CANADIAN HUMAN RIGHTS COMMISSION

SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN IN ADVANCE OF ITS CONSIDERATION OF CANADA'S 8TH AND 9TH PERIODIC REPORTS

SEPTEMBER 2016

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1. THE CANADIAN HUMAN RIGHTS COMMISSION

The Canadian Human Rights Commission (CHRC) is Canada's national human rights institution. It has been accredited "A-status" by the Global Alliance of National Human Rights Institutions, first in 1999 and again in 2006, 2011 and 2016.

The CHRC was established by Parliament through the *Canadian Human Rights Act* (CHRA) in 1977.[1] It has a broad mandate to promote and protect human rights. The Constitution of Canada divides jurisdiction for human rights matters between the federal and provincial or territorial governments. The CHRC has jurisdiction pursuant to the CHRA over federal government departments and agencies, Crown corporations, First Nations governments and federally-regulated private sector organizations. Provincial and territorial governments have their own human rights codes and are responsible for provincially/territorially-regulated sectors.

The CHRC also conducts compliance audits under the *Employment Equity Act* (EEA).[2] The purpose of the EEA is to achieve equality in the workplace so that no person is denied employment opportunities or benefits for reasons unrelated to ability, and to correct the historic employment disadvantages experienced by four designated groups: women, Indigenous peoples, persons with disabilities and members of visible minorities.

The CHRC has taken action to promote and protect the human rights of individuals in vulnerable circumstances by investigating complaints, issuing public statements, tabling Special Reports in Parliament, conducting research, developing policy, consulting with stakeholders, and representing the public interest in the mediation and litigation of complaints. It is committed to working with the Government of Canada to ensure continued progress in the protection of human rights, including Canada's implementation of the rights and obligations enshrined in the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW). It is in the spirit of constructive engagement that the CHRC submits this report to the Committee on the Elimination of Discrimination against Women (the Committee) on the occasion of its review of Canada's combined 8th and 9th periodic reports.

1 Available at laws-lois.justice.gc.ca/PDF/H-6.pdf. Although Canada's human rights laws are not part of the Constitution, they are considered "quasi-constitutional" in nature, meaning that all other laws must be interpreted in a manner consistent with human rights law.

2 Available at laws-lois.justice.gc.ca/PDF/E-5.401.pdf.

2. EQUALITY RIGHTS (ARTICLE 2)

2.1. Equality Rights of Women

In 2014, the CHRC released the *Report on Equality Rights of Women*. The report is available at www.chrc-ccdp.gc.ca/sites/default/files/report_on_equality_rights_of_women.pdf.

The purpose of this report is to compare the experience of adult women and adult men with respect to seven dimensions of well-being widely considered critical from an equality-rights perspective: economic well-being; education, employment; health; housing; justice and safety; and political and social inclusion[3]. The report uses data from several surveys conducted by Statistics Canada and provides as comprehensive a statistical portrait as can be drawn from the available data[4].

When compared to adult men, women in Canada:

- Earn less across most employment sectors;
- Are more likely to be unemployed;
- Rely more often on government transfers as their major source of income;
- Are more disadvantaged in housing;
- Feel unsafe in their own neighborhoods; and
- More often report being the victims of physical violence at the hands of their former spouses / partners.

Overall, more women than men in Canada reported experiencing discrimination in day-to-day activities – in stores, banks, restaurants, on buses, subways and planes, and when looking for a place to live.

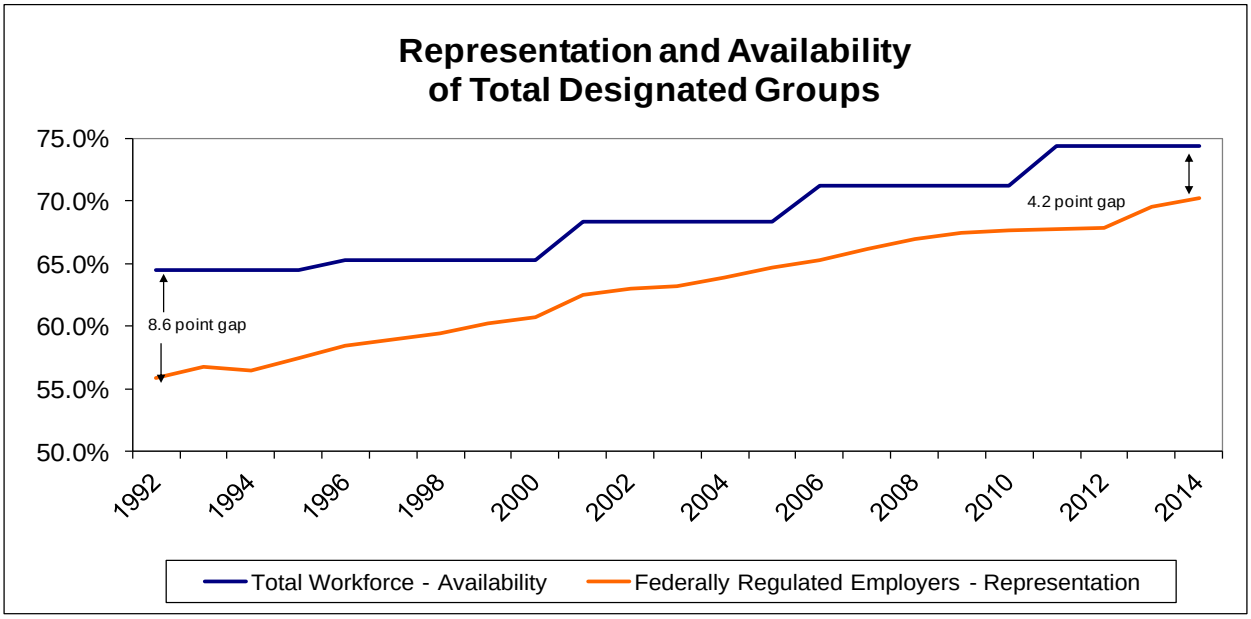
The report shows that women in Canada have made important gains on the road to equality over the years. However significant gaps remain.

The CHRC presents this report to the Committee in the hopes that it will inform the work of the Committee.

[3] The report does not further disaggregate the data, for example based on ethnic origin or disability. Rather, it presents data on the equality rights of all women compared to all men.

[4] The CHRC recognizes the limitations inherent in using data from multiple surveys. For example, none of the surveys used in the report were intended to document equality rights. Since each survey had its own purpose, design, definition of key concepts and sample size, comparisons between surveys were not made. Further, some sample sizes are so low in some surveys that it was necessary to drop some measures in accordance with confidentiality requirements. Finally, some measures were also dropped because the value of the coefficient of variation was too high and results were accordingly considered unacceptable.

