



RACIAL DISCRIMINATION IN CANADA

Submissions to the Committee on the Elimination of All Forms of Racial Discrimination on the Occasion of the Review of Canada's Seventeenth and Eighteenth Reports on the United Nations under the International Convention on the Elimination of All Forms of Racial Discrimination.

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Compiled by

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PART I: Overview

(a) ABOUT NARCC

Established in 2002, The National Anti-Racism Council of Canada (NARCC) is a Canadian coalition of community based organizations and individuals who initially came together to ensure a strong community input into both the development of Canada's contributions to the United Nation's World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR), and to the needed local community capacity building and commitment implementation following this global gathering.

In addition, in order to assist the Canadian NGOs attending the WCAR, collectively, NARCC released a report entitled, "Two faces of Canada – Community Report on Racism". Many of NARCC members attended the WCAR, as representatives of their respective communities.

Over the years, NARCC has emerged from being a small group of primarily locally based organizations to a truly National Network of Canadian community-based non-governmental organizations committed to the development and dissemination of anti-racism related information and resources, and to the building and supporting of local, regional, national and international strategies to effectively address racism and related intolerance.

NARCC membership consists of national organizations representing immigrants and refugees and ethno-racial groups including the Canadian Council for Refugees and the Chinese Canadian National Council, provincial networks such as the Council for Agencies Serving South Asians, as well as local advocacy organizations and community-based legal clinics as the Urban Alliance on Race Relations, the African Canadian Legal Clinic and the Metro Toronto Chinese & southeast Asian Legal Clinic. The NARCC membership also includes community groups representing the various regions of Canada.

In 2002, NARCC submitted a shadow report to the United Nations Committee on the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to highlight the state of racism in Canada and to comment on the status of compliance by the Canadian Government with ICERD. Our recommendations, along with recommendations from other NGOs, were incorporated into the CERD Committee's Final Observations and Conclusions about Canada

(b) ABOUT CONTRIBUTION ORGANIZATIONS

THE BLACK COALITION OF QUEBEC

The Black Coalition of Quebec takes its origin from the Black Coalition of Canada, which was formed in 1969 in defense of human rights. The Coalition is one of the principal speakers of the Black community in defense of individual rights. The Coalition is at the service of the collectivity to defend against all forms of discrimination

THE CHINESE CANADIAN NATIONAL COUNCIL (CCNC)

Founded in 1979, the Chinese Canadian National Council (CCNC) is an organization of Chinese Canadians that promotes equity, social justice, inclusive civic participation, and respect for diversity. The CCNC aims to activate new members across Canada to work alongside existing groups in the Chinese community and other racial groups, to establish an effective national network of communication. The CCNC promotes the rights of all individuals, in particular, those of Chinese Canadians and encourages their full and equal participation in Canadian society. The CCNC further encourages and develops in persons of Chinese descent, the desire to know and respect their historical and cultural heritage to educate them in adopting a creative and positive attitude towards the Chinese Canadian contribution to society. The CCNC achieves its mandate by conducting activities in the areas of: public education, systemic advocacy, community development and coalition building as well as providing assistance to individuals facing discrimination.

THE KA NI KANICHIHK – UNITED AGAINST RACISM

Ka Ni Kanichihk means "those who lead" in the Ininew (Cree) language. Ka Ni Kanichihk is a registered, non-profit, community based Aboriginal human services organization governed by a council that is inclusive of First Nation and Metis Peoples in Winnipeg. The organization is currently delivering a number of programs and initiatives, one of which is United Against Racism. United Against Racism (UAR) works towards the elimination of racism and discrimination in society. This unique initiative is community based and Aboriginal led. Aboriginal youth also play a vital in the development of anti-racism tools and resources, and in the transmission of anti-racist values and methodologies through education.

The vision for Ka Ni Kanichihk came from the Aboriginal community - women, men, elders and youth who recognized the critical need to develop greater human and capital capacity within the rapidly growing urban Aboriginal community. Ka Ni Kanichihk is committed to developing and delivering a range of culturally based education, training and employment, leadership and community development, and healing and wellness programs and services that focus on wholeness and wellness and that builds on each individual's assets (gifts) and resilience.

THE NATIONAL ACTION COMMITTEE ON THE STATUS OF WOMEN, (NAC)

The National Action Committee on the Status of Women (NAC) has played a significant role in advancing the agenda of women's equality in Canada. Since its inception in 1972, a coalition of grassroots equality seeking women's organizations and individuals NAC's organizational and democratic structures and policies have evolved in response to grassroots women's identification of how policy and legislation has impacted women's substantive equality. NAC is devoted to achieving the full civil, legal, economic, political and cultural rights for women and girls, in all their diversity, as well as the inclusive representation of local, territorial, provincial and national equality-seeking women's organizations. Among many of its achievements, NAC was notably instrumental in ensuring a women's right to reproductive choice and the guarantee of women's equality in the Canadian Charter of Rights and Freedoms. NAC advocates for a diversity of women's issues including childcare, employment rights, pay equity and employment equity. NAC also advocates for the rights of *all women* including Aboriginal women, racialized women, immigrant and refugee women, younger women, lesbians, senior women, women living in poverty, as well as the rights of women living with disabilities. NAC has been a visible leader; having participated actively on the various issues related to women's equality at the local, regional, national and international levels.

THE URBAN ALLIANCE ON RACE RELATIONS (UARR)

The UARR was formed in 1975 by a group of concerned Toronto citizens. The UARR works to promote a stable and healthy multiracial, multi-ethnic environment in the Metro Toronto community by undertaking educational, research, and advocative activities that promote racial and ethnic harmony.

(c) ABOUT THIS REPORT

NARCC, with its members, partners and affiliates, recognize the important role of international human rights instruments in the development of strong 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 non-governmental organization's (NGOs) are all too aware of the real struggles we face within our country. Despite its official rhetoric, the Government of Canada does not give full regard to the international treaties and conventions that it has signed on. Our Government continues to pass laws and engage in practices that are in clear violation of international human rights laws.

NARCC welcomes the opportunity to provide the *International Convention on the Elimination Racial Discrimination (CERD)* with a non-governmental community-based perspective on the status of compliance by The Government of Canada with the UN CERD. This submission is a product of a collective effort whereby NGO members of NARCC were invited to help put together a document which covers a wide range of issues including the impact of racial profiling and anti-terrorism provisions, racism and poverty, education, human rights and discrimination against Aboriginal peoples. Each of these NGOs brings forth in their submissions a unique set of expertise and perspectives on the issues affecting their respective constituencies.

NARCC urges the Convention to examine all of the reports prepared in this submission in the Committee's deliberation.

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

(d) INTRODUCTION

The consideration of Canada's combined Seventeenth and Eighteenth periodic report under the *International Covenant on the Elimination of all Forms Racial Discrimination* (the Covenant) by the Committee presents an important opportunity to draw the Committee's concentration to the unrelenting and increasing political and socio-economic exclusion of racialized groups living in Canada.

Canada is one of the wealthiest countries in the world and is in a privileged financial situation. The Government of Canada recently recorded its eighth consecutive annual surplus. In addition, Canada has an enviable international reputation as a "leader" in human rights, international peace and security; however, marginalized communities, and in particular racialized groups living in Canada, have not been able to share in its economic prosperity.

The lived experiences of racialized groups, is rooted in extreme and disparate poverty, inequality, racism, and general socio-economic insecurity and deprivation. Racialized groups in Canada are among the lowest that live of Canada's economic and social ladder as the poverty rate for racialized groups is three times the average of their white-counterparts.

Racialized groups within Canada are victims of structural and systemic racial inequality in a country that prides itself as a protector of human rights and promoter of equality. However visible violations of their enjoyment to economic, social rights and cultural rights are not acknowledged.

Canada's Seventeenth and Eighteenth periodic report does not address the condition of racialized Canadians and immigrants as one of the most vulnerable groups with higher rates of poverty than other Canadians.

Relevant levels of government have been unwilling or uninterested in effecting desired changes in legislation, policies and practices, or in taking definitive steps to ensure the economic, social and cultural rights of racialized groups. Although Canada has the resources, institutions and infrastructure necessary to eradicate poverty among women, men and children; relevant levels of government have been unwilling or uninterested in effecting changes in legislation, policies and policies that would ensure the economic, social and cultural rights of racialized and immigrant groups. Instead governments continue to implement regressive measures, perform cutbacks and implement unjust or inadequate policies that have a detrimental impact on racialized and immigrant communities.

This report highlights some major areas of concern to demonstrate Canada's violations of the economic, social rights and cultural rights of racialized groups. It draws attention to Canada's non-compliance with its obligation to respect, protect and fulfill the provisions of the *Covenant*. We invite the Committee to take note of and strongly condemn the

extreme, racialized violation of the economic, social rights and cultural rights – substantive rights of racialized citizens and immigrant living in Canada.

It is notable that the issues of concern in this report are interconnected and inextricably linked and rooted in discrimination – in the form of racism.

We submit that Canada has not only failed to fulfill its obligations under Articles 2 through 2.2 and 7 of the International Covenant on the Elimination of Racial Discrimination during the period under review, it has also taken regressive measures, contrary to its obligations under Articles 5 and 6.

This report is broadly divided into four parts, including this introduction, which forms Part I.

Part II provides an account to demonstrate how the patterns of racialization and systemic racial discrimination have informed and reproduced legislative, administrative, and judicial or other measures of socio-economic exclusion and racial inequality under Covenant Articles 2 through 2.2. In addition this chapter explores how in view of the striking economic and social disparities between different ethnic groups in the country, it is essential that Canada uphold measures that ensure the protection of racialized groups living in Canada.

In Part III, the report will highlight some specific areas where Canada has implemented regressive cutbacks, measures and policies that demonstrate its non-compliance and violation under Covenant Articles 5 equality before the law and under Article 6, effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate 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.

Part IV highlights Canada's failure to comply with its obligations to respect, protect, and fulfill the provisions under Article 7 of the *Covenant* with respect to the rights of Education, Culture and Information.

The last section, Part V, makes a summary of recommendations for improved and better protections from racism and discrimination of racialized groups living in Canada.

PART II ARTICLE 2: Legislative, administrative, judicial or other measures

Article 2 of The Convention obliges Canada to 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 undertake 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;

Article 2.2 obliges Canada, when the circumstances so warrant, to 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. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

(a) National Security and Anti-Terrorism Legislation

Introduction

On October 15, 2001, Canada unveiled its new anti-terrorism legislation.¹ The plan was in concert with similar laws passed in the United States and Britain in the wake of the attacks on the U.S. on September 11, 2001. The four principal objectives of the government's plan included: to keep terrorists out of Canada and to protect Canadians from terrorist acts; to procure tools to identify, prosecute, convict and punish terrorists; to ensure that the Canada-U.S. border remains free and safe for the sake of the Canadian economy; and to co-ordinate efforts at an international level to prosecute terrorists and deal with the causes of hatred.²

The *Anti-terrorism Act* (“ATA”) incorporated into the Canadian criminal justice system an expansion of the type of process present under the *Immigration and Refugee Protection Act* (“IRPA”),³ including the reliance on intelligence from foreign sources, the introduction of secret evidence and the labelling of “terrorists” without adequate scrutiny. Such provisions in both the *ATA* and the *IRPA* have led to systemic breaches of the human rights of Muslims and Arabs in Canada.

Since 9/11, Muslims and Arabs have endured increased incidences of discrimination against members of their communities, both by private actors and by the state. Although Muslims and Arabs are victims of historical discrimination and stereotyping, the political climate has, since September 2001, become ardently Islamophobic.⁴ The profiling of

¹ Bill C-36, *An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism* 1st Sess., 37th Parl., 2001 (assented to 18 December 2001), S.C. 2001, c. 41 [“Anti-terrorism Act”].

² Department of Justice Canada. Press Release: “Government of Canada Introduces Anti-Terrorism Act,” <http://canada.justice.gc.ca/en/news/nr/2001>, 15 October 2001.

³ *Immigration and Refugee Protection Act*, 2001, c. 27, entered into force June 20, 2002 [“IRPA”], formerly *Immigration Act*, R.S.C. 1985, c. I-2.

⁴ In the Ontario Human Rights Commission’s *Policy and Guidelines on Racism and Racial Discrimination*, it has adopted the term “Islamophobia” to reflect this “contemporary and emerging form of racism against Muslims in Canada” (OHRC, June 2005).

Muslims and Arabs in the administration of justice undermines the equality rights of members of these communities.⁵

The *ATA* and related legislation⁶ have also had a chilling effect on non-governmental advocacy and humanitarian organizations. Advocacy, protest and community activism are the most accessible tools for social and political change. The chilling of such activities for fear of social stigma and/or criminal suspicion undermines the ability of members of racialized communities to fully participate in public life and discourse.

Increased discrimination has led to decreased morale and a growing sense of insecurity within the communities affected, members of which are now widely viewed as fifth columnists.⁷ According to data, 60 percent of Muslim Canadians were personally subject to some form of discrimination between September 2001 and September 2002, while 80 percent know someone who was.⁸

Much of the discrimination and profiling evidence is anecdotal, reported in the media or gathered by community organizations. The vast majority of profiling incidences go unnoticed to the general public. Moreover, reporting mechanisms are inadequate and members of the affected communities often do report incidents for fear of reprisal and stigma. It is therefore very difficult to discern a clear picture of abuses and discrimination against Arabs and Muslims.

In *Presumption of Guilt: A National Survey on Security Visitations of Canadian Muslims* (2004), the Canadian Council on American-Islamic Relations (CAIR-CAN) documented the results of its national survey on the increased scrutiny under which members of the Canadian Muslim community have been placed by the RCMP, CSIS and the police. Eight percent of respondents indicated that they had been personally questioned by security officials, while 43 percent indicated they knew of at least one other Canadian Muslim who had been questioned. Meanwhile, 62 percent of respondents who had been questioned by security officials indicated they never reported the incident to any organization.

Canada continues to use “national security” considerations to justify the deportation of persons to countries where they face a reasonable likelihood of torture or death.

In January 2002, shortly after the terrorist strikes in the U.S., the Supreme Court of Canada handed down a seminal decision on deportation to torture under immigration

⁵ See Faisal Bhabha, “Tracking ‘Terrorists’ or Solidifying Stereotypes?: Canada’s Anti-terrorism Act in light of the Charter’s equality guarantee” (2003) 16 Windsor Review of Legal and Social Issues 95; Reem Bahdi, “No Exit: Racial Profiling and Canada’s War Against Terrorism” (2003) 41 Osgoode Hall Law Journal 293.

⁶ The government’s anti-terrorism strategy involved adopting not only the *ATA*, but also amendments to the *Customs Act* and the *Citizenship Act*, and the enactment of Bill C-17, *Public Safety Act, 2002*, (assented to 6 May 2004), S.C. 2004, c. 15.

⁷ See *Arabs in Canada: Proudly Canadian and Marginalized*, (Toronto: Canadian Arab Federation, 2002).

⁸ Canadian Council on American-Islamic Relations (CAIR-CAN), website: www.caircan.ca

legislation.⁹ The case involved a Tamil refugee claimant from Sri Lanka who was a member of the Liberation Tigers of Tamil Eelam (Tamil Tigers), which Canada considers a “terrorist organization” for immigration purposes. The Court considered whether the government could deport the appellant to his country of origin despite a serious risk of torture or death upon his return. The Court confirmed the need for a balance between fighting terrorism and protecting civil rights:

Canada has a legitimate and compelling interest in combating terrorism. But it is also committed to fundamental justice. The notion of proportionality is fundamental to our constitutional system. Thus we must ask whether the government's proposed response is reasonable in relation to the threat.¹⁰

Applying this proportionality test, the Court concluded that the impugned provision, which allowed for the deportation of persons deemed to be threats to the security of Canada, even in the face of torture, did not violate the *Charter*. It reached this conclusion despite ruling that:

The Canadian rejection of torture is reflected in the international conventions to which Canada is a party. The Canadian and international perspectives in turn inform our constitutional norms. The rejection of state action leading to torture generally, and deportation to torture specifically, is virtually categorical.¹¹

Canada’s failure to uphold its international and domestic obligations not to take action that results in torture is a serious concern for members of racialized communities, who are by far the most adversely affected by such action, especially refugee claimants and other non-citizens. While the Supreme Court has ruled that the prohibition on deportation to torture is “virtually categorical” under international and Canadian constitutional law, the government continues to be implicated in action that leads to torture.

The most publicized case of religious profiling leading to torture is that of Maher Arar. Mr. Arar, a Canadian citizen born in Syria, was detained and deported to his country of birth from the United States while *en route* to Ottawa from a family vacation in Tunisia in September 2002. He was imprisoned in Syria, where he was tortured for 16 months. While initially, Canadian officials claimed not to have been informed of Mr. Arar’s detention and deportation from the U.S., information released in the course of an ongoing public inquiry suggests some degree of coordination between American and Canadian officials.

Canada's anti-terrorism plan unjustifiably limits the liberty and security of the person rights as a result of overly broad legislation and discriminatory enforcement. Such violations occur primarily pursuant to anti-terrorism and immigration legislation. Arabs

⁹ *Suresh v. Canada (Minister of Citizenship and Immigration)* [2002] 1 S.C.R. 3.

¹⁰ *Suresh* at para. 47.

¹¹ *Suresh* at para. 76.

and Muslims, both citizens but especially non-citizens, are principally targeted for the enforcement of such legislation. This not only unreasonably limits liberty and security of the person interests, but it also undermines the rule of law.¹²

Anti-terrorism Act

The *ATA* provides the government with far-reaching authority to intrude on the lives of Canadians if there are grounds to believe that they are involved in “terrorist activity”, whether directly or indirectly through fundraising, facilitating, instructing or harbouring.¹³ Law enforcement agencies are endowed with the power to preventively arrest and detain without charge persons for whom there are “reasonable grounds to suspect” they are involved in planning an imminent act of terror.¹⁴ Groups for which there are “reasonable grounds to believe” that they are involved in terrorism are listed as “terrorist entities”, on the basis of secret and often unchallenged intelligence information. Persons can be convicted of collateral crimes, such as facilitation,¹⁵ without proof of criminal intent or even knowledge of a terrorist act. Investigative hearings and secret evidence are also incorporated into the criminal process where terrorism is alleged, raising significant obstacles to the accused’s traditional rights of defence, while penalties for failure to cooperate in interrogation encroach on the right to silence.

Lawyers representing accused terrorists have been placed in the precarious position of potentially facing prosecution for “facilitating” terrorist activities as a result of representing clients.

There is limited data on the enforcement of the anti-terrorism provisions. The *ATA* requires the Attorney General to report annually to Parliament on the use of the recognizance with conditions and investigative hearings provisions, while the Solicitor General is required to report annually on the number of arrests without warrant.¹⁶ The reports that have been produced so far contain only brief descriptions of the provisions and state that the powers of investigation and preventive arrest have not yet been used.¹⁷

While the reports to date cover only the period up to December 23, 2003, there are two known cases since then in which the *ATA* has been enforced. The first instance involved an RCMP raid on an Ottawa home on March 29, 2004 and the arrest of Mohammad Momin Khawaja, a Muslim Canadian of Pakistani origin, on charges of participating in

¹² Ziyaad Mia, “Terrorizing the Rule of Law: Implications of the Anti-terrorism Act” (2002) 14.1 National Journal of Constitutional Law 125.

¹³ See amendments to section 83, *Criminal Code*, R.S.C. 1985, c. C-46 [the “Code”].

¹⁴ Note the departure from the usual standard of “reasonable grounds to believe”, a bulwark against abuse of power.

¹⁵ Section 83.19 provides that “Every one who knowingly facilitates a terrorist activity is guilty of an indictable offence” regardless of whether the “facilitator knows that a particular terrorist activity is facilitated”.

¹⁶ Section 83.31.

¹⁷ Two such reports have been produced, the most recent of which was presented to Parliament on October 21, 2004: *Annual Report concerning Investigative Hearings and Recognizance with Conditions* (December 24, 2002-December 23, 2003), online: http://canada.justice.gc.ca/en/terrorism/annualreport_2002-2003.html.

the activities of a terrorist group and facilitating a terrorist activity. Khawaja was denied bail in May 2004 and June 2005, and currently remains incarcerated awaiting trial.

The other case involved the retrospective use of investigative hearings under section 83.28 in the *Air India* case,¹⁸ a terrorism-related criminal prosecution involving events that occurred more than 15 years prior to the adoption of the *ATA*.¹⁹

The reporting process established under the *ATA* is too narrow in scope, failing to account for the reality of the impact that it has on Muslims and Arabs, as well as on other racialized groups.²⁰ There lacks a single oversight mechanism with a mandate to monitor and assess the enforcement of the interconnected security measures as lacking transparency and giving rise to a reasonable probability of abuse of power.

Immigration and Refugee Protection Act

The *IRPA* has become the principal tool used to prosecute Canada's "war on terror" domestically. It is used to identify suspected terrorists without the higher evidentiary standards required under criminal law. This creates a highly unreliable method of tracking potential threats and necessarily results in casting the net far too wide. Specific persons, namely Muslim men from particular Asian and African countries, are the most likely to be targeted.

In August 2003, 21 Muslim men of Indian and Pakistani origin were arrested in Toronto under "Project Thread" for allegedly being part of an al-Qaeda sleeper cell.²¹ One of the men, a student pilot who flew a regular route which passes by the Pickering power plant outside Toronto, spent 44 days in protective custody at a maximum security jail before being released without any criminal or security-related charges being laid. All of the known cases were handled as simple immigration matters, and allegations of terrorism connections quickly dissipated.

Muslims and Arabs have been disproportionately targeted for deportation on the basis of relatively simple immigration matters since 9/11. Minor violations, such as overstaying a tourist visa or working without a permit, when related to members of profiled communities, can lead to anti-terrorism-like surveillance, investigations and detention, leading to deportation.

More serious deprivations of liberty are allowed pursuant to the security certificate provisions of the *IRPA*. This provides for preventive detention (i.e., no formal charges are

¹⁸ In *Application under s. 83.28 of the Criminal Code (Re)*, [2004] 2 S.C.R. 248 at para. 4 [per Iacobucci and Arbour JJ.], the Supreme Court ruled that the provision did not violate section 7 of the *Charter*.

¹⁹ On June 23, 1985, Air India flight 182 was blown up by persons believed to be Sikh extremists while *en route* from Toronto to New Delhi. The attack left 329 people dead.

²⁰ *In the Shadow of the Law: A Report by the International Civil Liberties Monitoring Group (ICLMG) in response to Justice Canada's 1st annual report on the application of the Anti-Terrorism Act (Bill C-36)* (May 14, 2003); online: www.devp.org/pdf/shadow.pdf ["ICLMG Report"].

²¹ See Thomas Walkom, "Suspicious Win the Day in Absence of Evidence" *The Toronto Star* (29 August 2003).

laid) when the Solicitor General and the Minister of Citizenship and Immigration deem that an individual represents a danger to national security or to the safety of any person. Preventive arrest and detention are provided for in both the *IRPA* and the *ATA*. Only landed immigrants and refugees are subject to the *IRPA*; under the *ATA*, however, Canadian citizens can also be preventively arrested.

The case of five men, all Muslim Arabs, detained indefinitely without charges, trial or access to the alleged evidence against them, has raised criticism of Canada's use of security certificates to deal with the problem of "Islamic terrorism".²² One of the five detainees, Adil Charkaoui, is a permanent resident who was detained on suspicion of "terrorism" offences in May 2003.²³ The Canadian government alleged that he was suspected of being an al-Qaeda agent and sought his deportation to his native Morocco. Mr. Charkaoui claimed he would be tortured if he returned to Morocco, on account of his political and religious beliefs.

Mr. Charkaoui brought a constitutional challenge to the security certificate on the basis that the government is violating his rights under the *Canadian Charter of Rights and Freedoms* by keeping him in custody without charges being laid or being informed of the case against him, and that the protection of national security does not mean that it is acceptable to deviate from normal legal protections for accused persons. Specifically, he challenged the fact that security certificates are issued on the basis of evidence that is never disclosed to the detainee or subject to scrutiny under cross-examination. At trial, the Federal Court held, among other things, that the impugned system was consistent with the *Charter*. The Federal Court of Appeal upheld this decision in December 2004, though it released him on bail, which was no small victory.²⁴ The case was before the Supreme Court of Canada in 2006. The National Anti-Racism Council of Canada along with other not-for profit community organizations was granted intervener status before the Supreme Court of Canada. NARCC's submissions articulated the impact of the Anti-Terrorism legislation on racialized group members.

The threat of criminal suspicion or sanction for engaging in activities most Canadians take for granted, such as attending religious services, giving charity, or engaging in community activism, has left members of the Muslim community feeling that they are being targeted for discriminatory treatment by the police, CSIS and the RCMP.

