right to appeal a removal order against him/her if the Minister of Immigration issues an opinion that the person is a "danger to the public." What is even more troubling, however, is the fact that this provision does not affect all permanent residents in an equal manner.

The African Canadian Legal Clinic (ACLC) of Toronto compiles a study of the substantive impacts of the implementation of this notorious provision.⁷⁹ Citing statistics provided by Canada Immigration,⁸⁰ the ACLC has argued that the "danger to the public" provision is invoked most often against members of racialized groups, including an overwhelmingly disproportionate number of persons of African descent with previous

⁷⁸ *Perera v. Canada (Minister of Citizenship & Immigration)* [2001] F.C.J. No. 1443 (QL)

⁷⁹ African Canadian Legal Clinic. *No Clear & Present Danger: The Expulsion of African Canadian Residents from Canada - A Discussion Paper* (Toronto, 1999), unpublished.

⁸⁰ *Ontario Region Danger to the Public Removals*, statistics provided by Detention and Removals, Citizenship and Immigration Canada Ontario Region, to the ACLC (16 September, 1997)

drug-related offenses. Based on the statistics, the ACLC finds that of the 297 persons removed on the “danger to the public” grounds in Ontario between 1995 and 1997, 116 have been deported to Jamaica. This constitutes 40% of the total removals from Ontario, and is more than five times greater than the number of deportees to Trinidad and Tobago, the next highest recipient of Ontario's “danger to the public” deportees.⁸¹ The ACLC argues that the dramatically high number of immigrants of colour, particularly immigrants of African descent, can be attributed to the fact that racism and the stereotypes of African Canadians “have informed immigration policies and practice throughout Canadian history.”⁸²

Falconer and Ellis have similarly argued that this provision is a law “which primarily targets members of the Black Jamaican community.”⁸³ They state that “colour profiling” in the criminal as well as the immigration context is prevalent throughout North America, and the latest example of that is embodied in the enactment of Bill C-44.⁸⁴

With the new *Immigration & Refugee Protection Act* that came into effect on June 28, 2002, it is feared that more permanent residents will be deported under the increasingly punitive measures of the new *Act*. On the one hand, the new *Act* abolishes the use of danger to the public assessments and replaces them with the ostensibly objective standard of the two-year sentence; this could eliminate some of the potential for racist evaluations by immigration officers. On the other hand, there continues to be the problem of systemic racism in the justice system leading to longer sentences for racialized minorities and the fact that CIC has said that they will deal with deserving cases by not issuing removal orders, which leads right back to assessments made by individual officers whose biases and prejudices are not readily subject to any independent challenge.

The second example of profiling, based on stereotypes, is used in the systematic criminality checks on certain groups of refugee claimants and immigrants. For example, for a certain period in the summer of 1997, immigration officials systematically subjected all Roma claimants to the more detailed criminality checks generally reserved for individuals for whom there are reasons to suspect criminality. The practice was only stopped after it was exposed by the media.

⁸¹ ACLC, *supra* note 59, at 3.

⁸² *Ibid.* at 6.

⁸³ J. Falconer & C. Ellis. *Colour Profiling: The Ultimate “Just Desserts”* (Toronto, 1999), unpublished.

⁸⁴ The figures quoted in their paper, which they obtained from the Ontario Region of Immigration Canada, show that between July, 1995 when the section came into effect until December 31, 1997, 335 persons had been deported from the Ontario Region to 48 countries. Of these, the top destination for deportees was Jamaica, with 138 Jamaicans having been deported. The second highest number was 22 to Trinidad, followed by 18 to Guyana, 17 to England, 17 to Portugal, 16 to El Salvador, and 12 to the U.S. The highest number of cases being monitored for s.70(5) removals was 100 for Jamaicans, followed by 62 Vietnamese, 18 Guyanese, 16 from Iran, and 13 from Ethiopia.

Unfortunately, the use of racial profiling as a "security" measure is gaining more ground and unwarranted legitimacy since the September 11 event. Canadian citizens and permanent residents of Arab and middle-eastern descent are among those most targeted.

The third incident of racial profiling was the detention of close to 600 Chinese migrants who arrived at the West Coast of Canada during the summer of 1999. Arriving in four separate boats after an extremely arduous and dangerous journey, these Chinese "boat people," as they were called, were met with hostility from the residents of British Columbia. Incidentally, that province is known to have a history of anti-Asian sentiment and policy ever since the arrival of the first Chinese in the 1850s. It was British Columbia that imposed the first ever head tax on Chinese immigrants; a measure later adopted by the Canadian Government.

As the public intensified its call to send the Chinese back in their "leaky boats," the Government of Canada responded by detaining almost all of the migrants, many of whom were women and children, in various correctional or immigration detention facilities scattered all over the province of British Columbia. The ground for detention was the migrants' membership in a particular social group, namely, rural Chinese from the Fujian province. Many of these boat people remained in detention for over a year and some for more than two years. When they first arrived, none were informed of their legal rights and many were denied the right to make refugee claims. It was not until community organizations intervened that immigration authorities began to allow their claims to go forward. While some of the migrants were granted asylum, most have since been deported to China.

On the day the first massive deportation of the "boat people" was executed, every single immigration officer involved in the operation was given a golf shirt with the words "class of 90" printed on it, to commemorate the officers' "successful" endeavor of deporting the 90 Chinese. The refugee advocates were outraged by such public display of racism towards the migrants.⁸⁵

II. Structural Issues with Differential Impact

Apart from the differential implementation of policies, another form of systemic discrimination occurs at the structural level within the Canadian immigration apparatus. This discrimination presents the following issues:

Distribution of visa posts

The distribution of Canadian visa posts around the world, and the allocation of resources of these offices, are biased against the countries in the South. For instance, there are 10 visa posts in Europe processing immigrant applicants from that continent. By contrast, in Africa where the population is much larger than Europe's, there are only 4 visa posts that serve the entire continent.

⁸⁵ CBC British Columbia News Online (June 23, 2000)

The unequal distribution, in effect, acts as a quota system when none exists on paper. Not only will fewer of their cases be processed, but immigrants from Asia and Africa will have to wait much longer for their applications to be completed, compared to those from Europe.

Sources of refugees

There has been a historical selection imbalance in favour of refugees from Europe. In 1998, 59% of government assisted refugees came from Europe, versus only 12% from Africa, although these two regions account for similar shares of the global refugee population.⁸⁶

In 1999, Canada responded swiftly and generously to the needs of Kosovar refugees, bringing to Canada about 7,000 refugees within a matter of weeks. By contrast, Canada failed to respond to Tutsi Congolese who were targeted for persecution. A group of these refugees, some of them with family in Canada, was evacuated ‘temporarily’ (for 6 months) to Benin. Canada failed to resettle any of them within the 6-month period.

Under-representation of Racialized Communities

As of mid 2000, representation of persons of colour within the staff of Citizenship & Immigration Canada (CIC) was at 8.15% (below a target of 9.8%). CIC also acknowledged that people of colour are disproportionately clustered at lower levels of officer groups. At the Immigration and Refugee Board, there is a higher proportion of people of colour. 22% of Board members and (as of March 31, 2000) 18.6% of public service employees are people of colour. This is the highest representation of people of colour reported among federal departments and agencies. However, among public service employees, they account for only 6.4% at the management level.

The Lack of Race Based Analysis

As part of the promise made by Canada at the 1995 World Conference on Women in Beijing, the Canadian Government must subject all of its laws and policies to a gender based analysis in order to detect and hopefully prevent any differential impact of such laws on women (and men). Despite repeated calls from the racialized communities, no move has been made by the Canadian Government to adopt a race-based analysis with the goal of alleviating the adverse impact of systemic and other forms of racial discrimination on racialized communities.

The need for a race-based analysis is particularly acute in the area of immigration and refugee law, given Canada's historical and contemporary immigration policies and their differential affect on racialized groups, and given that people of colour now make up the majority of all immigrants and refugees coming to Canada each year.

⁸⁶ Compiled by the CCR from the 1998 UN High Commissioner for Refugees (UNHCR) Statistical Overview and statistics from Citizenship & Immigration Canada.

Article 4

Non-Compliance

There are a significant number of hate groups and anti-immigrant groups flourishing in Canada, espousing white supremacist and other xenophobic ideas. With few exceptions, most of them have never been asked to account for disseminating hate materials and publications that promote a White-only Canada.

More critically, however, oftentimes public officials - elected and non-elected alike - in fact help to spread hatred and prejudice toward immigrants and refugees by scape-goating them as groups that can be blamed for any and all social or economic woes, such as increases in crime, poverty, and terrorism.

Just take the 1990s, in which abundant examples of public displays of prejudice could be found. For instance, the former leader of the Liberal Party of the Province of Ontario once called the Somali refugees who came to Canada fleeing civil war "welfare bums." Around the same time, a deputy mayor of an Ontario city said the Chinese immigrants are driving out the "backbone of our community." Neither of them has ever apologized for their statements despite protests from the communities and even from other political leaders.

When the 600 Chinese boat people arrived in Vancouver, a staff sergeant of the Royal Canadian Mounted Police (RCMP) was quoted in the media as saying that the Chinese were not refugees and they were lying.⁸⁷ A complaint was filed by the CCR to the RCMP expressing its concerns that the statement would further fuel the climate of hostility towards refugees and newcomers. An internal RCMP investigation exonerated the officer, prompting a further complaint by CCR to the RCMP Public Complaints Commission. In the end, while the Commission found that the officer's statement was inappropriate because it violated RCMP media policy, the Commission never addressed the key concern raised by CCR, namely, the significance of the racism and xenophobia exhibited, and the need for government institutions to counter such prejudice.

More recently, yet another municipal politician in Ontario blamed refugees and sponsored immigrants for placing burdens on the municipality. Hazel McCallion, Mayor of Mississauga, was quoted as saying that the federal government is letting in "unacceptable" and "unproductive people" who "came here by plane, have passports when they board then flush them down the toilets and declare refugee status, even when they are from rich countries." She also commented on how hospital emergency rooms are now "loaded with people in their native costumes," and children who do not speak English are negatively affecting the learning of other children.⁸⁸

Since September 11, the media and public opinion are all pointing at immigrants and refugees as the source of threats to our country's security. Rather than attempting to

⁸⁷ *Smuggled Chinese Aren't Real Refugees, Mountie Says* Globe & Mail (August 6, 1999) A1

⁸⁸ *Cities Fight for Fair Refugee Policy*, National Post (May 15, 2002)

dispel these myths, government officials perpetuate racist stereotypes against these individuals by tightening up the border and introducing new security measures both in the immigration and criminal law context. The underlying message is thus clear: immigrants and refugees are terrorists and we must guard ourselves against their invasion.

Article 5

Non-Compliance

Canada's report notes that the Canadian Human Rights Commission has jurisdiction to deal with potentially discriminatory actions taken by immigration officers who issue visas in Canada.⁸⁹ What is omitted - as highlighted in our chapter on human rights - is the fact that the *Canadian Human Rights Act* specifically excludes complaints brought to the Commission by individuals outside Canada unless the victim is a Canadian citizen or permanent resident. The effect is to render immune from human rights review virtually all services of the immigration department offered overseas.

During the late 1980's, the law was changed so that permanent residents no longer had the right to vote in municipal and provincial elections. Today, only citizens are entitled to vote in elections at all levels of Government. As a result, newcomers are effectively left out of any political decision making process that affects their day-to-day lives. As immigrants and refugees have no political clout, they also have no influence over government policies, however critical their input might be. As illustrated above, immigrants and refugees are therefore made vulnerable targets of scapegoating.

⁸⁹ Canada's 13th and 14th Report, para.68

Chapter IV: Health

Introduction

The Canadian government's last report to the CERD committee makes surprisingly few references to the issue of health. Health concerns have a direct and unmistakable impact on the wellbeing of racialized communities. As well as producing structural inequalities which create conditions of ill health, racism dramatically influences access to medical services and shapes the quality of encounters with the health care system.

While Canada prides itself on an internationally recognized system of socialized health care for all, it is important to keep in mind that this system has been rapidly eroding. Severe spending cuts in the health care system during the 1990s in most provinces have had a disproportionate impact on communities already marginalized by poverty, and it is well known that a disproportionate number of people of colour are poor. Recent attempts to preserve healthcare are floundering, and are compromised by a move toward greater privatization. Even at its best, the country's well-reputed medical system cannot guaranty equal treatment to all who require its services. Nor does it preclude unhealthy conditions in some communities, or assure that medical testing and treatment take into account the needs of diverse populations. The recent move toward a two-tier system will continue to assure better care only for those who can afford to pay.

Several areas of particular concern to persons of colour warrant special attention on behalf of the federal and provincial governments. For instance, Aboriginal communities are much more likely than the average Canadian population to experience poverty, violence, racism and poorer health, and to live in substandard conditions. Studies of immigrants have indicated that health tends to decline over the duration of their stay in Canada. People of colour, and women in particular, consistently report barriers to accessing health care information and treatment. This is similarly true of immigrants to Canada, who experience racism, language barriers and cultural isolation. While Canada boasts the number one ranking among best countries in which to live, if the conditions of its Aboriginal population were isolated, it would rank 63rd.⁹⁰

In the glaring absence of specific promises or plans in the report of the federal government of Canada, the following discussion utilizes recent Canadian research in outlining key health issues of particular relevance to racialized groups. It should make clear that racism affecting health care is an issue that mandates immediate and profound attention.

⁹⁰ A. Saidullah. *The Two Faces of Canada: A Community Report on Racism*. (National Anti-Racism Council of Canada, 2001) [hereinafter *Two Faces*]

Relevant Convention Provisions

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;

(e) Economic, social and cultural rights, in particular:

(iv) The right to public health, medical care, social security and social services;

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

Health Issues and Racism

Article 2

Lack of Race-Conscious Health Research

A thriving feminist health movement has made important gains in advancing gender as a crucial axis of analysis in health care research and treatment. However, women have often been treated as a homogeneous group within such analyses. A report from the Chinese Canadian National Council states, “Medical research communities as a whole are still not tuned into the changing demographics and the differences in the needs of racial minority communities due to different physiques.”⁹¹ Race, where it is considered at all, is often seen as merely an extra category to be ‘added’ when considering the needs of women of colour, rather than a fundamental organizing principal of a system which treats different women differently. Systemic racism and socioeconomic concerns also structure how people of colour gain access to health care and information, how comfortable they feel in seeking help, and their level of trust in ‘outsiders’ who assess and treat their families.

Various studies indicate that while immigrant and refugee women have many health needs that are similar to those of Canadian-born women, they possess far fewer resources, for example, in support networks, employment, and income. This indicates a need for culturally diverse services and programs that are tuned to immigrant women’s issues. It also points to the need for accessible information about Canadian law, women’s rights, and how to utilize the health care system. Further, the Canadian Centres for Excellence in Women’s Health call for more research to clarify the areas where the needs of Canadian-born women and immigrant women diverge, as well as where they are similar. They identify key areas requiring more investigation, such as the influence of language ability on health, the impact of social determinants on immigrant women’s health and the need for interpreter services. Their study reports that it remains unclear, for example, “whether immigrant and refugee women under-utilize preventive services due to differences in their concepts of health and health promotion, or systemic barriers, including those in the health system, and other socio-economic and linguistic factors.”⁹²

Immigrant men, too, may experience particular health problems related to gender identity and the transition to a new culture. A recent thesis examines the experiences of Guatemalan immigrant men in Canada, relating their common reluctance to report or seek help with health problems to particular understandings of masculinity. It calls for

⁹¹ Chinese Canadian National Council. *A Submission to the Romanow Commission*. (June, 2002)

⁹² M.A. Mulvihill, L Mailloux, W. Atkin. *Advancing Policy and Research Responses to Immigrant Women’s Health in Canada*. Report prepared for The Centres of Excellence in Women’s Health. (Canadian Women’s Health Network, 2001) [hereinafter *Advancing Policy*]

greater attention to how the meanings attached to gender, race and cultural identity positively and negatively influence health and help-seeking behavior.⁹³

⁹³ S. Dunn. "Keeping the Pain," Health, Belonging and Resilience Among Guatemalan Immigrant Men. (Unpublished Masters thesis, York University, Toronto, 2000)

Access to Health Care

Racialized women in Canada tend to use healthcare services less and to receive diagnoses later than do women from other populations. This has been attributed to systemic linguistic, gender, race, cultural and class barriers. A report from the Ontario Health coalition notes that “discrimination places many people at a disadvantage, and is a barrier to accessing health care.”⁹⁴ This has been found to be true of many racialized and immigrant populations. A recent study on the service seeking experiences of Chinese immigrants notes that barriers to communication and cuts to health and social services make it extremely difficult for these immigrants to find assistance, despite their overall high level of education.⁹⁵

A study of Arab Canadians identifies important barriers to accessing health care. Namely, the study found very few Arabic speaking health care providers, a lack of interpreters, few Arab female physicians for women, and a much greater need for culturally sensitive mental health services.⁹⁶

Cultural differences present particular issues for health-provision. For instance, in the drive to be ‘culturally sensitive’ many people rely on stereotypes and generalizations, or attribute particular problems to the ‘backwardness’ of other cultures, rather than to the complex forms of oppression immigrants may have experienced. Research with Somali women in the Lower Mainland of British Columbia found a troubling lack of appropriate, skilled and respectful reproductive care for women who had undergone female genital mutilation.⁹⁷

The same report found that institutions, such as residences for seniors, often fail to understand and respond to the needs of immigrants because “their operating principles are drawn from dominant care models.” Many societies place more emphasis on collective or community health than on individual well-being; thus racialized groups and immigrants seeking help may place their own needs after those of their families. Institutions are often insensitive to or judgmental of these values.⁹⁸

Language barriers, social isolation, unfamiliar hospital environments and the need to rely on family members as interpreters can create discomfort in relating personal experiences. In the case of Aboriginal health care, traditional methods of recovery and treatment are being reinvoked or combined with mainstream medical and psychological models. It is

⁹⁴ Ontario Health Coalition. *Our Health... Our Say! Word from the Street on Ontario's Healthcare System*. (2002) <http://www.web.net/ohc/ourhealth.htm>

⁹⁵ H. Leung. *Settlement Service Policies and Settlement issues Among Chinese Canadian (sic) in Canada*. (CIC-OASIS, 2000) <http://ceris.metropolis.net/Virtual%20Library/community/hleung1.html>

⁹⁶ L. Yuan, I. Rootman, A. Tayeh. *Health Status and Health Care Access for the Arab Community in Toronto: a Pilot Study to Assess Health Needs*. [CERIS Research Report, No date]. www.ceris.metropolis.net

⁹⁷ *Advancing Policy*

⁹⁸ *Ibid.*

important that such efforts be supported and that Aboriginal patients be encouraged to access them when desired.