2.2. Employment Equity[5]

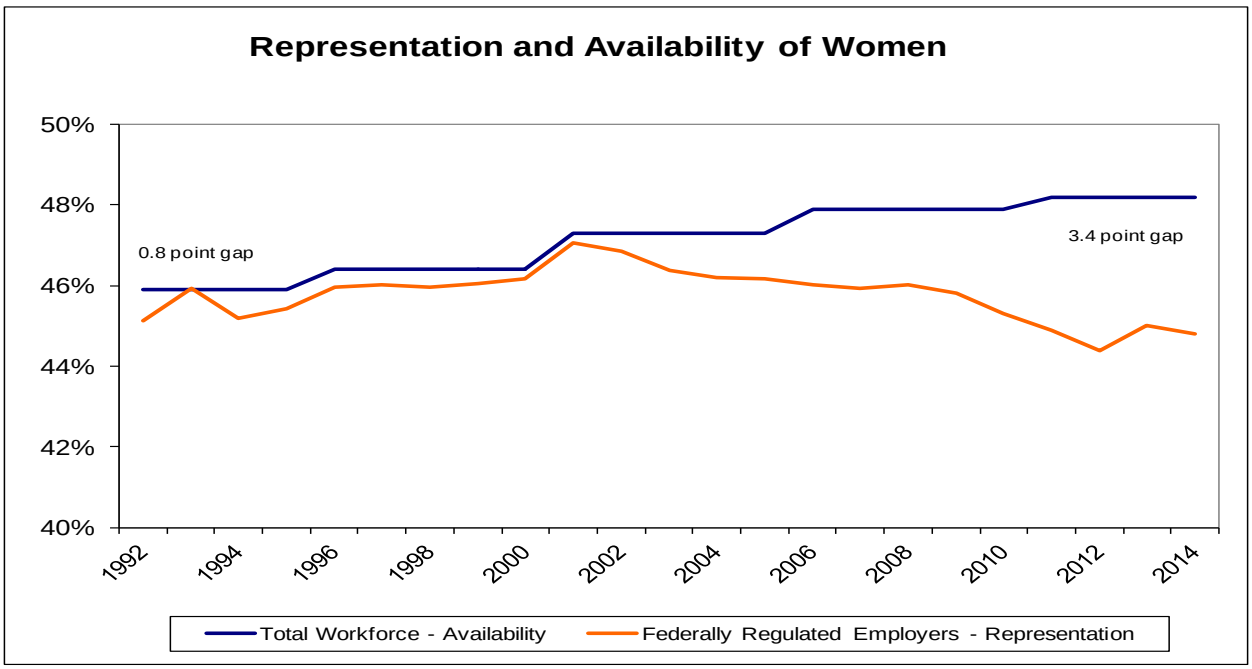


Women are one of the four designated groups listed in the EEA along with persons with disabilities, Aboriginal peoples, and members of visible minorities.

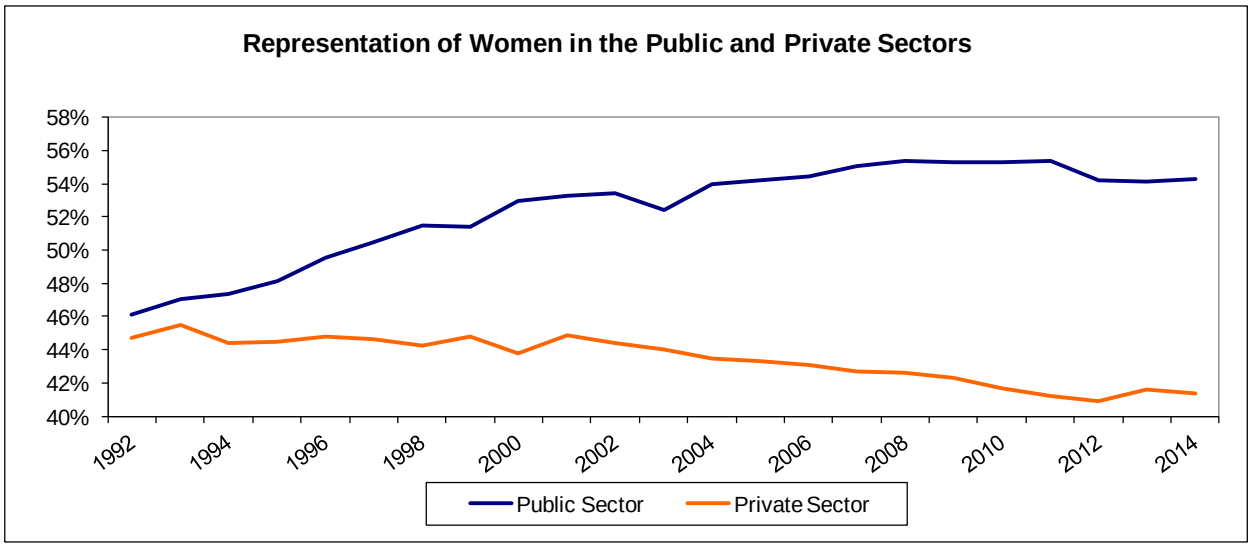
Overall, between 1992 and 2014 employment equity within the meaning of the EEA improved. In the federally-regulated sector, the gap[6] between availability and representation of the designated groups was reduced from 8.6% to 4.2%. However, when this data is disaggregated by designated group, a somewhat different picture emerges. Three of the four groups (persons with disabilities, Aboriginal peoples, and members of visible minorities) are better represented in the labour market than they were in 1992; women are not.

[5] The CHRC conducts audits of federally-regulated employers to monitor their compliance with their obligations under the EEA. The following information is based on data from three soucres: 1) for information relating to the private sector, *ESDC Employment Equity Act Annual Reports*, available at www.labour.gc.ca/eng/standards_equity/eq/emp/; 2) for information relating to the public sector, *Employment Equity in the Public Service of Canada*, available at www.tbs-sct.gc.ca/reports-rapports/ee/2012-2013/ee-eng.asp; and 3) for information realting to labour market availability, *2006 Census of Canada* and *2006 Participation and Activity Limitation Survey*, available at www.labour.gc.ca/eng/standards_equity/eq/pubs_eq/eedr/2006/report/page00.shtml.

[6] "Gap" means the difference between labour market availability and representation, where "labour market availability" means the share of designated group members in the workforce from which employers could hire and "representation" means the share of designated groups on a given labour force.



The gap between the availability and the representation of women has increased from 0.8% in 1992 to 3.4% in 2014. This downward trend appears to have begun in 2002, largely owing to declines in private sector employment.