Security agents' intrusions into the private realm have been noted.²⁵ There has been a trend of disturbing tactics on the part of security officials, including discouraging legal representation, aggressive and threatening behaviour, threats of arrest pursuant to anti-terrorism and/or immigration legislation, visits at work, intrusive and irrelevant

²² The detainees and date of detention are: Mohammad Mahjoub (June 2000), Mahmoud Jaballah (August 2001), Hassan Almrei (October 2001), Mohamed Harkat (December 2002), and Adil Charkaoui (May 2003).

²³ *Charkaoui (Re)*, 2003 FC 1418 (F.C.).

²⁴ *Charkaoui (Re)*, 2004 FCA 421 (F.C.A.).

²⁵ CAIR-CAN, *Presumption of Guilt: A National Survey on Security Visitations of Canadian Muslims* (2004).

questioning, improper identification, informant solicitation and the interrogation of minors.

Such tactics often violate the right to privacy and have the effect of undermining dignity and reinforcing stereotypes about the predominantly Muslim and Arab suspects. Very few if any of those subjected to surveillance and interrogation are actually ever charged with an offence.

Increased state targeting of Muslim places of worship, charities and community organizations, combined with public suspicion of Muslim cultural and religious institutions, has had a chilling effect on individual and collective expressions of religious and cultural identity.²⁶

Muslims are frequently questioned specifically about their level of religious practice and activity (e.g., mosque attendance, prayer frequency) when interrogated by CSIS, RCMP or police officers.²⁷ There appears to be a direct linkage between outward religious appearance (i.e., men with beards, women who cover their hair) and security scrutiny.

This has led to a growing tendency among Muslims to “closet” themselves and to suppress visible manifestations of their religious identity out of fear of discrimination and/or criminal suspicion.

There was an immediate spike in the incidences of hate crime carried out against Muslims and Arabs in Canada following the 9/11 attacks in the U.S. This was exacerbated by a government response to the attacks which fueled the fire of anti-Muslim sentiment. In the two-month period between September 11 and November 15, 2001, 115 incidents²⁸ of various forms of hate against Muslims in Canada were documented.²⁹ The types of incidents included 10 death threats, 12 attacks on mosques, 13 incidents of physical harassment and assault, and 33 incidents of verbal harassment. It is certain that these figures did not even come close to revealing an accurate picture of the number of incidents, as most incidents likely went unreported due to victims’ fear or lack of familiarity with the reporting process.

The *ATA* includes amendments to the *Criminal Code* and to the *Canadian Human Rights Act* that incorporate stiffer laws relating to hate crimes and hate propaganda. These provisions empower the courts to order the deletion of hate propagating websites, and create a new offence of “mischief motivated by bias, prejudice or hate,” designed to specifically criminalise attacks against places of worship or community centres. Also, the *Canadian Human Rights Act* was amended to ensure that propagating hate through the use of telephones, the Internet or other means of communication is prohibited.

²⁶ Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling: Inquiry Report* (Toronto: Ontario Human Rights Commission, 2003) at p. 36 [“*Paying the Price*”].

²⁷ CAIR-CAN, *Presumption of Guilt: A National Survey on Security Visitations of Canadian Muslims* (2004).

²⁸ See CAIR-CAN website: www.caircan.ca.

²⁹ Incidents of hate were also reported by non-Muslims presumably mistaken for Muslims, including Sikhs, Hindus and Arab Christians.

While these amendments were a response to the rash of anti-Muslim sentiment that swept through Canada following the attacks in the United States, they do little to address the problem of cultural stereotyping and profiling which actually lead to hate crimes. The *ATA*, notwithstanding the anti-hate provisions, serves to entrench negative stereotypes and prejudice against Muslims and Arabs, and has done more to contribute to the rash of hate crimes and discrimination against those communities than alleviate it.

Recommendations:

The Committee should:

Request Canada to ensure amendments to the Anti-Terrorism Act and Immigration and Refugee Protection Act as such provisions have led to racial discrimination and systemic breaches of human rights of Muslims, including Muslim men from Asian and African countries and Arabs in Canada.

Urge Canada to stop the deportation of persons to countries where they face a reasonable likelihood of torture and death.

Request Canada to resource Non Profit Community Organizations programs and activities that ensure the promotion of hate through the use of telephones, the internet or other means of communication is stopped.

(b) Racial Profiling in Canada

Racial profiling has been described as the practice of targeting radicalized persons for enforcement or security reasons on the basis, wholly or partly, of a person's colour.

*In R v. Richards*³⁰, the Ontario Court of Appeal defined Racial profiling as:

....criminal profiling based on race. Racial or colour profiling refers to that phenomenon whereby certain criminal activity is attributed to an identified group in society on the basis of race or colour resulting in the targeting of individual members of that group. In this context, race is illegitimately used as a proxy for the criminality or general criminal propensity of an entire racial group.

This definition has also been relied upon in subsequent cases, such as *R. v. Brown*³¹ and *R. v. Khan*³². The Ontario Human Rights Commission's Terms of Reference define racial profiling more broadly to include any action undertaken for reasons of safety, security or public protection that relies on stereotypes about race, colour, ethnicity,

³⁰ 1999), 26 C.R. (5th) 286, at 295, (Ont. C.A)

³¹ *R. v. Brown*, (2003) 173 C.C.C. (3d) 23 [hereinafter *Brown*]

³² *R. v. Khan*, (2004) 189 C.C.C. (3d) 49 [hereinafter *Khan*].

ancestry, religion, or place of origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment.³³

The impact of the body of recent case law which includes *Richards*, *Brown* and *Khan*, has been to have the issue of racial profiling directly addressed by the courts. Regrettably, there is no acknowledgement of racial profiling in Canada's Report to the Committee on the Elimination of Racial Profiling. This oversight is indicative of Canada's disregard of the impact of racial profiling on racialized communities and Aboriginal peoples. Yet, racial profiling is evident in all spheres of societal relations, for instance, access to education, employment, as well as health, financial and consumer services. Essentially, once people are targeted for "special" treatment solely on the basis of race, then this treatment also extends into all aspects of a person's life.

The practice of racial profiling is often manifested in the traffic stops and searches targeting African Canadians by the police and Canada Customs³⁴ agents and officials based upon assumptions about race and on the use of selection criteria that disparately impacts on African Canadians. However, the target group has expanded to include Muslims, South Asians and Arab Canadians.

Prior to September 11, 2001, the racial profiling debate largely focused on African Canadians, usually, though not exclusively, in the context of criminal law. While the issue did command sporadic public attention, it did not elicit protracted debate from either popular or scholarly circles. When the participants in the debate did square off, the main point of contention between them was whether officials did in fact resort to racial profiling as an instrument of law enforcement. After 9/11, however, the racial profiling debate focused more squarely on Arabs and Muslims while it also spilled beyond the criminal law to other contexts such as banking and employment. Moreover, 9/11 forced a fundamental shift in the racial profiling discourse. The central contention was no longer whether racial profiling was in fact taking place or how to best prevent incidents of racial profiling or even whether the Charter offered adequate remedial measures to address racial profiling. Rather, racial profiling debates in the context of

³³ Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling* (Toronto, 2004) at p. 10.

³⁴ Canada Customs has taken proactive steps to counter racial profiling at Canadian borders in light of the settlement of the Pieters case. *Selwyn Pieter v. Department of National Revenue (Canada Customs and Revenue Agency)* The Canadian Human Rights Tribunal, January 30, 2002. The common victims of racial profiling were predominantly African Canadians and Aboriginal people. However, since September 11, 2001, Arabs and Muslims have been targeted see Emerson Douyon, <<L'impact du 11 septembre sur les communautés ethnoculturelles au Canada>> In *Terrorism, droit et démocratie comment le Canada est-il change après le 11 septembre?*, institut canadien d'administration de la justice, Éditions Thémis, 2002, p.193-197. (Noted that in the context of racial profiling, African Canadians who are Muslims are doubly disadvantaged because of their faith.) See also Reem Bahdi, *No Exit: Canada's War Against Terrorism* Osgoode Hall Law Journal [Vol.41, Nos 2 &3294.

the War against Terrorism focus on whether Canadian society can morally, legally, or politically condone racial profiling.³⁵

The practice of racial profiling operates on the assumption that one's behaviour is primarily dictated by race. The assumption goes further to align good behaviour with certain (good) races and bad behaviour with other (bad) races. The potential harm of racial profiling is heightened by the fact that the practice as it has been manifested in the context of terrorism is not simply about stereotypical assumptions about race, but rather the assumptions are based on the particular intersection between race and religion. Essentially, racial profiling is about discrimination – which results in selective treatment, not on the basis of investigated evidence, but simply on the basis of prejudice.

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.³⁶

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.³⁷

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.³⁸ 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.³⁹

³⁵ Reem Bahdi, *supra* note 15 at paragraph 3 (QL).

³⁶ “*Aboriginal Peoples and the Criminal Justice System, Part IV: Aboriginal People and the Justice System*, pg. 2-3

³⁷ *The Aboriginal Justice Implementation Commission*, www.ajic.mb.ca

³⁸ S. H. Razack ed., *Race, Space, and the Law: Unmapping a White Settler Society*, (Between the Lines: Toronto, 2002) pg. 177

³⁹ *The Aboriginal Justice Implementation Commission*, www.ajic.mb.ca

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."⁴⁰

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.⁴¹ 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.

In 1992-1993 Aboriginal offenders represented 11.9% of the male and 16.7% of the female population in the country's jails.⁴² Statistics further show that the federal offender population in 1997, including those released into the community, numbered about 23,200.⁴³ Of the total number of federal offenders 12% (approximately 2,900) were Aboriginal offenders.⁴⁴ Yet Aboriginal peoples comprise less than 2% of the Canadian population.⁴⁵

Although Aboriginal women account for about 1% of the overall population, they represent approximately 20% of federally sentenced women.⁴⁶ Aboriginal women 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.⁴⁷ 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.⁴⁸ Over 90% of female young offenders held on

⁴⁰ *The Aboriginal Justice Implementation Commission, Final Report: Introduction to Section Three Community and Restorative Justice*, www.ajic.mb.ca

⁴¹ A. Saidullah, *The Two faces of Canada: A Community Report on Racism*, (Village Green Communications: Toronto) Aug. 2001.

⁴² "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.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Statistics Canada. Census 1996 www.statcan.ca/english/Pgdb/People/Population/demo39a.htm

⁴⁶ Kim 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 conjunction with the Department for Correctional Services SA and held in Adelaide, 31 October – 1 November 2000, p. 3.

⁴⁷ Ibid

⁴⁸ Gill, Sheila Dawn. "The Unspeakability of Racism," in S. Razack...

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%.⁴⁹

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 the system of slavery and segregation continue to influence how African Canadians are treated today. Within this broader historical and social context, the notorious practice of racial profiling has evolved. African Canadians are still perceived as inherently prone to criminal activities by the dominant culture. They are stopped and searched by police, and meted out harsher sentences for minor crimes.⁵⁰ The Supreme Court of Canada has acknowledged the disparate impact of police scrutiny on African Canadians with respect to arrests and personal searches.

The over policing of minority communities is directly linked to racial profiling which inevitably results in the over representation of people from racialized communities in the criminal justice system. A recent incident that highlights the trend took place in December of 2005. A white female was fatally shot on Boxing Day on a busy intersection in Toronto. Immediately, barely concealed images of the suspects who were African Canadian men were displayed on most news sources across the province. This prompted the Toronto police and the media to dub 2005 as the year of the gun. 'Toronto has lost its innocence,' police say of Boxing Day shooting⁵¹ This event was enough to cause a frenzy in the public and in the following months there were numerous raids of Toronto Community Housing properties where alleged gang members and their families were taken into custody. These raids were carried out on predominantly African Canadian homes and where there was suspicion of gang activity.

The systemic racism that permeates policing with respect to the Black community 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.⁵²

The Report of the Commission on Systemic Racism in the Ontario Criminal Justice System⁵³, which arose out of the Lewis Report⁵⁴, made several findings and recommendations regarding racism, African Canadians and the justice system. Most significantly, the Commission found that African Canadians were over represented in Canadian jails, more likely to be stopped and questioned by the police, less likely to get

⁴⁹ Ibid.

⁵⁰ Scot Wortley, "The Usual Suspects: Race, Police Stops and Perceptions of Criminal Injustice," unpublished paper, p.30

⁵¹ <http://www.cbc.ca/canada/story/2005/12/27/toronto-shooting-051227.html>

⁵² Erika L. Johnson, "A Menace to Society: The Use of Criminal Profiles and its Effects on Black Males,"(1995) 38 Howard Law Journal. 629.

⁵³ David Cole and Margaret Gittens (co-chairs) Report of the Ontario Commission on Systemic Racism in the Criminal Justice System, Queen's Printer, Toronto, 1995.

⁵⁴ Stephen Lewis Report on Race Relations in Ontario, June 1992.

bail and that racial bias was a systemic facet of the criminal justice system at all levels. The disproportionate number of African Canadians in jail reinforces the stereotype that the Black race is indeed a proxy for crime. Despite the fact that over-policing and over-surveillance contribute to the growing numbers of Black people in jail.

The use of deadly force by the police overwhelmingly impacts African Canadians. The shootings of African Canadian men and the increased police presence in African Canadian communities have generated numerous reports and recommendations on race and the criminal justice system. Few recommendations from reports commissioned by all levels of government and African Canadian community representative organizations over the years have been implemented. For instance, the African Canadian Community in Ontario has continuously called for independent, public accountability measures in relation to the police force. The persistent demands by the African Canadian community for an independent civilian oversight body are based upon their experience of unfair and discriminatory treatment at the hands of the police. The disposition of complaints they make is illustrative of the serious concern with the ineffectiveness of the police complaint system. In that context, only a paltry number of complaints were found to be substantiated or sent to a hearing by the Toronto Police. The Toronto City Auditor⁵⁵ reported in 2002 that of the 814 complaints received in 2000 by the Toronto Police Service, only 12 (1.5%) were determined to be substantiated. The Auditor found only 2 complaints (0.2%) were sent to a hearing, 139 complaints (17%) were dismissed outright, and 246 (30%) were found to be unsubstantiated.⁵⁶

Given that numerous studies, task forces and commissions have marked the need and supported the demand for an independent civilian oversight body⁵⁷, the disregard for the calls for reform has created a tense relationship between the African Canadian Community and the police. The Ontario Ministry of the Attorney General responded to the community demands to changes in the police complaints system by commissioning the Lesage Report on the Police Complaint's System, which was released on April 22, 2005⁵⁸. To date, there is no clear indication if at least this particular or any other recommendation will be implemented.

⁵⁵ Report on the Audit of the Toronto Police Service Public Complaint Process by the City Auditor, p.15 The information was obtained from statistics maintained by the Professional Standard Division of the Toronto Police Service.

⁵⁶ Tammy Landau, When Police Investigate Police: A View from Complainants' 38(3) Canadian Journal of Criminology 291; Tammy Landau, Back to the Future: The Death of Civilian Review of Public Complaints against the Police in Ontario.

⁵⁷ Malone, A, The Metropolitan Toronto Review of Citizen-Police Complaint Procedure, (Toronto: unpublished), 1975; Morand, J. Royal Commission Inquiry into Metropolitan Toronto Police Practices, 1976; Marin R. Canada, Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance, Report, 1976; Pitman, W. (Chair) Metropolitan Toronto Task Force on Human Relations – Now is Not too Late. 1977; C, Cardinal, Report to the Civic Authorities of Metropolitan Toronto and its Citizens, 1979; Report on Race Relations and Policing Task Force, 1989; Report on Race Relations and Policing, 1992; Stephen Lewis Report on Race Relation in Ontario, June 1992; K. Liao, Report on Police Services Boards and Police Governance in Ontario, 1994; Uniform Treatment: A Commission on Systemic Racism in the Ontario Criminal Justice System, December 1995.

⁵⁸ Report on the Police Complaint's System in Ontario. The Honourable Patrick J. Lesage, Q.C. April 22, 2005. <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/LeSage/en-fullreport.pdf>

The Asian Community and the Immigration/Criminal Justice Systems:

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, laws were passed to exclude them from participating in Canadian society and a head tax was imposed 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.⁵⁹ As the boats arrived their inhabitants were immediately transported to CFB Esquimalt's Work Point Barracks and questioned by immigration officials.⁶⁰ These migrants were detained from July 1999 in various jails across British Columbia and by December 1999 only one refugee claim was granted.⁶¹

The Canadian government recently implemented a new policy to detain all passengers on vessels from China who do not have proper documentation.⁶² 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.⁶³

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.⁶⁴ 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

⁵⁹ The Faces of Irregular Migrants: Photo Collection, www.library.ubc.ca/asian/FinalAsian/introduction.html

⁶⁰ M. van der Zon, *Aliens Go Home: A critical Media Analysis of the Chinese Migrants*, www.islandnet.com/~vipirg/aliensgohome.pdf

⁶¹ Ibid pg. 2.

⁶² J. Brooke, *New York Times*: Canada Starts to Take Hard Line Against Illegal Chinese Immigration, September 30, 1999, www.huaren.org/diaspora/n_america/canada/

⁶³ Citizens for Public Justice: Statement on Boat People, September 24, 1999, www.cpj.ca/refugees/99/statemt.html

⁶⁴ S. Riley, *The Ottawa Citizen*: Media Awareness Network, Crime has no Culture or Race, January 12, 1993, <http://www.media-awareness.ca/eng/issues/minrep/resource/articles/riley.htm>.

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.

Recommendations:

The Committee should

Urge Canada prevails on all provinces and territories to end the practice of racial profiling.

Request Canada to provide periodic specific and detailed reports on measures it has taken to address racial profiling and Canada should look into the deeper more systemic forms of discrimination and racial profiling.

Urge Canada to prevail over the Canadian Radio and Television and Telecommunications Corporation to ensure mechanisms to address the unfavourable portrayal of racialized communities and the deleterious effects of racism in Canadian media are advanced.

Committee to request Canada to resource the development of tools to examine and address the legacy of the Transatlantic Slave Trade on Canadian society to enable comprehensive approaches and strategies that address racism and racial discrimination.

Request Canada to adhere to the requirements in the declarations of the United Nations Educational, Scientific and Cultural Organization that declared the Slave Trade “a crime against humanity” and that August 23 be observed as the day of remembrance of the Transatlantic Slave Trade.

Request Canada to condemn the practice of imprisonment without due process of individuals apprehended under the Anti-Terrorism provisions and Immigration and Refugee Protection Act

Urge the government of Canada to stop the practice of racial profiling through the interpretation and implementation of the Anti-Terrorism provisions, which permit the imprisonment of non Canadian citizens.

Urge Canada to prevail over provincial and territories to develop measures that decrease the overrepresentation of Aboriginal Peoples and People of African and Asian descent in custody.

Urge Canada to sustain the Department of Justice working relationship with affected communities on initiatives and to find lasting solutions that address the overrepresentation of Aboriginal Peoples, People of African and Asian descent in the justice system.

(c) The Diminished Capacity to Respond to Racism towards Aboriginal Peoples

With respect to CERD Article 2.2 Canada has failed to *take special and concrete measures to ensure that Aboriginal peoples have full and equal enjoyment of human rights and fundamental freedoms*. While Canada and its provincial governments have implemented some actions and programs it is not enough to enable vulnerable Aboriginal people to protect themselves from discrimination and racism. This report will provide examples of the systemic racism deeply embedded in the Canadian education, justice and health systems and how it negates the fundamental rights of Aboriginal people to a balanced life, rich with culture and economic and social security.

A decade ago, Canada finally recognized that Aboriginal people had suffered psychological and physical harm from the colonizing of the Americas by the Europeans. A federal commission had been established to study the situation and provide recommendations, which are detailed in the Report of the Royal Commission on Aboriginal Peoples (RCAP). Volume 3 of the report, titled *Gathering Strength*, provides clear direction on how governments and Aboriginal communities can facilitate the healing that is needed. One of major outcomes of these recommendations has been the establishment of the Aboriginal Healing Foundation (AHF) which oversees a \$350 million dollar fund to assist communities in their healing work.

The AHF's document, *Historic Trauma and Aboriginal Healing*, cites the need to recognize factors such as complex post-traumatic stress disorder (appendix 1), historic trauma and historic trauma transmission (HTT) in assessing the capacity of Aboriginal people to recover from the effects of colonization and racist policies.

Finally, a new model of historic trauma transmission (HTT) is proposed to create a better understanding of the aetiology of social and cultural diffusion that disrupted Aboriginal communities for so many years. In this model, historic trauma is understood as a cluster of traumatic events and as a disease itself. Hidden collective memories of this trauma, or a collective non-remembering, is passed from generation to generation, as are the maladaptive social and behavioural patterns that are symptoms of many social disorders caused by historic trauma. There is no "single" historic trauma response; rather, there are different social disorders with respective clusters of symptoms. HTT disrupts adaptive social and cultural patterns and transforms them into maladaptive ones, which manifest themselves into symptoms of social disorder. In short, historic trauma

causes deep breakdowns in social functioning that may last for many years, decades and even generations.⁶⁵

The assumptions inherent in state anti-racism legislation and policy that isolated and vulnerable segments of the Aboriginal community can access information and redress regarding their human and civil rights in the ways that other Canadians can is erroneous. This false assumption has led to situations where systemic racism and discrimination goes unchallenged because there is little or no capacity among Aboriginal people to address it. This may be the primary reason there are so few complaints to the Canadian and provincial human rights commissions by Aboriginal people living off-reserve.

High school drop out rates – a lifetime of unemployment

By not acknowledging and addressing the diminished capacity of Aboriginal peoples to respond to systemic racism results in an increased vulnerability among Aboriginal youth. Many Aboriginal youth leave the education system without the tools required to understand their civil rights and no understanding of the mechanisms that are in place to address incidents of racism and discrimination. One of the consequences for Aboriginal people who have not completed a junior or high school education is that they may experience a lifetime of unemployment that further isolates them from mainstream society, making them more vulnerable to poverty and exploitation.

According to the report of the Ottawa-based Caledon Institute of Public Policy — titled *Aboriginal Peoples and Post-secondary Education in Canada - high school graduation rates of aboriginal people are far below those of people in the rest of Canada, and the situation is particularly bad on reserves.*

The report, which is based on census data, found that 58 per cent of on-reserve aboriginal people between the ages of 20 and 24 had not graduated from high school. Among all people across Canada, the comparable 2001 rate was 16 per cent. “Seventy per cent of young aboriginal adults living on Manitoba reserves have not completed high school – the highest dropout rate among on-reserve youth in Canada.”⁶⁶

Youth require adequate housing in order to confidently pursue their education, however, there is evidence in Canada that inadequate housing in First Nations communities is at the crisis point. The Mathias Colomb Cree Nation (Pukatawagan), a community of 2,600 people, is struggling to house their community members after 100 homes had to be torn down due to ground contamination by fuel spills from diesel generators and an oil farm in the 1970’s. The homes have never been replaced and there are now 29 individuals living in one house, 15 in another and one elderly couple sharing a 10-by-12 foot shack with no bathroom.⁶⁷

⁶⁵ Historic Trauma and Aboriginal Healing, The Aboriginal Healing Foundation Research Series, Aboriginal Healing Foundation, Wesley-Esquimaux C. C. Ph.D., Smolewski, M. Ph.D., 2004, ISBN 0-9733976-9-1, p. iv

⁶⁶ Improving Primary and Secondary Education on Reserves in Canada, Calendon Institute of Social Policy, October 2006, ISBN # 1-55382-207-2

⁶⁷ Winnipeg Free Press, February 4, 2006, Marks D., p. A8

Over-representation in the criminal justice system

In Canada, the best estimate of the overall incarceration rate for Aboriginal people in Canada is 1,024 per 100,000 adults compared to the rate for non-Aboriginal persons is 117 per 100,000. The following media story about the report of Canada's Correctional Investigator cites discriminatory practices against Aboriginal offenders.

OTTAWA, October 16, 2006 - According to the Annual Report of the Correctional Investigator, the Government of Canada's Corrections Ombudsman, the federal prison system has practices that discriminate against Aboriginal offenders. The Correctional Investigator found that the Correctional Service of Canada (CSC) routinely classifies First Nations, Métis and Inuit inmates as higher security risks than non-native inmates; Aboriginal offenders are released later in their sentences than other inmates; and they are more likely to have their conditional release revoked for technical reasons than other offenders. According to the Report, Aboriginal inmates often do not receive timely access to rehabilitative programming and services that would help them return to their communities.⁶⁸

Vulnerability to Exploitation

The constellation of socio-economic hazards created by false assumptions, inaction and inadequate responses by Canada and its provincial governments has resulted in the exploitation of vulnerable Aboriginal people, which constitutes a violation of their basic human and civil rights.

An unknown number of Aboriginal persons of First Nations, Inuit and Metis descent live without adequate representation and mechanisms to protect them from systemic racism and discrimination. Their vulnerability leads to exploitation by various legal and illegal trades in Canada. The following are examples of the devastating results upon individuals and families.

