

## **International Presentation Association – UPR Submission – Canada – Sept., 2008**

### **INTRODUCTION**

#### **1. Who We Are:**

Established in 1989, the International Presentation Association (IPA) is an NGO in special consultative status with Economic and Social Council at the UN. Representing Presentation women, the IPA has 2,600 members living and working in 22 countries. The IPA is particularly concerned with: women and children; Indigenous peoples; the Environment and sustainable living; and human Rights.

**2. Executive Summary:** The IPA is concerned about regressive policy changes affecting human rights in Canada since 2006. These policy changes are both direct and indirect and appear to disproportionately impact women and Indigenous peoples – groups which are already marginalized in Canada. **Key words:** women’s equality rights; Declaration on the Rights of Indigenous Peoples; Draft American Declaration on the Rights of Indigenous Peoples; Court Challenges Program; death penalty; Omar Khadr.

**3. Methodology:** For this submission, we collected data from many sources including but not limited to: the Government of Canada; Amnesty International; Human Rights Watch; Kairos; Canadian Ecumenical Justice Initiatives; the Native Women’s Association of Canada; the National Association of Women and the Law; the Canadian Human Rights Commission; and the Canadian Press.

### **WOMEN’S HUMAN RIGHTS: POLICY AND PROGRAMMING CHANGES**

**4.** Canada is a party to the Convention on the Elimination of Discrimination against Women<sup>1</sup>. But since 2006, there has been widespread concern in Canada over policy changes that threaten women’s ability to participate fully in the democratic life of the country. According to the National Association of Women and the Law (NAWL), these changes “jeopardize (women’s) equality and human rights” and damage Canada’s track record as a supporter of human rights.

**5.** These changes include a 40% cut to Status of Women Canada, which advocated for the advancement of women, and the closure of 12 regional Status of Women offices. Of the cuts, Minister Bev Oda stated that women are “strong and already equal.” Accordingly, the Government of Canada removed the goal of equality from Status of Women Women’s Program mandate and prohibited the use of federal funds to engage in advocacy at any level of government, lobbying, and most research. One result of the prohibition was the closure of NAWL the laying off of its staff in September, 2007 (it had existed since 1974).

**6.** Women’s formal equality rights are largely in place in Canada. However, there are indications that Canadian women’s status lags behind that of men. According to Statistics Canada, women still earn only 71 cents on the male dollar, making the country 38<sup>th</sup> in the world for wage gap ratios. NAWL and other women’s organizations note that

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<sup>1</sup> Canada is also party to the other five principal UN human rights conventions.

Aboriginal women and women of colour earn even less. Women are grossly under-represented in Canadian legislatures and there is not a single female premier.

7. In addition, Canada lacks a national child care program and there are thousands of children are on wait lists for subsidized places. This represents a failure to recognize women's dual roles as wage-earners and family caregivers. There were plans for a national child care program but these were scrapped and the funds set aside were allocated elsewhere after the 2006 election. The new Universal Child Care Benefit (UCCB), put in place in lieu of a national program, gives mothers \$100 per month per child and is taxable. The UCCB does not create child care spaces or come close to paying the real costs of private child care.

8. On December 10, 2006 (International Human Rights Day), 513 civil society organizations joined to release a Statement for Women's Equality and Human Rights. The list of organizations included: the Canadian Association of Sexual Assault Centres; the Canadian Association of University Teachers; the Canadian Arab Federation; the Canadian Federation of Business and Professional Women's Clubs; the Canadian Federation of Students; the Canadian Women's Health Network and dozens of other national organizations; the Canadian Labour Congress and many trade unions; and numerous regional organizations, such as the British Columbia NGO Steering Committee for Human Rights in Human Trafficking. Besides the policy changes outlined above, the Statement also mentioned: cuts to literacy programs, which disproportionately affect women; the lack of support for women and men who are homeless in Canada; the federal government's disregard for the Kyoto Protocol; the canceling of the Kelowna Accord (see below); and Canada's obstructionist position at the United Nations regarding the Declaration on the Rights of Indigenous Peoples. The Statement called on the federal government to:

- Improve the living conditions and respect the human rights of Aboriginal women
- Effectively address violence against women and women's poverty
- Improve maternity and parental benefits
- Fund civil legal aid
- Change immigration laws to respect the rights of live-in caregivers
- Ensure a more equitable participation of women in Canada's political institutions

9. Article 2 of the Convention on the Elimination of Discrimination against Women protects the rights of Indigenous women. But, according to the Native Women's Association of Canada (NWAC), there may be as many as 500 missing Indigenous women in Canada. In response, the Government of Canada has funded a five-year \$5 million research and education program on racialized and sexualized violence against Aboriginal women. Meanwhile, Amnesty International has described Indigenous communities in Canada as "over-policed but under-protected." Coupled with the extreme social and economic marginalization of Indigenous women, this makes many Indigenous women vulnerable to exploitation and "extreme brutality." Amnesty International has noted that perpetrators are racist and aware of societal indifference towards Indigenous women who are victims of violence. Structural changes, such as those that are part of the

Kelowna Accord (see below), are needed if Indigenous women's rights are to be truly protected.

