



CANADIAN  
HUMAN RIGHTS  
COMMISSION

COMMISSION  
CANADIENNE DES  
DROITS DE LA PERSONNE

**Social Equality in Canada:**  
**A Submission from the**  
**Canadian Human Rights Commission**  
**to the United Nations Human Rights Council**  
**as part of the Universal Periodic Review (UPR)**  
**of Canada's Human Rights Obligations**

**September 2008**

## **A. Description of the methodology and general consultation process**

1. This submission is the contribution of the Canadian Human Rights Commission<sup>1</sup> (“the Commission”), Canada’s national human rights institution, to the UPR led by the Human Rights Council, which will review Canada’s performance in 2009. It deals mainly with social equality. To fully appreciate this submission, the reader is invited to review the description of its context and methodology in Appendix 1.<sup>2</sup>

2. Given that Canada is a federal State comprising ten provinces and three territories, all provincial and territorial human rights commissions had the opportunity to comment on this document. It was also submitted for comments to about 60 NGOs, thanks to the invaluable help of Rights and Democracy, a Canadian organization that has greatly contributed to civil society’s participation in the UPR process. Unless otherwise attributed, the following comments are those of the Commission and are not reflective of the comments of other stakeholders.

## **B. Background on Canada and on its normative and institutional framework for the promotion and protection of human rights**

3. The human rights legislative and institutional framework in Canada is, in most areas, exemplary among the family of nations. The Canadian Constitution includes the *Canadian Charter of Rights and Freedoms*, which guarantees a number of human rights. In addition, all provincial and territorial legislative assemblies, as well as the federal Parliament, have enacted specific statutes that provide administrative and legal recourse mechanisms through commissions and/or tribunals dedicated to human rights. However, the Canadian Standing Senate Committee on Human Rights has noted a “growing discrepancy between Canada’s international human rights obligations and the measures actually taken to implement them”, attributed, in part, to inconsistencies between federal, provincial and territorial legislation, as well as to deficiencies in the mechanisms designed to implement these obligations, to monitor their implementation and to follow up on the results.<sup>3</sup>

4. On the latter issue, the Commission has indicated to Parliament that it is prepared to accept “the mandate to report on the government’s domestic implementation of its international human rights treaty obligations”.<sup>4</sup>

### **Full equality of Aboriginal peoples<sup>5</sup> before the law**

5. Since 1977, when the *Canadian Human Rights Act* was passed, First Nations and their members were prohibited from filing complaints under that Act on matters covered by the *Indian Act*. The Commission tabled two special reports in the Parliament of Canada, calling for the repeal of this provision, and therefore endorses the 2008 amendment repealing it.

6. The amendment, though essential, is not a panacea. There exists much support for the idea that the *Indian Act* itself should be replaced with more effective and modern legislation to enable and support First Nations' self-government. First Nations also have many outstanding land claims that are currently being negotiated, with some having been settled.

7. Canada supported the United Nations' universal *Declaration on the Rights of Indigenous Peoples* throughout its development, but Canada's decision to vote against it in 2007 was greeted with "regret" by the Commission and other stakeholders.

### **Poverty and human rights**

8. The human rights legislation of all provinces and territories include provisions that prohibit poverty-related discrimination to various degrees (e.g., on the related grounds of "social status" or "social condition", which are broader than poverty but encompass it); however, the federal *Canadian Human Rights Act* contains no such provision. The Commission has often recommended that the Parliament of Canada add "social condition" as the 12th prohibited ground of discrimination in the federal legislation. As the Commission noted in its *2003 Annual Report* to Parliament: "Since 1976, when Canada ratified the *International Covenant on Economic, Social and Cultural Rights*, the government has had an obligation to look at poverty as a human rights issue. In many respects, Canada has fallen short in meeting this duty. The United Nations Committee on Economic, Social and Cultural Rights has commented on the persistence of poverty in our country for particularly vulnerable groups and has called on Canada to 'expand protection in human rights legislation . . . to protect poor people . . . from discrimination because of social or economic status.'"<sup>6</sup>

### **Pay equity between women and men**

9. 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.<sup>7</sup> In 2006, the Government of Canada declined to accept that recommendation,<sup>8</sup> indicating that there was a lack of consensus among stakeholders. The Commission encourages the Government to reconsider its position.

### **Equality before the law for persons with disabilities**

10. The Commission acknowledges Canada's support for the development of the *Convention on the Rights of Persons with Disabilities*, to which Canada is a signator. As of September 2008, Canada had not yet ratified the Convention, and the Commission encourages the Government to do so. Ratification requires the consent of the provinces and territories – 13 other jurisdictions in total.

## **Age discrimination**

11. The *Canadian Charter of Rights and Freedoms*, which applies across Canada, prohibits discrimination on the basis of age. The federal *Canadian Human Rights Act* also prohibits age discrimination, but allows the mandatory retirement of workers at a given age, in certain circumstances.<sup>9</sup> The Commission has called for the repeal of that exception.

## **Rights of gays and lesbians**

12. Canada is a leader in the legal recognition of the rights of gays and lesbians. The Supreme Court of Canada has ruled that the right to equality found in the *Canadian Charter of Rights and Freedoms* extends to sexual orientation,<sup>10</sup> and human rights legislation at the federal, provincial and territorial levels all recognize that right, explicitly or implicitly. In addition, Canada was one of only six States to legally recognize same-sex marriages as of September 2008.

## **Hate**

13. Canada has criminalized "publicly inciting hatred" and "advocating genocide". The human rights legislation at the federal level and in some provinces also include provisions related to hate propaganda. The Commission is now reviewing the provisions of the *Canadian Human Rights Act* to ensure that they are modern and effective.