Sex trade:

Sacred Lives⁶⁹ [a report on youth and sexual exploitation] points out that in Canada, national surveys show anywhere from 14 to 65 per cent of youth in the sex trade are Aboriginal. Recently, that number has been estimated as high as 90 per cent in some cities.

Suicide:

On April 5, 2005, the Manitoba Provincial Conservative Party called for an inquiry after a child, only eight years of age, from the God's Lake First Nation, hanged himself. His 11-year-old brother had committed suicide in October 2002. The April

⁶⁸ Annual Report of the Office of the Correctional Investigator 2005-2006, Sapers W., The Correctional Investigator Canada, June 2006, ISBN 0-662-4943-8

⁶⁹ Sacred Lives, Canadian aboriginal children & youth speak out about sexual exploitation, Save the Children Canada, Kingsley, C., Mark M., December 2000

18, 2005 edition of Maclean's magazine reported that this is quite possibly the youngest ever reported suicide victim in Canada.⁷⁰

HIV/AIDS:

The HIV epidemics among Aboriginal people in Canada, fueled by injection drug use, has resulted in multiple infections among siblings and extended family members and the increasing numbers of Aboriginal AIDS orphans.

Aboriginal people represent 3.3% of the Canadian population, and yet an estimated 3,600 to 5,100 Aboriginal peoples are living with HIV (including AIDS) in Canada in 2005⁷¹

Aboriginal Charter of Rights and Freedoms

In October 2005, the Canadian Human Rights Commission recently published an analysis of the Indian Act and Section 67 of the Canadian Human Rights Act (CRHA), which reads as follows:

As a result of section 67, some actions carried out by the Government of Canada or a First Nation government (or by a related agency, such as a school board) can be exempt from human rights scrutiny. Given the broad scope of the Indian Act, which affects many aspects of the daily lives of First Nation people, the impact of section 67 is significant. In effect, it creates a zone of law and decision making within which First Nation people have a restricted right to pursue claims of discrimination.

(Section 67: Nothing in this Act affects any provision of the Indian Act or any provision made under or pursuant to that Act.)

This gap in human rights underscores the jurisdictional issues that Aboriginal peoples will need to successfully navigate. The CRHA recommends that First Nations establish their own human rights act as described below. These developments obligate Aboriginal stakeholders to become familiar and competent with human rights mechanisms and the discourse on Section 67 as it evolves.

A First Nations Human Rights Act

The proposed interpretative provision and adaptations of the Commissions procedures would make the CHRA and the Commission more accessible to and consistent with First Nation needs and aspirations. This is an important step. However, in accordance with the constitutional rights of First Nations and the inherent right to self-government, it may also be desirable, if such is the wish of First Nations, to consider specific legislation to deal with human rights in First Nations communities.

⁷⁰ AFN First Nations Health Bulletin, Summer 2005

⁷¹ HIV/AIDS Epi Update, HIV/AIDS Among Aboriginal People in Canada: A Continuing Concern, Centre for Infectious Disease Prevention and Control, Public Health Agency of Canada, August 2006

There are various institutional models that could be considered, such as the creation of a national First Nations Human Rights Commission and an independent First Nation Human Rights Tribunal. These new institutions might operate in conjunction with the existing Commission and Tribunal or as separate institutions. Alternatively, there might be human rights institutions established in individual First Nations, in regional groups of First Nations or on some other grouped basis. These bodies might act independently or in conjunction with national institutions.

(Source: A Matter of Rights, Special Report of the Canadian Human Rights Commission on the Repeal of Section 67 of the Canadian Human Rights Act, 2005)

On December 13, 2006 the Ministers of Indian and Northern Affairs and Justice tabled a bill to repeal section 67 of the Canadian Human Rights Act. Section 67 excludes people living on reserve from filing a complaint with the Commission relating to any action arising from or pursuant to the Indian Act. This makes First Nations people living on-reserve the only group of Canadians that are denied the ability to file human rights complaints in many circumstances.

The Assembly of First Nations has characterized the Government's approach as an attempt to achieve a quick fix rather than working with First Nations to find substantial and enduring remedies. There are Aboriginal values and beliefs that need to be considered in the development of legislation protecting the individual and collective rights of First Nations people (appendix 2).

The Declaration on the Rights of Indigenous Peoples

Despite the dire need of Aboriginal peoples in Canada to have equitably human and civil rights protection, Canada has attempted to further delay the adoption of an international declaration of indigenous rights that was in development for over ten years.

June 29, 2006 the Human Rights Council adopted by a roll-call vote of 30 in favour to 2 against and 12 abstentions a resolution on the Declaration on the Rights of Indigenous Peoples. The Declaration was forwarded to the UN General Assembly for approval before the end of 2006. If also adopted by the General Assembly in December 2006, the Declaration could well be a major step towards eliminating the widespread human rights violations suffered by over 370 million Indigenous people worldwide. While the Declaration is not binding to governments, it is a positive step which puts pressure on governments to live up to the objectives of the Declaration and would serve to reinforce such universal principles as justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

[Canada voted against adoption of the Draft Declaration at this inaugural session of the Council. http://www.ainc-inac.gc.ca/nr/spch/unp/06/ddr_e.html]

However, the process of adopting the UN Declaration on the Rights of Indigenous Peoples came to a halt on Tuesday November 27. A non-action resolution put forward

by the Namibian delegation was supported by a majority in the UN General Assembly's Third Committee. This non-action resolution is a serious set-back for the universal protection of indigenous peoples' rights. The declaration still, under the decisions of the Third Committee, must be considered before the end of the 61st session of the General Assembly in September 2007 and the States will therefore have to come back together to vote again on the declaration.⁷²

Recommendation:

The Committee should:

Condemn Canada for not implementing special and concrete measures to ensure that Aboriginal peoples have full and equal enjoyment of human rights and fundamental freedom; and for ignoring and normalizing evidence that Aboriginal basic human and civil rights are being violated.

⁷² International Work Group for Indigenous Affairs, <http://www.iwgia.org/sw248.asp>

**PART III ARTICLE 5: Equality before the Law &
ARTICLE 6: Effective Protections and Remedies**

Article 5 of the Convention contains the obligation of Canada to guarantee the enjoyment of civil, political, economic, social and cultural rights and freedoms without racial discrimination. Note should be taken that the rights and freedoms mentioned in article 5 do not constitute an exhaustive list. At the head of these rights and freedoms are those deriving from the Charter of the United Nations and the Universal Declaration of Human Rights, as recalled in the preamble to the Convention. Most of these rights have been elaborated in the International Covenants on Human Rights. All States Parties are therefore obliged to acknowledge and protect the enjoyment of human rights, but the manner in which these obligations are translated into the legal orders of States Parties may differ. Article 5 of the Convention, apart from requiring a guarantee that the exercise of human rights shall be free from racial discrimination, does not of itself create civil, political, economic, social or cultural rights, but assumes the existence and recognition of these rights. The Convention obliges Canada to prohibit and eliminate racial discrimination in the enjoyment of such human rights.

AND

Article 6 obliges Canada, the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination, which is embodied in article 6 of the Convention, is not necessarily secured solely by the punishment of the perpetrator of the discrimination; at the same time, the courts and other competent authorities should consider awarding financial compensation for damage, material or moral, suffered by a victim, whenever appropriate.

The Convention obliges Canada to assure to everyone within Canada's 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.

(a) Head Tax and Redress

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 1930, the equivalent of two years wages⁷³. The Head Tax caused great financial and emotional hardship on Chinese Canadians. Most Chinese immigrants spent their lives in the equivalent to indentured servitude in order to pay off the loans they obtained to pay the Head Tax. Some 82 000 Chinese paid the Head Tax. It is estimated that the government raised approximately \$23 million from this racist tax (in 1923 Canadian dollars)⁷⁴. 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 for decades, until the Act was repealed in 1947.

⁷³ Peter Li, *The Chinese in Canada* (2nd Edition) (Oxford University Press, Toronto, 1998) at 41

⁷⁴ *Ibid.* at 41

The Chinese Canadian community has been advocating for redress for years through community organizing, demonstrations, lobbying and legal action. The Chinese Canadian National Council (CCNC) has sought redress of the Chinese Head Tax (1885-1923), Newfoundland Head Tax (1906-1949) and Chinese Exclusion Act (1923-1947) for the past 23 years.

Within its report at paragraph 88, page 23, Canada states that:

“As a society, looking to the future can be difficult when troubling memories from Canada’s past go unacknowledged. The Department of Canadian Heritage has worked with Canadian ethnocultural communities who carry such memories with them as a result of events that occurred in Canadian history during times of war, or as a result of immigration policies of the day.”

The CCNC registered more than 4000 head tax payers and families seeking a just and honourable resolution. The head tax families vigorously opposed the Government’s efforts to impose a resolution which excluded an official apology and redress. On June 22, 2006, Prime Minister Stephen Harper issued a formal apology on behalf of the Government of Canada, and announced individual symbolic financial redress of \$20 000 to an estimated 50 living head tax payers and 500 living spouses of deceased head tax payers. This announcement covers about 15% of the head tax families seeking direct redress and less than 1% of all families that paid head tax.

While this is seen as a restorative moment for the Chinese Canadian community and a genuine first step towards reconciliation with the Canadian Government, the head tax families who were excluded from the June 22nd redress announcement continue to press for inclusive redress to restore dignity to all head tax families including those where the head tax payer and spouse have both passed away.

Articles 2 (eliminating racial discrimination) and 6 of ICERD 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.

Recommendations:

The Committee should:

Recommend that Canada be urged to redress all head tax families including those where the head tax payer and spouse have both passed away.

(b) Cuts to the Court Challenges Program of Canada

Introduction

In September 2005, the government of Canada cut several program including the Court Challenges Program. The Court Challenges Program is recognized as an important mechanism to ensure that constitutional rights set out in our Constitution are meaningful to all Canadians. The cuts to these organizations have far reaching implications to all Canadians.

Canada's Fifth Report on the International Convention on Civil and Political Rights was submitted to the United Nations Human Rights Committee on Economic, Social and Cultural Rights in 2005. In the "Additional Information in Response to Supplemental Questions of the Human Rights Committee on the occasion of its review of Canada's Fifth Report on the International Covenant on Civil and Political Rights: October 17 and 18, 2005," Canada explained the various circumstances in which *Charter* issues may arise during government-funded litigation and offered examples such as criminal trials, civil litigation involving government or quasi-government actors, and individuals engaged in litigation with government actors over rights and access issues.⁷⁵

"The Department of Canadian Heritage also funds the Court Challenges Program (CCP), which provides financial assistance for test cases of national significance in order to clarify the rights of the official language minority communities and the equality rights of disadvantaged groups. The Court Challenges Program assists official language minorities and disadvantaged individuals and groups who would not otherwise be able to pursue their Constitutional and Charter rights in relation to language and equality rights. An evaluation of the CCP in 2003 found that it has been successful in supporting important court cases that have a direct impact on the implementation of rights and freedoms covered by the Program. The individuals and groups benefiting from the CCP are located in all regions of the country and generally come from official language minorities or disadvantaged groups, such as Aboriginal people, women, racial minorities, gays and lesbians, etc. The Program has also contributed to strengthening both language and equality-seeking groups' networks. The Program has been extended to March 31, 2009."⁷⁶

The United Nations Human Rights Committee on Economic, Social and Cultural Rights,⁷⁷ stated at paragraph 13 of its Concluding Observations:

⁷⁵ United Nations Committee on Economic, Social and Cultural rights, 36th session Concluding Observations available at: <http://www.ohchr.org/English/bodies/cescr/cescr36htm>. Supplement to the Report of Canada, October 24, 2005, at p.20-21.

⁷⁶ http://www.pch.gc.ca/progs/pdp-hrp/docs/cerd/rappports_17_18_reports/17-18_e.pdf at p.21

⁷⁷ United Nations Committee on Economic, Social and Cultural rights, 36th session Concluding Observations available at: <http://www.ohchr.org/English/bodies/cescr/cescr36htm>.

“The Committee, while noting the State party’s Court Challenges Program, regrets that the CCP has not been extended to permit funding with respect to challenges to provincial and territorial legislation and policies, as previously recommended by the Committee.”

Further, at paragraph 42:

The Committee reiterated its recommendation that the State party extend the Court Challenges Programme to permit funding of challenges with respect to provincial and territorial legislation and policies.

In Canada’s Seventeenth and Eighteenth Reports covering the period of June 2001 and May 2005 to the International Convention on the Elimination of All Forms of Racial Discrimination at paragraph 80, Canada states that:

The Department of Canadian Heritage funds the Court Challenges Program (CCP), which provides financial assistance for test cases of national significance in order to clarify the rights of official language minority communities and the equality rights of disadvantaged groups. The CCP assists official language minorities and disadvantaged individuals and groups. The CCP assists official language minorities and disadvantaged individuals and groups who would not otherwise be able to pursue their Constitutional and Charter rights in relation to language and equality rights. An evaluation of the CCP in 2003 found that it has been successful in supporting important court cases that have a direct impact on the implementation of rights and freedoms covered by the Program. The individuals and groups benefiting from the CCP are located in all regions of the country and generally come from official language communities or disadvantaged groups, such as Aboriginal people, women, racial minorities, gays and lesbians, etc. The Program has also contributed to strengthening both language and equality-seeking groups’ networks. The Program has been extended to March 31, 2009.”

Notwithstanding Canada’s recognition of the important role of the Court Challenges Program to Canadians, as well, despite submitting Reports to two Committees of the United Nations indicating that the Program would be extended, the federal government cut funding.

Background of the Court Challenges Program of Canada

The Court Challenges Program of Canada is a self-governing non-profit corporation whose objectives are:

- 1) To provide financial assistance for important court cases and community projects that advance the Official language⁷⁸ minority rights guaranteed by Canada's Constitution⁷⁹, including the Canadian Charter of Rights and Freedoms,⁸⁰
- 2) To provide financial assistance for important court cases and projects that advance the equality rights guaranteed in section 15 of the Canadian Charter of Rights and Freedoms⁸¹;

The Court Challenges Program mandate derives from Canada's Constitution, Supreme Court of Canada jurisprudence, and international law principles relating to human rights

⁷⁸ Official language rights refer to the two official minority languages – English speaking in Quebec and French speaking the rest of Canada.

⁷⁹ Constitution Act, 1982, s.23 provides:

(1) Citizens of Canada

- (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
- (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada have the right to have all their children receive primary and secondary school instruction in the same language.

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province.

- (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
- (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

⁸⁰ Charter of Rights and Freedoms, The *Constitution Act, 1985* (herein after *Charter*)

⁸¹ Section 15 provides that:

(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

of which Canada is a signatory. The Program follows this jurisprudence and these principles in granting financial assistance.

The Program's objectives reflect a vision of substantive equality articulated by the Supreme Court of Canada⁸² and found in internationally recognized human rights principles.⁸³ This vision recognizes the pattern, found in many societies, of certain groups being especially vulnerable to having their basic rights directly impeded upon or overlooked by the majority. The proper role of the court is to help alleviate these patterns of historical disadvantage.

The funding granted from the Court Challenges Program provides access to justice to historically disadvantaged groups - those who are most vulnerable to marginalization and exclusion from full participation in Canadian society – and Canada's official minority language groups, who are also trying to claim their full and proper place in Canada - to challenge the government on policies, actions or practices that are unconstitutional.

Since its inception, the Court Challenges Program has supported many cases that have made an important contribution to constitutional law. For example, the Program has been involved in almost all of the litigation across the country surrounding educational rights for minority official language communities. On the equality side, the Program has provided funding for several cases that were unsuccessful in the courts but raised awareness of the issue and ultimately resulted in changes in the law. Many important constitutional cases would not have proceeded without financial support from the Program.

Many of the cases funded by the Court Challenges Program involve challenges to:

- older legislation that was passed by previous governments
- legislation whose very purpose is to *help* people, including those who are historically disadvantaged, but that contain unforeseen gaps, thus excluding certain classes of people on the basis of protected grounds

⁸² *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143,
Eldridge v. British Columbia (Attorney General) [1997] 3 S.C.R. 624,
Friend v. Alberta [1998] 1 S.C.R. 493,
Corbiere v. Canada (Minister of Indian and Northern Affairs) [1999] 2 S.C.R. 203,

⁸³ Provisions in section 15 of the *Charter* are similar to those listed in Article 26 of the United Nations International Covenant on Civil and Political Rights, which reads as follows:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The terms of the Covenant, to which Canada became a party in 1976, are relevant to the proper interpretation of the *Charter* by Canadian courts. The Covenant, like other international human rights instruments such as the Refugee Convention, recognizes that it is certain groups that require special protection from the majority.

- older legislation that has been reformed, but still not enough (again, unacceptable gaps remain – an example would be *Canada Pension Plan* survivor benefits that exclude people who were separated or divorced before or after certain specific dates)
- government policies and practices that appear to be constitutional at the outset but prove to be problematic once implemented.
- the discriminatory manner in which otherwise constitutional legislation is applied by government officials – these lawsuits are brought against the legislation’s *application*, not the legislation itself, such as, cases addressing new criminal laws that are neutral on their face but are disproportionately enforced against visible minorities.

Impact on Canadian Society

Constitutionally, the Program has played a meaningful role in Canadian society as is evidenced by the range of test cases and research it has supported on challenges to federal laws and policies concerning: women’s issues, criminal justice matters, national defense, taxation, Aboriginal issues, gay, lesbian and transgendered issues, employment, immigration, citizenship, interpretation of laws and policies and government electoral processes. It is evident that the cases funded by the Court Challenges Program have contributed to providing clarity to federal laws, policies and action.

Following are examples of some of the cases that have made significant contributions to equality rights and the rights of official language minorities in Canada.

Official language minority rights cases: - (section 23 of the Charter)

Doucet-Boudreau⁸⁴ - a Nova-Scotia case involving the section 23 education rights of the Acadian minority in that province. The case was funded at the three court levels, this case reached the Supreme Court of Canada, which upheld the trial level decision permitting more effective oversight of the government’s implementation of the education rights of the Acadian minority which the court found had not been effectively enforced since the advent of the *Charter* in 1982.

Montfort Hospital⁸⁵ achieved the further elaboration of an unwritten constitutional principle regarding the protection of minorities (first elaborated in the *Québec Secession Reference*), with the court recognizing that governments must consider the impact their actions might have on official language minorities before acting.

Arsenault-Cameron v. Prince Edward Island⁸⁶, where the Supreme Court of Canada confirmed the important principle of substantive equality and its application in s. 23 cases, stating that:

⁸⁴ Doucet-Boudreau v. Nova Scotia (Minister of Education) [2003] 3 S.C.R. 3, 2003 SCC 62

⁸⁵ Lalonde v. Ontario (Commission de restructuration des services de santé) [2002] O.J. No. 388.

⁸⁶ Arsenault-Cameron v. Prince Edward Island, [2000] 1 S.C.R. 3, 2000 SCC 1

Section 23 is premised on the fact that substantive equality requires that official language minorities be treated differently, if necessary, according to their particular circumstances and needs, in order to provide them with a standard of education equivalent to that of the official language majority.

R. v. Beaulac⁸⁷, which involved the right to be heard by a decision-maker in the official language of one's choice who understands the official language in question.

The establishment of adequate educational facilities equal to those of the majority – was accomplished in many provinces and territories (Saskatchewan, Alberta, Manitoba; PEI, Nova Scotia, Newfoundland and Labrador, New Brunswick, NWT).

Equality Rights Cases – section 15 of the Charter

Kevin Rollason⁸⁸ - Father of a daughter born with Down Syndrome and life-threatening cardiac problems successfully challenged the Employment Insurance program's failure to provide full parental leave benefits to parents of children requiring a long-term stay in hospital following birth.

Canadian Association for the Deaf⁸⁹ - Organization representing deaf Canadians successfully challenged the federal government's failure to provide sign language interpretation services in the delivery of programs and in other contexts.

Misquadis et al.⁹⁰ – Off-reserve rural and urban Aboriginal communities successfully challenged their exclusion from federal Aboriginal Human Resources Development Agreements designed to allow Aboriginal communities to create and implement employment training programs to ensure job stability.

Michael Hendricks and René LeBoeuf⁹¹ – Quebec-based same-sex couple successfully challenged s.5 of the federal *Harmonization Act*, which declared marriage to be between a man and a woman only in Quebec.

⁸⁷ *R. v. Beaulac*, [1999] 1 S.C.R. 768

⁸⁸ *Employment Insurance Act and Kevin Rollerson*, CUB 56478, (an appeal to an Umpire by the claimant from a decision by the Board of Referees given on August 16, 1999, at Winnipeg, Manitoba.

⁸⁹ *The Canadian Association of the Deaf, James Roots, Gary Malkowski, Barbara LaGrange and Mary Lou Cassie vs. The Queen*. 2006 FC 971

⁹⁰ *Attorney General of Canada v. Misquadis et al.* 2003 FCA 473

⁹¹ *La Ligue Catholique Pour Les Droits De L'homme v. Michael Hendricks and René LeBoeuf*, Cour d'Appel 500-09-012719-027, Mars 2004.

R. v. Williams⁹² – *questioning Jurors about their racial bias to ensure a fair and impartial trial. (Un-biased jury)* - The accused was an Aboriginal man charged with robbery requested that he be permitted to question potential jury members about their ability to judge the evidence in the case free from racial prejudices and biases about "Indians". The accused argued that such questioning was necessary in light of widespread racism in Canadian society.

Corbiere et al. v. The Queen and Batchewana Indian Band⁹³ - This challenge was to provisions of the *Indian Act*, which prohibit participation in Band elections by band members who do not live on reserve.

While two groups of justices provided two separate decisions, they all agreed that the residency requirement in the *Indian Act* violated the equality rights of Aboriginal band members living off-reserve. In reaching this conclusion, the court recognized that Aboriginal people living off-reserve had suffered historic disadvantage in society. Being prevented from participating in the political governance of their communities only perpetuated this incursion on their dignity and identity as Aboriginal people. Members of the court also recognized that Aboriginal women were particularly affected, due to many barriers faced by women who have recently regained status under the *Indian Act* when trying to establish a residence on reserve.

R. v. Darrach⁹⁴ - At the heart of this case was a constitutional challenge by an accused, charged with sexual assault, to the rules of evidence which prevent the Court from admitting evidence of prior sexual activity on the part of a sexual assault complainant unless certain strict requirements are met. These "rape shield" laws are in place to make sure that biases and myths about women who are sexually assaulted do not enter into the picture in such a trial. The accused was unsuccessful in challenging the constitutionality of these laws, both at his trial and before the Ontario Court of Appeal.

On October 12, 2001, a unanimous Supreme Court of Canada also affirmed the constitutionality of these provisions. The Court found that, as they stated in previous cases such as *R. v. Mills*, an accused person's rights under sections 7 and 11 of the Charter must be balanced with the privacy and equality rights of a sexual assault complainant. This decision is a further example of the interrelationship between equality and other rights in the Charter.

⁹²***R. v. Williams***, [1998] 1 S.C.R. 1128 Date: June 4, 1998

⁹³ *Corbiere et al v. The Queen and Batchewana Indian Band*, [1999] 2 S.C.R. 203

⁹⁴*R. v. Darrach*, 2000 SCC 46, [2000] 2 S.C.R. 443

R. v. Mills⁹⁵ - Mr. Mills, who was accused of sexually assaulting a 13-year-old girl, wanted to obtain records of visits she made to a counseling agency and a psychiatrist, for use in his court case. He did not want to follow the procedures for accessing these records which are imposed by Bill C-46, however, arguing that these sections of the *Criminal Code* violated his right to a fair criminal process. Bill C-46 sets out the process and the factors that a judge

In its decision of November 25, 1999, a majority of the Supreme Court of Canada found that the provisions in Bill C-46 do not interfere with an accused person's right to a fair criminal process under section 7 and 11(d) of the *Charter*. The Court pointed out that the scope of these rights is not unlimited and must take into account the rights and interests of the other people involved in the process, namely, the survivors of sexual assault who must report the crime and testify in court. Primarily women and children, sexual assault complainants have historically been subject to bias and stereotype within sexual assault trials. The Court has now made it clear that equality is an integral part of the concepts of fairness and justice, particularly in the criminal law. (*Mills - is a good example of a case where women, children and mental health consumers defended a Federal law (Criminal Code) on the grounds that it was necessary to protect their equality rights*)

The Court Challenges Program has made a unique contribution to the clarification of constitutional rights in Canada. It has been a benefit to all Canadians. The fundamental role the Court Challenges program has played in Canada's constitutional governance can be summarized as follows:

- a) Accountability: The Court Challenges Program provides a means to make the federal government accountable for unconstitutional conduct. Without the program, government accountability would be diminished.
- b) Rule of Law and Access to Justice: The Court Challenges Program is designed to ensure that the government cannot violate the Constitution with impunity because those affected have no practical means of challenge. The program provides access to the courts for those who could not otherwise afford to protect their constitutional rights and thus has the critical objective of ensuring that, as a practical matter, constitutional rights are meaningful.
- c) Equity: The Court Challenges Program brings *Charter* protection within the means of all citizens and helps ensure that the Constitution does not become simply a tool of the wealthy. The program recognizes that effective denial of constitutional rights can flow from economic barriers and the Court Challenges Program seeks to offset this problem through providing funding for constitutional challenges by groups not otherwise financially able to access the courts.