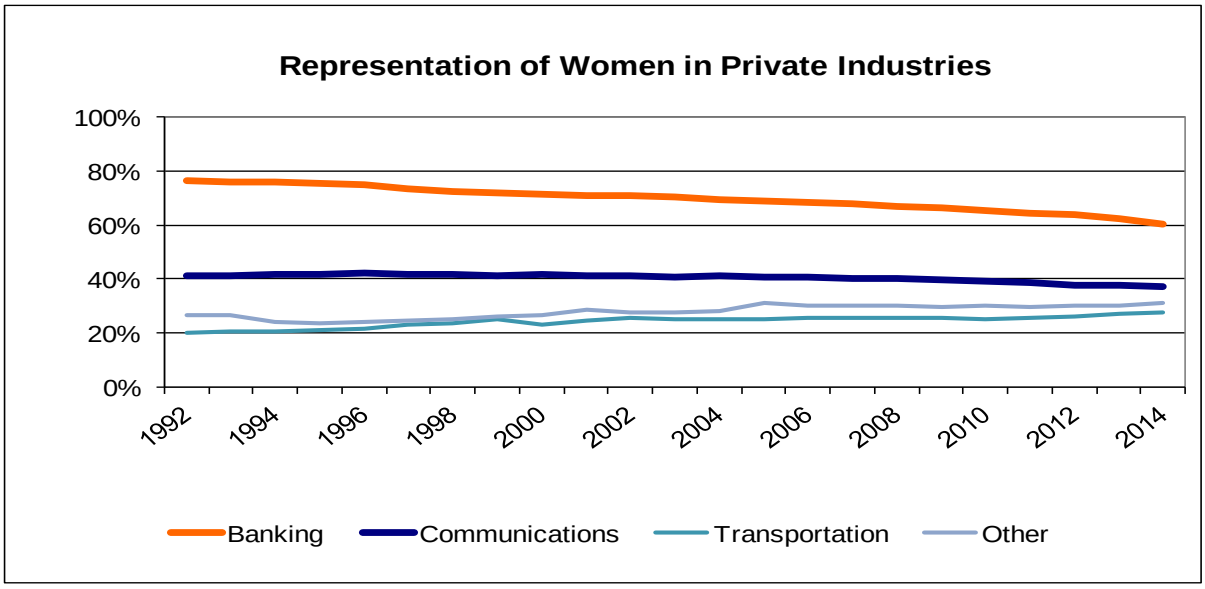


Over the years, while the representation of women has increased significantly in the public sector, it has decreased in the private sector. The difference between the two sectors grew significantly over the period from 1.4% in 1992 to 12.9% in 2014.

In the public sector, representation has grown significantly, going from 46.1% in 1992 to 54.3% in 2014. The overall representation of women in the core public sector is currently above availability. Overall, 62% of federal departments / agencies with more

than 500 employees either met or exceeded public service availability of 52.5% for women.

In the private sector, however, representation of women remained fairly consistent from 1992 to 1999, but fell by 2.3 percentage points between 2000 and 2014. Overall, in 2014, women held 41.4% of all jobs in the private sector, compared to an availability rate of 48.2%.



The highest levels of women's representation within the private sector have consistently been in the banking industry. However, from 1992 to 2014, representation declined from 76.3% to 61.5% – a total of 14.8 percentage points.

One cause of the decline in representation in the private sector was the increased use of automated technology, which made some clerical positions redundant. This was particularly true in the banking sector, where representation of women declined the most. In this sector, roughly 6 out of 10 jobs were clerical jobs in the early 1990s – compared to 5 out of 10 jobs in 2008. Given that women held the vast majority of clerical positions, as these positions were eliminated, the representation of women in the banking sector was reduced.

Women's representation was lowest in the transportation sector, although representation did grow from 20.0% in 1992 to 27.2% in 2014.

The representation of women in the communications industry fluctuated slightly over the 22-year period, but for the most part remained relatively constant – beginning at 41.1% in 1992 and ending at 37.4% in 2014.

In the "other" category, private sector industries experienced some growth in women's representation, which rose from 26.5% in 1992 to 30.9% in 2014.

2.2.1. Women in Senior Management Positions

Women continue to lag behind in representation in senior management positions in the federally-regulated sector. This is particularly true in the private sector:

- In 2006, women in the public sector held 38.8% of senior management positions. In the private sector, women held only 21.3% of such positions, resulting in a difference of 17.5% between these sectors.
- In 2014, women in the public sector held 46.4% of senior management positions, an improvement in representation of almost 8%. In the private sector, however, improvement was more muted, with only 24.8% of such positions held by women, representing an improvement of only 3.5%. The difference between these sectors had, accordingly, grown to 21.6%.

2.3. Sexual harassment

Despite all that has been done to eliminate sexual harassment in the workplace, it persists. A 2014 survey conducted by the polling firm Angus Reid, for example, found that 43% of women in Canada report having been sexually harassed at work[7].

From 2008 to the present, the CHRC has received 320 complaints alleging sexual harassment. 82% of these complaints were filed by women.

Sexual harassment persists especially in Canada's policing and military environments.

In 2015, the report of the *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces* (the Deschamps report) was released[8]. It found that there is an underlying sexualized culture in the Canadian Armed Forces (CAF) that is hostile to women and LGBTQ members, and conducive to more serious incidents of sexual harassment and assault. The Deschamps report made ten (10) recommendations, including that the CAF acknowledge that inappropriate sexual conduct is a serious problem that exists in the organization, and that it establish a strategy to effect cultural change to eliminate the sexualized environment and to better integrate women, including by conducting a gender-based analysis of CAF policies. The CHRC supports these recommendations and encourages the CAF to continue to work with experts in the field of sexual harassment, to implement them in an effective manner.

Allegations of widespread sexual harassment have also been made against Canada's national police force, the Royal Canadian Mounted Police (RCMP), including through the filing of two class action lawsuits against the organization. The CHRC has also, in recent years, received a number of complaints from women officers alleging sexual harassment during their time with the RCMP. The CHRC applauds the steps that the

[7] See http://angusreid.org/sexual-harassment/.
[8] See http://www.forces.gc.ca/en/caf-community-support-services/external-review-sexual-mh-2015/summary.page.

RCMP has taken to address this issue, including by increasing the representation of women in their senior ranks, and by setting a target that half (50%) of all recruits are women. It encourages the RCMP to continue its efforts to eliminate sexual harassment in its workplace.

3. INDIGENOUS WOMEN AND GIRLS

The CHRC views the situation of Indigenous peoples[9] in Canada as one of the most pressing human rights issues facing Canada today. Indigenous peoples in Canada continue to be significantly disadvantaged in terms of education, employment and access to basic needs such as water, food and housing. They often face difficulty in accessing justice on a basis equal with others in Canada. Indigenous women, in particular, bear a disproportionate burden of violence. All of these realities have been repeatedly recognized by international bodies, including this Committee.

Many of the problems in First Nations communities in Canada have been linked to the *Indian Act*, a piece of federal legislation. The *Indian Act* regulates and affects many aspects of the daily lives of Indigenous peoples, including their core identity. It sets out criteria for Indian status and band membership as well as criteria for entitlements that flow from having Indian status and band membership, such as access to housing on reserves. Legal challenges to these and other *Indian Act* provisions continue to be expressed at the national and international levels.

The landscape in relation to the rights of Indigenous peoples in Canada continues to evolve, resulting in some positive changes. For example:

- For more than 30 years, section 67 of the CHRA prevented people from filing complaints of discrimination resulting from the application of the *Indian Act*. In June 2008, the CHRA was amended to repeal this section[10]. This is a positive development that the CHRC hopes will have a lasting impact.

- In April 2014, the Supreme Court of Canada ruled on a landmark case involving the rights of Métis and non-status Indians, *Daniels v Canada (Indian and Northern Affairs)*[11], finding that these individuals are "Indians" within the meaning of section 91(24) of the *Constitution Act*. This ruling may allow Métis and non-status Indians access to federal programs and services that were previously offered only to First Nations and Inuit people.

[9] The term "Indigenous" or "Indigenous peoples" is used throughout this submission to refer to First Nations, Inuit and Métis peoples in Canada, also commonly referred to as Aboriginal peoples. In specific areas of this submission, the terms Aboriginal or First Nations may be used for greater specificity, for example where this is the official terminology used in a referenced law, or where a law or program is applicable only to this sub-category of the Indigneous population.

[10] See *Bill C-21: An Act to Amend the Canadian Human Rights Act*, available at www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=3598216.

[11] 2016 SCC 12.

- The current Government, elected in October 2015, has committed to improving its relationship with Indigenous peoples by implementing the calls to action of the Truth and Reconciliation Commission of Canada, and by adopting and implementing the *UN Declaration on the Rights of Indigenous Peoples*.