**C. Promotion and protection of human rights on the ground and**

**D. Identification of achievements, best practices, challenges and constraints**

14. Evidence is strong that Canada has made considerable progress in protecting and promoting human rights over the last few decades.<sup>11</sup> Yet the status of human rights throughout the country reveals disparities among Canadians. Those inequalities affect some groups in particular, as detailed in the following paragraphs.

## **Aboriginal peoples**

15. Over the past few decades, Canada has taken a number of steps to improve the status of Aboriginal peoples. In 2008, Canada formally apologized to former students of Indian Residential Schools for past policies of assimilation. That apology followed a settlement agreement, signed in 2007, to remedy some of this suffering. Nevertheless, Aboriginal peoples, who, in 2006, formed 3.8% of the Canada's population,<sup>12</sup> continue to represent one of its most disadvantaged segments, as well as one of its fastest growing.<sup>13</sup> In economic terms, Aboriginal peoples face a much higher unemployment rate and have a much lower personal income than the Canadian average.<sup>14</sup> Aboriginal peoples are also clearly disadvantaged in education,<sup>15</sup> in health status and in overall quality of life.<sup>16</sup> In 1996, 58% of Aboriginal children from birth to age five were living in low-income families.<sup>17</sup> In 1991, nearly a third of Aboriginal peoples had a disability, more than twice

the Canadian average.<sup>18</sup> In a significant number of Aboriginal communities, access to drinking water is not assured.<sup>19</sup> In addition, the incarceration rate among Aboriginal peoples in Canada is five to six times higher than the national average.<sup>20</sup> Furthermore, according to Canada's Correctional Investigator, Aboriginal inmates often face systemic and institutional discrimination.<sup>21</sup>

### **Persons with disabilities**

16. The federal, provincial and territorial governments have established numerous programs to support persons with both physical and mental disabilities, in particular through rehabilitation, job training, job placement and financial support. Nevertheless, those persons constitute another notably disadvantaged segment of the Canadian population, in particular in terms of low income<sup>22</sup> and employment.<sup>23</sup> In 2001, one-third of adults with disabilities who required assistance or technical aids were not able to obtain them all, and that rate rose to 50% for children with disabilities aged 5 to 14 years.<sup>24</sup> Other forms of accommodation are not always available, or provided in a timely manner. Some provincial human rights commissions report that persons with mental or intellectual disabilities face greater obstacles in having their rights recognized and in obtaining the accommodation and services that they require. However, several employers have also told the Commission that the many requests for accommodation that they receive represent a significant hardship for them. In any case, much remains to be accomplished before reaching the “full and effective participation in society on an equal basis with others” called for by the *Convention on the Rights of Persons with Disabilities*.

### **Women**

17. Canadian women have achieved considerable progress towards equality in the past few decades, but are still far from having reached full substantive equality. For instance, in 2000, the average employment income for full-time female employees working year-round was 70.8% of the income of male workers.<sup>25</sup> In addition, gender interacts with other factors, such as race, ethnic origin and disability to compound that economic disadvantage.<sup>26</sup> Another persistent barrier to equality for women is gender-based violence in the form of spousal and sexual assaults, for which the majority of victims still do not seek support from the criminal justice system.<sup>27</sup> Accessing justice is a major concern for Aboriginal women, who experience high rates of violence ranging from assault to murder.<sup>28</sup>

### **Race, colour and ethnic origin**

18. Canada's population has rapidly diversified over the last quarter century. Racial (or “visible”) minorities<sup>29</sup> made up 16.2% of the population in 2006.<sup>30</sup> Nevertheless, those minorities continue to experience notable disadvantages in Canadian society, including in terms of unemployment and income.<sup>31</sup> Since 2000, the federal government has made significant efforts to increase the proportion of racial minority employees in the federal public service. Despite those efforts, that group continues to be markedly under-represented, and the situation has been deteriorating in the past few years.<sup>32</sup> The

Government of Canada has not met the objectives of the federal *Employment Equity Act*,<sup>33</sup> the achievement of which will require increased rigour and positive measures.

### **Discrimination and hate**

19. Canada has established programs to counter racism and other forms of discrimination, and to promote tolerance, which is an encouraging sign. Nevertheless, several stakeholders have noted an increase in hate-based crimes in Canadian society, while others see increased hate propaganda, particularly on the Internet,<sup>34</sup> as a situation that is cause for concern.

### **The rights of children**

20. On November 14, 1989, Canada's House of Commons passed a unanimous motion seeking to abolish child poverty by the year 2000. Yet in 2005, 13.1% of Canadians under the age of 18 were living with low income, and that rate was even higher among younger children.<sup>35</sup> Some of the systemic issues underlying that situation were pointed out in 2003 by the United Nations' Committee on the Rights of the Child, which addressed 45 recommendations to Canada.<sup>36</sup> Five years later, the Canadian Coalition for the Rights of Children estimates that only a few of those recommendations have been implemented.<sup>37</sup>

### **Profiling**

21. Several stakeholders have denounced the use by authorities of profiling based on race, colour, religion, national or ethnic origin.<sup>38</sup> The Commission is studying the prevalence of racial profiling in Canada.

### **Conclusion**

22. Canada can be proud of the progress made in implementing its international human rights obligations, but much remains to be done before it can claim to have fully reached, in real terms, the ideal of equality expressed in those obligations, given the social inequalities still found in Canadian society. Still, it is a tribute to the strength of Canadian democracy and its institutions that such debates can occur freely and transparently. Addressing those inequalities would contribute to the sustainable development of Canada's human capital. More important, it would fulfill the vision inspired by the drafters of the *Canadian Human Rights Act* when they wrote, "the purpose of [the] Act is... to give effect...to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have..." (s. 2 CHRA).

23. The Commission submits its recommendations to improve the UPR process, in Appendix 2.