

**A JOINT REPORT BY THE ONTARIO COUNCIL OF AGENCIES SERVING
IMMIGRANTS, THE METRO TORONTO CHINESE & SOUTHEAST ASIAN LEGAL
CLINIC AND THE SOUTH ASIAN LEGAL CLINIC OF ONTARIO**

**ON THE STATUS OF COMPLIANCE BY THE CANADIAN GOVERNMENT WITH
RESPECT TO THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF
ALL FORMS OF RACIAL DISCRIMINATION**

A Community Response to the Seventeenth and Eighteenth Reports of Canada

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Introduction

About OCASI

The Ontario Council of Agencies Serving Immigrants (OCASI) is a council of autonomous community-based, non-profit, immigrant and refugee serving agencies in Ontario. It is the umbrella organization for the immigrant and refugee serving sector in this province.

OCASI was formed in 1978 to act as a collective voice for immigrant serving agencies and to coordinate responses to shared needs and concerns. It is a registered charity governed by a volunteer board of directors, and has more than 180 member organizations across the province of Ontario.

OCASI's mission is to achieve equality, access and full participation for immigrants and refugees in every aspect of Canadian life. OCASI asserts the right of all persons to participate fully and equitably in the social, cultural, political, and economic life of Ontario.

A key aspect of the Council's work is analysis and commentary on the impact of legislation, public policy and practice on immigrant, refugee and racialized communities, especially as it impacts on human rights and access and equity. This work is informed by the experience of OCASI member organizations and the communities that they serve. Specifically, OCASI has monitored the impact of immigration legislation and policy, security legislation, policy and practice, economic experience, access to justice, the situation of people with less than full immigration status in Canada, and the experience of women.

In recent years, OCASI's work has been dominated by the experience of exclusion, marginalization and discrimination experienced by immigrants, refugees and racialized communities in the wake of post 9/11 security measures, the rising poverty of these communities, and the growing numbers of people without full immigration status.

About MTCSALC

The Metro Toronto Chinese & Southeast Asian Legal Clinic (MTCSALC) is a community-based, non-profit organization, which is mandated to provide free legal services to low income members of Toronto's Chinese and Southeast Asian communities.

Established in 1987, MTCSALC has provided services to tens of thousands of low-income individuals and families from these communities. Apart from providing direct legal services, we also engage in public education in order to help build knowledge among members of our community in order to empower them to protect their own rights. Moreover, we undertake law reform activities to further the rights of immigrants, refugees and racialized communities in general.

On a day-to-day basis, our Clinic serves clients who face multiple problems in their lives because of economic, political and social barriers, such as: lack of job security, exploitation and discrimination at the workplace, domestic violence, lack of access to affordable housing, and

much more. They are our daily reminder of the very real inequities that exist in the socio-economic system in one of the richest countries in the world. Some of our clients are highly educated immigrants who, due to racism and other systemic barriers, are unable to practise in the profession that they are trained, and are stuck in low-wage, dead-end jobs with no future. Others are immigrant parents who are struggling just to provide for the basic needs for themselves and their children.

For close to two decades, MTCSALC has been an advocate for many immigrant workers and workers from racialized communities who find themselves ghettoized in low-wage, non-unionized jobs, and who face exploitation by employers who have little regard for their rights. These are also the workers who, when times get tough, find themselves falling through the cracks of the social safety net that is supposedly built to catch those who are destitute.

As a founding member of the National Anti-Racism Council of Canada (NARCC), MTCSALC helped put together a shadow report by NARCC to this Committee in response to the Government of Canada's 13th and 14th, as well as 15th and 16th reports to the CERD Committee. Representatives of MTCSALC attended the Committee meeting in 2002 and met with the Committee members prior to Canada's report to the Committee.

In 2003, representatives of MTCSALC met with Mr. Dou Dou Diene, UN Special Rapporteur on Racial Discrimination during his visit to Canada. Mr. Diene's report made specific reference to the recommendations made by our Clinic.

In addition, over the last five years, MTCSALC has also been active in the STATUS Campaign, the campaign for regularization of all non-status immigrants living in Canada, many of whom contribute to the economic development of our country without receiving any benefits in return.

About SALCO

The South Asian Legal Clinic of Ontario (SALCO) functions as a legal clinic specializing in poverty law, with an emphasis on immigration, refugee and human rights related matters. SALCO's experience of delivering services to the South Asian community reflects clearly that for vulnerable South Asians, poverty law is not just about income supports and shelter but rather an intersection of issues including immigration and/or refugee status, unstable work, family matters, gender issues, and the erosion of civil liberties. Many of these issues are unique to South Asians and are best addressed by an agency focused on the particular needs of the community.

Socially aware South Asian lawyers and activists ran SALCO as a volunteer clinic from 1999 to 2001. From 2001 onwards, it began receiving sporadic project funding from Legal Aid Ontario to hire a lawyer and a community legal worker to provide services to the community.

SALCO also provides services through a pro bono project funded by the Law Foundation of Ontario. In the 2005-2006 year of this project, SALCO held 30 public legal education seminars and staff training serving approximately 549 clients and conducted 382 client intakes and referrals.

Legal Aid Ontario's evaluation of SALCO in 2005 showed that the clinic had tremendous benefits for the community, even with extremely limited resources. In 18 months between 2004-2006, the clinic helped 63,355 South Asians in Ontario and served a total of 3,355 clients in-person through referrals, providing legal information/advice and brief services, representing clients, providing drop-in legal clinics, and providing public legal education.

Funding for the South Asian Legal Clinic of Ontario (SALCO) comes to an end in September 2007. After September 2007, the fastest growing community in the GTA – the South Asian community – will be denied access to legal services that are affordable and that meet the community's needs in a linguistically and culturally sensitive manner. The Ontario government refuses to make a commitment to our community in the shape of a fully funded and permanent legal clinic. While the government rightly made such commitments to Aboriginal, Francophone, African Canadian, Chinese and Spanish-speaking Ontarians, it has decided not to extend the same right to South Asian Ontarians.

About the Report

OCASI, MTCSALC and SALCO are submitting this joint report to the UN Committee on the International Convention on the Elimination of All Forms of Racial Discrimination (the "CERD Committee") to present the perspectives from the Chinese, South Asian and other immigrant communities in Ontario regarding the state of racism in Canada.

The report will focus on some key measures adopted by the Government of Canada and the Government of Ontario to combat racism.

We hope to provide the Committee with some information that is otherwise not included in the Government's report.

Chapter I: Human Rights

Introduction

In its 2002 report to the CERD Committee¹, NARCC had this to say about the human rights protection system in Canada:

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

On paper, Canada has a well-established human rights protection system. Our Constitution contains a Charter of Rights and Freedoms (the "Charter"), which, among other things, grants every individual in Canada equal protection and equal benefit before and under the law.² The Canadian Charter applies to all laws and government actions. Apart from the Charter, individual victims of discrimination could also seek protection and redress under federal and provincial human rights laws.

....

[I]t is our position that the human rights system in Canada is both ineffective and inadequate. The system itself in fact has become, in some instances, a barrier for people facing racial discrimination and other forms of discrimination to access justice.

.....

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

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

¹ National Anti-Racism Council of Canada, *Racial Discrimination in Canada – The Status of Compliance by the Canadian Government with the International Convention on the Elimination of All Forms of Racial Discrimination*, Toronto: July 2002, at p.6-7

²Section 15 of the *Canadian Charter of Rights & Freedoms, The Constitution Act, 1982*

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

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

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

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

Unfortunately, these comments still ring true five years after the last report submitted by the Canadian Government. The Government of Canada has taken no initiatives to implement any of the recommendations put forward by Justice La Forest who conducted a comprehensive review of the Canadian Human Rights system and produced a comprehensive report in 2000 entitled “Promoting Equality”. Nor has the Government of Canada committed to substantially increase funding to enable the human rights system to adequately handle its burdensome caseload.

More disturbingly, in some respects, the situation in Canada has become worse.

Cancellation of the Court Challenges Program

Canadians may well enjoy constitutionally entrenched Charter rights, but launching a Charter challenge to enforce such rights is a luxury that few people could afford. Among the least able to do so are the racialized communities.

As of September 25, 2006, the ability of members of these communities to launch Charter challenge has been undercut even further. On that day, the Government of Canada killed the **one** program that supports disadvantaged groups in their fight for equality.

The Court Challenges Program has, since 1989, been the key source of support for equity seeking groups who dare to challenge the Canadian Government for discriminating against the most vulnerable in our society. The Program made it possible for immigrants and refugees, racialized communities, women, people with disability, gays and lesbians, and others from marginalized communities, to not only read about their rights on paper, but to take action to enforce them.

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

The Government of Canada, by its own admission, particularly when it is appearing before the various UN treaty bodies, including the CERD Committee, has often referred to the Court Challenges Program to demonstrate how advanced the human rights protection system is in Canada, and how committed that the Government of Canada is to the fundamental principles and values enshrined in the Charter.

This is evidenced also in the Government's 17th and 18th report where the Government once again listed the Court Challenges Program as a shining example of measures taken by Canada to provide "effective protection and remedies" for victims of racial discrimination.⁵

Yet the Government of Canada decided to eliminate all funding to the Court Challenges Program, because in the words of the Chair of the Treasury Board, it does not make sense for the Government to subsidize lawyers to challenge the Government's own laws in court. If minority groups had problems enforcing their Charter rights before September 25, 2006, the difficulties they are going to face will be that much greater after that fateful date.