Despite these developments, the following section will illustrate that significant obstacles remain in the ability of Indigenous peoples to exercise their rights in a manner equal with others in Canada.

3.1. Violence against Indigenous Women and Girls

As the Committee is aware, Indigenous women in Canada experience systemic discrimination and bear a disproportionate burden of violence. The Royal Canadian Mounted Police recently reported that since 1980, over 1,100 Indigenous women have been murdered or gone missing in Canada[12]. Estimates indicate that the rate at which Indigenous women are murdered or go missing is four times higher than the rate of representation of indigenous women in the Canadian population, which is 4.3%.

In December 2014, the Inter-American Commission on Human Rights completed its study relating to missing and murdered Indigenous women in British Columbia, concluding that these disappearances and murders are part of a broader pattern of violence and discrimination against Indigenous women in Canada[13]. As the Committee is aware, in March 2015, it concluded its own inquiry concerning this issue with a finding that Canada has violated the rights of Indigenous women victims of violence under CEDAW[14].

The CHRC applauds the Government of Canada's decision to hold a national inquiry into murdered and missing Indigenous women and girls, and its recent appointment of three Aboriginal women to the five-member inquiry panel, including an Indigenous woman chair. It further applauds the Government's pre-inquiry activities that sought to consult survivors, family members and loved ones, Indigenous peoples, NGOs, provinces and territories, and other experts regarding the design of the inquiry itself.

The CHRC was consulted during the pre-inquiry process and made 16 recommendations for the Government's consideration. The full submission can be found at http://www.chrc-ccdp.gc.ca/eng/content/submission-canadian-human-rights-commission-government-canada-pre-inquiry-design-process.

[12] See: www.rcmp-grc.gc.ca/pubs/mmaw-faapd-eng.pdf
[13] See www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf.
[14] CEDAW/C/OP.8/CAN/1 (6 March 2015).

Recommendation 1: That Canada ensure that it applies a human rights-based approach to conducting its inquiry into murdered and missing Indigenous women. This approach should examine the issue comprehensively and holistically, reveal barriers to equality and their root causes, recommend lasting solutions, and establish a way to monitor progress in achieving these. To ensure its credibility, the inquiry must ensure the access, participation and empowerment of Indigenous women and girls who are survivors of violence, and must treat these women not just as victims but as independent rights-holders.

3.2. Challenges in Accessing Justice

Since the repeal of section 67 took effect[15], Indigenous individuals and organizations have filed 517 complaints with the CHRC: 173 complaints have been filed against the federal government, and 344 complaints have been filed against First Nation governments. Some of these cases raise complex issues and could set precedents that could advance equality and improve the quality of life of Indigenous people for generations to come.

However, barriers to human rights justice persist for many Indigenous people, and in these situations, protection from discrimination and guarantees of equality of opportunity remain elusive.

Throughout 2013 and 2014, the CHRC held a series of roundtable meetings across the country with Indigenous women, representative Indigenous women's associations, and other organizations that provide services to First Nations, Métis and Inuit women in order to discuss issues of access to justice generally, and access to human rights justice specifically.

The results of these consultations have been published in a report, *Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice for Indigenous Women and Girls*. It is available on the CHRC's website at http://www.chrc-ccdp.gc.ca/eng/content/honouring-strength-our-sisters-increasing-access-human-rights-justice-indigenous-women-and.

[15] Numbers are between 18 June 2008 and 18 June 2014.

A total of 21 barriers to access to justice have been identified through the roundtable process. These are:

- Awareness
- Leadership
- Accessibility of human rights information
- Re-victimization
- Fear of retaliation
- Intercultural understanding
- Human and financial resources
- Accessibility of justice system processes
- The scope of the CHRA
- Power imbalances
- Historical and ongoing colonization
- Education
- Linguistic barriers
- Mental health
- Confidentiality
- Economic barriers
- Trust
- Advocacy and legal supports
- Jurisdictional confusion
- Normalization of discrimination
- Systemic discrimination

The report also contains a description of strategies participants suggested to reduce or remove some of these barriers. Many of these relate to increasing human rights awareness and education among Indigenous peoples and communities in Canada.

The CHRC recognizes that it must act on what it heard from women during these consultations. To date the CHRC has worked toward removing these barriers and improving access to justice for Indigenous people by:

- conducting in-person outreach with Indigenous communities;
- developing a dedicated website with knowledge products targeted to Indigenous people (available at: http://www.doyouknowyourrights.ca/sites/nai-ina.ca/index.html);
- partnering with Indigenous organizations on various initiatives;
- conducting awareness sessions and webinars with Indigenous communities to provide education about the CHRC and its processes; and
- gathering information on barriers to accessing human rights justice from complaints investigation, research, and information and training sessions.

The CHRC will continue its efforts to ensure that Indigenous peoples have access to its processes in a manner equal with others. The CHRC is limited, however, by its funding.

Recognizing that the repeal of section 67 would have a significant impact on the work of the CHRC – in particular with regard to increased volume of complaints – the Government of Canada allocated it an additional $5.7 million over five (5) years: $5.1 million for implementation of the legislative change, and $0.6 million for activities to raise awareness. Some of this funding supported the work of the National Aboriginal Initiative (NAI), a small division tasked with strengthening relations with Indigenous stakeholders and helping the CHRC adjust to the changes triggered by the repeal.

This special funding peaked in 2011-12 and declined gradually thereafter. It came to an end in 2013-14. Since that time, funding for activities related to Indigenous peoples has been allocated from the overall budget of the CHRC. This has had an impact on the breadth of activity that the CHRC is able to undertake, particularly its ability to conduct systematic and sustained outreach with Indigenous communities.

Recommendation 2: That Canada ensure that the issue of access to justice – including human rights justice – is examined in the context of the inquiry into missing and murdered Indigenous women with a view to developing a concrete and specific strategy to address these issues.

3.3. Equity of Services for First Nation Communities

In its 2008 Concluding Observations to the Canada's combined 6th and 7th reports, the Committee noted with regret that Indigenous women in Canada continue to live in impoverished conditions, which include high rates of poverty, poor health, inadequate housing, lack of access to clean water, low school-completion rates and high rates of violence, and recommended that the Government develop a specific and integrated plan to address these conditions.[16] It further noted its concern that a disproportionately high number of Indigenous children, including girls, are being taken into State custody.[17]

Regrettably, little progress has been made on these issues in the intervening period. Across the country, many First Nation communities continue to live without adequate housing, safe drinking water or access to quality education and other social services.

First Nations often cite lack of funding as the main reason for inadequate services on reserves, arguing that government funding has failed to keep pace with the needs of their communities.

The Auditor General of Canada, an independent parliamentary officer, has noted that structural impediments – including the lack of clarity about service levels, the lack of a legislative base, the lack of an appropriate funding mechanism, and the lack of organizations to support local service delivery – severely limit the delivery of public services to First Nation communities and hinder improvements in living conditions on reserves.[18]

Funding for services on reserves was noted as an issue of concern by former Special Rapporteur on the Rights of Indigenous Peoples, Professor James Anaya, in his report

[16] See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CAN/CO/7&Lang=En, at paras. 43-44.
[17] *ibid*, at para. 45.
[18] See *2011 June Status Report of the Auditor General of Canada*, "Chapter 4 – Programs for First Nations on Reserve", available at www.oag-bvg.gc.ca/internet/English/parl_oag_201106_04_e_35372.html.

on his October 2013 visit to Canada. Noting the "rights and significant needs of Indigenous peoples and the geographic remoteness of many Indigenous communities", he recommended that the Government of Canada should ensure "sufficient funding for services for Indigenous peoples both on and off reserve, including in areas of education, health and child welfare" and that "the quality of these services is at least equal to that provided to other Canadians".[19]

The CHRC has received several complaints that allege that federal funding for programs and services delivered on-reserve is inequitable, inadequate and discriminatory when compared to provincial / territorial funding for the same services off-reserve.