Abortion

Access to safe and legal abortion for all women has long been a stated goal under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Canada Health Act. CEDAW requires that women be able to decide freely on the number and spacing of their children, and that all women have access to family planning information and services. The *Canada Health Act* recognizes abortion as a decision to be made by a woman in consultation with her doctor. This *Act* also states that all medically required procedures be covered by medicare in both hospitals and private clinics. However, abortion is the only procedure in Canada that is not mandated under this category.

Since the Act, hospitals have been allowed to determine their policies on abortion on an individual basis, and abortion performed in private clinics is not covered in several provinces. Abortion services are also limited in many cases to large urban centres. This has important consequences for Northern women, many of whom are Aboriginal, who lack access to urban facilities, and also for low income women who do not have the ability to pay. In most reciprocal billing agreements among provinces, abortion is excluded from coverage. Therefore women who travel to another province to access the service are forced to pay for their own care.⁹⁹

Article 5

Gender Violence

Aboriginal women, immigrant women and other women of colour experience disproportionate rates of domestic violence in Canada, where rates of violence against the general population of women are already severe. Among Aboriginal women, the rate of domestic abuse may be as high as 80%. In some communities, all women have a history of abuse.¹⁰⁰ Poverty, too, can increase a woman's risk of violence in her home. One study found that women with a household income under \$15,000 were twice as likely to be battered as were women in general.¹⁰¹

⁹⁹ Canadian Abortion Rights Action League, *Special Report to FAFIA* (Toronto: CARAL, 2001)

¹⁰⁰ Ontario Native Women's Association. *Breaking Free: A Proposal for Change to Aboriginal Family Violence*, (Thunder Bay, 1989).

¹⁰¹ Canadian Centre for Justice Statistics, *Wife Assault: The Findings of a National Survey*, 14 *Juristat* 9, (March 1994) at 13.

Immigrant women, women of colour, refugee women, live-in domestic workers, and women from linguistic minorities more often encounter barriers in accessing appropriate services, and therefore bear a greater burden from violence than other women.¹⁰²

The Centres for Excellence in Women's health report that health care delivery services to immigrant and refugee women are insufficiently equipped to deal with the impact of violence on health. There is consistent evidence that many refugee women suffer mental health problems attributable to multiple traumas such as rape and torture experienced prior to emigration.¹⁰³ One study examined both pre-migratory and post-migratory experiences of violence against refugee women from Peru and Chile. It found that "exposure to violence in the pre-migratory context, lack of familiarity with their new environment, and the isolation that Latin American refugee women experience upon their arrival in Canada increase their vulnerability to domestic violence, single parenthood and mental distress."¹⁰⁴

Black women, in particular, face significant barriers in reporting incidents of domestic violence in Canada. Due to the overwhelming discrimination faced by Black men in the justice system, Black women are justifiably fearful of reporting the men who abuse them. They face a double-edged sword, as they must choose to either risk perpetuating the violence against Black men at the hands of police and other justice officials, or remain in violent relationships and risk injury or death.

Life Expectancy, Mortality and Disease

Statistics Canada identifies 12 regions as having well below the average life expectancy of the general population.¹⁰⁵ Aboriginal people make up almost half of the population in nine of these regions, where average life expectancy is equivalent to that of the general Canadian population 25 years ago. The three regions of low life expectancy that do not have large numbers of Aboriginals are characterized by higher levels of poverty and lower levels of employment than the national average.

Rates of death due to most causes are higher in Aboriginal regions than in non-Aboriginal areas of Canada; many are even higher among Inuit populations. Most Aboriginal communities, including Inuit communities, experience higher than the national average of death rates from circulatory disease and cancer, among both men and women. Mortality due to respiratory and circulatory disease is even higher among Aboriginal women than men. Further, the rates are generally higher among Inuit populations than other Aboriginal communities. A Statistics Canada report calls the rates of lung cancer and

¹⁰² M. Shin. *Violence Against Immigrant and Visible Minority Women: Speaking with our Voice, Organizing from Our Experience*. (Ottawa: National Organization of Immigrant and Visible Minority Women of Canada, 1992)

¹⁰³ *Advancing Policy*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Life expectancy*. Statistics Canada: 11 Health Reports 3, (Winter, 1999) [hereinafter *Life*]; Low life expectancy means at least three years below that of the general population.

respiratory disease among Inuit women “particularly alarming.”¹⁰⁶ The death rate from respiratory illness in Region du Nunavik and Nunavut is over 3.5 times the national rate. This correlates with the fact that two thirds of Aboriginal residents in the north smoke, as compared with one third of non-Aboriginals and 29 per cent of the populations of the provinces. Aboriginal people also become smokers at younger ages. Diabetes rates for Native peoples are three times the national average.¹⁰⁷

Aboriginal women suffer from much higher rates of reproductive and breast cancers than non-Aboriginal women in Canada, and the number of Native people living with HIV/AIDS is much higher than the national average.¹⁰⁸ A study of racialized women in Canada found that written information about AIDS-related health concerns is not sufficiently accessible to African-Canadian women, who are at high risk.¹⁰⁹ It states that HIV/AIDS is quickly becoming a crucial issue for Black Canadians.

Infant mortality rates in Aboriginal communities are up to 2.8% higher than in the general Canadian population. In Region du Nunavik and Nunavut, which have very large percentages of Aboriginals, they are over 3.1% higher. For Aboriginal infants and preschoolers, the rate of death due to injury is four to five times higher than the Canadian rate.¹¹⁰

Aboriginal peoples, along with the elderly, immigrants from countries with high rates, and those who live in poverty, are much more susceptible to tuberculosis than are other Canadians. Tuberculosis is closely associated with low socioeconomic status and poor living conditions. Although the disease has generally been on the decline for the last fifty years, among Aboriginal peoples the decline has been slower and unsteady, and they maintain some of the highest rates of infection, particularly in the northern regions.¹¹¹

A report on the health of Northern residents¹¹² found an overall substantial difference in Aboriginal and Non-Aboriginal health, although the differences were not consistently in one direction. For example, fewer Aboriginal people drank alcohol, while fewer non-Aboriginal people smoked. This indicates the need for more specific and detailed information in order to meet health provision needs in these regions. The study also suggests that the lower rate of some chronic conditions reported in Aboriginal people may be due to underreporting and lack of diagnoses, as they also demonstrated lower rates of contact with physicians.

¹⁰⁶ *Ibid.*

¹⁰⁷ Health Canada. *The Health of Aboriginal Women*, The Women’s Health Bureau online http://www.hc-sc.gc.ca/english/women/facts_issues/facts_aborig.htm

¹⁰⁸ M.D. Stout. *Aboriginal Canada: Women and Health* <http://www.hc-sc.gc.ca/canusa/papers/canada/english/indig.htm>

¹⁰⁹ G. Simms. Aspects of Women’s Health from a Minority/Diversity Perspective [hereinafter Diversity Perspective] <http://www.hc-sc.gc.ca/canusa/papers/canada/english/minority.htm>

¹¹⁰ *Life*

¹¹¹ K. Wilkins. *Tuberculosis, 1994*, Statistics Canada: 8 Health Reports 1 (Summer 1996)

¹¹² B. Diverty & C. Perez. *The health of Northern residents*. Statistics Canada: 9 Health Reports 4 (Spring 1998)

In the same study, 47% of Northern Aboriginals assessed their own health as “very good” or “excellent” while 69% of non-Aboriginals made such an assessment.

Physical Impairment

Aboriginal people are far more likely than other Canadians to face a physical disability. For adults the rate is 31% versus 13% for the national population. Among those aged 15-24 it is 22% versus 7%. These rates were similar across different Aboriginal groups and different geographic regions. In addition, Statistics Canada notes that Native peoples with disabilities face barriers through racism and lack of access to services. The severity of their disabilities and requirements for assistance have also been shown to increase after age 55, at which time a substantial proportion have unmet healthcare needs.¹¹³

A recent study also suggests that women of colour who live with physical disabilities face particularly acute barriers in the health care system. Women of colour with disabilities reported in a symposium that lack of sensitivity on the part of health care providers was a major problem in their experiences, along with a general lack of awareness of the interlocking effects of race, gender and disability.¹¹⁴

Oral Health

The Canadian Dental Hygienists Association states that a number of Aboriginal oral health issues remain unaddressed. In 1997, only 51 per cent of the Aboriginal population on reserves had visited a dentist during the previous year. Ninety-one per cent of children on reserves suffered from tooth decay, and 25 per cent of children regularly suffered from toothache or bleeding gums. Only half of the children on reserves had healthy gums.

In a plea for public coverage of dental services, the Association also cautions that oral health is poor among low income Canadians, who are the least likely to have insurance or to have visited an oral health care provider during the past year. A study of Toronto’s West Central Community Health Centres revealed that 23 per cent of family benefits clients and 20 per cent of general welfare clients were refused treatment by a dentist.

A Toronto study on the oral health of street youth found that 41.4 per cent had dental decay and half reported dental and oral pain in the past month. The Dental Hygienists Association asserts, “To adequately address the oral health care needs of Canadians identified above, there is a need to provide more equitable access to oral health care by bringing a greater range of the continuum of health care under the umbrella of public funding.” Indeed it is absurd that the treatment of dental illnesses, which can lead to life-threatening infections and heart conditions, remains outside the identified bounds of “medically necessary services.”¹¹⁵

¹¹³ E. Ng. *Disability among Canada’s Aboriginal Peoples in 1991*, Statistics Canada: 8 Health Reports 1, (Summer 1996)

¹¹⁴ *Diversity Perspective*

¹¹⁵ Canadian Dental Hygienists Association. Brief to the Commission on the Future of Health Care in Canada. (October 31, 2001)

Cuts to Health Care

As mentioned above, cuts to provincially funded health care on the part of the federal government have been the locus of public policy debate in recent years. Many provinces have responded to these cuts by greatly reducing spending in the area of health care, and delisting important services from health care coverage. Women and racialized populations are naturally hard-hit by these reductions in spending. They are more likely to be poor and less likely to have access to health services and information in the first place. They are also less likely to incur supplementary healthcare benefits from their employers.

Recent reports on aging in Canada make clear that women, and particularly poor women, often compensate for decreased medical services by caring for family members at home. Further, home care workers are often women from racialized communities. They receive low pay and are required to perform more tasks to compensate for the increased burden of health care work, in positions with little opportunity for promotion. Such women are vulnerable to poverty and declining health.¹¹⁶

One study notes that health care reform in hospital obstetrics wards has created a great burden on the services delivered to racialized women, whose access to nursing care and information is limited. There is an increased need for community-based support systems for pregnant women from marginalized groups.¹¹⁷

A report on the effects of government cutbacks on immigrant and refugee populations states, “The downsizing of the health sector has weakened commitment to provision of services such as cultural interpretation, and practices of long term inclusiveness... There is an unraveling of inclusion and commitment to ethnoracial youth and children when major shifts occur in policy, programs, and services.”¹¹⁸ In addition, immigrants face barriers to health care when attempting to sponsor relatives who follow them. The sponsorship of elderly parents and disabled children often requires the signing of a waiver guaranteeing the sponsor is liable for any medical costs.¹¹⁹ Refugees are not eligible for provincial health care coverage, but can receive only limited insurance from the Interim Federal Health Program. Further, this program requires that they declare a need for financial assistance, it is unfamiliar to many health care providers, and has been analyzed as very difficult to use.¹²⁰

The above report, along with other research presented here, outlines a growing gap between health services and the needs of immigrant and marginalized populations. The dramatic increase in uninsured services means that individuals and community

¹¹⁶ *Advancing Policy*; The Bringing Care Home Campaign. In *20 Short Years: A Discussion Paper on Demographics and Aging*. (Ontario Community Support Association, 2001) at 5 www.ocsa.on.ca

¹¹⁷ *Advancing Policy*

¹¹⁸ E. Kwan, *Devolution of Social Programs and Spending Cuts: Impact on Immigrants and Refugees* [Canadian Labour Congress, No date] at 19 [hereinafter *Devolution*] <http://www.clc-etc.ca/policy/social/rp9.rtf>

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

organizations bear the burden of locating volunteers or providing cheap and accessible care. As newcomers to Canada already face gaps in services, their hopes of finding culturally and ethnically relevant means of support are rapidly fading.

Article 7

Several areas of health care reveal that lack of sensitivity among healthcare providers, underscored by systemic racism, contributes to the difficulties racialized group members face in accessing healthcare treatment and information. It is clear that anti-racism education is essential in the training of medical personnel and other care providers, as well as more broadly in society.

Mental Health

Research has shown that immigrant women's mental health issues are often conceptualized by mental health experts as individual psychological problems, when in fact many such issues require understanding of the broader social and political contexts of women's lives. This is particularly true for women who come from countries in which they survived war or political persecution.¹²¹ A failure on the part of health providers to understand political context, historical circumstances and different forms of oppression experienced by women makes it difficult for these women to seek treatment for mental distress.

Again a gender analysis is important in assessing risks for both women and men. As one study reports, "...the exceptional life contexts and personal experiences of immigrants and refugees often alter the pattern of social risks for mental health. For example... male subjects had more dangerous and traumatic experiences during exile."¹²² This study also identifies common frustrations over underemployment among immigrants and refugees as risk factors for depression, particularly among men. It notes that lifetime rates for depression among Ethiopian immigrants to Canada are three times greater than depression rates in Ethiopia.

Mental health is also a crucial topic among Canadian-born people of colour. Most regions with large Aboriginal populations have suicide rates up to 2.9 times the general Canadian rate.¹²³ Health Canada states that registered Indian youth suicide rates are eight times higher than the national female average, and five times higher than the national male average.¹²⁴ The highest suicide rates among Canadian men are found in Region du Nunavik and Nunavut.

¹²¹ *Advancing Policy*

¹²² S. Noh, I. Hyman, H. Fenta. *Pathways and Barriers to Mental Health Care for Ethiopians in Toronto*. (Centre for Addiction and Mental Health & Department of Psychiatry, University of Toronto: April 2001) <http://ceris.metropolis.net/Virtual%20library/health/hyman1.html> at 17

¹²³ *Life*

¹²⁴ *Two Faces*

Post-Immigration Health Changes

Several studies suggest that new immigrants to Canada are, on the whole, healthier than resident Canadians.¹²⁵ This was found to be especially true of non-European immigrants. They exhibited higher life expectancies and lower incidences of disability and chronic disease. However, it has been noted that this is to be expected due to “healthy immigrant syndrome” which indicates that the healthiest people are the most likely to make major life changes and geographic moves, and also the most likely to be admitted to Canada.¹²⁶

Importantly, the quality of immigrants’ health has been found to decrease as their stay in Canada increases. As immigrants age, their formerly higher life expectancy tends to converge with that of Canadian-born residents, and their incidence of chronic diseases and disabilities comes to resemble those of the general Canadian population. While the reports from Statistics Canada do not speculate in detail as to the causes of this change, they suggest that the health-related behavior of Canadians negatively influences immigrants over time.

Other reports suggest that the failure to deliver healthcare based on anti-racist principles contributes to poorer health for women of colour in Canada. It is important that further research address the impact of such a failure on immigrants’ health over time. A study by Vissandjée et al argues, “the critical question is not so much whether immigrant women are in better health than Canadian-born women, but rather what living conditions in Canada increase the incidence of various diseases among immigrants.”¹²⁷ Such a decrease in health has been evident among immigrants in the United States and Australia as well. It remains unclear how much of the decline is due to the adoption of the new country’s health habits, and how much to the failure of the health system to address the needs of immigrants, particularly those from non-European cultures.¹²⁸ Clearly, more research is needed to accurately assess and intervene in this trend.