In cancelling the Court Challenges Program, the Government of Canada has thus violated Article 6 of ICERD, which provides:

Article 6

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

Cancellation of the Law Commission of Canada

On the very same day that the Government of Canada announced its cancellation of the Court Challenges Program, it also announced that it would cancel all funding to the Law Commission of Canada.

The Commission has gone through a number of changes as successive governments in power try to curtail the influence of an agency that has dedicated itself to conducting high quality legal research on how the law should best be used as a means for social change. At the time of its cancellation, the Commission was looking at such issues as the changing workplace and its impact on vulnerable workers (including immigrant and racialized workers) and the impact of globalization on domestic laws. By cutting all funding to the Commission, the Government of Canada has thus eliminated an important tool for many non-governmental organizations in the social justice movement to engage in proactive measures to address racism and other forms of

⁵ International Convention on the Elimination of All Forms of Racial Discrimination – Seventeenth and Eighteenth Reports of Canada, at p.21

discrimination. This decision of the Government of Canada is inconsistent with Article 2(1)(c) of the ICERD, which states:

Article 2

1. *States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and to this end:*
- (c) *Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;*

Redress and Reparation

On a more positive note, we want to acknowledge the efforts by the Canadian Government to address a long standing issue facing the Chinese Canadian community, namely, Redress for the Chinese Head Tax and Exclusion Act. We command the Government of Canada to have finally agreed to provide an apology to the community for the historical injustice, and to provide financial redress for the few surviving head tax payers and widows. It has taken the Government of Canada 20 years to resolve this issue, and many head tax payers and widows had passed on without ever seeing justice done.

We urge the Committee to call on the Government of Canada to continue its consultations with the Chinese Canadian community and other communities who have suffered historical injustices with a view to developing community based projects to educate all Canadians about the history of Canada and to address contemporary forms of racism facing these communities.

Chapter II: Employment and Poverty

Racialization of Poverty

The growing social exclusion of racialized group members in Canada and their racialization, has led to many different undesirable individual and societal consequences, including the troubling phenomenon of what some social scientists have described as the **racialization of poverty**. In essence, while the gap between the rich and poor in Canada is generally widening, certain racialized groups are feeling the impact of this growing gulf much more profoundly. In the Toronto, the largest city in Canada, racialized group members are three times as likely to live in poverty as non-racialized groups. In addition among the largely “communities of colour” immigrant population, the fact that recent newcomers generally have higher levels of formal education than their predecessors has not relieved them from being adversely impacted by this stark socio-economic reality.

Statistics Canada reported in January 2007 that the increase in low income was concentrated among immigrants that had been in the country for only one or two years, and that nearly a fifth of recent immigrants were chronically low-income. (Analysis of data from 1992 to 2004). For the purposes of the report, “chronic” low income was defined as being in low income at least four of the first five years in Canada⁶. The report also found that “*overall, the large increase in educational attainment of new immigrants, and the shift to the skilled class immigrant, had only a small impact on their likelihood of being in low income*” and that “*Overall, the large rise in educational attainment of entering immigrants and the shift to the skilled class immigrant had only a very small effect on poverty outcomes as measured by the probability of entry, exit and chronic rates.*”⁷

In 2002, low-income rates among immigrants during their first full year in Canada were 3.5 times higher than those of Canadian-born people. By 2004, they had edged down to 3.2 times higher.

A number of research efforts and projects have been conducted with respect to these issues and the results have been clear and consistent. One such study was the landmark report prepared by Prof. Michael Ornstein for the City of Toronto in 2000.⁸ Based on an analysis of the 1996 Census data, Professor Ornstein gave detailed descriptions of the socio-economic situations of 89 ethno-racial groups with at least 2,500 members in the City of Toronto, and the results were more than disturbing. Ornstein’s Report found a large gap between the European ethno-racial groups and all other ethno-racial groups. Combining all the non-European groups, the family poverty rate is 34.3%, more than twice the figure for the Europeans and Canadians. Non-European families make up 36.9% of all families in Toronto, but account for 58.9% of all poor families. For families from East and South-East Asia and the Pacific, the *least* disadvantaged non-European region, the incidence of poverty is still *twice* as high as for European families. For Latin American ethno-racial groups the incidence of family poverty is 41.4%, for Africans,

⁶ Statistics Canada. *Chronic low income and low-income dynamics among recent immigrants*. Ottawa: January 2007

⁷ Ibid.

⁸ Ornstein, M. *Ethno-Racial Inequality in the City of Toronto: An Analysis of the 1996 Census*, Toronto: May 2000

Blacks and Caribbean Canadians it is 44.6% and for Arabs and West Asians it is 45.2% - all roughly *three* times the European average. The figure for South Asians, at 34.6%, is also very high.

Prof. Ornstein's updated study (again commissioned by the City of Toronto) in which he analyzed data from the 2001 Census generated very similar findings and trends.

In the words of Prof. Grace-Edward Galabuzi of Ryerson University, we have effectively created an "economic apartheid" in Canada⁹, and the trend will continue until and unless action is taken to address & redress the underlying systemic inequity.

A sampling of additional recent studies and relevant reports include – *Poverty By Postal Code: The Geography of Neighbourhood Poverty (2004)* and *A Decade of Decline – Poverty & Income Inequality in the City of Toronto in the 1990's (2002)* – United Way of Greater Toronto & the Canadian Council on Social Development, *Unequal Access: A Canadian Profile of Racial Differences in Education, Employment and Income* (by Jean L. Kunz et al) – Canadian Council on Social Development (2000), *Canada's Creeping Economic Apartheid : The Economic Segregation and Social Marginalization of Racialized Groups* (Grace-Edward Galabuzi) – Centre for Social Justice (2001) and *Is Work Working for Workers of Colour?* (by Andrew Jackson) – Canadian Labour Congress Research Paper No. 18 (2002).

The increasing racialization of all the major social and economic indicators and the impact of the growing racialization of poverty can be gleaned not only from the statistics on income and wealth, but also from any one of a number of different measures – as examples, the increasing rate of incidence and racialization of gun violence, differentials with respect to health status and learning outcomes (eg. higher drop-out rates among racialized school learners), and the re-emergence of racialized residential enclaves. All of these are by-products of the growing socio-economic exclusion of racialized groups from the so-called mainstream of society. (See Appendix A for further detailed information).

By failing to address the reality of poverty and its impact on racialized communities, the Government of Canada has failed to fulfill its obligations under Article 2(1)(c) of ICERD and Article 2(1) which states:

Article 2

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

⁹ Galabuzi, G. *Canada's Economic Apartheid – The Social Exclusion of Racialized Groups in the New Century*. Toronto: Canadian Scholars' Press, 2006

As well, Article 3 provides:

Article 3

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

Accreditation of Internationally Trained Professionals

In the 2002 report to the CERD Committee¹⁰ NARCC made the following observation about accreditation of internationally trained professionals:

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

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

In fact these realities have not changed sufficiently to address the systemic discrimination against internationally trained professionals. It must be noted however that the Province of Ontario enacted *Fair Access to Regulated Professions Act*¹¹ in December 2006 to require 34 regulated professions in Ontario to have a licensing process that has fair, open and timely assessment of credentials of foreign trained professionals. The Act also establishes the Office of the Fairness Commissioner who would be responsible for assessing registration and licensing practices, and ensure compliance.

It is too early at this point to determine whether this new legislation would be effective in combating the systemic discrimination faced by internationally trained professionals in Ontario. At the time of writing this report, the Fairness Commissioner named in the Act has yet to be appointed. In the interim, the only recourse available to internationally trained professionals is to take an accreditation body to court.

¹⁰ National Anti-Racism Council of Canada, *Racial Discrimination in Canada – The Status of Compliance by the Canadian Government with the International Convention on the Elimination of All Forms of Racial Discrimination*, Toronto: July 2002, at p.22

¹¹ Ontario Legislative Assembly: *An Act to provide for fair registration practices in Ontario's regulated professions*, Bill 124 42, 38th Legislature, 2nd Session, 2006. [Toronto]: The Assembly, 2006. (Assented to Dec. 20, 2006)

In January 2007, the Superior Court of Ontario ruled that Ontario College of Teachers must reconsider the accreditation application of Fatima Siadat, a teacher from Iran. The judgement handed down after a 13-year legal battle said that the application should be reconsidered despite the regulatory body twice deeming Ms. Siadat's few documents insufficient, and denying her the chance to teach in the province.¹²

The Ontario College of Teachers is now in the process of attempting to comply with the judgement, through considering alternate means of establishing Ms. Siadat's teaching credentials from Iran, something that she had requested repeatedly of the College. This decision was won as a result of Ms. Siadat's sheer persistence in maintaining a 13-year struggle. Access to an equitable, fair and transparent process should not have to be attained through individual court cases.

There is currently no equivalent legislation in other Canadian provinces that mandate a fair, open and transparent accreditation process. Its lack continues to be a serious issue.

Fairness legislation attempts to address only one component of the systemic barriers that internationally trained professionals face in obtaining accreditation and then going on to obtain employment in one's field of training and expertise.