⁹⁵ R. v. Mills, [1999] 3 S.C.R. 668

Conclusion

The intention of creating the Court Challenges Program was to fund test cases under the equality and language provisions of the Charter and Constitution to ensure inclusiveness, access to official language services and cement the notion that everyone is equal before and under the law. In essence, the Court Challenges Program was set up to provide access to justice for a specific demographic in challenging existing laws, policies and/or practices that were found to be discriminatory against this demographic, comprising historically disadvantaged and official minority language groups and individuals.

The annual budget of the Court Challenges Program of \$2,850,000 represents approximately .000536% of Canada's total 2006 estimated tax revenue of over \$532,183,000,000¹. This small budget is meant to provide access to justice relating to equality and language rights for visible minorities (estimated at 13.4% of the Canadian population), Aboriginal peoples (estimated at 3.3% of the Canadian population), official linguistic minorities (estimated at 5.1% of the Canadian population)⁹⁶ amongst others. Based on these statistics, the decision to cut the Program funding is unjustifiable as it has a successful track record of advancing human rights of all Canadians.

The Court Challenges Program has made possible some of our most important *Charter* cases. Moreover, the Program has contributed to Canada's capacity to fulfill its obligations under international human rights instruments as recognized by the United Nations.

Recommendations:

The Committee should:

Strongly condemn Canada for dismantling of the Court Challenges Program of Canada.

Urge Canada to immediately reinstate funding for the Court Challenges Program of Canada.

Re-emphasize Canada's responsibility to ensure the equality of historically disadvantaged and marginalized groups and language rights in Canada's official languages.

Request Canada to provide in its next periodic report specific measures it has taken to reinstate the Court Challenges Program of Canada.

⁹⁶ Percentage calculated from figures contained on Statistics Canada's web page at <http://www40.statcan.ca/101/cst01/govt01a.htm>.

(c) Cuts to the Status of Women Canada

Introduction

As one of the wealthiest and diverse countries in the world, Canada has the capacity to ensure fundamental human rights by eradicating economic and social inequities that continue to exist among women, men and children. A crucial component of Canada's international human rights obligations is to provide effective domestic remedies for violations of social and economic rights, and to include social and economic rights in the mandate of its national human rights institution.

Through the implementation of a formidable social foundation in the form of social programs and services Canada would ensure substantive equality under the law; and effective protection and remedies through its federal agencies against any acts of racial discrimination which violate fundamental human rights and freedoms, as well as the right to seek just and adequate compensation or satisfaction for any damage suffered as a result of such discrimination.

Despite achieving record budget surpluses in the past decade, every person living in Canada has not been able to share in its economic prosperity. In addition Canada has seen a significant shift in prioritizing the substantive equality rights of women.

Women in Canada make up over 50 per cent of the population however, Canadian governments have cut essential programs and services that women rely on and have imposed restrictive and inaccessible regulations and measures to several benefits. As a result, women who are marginalized within key social, political and legal institutions; who are most likely to be Aboriginal, African-Canadian, South Asian, Middle Eastern and other racialized immigrant women, single mothers, seniors and women living with disabilities; and who make up a significant majority living in poverty; are most likely to be harmed as systematic gender discrimination—the denial of women's basic human rights is a major cause of poverty.

As the federal government is the primary body responsible for the elimination of racial discrimination, Canada's Report to the International Convention on the Elimination of Racial Discrimination (CERD), June 2001 to May 2005, clearly exposes the lack of the federal government's commitment to ensure the substantive equality rights for the most marginalized living in Canada.

We submit that Canada has failed to uphold in its obligation to ensure substantive gender equality rights under Section 15 of the Canadian Charter of Rights and Freedoms and under Articles 5 and 6 of the UN CERD, through the implementation of disparaging and regressive measures which expose the federal government's lack of commitment to ensure the substantive equality rights of women.

Impact of Disparaging Policies on the Substantive Equality Rights of Women

For several years' women's groups in Canada have analyzed, critiqued and been applauded for holding governments accountable for required action in terms of their impact on women, families and communities.

The latter part of the 20th century marked a period of remarkable change in Canada. In particular, there was a dramatic evolution in the role of women in Canadian society as women became increasingly involved in the full range of social and economic aspects of life in this country. Most notably, women have become an integral part of the paid labour force, accounting for almost half of all those working for pay or profit. However, with the new century come new challenges. Substantial gender gaps persist on most major socio-economic variables. In fact, the rate of improvement in many of these areas has slowed dramatically in recent years. At the same time, vigilance is required to ensure that past gains on the road to substantive gender equality in Canada are not lost.⁹⁷

Racialized minority and immigrant women make up a diverse and growing population in Canada, in large part because of increasing immigration from countries outside Europe over the past two centuries, they face a particularly complex set of hurdles in their attempt to adapt to Canadian society. They have to cope with all the problems associated with adjusting to, what for many, may be a completely new lifestyle. At the same time, these women may also have to overcome many of the gender-related inequalities which women in Canada have traditionally experienced.

Several studies have has shown, that Aboriginal, racialized minority and immigrant women are among the poorest in the Canada. The processes of occupation, (re)settlement and nation building, slavery and disenfranchisement of racialized groups, labour migration and employment regulation continue to contribute to the rate and depth of economic inequality experienced by these groups. In addition, survival and poverty in this socio-economic system is directly linked to the increased criminalization of racialized and impoverished people.

Racialized women and racialized immigrant women living in poverty in Canada experience simultaneous barriers due to policies enacted under the: Indian Act, Immigration and Refugee Protection Act, National Child Benefit Initiative, Employment Insurance Act, Employment Standards Act as well as other government policies. Racialized women must contend with multiple systemic, internal and institutionalized oppressions. There is limited access to affordable housing, childcare, language translation, legal aid, welfare, and other programs that might improve marginalized women's socio-economic security and well-being.⁹⁸

⁹⁷ Statistics Canada, *Women in Canada 2005: A Gender-Based Statistical Report* (Ottawa: Statistics Canada, 2005) at 16. [Women in Canada 2005].

⁹⁸ Jackman, Martha and Porter, Bruce. *Women's Substantive Equality Rights and the Protection of Social and Economic Rights Under the Canadian Human Rights Act*, at 48: (Ottawa: Status of Women Canada, 1999) http://www.swc-cfc.gc.ca/pubs/pubspr/0662281578/199909_0662281578_3_e.pdf

Canada's Dereliction of Duty: Recent History

In the mid 1980's Canada's federal policy objectives began to de-emphasize the redistributive and universal features of social programs, in essence the assurance of the welfare state. This has been carried out through cuts to social program policies, which combined have led to the erosion of the programs' integrity and efficiency. Without overtly cutting programs, because such acts simply could not pass public scrutiny, the federal government in the past two decades has initiated changes in taxes and transfers to the provinces, which has had detrimental effects on the universality of social programs in Canada.

In 1995 the Budget Implementation Act (BIA) was introduced by the then federal government. The BIA repealed the Canada Assistance Plan Act (CAP) and replaced it with the Canadian Health and Social Transfer (CHST). The outcome of this is that "the federal government eliminated the conditions to social assistance spending; it ended 50-50 federal provincial cost sharing for social services; combined funds for health care, post secondary education, social assistance, and key social services into one block transfer; and drastically cut the total amount of the transfer to the provinces".⁹⁹ The total of this amount was less than had been allotted formerly for the three areas. The CHST system allows the provinces more flexibility in how these transfer payments are spent, thus they are not obligated to provide the same level of social programs to those in need. This led to a destabilization of programs and services at the provincial and territorial levels, eroding community programs, income supports and public goods that women in Canada rely on for economic and social security.

In 2004 the federal government split the Canada Health and Social Transfer into two transfers: the Canada Health Transfer (CHT) and the Canada Social Transfer (CST). The federal government increased its contribution to the costs of health care through the new dedicated health transfer. In 2005-06, federal transfer payments to the provinces under CHT stood at \$19 billion. In addition, the federal government has introduced some stability by committing itself to a 6 percent annual escalator in the health transfer until 2013-14, bringing the total amount at the end of the period to \$30.3 billion. When the CHST was divided into two components, spending on health care increased and spending on social programs and education suffered as a result. The federal government's support for post-secondary education, social assistance and social services has never been restored to pre-1995 levels. The CST for 2005-2006 was \$8.4 billion. If the CST was increased to the levels before 1995, for post-secondary education and social assistance it would require an additional \$2.2 billion annually.¹⁰⁰

Since 1998 Canada has witnessed a period of budget surplus, however, its major expenditures have been on tax cuts and debt reduction. Cuts to social programs have had a tremendous negative affect all women, men and children in Canada. Racialized and immigrant women have been particularly affected by the attrition of social assistance, Employment Insurance, civil legal aid, supports for women leaving violent relationships, supports for housing, and labour standards protections and enforcement. Some cuts have

⁹⁹ Gwen Brodsky and Shelagh Day. "How Come Women are so Poor", Herizons Fall edition, 2000.

¹⁰⁰ Council of the Federation. 2006. *Reconciling the Irreconcilable: Addressing Canada's Fiscal Imbalance*: http://www.councilofthefederation.ca/pdfs/Report_Fiscalim_Mar3106.pdf

resulted in direct discrimination against women. Others have had disproportionately harmful effects because of their already disadvantaged position in the society.

In recent reviews of Canada, the gendered impact of social programs and services has been recognized by several international committees including the SESCO, HRC and CEDAW. It is clear that cuts to social programs and services have had a negative effect on women as social programs play a critical role in women's lives.

To enjoy their right to substantive equality under the Charter and through International covenants there is a dire need for racialized and immigrant women to access to benefits through social programs and protections, including childcare and post-secondary education. As racialized women are among the most vulnerable these programs are vital to their equal participation in Canadian society.

Canada's federal government has been derelict in its responsibility to provide access to public policy decision-making and social services and thus imposed upon provincial governments to administer as they see fit with a significantly diminished budget.

Racialized groups have found the programs that they rely on, such as social assistance, are the first to be eliminated on provincial agendas (this has been evident in economically disadvantaged provinces). Since these groups have the least representation and are the most socially isolated, these unjust policies go unnoticed and unchallenged in any formidable capacity. The intensification of the already existing feminization of poverty is one example, and being that Aboriginal and racialized and immigrant women are among the majority that live in poverty in Canada it is more precise to say that these policies have contributed to a *racialized feminization of poverty*. Women's issues do not belong in water tight compartments as they are connected to issues of race, class, ableism, and all aspects of identity.

Therefore, without national standards, inclusive policies, and adequate federal funding through transfer payments to provinces and territories; Canada's obligation to eradicate racial discrimination has been abandoned and has in fact enabled the intensification of the divide among racial and gender lines.

Canada's Restrictions to Substantive Women's Equality: An Overview

Until the late 1980's equality women's rights groups, namely not-for-profit and non-governmental agencies were able to receive core-funding through Status of Women Canada (SWC) a federal agency, designed to improve the condition of women in Canada. The agency was created in the 1970's, following the work of a Royal Commission on the Status of Women in 1967, to address equality and the full participation of women in the economic, political, social, and cultural life of the country. In particular, SWC has focused on improving women's economic well-being, addressing issues around violence against women and children, and furthering the rights of women. In 1976 the establishing of the Status of Women Canada (SWC) as a department of government was a formidable step towards women's inclusion and equal participation in all aspects of

society. The objective of the department was two-pronged, “coordinate policy in respect to the status of women and to administer related programs.”¹⁰¹

SWC is seen as the primary mechanism by which the federal government fulfills its responsibility to women’s equality. Furthermore, as a state institution SWC, has served as a vehicle to advance the effective protection and remedies against any forms of discrimination which violate human rights and fundamental freedoms for women and more recently women from traditionally marginalized communities which has included racialized women, immigrant and refugee women, women living in poverty, lesbians, Aboriginal women and women living with disabilities. The four arms of the department include¹⁰²:

- Women’s Program (Conducts provides funding for groups with a gender-based analysis and promotes its application throughout the federal government)
- Policy Research Fund (Provides funds to individuals and groups to carry out independent policy research. It is through this fund that the “blue” research documents are produced.)
- Policy which includes international relations (Carries out analysis on a number of policy areas, staff sit on inter-departmental committees and represent Canada in international fora including the United Nations)
- Communications and Corporate Affairs

Originally located within the Human Resources Development Canada (HRDC) Department, the Women’s Program has been the primary federal mechanism providing core funding and project funding supports for community-based, social change activities aimed at ensuring that the full diversity of women's voices are heard in public policy processes; promoting the development of policies and programs within key institutions that take into account gender implications and the diversity of women's perspectives and the participation of women in decision-making processes; increasing public understanding on women's equality issues; and supporting capacity building of women's organizations.

In 1990 there was a move to eliminate core funding to equality-seeking women’s organizations as well as to ‘feminist publications’. Women's equality-seeking organizations and groups coordinated nation-wide consultations and strategy sessions to resist this loss of funding. “When women in Newfoundland occupied SWC offices and other women began to do the same in their areas, the government backed down on the cuts to most women’s centres (but not to feminist publications)”¹⁰³.

¹⁰¹ Coulter, Emilie. “The Status of the Status of Women Canada: Co-opting Our Agenda”. From the May 1997 edition of Kinesis, post on “The FREDa Centre for Research on Violence against Women and Children. Accessed May 4, 2006. <http://www.harbour.sfu.ca/freda/reports/swc.htm>

¹⁰² Status of Women Canada – Women’s Program Funding Guidelines: January 10, 2003. Accessed May 4, 2006.

¹⁰³ Coulter, E. 1997, *ibid*.

In 1995, The Women's Program moved from HRDC to the Status of Women Canada (SWC), in an effort by the then government to "[consolidate] women's equality programs".¹⁰⁴ At the same time and under the same premise, the then government also "disbanded the Canadian Advisory Council on the Status of Women (CACSW), a semi-independent agency, which conducted research on a wide range of issues as they affect women [and the] responsibilities and the budget of CACSW were moved over to SWC."¹⁰⁵ These actions signaled a change in the federal governments' political aim and direction, which would eventually result in the elimination of core funding to equality-seeking women's groups, and the consequent weakening of the collaborative strength and united front of equality-seeking women's organizations in Canada.

In 1996, SWC held consultations related to the "future direction" of the Women's Program, where equality-seeking women "strongly urged an increase in funding for the (Women's) Program" and stated that "program (core) funding should be maintained and extended to women's equality-seeking organizations on a more equitable basis", and emphasized that "core" funding "is an essential source of support for a number of women's organizations."¹⁰⁶

In 1997 what emerged, via the office of Status of Women Canada (SWC), was an end to program (core) funding. What emerged was project funding that made it virtually impossible for equality-seeking women's organization's to focus on equality issues. Equality-seeking women's groups were disappointed and frustrated with both the process and the outcomes of these consultations.

Equality-seeking women's groups felt that the consultation process was not sufficiently inclusive, transparent or participatory. Furthermore, they felt that the outcome, the elimination and replacement of "core" funding with "project" funding, did not heed the input and recommendations made by many of those consulted, which advocated for increased funding for the "Women's Program" and the retaining of "core funding" practices by the Women's Program. However, Status of Women Canada maintained that "certain participants felt that access to program funding was inequitable" and so this "concern about equity of access was used by Status of Women Canada to justify the movement away from core funding toward project funding"¹⁰⁷. This move toward "project funding" certainly did nothing to advance the principles of access or equity to funding, but instead, eroded the foundation of the equality-seeking women's movement.

In 1997, SWC adopted new funding guidelines for the Women's Program which came into effect in 1998. The Women's Program, under these new guidelines, not only eliminated core funding, but, under their new "project funding" mandate, restricted the

¹⁰⁴ Neville, Anita, MP, Chair. "Funding Through the Women's Program: Women's Groups Speak Out": Third Report of the Standing Committee on the Status of Women: House of Commons Canada: Ottawa. May 2005: http://www.parl.gc.ca/infocomdoc/38/1/parlbus/commbus/house/fewo/report/rp1861931/FEWO_Rpt03/FEWO_Rpt03-e.pdf#search=%22FUNDING%20THROUGH%20THE%20WOMEN%E2%80%99S%20PROGRAM%3A%20WOMEN%E2%80%99S%20GROUPS%20SPEAK%20OUT%22

¹⁰⁵ Coulter, E. 1997, *ibid.*

¹⁰⁶ Neville, A. 2005, *ibid.*

¹⁰⁷ Neville, A. 2005, *ibid.*

activities that equality-seeking women's organizations could receive funding for. For example, according to the Women's Program Funding Guidelines adopted in April 1998, the Women's Program no longer funds activities related to:

- Provision of direct social or health services;
- emotional, spiritual, personal or professional development;
- initiatives which have already taken place;
- initiatives taking place outside Canada;
- recurring activities not directly related to a clearly defined change-oriented strategy.

Status of Women Canada (SWC), defined these restrictions as part of their "Accountability Framework for the Women's Program" which they explained had been developed "to identify the short-term, intermediate and long-term results expected by the Women's Program" as well as to outline "the information necessary to measure these results."¹⁰⁸

These restrictions highlighted the current "outcome-based" funding focus, founded on "measurable", and consequently "short-term" approaches to social issues. In this funding context, equality-seeking women's organizations are limited in their ability to address systemic equity and equality rights issues in a substantive framework. Much of the work that needs to be done to advance women's equality rights is qualitative rather than quantitative work and is therefore difficult to "measure" according to "project-funding" formulas, and is therefore exempt from such funding. Equality-seeking women's groups have had to develop and create new *researched-based projects*, as opposed to engaging in *action-oriented initiatives*, which require extensive administrative support, and have been left with very little funding for core administration. As a result, many equality-seeking women's groups, have either struggled to subsist or have been eliminated forthright, while the substantive equality rights of women are being eroded.

Further Restrictions to the Substantive Equality Rights of Women In Canada: 2006-2007

Over the past year, women in Canada have continued to persevere to safeguard the right to political, economic, social, and cultural independence. However, through the most recent edicts and substantial changes implemented by the federal government, women's groups namely those who work with women who are the most marginalized, have been attacked economically and politically by disparaging government policies.¹⁰⁹

On September 25, 2006, Canada unveiled its plan to cut 1 billion dollars to federal social programs which is to be implemented over a two year period. At the same time that cuts to women's groups, youth employment, literacy organizations, Aboriginal health

¹⁰⁸ Neville, A. 2005, *ibid.*

¹⁰⁹ National Action Committee on the Status of Women: Brief Submission the House of Commons Standing Committee on the Status of Women. *Program Changes at Status of Women Canada: Impact of the Budget Cuts, December 13, 2006.*

initiatives, housing initiatives and other equity relevant programs were announced, the federal government also reported a \$13.2 billion surplus.¹¹⁰

For SWC, the sole federal agency which promotes gender equality, and the full participation of women in economic, social, cultural and political life of the country, the government announced its plans to cut 5 million dollars out of its 12.7 million dollar annual operating budget which translates in a close to 40 per cent cut in operating expenses effective in the fiscal year 2007-2008.¹¹¹ Prior to this announcement Status of Women Canada's annual budget stood at approximately 24.7 million dollars (2007-2008). Of this amount, nearly 11 million is disbursed through the Women's Program (WP), as well as one million to the Sisters in Spirit Campaign, thus leaving 12.7 million for all SWC work.¹¹²

On October 3, 2006, in a meeting with representatives from women's groups, the minister responsible for the status of women declared that were to be new funding guidelines imposed as part of the terms and conditions for receiving grants through the Women's Program and that the Women's program will from now on restrict women's groups from using federal grants for advocacy, lobbying and research activities. She also reaffirmed the government's intention to maintain the five million dollar cuts, despite several nationwide protests from equity and equality-seeking groups across the country.¹¹³ Cuts of this magnitude are far greater than simply administrative; they cut to the core of the agency's budget. The remaining budget of 7.7 million must cover all salaries, including those of the people administering the women's program, rent, supplies, web site, communications, publications.¹¹⁴

The decision to cut the operational budget of SWC completely contradicts the recommendations of the 2005, Government of Canada's commissioned Expert Panel on Gender Accountability which called for the implementation of stronger federal mechanisms. It must be noted that there were no formidable consultations with equality seeking women's groups and stakeholders at the grassroots level. The Standing Committee on the Status of Women, made up of elected Members of Parliament, was not consulted. The cuts were cast as "administrative efficiencies". The exercise was described as "efficiency savings".

It is important to note that the five million is to be withdrawn from the SWC agency's operational budget of 12.7 million. This means that the amount disbursed through the Women's Program will not be reduced. If women's organizations do not receive funding

¹¹⁰ Social Planning Council of Toronto, 2006. *Faces of the Cuts*, at 18. <http://www.socialplanningtoronto.org/CSPC-T%20Reports/Faces%20of%20the%20Cuts.pdf>

¹¹¹ Canadian Research Institute for the Advancement of Women (CRIAOW). Statement: *A Series of Bad Decisions for Women's Equality: Cuts to SWC*, 2006.

¹¹² *Ibid*, 2006.

¹¹³ Canadian Council for Refugees. *Statement: Federal budget cuts and their impact on refugees and immigrants*, 2006. *Statement*

¹¹⁴ *Ibid*.

in the future it is not because of the cuts but rather because of the changes to the terms and conditions of the Women's Program.

On November 28, 2006, Status of Women Canada revealed how the 40% cut in its operating budget would be implemented. Through the destabilizing of the Status of Women Canada (SWC) department by initiating five million dollars worth of administrative cuts and closures to 12 out of 16 regional offices. "We don't need to separate the men from the women in this country." She contended that the entire government was responsible for the development of policies and programs that address the needs of both men and women.¹¹⁵

Grassroots and front-line women's organizations have particularly been disillusioned by this as the SWC regional offices have provided critical support, advocacy and access for Aboriginal, francophone, rural, racialized and immigrant; and other disenfranchised women's groups that address violence, poverty, access to justice, and economic development. In addition, these offices have also played a particularly significant role in supporting Aboriginal women's groups to increase their participation in regional leadership and within the community. Unless they happen to live in one of the four cities where agency offices will remain open, women's access to critical services and programs will be severely restricted.

These new funding guidelines took effect on September 27, 2006 and apply until September 27, 2011.¹¹⁶ As stated previously, prior to these policy changes the Women's Program funded groups that were not-for profit and non-governmental agencies. Under these new guidelines for-profit organizations and institutions are now eligible to apply for funding through the Women's Program. In addition, the government has removed the term "equality" from the mandate and the goals of the women's programs and has barred "political groups" from receiving funding. Substantive equality women's groups find that restricting the role of SWC to "service provision" (barring it from funding "political" groups, research or campaigns) as an effort to de-politicize the racial discrimination and gendered oppression that continues to exist. For example, women's groups fighting against racialized poverty combine their efforts by helping individual racialized women at transition houses and women's centers and lobbying the government on ways to address and reduce the racialized feminization of poverty in general. The two activities cannot be separated.

At the core of these disparaging changes, new terms and conditions for receiving grants, and budget cuts is a complete annihilation of any voice to challenge inequalities that continue to exist. This Canadian federal government seeks to decimate women's groups that provide advocacy, lobbying and research that promote women's substantive equality and social change. Without adequate funding, several women's groups that make significant contributions to their communities will be forced to close their doors – namely grassroots equality-seeking women's organizations that rely on government funds to

¹¹⁵ CRIAW Statement, 2006.

¹¹⁶ Ibid.

serve their respective constituencies; groups that work in advocacy, lobbying, research and front-line service such as anti-violence and women's health groups.¹¹⁷

It is also clear that the capacity of SWC will be severely weakened in the future. This will have enormous impact in terms of the agency's capacity 1) to inform government wide policy, 2) to ensure that Gender Based Analysis (GBA) developed and properly implemented across government departments, 3) to monitor Canada's obligations to CEDAW and other international obligations 4) to fund independent policy research.¹¹⁸

The justifications for these regressive measures in a presentation to the Standing Committee on the Status of Women, by the Minister responsible for the Status of Women on October 5, 2006, were that "women are strong, already equal, and do not need policy supports..."¹¹⁹

The notion that women are equal directly relates to the formal equality model that has been instilled in the minds of most Canadians as the definitive meaning of equality. Most Canadians believe that treating people the same is what equality is about. For the majority of Canadians, equality means ignoring differences attributed to race, gender, disability and/or sexual orientation. Taking these factors into consideration is generally seen as discriminatory, unfair and "anti-equality". Formal equality is premised on the notion that equality means treating likes alike and posits same treatment as the defining feature of equality.