In a ground-breaking January 2016 decision, the Canadian Human Rights Tribunal found that the federal program and funding for child welfare services on reserve is discriminatory against First Nation children and families. The Tribunal has remained seized of the matter while the Government continues to take steps to implement the decision. The CHRC remains engaged in these discussions related to implementation.

Recommendation 3: That Canada develop a concrete and specific strategy to ensure that services for Indigenous persons in First Nation communities, including Indigenous women and girls, are equitable and adequate.

3.4. Eligibility for Registration as a "Status" Indian

3.4.1. Gender equality

The *Indian Act* historically discriminated against women and children by granting males with Indian status and those of patrilineal descent preference in the granting of Indian status. This had the effect of denying Indian status to the grandchildren of women with Indian status while granting status to the grandchildren of men with Indian status[20].

During its 2008 review of Canada, the Committee noted this discrimination and recommended that the *Indian Act* be amended to eliminate the continuing discrimination against women with respect to the transmission of Indian status, and in particular to ensure that First Nations women enjoy the same rights as men to transmit status to children and grandchildren, regardless of whether they have married out or the sex of their First Nations ancestors.[21]

[19] A/HRC/27/52/Add.2 at para 84.
[20] See, for example, *McIvor v. Canada*, [2009 BCCA 153], available at www.canlii.org/en/bc/bcca/doc/2009/2009bcca153/2009bcca153.html
[21] http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CAN/CO/7&Lang=En, at paras. 17-18.

While some of this was remedied through two amendments to the *Indian Act*[22], First Nations have identified that the current status classification system continues to create discriminatory distinctions based on gender.

For example, the CHRC received a complaint related to this issue[23] wherein the complainant alleges that he and his siblings were not entitled to pass Indian status entitlements to the children they have with non-status partners because they gained their Indian status entitlement from their grandmother. They allege that they would have been able to do so if their grandparent with status had been male instead of female.

Additionally, there continues to be an administrative requirement that, in order for the children of a woman with Indian status to be recognized as having full status, the identity of the father must be declared and the signatures of both parents must be presented. If these requirements are not met, it is assumed that the father is a man who does not have Indian status.

3.4.2. Enfranchisement

"Enfranchisement" is a legal process for terminating an individual's Indian status and conferring full Canadian Citizenship, and was a key feature of the government's assimilation policies regarding First Nations in Canada. Voluntary enfranchisement was introduced in the *Gradual Civilization Act* of 1857 and was based on the presumption that First Nation people would be willing to surrender their legal and ancestral identities in exchange for citizenship and the ability to assimilate into Canadian society. However, very few First Nation people were willing to voluntarily abandon their cultural and legal identities. As a result, with the introduction of the *Indian Act* in 1876, enfranchisement became legally compulsory for reasons such as serving in the Canadian Forces, gaining a university education, leaving reserves for long periods of time, and for First Nation women if they married a man without Indian status of if their husband with Indian status died or abandoned them.

Subsequent amendments to the *Indian Act* have eliminated the practice of enfranchisement, but its legacy remains in the Indian registration process.

For example, the CHRC received a complaint from a First Nations man, Roger Andrews, and his daughter. Mr. Andrews alleges that, because he was born after his father applied for enfranchisement, his daughter is not eligible for Indian status. He alleges that this constitutes discrimination on the basis of family status, race, and national or ethnic origin under the provisions of the CHRA[24].

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[22] *Bill C-31 – An Act to Amend the Indian Act* in 1985 and *Bill C-3 – Gender Equity in Indian Registration Act* in 2011 (referenced in Canada's report to the Committee at para. 29); see also: www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?Language=E&ls=c3&Parl=40&Ses=3&source=library_prb.

[23] See *Matson et al. v. Indian and Northern Affairs Canada* [2013 CHRT 13].

[24] See *Roger William Andrews and Roger William Andrews on behalf of Michelle Dominique Andrews v. indian and Northern Affairs Canada* [2013 CHRT 21], available at decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/63053/1/document.do. The Tribunal – following its decision in *Matson et al. v. Indian and Northern*

Recommendation 4: That Canada take all necessary steps to ensure that no residual discrimination exists in the Indian Registration System.

4. OTHER ISSUES

4.1. Women in Federal Corrections

The following section deals with issues arising out of the federal justice system, including federal corrections[25]. Many of the concerns outlined below are long-standing and have been noted by a variety of stakeholders, including the Office of the Correctional Investigator (OCI) – Canada's prison watchdog – in annual reports since at least 2004. These concerns have also been noted by international bodies including the UN Committee against Torture (CAT)[26].

4.1.1. Over-representation of Vulnerable Groups

In its 2012-2013 Annual Report, OCI noted that recent inmate population growth has been exclusively driven by increases in the composition of ethnically and culturally diverse offenders. In the preceding 10 years, the Indigenous incarcerated population increased by 46.4% while visible minority groups – including Black, Asian and Hispanic – increased by almost 75%. During the same period, the population of Caucasian inmates actually declined by 3%[27].

While this change is in part reflective of demographic shifts in the Canadian population, the reality is that these groups are disproportionately represented in federal penitentiaries. For example, in 2013:

- 9.5% of federal inmates were Black, despite Black Canadians accounting for 2.9% of the population[28];
- 22% of federal inmates were Indigenous, despite Indigenous people accounting for only 4.3% of the population[29]; and
- one-in-three women under federal sentence (33.6%) were Indigenous[30].

Affairs Canada [2013 CHRT 13] – dismissed the complaint on the basis that the complaint did not establish a discrimintory practice in the provision of a service but rather was a direct challenge to legislation, which it held is not possible under the CHRA.The Federal Court and the Federal Court of Appeal have agreed. The CHRC is seeking leave to appeal this decision to the Supreme Court of Canada.

[25] A federal sentence in Canada is a sentence of 2 years or more.

[26] CAT/C/CAN/CO/6 (25 June 2012) at para 19.

[27] See www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20122013-eng.pdf, at p. 3.

[28] *ibid*, at p. 8.

[29] *ibid*, at p. 30.

[30] *ibid*, at p. 30 & 35.

Once incarcerated, it appears that these inmates face additional challenges. For example, OCI has found that both Black inmates and Indigenous inmates are over-represented in maximum security and segregation, incur a disproportionate number of institutional charges, and are more likely to be involved in use-of-force incidents[31]. Indigenous women are over-represented in segregation, maximum security units, and with respect to use of force incidents[32].

Recommendation 5: That Canada ensure that the issue of over-representation of Indigenous women in federal corrections is fully examined – for example, in the context of the inquiry into missing and murdered Indigenous women – with a view to developing a concrete and specific strategy to address this issue.