The Association of International Physicians and Surgeons of Ontario (AIPSO) has this to say about the additional barriers that internationally trained medical doctors experience:

Licensure for International Medical Graduates (IMGs) in Ontario has some elements which make it unique among regulated professions. Because health care delivery and funding for the training of physicians is publicly funded, funding of undergraduate and post graduate training of physicians is used as a lever to manage physician supply in the province. This has a direct impact on IMGs seeking licensure to practice in Ontario. As the licensure system for IMGs in Ontario is currently structured, all IMGs who have not graduated from programs considered equivalent by the Royal College of Physicians and Surgeons of Canada or the College of Family Physicians of Canada (eg. UK, Australia, New Zealand etc.) must complete a period of assessment or post graduate training in order to be eligible for licensure.¹³

AIPSO added that approximately 1000 international medical graduates have to compete for 200 residency positions in a non-transparent selection process. Residency positions for graduates from Canadian medical schools, although limited, are not subject to the same kind of restrictions where only those in the top 20 percent are selected as is done for those who go through the accreditation process.

¹² Globe and Mail, *Iranian teacher to get review of credentials: Under court order, college will reassess her qualifications*, Toronto, January 2007.

¹³ Association of International Physicians and Surgeons of Ontario (AIPSO), *Submission to Mr. G. Thomson, Advisor to the Minister of Training, Colleges and Universities on Appeal Processes of Registration Decisions in Ontario's Regulated Professions*, Toronto: December 2004.

The 2002 NARCC report further noted the following¹⁴:

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

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

'They all find employment one way or the other but not in field of their own specialty and ironically not for the skills for which they qualified to be an immigrant to Canada in the first place. So in one stroke "we" have de-skilled those people who "we" chose as "suitable" immigrants for Canada while not resolving the issue of shortages of labour in those fields for which we chose them.'

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

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

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

¹⁴ National Anti-Racism Council of Canada, *Racial Discrimination in Canada – The Status of Compliance by the Canadian Government with the International Convention on the Elimination of All Forms of Racial Discrimination*, Toronto: July 2002, at p.22-23

These conditions have not changed. Teelucksingh and Galabuzi note in their 2005 paper, that racialized internationally trained immigrants continue to face enormous barriers in accessing the labour market. They conclude that while systemic barriers to accreditation are an important factor, that racism and discrimination continue to contribute to this reality.¹⁵

By failing to address the real experiences of internationally trained immigrants in their attempts to pursue accreditation and the opportunity for equitable access to the labour market, the Government of Canada has failed to fulfill its obligations under Article 2(1)(c) of ICERD and Article 2(1) and Article 5 which state:

Article 2

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

Article 5

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

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

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

Federal Employment Equity

In its 2002 report to the CERD Committee, NARCC made the following observations about the federal *Employment Equity Act*¹⁶:

¹⁵ Teelucksingh, Cheryl and Galabuzi, Grace-Edward. *Impact of Race and Immigrants Status on Employment Opportunities and Outcomes in the Canadian Labour Market*. In Policy Matters, No. 22, Toronto. November 2005.

¹⁶ National Anti-Racism Council of Canada, *Racial Discrimination in Canada – The Status of Compliance by the Canadian Government with the International Convention on the Elimination of All Forms of Racial Discrimination*, Toronto: July 2002, at p.17-18

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

Canada's Employment Equity Act is, by international standards, comprehensive and increasingly well-entrenched. It does include enforcement measures and has attained the status of legislation, not merely policy. However, this does not preclude limitations, and does not cover all bases. It applies only to larger corporations, federally regulated industries and governmental employers. It does not cover private or provincial organizations, among which the application of equity policies varies. A comprehensive study of employment equity across the provinces concludes:

We have discovered not only that the gap between employment equity policy and implementation is great, but also that there is extensive and multi-layered variation among the provinces in this regard. Such variation occurs both in the formulation of employment equity policy, or in its absence, and in the governmental orientation concerning the policy options available and how they should be implemented. There is also a notable expression of what we refer to as systemic frustration among the supporters of employment equity. Though specific concerns vary widely, in no province could we identify a sense of confidence that employment equity policy was appropriately and securely implemented.¹⁷

The outlook for racialized communities continues to be bleak. According to a recent report released in October 2006 by Canada's Public Service Commission, an independent agency mandated to ensure Canada's public service is competent, non-partisan and representative of the population, public servants in Canada are less likely to be members of racialized communities than workers in the private sector.¹⁸

The report found that in 2005, fewer minorities worked in the public service than in the private sector. As of March 31, 2005, only 8.1% of federal public service employees were members of visible minorities, even though they make up 10.4% of people looking for work. In addition, the report highlighted the persistent gap in the representation of visible minorities in top level jobs.

In fact, the Public Service Commission of Canada became so concerned about the report results that it announced earlier this year that will conduct a study on why disproportionately few visible minority job candidates are hired as federal public servants. Commission president Maria Barrados stated on January 17, 2007 that the agency will examine all stages of the application process from the initial computerized screening to the final selection to find out why minorities are hired into only 10 per cent of public service jobs even though 25 per cent of applicants self-identify as visible minorities.

¹⁷ A. Bakan & A. Kobayashi. *Employment Equity Policy in Canada: An Interprovincial Comparison*. (Ottawa: Status of Women Canada, 2000) at 2 [hereinafter *Employment Equity*]

¹⁸ Public Service Commission 2005-2006 Annual Report, Ottawa: October 2006

One of the concerns that many have raised regarding the hiring process by the federal government is the requirement of lengthy security checks, which act as a significant barrier for job seekers who have lived in Canada for less than five years.

The under-representation of members of racialized communities in the public service, especially among the managerial positions, is of concern in view of the following article of ICERD:

Article 5

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

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

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

Temporary Workers Program

Increasingly, to address the labour shortage in Canada, the Government of Canada has resorted to allowing Canadian companies to hire workers on a temporary basis from overseas. Typically, these workers come to Canada from developing countries on a temporary work permit, and are hired on a contract basis by their employers. As temporary workers, these migrant workers are not accorded the same rights and protections provided to Canadian citizens and permanent residents. Many are forced to work in undesirable work conditions with few protections under provincial employment standards and other labour laws. These temporary workers are also not entitled to form unions, or apply for certain benefits granted to other workers, including certain employment insurance benefits.

In some cases, the workers paid an exorbitant amount of money to the “recruiting agency” which is retained by the Canadian companies to recruit overseas workers. These agencies are in effect engaged in double dipping – they are paid twice.

In a recent report submitted to the Standing Committee on Citizenship and Immigration of the Canadian Parliament, a joint submission by NGOs working for justice for migrants, painted the following picture depicting the lives of migrant workers in Canada:

1. We wish to highlight that barriers to employability in Canada for these workers are tied to their status as temporary or illegal.

2. These precarious and largely racialized migrant workers and non-status people are vulnerable to various forms of exploitation and regularly face abuses of their rights and dignity.

3. Restricting labour market mobility of these workers aggravates workers' vulnerability and enforcement of labour and human rights and ensures that they are politically impotent.

4. These workers fill labour shortages in the Canadian market. There is a need to examine why there are labour shortages in certain industries (ie. Canadians will not endure the poor and difficult working conditions as opposed to a shortage of low skilled workers in Canada), and the effect of creating a class of temporary and non-status workers to fill this labour shortage (ie. working conditions remain depressed in these industries because these workers are unable to enforce their rights).

5. Employability in certain industries means accepting precarious status, poor working conditions and exploitation. Workers who are not prepared to accept these conditions face barriers to employability in Canada because they could be repatriated or deported.¹⁹

Approximately 18,000 Mexican and Caribbean agricultural workers are recruited to work in Canada every year through the Caribbean and Mexican Seasonal Agricultural Workers Program (SAWP). The NGO submission has the following to say about the Caribbean and Mexican workers recruited through the program:

1. Lack of mobility in Canada's labour market. SAWP workers enter into Canada under a temporary worker permit which requires them to only work in agriculture and to be employed by one named employer. In addition, the worker is required to live on his or her employer's property.

2. SAWP workers pay premiums into the Canadian unemployment insurance scheme despite having no possibility of receiving unemployment insurance benefits or retraining.

3. Unlike other employee-employer relationships, the migrant worker has no input into the contractual arrangement in which he or she is entering. A standard Employment Agreement has been created on their behalf in order to avoid exploitation of migrant workers. However, there is no effective enforcement mechanism to ensure compliance.

4. SAWP workers do not have the right to collectively bargain in Ontario and Alberta because these jurisdictions deny agricultural workers to have these rights in contrast to workers in other low-skilled industries.

¹⁹ FCJ Refugee Centre, KAIROS: Canadian Ecumenical Justice Initiatives, National Alliance of Philippine Women in Canada, United Food and Commercial Workers Canada. *Joint Submission to the Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities.* September 2006

5. A number of workers have been returning to Canada on a seasonal basis for several years, working anywhere from 4-8 months of the year in Canada for up to 20 years. Despite the significant labour market participation and social attachments these workers have created in Canada, their years of labour in Canada are not recognized as it relates to mobility or citizenship rights in Canada.