Taking these differences into account however, is what substantive equality requires. The substantive approach to equality is more abstract and more complex to understand and to apply than the formal equality approach. It requires a definitive understanding of historical and social contexts and an appreciation of their significance. As has already taken place in the courts, education and exposure to the realities and experiences of disadvantaged groups will shift the Canadian understanding of equality to reflect a substantive rather than a formal approach.

Although the Supreme Court of Canada affirmed equality rights under the *Canadian Charter of Rights and Freedoms*, like equality guarantees in federal and provincial human rights legislation, it requires positive measures to address social disadvantage. The Canadian Charter of Rights and Freedoms, under the heading of "Equality Rights", Section 15 which reads:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law; program or activity that has as its object the amelioration of conditions of disadvantaged individuals or

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ House of Commons Canada: Standing Committee on the Status of Women, Ottawa, October 5, 2006. <http://cmte.parl.gc.ca/Content/HOC/Committee/391/FEWO/Evidence/EV2388704/FEWOEV15-E.PDF>

groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Nevertheless, when women living in poverty, namely Aboriginal, racialized and immigrant women; have attempted to challenge government policies denying them access to adequate food, housing and social assistance, their claims have been rejected on the grounds that social and economic rights are beyond the jurisdiction of human rights commissions and the courts. As a result, impoverished women have been left without remedies to the most critical issues of discrimination and inequality which they face.

If the right to substantive equality is to have meaning for women who continue to be marginalized due to race, sex and class, then under the UN CERD Articles of 5 & 6, it must enable them to challenge inequitable denials of their social and economic rights, and to hold governments accountable for the failure to meet international human rights obligations to protect and promote the social and economic rights of women and other disadvantaged groups.

The courts and many equality seekers have a broader view of equality, one that is often called "substantive equality". A substantive equality approach recognizes that patterns of disadvantage and oppression exist in society and requires that law makers and government officials take this into account in their actions. It examines the impact of law within its surrounding social context to make sure that laws and policies promote full participation in society by everyone, regardless of personal characteristics or group membership. Substantive equality requires challenging common stereotypes about group characteristics that may underlie law or government action as well as ensuring that important differences in life experience, as viewed by an equality seeker, are taken into account. The Supreme Court of Canada recently affirmed its commitment to a substantive approach to equality in its unanimous decision in *Law v. Canada*.¹²⁰

In the context of human rights and Charter litigation, tribunals and courts were faced with the complex realities of long term systemic discrimination which has resulted in people who are very differently situated from each other, based on group membership relating to gender, race, disability, and sexual orientation. In order to deal with these differences in a respectful and meaningful way (that is, in a way that did not further entrench existing inequalities), the courts in Canada have moved beyond the more simplistic approach to equality known as formal equality.¹²¹

Realizing the impossibility of remedying entrenched inequalities simply by treating everyone the same, Canadian courts adopted the approach to equality known as substantive equality or result equality. Substantive equality focuses on the conditions that

¹²⁰ Court Challenges Program of Canada: "*Substantive*" Equality. <http://www.ccpcj.ca/e/rights/rights-charter.shtml>

¹²¹ Correctional Services Canada: *ii) The Charter of Rights and Freedoms*. http://www.csc-scc.gc.ca/text/prgrm/fsw/gender3/cg-17_e.shtml

created and perpetuate the inequality under review and looks to the effects of a practice or policy to determine its equality impact. Substantive equality recognizes that in order to further equality, policies and practices need to respond to historically and socially based differences. In order to be treated equally, the issues that are fundamental to right to equality before the law and effective protection and remedies for racialized and immigrant women; it would be that they need to be understood and treated differently.

Canadians must be educated on these matters so that we have a fuller and more of a fine distinction understanding of equality and inequality, and of what needs to be done to further equality.

The federal government clearly has not enough to make substantive equality a reality. Cuts to Status of Women Canada will disable any and all inroads equity and equality seeking groups have made for close to 30 years and these cutbacks will also make the government of Canada less accountable for its poor results when it comes to women's equality; further increasing the divide between the “have’s” and the “have not’s” within Canadian civil society.

Since its implementation, it was expected that SWC would serve as a “broker” and between disenfranchised women and other critical federal departments. However, SWC needed to develop its own capacity to help other government departments better understand the needs of marginalized women in today’s Canada. For example, The National Organization for Visible Immigrant and Minority Women of Canada (NOIVMWC) argues that it is important that SWC make the links between the productivity agenda and the under-utilization of immigrant women’s skills and qualifications or ‘brain waste’.

Immigrant and refugee women do not have one single ministry that can address their complex issues in Canada and that there is a general lack of understanding on the part of most ministry officials and of ministerial staff on the complexities of the heterogeneous population that the term ‘immigrant women’ covers.¹²²

However, cutbacks to this federal agency will certainly limit and diminish its ability to act as a broker for racialized and immigrant women’s interests with other larger ministries.

Prior to the cutbacks, Status of Women Canada (SWC) was taking much needed steps in addressing equality and diversity in key areas and concerns affecting Aboriginal women, racial minority women, and migrant, immigrant and refugee women — particularly those relating to violence and poverty.

Through its mandate, Status of Women Canada promoted attention to the diverse realities of women while ensuring that the Government of Canada meets its commitments to the

¹²² National Organization for Immigrant and Visible Minority Women of Canada (NOIVMWC), Brief to the Standing Committee on the Status of Women, 2006. <http://www.noivmwc.org/noivmwcen/briefs/fewodec06.pdf>

International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and other international and national racial and gender equality agreements.

Through the Women's Program, Status of Women Canada provided financial assistance and technical support to address the particular concerns of immigrant, refugee and visible minority women which focused on three areas: improving their economic status, eliminating systemic violence against women and girls, and achieving social justice. Through its Policy Research Fund, Status of Women Canada supported independent research projects related to human security, including the impact of the national security agenda on Aboriginal, racialized, immigrant and refugee women. Research examines how women and men are affected differently by changes to the *Immigration and Refugee Protection Act*. The research is used to assist affected groups in providing input into the legislative review of the *Anti-Terrorism Act*.¹²³

However the agency needed more administrative funds to take into account the intersections of identity by implementing structures rooted in anti-racism and anti-discrimination. In addition, there has rarely been a gendered focus on the plight of racialized minority and racialized immigrant women as they have been increasingly the objects of study but the data is not disaggregated by sex. An example would be the very competent and rigorous studies on immigrants' lost earnings due to underemployment where women are subsumed under the category of 'immigrants'. Under the changes of the new funding guidelines, this type of project may not qualify for support through the Women's Program. Equality seeking women's groups that work with racialized minority and immigrant women, efforts to make racialized evidence-based gender-focused policy recommendations to government will be severely restricted under these changes.¹²⁴

It is important to note that Status of Women Canada is the only government department that encourages not-for-profit work towards capacity development for racialized immigrant and refugee women. These cuts to Status of Women will deprive the already under funded department. With the new terms and conditions for funding through the program which has barred advocacy, lobby and research it means that the access these groups will be denied access to democratic processes in the political arena.

As there continues to be systemic and entrenched patterns of discrimination based ethnicity, gender and immigrant/new Canadian status, the disparaging changes to SWC they are going to have fewer resources and limited access to address their grievances. Through these cuts, the government is turning its back on what we consider one of the most fundamental values of society, namely our shared responsibility to ensure that those who are vulnerable and without voice have access to the same rights and justice as all Canadians.

Racism, classism, sexism continue to exist. Equality measures as outlined through the UN Convention on the Elimination of Racial Discrimination; the UN Convention on the

¹²³ Ontario Council Serving Immigrants. *Conservative Budget Cuts: An Assault on Levers for Social Justice*, 2006.

¹²⁴ NOIVMWC, 2006.

Elimination and Discrimination of Women; and the Canadian Charter of Rights and Freedoms are not being met under these disparaging policies. The Canadian Charter of Rights and Freedoms implemented access to eliminate these disparities but the charter itself has not eliminated these disparities. It is directly challenging the charter through test cases and funded charter challenges and programs that reflect the changes in society that enable the full substantive equality rights of all Canadians as those who are the most oppressed have very little access as it is.

To be effective, accountability has to be vested at a high level in government. National action plans with indicators against which gender equality outcomes can be judged have particular merit. Legislation that provides for promotion of gender equality issues, requirements for gender mainstreaming, and compliance and complaints mechanisms have been effective in moving countries closer to their equality goals.

It is the responsibility of the federal government to ensure that every woman has the means to fully participate in the public policy development process. To do this, research and advocacy work must be funded through the Women's Program. Achieving women's equality requires coordinated and concrete action on many fronts. It requires women's groups who document women's equality and advocate for change. It requires women's groups on the ground to provide front-line services to women in need. And it requires a strong internal mechanism run by women to push for women's equality from **within** government. The combination of these factors will make substantive women's equality a reality.

The Scope of Issues: Racialized and Immigrant Women Living In Canada

Despite the current government's notion that equity issues have been a priority and that substantive equality has been achieved there are several social, economic and political indicators that would suggest otherwise; as the evolution of regressive socio-economic policies and legal practices have had a detrimental impact on racialized and immigrant women.

There continues to be several instances where sex and race discrimination have occurred. Racism and sexism combine to produce more socio-economic inequalities for racialized women than experienced by either white women or racialized men. In addition, gender and race function closely together as determinants of women's poverty, employment and income levels.

Economic Inequality & Racialized Poverty of Women in Canada

Aboriginal, racialized and immigrant women, are disproportionately poor, when compared to other Canadian women, and to their male counterparts. In 2000 36% of Aboriginal women, 23% of immigrant women, 29% of visible minorities, and 26% of women with disabilities lived in poverty. In 2003 19% of senior women lived in poverty.¹²⁵ Many of these groups intersect. For instance, Aboriginal and Black women are more likely to be lone parents than other women.

¹²⁵ Statistics Canada, *Women in Canada 2005: A Gender-Based Statistical Report* (Ottawa: Statistics Canada, 2005) at 143,228,297,280,254 and 282. [Women in Canada 2005].

The fact that racialized and immigrant women are economically unequal to men and therefore more likely to be poor due to systemic discrimination in the labour market in a workforce that devalues the work of women; the marginalization of women workers who are racialized; and it is due to the fact that women are penalized because they are the principal care-givers for children, seniors, and those who are ill or disabled. Income and poverty data reveal a general picture of material inequality in relation to the distribution of the society's wealth.

Although women have made several gains in increasing their employment rates, they remain underrepresented in several levels. In general women still earn only 71 cents for every dollar earned by men and they earn less at all educational levels. In terms of affecting access to economic equality, gender interacts with other factors, such as race, ethnicity, language, place of origin, place of residence, disability, age, plus the amount of support girls and women receive from family and communities and many other factors. The following are Statistics Canada Census 2001 average annual income figures¹²⁶:

- Average for all Canadian men: \$36,865
- Visible minority men: \$28,929
- Men with disabilities: \$26,890
- Average for all Canadian women: \$22,885
- Aboriginal men: \$21,958
- Visible minority women: \$20,043
- Women with disabilities: \$17,230
- Aboriginal women: \$16,519

Racialized and immigrant women are disproportionately part of Canada's low-paid work sector. Employed Aboriginal women are disproportionately represented in low-paying occupations that have been 'traditionally' held by women. In 2000 60% of employed Aboriginal women worked in sales, service or administration jobs, and were twice more likely to work in these low-paying positions than Aboriginal men.¹²⁷ In 2001 only 6% of Aboriginal women held managerial positions where as the figure was 7% for Aboriginal men and 8% for non-Aboriginal women.¹²⁸

Racialized immigrant women face more barriers to employment in Canada: More often than not, foreign university degrees and qualifications and foreign work experience are not recognized, because Canada has inadequate systems to judge academic equivalencies. Although governments invest in English or French as a second language programs, existing programs are inadequate to meet the need. Many women in particular are not

¹²⁶ Canadian Research Institute on the Advancement of Women (CRIAOW). *Fact Sheet: New Federal Government Policies Affecting Women's Equality: Reality Check November 2006. No 8.* <http://www.criaw-icref.ca/factSheets/Fact%20sheet%202006/New%20Federal%20Policies%20affecting%20Women's%20Equality%20-%20Realiv%20Check.pdf>

¹²⁷ Women in Canada 2005 at 200.

¹²⁸ Ibid, 201.

receiving enough language training to integrate themselves as full participants in Canadian society.¹²⁹

Employed immigrant women are more likely to work in 'traditional' female jobs than their male counterparts. In 2001 46% of immigrant women were employed in sales or service positions, clerks or administrators.¹³⁰ Immigrant women are also overrepresented in the low-paid manufacturing sector, and underrepresented in management, and the professions compared to their male counterparts, and Canadian-born women.

Racism is still a major barrier to employment: Many employers and managers make assumptions about work habits, suitability of certain types of work and ability to "fit in" on the basis of race. In the case of Black women and Aboriginal women, long standing policies and practices of racism and marginalization keep almost half (over 40%) of these groups of women living in poverty, compared with 19% of women who are not visible minorities. In 1997 17% of visible minority women in Canada had a university degree compared to 12% of Canadian women who did not belong to a visible minority group. Nevertheless, 15% of visible minority women were unemployed, compared with 9% of non-visible minority women.¹³¹

Racialized women in Canada are a well-educated population. In 2001 21% of women from visible minorities had a university degree, compared to 14% of other women, and young racialized women have a disproportionate share of advanced degrees.¹³² Despite this women from visible minorities are ghettoized in low-paying administrative, clerical, sales, and service jobs,¹³³ and have lower employment earnings than other women¹³⁴, and their male counterparts. A large proportion (21%) of visible minorities also reported that they are discriminated against in finding employment, and in their places of employment.¹³⁵

Women, and particular immigrant and racialized women are disproportionately employed in the 'precarious' 'non-standard' work sector, working in part-time, temporary, and casual jobs. Their access to unionization, benefits, job security, and pensions is disproportionate.

¹²⁹ Canadian Research Institute for the Advancement of Women (CRIAOW): [Factsheet]: *Women's experience of racism: How race and gender interact*, **Full version, July 2002**. http://www.criaw-icref.ca/factSheets/Race%20and%20Gender/racegender_e.htm

¹³⁰ Women in Canada at 227.

¹³¹ CRIAOW: Factsheet, 2002.

¹³² Women in Canada at 248.

¹³³ Ibid, 252.

¹³⁴ Ibid, 254.

¹³⁵ Ibid, 256.

Employment Insurance, Maternity Leave and Parental Benefits

With respect to Employment Insurance (EI) racialized women have been severely impacted by strict rules for eligibility, reduced benefit levels and shortened benefit periods. Only 39% of unemployed workers were eligible for EI in 2001 compared to 74% in 1990. Revisions to eligibility regulations have disproportionately disqualified women workers. Only 33 % of unemployed women got unemployment insurance benefits in 2001 compared to 44% of men.¹³⁶ Part-time female workers continue to pay premiums but they disproportionately are unable to claim unemployment benefits.

In 2001, the then federal government extended maternity/parental benefits under the Employment Insurance program to one year. Although this policy was enhanced to ensure a 50 week leave, it was still exclusive since it did not meet the needs of racialized women living in poverty do not have access to the maternity and parental benefit program under Employment Insurance (EI) and for those who do have access, benefits are often inadequate.

Although a relatively small proportion of visible minority women are self-employed. In 2001, 8% of employed visible minority women were self-employed, compared with 9% of other Canadian women and 13% of visible minority men¹³⁷; the current program excludes those who are self-employed and the large number of parents (such as recent immigrants, new entrants to the labour force and many part-time workers) who are not eligible under the strict work requirements.

With more and more mothers with school-age children in the work force, it is necessary for this contribution to society to reduce the economic impact of having children. Statistics report that in 2004, 65 per cent of all women with children under age 3 were employed, more than double the figure in 1976 when just 28 per cent were employed.¹³⁸

The province of Quebec has taken the lead meeting the needs of women and families. In January 2006, the Québec Parental Insurance Plan (QPIP) came into force, replacing the maternity benefits, parental benefits, and adoption benefits previously available to new Québec parents under the federal employment insurance plan.

It is vital to find a way to provide an inclusive EI and maternity and parental benefit policy. By changing eligibility measures that are accessible, it would ensure that workers who are self-employed and unemployed are adequately assisted. It is also vital that changes in measures do not discriminate against women including those that are self-employed.

The racialized feminization of women's poverty also has gender-specific consequences. For these women, poverty enlarges every element of inequality, not just the economic aspect. They are less able to protect themselves from being treated sexualized. They are more likely to accept this subordination in order to survive. They lose their sexual

¹³⁶ Canadian Labour Congress. 2003. *Falling Unemployment Insurance Protection for Canada's Unemployed*: http://canadianlabour.ca/index.php/Unemployment_Insuran/a42927ce4c6992

¹³⁷ Women in Canada, 2005 at 252.

¹³⁸ Ibid at 40.

autonomy in relationships; racialized women are stigmatized and stereotyped as sexually irresponsible women, and as bad mothers; and are often vulnerable to rape and assault. Their ability to care for their children is compromised, and they are more likely to have their children taken away in the name of "protection," often because they do not have adequate housing and cannot supply proper food or ensure safe conditions. They have no political voice or influence.

Without access to adequate social programs, including adequate social assistance and social services, such as shelters and transitional housing, women are much less able to resist or escape subordination and violence. Because of the social and economic inequality of racialized and immigrant women, the diminishment of social supports and income security programs has particularly harmful impacts on their opportunities and well-being.

Migrant Workers: Canada's Live-In Caregiver Program (LCP)

Canada's Live In Care Giver Program (LCP) is one of the most important ways that women primarily from developing countries immigrate to Canada. There are many problematic issues faced by this group, including lack of regulated employment conditions, and isolation. Women in these jobs are not considered to be workers under the law. However, their status as "non-citizen" and dependence of their employer makes them vulnerable.

Participants in the LCP must work for 24 months in a period of three years to be eligible for permanent resident status. Failure to do so will result in deportation. Coupled with the requirement that participants live in the home of their employer, the temporary status of immigrant live-in caregivers in Canada leaves them vulnerable to abuse and the denial of basic workers rights. The conditions infringe their right to equal treatment under the law and effective protection because the majority of these women are racialized immigrants; they face discrimination based on sex and race.

The conditionality of permanent status on a good work record deters women working in unfair or abusive settings from reporting their employers. In addition, the time required to obtain a new work permit and the possibility that the 24 months of work in three years will not be completed means that women are less likely to exit unsatisfactory work situations for fear of losing the possibility of permanent status.

The requirement that caregivers live in the home of their employer creates a situation whereby employees are made vulnerable to violence and abuse, violations of privacy and unremunerated overtime work. Live-in immigrant caregivers have also reported non or under-payment of wages and lack of food or proper accommodation.¹³⁹

The combined effect of temporary migrant status and the compulsory live-in requirement for these workers create circumstances that promote economic, physical and psychological exploitation.

¹³⁹ http://www.swc-cfc.gc.ca/pubs/pubspr/066231252X/200010_066231252X_11_e.html

Policy that strives to be merely a better option for foreign care-givers rather than adhere to a strict standard of rights fails those who participate in the LCP and sets a dangerous precedent for policy development. The LCP requires a thorough examination and changes must be made to ensure that immigrant caregivers in Canada receive the same standard of rights and treatment as all other Canadians.

The federal government's policy paper on new immigration and refugee protection legislation, issued in 1998, recommended the removal of the live-in requirement in the LCP. The CEDAW Committee in its 2003 Concluding Comments recommended that the live-in requirement be removed and that permanent resident status for domestic workers be facilitated and there have been no changes made.

Child Care

According to the 1984 Royal Commission on Equality in Employment, "child care is the ramp that provides equal access to the workforce for mothers." Over two decades later, that ramp has yet to be built. Successive governments, both Liberal and Conservative, have promised to do so, but have not. In 2004 the then Government of Canada signed child care agreements with the provinces, providing money to support the development of regulated child care spaces. This was the first real step forward in 35 years. However, the current government gave notice to provincial and territorial governments that it will cancel these agreements as of March 2007, offering as an alternative a family allowance of \$1,200 per year for each child under age six.

A family allowance, while useful, does not build a national child care system. Preserving the childcare agreements, and building on them, is essential for women, children and families.

In Canada half a million children with poor mothers are growing up on inadequate amounts of social assistance that do not cover basic needs. Canada has one of the highest rates of child poverty because we have less supports for women than many industrialized countries. The proportion of lone parent mothers living in poverty in Canada is a social policy choice, not an individual one.¹⁴⁰ Visible minority women are slightly more likely than other women to be a lone parent. In 2001, 10% of visible minority women were lone parents, compared with 8% of their non-visible minority counterparts. As with the overall population, though, women make up large majority of lone parents in the visible minority community. That year, 85% of all visible minority lone parents were female, while in the non-visible minority population, women made up 81% of lone parents.¹⁴¹

- Good quality child care in a regulated space can cost over \$1000 per month. In some provinces, there are a limited number of subsidized

¹⁴⁰ *Fact Sheet: New Federal Government Policies Affecting Women's Equality: Reality Check November 2006. No 8.*
<http://www.criaw-icref.ca/factSheets/Fact%20sheet%202006/New%20Federal%20Policies%20affecting%20Women's%20Equality%20-%20Reality%20Check.pdf>

¹⁴¹ *Women In Canada, 2005* at 246.

spaces available and in some provinces, even "fully subsidized" parents have to pay.

- There are over 10,000 children on the waiting list for subsidized child care in the city of Toronto alone, up from 6,000 in the previous year.
- The National Council of Welfare has documented the cost of poverty to all Canadians in terms of health, justice, work and productive capacity and child development. It discusses the urgent need for Canadian governments to invest in affordable, accessible, good quality child care, and adequately support parents.
- Good quality child care, whether provided by parents, other caregivers or both, ensures healthy child development and maximizes young children's intellectual, social, emotional and physical capacities. Good quality child care has a positive impact on a country's economic development and stability, and not just a personal impact on the children and families involved.¹⁴²

Lack of Adequate and Affordable Housing

Canada is one of the few industrialized countries that do not have a national housing policy. Women's access to housing is further compromised by racism. Racial discrimination in housing is well-documented. Racialized and immigrant groups had particular difficulties in finding rental housing, because of perceptions of groups. Race is also a barrier to home ownership. In two studies of Black and White people in Toronto matched for income and family characteristics, found a lower rate of home ownership among Black people.¹⁴³ There is also a racist perception that East Asian immigrants in the BC Lower Mainland and northern areas of Toronto, for example, are "taking over", particularly certain suburbs.

Research has shown that racialized immigrant women can experience extreme forms of discrimination when finding housing, especially if they are single parents. They are very vulnerable to abuse by landlords. Some women have to stay in physically and/or sexually abusive relationships just to keep a roof over their heads, and their children's heads. A number of studies emphasize the link between stable, affordable housing and women's personal safety and economic participation.

Some low-income women had been sexually harassed by landlords. They had no choice but to raise children in unsafe neighbourhoods in overcrowded and often infested conditions, and moved frequently to find lower rents, which disrupted their children's schooling and social supports. Racialized, Aboriginal and immigrant women who are Aboriginal, visible minorities and immigrants have higher levels of poverty, and therefore have more difficulties finding and affording suitable housing.

¹⁴² *Fact Sheet: New Federal Government Policies Affecting Women's Equality: Reality Check November 2006. No 8.*
<http://www.criaw-icref.ca/factSheets/Fact%20sheet%202006/New%20Federal%20Policies%20affecting%20Women's%20Equality%20-%20Reality%20Check.pdf>

¹⁴³ ¹⁴³ CRIAW: Factsheet, 2002..

From 1995 to 2005, some provincial governments have withdrawn funding from subsidized, co-operative and transitional housing which is a need for racialized and immigrant women namely those who have been victims of domestic violence. Abuse in the home can drive women and girls into homelessness, and lack of housing puts women and girls at further serious risk of physical and sexual violence and early death. Many underfunded front line run service shelters and transition houses have been struggling to meet the demands of the women who need them as there has been an increased need. Shelters and services for women victims of violence were services designated under the *Canada Assistance Plan* for cost-sharing. The removal of Canada Assistance Plan's designations, 50/50 cost-sharing, its replacement of a block undesignated transfer (CST) from the federal government to the provinces severely affected support for shelters and transition houses in many provinces.

Access to Justice: Legal Aid

Not every one has equal access to the law. In the early 1990s, the federal government implemented limited measures in its contribution to the provinces for legal aid, and subsequently cut it significantly in the mid-1990s. This has filtered down into provincial restrictions about who could use legal aid.