4.1.2. Use of Solitary Confinement or "Administrative Segregation"

The *Corrections and Conditional Release Act* (CCRA), which regulates the federal prison system, does not explicitly refer to or use the term "solitary confinement". Rather, it provides for two forms of "segregation", disciplinary segregation and administrative segregation. The CHRC is of the view that segregation as defined by the federal legislation is frequently tantamount to solitary confinement as defined and prohibited by the international human rights system.[33]

Disciplinary segregation is a form of punishment in which an inmate is removed from the general prison population for a period of not more than 30 days. Procedural safeguards are in place in relation to the use of disciplinary segregation, including procedures whereby information is shared with the offender concerned. Hearings are held before an external independent chairperson, and a higher burden of proof – beyond a reasonable doubt – must be met to continue segregation.[34]

Administrative segregation, on the other hand, refers to the involuntary or voluntary isolation of an inmate from the general population for reasons other than discipline. It may be used where there are reasonable grounds for believing that the presence of an inmate in the general population may compromise the security of the penitentiary or the safety of any person. It should be noted that, unlike for disciplinary segregation, there is no limit on the length of time for which prisoners may be administratively segregated. Also, while there are procedural safeguards ostensibly in place with respect to administrative segregation, these are administered internally by CSC, as opposed to being subject to external review in the case of disciplinary segregation.

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[31] See: *A Case Study in Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries*, available at www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20131126-eng.pdf; and *OCI Annual Report 2012-2013*, available at www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20122013-eng.pdf.

[32] *supra* note 27, at p. 35.

[33] See www.un.org/apps/news/story.asp?NewsID=40097.

[34] The CHRC notes that the rules of evidence applicable in criminal matters do not apply in disciplinary hearings. Rather, the Chairperson conducting the hearing may admit evidence that he / she considers reasonable or trustworthy. See: http://www.csc.scc.gc.ca/lois-et-reglements/580-cd-eng.shtml#s2g.

According to figures provided by OCI, 48% of the current inmate population has experienced segregation at least once during their present sentence.[35]

The CHRC is concerned that the use of segregation affects some classes of inmates on a disproportionate basis. As noted in the section above, Indigenous inmates are over-represented in segregation, and this over-representation is particularly pronounced in the case of Indigenous women[36]. Black inmates are also consistently over-represented in segregation[37].

Research has shown that prolonged segregation can have harmful and permanent psychological and physical effects on inmates – particularly those with pre-existing mental disabilities – including insomnia, hallucinations, psychosis, and self-harm. It can also cause mental disabilities to develop. Inmates in segregation may be further negatively impacted because their access to rehabilitative programs tends to be limited while in segregation.

Research has also shown that women are more deeply affected by separation from the general inmate population than men are. Women tend to experience segregation as rejection, abandonment, invisibility and a denial of their existence. The circumstances which result in women's involvement in the criminal justice system are largely different, often involving a history of violence and poverty.

Following the death of female inmate Ashley Smith in 2007 while in federal custody, a coroner's inquest was convened. In 2013, the jury recommended that CSC reduce its use of segregation, improve administration and oversight of the segregation process, abolish 'indefinite' solitary confinement, and limit long-term segregation to no more than 15 days.[38] Unfortunately, the recommendations of the jury remain largely unimplemented, with tragic consequences. On July 6, 2016, another female inmate, Terry Baker, took her own life while being held in solitary confinement in the same facility where Ashley Smith died. Ms. Baker had significant and well-documented mental health concerns.

Greater parameters need to be placed on the use of segregation – and in particular administrative segregation – within the federal correctional setting.

The CHRC takes the position that the use of segregation to manage inmates with mental disabilities is inappropriate and should never be permitted. It acknowledges

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[35] See www.oci-bec.gc.ca/cnt/comm/press/press20150528-eng.aspx, and www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20150528-eng.pdf.

[36] On April 1, 2013, there were 797 federal inmates in segregation, of which 784 were men and 13 were women, and 252 (31.6%) were Indigenous.

[37] s*upra* note 38.

[38] See: www.csc-scc.gc.ca/publications/005007-9009-eng.shtml. The CHRC notes, however, that the 2014-2015 Annual Report of the Office of the Correctional Investigator recommends that a limit of 30 days, rather than 15, be imposed. The CHRC has not commented on this report. See: *supra* note 25, at p.31.

reports that some inmates with such disabilities, or their representatives, request segregation for reasons related to their safety. However, the CHRC is of the view that such situations highlight the lack of mental health services and alternatives to segregation available within the current correctional setting, and that these individuals would be more appropriately housed in a treatment facility.

The position of the CHRC is supported by various international and domestic stakeholders. For example:

- In 2011, the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment recommended that prolonged solitary confinement – which he defined as any period in excess of 15 days – be prohibited, and that this prohibition should extend to all forms of isolation for youth and prisoners suffering from mental illness.[39]
- During Canada's most recent review before the CAT, it expressed its concern with "[t]he use of solitary confinement, in the forms of disciplinary and administrative segregation, often extensively prolonged, in particular those with mental illness". It recommended that Canada 1) limit the use of solitary confinement as a measure of last resort for as short a time as possible under strict supervision and with a possibility of judicial review; and 2) abolish the use of solitary confinement for persons with serious or acute mental illness.[40]

Despite this, CSC has maintained that the use of administrative segregation is necessary to maintain the security of the penitentiary or of individual inmates.[41] The CHRC notes, however, that CSC has committed to further consult with external experts and other jurisdictions to develop options relating to its use of segregation as part of the federal government's "Mental Health Action Plan for Federal Offenders".

The CHRC would also like to bring to the Committee's attention some relevant legal proceedings that may impact on this issue:

- The CHRC is currently representing the public interest in several cases before the Canadian Human Rights Tribunal where the use of administrative segregation in cases of inmates with is at issue, including cases relating to inmates with disabilities, trans inmates, and other inmates who are members of protected groups such as Indigenous inmates.
- In January 2015, the British Columbia Civil Liberties Association and John Howard Society of Canada launched a legal challenge arguing that administrative segregation is unconstitutional, amounting to "cruel and unusual punishment" that discriminates in particular against those with mental disabilities and Indigenous inmates.[42] A second challenge was launched in Ontario by the

[39] See: www.un.org/apps/news/story.asp?NewsID=40097.
[40] CAT/C/CAN/CO/6 (25 June 2012), at para. 19.
[41] See: www.csc-scc.gc.ca/publications/005007-9011-eng.shtml.
[42] See: bccla.org/wp-content/uploads/2015/01/2015-01-19-Notice-of-Civil-Claim1.pdf.

Canadian Civil Liberties Association and the Canadian Association of Elizabeth Fry Societies.[43]

Recommendation 6: That Canada eliminate its use of segregation to manage inmates with mental health disabilities. It should further consider putting in place a moratorium on the use of segregation in women's correctional institutions until such time as the issue can be properly dealt with.

4.2. The Detention of Migrant Women and Girls

Every year, thousands of migrants who are not serving a criminal sentence are detained in Canada at the direction of the Canada Border Services Agency (CBSA). This detention can occur for a variety of reasons: some are detained as a result of past criminality, while others are detained because they are deemed a flight risk, because their identity cannot be confirmed, or because they are otherwise deemed to pose a danger to the public. A significant portion are held in institutions intended for criminal populations rather than immigration holding centres, sometimes for significant periods of time. Limited services are available to these detainees.