6. Barriers to citizenship place migrant workers in a position of social and political disadvantage. Migrant workers cannot vote for Canadian politicians who may campaign for improvements in wages and working conditions, or otherwise influence Canadian authorities to address concerns relating to their employment. Thus, migrant workers are limited in their effective participation in the political process. All SAWP workers are subject to vague language in their Employment Agreement that allows employers the right to repatriate workers without further compensation for “non-compliance, refusal to work, or any other sufficient reason”. This provision allows the employer to arbitrarily remove workers from their property with no formal right of appeal. The implication of the premature repatriation provisions significantly undermine the migrant workers’ ability to enforce any rights they may have and forces them to endure illegal working conditions. The workers’ vulnerability is compounded by the fact that as non-citizens they have no rights of mobility while in Canada. The worker may legally stay in Canada until the expiry of the work permit, regardless of the employer's decision to rescind the contract. However, if the employer triggers these provisions, the practical effect is that the worker is also immediately removed from the grower's property requiring costs for alternative accommodation to be incurred at the same time as employment income has ceased.

Moreover, the worker is prohibited from working for another employer unless the consulate is able to find another farm for the worker. If a transfer placement is not available, there is some urgency to send the worker home in order to avoid any additional costs for room and board. It is extremely difficult, as the grower knows, for the worker to claim damages for breach of contract in these circumstances. This raises the question of whether these workers are provided equal treatment of Canadian workers when the effect of the repatriation provisions makes it difficult to enforce their rights.

The IV Summit of the Americas and Labour Ministers at the XIV Inter-American Conference of Ministers of Labour (IACML) was held in 2005, under the umbrella of the Organization of American States (OAS). At the labour conference, Labour Ministers reaffirmed that all migrants, regardless of their immigration status, should be accorded the full protection of human rights and the full observance of labour laws applicable to them, including the principles and labour rights embodied in the International Labour Organization's (ILO) Declaration on Fundamental Principles and Rights at Work²⁰.

However Canada has failed to uphold this commitment and is potentially in violation of Section 15 of the Canadian Charter of Rights and Freedoms, which guarantees every individual in

²⁰ Human Resources and Social Development Canada. *Backgrounder: Workshop on the Protection of Labour Rights of Migrant Workers and Labour Market Programs*. Ottawa, November 2006

Canada "equal protection and equal benefit of the law without discrimination"²¹ including discrimination based on race, national or ethnic origin.

The United Food and Commercial Workers Canada (UFCW Canada) has launched a constitutional challenge to the Government of Canada on behalf of non-unionized workers whose rights under Section 15 of the Canadian Charter of Rights and Freedoms are being violated but who do not have the means or the opportunity to seek redress through the courts. The case involves challenging as unconstitutional the federal government's Employment Insurance (EI) program's historic and ongoing discrimination against migrant agricultural workers. Migrant workers are required to pay the same EI premiums as other workers in Canada but are, by law, ineligible for basic EI benefits.

The United States Commission for Labour Cooperation has found that even though migrant agricultural workers are seemingly given adequate protection and access to rights under Canadian laws that many exceptions continue to exist. In a 2002 report the Commission found that the " *provinces of Saskatchewan, Alberta and Manitoba exclude most agricultural workers from the coverage of most standards. New Brunswick and Prince Edward Island exclude those who work on small family farms from the application of many standards. The other provinces have exclusions limited to specific standards, most commonly those relating to hours of work and overtime* "²².

The report also notes the following concerns: that while Canada has statutes regulating the application and storage of pesticides, they do not create requirements to notify agricultural workers when and which kinds of pesticides are being used or stored on a farm; and that, while many migrant agricultural workers in Canada would qualify for legal aid programs, in most provinces some or all labour and immigration matters are excluded from the scope of the program.

The 2006 NGO joint submission Standing on Human Resources, Social Development and the Status of Persons with Disabilities states the following about the Live-in Caregiver Program which bring primarily women, primarily from Philippines and Caribbean countries to work in Canada as migrant workers:

The Live-in Caregiver Program (LCP) is a government program that was developed and implemented in 1992 and brings mainly women from the South into Canada to perform work in the four major areas of child care, care of the elderly, care of people with disabilities, and housekeeping and other household chores. In 2005, according to statistics from the Canadian embassy in Manila, Filipino women made up 95.6% of domestic workers in Canada. The LCP privatizes the public demand for universal child care and other health care needs of Canadians.

²¹ Department of Justice, Canada. *Canadian Charter of Rights and Freedoms: Section 15 (1) in Constitution Act 1982*. Ottawa, 1982

²² Secretariat of the Commission for Labour Cooperation (United States). *Protection of Migrant Agricultural Workers in Canada, Mexico and the United States*. Washington, 2002

The program has a mandatory live-in requirement which makes it illegal for a live-in caregiver to live outside the home of her/his employer during the course of the contract; provides temporary immigration status for 24 months within a three year period making them vulnerable to immediate deportation upon non-completion within this period; and issues work permits which ties the worker to a single employer making them vulnerable to abuse and arbitrary demands by their employer. It thus puts women under the program in vulnerable and precarious situations, gives them literally no rights as workers and subjects them to immediate deportation for non-completion of the contract, even the women are fleeing a situation of abuse and sexual harassment by the employer as has been reported frequently by community organizations that assist them.

The joint submission cited above also notes the following economic, political and social impacts of the LCP:

Economic Impacts:

- 1. Being tied to a single employer at minimum wage, virtually legislates these women into poverty. Because of lack of economic opportunity and poverty, some of these women have become victims of prostitution and sex-trafficking.*
- 2. After completing the program, many of these women continue to be stuck in low-paying "dead-end" jobs having been de-skilled and their past education and training not recognized. This results in downward economic mobility as they find it difficult to move up to other good paying jobs outside the LCP.*
- 3. Non-accreditation and recognition of education and training despite the relatively high level of education and having practiced their profession in the Philippines and other countries.*
- 4. Women who are compelled to continue working as domestic workers lose their skills and their professional knowledge over time.*

The political impacts are:

- 1. Because of their precarious status as temporary workers they are unable to participate in the political affairs of society. This disempowers them and increases social inequality.*
- 2. The program creates a pool of people (mostly women) whose rights are easily violated both in the workplace and society at large because of their temporary status. Without Canadian citizenship, they do not have rights and privileges due to them as contributors to the Canadian economy.*
- 3. There is delay or denial of immigrant or resident status which could lead to deportation due to bureaucratic hurdles.*

4. Because they cannot vote, advocacy on their behalf is not recognized or given enough attention in political debates. LCP hardly enters discussions on universal daycare and health care, although it is obvious that the LCP, and the women under it, are being used to address these two issues.

5. These women lack the necessary legal aid and support when they encounter problems because of their temporary status and as non-immigrants.

The social impacts are:

1. Their non-immigrant status deepens their experience of systemic racism and discrimination because they are not considered members of the imagined Canadian community and they are made to feel that way. This undermines their successful integration and settlement in Canada.

2. Their status under the LCP discourages them from complaining of poor working conditions because they fear that this may negatively impact their application for residency and citizenship.

3. They continue to suffer long family separation because they cannot bring their families under the program. Our study shows that separation, on average, lasts between 5 to 8 years. These women are virtual strangers to their families once they reunite either in the Philippines or in Canada.

4. Many are punished by immediate deportation even for minor non-compliance such as failure to make the 24 month live-in within 3 years or living outside the home even with permission of the employer.

Article 5 provides that states parties should ensure that everyone is entitled to the following civil rights:

Article 5

(i) *The right to freedom of movement and residence within the border of the State;*

(iii) *The right to nationality;*

(ix) *The right to freedom of peaceful assembly and association*

and economic, social and cultural rights including:

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

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

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

All of these rights have been denied to the migrant workers in Canada.

Chapter III: Immigration, Refugees and Migrants

Introduction

The *cliche* that Canada is built by immigrants, and that all of its inhabitants – besides Aboriginal and First Nations peoples - come from elsewhere is a much quoted yet in reality ignored fact about this country.

While Canada is seen in general by the world as a country that welcomes immigrants, historically and contemporarily, Canada's immigration policy is either informed by racially driven ideology, or has the effect of excluding immigrants from the developing world, who are largely immigrants of colour.

Examples of historical exclusion of immigrants include: the head tax imposed on Chinese immigrants between 1885 and 1923, followed by the Chinese Exclusion Act which barred all but a few Chinese immigrants to Canada and the Continuous Passage Rule in 1907 which was aimed at stopping South Asian immigrants from entering Canada by requiring that anyone who entered Canada must have come via a continuous passage from the point of departure.

When Chinese and other Asians were being barred from entering, the Canadian Government opened up the west to the European immigrants. Land was given to Eastern Europeans to settle in Alberta and the Prairies.

Refugees coming to Canada hoping for a chance to save their lives did not fare any better than the Asians. During the height of World War II, a shipload of Jewish refugees attempted to dock on the shore of Canada in order to escape Nazi persecution. But thanks to an immigration officer who believed that when it came to Jews, "none is too many", these refugees were turned away and sent back to Germany to meet their death.

Before 1967, Canada's immigration law contained specific provisions to deny entry to anyone on the ground that they were not suited to the climate of Canada - a tactic used to turn down applications from Caribbean and African countries.

With the reform of Immigration Act in 1967 and the introduction of a "point system", it would appear for the first time that many of these racist and arbitrary policies were removed from our law books once and for all. But Canada's immigration system continues to impose barriers on many.

Contemporary Forms of Exclusion

If we look at immigration policy today, there remain many barriers, both systemic and overt, that bar access to majority of the world's population, especially from the so-called developing countries, the very places where migration is taking place on a large scale. Some examples of the barriers are:

a. The Right of Permanent Residence Fee

Introduced as a budget measure in February, 1994, the RPRF (formerly known as Right of Landing Fee) was imposed initially on all immigrants and refugees who applied to become permanent residents of Canada. Bowing to pressure from the public and from refugee advocates, the Government of Canada removed the requirement to pay ROLF from refugees. Immigrants 19 years old and over - regardless of their class and country of origin however - continue to be subject to this exorbitant fee. In 2006, the Federal Government agreed to reduce the \$975 by half.