Immigrants and Aging

The Québec-based Alliance des communautés culturelles pour l’égalité dans la santé et les services sociaux (ACCESSS) conducted a pathbreaking study on older immigrants and issues of aging in 1999. The research demonstrated that older immigrants face extra difficulties in accessing the health care system. Important factors cited were communication, increased vulnerability to poverty, social isolation, and a lack of family-focused strategies in mental health. Of particular concern is the increased role of older women caregivers in the context of their adaptation to immigration. Such women are

¹²⁵ J. Chen, E. Ng, R. Wilkins. *The Health of Canada’s Immigrants in 1994-95*, Statistics Canada: 7 Health Reports 4 (Spring 1996); J. Chen, E. Ng, R. Wilkins. *Health Expectancy by Immigrant Status, 1986 and 1991*, Statistics Canada: 8 Health Reports 3 (Winter 1996)

¹²⁶ In fact, both the former *Immigration Act* and the new *Immigration & Refugee Protection Act* contain provisions which bar the entry of persons being determined as “medically inadmissible”.

¹²⁷ *Advancing Policy* at 10

¹²⁸ *Ibid.*

more likely to face poverty, isolation and stress. Very little is known about the social issues around aging in immigrant and refugee populations.¹²⁹

Clearly, Canada has ample cause for alarm over the health issues and needs of racialized and marginalized communities. For healthcare is about more than the emergency provision of help at times of crisis. An inclusive and comprehensive system demands strategies for prevention, education and support as well as recovery, so that the overwhelming crises in our midst might be averted in the future.

¹²⁹ *Ibid.*

Chapter V: Media

Introduction

Canada's report to CERD contains minimal information about media issues in relation to its obligations under ICERD. The Canadian report's media focus (hate propaganda, regulation of media, and use of media by governments as a public education tool) fails to address the core contemporary concerns about racism in the media – invisibility, systemic racist and stereotypic depiction in mainstream news, programming and advertising.

In the past number of years, the problem of racism in the media has become an escalating concern for racialized communities, Aboriginal communities, and other justice-seeking groups. Along with the pervasive issues of lack of employment equity within the media industry and racist misrepresentation and portrayals, media concentration and convergence have more recently emerged as government-sanctioned factors that serve to compound these problems. The Canadian government has been roundly criticized for having an antiquated legislative and regulatory framework that has proved ineffective in addressing contemporary issues within Canadian media. In April, 2002, over 50 prominent Canadians, leaders from a diverse political and sectoral cross-section of Canadian society, challenged the government to commission a public inquiry into the effects of media concentration in Canada.¹³⁰

Relevant Convention Provisions

Article 1

“Racial discrimination” is defined as “any distinction, exclusion or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any field of public life”.

Article 2

2. States Parties shall...take in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development...of certain racial groups...for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms...

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin,

¹³⁰ *Let's press for press freedom*, Globe and Mail (April 19, 2002)

or which attempt to justify or promote racial hatred and discrimination...and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination...

Article 5

...States Parties undertake...to guarantee the right of everyone...in the enjoyment of the following rights....

(e)(vi) The right to equal participation in cultural activities.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups

It is submitted that Canada fails to live up to its obligations under Articles 2 (2), 5 and 7 of ICERD.

Issues of Racial Discrimination in the Media

The issues that racialized groups face include:

- Invisibility and misrepresentation in the media;
- Lack of employment equity in the media industry – both under-representation and the “glass ceiling” phenomenon;
- Lack of leadership from the government in eliminating racism and discrimination from the public sphere and in private enterprises; and,
- Lack of opportunity and access for effective advocacy from affected communities.

Invisibility and Misrepresentation by the media

Portrayal of racialized groups in mainstream Canadian media is characterized by two main problems: invisibility, on the one hand, and misrepresentation and racial stereotyping on the other. This problem of portrayal results in racial discrimination as defined in Article 1 of the ICERD, and constitutes a violation of Articles 2(2) (lack of special and concrete measures to ensure adequate development and full and equal enjoyment of human rights) and 5 (right of equal participation in cultural activities).

According to Canadian researchers Carol Tator and Frances Henry, “Media images, narratives and language carry powerful but coded meanings and messages. Media stories

are often filtered through a White, male, middle class or corporatist perspective.”¹³¹ It is these perspectives which shape the stories that are told – or not told – about racialized communities and individuals in the mainstream media, resulting in news, programming and advertising that can be mired in both racist misrepresentation and invisibility of Canada’s diverse communities.

i. Invisibility

According to the 1996 Census, racialized groups in Canada make up over 11% of its population and roughly 31% of the population of the two urban centres of Toronto and Vancouver.¹³² These numbers, however, are not reflected in their images and representation in mainstream media.

There are numerous studies that demonstrate this lack of representation, including the following:

- A 1987 study by the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) found that minority actors comprised less than 3% of actors in commercials and 5.5% of television actors.¹³³
- In a recent study of billboard advertising in Montreal subway stations, racialized minorities were featured on only one billboard out of a total of 163 on display.¹³⁴
- A 1993 “content audit” study of representation of racialized groups in Canada’s print media found that they were underrepresented in print stories in 5 out of 6 major daily newspapers.¹³⁵
- Another study found that people of colour and Aboriginal peoples were rarely depicted in general interest stories involving subjects such as taxes or political issues in two major Canadian evening news programs, CBC’s “The National” and CTV’s “National Evening News.” Only 20 out of 725 interviews sought the opinions of racial minorities for subjects not specifically related to issues or people from their communities.¹³⁶

This invisibility subtly marginalizes people of colour, and implies that they are not truly “Canadian.”

¹³¹ F. Henry, C. Tator, *Discourses of Domination: Racial Bias in the English-Language Press* (Toronto: University of Toronto Press, 2002)

¹³² Canada’s 13th and 14th Reports to CERD, paragraph 7

¹³³ Cited in A. Fleras. “Please Adjust Your Set: Media and Minorities in a Multicultural Society,” in *Communications in Canadian Society, 4th Edition* (Nelson Canada, 1995)

¹³⁴ Ibid.

¹³⁵ J. Miller. *How Canada’s daily newspapers shut out minorities*. Media Magazine (July, 1994)

¹³⁶ Cited in Professor Carol Tator, “Taking a Stand Against Racism in the Media,” (presented October, 1995)

The absence of minorities serves to consolidate the status quo, with its prevailing distribution of power and resources... The exclusion of people of colour also perpetuates the “white face” of Canada, leaving others with “feelings of rejection, of marginality, and of non-belonging.”¹³⁷

Visibility is also an issue of access and equity. Because they are not “visible,” it follows that journalists and performers from racialized communities are being excluded from employment and access to mainstream media (see below).

ii. Misrepresentation and Racial Stereotypes

The study “Racial Bias in Canadian Media” documents the misrepresentation and stereotyping of racialized groups and communities and Aboriginal peoples. They are frequently portrayed as outsiders, foreigners, or aliens, or as violent, criminal Others who pose a threat to the Canadian way of life.¹³⁸

Some examples of negative stereotypes include:

- African Canadians are associated in media with drugs and guns, and are scapegoated for crime in Canadian society.¹³⁹
- Immigrants are aligned with illegal activities such as drug smuggling, or depicted as troublemakers who steal jobs from Canadians.
- Muslim Canadians are stereotyped as terrorists, fundamentalists and untrustworthy conspirators.¹⁴⁰ The Canadian Islamic Congress reported a marked increase in anti-Islam terminology after the events of September 11, in its fourth annual media watch study.¹⁴¹
- Tamil Canadians are stigmatized by coverage linking them to gangs or terrorism.¹⁴²
- Stories about Asian Canadians are increasingly focused on crime and immigration as a social problem.¹⁴³
- Latino Canadian youth are stereotyped by the media as gang members and criminals.¹⁴⁴

¹³⁷ *supra* note 4

¹³⁸ C. Tator, F. Henry. www.innoversity.com/newsletter/ArticleTwo.htm

¹³⁹ *supra* notes 4, 7

¹⁴⁰ A. Mayer. *The Usual Suspects*. Ryerson Review of Journalism (Spring 1998)

¹⁴¹ Canadian Islamic Congress. *Islamic Congress's Anti-Islam Media Research Again Finds National Post Worst Offender*, Media Communiqué (December 6, 2001)

¹⁴² K. Rau, *Community Coverage*, Ryerson University School of Journalism Diversity Watch website, <http://www.diversitywatch.ryerson.ca/watch/media/archive01/page12.html>

¹⁴³ J. Ma and K. Hildebrandt, “Canadian Press Coverage of the Ethnic Chinese Community: A Content Analysis of the Toronto Star and the Vancouver Sun, 1970-1990,” *Canadian Journal of Communications*; P. Hwang, “Media representation of Chinese ‘boat people’”, unpublished paper, (December 2000)

- Aboriginal Canadians are portrayed in the stereotypical image of the “fighting warrior, sexual savage and mystical Indian.”¹⁴⁵

Studies confirm that these images are dominant in mainstream media. One study by John Miller, chair of the School of Journalism at Ryerson University in Toronto, Canada, showed that stereotyping and negative coverage of racialized minorities were common in Canadian print media. Overall, the reviewed news stories were 49% negative, 42% positive and the rest neutral. The study found that most of the positive portrayals dealt with athletes, and that the general impression of the stories was that nonwhites are athletes, entertainers or criminals.¹⁴⁶

In a national poll of 750 English speaking Canadians, it was found that of those who had reported contact with “offensive” content in media (e.g., 44% for television), about 60% reported racist content, and over 55% reported stereotyping of racial minorities.¹⁴⁷

Because mainstream media is a major source of cultural standards and values in today’s society, these negative portrayals serve to reinforce racist attitudes toward people of colour in Canada and can lead to increased racial tension or even hate crimes. They can be used to incite support for regressive government policies that target immigrants and people of colour, from racial profiling by police to harsh immigration policies such as detention of migrants.

Under-representation in employment, decision-making and positions of influence

People of colour are under-represented in the mainstream media as journalists, producers, and other decision-makers. This under-representation constitutes racial discrimination as defined by Article 1 of the ICERD, and results in violation of Canada’s obligations under Article 5 (right to equal participation in cultural activities) and Article 7 (immediate and effective measures, particularly in the fields of culture and information to combat prejudices).

Employment equity data for large broadcasters must be provided under the federal *Employment Equity Act*. This data demonstrates that people of colour are under-represented in employment in the telecommunication broadcast sector. In 1996, only 4.54% of employees in this sector were members of “visible minorities” (the federal government’s term for people of colour), despite the fact that they then made up over 11% of the population.¹⁴⁸

¹⁴⁴ See, for example, an ad placed by Toronto Police Association in subway stations in 1999 depicting Latino Canadian youth as criminals and delinquents. <http://www.tao.ca/~lacar/main.html>

¹⁴⁵ *Images on screen promote aboriginal clichés* The Ottawa Citizen (February 12, 1997)

¹⁴⁶ Leslie Joynt. *Too White*, Ryerson Review of Journalism (Spring 1995)

¹⁴⁷ N. Coulter and C. Murray. *Watching the Watchers*, Centre for Policy Research on Science and Technology (April 2001)

¹⁴⁸ *Annual Report, Employment Equity Act*, Human Resources Development Canada, 1997

Similarly, a 1993 study of print media newsrooms across Canada found that only 67 out of 2,620 professional journalists were people of colour. This represents only 2.6% of employed journalists.¹⁴⁹ This problem is highlighted by Cecil Foster, an African Canadian journalist, who noted that when he left the *Globe and Mail* (a major national Canadian daily newspaper), “100 per cent of the black staff went out.”¹⁵⁰ Performers of colour are also under-represented, comprising only 3% of actors in commercials and 5.6 of television performers.¹⁵¹

This lack of representation is the result of overt and systemic discrimination against racialized minorities.¹⁵² It is submitted that this under-representation has an obvious impact on content and the nature of media portrayals of racialized communities. Lack of ability to provide input on news stories or development of dramatic materials, for example, results in under-reporting on these communities, and distortions and misrepresentations in their portrayal.

Canadian Media Regulatory Framework

The Canadian government regulates Canadian media to varying degrees. While Canada’s constitution provides a guarantee of freedom of expression, this freedom is not unlimited. There are criminal prohibitions against speech that “incites hatred against identifiable groups,”¹⁵³ and our constitutional freedoms are subject to “reasonable limits... demonstrably justified in a free and democratic society.”¹⁵⁴ Further, federal and provincial human rights codes prohibit the printing or broadcasting of racist propaganda.

The Canadian federal government regulates broadcast media through the Canadian Radio-Television and Telecommunications Commission (CRTC) by granting licenses with certain content restrictions or requirements. Broadcasters must air, for example, a certain percentage of Canadian content, and their licenses set out restrictions on the type of programming they provide. There are policy guidelines for broadcasters regarding gender role portrayal, violence and cultural diversity, and as employers they are required to comply with federal employment equity legislation.

Formal complaints about racist representation can be made to the CRTC, but unfortunately they are usually referred to the private broadcasters’ self-regulating body, the Canadian Broadcast Standards Council (CBSC). While the CBSC has established its own codes of conduct and can take complaints, they are an industry-run organization that is not directly accountable to the public. As a result, the CBSC and other self-regulatory bodies have been found by NGOs to be largely unresponsive to complaints of racial and

¹⁴⁹ *supra* note 6

¹⁵⁰ *supra* note 15

¹⁵¹ *supra* note 4

¹⁵² Canadian Ethnocultural Council, 1985. “Brief to the Parliamentary Subcommittee on Equality Rights.” Ottawa, as cited in F. Henry, C. Tator. *Racist Discourse in Canada’s English Print Media* (Canadian Race Relations Foundation, March 2000)

¹⁵³ s.319, *Criminal Code*

¹⁵⁴ s.1, Canadian Charter of Rights and Freedoms, *Constitution Act*

other forms of bias in broadcast portrayals.¹⁵⁵ The self-regulatory system has also been criticized for relying on individual complaints with limited support and no systemic monitoring of media portrayals by the regulator.¹⁵⁶

Content of print media and advertising is not regulated by the state but private media outlets can voluntarily participate in self-regulatory bodies such as Advertising Standards Canada and the Ontario Press Council. These bodies can respond to complaints, but like the CBSC, they are industry-run and not directly accountable to the public. There is no requirement for media outlets to join these organizations, and one of Canada's two national newspapers, *The National Post*, does not even belong to a press council.

An emerging problem is the lack of regulation or regulatory approval of the growing concentration of media ownership in the hands of a small media elite, resulting in:

- further limited access to the media;
- increased uniformity of news coverage and editorial thought and decreased diversity of viewpoints available to Canadian readers and viewers; and
- conditions that have made it difficult for formerly viable smaller and/or community-based enterprises to survive in the industry.

Canada's Report to CERD

Canada's report regarding media issues and its performance under the terms of ICERD focuses on three main areas: hate propaganda, regulation of media and use of media by governments as a public education tool. It does not address the main media issue faced by racialized communities: that of invisibility or systemic racist and stereotypic depictions in the mainstream media.

Hate Propaganda

Canada's report outlines the ways that the federal and provincial governments respond to hate literature or propaganda. Canada has enacted *Criminal Code* sanctions for promotion of hate (paragraph 12). Further, the Canadian Human Rights Act has been used to prevent the spread of hate messages by telephone (paragraphs 13 to 17).

Provincial human rights codes have also been used to address the issue of hate propaganda. Provincial human rights codes prohibiting publication or display of hate propaganda have been enacted in British Columbia (paragraph 128), Saskatchewan (paragraph 242), New Brunswick (paragraph 429; includes newspapers and television and radio broadcasts), Nova Scotia (paragraph 495, also includes publications and broadcasts), and Prince Edward Island (paragraph 519). Nova Scotia cited a case where a store owner was ordered to stop displaying and selling sweatshirts conveying negative stereotypes of Black women (paragraph 495). Saskatchewan's Court of Appeal ordered a

¹⁵⁵ *supra* note 16

¹⁵⁶ *Ibid.*

permanent injunction to stop the sale of racist stickers which showed caricatures of a Black person, a Sikh and a Chinese person with a red circle with a line through it superimposed on the picture (the international “not permitted” symbol).

While Canada does take action on hate propaganda as required under Article 4 of ICERD, this type of action does not address the wider and arguably more dangerous issue of more subtle, systemic depictions of racialized communities that can also make them more vulnerable to violence and discrimination. Further, the focus only on hate issues subtly reinforces the myth that racism is not a systemic issue, but one limited to extreme, deviant individuals that we can stop through criminal sanction.

We support Canada’s response to hate propaganda, but note that it also must address the problem of racist depictions that do not reach the level of “hate” but are harmful nonetheless. Further, we caution that prohibitions against hate propaganda have in the past been used against freedom of expression of racial minorities, for example in the detention of the scholarly book *Black Looks: Race and Representation* by bell hooks, by Canada Customs.¹⁵⁷

Regulation of Media

Canada refers to its role in the regulation of broadcast media in paragraph 64 of its report. It states that “issues relating to racial discrimination were included in the review of the *Broadcasting Act*, which was updated and became the new *Broadcasting Act* in 1991. The Canadian Radio-Television and Telecommunications Commission regulates the issues of portrayal, employment equity, and ethnic and Native (Aboriginal) broadcasting.” It is significant, however, that Canada does not provide details of what has been included in the *Broadcasting Act* to promote racial equity in Canada, or whether it has taken any action with broadcasters on issues of portrayal or employment equity.