Hundreds of children have been and continue to be placed in immigration detention in Canada. In most cases, children are held alongside their parents are adult siblings who have been held for immigration-related reasons. Many of these children are held as "guests" to avoid separating them from their parents. However, they have no right of review of their detention, and inadequate consideration of their best interests is undertaken when their parents' detention is reviewed.

Many civil society organizations in Canada have expressed concern with this practice. The CHRC wishes to highlight in particular a 2015 report issued by the Human Rights Program (IHRP) at the University of Toronto's Faculty of Law entitled *We Have No Rights: Arbitrary imprisonment and cruel treatment of migrants with mental health issues in Canada*.[44] This report conducts an analysis of this situation vis-à-vis international human rights standard and concludes that this detention and the associated conditions of confinement violate international human rights law protections relating to cruel, inhuman and degrading treatment, non-discrimination on the basis of mental disability, and the rights to an effective remedy. Thirty (30) recommendations have been made including that:

- an independent body be created to oversee and investigate detention-related matters;

[43] See: ccla.org/wordpress/wp-content/uploads/2015/01/CCLA-CAEFS-Notice-of-Application-Solitary-Confinement.pdf.
[44] Available at: http://www.law.utoronto.ca/utfl_file/count/media/ihrp_we_have_no_rights_report_web_version_final_170615.pdf.

- sufficient funding be provided to ensure regular access for detainees to health care (including mental health care), social workers, community supports, and spiritual and family support; and
- a screening tool be created for CBSA offices to assist in identifying vulnerable persons, such as asylum-seekers, those with mental health issues and victims of torture, to ensure that the risk posed by these detainees is accurately assessed.

Many advocates highlight the case of Lucía Vega Jiminéz, a Mexican national without status in Canada who hanged herself in December 2013 while in immigration detention. Ms. Jiminéz was initially detained in an immigration holding centre, but was transferred within days to a correctional facility, where she sought treatment for mental health-related issues prior to her death. A Coroner's inquest into the death of Ms. Jiminéz was held in the province of British Columbia in September 2014. The inquest provided a list of recommendations, including that Canada appoint an ombudsperson to mediate any concerns or complaints, that it create a civilian organization to investigate critical incidents in CBSA custody, and that immigration detainees have access to legal counsel, medical services, services offered by NGOs, and spiritual and family visits.

The IHRP, in September 2016, released a second report *No Life for a Child: A Roadmap to End Immigration Detention of Children and Family Separation*.[45] The report calls for an end to the practice of detaining migrant children, and provides eleven (11) specific recommendations relating to this goal, including revising existing laws to ensure that the "best interest of the child" principle is a primary consideration in all immigration decisions involving children, and creating policy guidelines to increase access to quality education, recreational opportunities, medical services and appropriate nutrition within immigration detention facilities.

The CHRC shares the concern that has been expressed by civil society organizations engaged on this issue, and echoes the recommendations that have been made. Appearing before the Standing Senate Committee on National Security and Defense in May 2016 in relation to *Bill S-205, An Act to amend the Canada Border Services Agency Act*, the CHRC highlighted its concerns regarding conditions in detention centres and advocated for independent oversight and monitoring of this practice.

Beyond oversight and monitoring, however, there exists a significant gap in the human rights protections afforded to migrants detained in Canada.

While all individuals present in Canada are able to access the protections of the *Canadian Charter of Rights and Freedoms,* many migrant detainees are not able to appropriately assert and claim their rights, both as a result of their lack of awareness of what those rights are and their lack of necessary resources, including legal assistance, to advocate for those rights through the Court.

[45] Available at: http://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf.

The CHRA could provide detainees with a more accessible manner in which to challenge discriminatory conduct, including failure to provide appropriate services, in the course of their confinement. However, in order to file a complaint under the CHRA about a situation or practice occurring in Canada, an individual must be either "lawfully present" in Canada or, if temporarily absent, entitled to return to Canada.[46] Where there is a question about lawful presence – as is most often the case with migrant detainees – the CHRC is obliged to refer the matter to the Minister of Citizenship, Immigration and Refugees and cannot proceed with the complaint until and unless the question of immigration status is resolved by the Minister in the individual's favour.[47] The CHRC has declined to deal with complaints as a result of these sections of the CHRA in at least thirty (30) cases since 1986, including two (2) in 2015. The CHRC has at various times in its history called for the repeal of these provisions of the CHRA, most recently in its submission to the UN Human Rights Committee during consideration of Canada's 6th periodic report.

The CHRC understands and agrees with the concern that the human rights system should not be used to undermine immigration enforcement activities. However, it is of the view that human rights protections should be available to all individuals present in Canada – lawfully or not – in a manner that does not interfere with the legitimate operation of the immigration system.

Recommendation 7: That Canada establish a regime to ensure appropriate independent oversight and monitoring of migrant detention. It should also ensure that migrant detainees are able to access human rights protections on an equal basis with all others present in Canada.

4.3. Gender Identity and Trans Women

Recent international research estimates that approximately 0.3-0.5% of the adult populations identifies as transgender or gender non-binary. In Canada, a recent study noted that about 40% of its Ontario trans population identifies as transwomen, and another 20% identify as non-binary.[48] About 7% of trans persons identified as Aboriginal, and some of these individuals may identify as two-spirit.[49]
Trans, two-spirit, and gender non-binary individuals in Canada experience discrimination at an alarming rate in Canada. Recent statistics released by Transpulse[50] indicate that this discrimination occurs in many facets of life – including in employment,

[46] Section 40(5).
[47] Section 40(6).
[48] Available at: http://transpulseproject.ca/wp-content/uploads/2015/06/Trans-PULSE-Statistics-Relevant-for-Human-Rights-Policy-June-2015.pdf.
[49] Scheim AI, Jackson R, James L, et al. Barriers to well-being for Aboriginal gender- diverse people: results from the Trans PULSE Project in Ontario, Canada. Ethnicity and Inequalities in Health and Social Care 2013;6(4):108 – 120. Available at http://www.emeraldinsight.com/doi/full/10.1108/EIHSC-- 08--2013--0010
[50] Available at: http://transpulseproject.ca/wp-content/uploads/2015/06/Trans-PULSE-Statistics-Relevant-for-Human-Rights-Policy-June-2015.pdf.

in the provision of housing and medical care, public services, and when seeking identity documents – and that it can result in trans individuals, avoiding public spaces, being excluded from communities, avoiding seeking health care, becoming economically marginalized, and experiencing mental health issues.

Trans and two-spirit people suffer high rates of violence and alarming suicide rates. In the recent Canadian study, twenty percent had been physically or sexually assaulted specifically for being trans, and an additional 34% had been verbally threatened or harassed. Internationally, about 35% of trans and non-binary individuals have been victims of violence because of their gender, and in the last 8 years, this same research found over 2100 documented murders of transgender people. In addition, 41 per cent of transgender people have attempted suicide at least once (versus rate of about 5% in the general population).[51] And (partly because 24% reported having been harassed by police), many incidents of violence go unreported[52]. The CHRC has urged the newly-appointed MMIWG Inquiry panel to ensure consideration of violence against transgender and two-spirit Indigenous women and girls in its work.

In addition, trans and two-spirit women and gender non-binary people are also uniquely disadvantaged by an overall stigma still suffered by transgender persons, while often being excluded from traditionally gender-segregated places of refuge. Trans and two-spirit women and gender non-binary people may face increased vulnerability if they are not included in "safe spaces" traditionally created for women fleeing violence or homelessness, such as shelters. .