In the 17th and 18th report, the Government of Canada rationalized the fee as necessary to shift “a greater share of the costs of immigration services to those who benefit directly and not the general taxpayer.” In fact, the money collected from prospective immigrants is put into the General Revenue of the Government, and not designated for immigrant services.

Federal government funding for immigrant services, more specifically the programs meant to assist immigrants to settle in Canada, have remained constant since 1996-97. The total annual allocation, except for the province of Quebec which has a separate agreement with the government, was set at 173.3 million. This falls well short of the amount that was collected annually from immigrants through the ROLF and the re-named RPRF. In November 2006, the Government of Canada announced an additional \$307 million over five years for immigrant settlement services, excluding Quebec (separate agreement), over and above the current allocation. The total number of permanent residents for 2005 was reported as approximately 112,000²³ (includes permanent residents under 19 years of age, and who do not have to pay the fee). Even the recent increased allocation does not account for the total amount of the RPRF collected from immigrants.

Labelled the new head tax, the RPRF has the harshest impact on immigrants from the developing world and it presented as a major barrier to these immigrants. The application of this fee amounts to a cash grab by the Canadian government from those least able to afford it.

b. The Safe Third Country Agreement

The Safe Third Country Agreement (STCA) between Canada and the United States is but the modern reincarnation of the Continuous Passage Act. With a few exceptions, the agreement bars individuals who enter Canada via the United States (a so-called safe third country) from seeking asylum in Canada. Since the agreement was implemented, the number of refugees allowed to enter Canada through the land border with the US has dropped by almost half²⁴.

The majority of refugees seeking entry into Canada through the US tend to be from countries in the global south and many are from racialized communities. The top source countries in 2005 included Colombia, Zimbabwe, the U.S., Sri Lanka, Burundi, the Democratic Republic of

²³ Citizenship and Immigration Canada. *The Monitor: First and Second Quarter 2006*. Ottawa, 2006

²⁴ Citizenship and Immigration Canada website. *First Statistics Under Canada–U.S. Safe Third Country Agreement Show Decline in Refugee Claimants*. Ottawa, 2005

Congo, Peru, El Salvador, Guatemala and Haiti²⁵. This listing represents only those refugees who meet the provisions of STCA and are allowed to enter Canada. A 2006 Harvard Law School report documents the impact on refugees attempting to seek protection in Canada. The report notes that a large number of refugees from Columbia did not meet STCA provisions and therefore would not have even attempted to seek entry. The Centre Scalabrini and the South Asian Women's Centre in Montreal (community organizations that usually serve members of racialized communities and refugees from the global south) had reported that the number of refugee claimants in that city remained low since the implementation of the STCA.²⁶

The Canadian Council for Refugees (CCR) has pointed out repeatedly that the US is not a safe country for refugees. In a November 2006 submission to the federal cabinet the CCR presented evidence that, since the US was designated as a safe third country, there have been series of developments that mean that the US fails to meet the safe third country test, according to the definition and the factors established in the Immigration and Refugee Protection Act. The Act requires Cabinet to keep under continuing review whether the US complies with its non-refoulement obligations; its policies and practices with respect to the Refugee Convention and the Convention Against Torture (CAT); and its human rights record.²⁷ Despite overwhelming evidence to the contrary the STCA remains in force.

c. The point system

Even though relaxed somewhat, the new point system will still only admit individuals with a university degree or above, fluency in one of our official languages, and recognized employment experience to Canada. In other words, over 90% of the world's population need not apply. The elitist point system particularly affects women, who do not have equitable access to education in most countries in the world. It also more or less shuts out anyone who is not part of the middle or upper middle class in her or his country of origin. While French-speaking immigrants are given points for fluency in that language, the majority who are from Africa and the Caribbean (ie. Haiti) then have to deal with barriers resulting from trying to gain access in primarily English-speaking parts of Canada, and from the broader manifestation of racism.

d. Family Class Immigration

Over the last 10 years, family class immigration as a percentage of the overall immigration intake has dropped from over 50% to less than 25%. This is a result of both the increase in emphasis placed on independent immigrants as well as an increasingly restrictive definition of who constitutes a family member under the immigration law and who could be a sponsor. While in the past, brothers, sisters and other extended family members were given points for their relationship to a Canadian immigrant or citizen under the point system, and thereby increasing

²⁵ Citizenship and Immigration Canada website. *A Partnership for Protection - Year One Review: November 2006*. Ottawa, 2006

²⁶ Harvard Law School – Harvard Law Student Advocates for Human Rights, The International Human Rights Clinic - Human Rights Program, Harvard Immigration and Refugee Clinical Program. *Bordering on Failure: The U.S.-Canada Safe Third Country Agreement Fifteen Months After Implementation*. Boston, 2006

²⁷ Canadian Council for Refugees. *Less Safe Than Ever: Challenging the designation of the US as a safe third country for refugees*. Montreal, 2006

their chance of acceptance, today only those who are considered as part of the nuclear family are deemed worthy of being granted entry.

As well, increasingly restrictive financial eligibility requirements under the *Immigration and Refugee Protection Act (IRPA)* which came into effect in 2002 effectively bar many low income Canadians from sponsoring their families from abroad. For instance, while Canadians who are sponsoring their spouses and dependent children are exempted from the financial requirement of sponsorship, nevertheless they are prohibited from sponsoring their loved ones if they are in receipt of social assistance. The fact that immigrants and racialized community members are among the poorest in Canada means that the financial requirement for sponsorship has a disproportionate impact on these communities.

The biases and prejudices of immigration officers in determining the “genuineness” of family relationships continue to pose a problem for many Canadians who want to bring their spouses and adopted children to Canada. This is of particular concern to Canadians from China and South Asia, whose applications to sponsor are routinely denied as visa officers see theirs as “marriage of convenience” or “adoption of convenience”, without regard to the cultural reality of these communities and the actual circumstances facing the families.

One particular section in the Regulations under *IRPA* denies the right of a Canadian to sponsor a family from abroad if the sponsor did not include the family member in his/her own previous application for permanent resident.²⁸ There are many reasons why a sponsor might not have included his/her family member in his/her own application. The sponsor may be a refugee fleeing persecution and is concerned that the inclusion of family members would expose them to risk. In some cases, the sponsor may not be aware of the existence of a child who was born after he left the country, or that the child might not have been in the custody of the sponsor at the time. Whatever the reasons, this section does not allow for any humanitarian concerns and has resulted in the separation of many families. Unfortunately, the Federal Court in Canada has found that this section does not violate s.7 of the Charter of Rights and Freedoms.²⁹ As a result of that finding, a Filipino immigrant woman was denied the right to bring her two sons to Canada as the sons were found not to be members of the family class.

e. Visa Office Resource Allocation

The inequitable resource allocation across the various visa posts also plays a role in perpetuating systemic barriers to immigration and reinforcing illegal migration. On a per-capita basis, there are far more visa offices in Europe than in Asia, Africa and other regions of the world. Fewer resources mean more processing time even for those who are qualified to come. For instance,

²⁸ S.117(9) Excluded Relationships

A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if

(d) subject to subsection (10), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.

²⁹ *De Guzman v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 2119 (C.A.), leave to appeal to S.C.C. refused [2006] S.C.C.A. No. 70

while it may take anywhere between one to four years for someone to apply as an independent immigrant from Beijing, China, an applicant with the same qualification could receive an immigration visa several months after he/she submits an application from Berlin, Germany. The long and unnecessary delay in processing of applications is one of the contributing factors to individuals seeking to enter Canada through other avenues.

f. Unfair Refugee Determination Process

Much has been said about the refugee determination system in Canada and its problems. The non-merit based patronage appointment to the Immigration & Refugee Board (IRB) has long been a target from both the left and right of the political spectrum. The changes brought in under the Immigration & Refugee Protection Act which replaced the two-member panel with a single member process does not help make the system more credible. Worse, the system's inability to correct its own mistakes due to a lack of appeal process is an issue that persists despite promises in the *IRPA* to form a Refugee Appeal Division.

Since September 2001 and Canada's increased scrutiny of members of racialized communities, there is a growing fear that even a positive determination of refugee status might be reversed with no recourse. An immigrant and refugee-serving community organization in Southern Ontario has reported that the Canadian Government has applied to federal court to vacate Convention Refugee status of several Eritrean refugees who are their clients, allegedly upon suspicion that they may be linked to terrorist activities. The organization fears that this may represent a growing trend targeting refugees from Eritrea and other countries experiencing civil unrest and violence, the conditions that led to refugees fleeing and seeking protection elsewhere. Reportedly, there is increasing alarm among refugees living in that community.

g. Non-Status Immigrants

The end result of all of the systemic problems with the refugee determination process is the creation of an under-class of non-status immigrants in Canada.

There are an estimated 20,000 to 200,000 individuals living without status in Canada. As persons without status, they are not entitled to receive any benefits that ordinary Canadians take for granted. Children of non-status parents are often denied the right to education and right to healthcare even though some of these children are born in Canada. As taxpayers, non-status individuals contribute to the funding of public services that they themselves do not enjoy.

