



CANADIAN
HUMAN RIGHTS
COMMISSION

COMMISSION
CANADIENNE DES
DROITS DE LA PERSONNE

**Submission by
the Canadian Human Rights Commission
to the
United Nations Committee on the Elimination of Discrimination
against Women
on the
Sixth and Seventh Periodic Reports of Canada
under the
International Convention on the Elimination of All Forms of
Discrimination against Women**

September 2008

Introduction

The Canadian Human Rights Commission (the CHRC; the Commission) is Canada's national human rights institution. Created by Parliament through the enactment of the *Canadian Human Rights Act (CHRA)*, it operates as an independent agency mandated to promote and protect the human rights of Canadians within federal areas of jurisdiction.¹

The CHRC was instrumental in the development of the *Principles relating to the status and functioning of national institutions for the protection and promotion of human rights* ("the Paris Principles"), which were incorporated into General Assembly resolution 48/13 of December 20, 1993. Over the years, the CHRC has developed ongoing relationships, bilaterally and multilaterally, with national human rights institutions (NHRIs) around the world, and currently chairs the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

The Commission acknowledges, as outlined in the Sixth and Seventh Periodic Reports, the considerable efforts of the Government of Canada to ensure full realization of the rights guaranteed under the International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and remains committed to working with the Government to ensure continued progress in that regard. It is in the spirit of constructive engagement that the Commission brings, to the attention of the Committee, the following comments respecting Canada's report. This submission focuses on section 2 and 11 of the Convention, as they are more closely related to the Commission's legislative mandate under the *Canadian Human Rights Act*.

Article 2: Anti-Discrimination Measures

Complaints of Gender-Related Discrimination

Complaints of discrimination based on sex continue to account for 10% to 15% of all signed complaints received by the Commission. While men can and do file complaints alleging discrimination based on their sex, the majority of sex discrimination complaints are filed by women. In the past two years, almost half of these complaints filed by women included an allegation that they were harassed, either in the workplace or while receiving a service. Other forms of discrimination frequently raised in sex discrimination complaints filed by women included discrimination related to their pregnancy, and lack of pay equity (equal pay for work of equal value) with their male counterparts.

Recently, some complaints filed with the Commission have led to Tribunal decisions that have brought important advances in ensuring full equality for women. For example, in one recent case, the right of a new mother to have her work schedule altered to enable her to breast feed her newborn was affirmed. In another case, the Tribunal ordered that the leave taken by a female employee for maternity and parenting purposes should not be counted against her in calculating her entitlement for job eligibility.

¹For more information on the mandate of the Commission see Annex A.

Special Report on Federally Sentenced Women

In 2004, the CHRC released the special report, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. It noted that the Correctional Service of Canada has made important progress in addressing the unique circumstances of women offenders. For example, the Service has established five regional centers and an aboriginal healing lodge for women offenders, and had adopted a women-centered approach to its work. However, human rights problems remain, particularly with regard to Aboriginal women, women belonging to racial minorities, and women with mental disabilities. The Commission continues to work with the Correctional Service of Canada to follow up on the implementation of the report's 19 recommendations. The Commission is hoping for more progress in the future on the report's key recommendations, including those related to instituting independent adjudication for decisions relating to segregation, and to establishing an external redress body for federal offenders that is fully independent from Government.

The number of Aboriginal women who are incarcerated continues to increase. Although Aboriginal women account for 3% of the female population of Canada, they account for 31% of the women in federal institutions. While the disproportionate representation of Aboriginal women is part of a broader systemic issue, the Commission remains concerned that the Correctional Service of Canada's programs and policies take into consideration the unique needs of Aboriginal women, and work to ensure their effective and timely reintegration into the community.

Application of the Canadian Human Rights Act to First Nations Women

Until June 2008, section 67 of the *CHRA* prevented some First Nations people from full access to the human rights redress process provided by the *Act*. Specifically, section 67 excluded these First Nations people from filing a complaint with the Commission relating to any action arising from, or pursuant to, the *Indian Act*. As is discussed below, in December 2006, the Government of Canada introduced legislation to repeal section 67.

When the *CHRA* was enacted in 1977, the reason given for this unusual exemption was that the government of the day needed time to address issues of discrimination concerning women who married non-Indian men. At the time, discussions were underway with First Nations organizations to resolve this issue. Section 67 was to be a temporary measure; nevertheless, it took over 30 years for the section to be repealed.