“For women, the results [of legal aid cuts] have been devastating. Women’s need for legal services is overwhelmingly in the areas of family or civil law — precisely where most of the cuts were made. Without adequate legal representation, women are losing custody of their children, giving up valid legal rights to support, and being victimized through litigation harassment. They are spending endless days navigating a complex legal system — researching and preparing legal documents, appearing without a lawyer for highly charged divorce and custody cases, and agreeing to settlements that are not in their own or their children’s interests.”¹⁴⁴

Legal aid cutbacks of the 1990s make it more difficult for women to get aid for family law cases, let alone the multi-year process of a Supreme Court challenge. Some of Canada’s laws were written over a hundred years ago, such as the *Indian Act*. Although changes were made in 1985 which removed some of the gender discrimination, women and men are still not treated equally under the Act in terms of passing Indian status to their grandchildren, which leaves some Aboriginal people disenfranchised in their communities and unable to access housing and education.¹⁴⁵

In its study of the availability of legal aid, the African Canadian Legal Clinic stated: “Lawyers are now faced with the dilemma of choosing who will be properly represented and be able to secure access to justice. The maximum seventeen hours of representation now allotted on many certificates are not enough for counsel to properly prepare and present a full case. The fact that disbursements are also not paid impacts on our community. One group participant recounted how a disbursement to secure an expert was denied to a woman in a custody case. Her lawyer could not shoulder the cost of the

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

expert. The woman was not successful in her case before the court and her child was taken into care. Massive gaps in information in the African Canadian community regarding legal rights, coupled with the cultural insensitivity and ignorance on the part of many lawyers have led to inadequate representation for many individuals or no representation at all.”¹⁴⁶

Citizenship and Immigration

Canada claims to have a non-racist, non-sexist immigration system. However, Canadian overseas immigration offices in the United States and Europe are overrepresented as most of Canada's immigrants now come from Asia.

Canada's immigration system divides people into classes: If you have enough money, you can buy your way in under the investor class. Canada judges independent class immigrants according to a point system, which gives points for education, and speaking one of Canada's official languages, for example. This discriminates against women, because "women have been denied access to education, training and employment opportunities. As a result, most women entering Canada are unable to qualify as independent immigrants. Most women enter Canada as sponsored a immigrant, which means that they are financially dependent on their sponsors, usually their husbands, for a period of three or ten years. It means they do not qualify for many social services or programs. It gives husbands and other sponsors a huge amount of power over women, who can be abused and threatened with deportation if they complain. Many women do not know their rights.”¹⁴⁷

Women Violence & Crime

Racialized visible minority and immigrant women are at a higher risk of violence. Further, these women have a more difficult time accessing services. For racialized women, gender-based violence is not the only type of violence they experience: race and gender combine to increase their likelihood of being assaulted. Because of the documented racism of Canada's police forces, criminal justice system and jails - racialized women may be reluctant to call police in cases of domestic assault out of loyalty to their family and community, not wishing to fuel racist stereotypes about their community, or to subject themselves or family members to a racist system. Refugees from places in which police forces, military and the government were involved in violence against civilians, including organized or systemic rape of women, may have no trust in systems of authority.”¹⁴⁸

In addition, there is a complex set of issues, attitudes, barriers and gaps in service that make immigrant and racialized women uniquely vulnerable when faced by domestic violence. Only 57 per cent of Canadian shelters offer services that are sensitive to cultural differences. Furthermore, women who have difficulty speaking one of the official languages live face enormous barriers in accessing services and dealing with the justice

¹⁴⁶ African Canadian Legal Clinic, “Legal Aid Review” (Toronto: ACLC) http://www.aclc.net/submissions/legalaid_review.html Accessed January 11, 2006

¹⁴⁷ Ibid.

¹⁴⁸ ¹⁴⁸ CRIAW: Factsheet, 2002.

system. When services and the justice system fail, women find it even more difficult to escape abuse.¹⁴⁹

During the last decade, combating violence against women and improving the conditions of women who are victims of violence has become increasingly difficult. Through the implementation of Canada's "Tough on Crime Policy" which enforces stricter penalties for law breakers, it failed to understand the root causes of violence against women in subordinated social, political, legal, and economic status. Women are victims of violence by men, including the men with whom they are with, because women have less status and power in Canadian society violence against women is a result of women's inequality.

Rather than supporting women's rape crisis centres and shelters for battered women, and women-run front line services, these women-led, non-governmental services have had funds cut, while public money is being given to "victim's assistance" programs, run by police, crown prosecutors, or non-profit organizations that do not recognize that violence against women is a manifestation of women's inequality.¹⁵⁰

Welfare incomes have dropped many shelters and transition houses have noted that women are returning to abusive relationships because they cannot support themselves and their children adequately on welfare incomes. These women choose continued exposure to violence for themselves over being unable to feed and house their children.

Political Participation

Although women in Canada, women make up 50.4% of the population, but only 20.8% of seats in the House of Commons. According to the United Nations, Canada ranks 30th in the world in terms of the representation of women in Parliament, behind Sweden, Norway, Rwanda, Trinidad and Tobago and many other countries on every continent.¹⁵¹ The current governing party in the House of Commons fielded the fewest women candidates in the general election of 2006: 10% of its candidates were women.

Women's political participation is a social policy choice that countries as a whole make. Women are less likely than men to run for parliament for a number of reasons. Some women have been socialized to view politics as an unsuitable or undesirable vocation. These challenges are even greater for certain groups of women, such as Aboriginal and racialized minority women.

As Canada's Royal Commission on Electoral Reform and Party Financing (Lortie Commission) reported in 1991, some of the barriers to women's participation "relate to broad social phenomena ... [which] do not lend themselves to solutions by institutional or legal reform of the electoral system." For example, women continue to hold a disproportionate share of household and family responsibilities and, on average, have

¹⁴⁹ Ibid.

¹⁵⁰ Fact Sheet: *New Federal Government Policies Affecting Women's Equality: Reality Check November 2006. No 8.*
<http://www.criaw-icref.ca/factSheets/Fact%20sheet%202006/New%20Federal%20Policies%20affecting%20Women's%20Equality%20-%20Reality%20Check.pdf>

¹⁵¹ Ibid.

lower incomes (and hence less financial independence) than men. Women also continue to be under-represented in the upper echelons of areas such as law, academia and the business world. They thus have fewer opportunities to develop the high-profile professional reputations that are sought by political parties, and to obtain easy access to the necessary networks and financing to secure nominations.¹⁵²

Traditional ways of working in political parties and other political institutions may discourage racialized women from seeking political office through discriminatory attitudes and practices, and lack of attention to mechanisms that could support a balance between family and work responsibilities. It has also been suggested that women may be reluctant to run for parliament because of the adversarial and combative nature of the work.¹⁵³

Conclusion

Nothing threatens the political and economic rights of women more than this current attack against equality-seeking women's groups and individuals in Canada namely those that work with women from traditionally marginalized and disenfranchised communities. It had taken years for the Canadian political class to come to an understanding of the social barriers impeding access to equality for peoples in Canada along lines of racialization, gender and class and language. The fact that the public sector had come to grasp the need for sustained programming to counter such sources of inequity was a major Canadian achievement in the field of public responsibility and State vision on how to attain fairness and justice for all.

However, women in Canada share a bond in dealing with issues of social and economic inequality; however women racialized minority and immigrant women often face circumstances that are uniquely different. Prior to the federal budget cuts NAC facilitated a nation-wide study which examined the needs and the processes of the equality-seeking women's movement. It was confirmed that there has been a widening gap that separates the vast majority of women and in particular racialized and immigrant women from policy development and decision-making processes within government. They have observed the deterioration in the ability of substantive equality-seeking women's organizations to effectively access these processes due largely to the lack of the financial resources necessary to sustain the structures that have traditionally supported the participation of women.

Recent budget cuts and the changes in the Women's Program funding criteria , will undoubtedly have a damaging impact to women's groups. These changes simply seek to decimate women's groups that provide advocacy, lobbying and research by promoting women's substantive equality and social change. Without adequate funding several

¹⁵² Cool, Julie. *Women In Parliament*, Parliamentary Research and Information Service. February 2006. <http://www.parl.gc.ca/information/library/PRBpubs/prb0562-e.htm>

¹⁵³ *Fact Sheet: New Federal Government Policies Affecting Women's Equality: Reality Check November 2006. No 8.* <http://www.criaw-icref.ca/factSheets/Fact%20sheet%202006/New%20Federal%20Policies%20affecting%20Women's%20Equality%20-%20Reality%20Check.pdf>

women's groups that make significant contributions to their communities, will be forced to close their doors within a short time frame— namely grassroots equality-seeking women's organizations that rely on government funds to serve their respective constituencies; groups that work in advocacy, lobbying, research and front-line service such as immigrant and visible minority groups, anti-violence, anti-poverty and women's health groups.

Barring funding to grassroots and other women's groups that research and advocate on behalf of women who are among the most marginalized in society, allowing for-profit organizations to be eligible for funding and the removal of the word "equality" from the objectives of Status of Women Canada's Women's Program, are a travesty against women's ability to fully participate in Canadian civil society and negatively impact government policy.

Status of Women is one of the few departments fostering projects to build organizing capacity among visible minority and immigrant women. This agency also produced the basic information that racialized immigrant and refugee women need to get access to participation in society. The decision to cut these funds to a department that already had very little money is antidemocratic

It is critical that women's human rights organizations are provided with **sufficient** resources to advocate and lobby for change regarding programs, policies and laws that can have a discriminatory impact on women. These groups represent an 'ear to the ground' for government and optimism for the women whom they serve.

Changes in the funding criteria of the Women's Program and effectively destabilizing Status of Women Canada cumulatively speaks to the government's lack of commitment and concern about women's equality in Canada, and the full participation racialized and immigrant women in Canadian civil society. It is imperative that the federal government invest in the future of all Canadians instead of ones who can afford a future. It must resolve continuing inequities as one of its priorities.

The budgetary cutbacks to the Status of Women department and changes in the funding criteria of the Women's program have been seen as an attempt to ensure that women are cut off from meaningful input into public policy and a deliberate silencing of the voices of equality-seeking women from across the country. Serious concerns have been raised of the Federal government's attempts to silence the voices of equality-seeking women's groups. Moreover, it is through access to financial resources of the Women's Program Fund that women's groups have been able to participate in the democratic processes in Canada.

For a government to disregard organizations that speak out from a perspective of signaling the impact of policies and commitments on the lives and members of society — in particular, women living in poverty, racialized women, immigrant women, Aboriginal women and women living with disabilities, is inexcusable. The very people who need to create change the most have the least ability to do so in this democratic society. Similar

to its abandoning of the Kyoto Protocol, the Canadian government's SWC actions are entirely out of step with the global community. While the federal government implements its cuts and abandons the substantive equality rights of women, the United Nations is strengthening its gender equality architecture by establishing an independent women-specific body to ensure a voice for women at the United Nations decision-making tables. Instead, the Canadian government is taking actions that will silence the voices of women and further marginalize the position of disadvantaged women at every level.

Finally substantive equality rights of women are integral to a healthy economy. The federal government must include this goal as a top priority and uphold and fulfill its commitments to international conventions to ensure the substantive equality rights of women under Article's 5 & 6 of the UN CERD.

Recommendations:

The Committee should:

Urge Canada to reinstate national standards to show a unified commitment to eliminate racial discrimination in policies, social, economic and cultural aspects of life by investing in social programs that will benefit racialized and immigrant women.

Urge Canadian federal, provincial and territorial governments to consult with nongovernmental organizations representing women and other groups affected by racialized systemic discrimination in Canada in order to develop strategies and implement mechanisms for monitoring fulfillment with equality and socio-economic and political rights to ensure that laws, policies and decisions regarding resource allocation and resource-sharing among jurisdictions, contribute to the progressive realization of Covenant rights.

Strongly urge Canada to immediately restore the operating capacity to Status of Women Canada; and terms and conditions to receive grants through the Women's Program prior to recent federal budget.

Request that Canada facilitate a public review of the obstacles and challenges to women's substantive equality in Canada to determine future funding to Status of Women and changes required in other areas of the government.

Urge the Canadian federal government to work with all levels of government in Canada as well as women's equality seeking organizations to carry out a thorough study of the nature and scope of violence against women in Canada and develop a comprehensive plan of action to address the violence.

Urge Canada to prevail on all provinces and territories to implement measures that will seek to eliminate the high levels of poverty among particular groups of women, Aboriginal women, visible minority and immigrant women and women with disabilities, seniors, and lone parents.

Urge Canada to work with community groups to find lasting solution to the problem of racial and gendered discrimination in the labour market, and to develop enhanced strategies for eliminating its effects.

Urge Canada to improve the standard of living by providing a guaranteed livable income through a raise to minimum wages, and improve the access of women to unionization, benefits and job security.

Urge Canada to revoke the “live-in” requirement in the Live-In Caregiver Program and to provide permanent resident status for all domestic workers.

Urge Canada to increase the funds in the Canada Social Transfer to the provinces and territories that support post-secondary education, social assistance, legal aid, and other social services of particular importance to all women.

Urge Canada to provide core funding and adequate resources to front line anti-violence services, shelters and transition houses. Standards attached to the Canada Social Transfer should ensure that core funds are provided to support these services.

Request the Canadian federal government and the provinces preserve and build on childcare agreements so that a national childcare system, providing an accessible and affordable, quality child-development-based care.

Urge Canada to implement laws requiring public and private sector employers to pay women equal pay for work of equal value.

Urge Canada to revise the EI eligibility rules and benefit levels to ensure that unemployed workers are adequately assisted, and that rules do not discriminate against women.

(d) Racism and Poverty

The existence of a process of racialization of poverty in Canada as manifest through a double digit racialized income gap, higher than average unemployment, differential labour market participation, deepening and disproportionate exposure to low income, differential access to housing leading to Neighbourhood racial segregation, disproportionate contact with the criminal Justice system, particularly for racialized youth leading to the criminalization of youth and higher health risks. Despite calls to attention by communities impacted by this, the Canadian government has failed to take any meaningful action to alleviate poverty.

Racialized Canada - a demographic profile

In 2001, Canada was home to about four million racialized group members, or 13.4% of the Canadian population, a 24.6% increase since 1996. This increase far outpaced the Canadian rate of 3.9% over the five year period. During the last census period (1996-2001), the growth rate of the racialized component of the labour force accounted for (males 28.7%/females 32.3%) compared to (5.5% and 9%) respectively for the Canadian population. While the growth was highest in Ontario (28%) it was significant in British Columbia (26.6%), Alberta (22.5%), New Brunswick (18%), Quebec (14.7%) and Manitoba (12.6%) among others, only falling in Prince Edward Islands (-22%).

Racialized group share of the population is projected to rise to 20% by 2016. Much of that growth can be accounted for through immigration but also higher than average birth rates. Canada welcomes an annual average of close to 200,000 new immigrants and refugees over the 1990s. While Canada welcomed 13 million immigrants in the last century, 2.2million of them came in the last decade of the century – the largest amount of any decade. Immigration accounted for more than 50% of the net population growth and 70% of the growth in the labour force over the first half of the 1990s (1991-96), and according to a study by the Human Resources and Skills Development Canada, it is expected to account for virtually all of the net growth in the Canadian labour force by the year 2011 (HRSDC, 2002). Over much of the last 15 years, over 75% of Canada's newcomers were members of the racialized groups.

According to the 2001 census, immigrants made up 18.4% of Canada's population, projected to rise to 25% by 2015. Immigrants constituted 18.4% of the Canadian population, the largest share in more than 50 years. Of particular note is the fact that, since the 1970s, increasing numbers of immigrants to Canada have come from Asia and the Middle East. Asian born immigrants accounted for more than half (57%) of the immigrants who arrived since 1991.¹⁵⁴ In 2001, the five largest racialized groups in Canada are, in order of size: Chinese (1.029M); South Asian (917, 000); Black or African Canadian (662,000); Filipino (309, 000); Arab/Middle Eastern or West Asian (304,000) and Latin American (217,000). According to the 2001 Census, about one third (34%) of racialized group members immigrated to Canada after 1990, while 33% entered Canada before 1990 and the last third 33% were Canadian born.

The percentage of racialised minorities in the Canadian population, which was under 4% in 1971, grew to 9.4% by 1991, hit double digits (11.2%) by 1996, and is now projected to be 20% by 2016. With Canada's continued reliance on immigration for population growth and with globalisation escalating, these trends are likely to continue. Canada's racialised groups are mainly concentrated in urban centres, with Toronto, Vancouver, and Montreal accounting for about 75% of the total racialised population (Toronto 42%, Vancouver 18%, and Montreal 13%). In 2001, racialized groups accounted for an increasing number of people in the major Canadian urban centres as well as the most populous provinces

¹⁵⁴ Statistics Canada, 2003: 2001 Census data.

Overwhelmingly, the changes in immigration composition have been most felt by Canada's three biggest urban areas —Toronto, Vancouver, and Montreal. The cumulative increase in the number of racialised group members over the last 30 years is most noticeable in the major urban areas, where, in the 1990s, more than 80% chose to settle. They have transformed these areas into diverse cultural centres, and their increased contributions to the life and economies of cities like Toronto have led many Torontonians to proclaim diversity as their city's strength.

In 1996, the Toronto CMA, which roughly covers the area that is the Greater Toronto Area (GTA), was home to 1.3 million racial minorities, who constituted 32% of its total population. That number had risen to 1.7 million by the year 2001. Five out of every 10 recent immigrants settled in the Toronto CMA over the last ten years, with 60% of them from Asia and the Middle East. The other big magnet for recent immigrants is Vancouver, which received 18% of all recent immigrants to Canada between 1991-96, 80% of whom were Asian born.¹⁵⁵

But with these demographic shifts, has come a noticeable lag in social economic performance among racialized groups. And these patterns of poor socio-economic performance seem to be holding both during and after the recession years of the late 1980s and early 1990s as well as the boom years of the late 1990s and early 21st.

Factors affecting declining social economic status of racialized groups

There is mounting evidence that the bouts of economic restructuring Canada has endured in the last two decades have intensified processes of racialization and feminization in the labour markets, leading to increased economic, social and political inequality and immiseration of vulnerable populations of women, men and children. The patterns of intensified inequality suggest that racialized groups, immigrants, refugees and women have borne the brunt of the economic restructuring and austerity. Not only has global economic restructuring escalated the process of informalization of economies and the emergence of 'precarious work' - temporary, part-time, contract, casual, types of work with low pay, few or no benefits, little or no job security, and poor working conditions, it has also exacerbated previous fissures of racial and gender inequality based on systemic discrimination. Various Canadian studies suggest that the emergence of flexible work arrangements as a major feature of the labour market, facilitated by the state deregulation and re-regulation of the labour market, have had a particularly adverse impact on racialized groups and especially racialized women.¹⁵⁶ Coupled with the persistence of

¹⁵⁵ Statistics Canada, The Daily, November 4, 1997

¹⁵⁶ See literature review by Zeytinoglu, I & J. Muteshi "Gender, race, and Class Dimensions of non-standard work' Industrial Relations, Vol. 55, Issue 1, Winter 2000 p133-166; L. Vosko Temporary Work: The Gendered Rise of a Precarious Employment Relationship (Toronto: University of Toronto Press, 2000); de Wolff, A., Breaking the Myth of Flexible Work (Toronto: Contingent Workers Project, 2000); B. Fox & P. Sugiman "Flexible Work, Flexible Workers: The Restructuring of Clerical Work in the large telecommunications Company" Studies in Political Economy Vol. 60 Autumn, 1999 pp59-84; M. Ornstein, Ethno-racial Inequality in Toronto: Analysis of the 1996 Census (Toronto: Access and Equity Centre of Metro Toronto, 2000); Galabuzi, G., Canada's Creeping Economic Apartheid: The Economic Segregation and Social Marginalization of Racialized Groups (Toronto: Centre for Social Justice, 2001); K. Hughes Gender and Self Employment: Assessing Trends and policy implications (Canadian Policy research Network, November, 1999)

historically racial and gender discriminatory in the labour market, what emerges is a deepening of the process of social inequality, manifested through the segmentation of the labour market along racial line, intensification of income inequality and along with it the racialization of poverty, the racialization and segregation of low income neighbourhoods with higher health risks, disproportionate contact with the criminal justice system and the overall intensification of processes of group marginalization and social exclusion.

The labour market experience forms a key part of the explanation as to why these social inequalities are intensifying. There is a persistent racialised income gap as well as a gap in labour market participation, unemployment rates and sectoral concentration.

Economic exclusion in the labour market

In 1984, the Abella Commission stated that the differences in unemployment rates and incomes between racialized group members and the non-racialized should be understood as 'social indicators' of job discrimination and that, furthermore, such discrimination can be characterized as systemic. The same year, a parliamentary committee report, titled *Equality Now*, concluded that similarly that racialized group members were disadvantaged in the labour market because of racial discrimination in employment.

State responses to racism and racial discrimination in employment have been varied and inconsistent at best. Key legislative instruments such as the *Charter of Rights and Freedom*, and the *Multiculturalism Act, 1988* and the various provincial human rights legislation and commissions have provided a basis for a culture of tolerance, by imposing sanctions on certain forms of racial expression and racially motivated action. However, what is still elusive is a systematic commitment to building an anti-racism culture, in the workplaces, in the schools, in all other state and social institutions, as well as the key cultural institutions –such as the media - that are central to intervening in public debates and discourses that determine public policy.

Employment equity is a Canadian designed response to discrimination in employment. Although the federal *Employment Equity Act, 1986* and related affirmative action programs since implemented were motivated by the goal of removing inequalities in income and occupational status between racialized group members and the non-racialized that had been identified by the Royal Commission, their effectiveness has been largely limited.¹⁵⁷ Seven provinces have employment equity policies (British Columbia, Manitoba, Saskatchewan, Quebec, Nova Scotia, New Brunswick, and Prince Edward Island). Most of these policies apply to the public sector and only British Columbia has employment equity legislation. There is wide variation in policies although most policies require some level of planning and reporting or monitoring, focussing on recruitment, retention, and promotion. Most also attempt to address pay equity as an aspect of employment equity, with some provinces having specific legislation addressing pay inequity. Their impact on discrimination in employment has been constrained by the lack

¹⁵⁷ Abella, R. *Commission Report on Equality in Employment* (Ottawa: Supply & Services Canada, 1985); House of Commons. *Equality Now! Report of the Special Committee on the Participation of Visible Minorities in Canadian Society* (Ottawa: 1984)

of adequate enforcement mechanisms – most are not legislated but voluntary programs and because they are not comprehensive.¹⁵⁸

Ontario had gone the furthest in attempting to implement employment equity with its Employment Equity Act 1993. The Act called for a mandatory program covering public sector, broader public sector and all workplaces with 50 or more employees. It focused on data collection, employment systems reviews, reporting and setting targets for building representative workplaces. However, it was repealed in 1995 before its impact could be established. In many of the workplaces where work had begun, management reversed course. So because of inadequate state response, economic exclusion has not diminished but intensified.¹⁵⁹

Today, racialized economic exclusion takes the form of labour market segregation, unequal access to employment, employment discrimination, disproportionate vulnerability to unemployment and underemployment, income inequality and precarious employment. These act both as characteristics and causes of exclusion. Attachment to the labour market is essential to both livelihood and to the production of identity in society. It determines both the ability to meet material needs as well as a sense of belonging, dignity and self-esteem. Labour market related exclusion also has direct implications for health status not just because of the impact on income inequality as a social determinant of health, but also because of the extent to which working conditions, mobility in workplaces, fairness in the distribution of opportunities, utilization of acquired skills all have a direct bearing on the levels of stress generated in workplaces.

The neo-liberal restructuring of Canada's economy and labour market towards flexible labour markets has increasingly stratified labour markets along racial lines, with the disproportionate representation of racialized group members in low income sectors and low end occupations, and under-representation in high income sectors and occupations. By accentuating the vulnerabilities arising from racial discrimination in employment identified by the Abella report, economic restructuring has intensified the racialization (and feminization) of labour market segregation leading to occupational and sectoral segregation or the ghettoization of racialized groups in low income, low status sectors with poor working conditions, and low levels of unionization.

These labour market patterns emerging out of a context of neo-liberal restructuring of the economy are conditioned by global competition and demands for flexible deployment of labour, persistent racial inequality in access to employment, and the growing predominance of precarious forms of work in many of the sectors racialized group members are disproportionately represented. Hence the disproportionate racialized group representation in low income sectors and occupations point to racially unequal incidence of low income and racially defined neighbourhood selection.

¹⁵⁸ Bakan, A. & A. Kobayashi. *Employment Equity Policy in Canada: An Inter-provincial Comparison*. (Ottawa: Status of Women Canada, 2000).

¹⁵⁹ Agocs, C. "Canada's Employment Equity Legislation and Policy, 1986-2000: Unfulfilled Promises" in C. Agocs (ed) *Workplace Equality: International Perspectives on Legislation, Policy and Practice* (The Hague: Kluwer Law International, 2002).