Contrary to public perception, the vast majority of non-status immigrants are law-abiding individuals and do not pose any threat to our national security. Yet, they are the easy targets for media or public backlash since they do not have a voice in our political system.

Living without status means living in fear. Non-status immigrants live in severe isolation because they cannot afford to draw any attention to themselves, especially from the authority.

Currently, the only avenue open to a person without status in Canada to acquire status is by way of the humanitarian and compassionate (H&C) application process. It is a misnomer to call the

process humanitarian and compassionate when the main emphasis is placed on individuals who have "made it" by becoming economically successful, as opposed to those whose misfortune may in fact requires - if not deserves - more of our compassion. With a success rate of less than 10%, the H&C is not a real option for the thousands of non-status immigrants in Canada who have in effect established their homes in this country.

The Canadian Government has rejected the call for a regularization program for non-status immigrants. Instead, as stated previously, the Government has chosen to bring in even more temporary workers to address the labour shortage in certain parts of Canada, thereby increasing the potential number of "non-status" immigrants should some of these workers decide to stay after their work permit has expired.

To add injury to insult, the Government of Canada has continued to refuse to sign on to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Government's refusal to address the issue of non-status immigrants, along with its restrictive policies on immigration and refugee, are in violation of Articles 1 (1), (2), and 5 of ICERD.

Article I

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

Article 5

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

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

Chapter IV: National Security and Racial Profiling

Introduction

The increase in racial hatred, violence and discrimination directed against Arabs, South Asians and Muslims after September 2001 is a serious concern. Members of these communities continue to face suspicion and special scrutiny in all areas of society, resulting in discrimination and exclusion.

A 2002 study on the experiences of Muslim women wearing Hijab applying for work in the manufacturing, sales and service sectors, where most recent immigrants tend to find employment, attempted to understand some of the barriers. The study found that women who wear hijab were denied jobs, told they must remove their hijab to be hired or continue working, harassed in the workplace and fired from jobs as a result of wearing hijab. The women experienced discrimination in all sectors studied, regardless of age, skin colour, experience in Canada, accent, mannerisms and education.³⁰ Community workers have noted that these experiences illustrate the growing Islamophobia in Canada.

In August 2003, the Royal Canadian Mounted Police (RCMP) arrested 19 Pakistani men in a pre-dawn raid in and near Toronto as part of Project Thread, a joint investigation with Citizenship and Immigration Canada and the RCMP. The RCMP went on to make a series of accusations and allegations against the men, including being an al-Qaeda sleeper cell and plotting various bomb attacks. They were unable to substantiate the accusations, the men were never charged, and they were all eventually deported back to Pakistan despite holding valid student visas. Many were shackled for the duration of the journey back, including on the airplane, despite the fact that no evidence was produced to show that they were a terrorist or criminal threat. One can only imagine the horrifying impact that this might have had for their future life and safety in Pakistan.

In April 2006 the Government of Canada used public security legislation to proscribe the Liberation Tigers of Tamil Eelam (LTTE). As a result of the ban anyone who knowingly provides financial support to the LTTE could be jailed for up to 10 years, while persons who fundraise or otherwise “facilitate” the work of the LTTE face 14 years’ imprisonment.

Canada is home to the largest Sri Lankan Tamil population outside Sri Lanka with the majority of community members living in Ontario. The immediate impact on the community was increased scrutiny of money transfer services, a vital means of sending financial support to family members in the North and East of Sri Lanka where government and banking services are not readily available. Other consequences for the community included experiencing difficulty in booking facilities for community events, increased scrutiny by local police, and difficulties in obtaining and retaining employment and housing.

³⁰ Persaud, Judy Vashti and Lukas, Salome. *No Hijab is Permitted Here*. Women Working With Immigrant Women, Toronto, December 2002

When 12 mostly South Asian men were arrested in Toronto in June 2006 on the allegations of a bomb plot, media coverage focussed heavily on the fact that they were all Muslim. Soon after the arrest, vandals damaged and defaced a mosque in Toronto.

The impact of all of these actions on Arab, South Asian and Muslim communities has been devastating, and has served to increase discrimination and violence directed against them.

The Concluding Observations of the Committee on the Elimination of Racial Discrimination : Canada adopted on 21 August 2002 says the following:

24. The Committee notes with concern that, in the aftermath of the events of 11 September 2001 Muslims and Arabs have suffered from increased racial hatred, violence and discrimination. The Committee therefore welcomes the statement of the Prime Minister in the Ottawa Central Mosque condemning all acts of intolerance and hatred against Muslims, as well as the reinforcement of Canadian legislation to address hate speech and violence. In this connection, the Committee requests the State party to ensure that the application of the Anti-terrorism Act does not lead to negative consequences for ethnic and religious groups, migrants, asylum-seekers and refugees, in particular as a result of racial profiling.³¹

Security Certificates

Meanwhile, Canada has continued to use tools such as the Security Certificate provisions provided in the Immigration and Refugee Protection Act to detain individuals. Five men have been detained to-date using these provisions. Mohamed Harkat was released from detention, but is subject to extremely stringent requirements that have become a hardship to him and his family. The others have been held in detention for more than 5 years without any charges, and not even knowing the evidence against them. Although only 5 individuals were detained using Security Certificate provisions, given the secrecy, lack of information and lack of evidence presented for individual cases, many Canadian residents from racialized communities, and especially the ones mentioned here, continue to be fearful about being the target of special security scrutiny and action for no valid reason.

The Canadian Council for Refugees has highlighted the use of Security Certificates in the minus side of the Annual Status Report 2006 as follows:

Five Muslim men continued to be subjected to security certificates, unable to defend themselves fairly because they are not allowed to know the evidence against them. While Mohamed Harkat was released (subject to extraordinarily restrictive conditions), three others remain in detention (all of them have now spent more than 5 years in jail). In June 2006 the Supreme Court heard challenges of the rights violations inherent in the security certificate process: a decision is awaited³².

³¹ Committee on the Elimination of Racial Discrimination. *Concluding Observations of the Committee on the Elimination of Racial Discrimination : Canada*. A/57/18, paras.315-343. August, 2002

³² Canadian Council for Refugees. *Annual Status Report 2006*. Montreal, 2006

In January 2007 the Government of Canada finally offered an apology and a financial compensation package to Maher Arar, almost five years after he was deported to Syria to experience imprisonment and torture. Mr. Arar's experience continues to frighten members of Arab, South Asian and Muslim communities since his Canadian citizenship apparently wasn't sufficient to ensure protection and adequate representation from the Canadian state.

Mr. Arar's experience and reports of the harsh treatment of immigration detainees in the United States has served give voice to the fears of many members of targeted communities about getting stuck in that country, and among immigration detainees of being forcibly sent there. A community organization providing information and other assistance to immigration detainees at an Ontario detention centre reported that the Canadian government is in the process of removing to the US a male migrant from Pakistan. Despite obtaining valid travel documents and expressing a desire to voluntarily return to Pakistan at his own cost, the man is to be sent to the US. His wife who was detained with him is to be allowed to return to Pakistan.

The Government of Canada has failed to meet its obligations under Articles 2, 5,6 and 7 of ICERD:

Article 2

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

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

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

Article 5

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

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

Article 6

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

Article 7

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

Chapter V: Canada's Action Plan Against Racism

Throughout its 17th and 18th Report, the Government of Canada made reference to its national plan entitled A Canada for All: Canada's Action Plan Against Racism (the "Action Plan")³³. The Government of Canada presented this as an illustration of its "firm commitment" to "breaking down the barriers to full participation in Canada's society".³⁴

What the Government of Canada has omitted to mention, is the fact that from the perspective of the NGOs, the Action Plan falls far short of its stated promise.

To start, there was no prior consultation with affected community organizations, in particular community groups from racialized communities before the Government announced the Action Plan, despite repeated calls by community for a broad consultation process for its development.

Substantially, the Action Plan is seriously flawed because, among other things:

- it provides no comprehensive vision as it fails to define the problem or address the systemic barriers identified by racialized communities;
- there is no clear articulation of the goals that the Government aims to achieve through the Action Plan;
- there is no stated target or measurable goals as to how and when racism will be addressed or eliminated; and
- there is no accountability framework for ensuring that the goals – whichever they might be – will be achieved;

Further, while the Action Plan was touted as the Government of Canada's commitment to implement the Declaration and Programme of Action coming out of the World Conference Against Racism, Xenophobia and Related Intolerance (WCAR), there is a disconnect between the Action Plan and the WCAR documents. Indeed, the Government of Canada has so far provided no leadership in the implementation of WCAR. Six years have passed since the historical meeting in South Africa, yet no action has been taken by the Government to implement the WCAR documents.

In other words, if the Action Plan were the Government's answer to racism, then racialized communities will have much to worry about.

³³ International Convention on the Elimination of All Forms of Racial Discrimination – Seventeenth and Eighteenth Reports of Canada, at p.13, 15, 22

³⁴ International Convention on the Elimination of All Forms of Racial Discrimination – Seventeenth and Eighteenth Reports of Canada, at p.22

Chapter VI: Province of Ontario

Introduction

Ontario is the largest province in Canada and it absorbs more than half of the immigrants and refugees who come to Canada every year. It also has the highest percentage of people from racialized communities among all provinces, and it the most diverse province in Canada.

In this chapter, we will respond to two particular aspects from the report on Ontario: the Human Rights system and the Legal Aid system.