The Commission issued a special report on this matter in October 2005: *A Matter of Rights: A Special Report of the Canadian Human Rights Commission on the Repeal of Section 67 of the Canadian Human Rights Act*. In issuing the report, the Commission noted:

"First Nations people living on-reserve are the only group of people in Canada who are legislatively excluded from filing human rights complaints in some circumstances. This situation is an embarrassment to Canada. How can Canada, in good conscience, promote respect for human rights both at home and abroad while excluding First Nations people from full human rights protection?"

The key recommendation of the Commission's report was the immediate repeal of Section 67. The special report also recommended that there be a transition period to allow the Commission and First Nations governments to properly prepare for the application of the *CHRA* in areas which were previously excluded.

The special report highlighted the need to introduce human rights protection in a way that respects the rights and interests of First Nations people. An example is the inclusion of an interpretative provision to guide the Commission, the Human Rights Tribunal, and the Courts in applying the Act so that the legitimate collective rights and interests of First Nations communities are appropriately considered.

The recommendations of the Commission were substantially adopted when amendments to the *CHRA* were approved by Parliament in June 2008. Application of the Act to First Nations governments is suspended for 36 months to allow for proper implementation of the amendments.

Whenever possible, the Commission encourages parties to a human rights complaint to try to resolve the matter through their own dispute resolution processes, rather than using the more formal statutory process under the *CHRA*. Filing a complaint with the Commission should be a last resort, to be used when other forms of dispute resolution have been unsuccessful. The Commission is committed to continuing its close collaboration with First Nations and others to ensure that all First Nations citizens are able to access human rights processes that are respectful of their particular cultural situations and needs.

Article 2 c): Effective protection and remedies

CHRC Measures to Ensure Effective Resolution of Complaints

Since it was established in 1978, the Commission has played a key role in protecting human rights in Canada by responding to the evolving needs of the public. However, the Canadian human rights landscape has changed fundamentally since the Commission was created 30 years ago. The traditional approach to investigating human rights complaints resulted in lengthy investigations, significant litigation, and recurring backlogs. It did not respond to the legitimate demands of Canadians for timely and effective service. Dealing with human rights complaints on a case-by-case basis consumed a tremendous amount of time and resources, leaving many of the Commission's broader objectives and purposes unmet.

Against this backdrop, the Commission has, and will continue to transform the way it works to better protect and promote equality in Canada. As always, the Commission works to advance human rights and offer Canadians under federal jurisdiction an avenue for resolving complaints. In essence, the Commission is moving towards focussing more of its efforts and resources on human rights problems before they grow into damaging and lengthy disputes that are costly, both emotionally and financially. That means trying to resolve human rights issues early, using such instruments as mediation, issuing interpretative policies, and providing education and training.

This approach also involves improving the investigation process for handling complaints, the traditional bedrock of the Commission's work. Since 2002, the combination of an expanded mediation program, a streamlined investigation process, and faster decision-making fuelled the Commission's drive toward eliminating its backlog of human rights cases and setting standards for timely processing.

The Commission's new approach has resulted in a more effective human rights redress process:

- the average age of cases has been reduced by 64%, from 25 to 9 months since December 2002;
- active cases aged two years and older were reduced by 82%, and now represent 5% of the active caseload compared to 27% in 2002;
- since 2002 the active caseload has been reduced by 48% from 1287 to 676.

The Commission, within its limited resources, has also expanded its efforts to increase public understanding of human rights and thereby reduce discrimination, by implementing initiatives such as:

- the creation of a comprehensive prevention initiative that focuses on working with employers to put in place human rights policies and procedures aimed at reducing and preventing discrimination. This initiative includes, for example, the provision of training aimed at preventing and resolving harassment in the workplace. Early results indicate a reduction in the number of complaints filed against employers who are participating in prevention activities.
- the creation of a corporate Knowledge Centre as a focus for cutting edge research and policy development on issues relevant to the Commission's mandate.
- the initiation of a number of strategic projects aimed at highlighting key human rights issues and working cooperatively with government and civil society to resolve them, including a major initiative regarding hate on the Internet.

Article 11: Employment

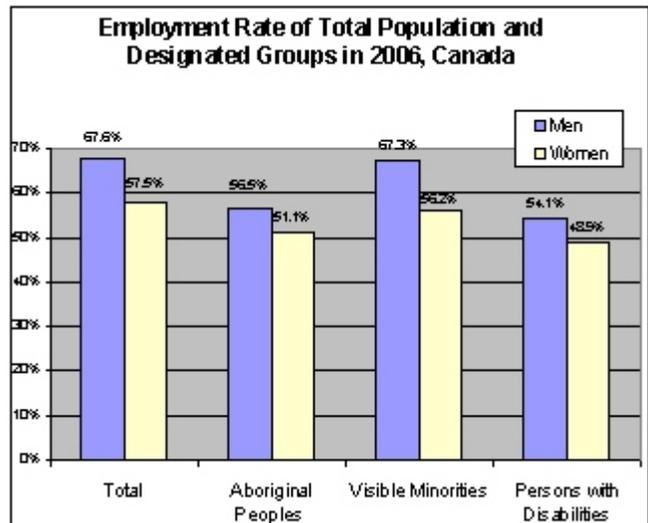
The *Employment Equity Act (EEA)* requires all federally regulated employers, including the Government of Canada, to take measures to ensure an equitable representation of members of four designated groups in the workplace - visible minorities, Aboriginal peoples, women, and persons with disabilities. Although the representation of designated group members has increased in several areas since the Act was passed in 1986, under-representation remains in many sectors.