The CHRC welcomes recent developments to protect rights based on gender identity and expression, including the following:

- The introduction of Bill C-16[53], a government bill which proposes to add "Gender Identity or Expression" to the list of prohibited grounds in the CHRA. This follows the addition of one or both of these terms to many other Canadian provincial and territorial human rights codes. The CHRC strongly supports this amendment to the CHRA.

- Progress in Canada to remove gender from documents and ID cards where this information is irrelevant, and to make it easier to obtain documents in a person's self-identified gender by removing requirements for evidence of surgery, waiving fees, and reducing bureaucratic burdens .

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[51] http://www.thelancet.com/series/transgender-health, see especially Synergies in health and human rights: a call to action to improve transgender health, Winter, Sam et al. The Lancet , Volume 388 , Issue 10042 , 318 - 321

[52] Available at: http://transpulseproject.ca/wp-content/uploads/2015/06/Trans-PULSE-Statistics-Relevant-for-Human-Rights-Policy-June-2015.pdf.

[53] *An Act to amend the Canadian Human Rights Act and the Criminal Code,* available at: http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=8280564

- The 2016 resolution to appoint a UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.[54] The CHRC encourages the Committee to interact with this mandate holder in support of an international framework that views gender diversity in its most inclusive form.

4.4. Pay Equity

Section 11(1) of the CHRA provides that it is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value. The CHRC therefore has a mandate to receive complaints relating to pay equity against employers covered by federal jurisdiction, which it could then refer to the Canadian Human Rights Tribunal (CHRT) for adjudication.

In 2009, the government passed the *Public Sector Equitable Compensation Act* (PSECA), which, amongst other measures, restricted the ability of employees in the core federal public service to file complaints of discrimination with the CHRC. While the PSECA has never been enacted, the government did provide transitional provisions that resulted in federal public service pay equity complaints being transferred from the purview of the CHRC and CHRT to the Public Service Labour Relations and Employment Board.

In April 2016, the CHRC appeared before the House of Commons Special Committee on Pay Equity. It highlighted the fact that, because the current pay equity regime is complaints-driven, it is reactive and often results in lengthy, costly and contentious disputes between employers and bargaining agents. The CHRC advocated for the adoption of a more proactive regime focused on making non-discriminatory wages a priority and achieving pay equity at a clear point in time, and which fosters management-union cooperation and a reduction in the need for complaints.

The Special Committee released its report, *It's Time to Act*, in June 2016. It makes 31 recommendations, including the repeal of PSECA and the enactment of a more proactive pay equity regime to replace the existing one. The CHRC supports the recommendations made and encourages the government to implement them in a timely manner.

Recommendation 8: That Canada fully implement the recommendations of the Special Committee on Pay Equity.

54 www.un.org/ga/search/view_doc.asp?symbol=A/HRC/32/L.2/Rev.1

5. PROTECTION FRAMEWORK

5.1. Limitations of the CHRA

The CHRC was enacted in 1977, and very few changes have been made since that time. Accordingly, the CHRC is in the process of reviewing its legislation and intends to make recommendations to the government in 2017 regarding proposed amendments.

5.1.1. Economic and social status

In its most recent report to the UN Committee on Economic, Social and Cultural Rights, Canada noted that an estimated 150,000 Canadians are homeless, and that recent reports from communities indicate that the number is increasing. Canada acknowledged that the contributing factors of homelessness are varied and complex, including: low educational attainment; unemployment; addictions; health and mental health issues; family dissolution; and abuse[55]. Many communities have recognized growing numbers of women and girls amongst their homeless population. As such, they have chosen to target women and the challenges they face, including mental, physical and sexual abuse as well as marginalization, within their homeless community plans[56].

It is clear that those suffering from social and economic disadvantage are one of the most vulnerable groups in Canadian society, subject to negative stereotyping, adverse living conditions, and discrimination.

However, while all provincial / territorial jurisdictions in Canada recognize some type of economic or social ground of discrimination in their human rights code[57], the CHRA does not.

Lack of recognition in the CHRA of a ground of discrimination related to social or economic status may result in disadvantaged individuals falling through the cracks of human rights protection where their lived experience – the totality of their characteristics – may not be a neat and clean fit with the current enumerated grounds. As noted in the above sections, poverty is particularly present among single mothers, Indigenous women, persons with disabilities and the elderly. The addition of an appropriate prohibited ground of discrimination provides the potential of better reflecting and addressing the realities of discrimination in that it offers a means for recognizing the way economic and social disadvantage intersects with other grounds of discrimination already recognized in the CHRA such as age, sex, race, ethnic origin, disability, family status or marital status.

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[55] s*upra note* 53 at para 125.
[56] E/C.12/CAN/6 at para 129.
[57] Three Canadian jusridictions – Quebec, New Brunswick and the Northwest Territories – have adopted “social condition” as a prohibited ground of discrimination. Seven jurisdictions – Alberta, British Columbia, Manitoba, Nova Scotia, Prince Edward Island, the Yukon and Nunavut – prohibit discrimination based on “source of income”. “Recepit of public assistance” is a prohibited ground of discrimination in Ontario and Saskatchewan. Newfoundland has adopted the ground “social origin”.

The CHRC therefore supports the addition of an appropriate ground, such as social condition, to the CHRA. In its Concluding Observations to Canada's 6th periodic review, the UN Committee on Economic, Social and Cultural Rights recommended that social condition be included in the prohibited grounds of discrimination in the CHRA.[58] It is not clear what steps Canada intends to take to follow up on this recommendation.

5.2. Coordination and Implementation of Gender-Based Analysis

GBA+, as it is now known, has recently become a requirement for all federal government initiatives. The CHRC has urged government to ensure that this tool is inclusive of gender identity.

The CHRC supports the use of an expanded gender-based analysis tool that integrates an inclusive concept of gender diversity which does not exclude trans women and gender non-binary people, and that integrates a strong intersectional analysis of gender with other grounds found in the Canadian Human Rights Act (such as race and disability). These types of analyses can contribute meaningfully to the well being of women, and especially women who face multiple disadvantages.

5.3. Consultation in Preparation of and Follow-up to Periodic Reports

The CHRC notes with appreciation efforts taken by the government in recent years to increase engagement with the CHRC and with civil society in relation to its international reporting. The government has undertaken a regular dialogue with national NGOs and with the CHRC in relation to its work at the UN Human Rights Council. It has also established contacts between the Continuing Committee of Officials on Human Rights – the federal-provincial-territorial group that has been established to consult on international human rights treaties – and NGOs, including with the CHRC. These efforts have resulted in enhanced information sharing, and the CHRC is encouraged by this approach.

However, the CHRC considers that more needs to be done to improve consultation and dialogue on the promotion and protection of human rights in Canada. By way of illustration, civil society and Indigenous peoples organizations as well as the CHRC were invited to provide comment on the issues to be covered by Canada's present report to the Committee. Of the 350 organizations contacted, however, only fourteen (14) provided a response.[59] This is indicative of a low overall level of engagement with the process of consultation, and Canada should do more to encourage robust engagement.

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[58] See: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/062/37/PDF/G1606237.pdf?OpenElement, at para. 18.

[59] *http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCAN%2f8-9&Lang=en*, at para. 15.

The CHRC further notes that there has not been a federal-provincial-territorial conference of Ministers responsible for human rights in Canada since 1988.