Human Rights System

The report from the Ontario Government is peppered with achievements and actions taken by the Ontario Human Rights Commission (OHRC).³⁵ The irony however is that, shortly after the report was submitted, the Ontario Government introduced a law to radically reform the human rights system.

Bill 107 – an Act to Amend the Human Rights Code - was introduced in April, 2006 and proclaimed in December 2006. Many community organizations, including racialized community groups believe that Ontario's human rights enforcement system needs to be significantly improved. It is too slow and backlogged. This is because it has been seriously under-funded for years, and needs administrative reforms. The Commission's gatekeeping function can benefit from procedural reforms to ensure that meritorious cases are taken forward to the Human Rights Tribunal. The Human Rights Tribunal also needs significant reforms.

However, Bill 107 does not provide an effective solution to these problems. It will make things worse, not better, for these reasons:

- It abolishes discrimination victims' decades-old legal right to have the Human Rights Commission publicly investigate all non-frivolous human rights complaints, armed with legal investigation powers. It abolishes discrimination victims' right to have the Human Rights Commission publicly prosecute a human rights complaint if the evidence warrants it, and if the parties don't settle the case.
- It lets the Human Rights Tribunal adopt rules that could deny the time-honoured right of all parties at a hearing to be represented by a lawyer, to call relevant evidence, and to cross-examine opposing witnesses.
- It dramatically reduces the right to appeal from the Tribunal to court. Now, anyone who loses her or his case at the Tribunal has the broadest right to appeal to court. Bill 107 lets

³⁵ International Convention on the Elimination of All Forms of Racial Discrimination – Seventeenth and Eighteenth Reports of Canada, at p.46-52

the loser go to court only if the Tribunal ruling is proven to be patently unreasonable, a far tougher test.

- It unfairly forces thousands of discrimination cases now in the human rights system, to start all over again in the new system, but without the benefit of the Human Rights Commission's help. Many spent years trusting that they could continue in the current system.
- Contrary to major Government commitments, it does not ensure that every human rights complainant will have free publicly funded legal advice and representation. It merely lets the Government fund legal assistance if it wishes. It does not require the Government to fund any, nor that Government funding be adequate. Cuts to funding can be as close as a provincial election or cabinet shuffle away. It does not entrench the Government's promised Human Rights Legal Support Centre. It does not require legal services to be delivered by lawyers.
- It does not keep the Government's commitment that all discrimination victims will be given a hearing before the Human Rights Tribunal. It lets the Human Rights Tribunal throw out a discrimination complaint without a hearing, or defer a hearing.
- It does not eliminate or reduce the chronic backlog of human rights cases. It shuffles the line-up from the Human Rights Commission to the Human Rights Tribunal. It does not set enforceable deadlines to ensure that cases are heard and decided within a reasonable time.
- Contrary to Government commitments, the Act to Amend the Human Rights Code significantly weakens, and does not strengthen the Human Rights Commission's ability to bring its own cases to challenge systemic discrimination. Now the Commission can launch its own complaints in any case (not just systemic cases). It has investigation powers to get evidence to support its case. It can seek sweeping remedies to compensate discrimination victims for past wrongs and to prevent future discrimination.
- Seriously weakening the Commission, the Act to Amend the Human Rights Code only lets the Commission launch its own case in systemic cases. It does not define "systemic." It abolishes the Commission's investigation powers. It stops the Commission from seeking remedies to compensate victims for past wrongs, even in systemic cases.
- It largely privatises human rights enforcement. It removes the Human Rights Commission from most discrimination cases. This makes the Commission less effective and relevant when it does public policy, advocacy and public education.
- It dramatically shrinks the human rights system's capacity to advocate for and protect the public interest. Now the Human Rights Commission can seek remedies both for individual discrimination victims, and to address the broader public interest. It can do so when settlements of cases are negotiated, and at Human Rights Tribunal hearings. In contrast, under the Act to Amend the Human Rights Code, the Commission will not be

involved in negotiating most case settlements. It will not have carriage of or even be present at many if not most Human Rights Tribunal hearings.

Not only that, the Government decided to silence all opposition to the Bill by bringing in a motion to shut down public hearings before the legislative committee which was studying the Bill. Many groups - including the three organizations submitting this report - which already had been scheduled to appear before the committee, were suddenly told that their input was no longer needed.

This was the first time in the history of the legislature of Ontario that the Government had brought a motion to muzzle its critics in the middle of public hearings. And the Ontario Government chose to exercise this draconian power in dealing with a bill that affects the fundamental human rights of thousands of Ontarians.

In passing Bill 107, the Act to Amend the Human Rights Code, the Government of Ontario has thus breached Articles 2, 5 and 6 of ICERD.

Legal Aid Ontario

The Ontario Government's report made reference to the Legal Aid Ontario (LAO) as a program that provides access to legal services to aboriginal peoples, African Canadians, and South Asians.³⁶

LAO also funds MTCSALC, and other ethno-specific clinics like Aboriginal Legal Services Toronto and the African Canadian Legal Clinic. Despite the fact that Chinese is the third most significant mother tongue in Canada, and the Chinese Canadian community is among the largest allophone communities in Ontario, MTCSALC remains one of the smallest legal clinics funded by LAO. Repeated requests by MTCSALC for funding increase have not been met by LAO. This is due in part to the fact that there has been chronic under-funding by the Government of Ontario of the legal aid program particularly legal aid for civil (non-criminal) matters. By March 2006, while the total annual expenditures in the justice sector in Ontario amounted to \$3 billion, only 9% went to Legal Aid Ontario, including just 2% for the clinic system. The new investment into the justice system is spent primarily in the area of criminal justice as a political reaction to the perceived increase in gang violence. When more money is spent on policing and prosecution of crimes, more need is generated for criminal legal aid, and thus taking further resources from other parts of the legal aid system.

In the Seventeenth and Eighteenth ICERD Reports, the Government of Canada notes that the LAO is providing funding to the South Asian Legal Clinic of Ontario (SALCO) to provide legal representation in the areas of social assistance/welfare and immigration and refugee law³⁷.

In fact SALCO is not funded as a full legal clinic equivalent to the other ethno-specific clinics even though there is clearly a strong need for this service. LAO's evaluation of SALCO in 2005

³⁶ International Convention on the Elimination of All Forms of Racial Discrimination – Seventeenth and Eighteenth Reports of Canada, at p.49-50

³⁷ *Ibid*, Part IV

showed that the clinic had tremendous benefits for the community, even with extremely limited resources. In 18 months between 2004-2006, the clinic helped 63,355 South Asians in Ontario and served a total of 3,355 clients in-person through referrals, providing legal information/advice and brief services, representing clients, providing drop-in legal clinics, and providing public legal education.

LAO's evaluation of SALCO's services concluded: "...South Asians are a rapidly growing group in Canada, and were the largest visible minority group in Ontario in 2001. Therefore, if, as according to stakeholders, population trends, among other factors, affect decisions to fund ethno-specific clinics, and SALCO is effectively meeting the terms and conditions of funding, then SALCO could be deemed a needed and valuable legal aid service in Ontario."

Despite the extent of the need in a community that, among other challenges, has to deal with increased security scrutiny and racial profiling of South Asians, LAO will stop funding SALCO by September 2007. LAO currently has no plans to provide a viable alternative to the desperately needed services provided by SALCO.

The lack of the Ontario Government's commitment to fund civil legal aid has a disproportionate impact on members of racialized communities, as they are over-represented among the poorest in the province and are most dependent on government funded legal services in order to access the legal system and enforce their rights. The Ontario Government's continuous under-funding of LAO thus constitutes a violation of Article 5(a) and 6 of ICERD.

Chapter VII: Ratification of Article 14

Article 14 of ICERD provides:

Article 14

A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party or any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

As of this date, the Government of Canada has yet to ratify Article 14. This is contrary to the concerns and recommendations made by this Committee in its Concluding Observations with respect to Canada's last report which state:

26. The Committee invites the State party to reconsider the possibility of making the declaration provided for in article 14 of the Convention.³⁸

³⁸ Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada. A/57/18, paras.315-343

Concluding Remarks

There exist legal mechanisms in Canada whereby individuals who face human rights violations can access to seek redress and remedy. In some respect, Canadians do enjoy certain fundamental rights that are often denied to many people in the rest of the world.

Because of racism and related discrimination, however, the rights that are enshrined in the Canadian Charter of Rights and Freedoms and the federal and provincial human rights laws are not always respected or enforced. Members of racialized communities must still confront racism on a day-to-day basis.

This shadow report highlights some of the key areas where improvements are seriously needed in order to address racism at its core.

Appendix “A”

The following analysis was developed by Professor Grace-Edward Galabuzi of Ryerson University in Toronto to provide a snapshot of the current challenges as faced by racialized communities living in Canada today.