The CHRC's mandate is to audit federally regulated employers to ensure they are compliant with the requirements of the *EEA*. The Act requires that employers prepare an employment

equity plan and set numerical goals to correct the under-representation of designated groups in their workforce. Employers are to make all reasonable efforts to implement their employment equity plans, a requirement that the Commission can verify by monitoring and intervening where progress is not achieved.

Labour Force Characteristics of Women in Canada

In 2006, the overall employment rate of men in Canada (67.6%) was considerably higher than that of women (57.5%). Among visible minority women, the employment rate (56.2%) was slightly lower than that of all women; and among Aboriginal women, it was again lower (51.1%). The employment rate of men in each of the groups was higher than the corresponding rate for women.



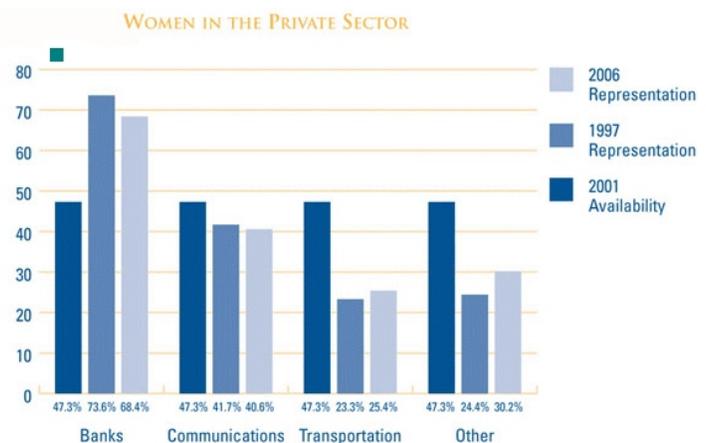
The most recent labour force data available for persons with disabilities shows that the employment gap between people with disabilities, and those without, is narrowing. While this is encouraging, the gap is still large. At the same time, there is a disparity between the employment rates of men with disabilities and their female counterparts.

The employment rate for women with disabilities was 48.9%, and for men with disabilities, 54.1%.

Furthermore, the unemployment rates for Aboriginal women, visible minority women, and women with disabilities were higher than those of all women in Canada. The overall unemployment rate for women was 6.6%. In comparison, the rates were 13.5% for Aboriginal women, 9.3% for visible minority women, and 9.9% for women with disabilities.

Employment Equity in the Private Sector

Overall, women are under-represented in the federally regulated private sector compared to their availability in the labour market. Women who are also members of other designated groups face additional challenges compared to other persons in the workforce.



In 2006, Aboriginal women comprised 0.8% of all private sector employees covered by the *EEA* (compared to 1.0% of Aboriginal men). A total of 7.0% of all jobs in the federally regulated sector were held by visible minority women, slightly less than the share held by visible minority

men (7.9%). Just 1.2% of employees were women with disabilities (compared to 1.5% of men with disabilities).

The extent to which women in designated groups are under-represented in management jobs in the private sector can be seen by comparing their overall representation to their share of management positions. Although women occupied 43.1% of all jobs in the federally regulated sector in 2006, they held just 21.3% of senior management positions. Aboriginal women held 0.8% of all occupations, but 0.1% of senior management jobs (Aboriginal men, 0.6%). Visible minority women held 7.0% of all jobs, but 1.5% of senior management jobs (visible minority men, 3.6%). Women with disabilities held 1.2% of all occupations, but only 0.4% of senior management jobs (men with disabilities, 2.0%).

Forty-four percent of all women in the federally regulated sector in Canada were still employed in clerical jobs in 2006. Concentration in these occupations was especially evident among Aboriginal women and women with disabilities.

The proportion of visible minority women and women with disabilities who were employed in management and professional occupations was similar to that of all women in the federally regulated private sector (24%). However, just 15% of Aboriginal women were employed in these occupations.