In the 1990s, the fastest growing form of work in Canada was precarious work also referred to as contingent work or non-standard work - contract, temporary, part-time, and shift work with no job security, poor and often unsafe working conditions, intensive labour, excessive hours, low wages, and no benefits. In the early 1990s, it grew by 58%, compared to 18% for full time employment. (Vosko, 2000; de Wolf, 2000).¹⁶⁰

Labour market research shows disproportionate participation of racialized groups in such industries increasingly dominated by non-standard forms of work as textiles, clothing, hospitality, and retailing industries. These tend to have average lower wages because of the characteristics of precariousness and insecurity – temporary, part time-time, contract work with little job security and low unionization rates. On the other hand, racialized groups are under represented in such high income sectors as the public service, automobile making, metal working, which also happen to be highly unionized and so more job secure.¹⁶¹

Most of this work is low-skilled and low paying and the working conditions are often unsafe. Such non-regulated service occupations as newspaper carriers, pizza deliverers, janitors and cleaners, dish washers, parking lot attendants, are dominated by racialized group members and recent immigrants who work in conditions with little or no protection, - condition similar to low end work in the hospitality and health care sectors, light manufacturing assembly plants, textile and home-based garment work. Many employees are ‘self-employed’ or sub-contracted on exploitative contracts by temporary employment agencies, with some assigning work based on racist stereotypes.

Racialized women are particularly over-represented in another form of self-employment - unregulated piecework in the home. Gendered racism and neo-liberal restructuring have conditioned the emergence of what some have called Canada’s sweatshops, especially in the garment and clothing industry (Yanz, et al, 1999; Vosko, 2000). The intensity of the experience of exploitation imposes stressors especially on racialized and immigrant women who continue to carry a disproportionate bulk of house work, to go with the sub-contract wage work, and many of whom are single parents.¹⁶²

¹⁶⁰ de Wolff, A. *Breaking The Myth of Flexible Work: Contingent Work in Toronto* (Toronto: Contingent Worker's Project, 2000); Vosko, L. *Temporary Work: The Gendered Rise of a Precarious Employment Relationship* (Toronto: University of Toronto Press, 2000).

¹⁶¹ Zeytinoglu, I & J. Muteshi "Gender, race, and Class Dimensions of non-standard work' *Industrial Relations*, Vol. 55, Issue 1, Winter 2000 p133-166; L. Vosko *Temporary Work: The Gendered Rise of a Precarious Employment Relationship* (Toronto: University of Toronto Press, 2000); de Wolff, A., *Breaking the Myth of Flexible Work* (Toronto: Contingent Workers Project, 2000); B. Fox & P. Sugiman "Flexible Work, Flexible Workers: The Restructuring of Clerical Work in the large telecommunications Company" *Studies in Political Economy* Vol. 60 Autumn, 1999 pp59-84; K. Hughes *Gender and Self Employment: Assessing Trends and policy implications* (Canadian Policy research Network, November, 1999)

¹⁶² Yanz, L, B. Jeffcoat, D. Ladd, J. Atlin & the Maquila Solidarity Network. *Policy Options to Improve Standards for Women Garment Workers in Canada and Internationally*. (Status of Women Canada: January, 1999);

Inequality in access to employment

The difference in unemployment rates between racialised groups and non-racialized groups in Canada dramatically demonstrates the unequal access to work opportunities. In 1991, the unemployment rate for racialized group members was 16%, compared to 9.6% for the general population.¹⁶³ While both rates fell by 2001, bringing the general population rate down to 6.7% , it contrasted with the 12.6% rate for racialized groups, almost twice as high (table 5 below). The data show that the levels of unemployment were much higher among specific racialised groups, including women, youth and those without post-secondary education in 1996 but leveled off in 2001 except among recent immigrants (those in the country for five years or less). For instance, while the 1995 rate for racialised women shows a gender gap of 15.3% compared to 13.2% for racialised men, both were that much higher compared to 9.4% for other women and 9.9% for other men.¹⁶⁴ In 1991, the participation rate for the non-racialized group adult population was 78% compared to 70.5 percent of the racialized adult population. The participation gap grew in 1996, with the participation rate for the non-racialized group adult population dropping to 75% compared to 66 percent of the racialized adult population. While the participation rate for the total population improved to 80% in 2001, racialized participation rates lagged at 66%

Racialized Youth and employment discrimination

Racial discrimination is a key determinant of opportunity for racialized youth in the labour market as well. General youth wages are 56.7% of other workers, 15.9% of whom are racialized youth and 41% are Canadian born. Despite higher educational attainment, they experience lower labour participation rates, lower than average incomes, and their unemployment rates are higher than average. This is especially true for black youth with almost twice the unemployment rates of all young workers.

Income inequality

Racialized Canadians in 1996 received pre-tax average earnings of \$19,227, while non-racialized Canadians made \$25,069, or 23% more or \$5,464 - equal to about 6 months rent for average earners. In 1997, the gap grew to 25% or \$6,189 . In 1998, it fell back somewhat to 24% or \$5,650. The median before tax income gap remained statistically stagnant (29% in 1996 and 28% in 1998) and with the government intervention effect, the median after tax income gap grew from 23% to 25%. By 2000 the median after tax income gap was 13.3% and an average after tax income gap of 12.2%. The gap was highest among male youth (average after tax income gap 42.3% and median after tax income gap 38.7%), as well as those with less than high school education (median after tax income gap 20.6%) and those over 65 years (average income gap 28% and median income gap 21%).¹⁶⁵

¹⁶³ Dibbs, Ruth and Leesti, Tracey, "Survey of Labour and Income Dynamics: Visible Minorities and Aboriginal Peoples," Statistics Canada, 1995.

¹⁶⁴ Jennifer Chard, Women in Visible Minorities, in Women in Canada, Statistics Canada, Ottawa, 2000: A gender based statistical report.

¹⁶⁵ Galabuzi, G. Canada's Creeping Economic Apartheid: The economic segregation and social marginalization of racialized groups. (Toronto: CJS Foundation for Research & Education, 2001)

Recent Statistics Canada analyses show that male recent immigrant full time employment earnings fell 7% between 1980 and 2000. This compares with a rise of 7% for Canadian born cohort.¹⁶⁶ Among those with university education the drop was even deeper at 13%. For female recent immigrant full time employment earnings rose but by less than the average full time female earnings. The exposure to low income implications of these trends are alarming.

Labour market segmentation and precarious forms of employment

Racialized group members are over represented in many low paying occupations, with high levels of precariousness while they are under represented in the better paying occupations with more secure jobs. Racialized groups were over-represented in the textile, light manufacturing and service sectors occupations such as sewing machine operators (46%), electronic assemblers (42%), plastics processing (36.8%), labourers in textile processing (40%), taxi and limo drivers (36.6%), weavers and knitters (37.5%), fabrics, fur and leather cutters (40.1%), iron and pressing (40.6%). They were under-represented in senior management (2.0%), professionals (13.8%), supervisors (6.3%), fire-fighters (2.0%), legislators (2.2%)

Precarious employment is generally defined by such conditions as low pay, no job security, poor and often unsafe working conditions, intensified work schedules, excessive hours of work, low or no benefits, and low or no control over work for workers in the workplace. Precarious employment depresses wages in the sectors in which it becomes generalized. Recent immigrant workers, especially women, are disproportionately represented among the occupations and sectors that are highly dependant on precarious work arrangements, such as commercial and retail, hospitality and other service industries, light manufacturing, textile and garment, domestic work), as well as the low-status highly precarious occupations (such as manual, sales, clerical, janitorial, food service, harvesting, low-end health care workers, domestic workers).

Union Density

It is among unionized racialised workers incomes that the wage differential is single digit. In fact, in 1996, the average wages of racialized unionized workers were comparable to those with university degrees, suggesting that unionization is a serious nongovernmental option to deal with the racialized income gap. Yet racialised group members are underrepresented in unionized work. Between 1996 and 2001, the proportion of racialized workers among paid workers rose from 8.4% to 9.3%. Union coverage among racialized workers rose slightly from 19.7% to 21.3%. representing about 6.9% of all unionized workers (up from 5.8% in 1996). However, this is still much lower than the over rate of union density at 32.2% in the Canadian economy.¹⁶⁷

Racialized people experience higher rates of unemployment than the average Canadian and those who are employed earn considerably less on average than the average

¹⁶⁶ Frenette, M & R. Morissette. Will they ever converge? Earnings of immigrants and Canadian-born workers over the last two decades. Statistics Canada (2003). Analytical Studies paper No. 215

¹⁶⁷ Jackson, A. & S. Schetagne. Solidarity for Ever? An Analysis of Changes in Union Density. (Ottawa: Canadian Labour Congress, 2003)

Canadian. These lower employment incomes occur even among those with comparable education levels. The growing labour market segregation means that racialized group members are disproportionately employed in low income and low status jobs compared to the Canadian averages. Because of income constraints, racialized people often face inadequate nutrition, substandard housing, higher unemployment and poverty, along with racial discrimination in accessing services, culturally inappropriate services and service deficits, high school drop out rates and subsequent high health risks including rates of physical, social, mental illness and violence.

These developments have had numerous adverse social impacts, leading to differential life chances for racialized group members such as:

- A double digit racialized income gap
- Higher than average unemployment
- Disproportionate exposure to low income
- Differential access to housing leading to Neighbourhood racial segregation
- Disproportionate contact with the criminal Justice system (criminalization of youth)
- Higher health risks

These are characteristics of a deepening condition of poverty. It is the broader socio-economic processes that both reproduce and explain the emergence of the phenomenon we refer to as the racialization of poverty - whose key indicators include the disproportionate and recurring incidence of low income and racialized spatial concentration of poverty in key neighbourhoods in Canada's urban centres.

The Racialization of Poverty

The racialization of poverty is a process by which poverty becomes more concentrated and reproduced among racialized group members, in some cases inter-generationally. The racialization of poverty emerges out of structural socio-economic features that pre-determine the disproportionate incidence of poverty among racialized group members. What seems to explain these trends are those structural changes in the Canadian economy identified above and the compound impact of these forces which accentuate historical forms of racial discrimination in the Canadian labour market to create a process of social and economic marginalization the result of which is this disproportionate vulnerability to poverty among racialized group communities. Racialized groups are also disproportionately highly immigrant communities (67%) and suffer from the impact of the immigration status. Moreover, current trends indicate that the economic inequality between highly racialized immigrants group and those who are Canadian-born is becoming greater and more permanent. That was not always the case. Infact, traditional trends suggest that immigrants tended to outperform Canadian-born counterparts, over a ten-year period because of their high educational levels and age advantage. Increasingly, racialized people live on the margins of society, surrounded by others in similar circumstances, excluded from the job market and other "avenues of upward mobility." Increasingly they live, in neighbourhoods of deep poverty with high unemployment rates,

significant welfare dependency and high school dropout rates, condition that reproduce poverty.

The racialization of poverty is also linked to the entrenchment of disproportionate privileged access to the economic resources of Canadian society by a minority but powerful segment of the majority population on the other, which also explains the polarizations in income and wealth in the society as a whole. The concentration of economic, social and political power that has emerged as the market has become more prominent in social regulation in Canada explains the growing gap between rich and poor as well as the racialization of that gap (Yalnyzian, 1998; Kunz et al, 2001; Galabuzi, 2001, Dibbs et al, 1995; Jackson, 2001).¹⁶⁸ Racialized community members and aboriginal peoples are twice as likely to be poor than other Canadians because of the intensified economic and social and economic exploitation of these communities whose members have to endure historical racial and gender inequalities accentuated by the restructuring of the Canadian economy and more recently racial profiling. In the midst of the socio-economic crisis that has resulted, the different levels of government have responded by retreating from engagement and abandoning anti-racism programs and policies aimed at removing the barriers to economic equity. The resulting powerlessness, socio-economic marginalization and loss of voice has compounded the groups' inability to put issues social inequality and, particularly the racialization of poverty on the political agenda. They are unable to seek remedy effectively through political representation.

In urban centres like Toronto, Vancouver, Montreal, Calgary where racialized group populations are statistically significant, the cumulative impact of the normalization of racially segmented labour markets, accounting for the income and employment gap between these groups and whites, is not just the racialization of poverty, but combined with other social patterns such as the sustained school drop-out rates, the racialization of penal system and the criminalization of racialized youth, and the racial segregation of urban low income neighbourhoods. These conditions have created a deepening social marginalization such that in a number of low income neighbourhoods in Toronto where racialized group members are disproportionately represented as tenants of poorly maintained public and sub-standard private housing, the process of immiseration, desperation, hopelessness, disempowerment, has degenerated into a level of violence that claimed many young lives and threatens to spiral out of control. These are all signs of what has been referred to as deep poverty (Ley & Smith, 1997).

According to a recent United Way of Greater Toronto report titled *Poverty by Postal Code*, in Toronto in 2001, racialized groups members and immigrants were almost three times as likely to live in poverty whether they are employed or not. About 29.5% of them

¹⁶⁸ Kunz, J.L., Milan, A. & Schetagne, S. Unequal Access: A Canadian Profile of Racial Differences in Education, Employment and Income (Toronto: Canadian Race Relations Foundation, 2000); Dibbs, Ruth and Leesti, Tracey, "Survey of Labour and Income Dynamics: Visible Minorities and Aboriginal Peoples," Statistics Canada, 1995. Galabuzi, G. Canada's Creeping Economic Apartheid: The Economic Segregation and Social Marginalization of Racialized Groups (Toronto: Centre for Social Justice, 2001); Jackson, A. "Poverty and Racism" Perception (Canadian Council on Social Development) 24, 4, 2001; Yalnyzian, A., The Growing Gap: A Report on the Growing Income Inequality Between the Rich and Poor in Canada (Toronto: Centre for Social Justice, 1998).

lived below the poverty line, 24% of immigrants compared to the overall average of 11.6% among non-racialized. The overall Toronto poverty rate at 19% was higher than the Canadian rate at 14.7%. While the poverty rate for non-racialized population fell by 28%, poverty among racialized families rose by 361% between 1980 and 2000.¹⁶⁹

Some of the highest increases in low income rates in Canada have occurred among recent immigrants, 75% of who are racialized group members. Low-income rates rise among successive groups of immigrants almost doubled between 1980 and 1995, peaking at 47% before easing up in the late 1990s. In 1980, 24.6% of immigrants who had arrived during the previous five-year period lived below the poverty line. By 1990, the low-income rate among recent immigrants had increased to 31.3%. It rose further to 47.0% in 1995 but fell back somewhat to 35.8% in 2000. In 1998, the annual wages of racialized immigrants were one-third less those of other (non-racialized) immigrants, partly explaining why the poverty rate for racialized immigrants arriving after 1986 ranged between 36% and 50% (Jackson, 2001). This is happening at a time when average poverty rates have been generally falling in the Canadian population. While low income rates among recent immigrants with less than high school graduation increased by 24% from 1980 to 2000, low income rates increased by 50% among high school graduates and a whopping 66% among university educated immigrants!¹⁷⁰

Recent immigrants rates of employment declined markedly between 1986 and 1996, coinciding with the shift towards racialized immigrant as the predominant source of Canadian immigration. The result is that Canada's immigrants exhibit a higher incidence of poverty and greater dependence on social assistance than their predecessors, in spite of the fact that the percentage of university graduates among them is higher in all categories of immigrants including family class and refugees as well as economic immigrants than it is for the Canadian-born. This deterioration of their socio-economic status has occurred during a period when immigrants have more educational attainment than any of their predecessors. The percentage of recent immigrants with a university degree rose to 34.1 per cent in 2000 from 7.6 per cent in 1980 (CIC, 2002).

Studies show that former waves of immigrants were subject to a short term 'immigration effect' which over time - not longer than 10 years for the unskilled and as low as 2 years for the skilled - they were able to overcome and either catch up to their Canadian born counterparts or even surpass their performance in the economy. Their employment participation rates were as high or higher than the Canadian-born, and their wages and salaries rose gradually to the level of the Canadian-born.

However recent research indicates persistent and growing difficulties in the labour market integration of immigrants, especially recent immigrants. Rates of unemployment and underemployment are increasing for individual immigrants, as are rates of poverty

¹⁶⁹ United Way of Greater Toronto. Poverty by Postal Code: The Geography of Neighbourhood Poverty 1981-2001 (Toronto: UWGT /CCSD, 2004).

¹⁷⁰ Picot, G. & F. Hou. The Rise in Low-Income Rates Among Immigrants in Canada. Statistics Canada (2003).

for immigrant families. So the traditional trajectory that saw immigrants catch up with other Canadians over time seems to have been reversed in the case of racialized immigrants. Of course the irony is that over that period of time, the level of education, usually an indicator of economic success, has been growing.

The experience of poverty has many social implications and impacts on an individual, or family's or group's life chances. Low incomes cut into standard basic needs expenditure budgets, dooming many racialized people to substandard and increasingly segregated housing, poor quality diets, reliance on food banks, used clothing, unstable home life and school drop out – all of which had a direct impact on the dignity of the victims of poverty. Some of the effects identified include learning difficulties for the young, social and psychological pressures within the family, increased mental and other health risks, and an array of symptoms of social exclusion, including increased contact with the criminal justice system and an inability to participate fully in the civic and social life of the community, or to exercise democratic rights such as voting and advocacy.

These impacts on the quality of life and citizenship represent serious harm to the dignity of the individuals or groups victimized by racialized poverty. These impacts are also differential because of the racialized character of poverty.

Young people living in these low income areas often struggle with alienation from their parents and community of origin, and from the broader society. Often the social services they need to cope with dislocation are lacking, the housing on offer is often sub-standard or if it is public housing it is largely poorly maintained because of cutbacks and they face the crises of unemployment, despair and violence. They are more likely to drop out of school and continue the cycle of poverty and because their alienation often translates into anti-social behaviour, they are disproportionate targets of contact with the criminal justice system. According to the Commission on Systemic racism in the Criminal justice System in Ontario (1995), incarceration rates for young blacks rose by 203% between 1986 and 1994. As well, young blacks in Toronto are four times as likely to be the victims of homicide than other Torontonians.¹⁷¹

Homelessness is said to be proliferating among racialized group members because of the incidence of low income and the housing crises in many urban areas (Lee, 2000; Peel, 2000). Homelessness is an extreme form of social exclusion that suggests a complexity of causes and factors. Increasingly, recent immigrants and racialized people are more likely to be homeless in Canada's urban centres than they were ten years ago. It compounds other sources of stresses in their lives. Homelessness has been associated with early mortality, health factors such as substance abuse, mental illness, infectious diseases, and difficulty accessing health services.¹⁷²

¹⁷¹ Gittens, M. & Cole, D. Report of the Ontario Commission on Systemic Racism in the Criminal Justice System (Toronto: Queens Printer, 1995); Gittens, M. & Cole, D., Racism Behind Bars: The Treatment of Black and Racial Minority Prisoners in Ontario Prisons, 1994;

¹⁷² Toronto Mayor's Homelessness Action Task Force Report. Taking Responsibility for Homelessness: An Action Plan for Toronto (City of Toronto, 1999).

Racialization of poverty and health status

“if today’s immigrants have higher rates of illness than the native-born, the increased risk probably results from an interaction between personal vulnerability and resettlement stress, as well as lack of services, rather than from diseases they bring with them to Canada” (Health Canada, 1998).

A study of African Canadian Women and HIV/AIDS done by Women's Health in Women's Hands, respondents said that racist experiences with the health care system was one of the reason African Canadian women reported a reluctance to access the health care system for services like HIV/AIDS treatment, education and care

(Tharoa & Massaquoi, 2001).

"I have to worry about "feeding, clothing, and housing my children. I don't have time to think about AIDS"

African-Canadian woman quoted in the Toronto study cited above

Universal access to health care is now a core Canadian value, espoused broadly by all segments of the political elite as defining Canadian society. But beyond the policy articulation of the universality of coverage, other determinants such as income, gender, race, immigrant status and geography increasingly define the translation of the concept of universality as unequally differentiated. The processes of racialization of poverty affect the health status of racialized and recent immigrant communities. There is a gap between that promise and the reality of unequal access to health service utilization, leading to inequalities in health status arising out of the inequalities in the social determinants of health. It is the gap between the promise of citizenship and the reality of exclusion that represents the extent of social exclusion and the unequal impact on the well-being of members of racialized groups and immigrants in Canada. While there is limited empirical research to draw on, there is significant anecdotal evidence to make the case.

It follows though that given the manifestations of exclusion presented above, based on the social determinants of health perspective - a synthesis of public health and social scientific literature, which suggests that the most important antecedents of human health status are not medical care inputs and health behaviours (smoking, diet, exercise, etc.), but rather social and economic characteristics of individuals and populations - there is significant convergence between the racialization of poverty and diminished racialized health status. The intensified exploitation characterized by demands for longer working hours and low pay, and or multiple part-time jobs, the intensity of work under a deregulated labour market becomes a major source of stress and related health conditions. While empirical research is under-developed, there is significant qualitative evidence, collected from group members, service providers, and some qualitative community based research to suggest that these act as determinants of the health status for socially marginalized groups such as racialized women, youth and men, immigrants and Aboriginal peoples (Agnew, 2002; Tharoa & Massaquoi, 2001).¹⁷³ These conditions

¹⁷³ Agnew, V. 2002. Gender, Migration and Citizenship resources Project: Part II: A literature Review and Bibliography on Health. Toronto: Centre for Feminist Research, York University; Adams, D. Health Issues

contribute to and mediate the experience of inequality into powerlessness, hopelessness, and despair contributing to the emotional and physical health of the members of the groups. These in turn negatively impact attempts by affected individuals, groups and communities to achieve full citizenship because of their inability to claim social and political rights enjoyed by other Canadians - including the right to physical and mental well-being of residents (Canada Health Act, 1984).

Institutionalized racism in the health care system characterized by language barriers, lack of cultural sensitivity, absence of cultural competencies, barriers to access to health service utilization and inadequate funding for community health services has been identified as impacting the health status of racialized group members. Mainstream health care institutions are Eurocentric, imposing a European and white cultural norms as standard and universal and by extension, their cultural hegemony imposes a burden on racialized and immigrant communities. The cumulative burden of the subtle, ordinary by persistent everyday forms of racism, compounded by experiences of marginalization also determines health status. The psychological pressures of daily resisting these and other forms of oppression add up to a complex of factors that undermine the health status of racialized and immigrant group members. They are compounded by the low occupation status, low housing and neighbourhood status, high unemployment, and high levels of poverty. The underdeveloped cultural competencies and racist stereotypes among health practitioners also tend to impact health status negatively.¹⁷⁴

Racism and health

It is generally acknowledged that racism is a key source of stress and hypertension in racialized group communities. Everyday forms of racism, often compounded by sexism and xenophobia, and the related conditions of underemployment, non-recognition of prior accreditation, low standard housing, residence in low income neighbourhoods with significant social deficits, violence against women and other forms of domestic and neighbourhood violence, targeted policing and disproportionate criminalization and incarceration define an existence of those on the margins of society, an existence of social exclusion from the full participation in the social, economic, cultural and political affairs of Canadian society. They are also important socio-economic and psycho-social determinants of health.¹⁷⁵

Racism is a stress generator as are family separation through immigration, the intensification of work, devaluation of one's value and worth through decredentialism,

of Women of Colour. A Cultural Diversity Perspective. (Thousand Oaks, London: Sage Books, 1995); Anderson, J.M. Gender, Race, Poverty, health and Discourses of Health reform in the Context of Globalization: A Post-Colonial Feminist Perspective in Policy Research. *Nursing Inquiry* 7(4) 2000 p220-229; Hyman, I. Immigration and Health. Health Canada. Working Paper No. 01-05. September 2001. (Ottawa: Queens Printer, 2001); Noh, S., M. Beiser, V. Kaspar, F. Hou, & J. Rummens. "Perceived Racial Discrimination, Discrimination, and Coping: A Study of South east Asian Refugees in Canada" *Journal of Health and Social Behaviour* 40, 1999:193-207; Tharoo, E. & N. Massaquoi "Black Women and HIV/AIDS: Contextualizing their realities, their silence and proposing solutions" *Canadian Woman Studies*, Vol. 21, 2, 2001:72-80

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¹⁷⁵ See Galabuzi, G. "Social Exclusion" in Raphael, D (ed) *Social Determinants of Health: Canadian Perspectives* (Toronto: Canadian Scholars Press Inc, 2004: 235-251

and the very experience of inequality and injustice. Stress in turn is a major cause of a variety of health problems. It has been observed that one of the reasons the health status of immigrants declines is because of the experiences of discrimination and racism (Hyman, 2001). State imposed barriers to family reunification through immigration policy that discourage reunification in favour of independent class immigration lead to extended period of family separation. Family separation, and failure to effect reunification robs family members of their support network but also engenders separation anxiety, thoughts of suicide, lack of sufficient support mechanisms and even death.

Racism and discrimination based on immigrant status intensify processes of marginalization and social exclusion, compounding the experiences of poverty and its impacts on mental health status. The every day darts that arise from put downs and diminishing self-esteem tend to undermine the mental health of racialized group members.

Racism and mental health

Many racialized group members and immigrants with mental health issues and mental illnesses identify racism as a critical issue in their lives. The magnitude of the association between these racism and poverty and mental health status was said by low income racialized group community members surveyed as similar to other commonly studied stressful life events such as death of a loved one, divorce or job loss (Healing Journey 1999).