The current *Broadcasting Act* requires that the Canadian television system “through its programming and employment opportunities, should reflect the circumstances and aspirations of all Canadians, as well as the multicultural and multiracial nature of Canadian society and the special place of Aboriginal peoples in that society.” The current Canadian Television Policy also refers to specific commitments to racial and cultural diversity and “accurate, fair and non-stereotypical portrayal” of all minority groups.¹⁵⁸ However, as noted by Centre for Research-Action on Race Relations (CRARR), a Canadian NGO active in the area of racism in media, most applications for television licenses fail to refer to specific activities or programming regarding the multicultural and multiracial characteristic of Canadian society, and “fail to provide quantitative data on their on-screen personnel” or information on policies related to fair portrayal and stereotyping.¹⁵⁹

¹⁵⁷ See Article 19, “Memorandum on Freedom of Expression for The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance” (August 2001)

¹⁵⁸ *Building on Success – A Policy Framework for Canadian Television*. Public Notice CRTC 1999-97 (June 11, 1999)

¹⁵⁹ *Letter to Ursula Menke from CRARR, CRTC*, (March 23, 2001)

Further, in most complaints regarding racism in media, the CRTC fails to take action and refers complaints to the broadcaster or the Canadian Broadcast Standards Council. Usually complaints are dismissed. For example, a complaint filed by the Chinese Canadian National Council regarding a portrayal of Chinese Canadians as deviant (for eating cats) was dismissed by the Commission on the basis that it had “no grounds to take further action.” This was the case despite the fact that the Commission noted the broadcast to be “in questionable taste” and found that it did “perpetuate a type of stereotyping.”¹⁶⁰ This type of systemic inaction by the CRTC has led CRARR to launch legal action against the CRTC for their failure to handle complaints of race bias in a fair and transparent manner.

While Canada has begun to include language regarding racial equity in its broadcast legislation and policy, we submit that it fails to meet its obligations under Articles 2 and 5 of the ICERD, namely to take “special and concrete measures” to ensure full and equal enjoyment of human rights, and to ensure that all Canadians enjoy “the right to equal participation in cultural activities.”

Use of media to promote anti-racism messages

Canada’s report also cites examples of the use of media by the state to promote human rights and an anti-racism message. The federal and provincial governments have used a variety of media, including:

- Advertising: development of advertising for movie theatres (paragraph 77)
- Videos: Stop Racism National Video Competition for youth (paragraph 80); funding for a series of videos called “Scattering of Seeds” about stories of immigrants (paragraph 106); an educational video entitled “New Threads, New Trends: Making of the New Brunswick Tapestry,” about the contributions of immigrants (paragraph 406)
- Poster campaigns: “Stop the Hatred” posters (paragraph 108); funding to the Saskatchewan Multicultural-Intercultural Association to produce posters, buttons (paragraph 215)
- Internet: Quebec has launched an anti-racist internet site (paragraph 79)
- Books and Manuals: funding of publication of a book entitled “Regarding Diversity” in Prince Edward Island

We support production of such materials, especially if funding is provided to racialized and community groups to produce media themselves. The impact of such material is, however, limited in scope. Again, while positive, this type of initiative does not consist

¹⁶⁰ *Letter from Jean-Pierre Blais, CRTC, May 18, 2000.*

of “*effective* measures” to combat prejudices which lead to racial discrimination as required by Article 7 of the ICERD.

Policy Recommendations

The policy recommendations focus on three principle areas: the role of government, the role of CRTC as regulator, and the role of the Canadian Human Rights Commission as the national public agency with a mandate to eliminate discriminatory, racist practices and promote equality, employment equity and social justice.

The Role of Government

Issues of racism and discrimination are marginalized from political, economic, legal and social discourses in Canada.

Although several institutions are charged with ensuring equity and a discrimination-free society, very few elected officials or senior representatives of organizations speak out against racist views and comments. In fact, many of the comments that marginalize racially identified communities come from elected representatives. For example, Betty Granger, a federal political candidate, warned about a coming “Asian invasion” in a lecture to university students about immigration policy.¹⁶¹ In a similar incident, a Canadian Member of Parliament, Roy Bailey, referred to a Filipino-Canadian cabinet minister as a “Chinese chap” who didn’t deserve the job of Veterans Affairs minister because he was not born in Canada.¹⁶² The mayor of Toronto, Mel Lastman, recently told a *Toronto Star* freelance reporter that he feared going to Mombasa for a meeting of the Association of National Olympic Committees of Africa. He stated, “What the hell would I want to go to a place like Mombasa,” adding that he feared snakes. He continued, “I just see myself in a pot of boiling water with all these natives dancing around me.”¹⁶³

This offensive style of leadership is also reflected in the lack of commitment to institutional change whether at the national, provincial, municipal or territorial levels of government. Funding bodies withhold the support that racialized communities need to develop community media. Strong leadership is required from elected officials, regulators, and agencies charged with maintaining the public good to stem the tide of discriminatory behaviors.

Many of the above issues can be addressed by public bodies that are charged with responsibility for the public good. Some of the concrete steps that can be taken by governments to address the issue of racism in media, and thus improve its performance under Articles 2 (2), 5 and 7 of ICERD, include:

¹⁶¹ National Post. November 21, 2000

¹⁶² Alliance MP apologizes for calling new minister 'Chinese chap', CBC News online, <http://www.cbc.ca/cgi-bin/templates/view.cgi?/news/2002/01/16/pagtakhan020116/>

¹⁶³ http://sportsillustrated.cnn.com/olympics/news/2001/06/21/mayor_apology_ap/

- Hold a national independent public inquiry to look at issues arising from increasing concentration of media ownership, such as the threat to freedom of the press and the further reduction of the diversity of voices in the media. Pass legislation to ensure that there is pluralism in and equal access to the media in Canada (i.e., by amending the *Broadcasting Act* and amending and passing laws to limit media concentration).
- Improve the regulatory process by introducing legislation to provide for public interest intervenor funding to facilitate participation of NGOs in the broadcast regulation and licensing sphere (currently being proposed as Bill S-7).
- Create better opportunities for community media through funding and granting of broadcast licenses.
- Provide resources and funding to non-governmental organizations for media monitoring, public education and media advocacy.
- Ensure CHRC, CRTC and other regulatory bodies are provided with adequate funding to carry out their public interest mandates.
- Ensure that the Canadian Broadcasting Corporation (CBC) fulfils its role as a public broadcaster by representing the diversity of Canadian society, both in terms of hiring and programming. While the CBC is a crown corporation that operates at “arms length” from government, it is the government that sets its legislative mandate and ensures accountability for its public funding.

The role of the Canadian Radio-television and Telecommunications Commission (CRTC)

As the body responsible for implementing laws and developing policies and programs, the CRTC is in a position to play a key role in addressing media concentration: through regulations, policies and awarding of broadcast licenses. One study suggested that “the corporatist” nature of the media marginalizes racialized communities and sets such high standards for competition that racialized communities are unlikely to have the financial resources to participate in the media.¹⁶⁴ This represents a huge loss of talent and underutilized potential from racialized communities. Some suggestions are that the CRTC undertake to:

- Provide resources to enable NGOs that represent racialized communities to participate in the political, policy, licensing and media monitoring processes (e.g., facilitating representation through outreach, funding for policy research).
- Implement licensing policies that reflect racial diversity of both ownership and planned programming content as a consideration. The criteria for licensing

¹⁶⁴ *supra* note 2

should “include promoting a wide range of viewpoints which fairly reflects the diversity of the population.”¹⁶⁵

- Provide incentives and funding for production of diverse programming. Examine the possibility of promoting increased diversity of content in the same way that we already promote Canadian content through regulation and terms of license.
- Improve diversity of representation and staff on CRTC.
- Improve the CRTC complaint process to make it more accessible and effective in dealing with complaints of racism in broadcast media.
- Address the issue of growing concentration of ownership of both print and broadcast media by large companies such as CanWest, which owns both a major television network, a major newspaper chain, and one of Canada’s two national (mainstream) newspapers.
- Ensure through the licensing process that the Canadian Broadcasting Corporation (CBC) fulfils its special role as the public broadcaster by representing the diversity of Canadian society, both in terms of staff and programming.

These measures would improve Canada’s compliance with its obligations under Articles 2(2), 5 and 7.

The Role of the Canadian Human Rights Commission

One of the roles of the Canadian Human Rights Commission is to enforce the Canadian Human Rights Act “to help reduce barriers to equality in employment and access to services.” The Canadian Human Rights Act protects anyone living in Canada against discrimination in or by television and radio stations. Yet there is a marked absence of complaints about the services provided by these sectors.

This body has the responsibility for implementing laws and developing policies to address race and discrimination issues. It is also responsible for discrimination or hate propaganda in the public broadcast, cable, and telecommunications sectors. Yet messages that diminish, misrepresent and stereotype communities continue unchallenged by the CHRC.

Similar to the CRTC, the CHRC can address these deficiencies by enforcing the law, and through policy and programs. The CHRC should:

- Address the under-representation in employment and in decision-making positions in federally regulated bodies such as television broadcasters. As the body responsible for enforcing the Employment Equity Act in the federal sphere, the CHRC can monitor

¹⁶⁵ Article 19, “Access to the Airwaves”, March 2002

and challenge the under-representation of racially identified groups in on-air roles such as anchors, reporters, experts, or actors, as well as in all levels of staffing operations, production and decision-making positions.

- Under-representation in all areas of print and electronic media can also be assessed and rectified by the CHRC.

Action by the CHRC would assist Canada in meeting its obligations under Articles 2(2), 5 and 7 of ICERD.

Chapter VI: Education

Introduction

Educational systems and programs in Canada do not adequately serve the needs of racialized minority groups and Aboriginal persons. Manifest both overtly and covertly, systemic racism and racial discrimination exist at all levels and areas as well as in all regions of the country through, among other things, non-inclusive curriculum, disproportionate streaming of racialized and Aboriginal students, ethno-racially targeted harassment, and the absence of role models from racialized and Aboriginal communities and backgrounds (for instance, elected trustees, educators, administrators, counselors, etc.).

In more recent years the inequality, as experienced by racialized and Aboriginal communities, has been exacerbated by the generalized shift away from the traditional activist role of governments across the country, toward a "free market" approach to all social and educational challenges. This shift in fact raises serious questions about Canada's commitment to the liberal democratic notion of equal citizenship as enshrined in the Canadian Charter of Rights and Freedoms, and about its international obligations under various United Nations rights covenants and conventions such as ICERD.

To illustrate this point, the 1996 Census revealed that the overall poverty rate in Canada was 21% (using the pre-tax low income cut-off - LICO measure). For racial minority persons - about seven in ten of whom were foreign born - the poverty rate was 38%.

The same census data reveals an increasing rate of poverty among immigrants over time. Those who immigrated to Canada prior to 1986 experienced poverty rates of less than 20%. But as the immigration demographic profile changed dramatically, so did the distribution of poverty. The rate was 35% for those who arrived between 1986 and 1990, and it rose to 52% for immigrants who arrived between 1991 and 1996.¹⁶⁶ It is critical to note that the profile of recent immigrants to Canada has shifted increasingly to those of racialized groups - predominantly those of African, South Asian and East Asian heritages.

Further, poverty, the **key determinant of successful educational outcomes**, is highly concentrated in the largest urban centres of Toronto, Montreal and Vancouver, where the vast majority of Canada's racialized minorities reside. In these cities, over one in three persons belong to a racialized or Aboriginal group. In 2002 in Toronto, the number has reached 54%. While Canada has yet to produce U.S.A.-style ghettos and barrios, poverty in urban Canada is becoming increasingly concentrated in racialized and ever more distressed neighbourhoods.

¹⁶⁶ A. Jackson, *Poverty and Racism* 24 Perception 4 (Spring 2001)
Online: Canadian Council on Social Development <http://www.ccsd.ca/perception/244/racism.htm>

Frustratingly, as awareness grows with respect to the increasing racialized divide in Canadian society, we are faced with governments under-resourcing, if not wholly dismantling, pre-emptive and capacity-building public engagement. These breakdowns are occurring at a time when the roles of both formal and informal educational initiatives in addressing and eliminating such inequity are more crucial than ever.

In considering, then, this regression in the educational field in light of Canada's commitments as a State signatory to the Convention on the Elimination of All Forms of Racial Discrimination, we pay particular attention to the following convention articles.

Relevant Convention Provisions

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

(e) Each State Party undertakes to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (e) *Economic, social and cultural rights, in particular :*
- (v) *The right to education and training.*
- (vi) *The right to equal participation in cultural activities.*

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial and ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

Ongoing Racism in Education

Schools - elementary, secondary and post-secondary - are the key institutions of teaching and learning in a society. As stated by anti-racism scholar George Dei, “the school setting is a key site for the production and reproduction of the ideological hegemony of the state, as well as the political and economic interests of modern capital.”¹⁶⁷

Racialized minority and Aboriginal teachers, learners and others continue to find themselves marginalized within this educational system due to its near exclusive systematic reinforcement and reproduction of Euro-centric norms, values and knowledge.

During the past decade several research studies have documented racialized exclusion within Canadian sites of learning. A 1992 report from a Nova Scotia Advisory Group shows that racial minorities are not achieving to their fullest potential within the educational system due to racism. The 1992 Lewis Report¹⁶⁸ reiterated that systemic racism exists in the schools of Ontario, specifically affecting Black students, and a study by Professor Frances Henry and colleagues found that African Canadian students in Quebec were particularly troubled by racism in the schools of that province.¹⁶⁹ All such research leads to the conclusion that racism in education is not restricted to any one city or locale but is in fact a nation-wide problem. Learners from racialized and Aboriginal communities are thus being denied the full privileges of an education due to the prevalence of racism in the systems of learning.

¹⁶⁷ XXV Canadian Ethnic Studies 3 (1993) at 49

¹⁶⁸ Stephen Lewis was appointed as Advisor on Race Relations in Ontario, by the provincial government (New Democratic Party). His report to then Premier Bob Rae, dated June 9, 1992, followed his consultation with various racialized groups.

¹⁶⁹ F. Henry, et al. *The Colour of Democracy: Racism in Canadian Society* (Toronto: Harcourt Brace & Company, 1995)

Teachers, learners and others from marginalized groups are not seeing themselves or their communities reflected in the educational system. As they are perpetually forced to the periphery of the educational system they are, at the same time, expected to conform to the cultural goals and social standards of the Euro-centric national majority. Inevitably, such learners, teachers and others find it difficult to identify with such a curriculum, which negates both their individual and collective identities. They often engage, understandably, in resistance to such efforts at forced assimilation.

Such denial and exclusion is manifested within the policies, programs, structures and practices of the educational system as it promotes and reinforces Euro-centric norms and values, producing Whiteness as the valid norm against which all else is measured. The worldview of the White national majority is in this way manufactured and disseminated throughout the system, with its perspectives reflected at all levels of the curriculum - elementary, secondary and post-secondary. Anglo-European culture, and its associated foundations of knowledge or 'truth', is defined as legitimate and by definition superior to all other ways of seeing and being.¹⁷⁰ The knowledge contributed to the world by racialized and Aboriginal groups and individuals is simply not integrated into Canadian curriculum, other than anecdotally or peripherally; this perpetuates racist thinking among all system participants.

Educational professionals (teachers, counselors, administrators, etc.) continue to be under-represented across all systems of learning in the country, leaving learners from racialized and Aboriginal groups without role models with whom they might identify. This lack of appropriate and proportionate representation impacts directly upon the taught curriculum given the considerable discretion that exists for (mostly White) teachers to choose what gets taught as well as how they teach it.

The practice of streaming - the process of placing learners into varying tracks or levels of education through a process of assessment - continues to be one of the greatest affronts to equity in the educational system in Canada. With such assessment and placement procedures and tools being inherently racially, culturally and linguistically biased, learners from some racialized groups, and Aboriginals in particular, end up in the basic, technical, vocational or 'general' tracks and are vastly under-represented in the advanced or university-oriented streams.

While research indicates that racialized groups in Canada, in general, have higher levels of education than the non-racialized population, this is not the case for Aboriginals, who have the lowest education level of all groups. Over 50% of Aboriginals aged 20 to 24 do not complete high school, compared to 10% of Canadian-born racialized groups and 18% of racialized immigrants in the same age group.¹⁷¹ Black Canadians exhibit higher than average rates of high school completion, but lower than average rates of university education, and Black immigrants are less likely to achieve high education

¹⁷⁰ Canadian Council on Social Development. *Unequal Access: A Canadian Profile of Racial Differences in Education, Employment and Income*. (Toronto: Canadian Race Relations Foundation, 2000) at 10

¹⁷¹ *Ibid.* at 15-17

levels than young immigrants to Canada from other racialized groups.¹⁷² With life chances thus circumscribed, learners from some marginalized communities gravitate toward commercial, technical or vocational careers with generally lower income prospects.¹⁷³ A self-perpetuating cycle has evolved as racialized and Aboriginal learners both grow to distrust the advice that is provided by professionals within the system and feel the inevitable effects upon their levels of self-esteem. This leads to higher dropout rates, truancy rates and, ultimately, failure rates.