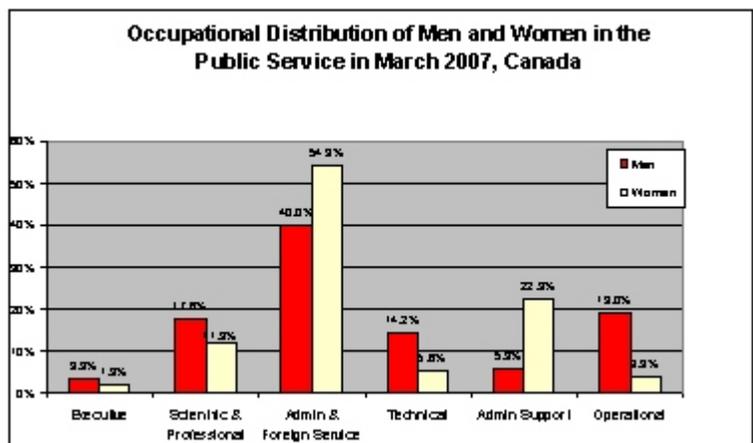


Men were more likely to be in full-time employment (89%) than women (77%). Visible minority women were most likely to be working full-time with 81% employed full-time, followed by women with disabilities (79%), and Aboriginal women (75%).

There were substantial differences in the salaries of men and women employed in the federally regulated private sector, even among those working full-time. Most men (57%) with full-time employment in Canada, including those who belonged to designated groups (Aboriginal men, visible minority, and men with disabilities), earned over \$50,000 per year. However, just 38% of women in Canada earned more than \$50,000. Women, who were also members of other designated groups, earned even less.

Employment Equity in the Public Sector

In 2006, more than half (53.9%) of all jobs in the public service were held by women, slightly higher than their workforce availability (52.2%). Aboriginal women, women with disabilities, and visible minority women also held the



majority of jobs in each of their respective designated groups - Aboriginal women occupied 2.6% of all public service jobs (compared to 1.6% of Aboriginal men), women with disabilities occupied 2.9% of jobs (2.8% for men with disabilities), and visible minority women occupied 4.8% of jobs (4.0% for visible minority men).

The prevalence of women in the public service is partly related to the predominance of administrative and clerical jobs in this sector. Almost half (47.7%) of all public service jobs are grouped as administrative and foreign services positions, followed by administrative support (14.8%), scientific and professional (14.5%), operational (10.9%), technical (9.6%), and executive (2.6%). Women were under-represented in all of these groups, except for administrative support and administrative and foreign service. Over three out of four women were employed in these latter two occupational groups; 54.3% were in administrative and foreign service positions and 22.3% were in administrative support positions. In contrast, 40.0% of men were in administrative and foreign service positions and 5.9% were in administrative support positions.

Just 1.9% of women held executive jobs and 11.9% held scientific and professional jobs. In comparison, 3.3% of men occupied executive positions and 17.6% held scientific and professional jobs.

Pay equity between women and men

The Canadian Human Rights Act prohibits differences in wages between women and men “who are performing work of equal value”. In 2001, the Commission tabled a special report in Parliament calling for additional provisions in the federal legislation to reduce pay inequity between women and men. The report noted that over the past 20 years, the Commission had found that the complaint-based, reactive model of redress provided by the Canadian Human Rights Act had serious limitations. The report called for an amendment to the federal legislation that would require employers to take proactive measures to achieve pay equity, such as developing a systematic action plan that would be monitored by the State. That recommendation was also made in 2004 by the Pay Equity Task Force that was appointed by the federal government to review the issue. In 2006, the Government of Canada declined to accept that recommendation, indicating that there was a lack of consensus among stakeholders. The Commission encourages the Government to reconsider its position.

Annex A: The Canadian Human Rights Commission

The Canadian Human Rights Commission (the Commission) was established in 1977 to administer the *Canadian Human Rights Act*. The purpose of the Act is to promote equality of opportunity and to protect individuals from discrimination based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, or conviction for an offence for which a pardon has been granted.

The Commission also has a mandate under the *Employment Equity Act*, which seeks to achieve equality in the workplace and to correct the conditions of disadvantage in employment experienced by women, Aboriginal peoples, persons with disabilities and members of visible minorities. Both the *Canadian Human Rights Act* and the *Employment Equity Act* apply to federal departments and agencies, Crown corporations and federally regulated private-sector organizations.

The Commission is made up of a Chief Commissioner and a Deputy Chief Commissioner appointed for a term of up to seven years; and up to six other Commissioners, either part-time for terms of up to three years, or full-time for terms of up to seven years. The Chief Commissioner is the Chief Executive Officer of the Commission, supported by a Secretary General, who is its Chief Operating Officer.