Working precariously

- *The evidence shows that the social and economic status of racialized group members is determined not just by their productive capacity but also by their racialized and immigrant status*
- *Racial and its related forms of discrimination continue to deny racialized group members the attainment of their full potential in the Canadian labour market*
- *Working conditions have been exacerbated by the increasing deregulation of the labour market and the tendency towards “flexible” deployments of labour and the growth of precarious forms of work due to economic restructuring*
- *These shifting rules of engagement have had a destructive impact on the social and economic status of racialized group members as shown by indicators such as income, unemployment, sectoral concentration relative to the rest of the Canadian population, etc.*

Canada’s Changing Population, Immigration and Labour force

- *During the census period (1996-2001), the growth of the racialized group population far outpaced the Canadian average.*
- *While the Canadian population grew by 3.9% between 1996-2001, the corresponding rate for Racialized groups was 24.6%.*
- *Over the same period, the racialized component of the labour force by (males 28.7%/females 32.3%) compared to (5.5% and 9%) respectively for the Canadian population.*
- *According to the 2001 Census, racialized group members made up 13.4% of the Canadian population while immigrants accounted for 18.4%.*
- *These figures are projected to rise to 20% and 25% respectively by 2015.*

Recent Immigration Patterns and Canada’s changing population

- *Canada welcomed an annual average of close to 200,000 new immigrants and refugees over the 1990s.*
- *Immigration accounted for more than 50% of the net population growth between 1991 – 1996.*
- *Immigration accounted for 70% of the growth in the labour force from 1991- 1996*
- *Immigration will account for virtually all of the net growth in the Canadian labour force by the year 2011 (HRDC, 2002).*
- *There has been a significant change in the source countries, with over 75% of new immigrants in the 1980s and 1990s coming from what is called the global South.*

Dimensions of Social Exclusion and differential life chances

- *Segmented labour market participation*
- *A double digit racialized income gap*
- *Chronically higher than average levels of unemployment,*
- *Deepening levels of poverty*
- *Differential access to housing and neighbourhood segregation*
- *Disproportionate contact with the criminal Justice system*
- *Higher health risks*

Labour Market segregation and Working Precariously

- *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 terms of employment.*
- *In the 1996-2001 census period, 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 (6.2%), supervisors (6.3%), fire-fighters (2.0%), legislators (2.2%)*

Inequality in employment income (1996-2001)

- *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*
- *In 1997, the gap grew to 25% or \$6,189*
- *In 2001, the employment income gap narrowed to 13.3% as the rewards of economic recovery finally filtered to the racialized groups, however the average after tax income gap was highest for male racialized youth at 42.3%*
- *The gap is also evident both among university educated (14.6%) as well as those with high school education (20.6%)*

Unemployment rates for Immigrants, Non-Immigrants, and Visible Minorities (%)

	<u>1981</u>	<u>1991</u>	<u>2001</u>
<i>Total labour force</i>	<i>5.9</i>	<i>9.6</i>	<i>6.7</i>
<i>Canadian born</i>	<i>6.3</i>	<i>9.4</i>	<i>6.4</i>
<i>All immigrants</i>	<i>4.5</i>	<i>10.4</i>	<i>7.9</i>
<i>Recent Immigrants</i>	<i>6.0</i>	<i>15.6</i>	<i>12.1</i>
<i>Visible Minorities</i>	<i>n/a</i>	<i>n/a</i>	<i>12.6</i>

Source: Statistics Canada, 2001 Census Analysis Series. The Changing Profile of Canada's Labour Force, February, 11, 2000 and 2001 Employment Equity Act Report, Human Resource and Development Canada.

Labour force participation

Patterns of lower labour force participation among immigrants coincided with the shift to immigration from the global South.

	1981	1991	2001
Total labour force	75.5	78.2	80.3
Canadian born	74.6	78.7	81.8
All immigrants	79.3	77.2	75.6
Recent Immigrants	75.7	68.6	65.8
Racial Minorities	n/a	70.5	66.0

Unequal return to education

Average earnings of immigrants and Canadian born with university degree in '000

	<u>Male</u>		<u>Female</u>	
	<u>1990</u>	<u>2000</u>	<u>1990</u>	<u>2000</u>
1yr in Can.	\$33	\$31.5	\$21	\$19.8
10yr in Can.	\$52	\$47.5	\$32.5	\$32.4
Can. Born	\$60	\$66.5	\$37	\$41

Racialized Youth and employment discrimination

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

Racialized Youth in the Labour Market, 2001

<i>Age 15-24</i>	<i>Labour Market Participation</i>	<i>Unemployment Rate</i>
<i>All persons</i>	<i>58.4%</i>	<i>13.3%</i>
<i>Immigrant Youth</i>	<i>55.0%</i>	<i>14.8%</i>
<i>Racialized Youth</i>	<i>43.7%</i>	<i>16.1%</i>
<i>Racialized youth – Can born</i>	<i>48.4%</i>	<i>15.5%</i>
<i>Black Youth – Can. Born</i>	<i>33.2%</i>	<i>21.4%</i>

Source: Census of Canada. Catalogue 97F0012XCB200102.

Racialized Youth in the Labour Market, 2001

<i>Age 20-24</i>	<i>Labour Market Participation</i>	<i>Unemployment Rate</i>
<i>All persons</i>	<i>72.9%</i>	<i>12.5%</i>
<i>Racialized Youth</i>	<i>67.3%</i>	<i>15.4%</i>
<i>Racialized Youth – Can. Born</i>	<i>64.7%</i>	<i>14.6%</i>
<i>Black Youth – Can. Born</i>	<i>64.8%</i>	<i>16.5%</i>

Source: Census of Canada. Catalogue 97F0012XCB200102

Racial Discrimination in Employment

- *According to the Ethnic Diversity Survey, 2003, 33% of racialized workers and 51% of Blacks reported experiencing racial discrimination*
- *Sectoral segregation and ghettoization has resulted in low income clusters and precarious jobs*
- *Inequality in income and employment status leads to the intensification of other forms of social exclusion*
- *Differential treatment in recruitment, hiring and promotion continues to occur*
- *Extensive reliance on non-transparent forms of recruitment such as word of mouth reproduces and reinforces existing networks of privilege of opportunity, exacerbated by differential valuation or effective devaluation of internationally obtained credentials and the use of immigrant status as a proxy for lower quality of human capital.*

Access to Professions and Trades

Barriers to access to professions and trades take the form of and result in:

- *Non-recognition of international credentials*
- *Devaluing human capital on the basis of source country or knowledge tradition*

- *Demands for Canadian experience*
- *Relegation into precarious employment in low wage jobs and occupations*
- *Degradation of skills over time*

The Racialization of Poverty

- *The Racialization of poverty is linked to the process of the deepening social exclusion of racialized communities.*
- *It represents a disproportionate and persistent experience of low income among racialized groups*
- *A key contributing factor is the concentration of economic, social, cultural and political power in fewer hands that has emerged as the state has retreated from its regulatory role in the economy.*
- *The experience of poverty includes powerlessness, marginalization, voicelessness, vulnerability, and insecurity.*
- *Different dimensions of the experience of poverty interact in important ways to reproduce and reinforce social exclusion*
- *In 1995, the rate for racialized children under six living in low income families was 45 per cent - almost twice the overall figure of 26 per cent for all children living in Canada.*
- *In 1996, while racialized groups members accounted for 21.6 per cent of the urban population, they accounted for 33 per cent of the urban poor.*
- *In 1996 36.8% of women and 35% of men in racialized communities were low-income earners, compared to 19.2% of other women and 16% of other men*
- *In 1998, the family poverty rate for racialized groups was 19% compared to 10.4% for other Canadian families.*

Low income growth among racialized populations in Toronto

- *In Toronto, racialized group members and immigrants are almost three times as likely to live in poverty whether they are employed or not.*
- *Racialized poverty rate is 29.5%, and 24% of immigrants compared to the overall average of 11.6% among non-racialized, non-immigrant population.*
- *The overall Toronto poverty rate is 19% and the Canadian rate is 14.7%.*
- *Between 1980 and 2000, while the poverty rate for non-racialized population fell by 28%, poverty among racialized families rose by 361%.*

Neighbourhood dimensions of Social Exclusion

- *In Canada's urban areas, the spatial concentration of poverty or residential segregation is intensifying along racial lines.*
- *Immigrants in Toronto are more likely than non-immigrants to live in neighbourhoods with high rates of poverty*
- *Young immigrants living in low income areas often struggle with alienation from their parents and community of origin, and from the broader society. They are disproportionate targets of criminalization.*

- *But these neighbourhoods also have a complex role as communities for their immigrant and racialized residents by providing a space in which a sense of belonging is created.*

Racialized neighbourhoods

Toronto Area racialized enclaves experience high poverty rates

	<u><i>University</i></u>	<u><i>unemployment</i></u>	<u><i>low income</i></u>	<u><i>lone parent</i></u>
<i>Chinese</i>	<i>21.2%</i>	<i>11.2%</i>	<i>28.4%</i>	<i>11.7%</i>
<i>South Asian</i>	<i>11.8%</i>	<i>13.1%</i>	<i>28.3%</i>	<i>17.6%</i>
<i>Black</i>	<i>8.7%</i>	<i>18.3%</i>	<i>48.5%</i>	<i>33.7%</i>

Impacts of Neighbourhood exclusion

- *One way to understand the increase in various forms of violence, including the explosion of gun violence among youth in low income neighbourhoods in Toronto are the high levels of marginalization, hopelessness and powerlessness brought about by the economic restructuring of these neighbourhoods, allowing for conditions under which generalized violence can thrive.*
- *Research of community violence suggests that it is largely a function of social breakdown pertaining to social inequality. It represents a nihilism that arises out of the disconnection and distorted evaluation of the worth of human life that emerges in conditions of despair, powerlessness, and hopelessness in some socially excluded environments.*
- *Young racialized group members who grow up in these conditions are often caught up in a culture of alienation both from their parents and community of origin, and from the broader society.*