Our chapter on the province of Ontario contains a detailed examination of the deliberate under-resourcing and dismantling of anti-racist and other equity initiatives in that province since 1995. Another important way to illustrate how Canada falls short of its ICERD obligations is presented in the following look at the continuing institutionalized oppression of Aboriginal peoples across Canada.

Issues for Aboriginal Peoples

As a signatory to the UN convention on genocide in 1949, which forbade "forcibly transferring children from one group to another," Canada failed miserably in its commitment. For another thirty years following the convention, the government continued the practice of "scooping" Aboriginal children from their families and putting them into residential schools. There, these children were forced to abandon their culture and prohibited to speak their own languages through the very real threat of physical punishment.

The 1996 Royal Commission on Aboriginal People (RCAP) report recorded the trauma of widespread sexual, physical, racial and cultural abuse suffered by these children. This is now resulting in thousands of lawsuits against Canadian churches and the federal government. The effects of residential schools, including the abuse of children and the devastation of communities, still echo in Aboriginal communities, particularly in horrifically high rates of suicide. While suicide is the second leading cause of death among young people aged 15 to 24 generally, the rate for Aboriginal youth is almost nine times the national average.

The history of residential schools and other educational policies explains, to some degree, the barriers to formal educational attainment among Aboriginals. Aboriginal children's rates of poverty in Ontario, for example, at 45.3% as opposed to 22.1% as the provincial average, contribute to dropout rates that are 2 to 4 times the rates in the general population.

Isolated Aboriginal communities still do not have easy access to colleges and universities. As a consequence of this isolation, as well as poverty and the ongoing racist exclusion experienced in the education system, the proportion of Aboriginal university degree or certificate holders in 1996 was just 4%, compared to 15% of non-Aboriginal people. In addition, 45% had less than high school education, compared to

¹⁷² *Ibid.* at 10

17% of non-Aboriginals. Disturbingly, quite a few Aboriginal people who have returned to school as adults are now being greatly affected by the current cuts to adult education programs.

Chapter VII: The Criminal Justice System

Introduction

Despite Canada's public declaration that equity issues are at the forefront of its concerns, legal practices with respect to racialized communities do not demonstrate this commitment. Throughout the CERD Report, the Canadian government states its commitment to equality and insists that many projects and programs have been created and developed with this commitment as their main focus. As this chapter demonstrates, a high level of violence toward minorities continues to characterize the justice system at all levels, as do discriminatory policing practices and unequal access to legal recourse.

This discussion proceeds with a response to Canada's report in the area of criminal justice, and then examines particular issues with respect to different racialized communities. It includes background information on the major racialized populations in Canada, in order to provide some context around the current issues they face. Within each section, several recent cases of injustice against racialized persons are examined.

Relevant Convention Provisions

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

Racism in the Justice System

In its 13-14th Report to the CERD committee, the government of Canada makes much of the Federal-Provincial-Territorial Working Group on Multicultural and Race Relations in the Justice System. The Report states that the Working Group produced policy documents and research reports on various issues such as the legal needs of ethnocultural women, and a complaints and redress mechanism for racial discrimination. The Report also makes references to grants and other funds that are distributed to promote a justice system that is sensitive to the needs of a racially diverse public.

Unfortunately, all government bodies in Canada consistently fail to examine issues of racial discrimination from an anti-racism perspective with the view to bring about systemic and lasting change. What remains is a tinkering with the system to implement half-hearted and incremental changes using the language of diversity and anti-racism.

Finally, none of the levels of government in Canada (municipal, provincial and federal) has shown any commitment towards aggressively implementing recommendations that aim to eliminate discriminatory practices in Canada's criminal justice system.

Article 5

Between 1990 and 2001, 173 people died and 604 persons were injured while they were in police custody.¹⁷⁴ Despite these high numbers of assaults, only 77 charges were laid against police officers and only 25 of the officers were actually convicted.¹⁷⁵ It has been shown that many cases of excessive force by police occur in their dealings with racialized communities, Aboriginals, the poor and the mentally ill.

Over-policing of minority communities is directly linked to racial profiling (see page 6). which inevitably results in high incarceration rates for Aboriginal peoples and people of colour in jails. If it can be documented that certain types of people are more likely to come under police surveillance it is logical to assume that such people are also more likely to be caught for breaking the law. A survey conducted at York University's Institute for Social Research (ISR) in 1994 found that Blacks were more likely to report being stopped by the police once it had occurred on two or more occasions.

The same study indicated a connection between race, age, gender and the probability of being stopped by the police. The data in this study strongly suggests that racial profiling is a common practice in Canadian police forces.¹⁷⁶

In the wake of September 11, 2001, the federal government passed an anti-terrorism Bill largely sanctioning the use of racial profiling, especially at points of entry into Canada.

On the other hand, the underpolicing of certain communities ensures that they are not protected by police services. This may be due to notions that certain groups are more inherently violent and thus have no need for protection.¹⁷⁷ Threats against members of minority communities may be taken less seriously than those that occur within the dominant population. For instance, On February 16, 2000 in the north end of Winnipeg, two Aboriginal sisters, Corrine McKeown, 52, and Doreen Leclair, 51, were murdered by McKeown's former boyfriend, despite their repeated calls to the 911 dispatcher. The women called the dispatcher a total of five times and no assistance was provided despite

¹⁷⁴ Special Investigations Unit: Independent Investigations – Community Confidence, www.siu.on.ca/occuranc.htm

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid* at 34.

¹⁷⁷ F. Henry, C., Tator, W. Mattis, & T. Rees, *The Colour of Democracy: Racism in Canadian Society*, (Harcourt Brace and Company, Canada: Toronto, 1995) at 114.

the fact that there was a restraining order against the boyfriend that was supposed to be backed up with “Zero Tolerance” police protection.¹⁷⁸

The over- and under- policing of minority communities has exacerbated the tense relationship between police and minority groups. It has been argued that a more diverse representation on the police force would encourage better communication with racialized communities.

Aboriginal Communities and the Criminal Justice System

The high rate of incarceration for racialized groups, and their deadly encounters with the police and criminal justice system, must be understood in the context of Canada’s history of genocide, enslavement and exploitation of Aboriginal peoples, African-Canadians, Asians and other people of colour.

The history between Aboriginal peoples and the Canadian State is long and troubled. Aboriginal peoples have suffered repeated trauma at the hands of Anglo-Canadian settlers who stole Aboriginal lands, destroyed their cultures and confined their children to residential schools where many were systematically abused. This history of violence has led to poverty, unemployment, alcohol abuse, domestic violence and cultural decimation within Aboriginal communities. The colonial legacy is continued through systemic violence within law enforcement, such as over-surveillance and abuse by police, and in the criminal justice system. Different values can make it especially hard for some Aboriginals to function within a justice system which is unfamiliar, isolating and adversarial, versus traditional Aboriginal systems which tend to focus on compromise and community-based solutions.

In 1988, the government of Manitoba, which has the highest proportion of Aboriginal peoples in its jurisdiction, established the Aboriginal Justice Inquiry to review the administration of justice for Aboriginal peoples. The inquiry was a response to two incidents: the murder of Helen Betty Osborne by several white men, and the 1988 death of J.J. Harper. Helen Betty Osborne was murdered in 1971. Although the identities of her murderers were well known shortly after her murder, it took the police sixteen years to bring the case to a close. In March of 1988, J.J. Harper died during an encounter with a Winnipeg police officer. Harper was the Executive Director of the Island Lake Tribal Council and his death further precipitated the need for the justice inquiry.¹⁷⁹

¹⁷⁸ *The Winnipeg 911 murder*: CBC News Online, Updated: January 2002
http://cbc.ca/news/indepth/911_tapes/

¹⁷⁹ *The Aboriginal Justice Implementation Commission*, www.ajic.mb.ca

The mandate of the Aboriginal Justice Inquiry was to examine the relationship between Aboriginal peoples and the justice system and to suggest ways to improve it.¹⁸⁰ Another Commission, The Aboriginal Justice Implementation Commission (AJIC), was created in November 1999 to develop an action plan based on the conclusions reached by the Aboriginal Justice Inquiry during its investigations.¹⁸¹

The Aboriginal JIC is no longer in effect but the Commission made some valuable recommendations during its tenure. These included changes in probation programs, changes to the Young Offenders Act and changes in policing practices. In its final report the AJIC advocated for the implementation of an Aboriginal Justice system that is governed primarily by Aboriginal ideas of community justice. The institution of an Aboriginal community justice system involves a reconsideration of "... a new approach to how one defines a crime, the role of a police force and its relationship to a community, the role of the courts, the types of sanctions that are employed, the justice system's recruiting policies, and the system's obligations to the victims of crime."¹⁸²

Some particular problems addressed include the facts that many Aboriginal people in jail are denied bail, lawyers spend less time with their Aboriginal clients, and jail time is often awarded by the police as the punishment of choice over fines.¹⁸³ The recommendations made by AJIC might help to eliminate these practices with regard to not only Aboriginal communities but other racialized groups as well. The AJIC recommendations are crucial, but to date, very few have been implemented.

Aboriginal peoples, African Canadians and people of colour are over-represented in Canada's criminal justice system. In 1992-1993 Aboriginal offenders represented 11.9% of the male and 16.7% of the female population in the country's jails.¹⁸⁴ Statistics further show that the federal offender population in 1997, including those released into the community, numbered about 23,200.¹⁸⁵ Of the total number of federal offenders 12% (approximately 2,900) were Aboriginal offenders.¹⁸⁶ Yet Aboriginal peoples comprise less than 2% of the Canadian population.¹⁸⁷

Although Aboriginal women account for about 1% of the overall population, they represent approximately 20% of federally sentenced women.¹⁸⁸ Aboriginal women

¹⁸⁰ S. Gill. "The Unspeakability of Racism: Mapping Law's Complicity in Manitoba's Racialized Spaces," in S. H. Razack ed., *Race, Space, and the Law: Unmapping a White Settler Society* (Between the Lines: Toronto, 2002) at 177

¹⁸¹ *The Aboriginal Justice Implementation Commission* www.ajic.mb.ca

¹⁸² The Aboriginal Justice Implementation Commission, Final Report: Introduction to Section Three Community and Restorative Justice, www.ajic.mb.ca

¹⁸³ A. Saidullah, *The Two Faces of Canada: A Community Report on Racism*, (National Anti-Racism Council of Canada, 2001)

¹⁸⁴ *Aboriginal Peoples and the Criminal Justice System*, A Special Issue of the Bulletin, May 15, 2000. <http://home.istar.ca/~ccja/angl/aborit.html> see p. 2 of Part II: Demographics.

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

¹⁸⁷ Statistics Canada. Census 1996 www.statcan.ca/english/Pgdb/People/Population/demo39a.htm

¹⁸⁸ K. Pate. "Women in Corrections: The Context, The Challenges" Paper presented at the Women in Corrections: Staff and Clients Conference convened by the Australian Institute of Criminology in

account for most of the increases among the female prison population in the Prairies, and Black women and women with cognitive and mental disabilities make up a large percentage of a similar rise in the east.¹⁸⁹ In Manitoba, where the concentration of Aboriginal citizens is high, youth incarceration rates in 1990 were 64% and 78% at two youth correctional centres respectively.¹⁹⁰ Over 90% of female young offenders held on remand in that province are Aboriginal. The Aboriginal population of all Manitoba correctional institutions is 57%, while their population in the province is 11.8%.¹⁹¹

Case Examples

In Canada, policing is a provincial responsibility that is delegated to the municipalities; the *Police Services Act* governs all police forces.¹⁹² Police officers are the gatekeepers to the criminal justice system; they are the initial authorities who can determine if a matter is to be taken through the legal system or simply ended with a warning.

There are many instances of unfair treatment of Aboriginal and racialized peoples at the hands of law enforcement officers. For example, in the city of Saskatoon, Saskatchewan, there have been various instances in which police officers in cities rounded up Aboriginal men alleged to be drunk and drove them to remote areas, where they were abandoned in sub-zero winter weather. Police have often justified this action as a way to “sober” the men.

In the winter of 2000, the bodies of two Aboriginal men were discovered near the Queen Elizabeth Power Plant south of Saskatoon. On January 29, the partially-clad and frozen body of Rodney Naistus was discovered. Lawrence Wegner's body was found on February 3, scantily clothed in only a T-shirt and jeans and without shoes.¹⁹³

In 2001 two Saskatoon police officers admitted to picking up Darrel Night, an Aboriginal man, on a downtown street and driving him to the city's outskirts. Night says they took his coat and left him to walk home in the bitter cold. Night's survival publicly exposed these abhorrent practices. The officers involved in the Night case were suspended from their jobs, stood trial and received sentences of eight months each, which they immediately appealed. The exposure of the case generated a response from city officials, who created a sixteen-officer task force to investigate the practices of the Saskatoon police. In separate inquests into the deaths of Wegner and Naistus, the task force found no grounds for charges.¹⁹⁴

conjunction with the Department for Correctional Services SA (Adelaide, 31 October – 1 November 2000) at 3

¹⁸⁹ *Ibid.*

¹⁹⁰ *supra* note 7

¹⁹¹ *supra* note 14

¹⁹² F. Henry, C., Tator, W. Mattis, & T. Rees, *The Colour of Democracy: Racism in Canadian Society*, (Harcourt Brace and Company, Canada: Toronto, 1995) at 107-109.

¹⁹³ D. Kossick. *Death by Cold: Institutionalized Violence in Saskatoon*. 34 Canadian Dimension 4 (July/August 2000)

¹⁹⁴ *Saskatoon officers gets jail, then bail*. Canadian Press (Dec. 7, 2001)

African Canadians and the Criminal Justice System

The troubled relationship between African Canadians and the criminal justice system, and the police in particular, must be understood in the socio-historical context of enslavement, segregation, exclusion and legally sanctioned discrimination. The stereotypes that supported systems of slavery and segregation continue to influence how Black Canadians are treated today. African-Canadians are still perceived as inherently prone to criminal activities by the dominant culture. They are over-policed and racially profiled, most likely of any group to be stopped and searched by the police, and meted out harsher sentences for minor crimes.¹⁹⁵

In 1995, the *Commission on Systemic Racism in the Ontario Criminal Justice System* reported that the 1992-1993 provincial incarceration rates for Black adult males in Ontario was five times higher than that of white adult males, a number that is disproportionate to the number of African-Canadians in the population.¹⁹⁶

The same report revealed statistics for Ontario prisons over a six-year period (1986/87 to 1992/93) as follows:

- The number of prisoners described as Black admitted to Ontario prisons increased 204% while the number of white prisoners admitted increased 23%.
- Black admissions to prisons serving the Metro Toronto area for drug trafficking/importing charges increased by several thousand percent. White admissions to the same prisons for drug trafficking/importing also increased, in some prisons by large percentages, but nowhere near as much as the growth in Black admissions
- Statistics Canada's profile of ethnic groups reports 158,140 Black residents in Ontario in 1986. By 1991, the Black population consisted of 215,775 residents, an increase of 36.4% while the population of the province as a whole grew by 10.8%. Thus between 1986 and 1991, the Ontario Black population grew from 2.4% to 3.1% of the province's total population.
- The growth in Black admissions to Ontario prisons over a similar period was much higher. There were 4,205 Black admissions in 1986/87, and three times that number (12,765) in 1992/93. The more recent statistic shows that Black people account for 15% of prison admissions while they constitute only about 3% of the province's population.¹⁹⁷

¹⁹⁵ S. Wortley, *The Usual Suspects: Race, Police Stops and Perceptions of Criminal Injustice* (unpublished paper) at 30

¹⁹⁶ *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, (December 1995) at 69-71.

¹⁹⁷ Statistics taken from the *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, (December 1995) at 69-71.

Case Examples

In a society where the Black population is, de facto, considered dangerous, police shootings of black people, particularly young black males, constitute a serious problem. One study argued that the number of victims is disproportionate when compared to the shootings of white citizens by the police.¹⁹⁸ The disproportionate impact was particularly evident in Toronto and Montreal between 1994 – 1997.