The stigma of mental illness often bars members from seeking treatment, some afraid that that status would compound their marginalization. The Canadian Task force on Mental Health issues Affecting Immigrants identified a mental health gap between immigrants and Canadian born population based on the socio-economic status of immigrants. Concluding that the socio-economic status of immigrants was a determinant of mental health, it called for increased access to mental health services for immigrants, more appropriate culturally sensitive and language specific services to help close the gap. (Beiser, 1988).¹⁷⁶

Reports on HIV/AIDS and racialized groups suggest that discrimination against people with HIV/AIDS is compounded with their racial status. A study by the Alliance for South Asian AIDS Prevention (ASAP, 1999) found that the cultural, religious, language and racial barriers the communities face in accessing health care services led to differential impacted in treatment between the South Asian communities and people from the majority community living with HIV/AIDS. While they had to deal with the cultural stigma imposed on those living with HIV/AIDS in the community, they were also vulnerable to racism and marginalization which led to withdrawal and silencing and higher health risks.¹⁷⁷

¹⁷⁶ Beiser, M. After the Door has been opened. Mental Health Issues Affecting immigrants and Refugees in Canada. Report of the Canadian Taskforce on mental Health Issues Affecting Immigrants and Refugees. (Ottawa: Health and Welfare Canada, 1998)

¹⁷⁷ Alliance for South Asian AIDS Prevention (ASAP), Discrimination & HIV/AIDS in South Asian Communities: Legal, Ethical and Human Rights Challenges, An Ethno-cultural Perspective (Toronto: ASAP/Health Canada, 1999).

Income Transfers

According to the National Council on Welfare, welfare incomes were way below average incomes in all ten provinces in 2004. For single employable persons they ranged from a low of 15 percent of average income in New Brunswick to a high of 37 percent of average income in Newfoundland and Labrador. Rates for single parents on social assistance rate ranged from 26 percent of average income in Alberta to 52 percent in Newfoundland and Labrador. For two-parent families they ranged from 19 percent in Ontario to 32 percent in Prince Edward Island. In every case though, they were below the level of subsistence established by Statistics Canada using the Low Income Cut-off measure.¹⁷⁸

Social and Economic rights – Canada’s international obligations

The Canadian state’s international and domestic human rights obligations include its commitments to respect, protect and promote the human rights of all members of Canadian society, and, in particular, members of the most vulnerable and disadvantaged groups. These rights include political and civil rights, as well as social, economic and cultural rights.¹⁷⁹

While largely de-emphasized in many capitalist countries, social and Economic rights are a category of fundamental human rights guaranteeing social and economic security and dignity. They include rights such as: The right to adequate food, clothing and housing, the right to the highest attainable standard of health, the right to education, the right to social security, the right to freely chosen work, the right to decent working conditions. Social and economic rights are recognized in many international human rights documents, beginning with the Universal Declaration of Human Rights.

Canada has ratified the International Convention on the Elimination of Racial Discrimination (ICERD), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and a number of other treaties. While these covenants and conventions cannot be invoked directly in courts and tribunals, Canada and the provinces have promised to ensure that the rights under these Covenants are protected in domestic law, and that public policy and decision-making will be consistent with these rights.¹⁸⁰

By not addressing poverty, Canadian governments have failed to meet substantive obligations toward vulnerable groups such as racialized groups.

¹⁷⁸ National Council of Welfare. Reports – Welfare Income, 2004. Spring 2005. Revised August 2005. Public Works and Government Services Canada. Volume # 123

¹⁷⁹ United Nations *Universal Declaration of Human Rights* GA Res. 217 (111) UN GAOR, 3d Sess., Supp. No.13, UN Doc. A/810 (1948)

¹⁸⁰ United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, (ICESC); United Nations International Convention on the Elimination of All Forms of Racial Discrimination. Adopted by General Assembly resolution 2106(XX) of December 21, 1965

Recommendations:

The Committee should

Strongly urge Canada to add social and economic rights to the Canada Human Rights Act (CHRA) as well as to provincial human rights legislation, a recommendation endorsed by the Canadian Human Rights Commission and the majority of human rights groups across Canada.

Urge Canada to prevail on the provinces and territories to ensure the rights under the ICERD and other Covenants are protected in domestic law, and to ensure public policy and decision-making will be consistent with these rights.

PART IV Article 7: Education, Culture and Information

Article 7 obliges Canada to 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.

(a) Education in Canada

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 and 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 1996.¹⁸¹ 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 of three persons belong to a racialized or Aboriginal group. In 2002 in Toronto, the number reached 54%. While Canada has yet to produce USA-style ghettos, and barrios, poverty

¹⁸¹ A. Jackson, *Poverty and Racism* 24 Perception 4 (Spring 2001)

in urban Canada is becoming increasingly concentrated in racialized and ever more distressed neighbourhoods.

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 convention article 7.

Ongoing Racism in Education

Schools – elementary, secondary, and post-secondary – are the key institutions of teaching and learning in a society. As stated by antiracism 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.”¹⁸²

Racialized minority and Aboriginal teachers, learners and others continue to find themselves marginalized within this educational system due to its near and 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 Report 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. 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.

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.

¹⁸² XXV Canadian Ethnic Studies 3 (1993) at 49

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 cultures, and its associated foundations of knowledge or ‘truth’, is defined as legitimate and by definition superior to all other ways of seeing and being.¹⁸³ 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.¹⁸⁴ 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 levels than young immigrants to Canada from other racialized groups.¹⁸⁵ With life chances thus circumscribed, learners from some marginalized communities gravitate toward commercial, technical or vocational careers with generally lower income prospects. 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.

¹⁸³ 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

¹⁸⁴ *Ibid.* at 15-17

¹⁸⁵ *Ibid.* at 10

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 of Aboriginal Peoples

As a signatory to the UN convention on genocide in 1949, which forbade “forcible 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 language 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 horrifying 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.

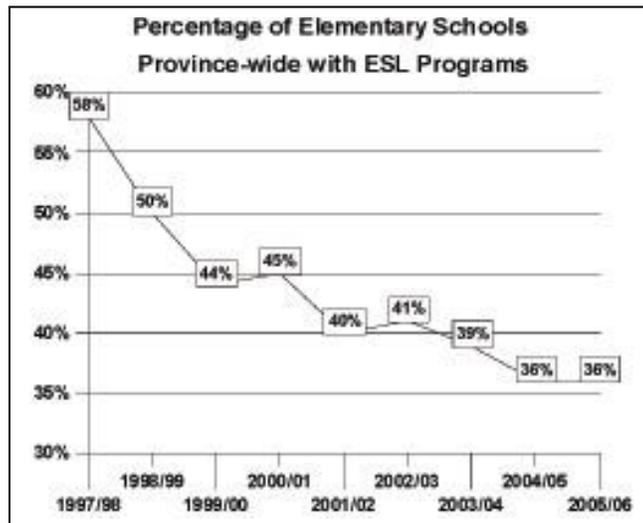
The history of residential schools and other educational policies explains, to some degree, the barriers to formal educational attainment among Aboriginals. Aboriginal children’s rates of poverty in Ontario, for example, at 45.3% as opposed to 22.1% as the provincial average, contribute to dropout rates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

(i) English as a Second Language – Ontario

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 terms of Canada’s obligations under Article 7, following is an examination of English Language Instruction within the province of Ontario.

With Canada’s international image as a nation founded upon and supportive of both bilingualism and multiculturalism, one would envision that our public schools would ensure that they adequately reflect this picture in the services they provide. This would entail fostering and supporting school programs that develop students’ language capabilities, as well as their knowledge of each other’s culture and history. Instead, English as a Second Language (ESL), International Languages and Black Cultural programs have continuously been threatened and undermined by successive provincial governments. The Mike Harris led Progressive Conservative Provincial Government of the mid-1990s implemented a rash of economic and curricula reforms to Ontario’s school system. These reforms included funding reductions and a move towards greater standardization of the curriculum: decisions that have heavily impacted ESL, International Languages and Black Cultural programs. One example of the results of this decision-making can be seen in recent statistics, which show a steady province-wide decrease in the percentages of schools reporting ESL programs from the late-1990s until today.



(People for Education, 2006, p. 1)

What is most troubling about this movement away from support for programs such as ESL is that its development is not reflective of the actual needs of the surrounding community, and is in fact done at the expense of it. The GTA has been one of the areas most adversely affected by program cutbacks as it continues to attract the highest proportion of newcomers of all cities in Canada, and with the majority of newcomers arriving from countries where English is not the first language (People for Education, 2005, p. 8). Approximately 230,000 immigrants arrive in Canada each year and about

75,000 of these newcomers choose to settle in Toronto (Regier, Goosen, DiGiuseppe & Campey, 2005, p. 3). Common sense would thus dictate that there should be a corresponding *increase* in the numbers of ESL programs, ESL teachers and International Languages programs to meet this rising need. Instead the opposite seems to be happening. The percentage of elementary schools in the GTA with a high proportion of ESL students but lacking an ESL teacher has grown from 18% in 1999-2000 to an astonishing 51% in 2005-2006 (People for Education, 2006, p. 3). This continuing trend of a rapidly decreasing pool of ESL teachers in relation to the number of ESL students creates a massively overburdened and ineffective system that is putting at risk the futures of students.

However, the neglect of ESL and other programs has not only been confined to the Harris era of provincial leadership. Since the election of Dalton McGuinty's Liberal government in 2003 there have been few inroads made to address the downward spiral of support for certain programs in Toronto. A recent survey of Toronto areas teachers displays opinions that emphasize concerns about the sorry state of Toronto's school system:

- Only 12% of teachers agree that provision of ESL/ELD programs has gotten better, whereas 31% say that it has gotten worse since the election of Dalton McGuinty's government.
- 74% of ESL teachers answered 'Yes' when asked, "Are there students in your school who need ESL/ELD services but are receiving no or inadequate ELD services?"
- 45% of teachers feel that Toronto's schools are doing a poor job "when it comes to providing ESL/ELD teaching and supports for students who need them."

(Elementary Teachers of Toronto, 2006, p. 2)

ESL, International Languages and Black Cultural programs all suffer from a chronic lack of support by the government and school boards which, in turn, highlights which programs are deemed less relevant or essential by the school board when balancing their budgets. Though funding for ESL has increased in the past few years, very little of that money actually makes it through to provide students with English education. This is due to a loophole in the system that does not tie government funding of ESL to the actual delivery of ESL services. Instead, it is at the discretion of the school boards as to how they use money earmarked for ESL (Auditor General of Ontario, 2005, p. 149). The effects of this discretion have meant that less than half the money that the TDSB receives to provide students with ESL education is actually used for this purpose. The Toronto District School Board will receive over \$80 million from the provinces for ESP Programs in 2005-2006. Financial reports show that the Board will only spend approximately \$35 million of that money on ESL. (People for Education, 2006, p. 3). The remaining money is used to cover expenses not directly related to ESL programs such as teacher salaries, utilities and general classroom costs. School boards are thus balancing their budgets at the expense of ESL students and programs. The consequences of running a program that

is essential for many students across Toronto with less than half of the money that is required obviously has a huge detrimental impact upon the quality of the education they are receiving. As recently as February 2006 Premier McGuinty announced a \$64 million increase in funding for ESL programs in Ontario, yet unless this money is actually tied to ESL services it remains uncertain as to how much of this amount will actually benefit ESL students. The Auditor General of Ontario addressed this funding dilemma among many other recommendations to the Ministry of Education concerning ESL in its 2005 Annual Report.

Deficiencies in ESL funding are further compounded by issues surrounding the length of time, and for whom, ESL education is provided. Even though there is evidence that ESL students need a minimum of 5 to 7 years to acquire the English skills needed to succeed in high school, Ontario has only recently upped its funding to cover four years – still below what is needed (Duffy, 2004, p. 2). Also, the rules governing who is eligible for ESL in the first place excludes many students that still require its assistance. The funding is limited to students who have entered Canada during the last four years and were born in a country where English is not a first or standard language (Ministry of Education, 2006, p. 38). But this criteria excludes students:

- Who enter Canada from an English-speaking country but cannot speak English.
- Who are born in Canada but cannot speak English.
- Who take longer than four years to learn the language.

By not being open to include students from the abovementioned categories in ESL education, we are risking their opportunities to attend or graduate from high school.

In addition, these funding issues have been complicated by the standardization of curriculum, which further exasperates the quality of education an ESL student can expect to receive. With the provision of fewer ESL classes across the city students are instead forced to attend regular classes, led by teachers who have little or no experience in ESL instruction. In the state of California similar concerns regarding ESL students have been dealt with by making it so that a teacher cannot be hired without ESL certification (Meyers, 2004, p.12). This stands in stark contrast to the situation in Ontario where there is still no mandatory teacher education for ESL, and only 5% of the 1,300 graduating students from the University of Toronto's OISE will take the ESL elective in any given year (People for Education, 2005, p. 12). This is obviously highly problematic when a majority Toronto's schools have ESL students in attendance.

Unfortunately, the TDSB does not track its ESL students to determine their graduation rates, but an independent study of a Calgary high school during the early to mid-1990s does provide us with some alarming insights:

- The overall dropout rate of 74% among ESL students was two-and-a-half times that of the general student population.
- ESL students who arrived as beginners in English were the most likely (93%) to drop out. (Duffy, 2004, p. 4)

With similar results likely to be found in Toronto area high schools there is good reason to be concerned by the lack of adequate funding directed to the provision of ESL services and education and oversights in teacher training.

While resources for ESL are used on other “priorities” the Black Cultural Program is constantly at risk of disappearing altogether. The classes are designed to introduce elementary school students to the history, culture and the role of Black people throughout Canada and around the world. This education is seen as essential by many as a means of keeping black youth in the school system, and also allowing students to access information that is otherwise absent from the school curriculum. Though the program has been around for 29 years, and currently has 30 classes located within 13 elementary schools, it receives no funding whatsoever from the provincial government. Instead, the TDSB is forced to find other sources from its own budget to finance the program. Without essential provincial funding the Black Cultural Program is continually in jeopardy of being eliminated from the school day.

Likewise, the International Languages program has also recently been threatened by school boards looking for new places to save money. It is a provincially approved program that provides students with the opportunity to learn a third language (other than English and French) or develop one that they have been introduced to at home. In the Ministry of Education’s own words, courses in international languages are important because they:

...help students to develop the skills they will need to communicate effectively with people from other countries, and increase their understanding and appreciation of diverse cultures. At the same time, these courses improve students’ skills in the English language.(2000, p. 3).

While the Ministry’s language appears to stress the importance of this program there still remains ways in which the courses can be undermined. Generally, there is a lack of data available from the school boards investigating the impact of International Languages and Black Cultural Programs upon elementary students’ academic development. The lack of research can, in turn, be attributed school boards focusing their attention upon other priorities in the school system. Presently, the International Languages and Black Cultural Programs serve 13,000 students and have been available as courses that are integrated within the school day. Despite the existence of strong community support for both these programs there is a constant risk that they will be dropped from the curriculum.

As recently as February 2006 the TDSB challenged the continuance and impact of the International Languages program and Black Cultural Program by polling parents to see if the board should keep offering them as part of the school day, or whether the programs should be moved out of the school day and only offered for a fee after school and on Saturdays – something that would tend to marginalize the courses and reduce the number of students that attend or have access to them. The manner in which polling was conducted was problematic in itself, being that a certain number of parents had to

respond favorably, rather than negatively, for the programs to continue. In addition, the possible removal of the International Languages and Black Cultural Programs from the curriculum would seem to contradict the TDSB's own language which stresses the important role that both of these programs can play in the development of student's skills. As schools across Toronto continue to develop a more international student population common sense would dictate that there should be an increasing amount of international language instruction to respond to their educational needs. Likewise, as continuing research uncovers mounting evidence that African-Canadian youth are disproportionately left-behind in the school system there should be greater attempts to support programs that minimize this marginalization. In light of these issues it would seem prudent for the TSDB to look at more ways of integrating these programs into the school day, and not the reverse.

A central concern in the debate surrounding ESL, International Languages and Black Cultural Programs is why these programs are repeatedly singled-out during budgetary considerations. The people most directly affected by changes to the abovementioned programs are newcomer families and racialized communities. Generally, these are also the same people that have the hardest time having their voices heard and lobbying for change due to systemic barriers, language issues and their marginalized position. Thus, school boards have an opportunity to cut these programs with relative impunity, whereas cuts to programs such as French immersion might risk greater public awareness and criticism (Duffy, 2004, p. 3). In light of this reality it is pertinent for community members to remain aware of this decision making process and how it can exclude, both certain programs from the curriculum, and certain students from the educational system. Unfortunately, until more educators and administrators grasp the critical role ESL, International Languages and Black Cultural Programs play in the development of students' opportunities these programs are likely to remain in jeopardy.

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Recommendations:

The Committee should:

Request Canada to ensure amendments to the Anti-Terrorism Act and Immigration and Refugee Protection Act as such provisions have led to racial discrimination and systemic breaches of human rights of Muslims, including Muslim men from Asian and African countries and Arabs in Canada.

Request Canada to stop the deportation of persons to countries where they face a reasonable likelihood of torture and death.

Request Canada to establish resource for programs and activities that ensure the promotion of hate through the use of telephones, the internet or other means of communication is stopped.

Condemn Canada for not implementing special and concrete measures to ensure that Aboriginal peoples have full and equal enjoyment of human rights and fundamental freedom; and for ignoring and normalizing evidence that Aboriginal basic human and civil rights are being violated.

Condemn racial profiling of Aboriginal Peoples, Muslims and Arabs and People of African descent.

Request Canada to adopt measures to stop racial profiling within the justice system, the education system, law enforcement and health.

Urge Canada to continue working with community groups to find lasting solutions to the problem of overrepresentation of Aboriginal Peoples, people of African and Asian descent in custody.

PART V: SUMMARY OF RECOMMENDATIONS

- 1. The Committee should Request Canada to ensure amendments to the Anti-Terrorism Act and Immigration and Refugee Protection Act as such provisions have led to racial discrimination and systemic breaches of human rights of Muslims, including Muslim men from Asian and African countries and Arabs in Canada.**
- 2. The Committee should urge Canada to stop the deportation of persons to countries where they face a reasonable likelihood of torture and death.**
- 3. The Committee should request Canada to resource Non Profit Community Organizations programs and activities that ensure the promotion of hate through the use of telephones, the internet or other means of communication is stopped.**
- 4. The Committee should urge Canada prevails on all provinces and territories to end the practice of racial profiling.**
- 5. The Committee should request Canada to provide periodic specific and detailed reports on measures it has taken to address racial profiling and Canada should look into the deeper more systemic forms of discrimination and racial profiling.**
- 6. The Committee should urge Canada to prevail over the Canadian Radio and Television and Telecommunications Corporation to ensure mechanisms to address the unfavourable portrayal of racialized communities and the deleterious effects of racism in Canadian media are advanced.**
- 7. The Committee should request Canada to resource the development of tools to examine and address the legacy of the Transatlantic Slave Trade on Canadian society to enable comprehensive approaches and strategies that address racism and racial discrimination.**
- 8. The Committee should request Canada to adhere to the requirements in the declarations of the United Nations Educational, Scientific and Cultural Organization that declared the Slave Trade “a crime against humanity” and that August 23 be observed as the day of remembrance of the Transatlantic Slave Trade.**
- 9. The Committee should request Canada to condemn the practice of imprisonment without due process of individuals apprehended under the Anti-Terrorism provisions and Immigration and Refugee Protection Act**
- 10. The Committee should urge the government of Canada to stop the practice of racial profiling through the interpretation and implementation of the Anti-Terrorism provisions, which permit the imprisonment of non Canadian citizens.**

- 11. The Committee should urge Canada to prevail over provincial and territories to develop measures that decrease the overrepresentation of Aboriginal Peoples and People of African and Asian descent in custody.**
- 12. The Committee should urge Canada to sustain the Department of Justice working relationship with affected communities on initiatives and to find lasting solutions that address the overrepresentation of Aboriginal Peoples, People of African and Asian descent in the justice system.**
- 13. The Committee should condemn Canada for not implementing special and concrete measures to ensure that Aboriginal peoples have full and equal enjoyment of human rights and fundamental freedom; and for ignoring and normalizing evidence that Aboriginal basic human and civil rights are being violated.**
- 14. The Committee should recommend that Canada be urged to redress all head tax families including those where the head tax payer and spouse have both passed away.**
- 15. The Committee should strongly condemn Canada for dismantling of the Court Challenges Program of Canada.**
- 16. The Committee should urge Canada to immediately reinstate funding for the Court Challenges Program of Canada.**
- 17. The Committee should re-emphasize Canada's responsibility to ensure the equality of historically disadvantaged and marginalized groups and language rights in Canada's official languages.**
- 18. The Committee should request Canada to provide in its next periodic report specific measures it has taken to reinstate the Court Challenges Program of Canada.**
- 19. The Committee should urge Canada to reinstate national standards to show a unified commitment to eliminate racial discrimination in policies, social, economic and cultural aspects of life by investing in social programs that will benefit racialized and immigrant women.**
- 20. The Committee should urge Canadian federal, provincial and territorial governments to consult with nongovernmental organizations representing women and other groups affected by racialized systemic discrimination in Canada in order to develop strategies and implement mechanisms for monitoring fulfillment with equality and socio-economic and political rights to ensure that laws, policies and decisions regarding resource allocation and resource-sharing among jurisdictions, contribute to the progressive realization of Covenant rights.**

- 21. The Committee should strongly urge Canada to immediately restore the operating capacity to Status of Women Canada; and terms and conditions to receive grants through the Women's Program prior to recent federal budget.**
- 22. The Committee should request that Canada facilitate a public review of the obstacles and challenges to women's substantive equality in Canada to determine future funding to Status of Women and changes required in other areas of the government.**
- 23. The Committee should urge the Canadian federal government to work with all levels of government in Canada as well as women's equality seeking organizations to carry out a thorough study of the nature and scope of violence against women in Canada and develop a comprehensive plan of action to address the violence.**
- 24. The Committee should urge Canada to prevail on all provinces and territories to implement measures that will seek to eliminate the high levels of poverty among particular groups of women, Aboriginal women, visible minority and immigrant women and women with disabilities, seniors, and lone parents.**
- 25. The Committee should urge Canada to work with community groups to find lasting solution to the problem of racial and gendered discrimination in the labour market, and to develop enhanced strategies for eliminating its effects.**
- 26. The Committee should urge Canada to improve the standard of living by providing a guaranteed livable income through a raise to minimum wages, and improve the access of women to unionization, benefits and job security.**
- 27. The Committee should urge Canada revoke the "live-in" requirement in the Live-In Caregiver Program and to provide permanent resident status for all domestic workers.**
- 28. The Committee should urge Canada to increase the funds in the Canada Social Transfer to the provinces and territories that support post-secondary education, social assistance, legal aid, and other social services of particular importance to all women.**
- 29. The Committee should urge Canada to provide core funding and adequate resources to front line anti-violence services, shelters and transition houses. Standards attached to the Canada Social Transfer should ensure that core funds are provided to support these services.**
- 30. The Committee should request the Canadian federal government and the provinces preserve and build on childcare agreements so that a national**

childcare system, providing an accessible and affordable, quality child-development-based care.

31. The Committee should urge Canada to implement laws requiring public and private sector employers to pay women equal pay for work of equal value.
 32. The Committee should urge Canada to revise the EI eligibility rules and benefit levels to ensure that unemployed workers are adequately assisted, and that rules do not discriminate against women.
 33. The Committee should strongly urge Canada to add social and economic rights to the Canada Human Rights Act (CHRA) as well as to provincial human rights legislation, a recommendation endorsed by the Canadian Human Rights Commission and the majority of human rights groups across Canada.
 34. The Committee should request Canada to ensure amendments to the Anti-Terrorism Act and Immigration and Refugee Protection Act as such provisions have led to racial discrimination and systemic breaches of human rights of Muslims, including Muslim men from Asian and African countries and Arabs in Canada.
 35. The Committee should request Canada to stop the deportation of persons to countries where they face a reasonable likelihood of torture and death.
 36. The Committee should request Canada to establish resource for programs and activities that ensure the promotion of hate through the use of telephones, the internet or other means of communication is stopped.
 37. The Committee should condemn Canada for not implementing special and concrete measures to ensure that Aboriginal peoples have full and equal enjoyment of human rights and fundamental freedom; and for ignoring and normalizing evidence that Aboriginal basic human and civil rights are being violated.
 38. The Committee should condemn racial profiling of Aboriginal Peoples, Muslims and Arabs and People of African descent.
 39. The Committee should request Canada to adopt measures to stop racial profiling within the justice system, the education system, law enforcement and health.
 40. The Committee should urge Canada to continue working with community groups to find lasting solutions to the problem of overrepresentation of Aboriginal Peoples, people of African and Asian descent in custody.
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