Of the eleven killings by police in Montreal within this period, five of the victims were Black, three were Hispanics and three were white. In 1991 Montreal had a total population of 3,091,115 of whom 38,650 (or 1.25 per cent) were Black. All of the victims except for one were killed by police officers using handguns. Of the twelve deaths in Toronto, six victims were Black, one was Hispanic and five were white. Although an equal number of whites and Blacks were killed, African Canadians make up but a small fraction of the general population. In 1991, of Toronto's total population of 3,863,105 only 125,610 (3.25 per cent) were Black.¹⁹⁹

Although the study referenced above addressed police shootings between 1994 – 1997, more people have been killed in the years before and since. What follows is a partial list of African Canadian victims of police brutality:

Name	Date of Shooting	Outcome	Police Force
Leander Savoury	January 30, 1985	Killed	Metro Toronto
Lester Donaldson	August 9, 1988	Killed	Metro Toronto
Michael Wade Lawson	December 8, 1988	Killed	Peel Region
Sophia Cook	October 27, 1989	Injured	Metro Police
Marlon Neil	May 4, 1990	Injured	Metro Police
Kenneth Allen	November 29, 1991	Killed	Metro Police
T.T. (a young offender)	September 20, 1991	Injured	Metro Police
Raymond Lawrence	May 2, 1992	Killed	Metro Police
Ian Coley	April 20, 1993	Killed	Metro Police
Albert Moses	September 29, 1994	Killed	Metro Police
Tommy Barnett	January 10, 1996	Killed	Metro Police
Wayne Williams	June 11, 1996	Killed	Metro Police
Andrew Bramwell	March 21, 1996	Killed	Metro Police
Faraz Suleman	June 19, 1996	Killed	York Region
Francis Nichols	January 1, 1997	Injured	Ottawa-Carleton
Henry Masuka	December 31, 1999	Killed	Metro Police

¹⁹⁸ H. Glasbeek. *A Report on Attorney-General's Files, Prosecutions and Coroners' Inquests Arising out of Police Shootings in Ontario to The Commission on Systemic Racism in Ontario Criminal Justice System* 1993 at 3

¹⁹⁹ G. Pedicelli, *When Police Kill: Police Use of Force in Montreal and Toronto* (Vehicule Press, 1998) at 65

In the majority of cases, the police officers involved in the shootings were either not charged or were acquitted. Of the eleven deadly encounters between the police and the public in Montreal, ten of the officers involved were exonerated, and one was convicted on appeal. Of the twelve incidents in Toronto, all of the officers were exonerated.²⁰⁰

The systemic racism that permeates policing with respect to Black criminality has led to an excessive reliance on racial profiling to target African Canadians. Racial profiling attributes certain criminal activities to an identifiable group in society on the basis of race resulting in the targeting of individual members of that group.²⁰¹

The Ontario provincial government's use of tougher law enforcement measures in the "war on drugs" is an example of excessive reliance on racial profiling. These law enforcement measures have resulted in increased surveillance of African Canadians such that "although statistics on race and crime are not normally collected in Canada, there is some evidence to suggest that racial biases in drug surveillance strategies had a disproportionate impact on Canada's Black community."²⁰² There are studies that show that the "war on drugs" has a far greater impact on African Canadians than it does on whites.

Between 1986 and 1993, the number of people admitted to Toronto area detention centres on drug trafficking charges increased dramatically from 524 to 2 787 – an increase of 532%. Within this period, the number of Black people admitted for trafficking increased from only 131 to 1,656. This represents an increase of 1 164% over the five-year period in the number of African Canadians admitted. By comparison, the number of admissions of Whites for trafficking increased by only 151%.²⁰³

These dramatic increases occurred despite the fact that there is no evidence to show that Black people are more likely to use drugs than others or that they are over-represented among those who profit from drug use. Events of the last few years show, however, that intensive policing of low-income areas in which Black people live produces arrests of large and disproportionate numbers of Black male street dealers.

²⁰⁰ *Ibid.*

²⁰¹ E. Johnson, *A Menace to Society: The Use of Criminal Profiles and its Effects on Black Males* 38 *Howard Law Journal* 629.

²⁰² S. Wortley, *A Northern Taboo: Research on Race, Crime, and Criminal Justice in Canada*. 41 *Canadian Journal of Criminology* at 261-274.

²⁰³ *supra* note 22 at 30

The Asian Community and the Immigration/Criminal Justice Systems

Persons of Asian descent have never been welcome in Canada as equal citizens. Historically, the state has used legally and socially sanctioned measures to exclude and oppress Asian-Canadians, to import them for cheap labour in times of need, or, as in the mid 20th century, to intern them on false allegations.²⁰⁴ The Chinese in particular have long been seen to require special regulation.²⁰⁵ In 1882, John A. MacDonald, Canada's first Prime Minister expressed the view that the Chinese, "an alien race in every sense, would not and could not be expected to assimilate with our Aryan population."²⁰⁶

Such was the hatred toward Chinese immigrants that on March 5, 1912 the Saskatchewan legislature passed *An Act to Prevent the Employment of Female Labour in Certain Capacities*. Of particular concern was the danger Chinese masculinity presumably posed to White womanhood. The Act specified that "no person shall employ in any capacity any white woman or girl or permit any white woman or girl to reside or lodge in or to work in or save as a *bona fide* customer in a public apartment thereof only, to frequent any restaurant, laundry or other place of business or amusement owned, kept or managed by any Japanese Chinaman or other Oriental person."²⁰⁷

The immigration and criminal justice systems have been instrumental in policing Asian communities. Chinese men in particular were allowed into Canada under difficult and limited conditions to work on the railroads. When their exploited labour threatened the jobs of white male workers, the government passed laws to exclude them from participating in Canadian society and imposed a head tax on new Chinese male immigrants.

Subsequently, Chinese immigrants were financially prohibited from entering the country by the head tax, were not permitted to bring their families to Canada, were confined to certain sections of towns and cities, and were perceived as a threat to the white community. Government policies and laws, then, have always been regulatory with respect to the Chinese community.

The detention of Chinese people is relatively high within the immigration system. During the summer of 1999 four vessels were stopped off the coast of British Columbia housing roughly 600 illegal Asian migrants.²⁰⁸ As the boats arrived their inhabitants were immediately transported to CFB Esquimalt's Work Point Barracks and questioned by

²⁰⁴ See M. Oikawa, "Cartographies of Violence: Women, Memory, and the Subject(s) of the "Internment"," in S. Razack, ed. *Race, Space and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002), for analysis of the Japanese internment in Canada during WWII

²⁰⁵ James W. St. G. Walker, "Race," *Rights and the Law in the Supreme Court of Canada: Historical Case Studies* (Wilfrid Laurier Press, 1997) at 56.

²⁰⁶ *Ibid.* at 58

²⁰⁷ *Ibid.* at 51

²⁰⁸ The Faces of Irregular Migrants: Photo Collection, www.library.ubc.ca/asian/FinalAsian/introduction.html

immigration officials.²⁰⁹ These migrants were detained from July 1999 in various jails across British Columbia and by December 1999 only one refugee claim was granted.²¹⁰

The Canadian government recently implemented a new policy to detain all passengers on vessels from China who do not have proper documentation.²¹¹ This policy is steeped in stereotypes that criminalize Chinese refugees and fuel the idea that they are dangerous and need to be contained. No consideration is given to the reality that people fleeing for their lives or who live under oppressive conditions do not have easy access to the bureaucracies that issue appropriate documents. Yet Canada is a signatory to the 1951 *Geneva Convention* relating to the Status of Refugees and its 1967 Protocol as such the government is obliged to give each refugee a fair hearing.²¹²

Images of Asians as particularly foreign remain prevalent today. In the criminal justice system, Asian youth are stereotyped as gang members, drug dealers and operators of prostitution rings.²¹³ For example, Vietnamese, Laotian and Cambodian men are widely associated with gang and drug activities and credit card fraud. These stereotypes are widely played up in the media, especially in places like British Columbia where many whites feel that their province is being 'taken over' by 'foreigners.' European-Canadians who commit similar crimes are not racialized, nor is the entire white group associated with criminal activity.

The discourse regarding the tension between the police and Asian-Canadians focuses on difference in language and cultural perceptions. In large cities like Vancouver, Toronto and Ottawa there are Asian investigation units that attempt to bridge the gap between the cultural differences of Asian communities and Canadian communities. Little attention is paid to police abuses of power against Asian groups to protect white Canadians.

On occasion the Canadian legal system has found itself a victim of its own prejudiced perceptions against Asian-Canadians. In 1997, the Chinese Canadian National Council issued a complaint against the Right Honorable Chief Justice Antonio Lamer with regards to racist comments he made that reinforced the stereotype that Asians have a propensity for gambling.²¹⁴ These remarks are a reminder that there is still a long way to go to eradicate racism in the Canadian legal system, as well as in society at large.²¹⁵

²⁰⁹ M. van der Zon, *Aliens Go Home: A critical Media Analysis of the Chinese Migrants*, www.islandnet.com/~vipirg/aliensgohome.pdf

²¹⁰ *Ibid.* at 2.

²¹¹ J. Brooke, *Canada Starts to Take Hard Line Against Illegal Chinese Immigration*. New York Times (September 30, 1999) www.huaren.org/diaspora/n_america/canada/

²¹² Citizens for Public Justice: *Statement on Boat People* (September 24, 1999) www.cpj.ca/refugees/99/statemt.html

²¹³ S. Riley. *Crime has no Culture or Race*, Ottawa Citizen (January 12, 1993) <http://www.media-awareness.ca/eng/issues/minrep/resource/articles/riley.htm>

²¹⁴ Chinese Canadian National Council: *CCNC Files Complaint Against Insensitive Comments by the Chief Justice on Chinese Canadians and Other Diverse Communities*, www.ccnc.ca/news/news.htm

²¹⁵ *Ibid.*

Chapter VIII: Province of Ontario

Introduction

Ontario is the largest and also the most racially diverse province in Canada. Over 50% of all immigrants coming to Canada choose Ontario as their final destination. In particular, Toronto, the largest city in Ontario, is home to 3 million people, over 50% of who are persons of colour.

As the richest province in Canada, Ontario is also better suited than any other province to address issues of social and economic inequities. Yet, as the following sections show, over the last several years, the Government of Ontario has failed miserably in addressing challenges faced by racialized communities and immigrant populations in this province.

During the period covered by the 13th and 14th report, Ontario went through a dramatic political change. In 1995, the New Democratic Party (NDP) Government lost its power to the Progressive Conservative (PC) Party which campaigned on an anti-equity "common sense revolution". As part of this "revolution", almost all anti-racism and equity programs, laws and policies established by the previous government were either dismantled or significantly downgraded. Gone, for instance, was the *Employment Equity Act*, the Anti-Racism Secretariat within the Ministry of Citizenship, the Race Relations and Policing Unit at the Ministry of Solicitor General, and the list goes on. Indeed, much of what was reported in the 11th and 12th report by the Ontario Government as evidence of compliance with CERD has since been brutally destroyed by a new Government which intends on making the elimination of equity its number one priority.

In this chapter, we will highlight several aspects of policy change which have the most significant impact on racialized communities.

Relevant Convention Provisions

Article 2

1.(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

(iv) The right to public health, medical care, social security and social services;

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

Racial Discrimination in Ontario

I. Human Rights

Article 6

In its report, the Ontario Government claims that it is "committed to strong enforcement of the Human Rights Code." Yet since the early 1990s, and particularly after 1994, the human rights system in Ontario has been in disarray for a variety of reasons.

The Ontario Human Rights Commission (OHRC) is mandated to enforce the Ontario Human Rights Code in that province. According to the Ontario Government's report to the CERD Committee, the percentage of race based complaints received by the OHRC from 1994 to 1997 ranges from 23% to 26% every year. However, what the Government report has omitted is that, over the same period, the percentage of race based complaints that were dismissed by OHRC increased from 31% (in 1994/1995) to 49% (in 1997/1998). Of the race based complaints, the percentages withdrawn were 38% in 1994/96, 44% in 1996/97 and 30% in 1997/98. In contrast to these figures, the percentage of race based complaints that were in fact referred to the Board of Inquiry for

adjudication were 1% in 1994/95, 0.5% in 1995/96, 0.7% in 1996/97 and 0.8% in 1997/98.

Until very recently, the OHRC has used a particular section in the Code, namely, s.34 to dismiss many meritorious claims. In particular, s.34(a) says that the OHRC has the discretion not to deal with a complaint if "the complaint could or should be more appropriately dealt with under another Act." Applying this section, the OHRC has dismissed many cases involving workers in unionized workplaces by suggesting that their complaints could be more appropriately dealt with through the grievance and labour arbitration process. This problem was only alleviated after persistent protest from human rights advocates and unions.

The OHRC also closed down offices. In 1989/90, it had 16 offices across the province. In 1996/97, the figure had dropped to 11. With the closure of offices, the OHRC has become less accessible to the public.

Because of the frustration over the ineffectiveness of the OHRC, a group of human rights advocates, community service providers and lawyers came together and formed a Coalition for Reform of the Ontario Human Rights Commission (the "Coalition") in the mid-1990s. In June 1995, the Coalition issued a report, "Dysfunction in the Human Rights System," documenting a host of problems within the Commission.

Even before the release of the Coalition report, problems had been identified in "Achieving Equality: A Report on Human Rights Reform," a 1992 Report by the Cornish Task Force set up by the Ontario Government to review the human rights system. The Cornish Task Force report shows, among other things, disrespectful treatment of complainants and their advocates, bias, delay, inappropriate pressure to settle, failure of the Commission staff to provide information, disorganization, and a general lack of efficiency and productivity within the Commission.

By 1995, these problems had still not been diminished. The Coalition's Dysfunction Report documents a series of problems. The following merely highlights some of the Coalition's more serious concerns:

The OHRC is not readily accessible to complainants and there are barriers to filing complaints: For instance, intake services are only open on certain days of the week, and the complainants have to attend in person. Interpretation services are non-existent. Complainants are expected to bring their own interpreters.

Intake takes far too long: It is common for a period of 6 months or more to pass between the time a complaint is brought to the Commission's attention by the complainant and the time the Commission officially "files" the signed complaint form.

Complainants receive discouraging advice and misinformation at the intake stage: Frequently, complainants are not permitted to file complaints. Sometimes complainants

are incorrectly informed that if a complaint is over six months old, it cannot be dealt with by the Commission.

Notice to the respondent can take far too long: There are incidents in which the Commission fails to send a copy of the complaint to the respondent until weeks, and sometimes months, after the complainant has attempted to file a complaint.

On the other hand, the Commission appears to have difficulty being firm with obvious delay tactics on the part of the respondent: When a respondent refuses to respond to the complaint in a timely fashion, the Commission staff will not proceed until they receive the respondent's written response, although receipt of a response is not a requirement in law, and the respondent's failure to respond should not be used as an excuse to delay investigation.

Investigation of complaints often begins far too late: Often investigation does not begin until after attempts at mediation have failed. Months, or in some cases, a year has passed before an investigator is assigned to the case after the initial complaint. By then, recollections fade, witnesses become unavailable, and evidence can be lost or destroyed.

Some Commission investigators appear to lack certain important investigative skills: Some investigators have no logical plan for the investigation, little appreciation of what evidence would be relevant to a particular complaint, and difficulty with relating the evidence to the relevant substantive law. In some cases, officers even display a lack of interest in the case, and appear to regard the complaint as a nuisance.

Some officers fail to appreciate the relevance of certain types of evidence: For example, officers have stated that an adverse action taken against a complainant by the respondent was not relevant to a complaint of race discrimination because it was not accompanied by overtly racist remarks.

Systemic Discrimination cases are not properly dealt with: While the Commission has set up a unit specifically to deal with systemic discrimination, the efforts of the unit have not been fruitful. There is confusion about the mandate of the unit and no criteria that govern when a case will be referred to the unit.

The Commission seems to prefer settlement as a way of resolving complaints: Sometimes the settlements are made prematurely, leaving the complainant with little compensation. There are cases in which the Commission officers press complainants to settle on the spot, without affording the complainants an opportunity to consult with their counsel.

Most cases never get to go before the Tribunal: There are many problems with Commission decisions not to appoint boards of inquiry to adjudicate on complaints. As shown by the statistics cited above, the Commission refers only a minute percentage of cases to the Board, leaving the vast majority of complainants with no recourse to address their complaints.

While the "Dysfunction" report was released in 1995, many of the problems identified are still relevant today. In addition, one of the major issues still plaguing the OHRC is delay. Because of all the issues described above, it often takes years for a complaint to go through the system. The inordinate delay has the effect of both discouraging complainants from pursuing their claim, and diminishing the Commission's ability to properly deal with complaints. As a result, most complaints eventually become dismissed or withdrawn.

One high profile human rights case, which illustrates these problems more pointedly, is the case of Dr. Kin-Yip Chun. Dr. Chun's search for justice began in the early 1990s when he initiated a complaint of racism against the University of Toronto, which denied him a tenure-track position. The University commissioned the "Yip Report" in 1994, which concluded that Dr. Chun was not the victim of racism. Rather, the investigation had found evidence that Dr. Chun had been "exploited" in his work at the University. In 2000, after a six year delay, the Ontario Human Rights Commission concurred with the conclusions of the University and decided not to refer Dr. Chun's complaint to a board of inquiry because the Commission found no evidence of racism. In the end, the University of Toronto and Dr. Chun reached an agreement in September 2000. The learned professor was finally offered a tenured position. This case was resolved, not because of the work by the OHRC, but because of the numerous NGOs, academics and student bodies, which supported Dr. Chun throughout his six year struggle for justice.

Article 7

The OHRC has a broad and varied mandate listed under s.29 of the Code. Many of the duties listed are preventive, and in the past, the Commission has undertaken some activities that might have some preventive value. However, such activities have been neglected since the mid-1990s. Nowadays, the Commission rarely publicizes a settlement or board decision, nor does it undertake educational activities or monitor settlements. The Commission's lack of educational initiatives is particularly alarming given the changes in political climate that have swept the province since 1994. Many of these changes are described in the rest of this chapter.

Under the current Ontario Government, which refuses to deal with racism and other issues of inequality, essentially no government agency is left with any specific mandate to educate the public or take preventive initiatives to combat racism and prejudice. At the same time, the gap in the need for public education is not being filled by the one agency that is set up to do so, namely, the OHRC. As Commissioners are all appointed by the political party in power, few, if any, of the current Commissioners have demonstrated abilities - let alone commitments - to promote the principles of racial equality in this province.

II. Employment Equity

Article 5

In Canada's 11th and 12th reports,²¹⁶ the government stated that Ontario had appointed an Employment Equity Commissioner and was poised to enact legislation that would provide mandatory employment equity for racial minorities, Aboriginal people, women and people with disabilities. In 1993, the Legislature of Ontario indeed enacted the *Employment Equity Act*²¹⁷ with the express purpose of addressing and remedying the well-documented problem of systemic employment discrimination.

Adopting established procedures for anti-racist organizational change, the *Act* required employers in Ontario to proactively review their employment policies and practices, and to identify and remove discriminatory barriers. The *Act* also required Ontario employers to conduct a survey to determine the representation of designated group members in their workforce, and to prepare plans with specific goals and timetables to ensure that discriminatory policies and practices were eradicated. An agency known as the Employment Equity Commission was established to assist employers in complying with the *Act* and to monitor its implementation, and an independent tribunal was created to determine issues arising from the *Act's* requirements.

On December 13, 1995, the PC government passed Bill 8, entitled *An Act to Repeal Job Quotas and Restore Merit-Based Employment Practices in Ontario* (with the short title of "*Job Quotas Repeal Act*"). Bill 8 repealed the *Employment Equity Act* in total. Bill 8 further required the destruction of all information obtained through the workforce survey required under the *Act*.

The *Employment Equity Act* was a product of nearly a decade of research, policy development and practical experience under a variety of different governments in Canada and was preceded by months of public consultation across the province. In contrast, Bill 8 was enacted without appropriate consideration and analysis informed by research. Bill 8 was not preceded by any consultation with the public nor by any study of the conditions of inequality in the workplace that created the need for the *Employment Equity Act*.²¹⁸

By removing a legislated remedy for systemic employment discrimination without replacement, Bill 8 has had the effect of re-imposing discriminatory barriers to equal employment opportunities and thereby withholding equal access to employment opportunities and benefits. Further, Bill 8 has reinforced negative stereotypes and prejudicial attitudes that designated group members are unqualified for employment or lack merit. The title of Bill 8 expressly states that this legislation was enacted to "repeal job quotas" and to "restore merit-based hiring practices." Such statements were also

²¹⁶ See paragraph 54 in Canada's 11th Report and 149 in its 12th Report.

²¹⁷ *Employment Equity Act, 1993*, S.O. ch. 35.; *Ontario Regulations 386 to 390/94*.

²¹⁸ Information from materials filed in *Ferrel v. Ontario*, Application for Leave to Appeal, SCC File No. 27127, a challenge to the repeal of the *Employment Equity Act*, and from counsel for the Applicants, Mark Hart LL.B.

made by the government when it announced it would repeal the *Employment Equity Act* and by the Minister when Bill 8 was tabled in the Legislature. These statements are not supportable, nor are they an accurate representation of the provisions of the *Employment Equity Act*.²¹⁹

The *Employment Equity Act* did not impose quotas. The term "quota" has developed a clear and well-established meaning in the context of American affirmative action programs, and refers to a fixed percentage of opportunities that are reserved exclusively for members of a specific group to the complete exclusion of persons who are not members of this group. In contrast, the *Employment Equity Act* required employers merely to establish numerical goals that represent targets for measuring the success of their initiatives to eliminate discriminatory barriers; it required only that reasonable steps be taken to achieve these goals.²²⁰

Further, the *Employment Equity Act* did not undermine the merit principle, and in fact was aimed at establishing merit-based hiring where it does not now exist. Employment equity is based on the premise that there are qualified people among all groups regardless of disability status, gender, race or ancestry, and is intended to open up the employment process to fair competition by members of groups that have been traditionally excluded in the past because of discrimination. Employment equity requires employers to clearly specify what is meant by "merit" by setting relevant and objective job qualifications, and to hire, train and promote on the basis of those qualifications using decision-making processes that are open and fair.²²¹

Article 5(e) i.

The Equal Opportunity Plan referred to in paragraph 294 of Canada's 13th and 14th report takes no measurable or enforceable steps to ensure the equal participation of racial minorities or other disadvantaged groups and represents a complete abdication of Ontario's responsibility to address and remedy systemic discrimination in employment.

The Ontario government has also drastically reduced the protection of other rights relating to work. It has enacted a program of "workfare" for recipients of social assistance without free choice of employment or the protections and rights provided to other workers. The provincial government has also reduced protections and rights for all workers, through such acts as eliminating a basic floor of rights for maximum hours in a work week. Further, the minimum wage has been frozen at (Can) \$6.85 since 1995, resulting in a drop in real income of 20%.²²² Racialized minorities facing discrimination in employment are disproportionately impacted by these attacks on the rights of workers.

²¹⁹ *Ibid.*

²²⁰ *Ibid.*

²²¹ *Ibid.*

²²² Justice for Workers, "Finding it hard to make ends meet?" leaflet, 2001

Article 5(e) iv.

In addition, the government has presided over a massive dismantling of other economic provisions. Ontario implemented a 21% cut to social assistance rates in 1995.²²³ It also discriminates against sponsored immigrants who have applied for social assistance if their relationship with their sponsor breaks down. The government “deems” these immigrants to be receiving money from their sponsor and reduces their benefits by 20% or more, even if the sponsor refuses to support them. Because the majority of immigrants are now from racialized communities, this policy has a disproportionate impact on people of colour.

III. Health

Article 2

During its first term in office, between 1995 and 1999, the Ontario Conservative government cut approximately one billion dollars from its \$19 billion annual health budget.²²⁴ By the time the government began a slow attempt to replenish the healthcare system late in the decade, the damage had been severe. New healthcare dollars remain a Band-Aid solution to a long-term problem, on top of which rests the new reality of increased privatization of health services. Sixty two per cent of new long-term care beds fall under the jurisdiction of private agencies.²²⁵ A private cancer clinic has been established and patient care services in hospitals have been cut.

The Ontario government, in its report to the CERD committee, claims to have established a task force to “implement organizational change in the hospital sector to prevent and eliminate discrimination.” Not only is this claim extremely vague - it says nothing about what the task force intends to do or the particular issues of discrimination to be eliminated – but the campaign to cut spending under Premier Mike Harris resulted in the closure of thirty-five hospitals province-wide. Further, the restructuring of hospitals has resulted in an estimated cost of \$500 million in severance for employees who were terminated.²²⁶

Among the government’s health initiatives in the latest report is an Aboriginal Healing and Wellness Strategy. Ontario correctly claims that this program exists as a joint

²²³ Ontario Association of Interval and Transition Houses (OAITH) *Locked In Left Out: Impacts of the Progressive Conservative budget cuts and policy initiatives on abused women and their children in Ontario*, 1996

²²⁴ L. Parsons. “Canada: Ontario Tories intensify assault on social and public services,” World Socialist Web Site, 9 April, 1999 <http://www.wsws.org/articles/1999/apr1999/ont-a09.shtml>; Ontario Federation of Labour, “Promises made, promises broken,” www.ofl-fto.on.ca/library/healthcare.html

²²⁵ Consider the Cost Coalition, “Second Class Health Care” Centre for Social Justice, Toronto. www.socialjustice.org

²²⁶ Canadian Centre for Policy Alternatives. “No Mystery Behind Crisis in Ontario Hospitals: Study,” May 6, 2002. <http://www.policyalternatives.ca/whatsnew/onhealthspendingpr.html>

initiative between the provincial government and a number of First Nations organizations. What the report fails to mention is that this program was initiated in 1990 under the former New Democratic Party government, and was launched in 1994. The current Conservative government came to power in 1995 and was under obligation to carry the project through. In addition, a program to address HIV/AIDS in Aboriginal communities, while important, was not an initiative of the current government.

One of the central issues following Ontario's cuts to health care spending has been the onset of increased home care for ill and elderly patients. A study for the Canadian Centre for Policy Alternatives found that competition in the home care sector, introduced by the Ontario government's competitive bidding policy, has resulted in lower motivation and less continuity of care.²²⁷ The Ontario Nurses Association expresses similar concerns in two reports on the future of health care.²²⁸ Health cuts resulted in reduced services for an aging population, and increased the workloads of nurses and physicians dramatically. Privately funded care, based on strategies of underbidding, has created competition, forcing some non-profit agencies to reduce wages in order to compete. A recently proposed budget initiative under new Premier Ernie Eves promises more funding for healthcare, but is devoid of increases to remedy the home care crisis.²²⁹

Under this system, the greater quality of care goes to those who can afford to pay. Care for marginalized persons and those living in economic poverty is compromised by the need to find inexpensive labour. As the Canadian Council on Social Development states, "The real losers from privatization are the poor. The poor are, in effect, excluded from good health, denied access to the most basic of services and supports, and forced to rely on the unpaid labour of family, friends and neighbours."²³⁰ A study notes that children, too, suffer from the long-reaching effects of inadequate medical care. City of Toronto research on low income children found that untreated dental disease significantly effected school performance.²³¹

The Council on Social Development makes important links between social equity and health care, noting that a society with lesser employment and income disparity is a healthier society. The Ontario Nurses Union also reports that emergency care has been severely compromised by understaffing, and that some of the increased provincial spending has been allocated to less essential projects such as renovations, rather than front-line medical services.

²²⁷ Canadian Council on Social Development. Equality, Inclusion and the Health of Canadians: Submission to the Commission on the Future of Health Care in Canada, Nov. 15, 2001 [hereinafter Equality] www.ccsd.ca

²²⁸ "Presentation by the Ontario Nurses' Association to the Commission on the Future of Health Care in Canada," Toronto, May 30, 2002 www.ona.org; *Submission by the Ontario Nurses' Association to the Commission on the Future of Health Care in Canada*, October, 2001 www.ona.org

²²⁹ *Equality*. This budget, notes the report, also fails to commit to a multi-year plan, and indicates no move to follow through on primary care reform.

²³⁰ *Ibid.* at 13

²³¹ *Ibid.*

Article 5

One need not look far to see how racial minorities and immigrants are disproportionately penalized in a health system based on access to resources and the ability to pay. Chinese Canadians, for instance, make up only 10% of the population of Toronto, but occupy 18% of the spaces on waiting lists for long term care facilities in the city. Due to lack of language facilities, they have only two options for long term care out of a total of sixty agencies. Many wait for up to six years for beds, and many simply do not live long enough to take advantage of the service.²³²

As noted earlier, a study on Arab Canadians in Toronto speaks to a profound lack of culturally and linguistically appropriate health services to meet the needs of this population. These concerns are felt throughout many diverse groups. Downtown Toronto itself houses at least fifty-seven linguistic communities, and a large percentage of these residents live below the poverty level. Many hostels and shelters for the homeless exist in this downtown area, and the homeless population consists of a large number of poor and ethnic minority residents. One quarter of Toronto's homeless community is Aboriginal,²³³ although Aboriginals make up only a small percentage of the overall population. Recent immigrants and refugees are at heightened risk for poverty as well.

Homelessness is rising as a result of increased poverty and the elimination of rent control, which has set affordable housing at an all-time low. Approximately 60,000 people in Toronto await subsidized housing.²³⁴ In other parts of the province, a community association report notes, the healthcare needs of seniors are becoming greater and more complex. As the population ages and as immigrant communities establish roots in Ontario, an increasing number of seniors are from racial minority communities. The report states that "seniors of visible minorities are more likely to be poor than those from ethnic communities with a European background."²³⁵ It further notes that Aboriginal seniors, particularly in Northern Ontario communities, have extremely high rates of diabetes,²³⁶ a condition requiring consistent monitoring and medication. Although the Ontario government began to increase spending on home care in the late 1990s, the new rate, (6.1% of the health budget in 1997-98),²³⁷ fails to keep pace with a growing aging population or the expansion in caregiving services that accompanies its growth. The government's frequent claims that it is reinvesting in the healthcare system consistently fail to account for the discrepancy between its current spending and the amount that would be appropriate had it not cut spending for years, had it accounted for the system's growing needs, and had it not permitted competitive, privatized services.

²³² Chinese Canadian National Council. *A Submission to the Romanow Commission*, June, 2002.

²³³ A. Saidullah. *The Two Faces of Canada: A Community Report on Racism*. National Anti-Racism Council of Canada, 2001 [hereinafter *Two Faces*]

²³⁴ Ontario Health Coalition. "Our Health... Our Say! Word from the Street on Ontario's Healthcare System," 2002. <http://www.web.net/ohc/ourhealth.htm>

²³⁵ The Bringing Care Home Campaign. "In 20 Short Years: A Discussion Paper on Demographics and Aging," Ontario Community Support Association, 2001. at 5 www.ocsa.on.ca

²³⁶ *Ibid.* at 6

²³⁷ *Ibid.*

Research from the Ontario Women’s Health Council illustrates that women make up the majority of both healthcare workers and users of the healthcare system. Thus restructuring affects women disproportionately, and restructuring which results in cutbacks to services for the poor touches women who are further marginalized. The Council identifies several groups as “high risk” in light of the threats to government funded healthcare, including Aboriginal women, women with disabilities, immigrant and refugee women, and single mothers.²³⁸

IV. Criminal Justice

In 1995, the *Report of the Commission on Systemic Racism in Ontario’s Criminal Justice System* made comprehensive recommendations about how to address racism within the criminal justice system. Among the recommendations were:

-Mandatory equity and anti-racism training for all working within the Ontario justice system.²³⁹

-The development and implementation of employment equity policies to include visible minorities in the judicial, correctional and law enforcement systems.²⁴⁰

-Equity training at all levels within the criminal justice system, with input from the community when developing criminal justice policy.²⁴¹

-Continuous monitoring of the initiatives when and after they are implemented to ensure their success to change the criminal justice system.²⁴²

-Police must file a report indicating why a detainee was not released and have the report approved by an officer on duty at the station.²⁴³

-The Law Society of Upper Canada should create a complaints office in which racist conduct of judges or lawyers could be filed. Additionally, when the use of an interpreter is required, these court testimonies should be audio taped and kept on record for future reference.²⁴⁴

-Studies need to be done to address the systematic racism that affects the terms of imprisonment and the need for equality when sentencing.²⁴⁵

²³⁸ Ontario Women’s Health Council. Submission to Roy Romanow, Commissioner. *The Commission on the Future of Health Care in Canada*, Jan 15, 2002.

²³⁹ M. Gittens, et al. *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, Queen’s Printer for Ontario, 1995. at 392.

²⁴⁰ *Ibid.* at 391

²⁴¹ *Ibid.* at 401

²⁴² *Ibid.* at 403

²⁴³ *Ibid.* at 415

²⁴⁴ *Ibid.* at 422

²⁴⁵ *Ibid.* at 425

-Judges should be equipped with a catalogue of community services available for non-prison sentences and should be encouraged to use these sources when necessary.²⁴⁶

-The Correctional Services Department should have extensive interactions with the Ministry's Anti-Racism Co-ordinator and a committee should be established consisting of all representatives from all regions to assist in revamping the Correctional System.²⁴⁷

Despite the government's commitment to the Commission and its findings, to date only a few of the recommendations made by the Commission have been put into action.

Some problems inherent in the criminal justice system and in minorities' interactions with the police are due to the lack of racialized people working within these institutions. Less than 2% of police officers in Canada are from minority groups; the greatest representation of officers is found in Toronto with just over 4%. The overall racialized labour pool is 26%.²⁴⁸

The unwillingness to aggressively implement the Commission's recommendations in Ontario is a symptom of the times, when cutbacks to social programs, growing poverty and declining opportunity for marginalized groups are daily realities.

V. Aboriginal Justice Issues – Failure to call an Inquiry into the Shooting of Dudley George at Ipperwash, 1995

In 1995, Dudley George was shot dead by an Ontario Provincial Police officer. Dudley George was an aboriginal man, who was participating in an unarmed occupation of Ipperwash Provincial Park to protest the seizure and desecration of sacred aboriginal burial site. The OPP officer was part of a team of police officers sent into the park to stop the occupation. In 1997 the officer was convicted of criminal negligence causing death. The judge hearing the criminal case found that the police knew that none of the protesters were armed and that the police had fabricated evidence to protect the officer.²⁴⁹

²⁴⁶ *Ibid.* at 425

²⁴⁷ *Ibid.* at 426-427

²⁴⁸ F. Henry, C., Tator, W. Mattis, & T. Rees, *The Colour of Democracy: Racism in Canadian Society*, (Harcourt Brace and Company, Canada: Toronto, 1995) at 118.

²⁴⁹ Canada has failed to correct information provided in 1996 to the Special Rapporteur for the UN Commission on Human Rights, in which it claimed that the police were responding to fire from the protesters. The incorrect information was recorded in Report E/CN.4/1996/4 25 January 1996, UN COMMISSION ON HUMAN RIGHTS, Fifty-second session, paragraphs 98 to 100:

98. During 1995, the Special Rapporteur transmitted the cases of Nicholas Cotrell, 15 years old, and Dudley George, reportedly killed by the Ontario Provincial Police (OPP) on 6 September 1995. It was alleged that the OPP opened fire on a group of unarmed Pottawatimi and Ojibway men, women and children who were defending a sacred burial ground located in Ipperwash Provincial Park, Ontario.

99. The Permanent Mission of Canada to the United Nations informed the Special Rapporteur that Canadian federal authorities have sought information from the competent

There is mounting evidence that members of the newly elected Ontario government, including the Premier of Ontario, were directly involved in decisions to force a stand-off with the aboriginal protesters rather than following the established practice of non-violent intervention in similar land claim issues.

The Ontario government has refused widespread calls for a public inquiry to examine the circumstances surrounding Dudley George's death and the nature of the Ontario Government's response. The 1999 Concluding Observations of the UN Human Rights Committee strongly urging Canada to hold an inquiry into the shooting²⁵⁰ continue to be ignored. The government has raised the existence of a wrongful death lawsuit by Dudley George's family as a bar to holding a public inquiry. There is nothing in the Ontario Public Inquiries Act that would prevent an inquiry in these circumstances²⁵¹. The George family has repeatedly stated that their purpose in commencing a lawsuit is to bring information about the shooting into the open and have offered to withdraw the suit, if an inquiry takes place²⁵².

VI: Education

Although people of colour now make up about 11% of the total population of the country (compared to 9% in 1991, and just 6% in 1986), they presently make up 54% of the population of Toronto, the largest city in Canada.

The recent Royal Commission on Learning in Ontario examined ways to eliminate racial bias in schooling by suggesting an advocacy role for the provincial Ministry of Education and Training. Methods proposed included anti-racism training for trustees, educators and staff,

authorities of the Province of Ontario which will be provided shortly to the Special Rapporteur (24 November 1995). Furthermore, the Government informed the Special Rapporteur that on 6 September 1995, a confrontation between the occupiers of Ipperwash Provincial Park took place. According to the Government, police officers who were responding to the confrontation were fired upon and they returned fire. As a result of the incident, George Dudley died and Nicholas Cotrell was injured and subsequently taken to the hospital, from where he was released shortly afterwards. In addition, the Government stated that the incident is currently being investigated by the Special Investigation Unit (25 November 1995).

Observations

100. The Special Rapporteur urges the Government to investigate such disturbing allegations, identify and bring the perpetrators to justice and compensate the families of the victims.

²⁵⁰ 11. The Committee is deeply concerned that the State party so far has failed to hold a thorough public inquiry into the death of an aboriginal activist who was shot dead by provincial police during a peaceful demonstration regarding land claims in September 1995, in Ipperwash. The Committee strongly urges the State party to establish a public inquiry into all aspects of this matter, including the role and responsibility of public officials.", *Concluding Observations* of the UN Human Rights Committee in response to Canada's 4th periodic report under the International Covenant on Civil and Political Rights, April 7, 1999.

²⁵¹ *Public Inquiries Act*, R.S.O. 1990, c. P-41

²⁵² See news report at: <http://ca.news.yahoo.com/011120/6/ej5z.html>

evaluation on anti-racism outcomes for supervisory officers, principals, and teachers; and an antiracism review of classroom and other resources. Though most of these suggestions have simply been ignored all along, the province of Ontario is now moving in an even more retrograde fashion, back-peddling further and further away from the modest efforts at implementation that had been made.

Ontario has moved away from any kind of a focus or commitment to equity. The number of counselors available to help racialized minority and Aboriginal students is being cut across all schools. Ontario, once the leader of anti-racist and related equity initiatives in education in Canada, repealed its employment equity legislation in 1995 so that efforts to have a representative supervisory, teaching and administrative staff have been scaled back considerably. In addition, racialized and Aboriginal persons have difficulty in obtaining tenure or teaching positions at colleges or universities.

Further, the so-called “safe schools” program in the province has begun to target racially visible groups such as Tamil, Sikh, Muslim, Vietnamese, Aboriginal, and particularly Black students. While some racialized groups have shown higher than average levels of violent behavior in the schools’ jurisdictions, there is a repeated failure to understand this trend in the context of the overwhelming levels of racism and hatred some groups face. Instead, the violence becomes understood as something inherently linked to the racialized group whose members are acting out. According to the Commission on Systemic Racism in the Ontario Criminal Justice System “a third of staff members (35%) think black students are more involved than white students in incidents that ‘require’ police intervention at school. . . [and] black students widely perceive racial differentials in their schools’ use of the police and how police officers treat black students.” This Commission confirms, “participants in our consultations believed that the application of safe school policies is targeting Black students.”

“The budget crises now being experienced by school boards across the province shouldn’t surprise anyone,” writes the author of a new study from the Canadian Centre for Policy Alternatives (CCPA); “The boards’ budget struggles are in direct response to massive cuts in education funding by the Conservative Government since it took office in 1995.” The study, *Cutting Classes: Elementary and Secondary Education Funding in Ontario 2002-03*, finds that between \$2.2 and \$2.5 billion has been cut from elementary and secondary education funding in Ontario since 1995, with the cuts concentrated in the larger urban boards of the province. In fact 69% of the total budget loss is found within the Greater Toronto Area, within the Toronto District School Board (TDSB) alone. This is by far the largest school board in the country, with over 300,000 students. Once a leader in anti-racist and related equity educational initiatives in Canada, the board has lost over \$544 million dollars over the past seven years.

Toronto schools, in fact, are some of the most multilingual and ethno-racially and culturally diverse in the world, with over half of students being of racialized minority or Aboriginal background, and over 40% involved in English as a Second Language (ESL) programs.

The Toronto District School Board's commitment to anti-racism and equity education has long been designed to enhance the educational opportunities and outcomes of all students. It has recognized that there is a strong relationship between the success of all learners and the ability and willingness of schools to integrate equity into their policies, programs, operations and practices. Key components of such a strategy have been the appropriate adaptation of all learning materials, the provision of anti-bias staff training and the development of equity leadership programs for all learners.

The TDSB has committed itself to ensuring that fairness, equity and inclusion are essential principles of the school system, and has, over the years, developed innovative and internationally recognized programs and supports. Some of these include an International Languages and Black Culture/African Heritage Program, Inclusive Curriculum staff development, curriculum resource documents such as "Asian Heritage Resources and Activities for the K-8 Classroom," and a program of annual Equity Leadership Camps and Conferences for Students.

The TDSB has found, though, that the present provincial government's funding regime seriously threatens all of these educational and instructional anti-racist and equity innovations. Having already cut \$544 million from its annual operating budget, the Board is being forced to make an additional \$89 million in cuts in the current fiscal year (2002-2003), with more cuts pending. They, together with the boards of education of the other larger urban centres in the province, are currently fighting with the government of Ontario to stave off any further budget losses which would result in further compromises of the boards' equity and human rights commitments. These boards of education have collectively refused to work any further behind the scenes to squeeze more money from the province, and have either passed deficit budgets or refused to pass a balanced budget containing the program cuts which they consider to be unacceptable.

Some of the most dramatic cuts to date have been made to ESL, heritage language, literacy, adult education programs, and related supports, which primarily affect racialized and Aboriginal learners. Library resources for racialized and Aboriginal communities are also dwindling. There are very few targeted resources for smaller groups, such as Francophones of colour. The histories, contributions and perspectives of Aboriginals and people of colour are thus becoming more and more difficult to teach and increasingly devalued.

The current provincial government's dismantling of the relevant Ministry level sections and divisions preceded all of these budget cuts to anti-racism and equity commitments at the board level. The Ministry of Education, the Ontario Anti-Racism Secretariat and other now-defunct bodies had been put in place over the years to help build and support anti-racism and equity educational and other initiatives across the province.

As systemic inequities serve to define educational and life achievements, the situation of racialized minority and Aboriginal communities is becoming increasingly untenable with respect to post-secondary education. According to an annual report released by the Canadian Centre for Policy Alternatives, *Missing Pieces III: An Alternative Guide to*

Canadian Post-Secondary Education, differing provincial priorities reinforce imbalances in access to quality higher education. This study ranks provincial performance on the basis of four categories - equity, accessibility, quality and public accountability. For the third year in succession, Ontario, both the most populous and the most ethno-racially and otherwise diverse province, ranks dead last. British Columbia, the second most diverse of the provinces, has started to fall in the ranks as the equity-averse policy agenda of a new provincial government, equally driven by neo-conservative fiscal analysis, begins to take effect.

According to the *Missing Pieces III* study, while other OECD countries have increased their higher education participation rates (the number of people aged 18-24 enrolled in post-secondary education), Canada's rate has actually stagnated.

On every front, Ontario has failed to provide and sustain effective education initiatives, public awareness, policies, and activities that would promote acceptance, inclusion and diversity.

Chapter IX: Province of British Columbia

Introduction

Similar to Ontario, the progress - or lack thereof - in equity in the province of British Columbia depends largely on the political party in power. Prior to 2001, British Columbia was under the rule of the New Democratic Party (NDP) as was the case in Ontario before 1995. The NDP however has since lost all but two of its seats in the provincial legislature. With the change in political wind, British Columbians are now preparing for a stormy period of slash, cuts and downsizing, thanks to the new Liberal Government. The impact of such changes are currently being experienced by the people in that province. Rather than wait for another 5 years when Canada presents its 15th and 16th report which might address some of these changes, we believe that it is critical for the CERD Committee to be made promptly aware of these fundamental problems. Thus, the following sections will focus on the emerging problems afflicting this west coast province of Canada.

Relevant Convention Provisions

Article 2

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

Racial Discrimination in British Columbia

Article 2

In responding to its obligations under Article 2 for CERD, British Columbia (BC) reported that from 1993 – 1997 “important developments in the human rights scheme in the province” took place. BC further reported that, effective January 1, 1997, new structural and procedural amendments were made to the administration of human rights. The government created the British Columbia Human Rights Commission and the British Columbia Human Rights Tribunal. As well, a Human Rights Advisory Council was established as a vehicle to transmit the views of the community to the Human Rights Commission and the Minister Responsible for Human Rights. BC goes on to report the important role and activities of the Human Rights Commission.

In 2001, there was an election in BC which saw a new government come into power. In July 2001, the government announced a review of human rights legislation as part of its administrative justice review initiative. In March of 2002, the government reduced the budget of the Human Rights Commission by 32% resulting in the reduction of staff and eliminating education, public interest and administrative programs. On May 30, 2002 the government announced legislation (Bill 53 – the *Human Rights Code Amendment Act*) that would abolish the BC Human Rights Commission and the Human Rights Advisory Council, thereby leaving the Human Rights Tribunal as the only vehicle citizens have through which to file their complaints. While the government has cloaked these changes in the guise of “direct access” to the Tribunal, in our view, it provides no access to justice when citizens have experienced human rights violations.

The “Paris Principles” endorsed by the United Nations General Assembly (UN General Assembly Res.48/134 [4 March 1994]), provide minimum standards on the status and advisory role of human rights commissions. The principles require that State human rights agencies have:

- Independence guaranteed by statute or constitution
- Autonomy from government
- Diverse membership
- A broad mandate based on universal human rights standards
- Adequate powers of investigation
- Sufficient resources

According to Professor Bill Black, a well-known and respected human rights scholar in Canada, there are five important principles to keep in mind when dealing with human rights.

1. In Canada, we recognize that when discrimination occurs, all of society suffers. Discrimination is a public issue and not a private dispute between individuals.
2. Education and research are essential elements to the identification and elimination of discrimination.

3. Positive measures to address historical and systemic forms of discrimination are important and public advocacy by an independent government institution like a human rights commission or commissioner on behalf of the human rights of all citizens is essential.
4. There must be a public watchdog over the human rights performance of government, the public and private sector.
5. The agency responsible for human rights must have independence from government.

Bill 53 meets neither the Paris Principles nor the principles elaborated by Professor Black.

In addition to abolishing the Human Rights Commission and the Human Rights Advisory Council, the government has eliminated all provisions in the legislation that provide for education, research, public hearings into human rights issues, and special reports to the legislature on the status of human rights in BC. There will be no public watchdog over the human rights performance of government or to advocate on behalf of marginalized groups. Furthermore, Bill 53 eliminated any investigative powers, claiming that pre-hearing disclosure meetings held by the Tribunal would be a sufficient substitute. As the Tribunal is adjudicative in nature and not administrative, the processing of human rights complaints will be more formal and legalistic, and it will be more difficult for complainants to proceed. There will be no public interest in human rights complaints as Bill 53 treats all complaints as though discrimination is a private dispute between parties. The ability to litigate against historical or systemic forms of discrimination will be virtually impossible, as there is no agency mandated to take these complaints forward.

Another troubling aspect of Bill 53 is that the Tribunal can dismiss complaints without a hearing. Specifically, the tribunal can dismiss a complaint or part of a complaint not within its jurisdiction. It can do so if it deems that proceeding with the complaint or that part of the complaint would not (i) benefit the person, group or class alleged to have been discriminated against, or (ii) further the purposes of the Code. Further, complaints can be dismissed if they are deemed to have been filed for improper motives or made in bad faith, if the substance of the complaint or part of the complaint has been appropriately dealt with in another proceeding, or if a reasonable settlement offer has been made with respect to the complaint and not accepted by the complainant. Dismissal can also be applied if the contravention alleged in the complaint or part of the complaint occurred more than 6 months before the complaint was filed, unless the complaint or part of the complaint was accepted under section 22 (3). With respect, with the exception of a complaint that is outside of the jurisdiction of the tribunal, we cannot understand how justice can be served when complaints can be dismissed without a hearing.

In addition, Bill 53 takes human rights litigation into the realm of ordinary civil litigation by enabling the Tribunal to award costs against the parties. Traditionally, costs are awarded in human rights cases only if there is clear evidence that a party has acted improperly during the conduct of the case. Bill 53 now allows for a Tribunal to award costs against a losing party. This provision for costs will certainly have a chilling effect

on complainants, many of whom are already low wage earners and most marginalized in our society.

When introducing Bill 53 in the legislature, the Attorney General for BC announced that a legal clinic would be set up to provide for education and legal representation. However, there is no legislated statutory obligation on the part of government to fund legal representation. While the ideal of providing a legal aid clinic might be welcomed by some, in the view of many human rights experts in BC, this effectively results in human rights legal representation being privatized. When there is no statutory obligation to provide legal representation, the legal clinic in fact is a private contract between government and a group to provide legal services. This is unacceptable.

In the Human Rights Commission's 2001/02 Annual (and perhaps last) Report, it is noted that 167 complaints or 16.5% of all complaints were filed on the grounds of race, ancestry, colour and place of origin. We fear that Bill 53 will make it more difficult for all British Columbians and those impacted by racism to effectively deal with human rights violations committed against them. Community organizations, human rights advocates and NGO's are mobilizing against Bill 53. We implore the Committee to review the current status of human rights protections in BC and to make appropriate comments on it.

Article 5

The Government of British Columbia reports that it attempted to improve relations between First Nations and provincial authorities in the period between 1993 and 1997. Since the election of the new government in 2001, relations between First Nations and provincial authorities have deteriorated considerably as a result of the government proceeding with a referendum on the principles guiding negotiations of Aboriginal land claims. At present, 51 First Nations, representing over 70 percent of BC's aboriginal population, are participating in the BC treaty process.

Canada's obligation to protect and enforce the rights of Aboriginal people goes beyond Canadian borders to the international level. As a signatory of the Universal Declaration of Human Rights, and other UN and international agreements, Canada is bound by principles that include the rights of all people to "... freely determine their political status and freely pursue their economic, cultural and social development."

While a minority, Aboriginal people have unique status, as first peoples on this land, under Canada's constitution. These protections were strengthened by the Supreme Court of Canada's 1997 decision²⁵³ which recognized Aboriginal title as "a right to the land itself," deriving from the First Nations original occupation of Canada. The decision was widely seen as a turning point in the rights of First Nations people as it confirmed that Aboriginal title does exist in BC and that governments must consult with, and may have to compensate, First Nations whose land titles are affected.

²⁵³ *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010

Notwithstanding Canada's international obligations, court rulings on Aboriginal rights and the objections of many business, labour, religious and community leaders, the government proceeded with a referendum on principles to guide treaty negotiations. British Columbia's 2.1 million voters were asked to reply, simply, "yes" or "no" to issues such as whether Native governments should be relegated to mere municipal status, the phasing out of the limited tax exemptions that apply on Indian reserves, and whether private property would be expropriated to settle treaties. Further, they voted on whether disruptions to commercial interests would require compensation, whether parks and environmental protection would be maintained along with hunting and fishing opportunities, and similar issues. Angus Reid, one of Canada's most respected public-opinion pollsters, called the referendum "one of the most amateurish, one-sided attempts to gauge the public that I have seen in my political career." While many in the community objected to the referendum as a violation of the fundamental rights of the indigenous peoples of Canada, a group called BC White Pride, declared the referendum "the most fundamental symbolic expression of white unity since racial pride went out of style almost 40 years ago."

According to some reports nearly 75% of BC voters either boycotted or registered a no vote in the treaty referendum sponsored by the BC Liberal government. In short, approximately 1.6 million citizens of BC rejected the government's treaty referendum. Federal Indian Affairs Minister Robert Nault has spelled out Ottawa's opposition to one of the principles endorsed by the minority of BC voters in the treaty referendum. He warns that municipal-style Aboriginal self-government is not part of the federal negotiating position, because it doesn't work. The government of BC has indicated that the results of the referendum will guide them in their negotiations with First Nations. We ask the Committee to monitor the BC government's actions in its dealings with the indigenous peoples of BC.