## **INDIGENOUS PEOPLES' RIGHTS: CANADA AND THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

10. Canada was a lead country and sponsor of the Declaration on the Rights of Indigenous Peoples when the debate leading to the Declaration began well over a decade ago. In 2004 and 2005, Canada supported the Rights of Self-Determination for Indigenous Peoples. But Canada's policies on Indigenous rights have shifted radically. Canada was one of only four countries voting against the Declaration on September 13, 2007<sup>2</sup>. Canada had lobbied aggressively against the Declaration for over a year, sending emissaries to the UN and using its human rights record as leverage. Canada tried to get more than 40 changes to the Declaration before the vote. Canada continues to limit the application of the Declaration to Canada and lobbies to avoid having UN special rapporteurs apply it here.

11. According to Canada's Indian and Northern Affairs minister, Chuck Strahl, the Declaration is "too broad" and could be in conflict with existing Canadian statutes. In reality, the Declaration is a non-binding statement of human rights standards; further, it is likely that no other UN Declaration includes as much protection for states and even individual and property rights as this one. Louise Arbour, a former Supreme Court judge in Canada and then the UN High Commissioner for Human Rights, was "astonished" that Canada voted against the Declaration; she saw no incompatibility between the Declaration and the Canadian constitution. It is worth noting also that the federal government's Departments of Indian and Northern Affairs, Foreign Affairs and International Trade, and National Defence all recommended a vote for the Declaration. On April 8, 2008 the House of Commons passed a motion calling upon Canada to endorse the Declaration and to "fully implement the standards contained therein." But there has been no change in policy.

12. The rights of Indigenous peoples in Canada — specifically the Inuit, First Nations, and the Métis — are protected in Section 35 of the Canadian constitution, which has had positive impacts on Indigenous communities. The socio-economic and health status of Indigenous peoples in Canada continue to lag significantly behind that of other Canadians, however. Some examples: over half of all Inuit drop out of school; the leading cause of death among First Nations people aged 10 to 44 is self-inflicted injury or suicide; and 26% of ethnically-identified HIV/AIDS cases in Canada are Indigenous people, who are only 3% of the total population. Indigenous communities face serious over-crowding, lack of access to potable water, and high rates of addictions and violence. These and other worrying statistics are the result of centuries of colonial and post-colonial policies that fail to respect Indigenous peoples' rights to land and self-determination.

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<sup>2</sup> 144 countries voted for the Declaration and 11 abstained. The other countries voting against the Declaration were New Zealand, Australia, and the United States.

13. Recently the government of Canada apologized in parliament to some — but not all<sup>3</sup> — Indigenous survivors of residential schools, in which Indigenous children were placed usually against the will of their parents and communities. An Indian Residential School Truth and Reconciliation Commission was established by the government, although its work has not yet begun. The apology may portend well but it must be accompanied by changes in policy to have real meaning. NWAC President Beverly Jacobs says that Indigenous women are waiting to see if the apology was sincere.

14. **The Kelowna Accord:** The Government of Canada could solidify its apology by re-instating the 2005 Kelowna Accord it cancelled or replacing the accord with a similar agreement. The Kelowna Accord was a \$5.1 billion strategic plan to improve health, housing, education for Indigenous peoples, and relationships between Indigenous and other levels of government. It was developed with and signed by all the provinces and territories, the Government of Canada, and five national Aboriginal organizations. Through NWAC, it brought an Aboriginal women's organization to the table for the first time. The provinces, territories and Aboriginal organizations have again this year called for its re-instatement but the Government of Canada has not responded.

15. **The Draft American Declaration:** After the April 8, 2008 motion cited above, Canada announced to the Organization of American States that it would no longer actively participate in negotiations on the Draft American Declaration on the Rights of Indigenous Peoples. Further, Canada's position is that if it cannot support the final version of the Declaration, it will try to block consensus. One of Canada's conditions for not blocking consensus is that the text must state the Declaration does not apply to Canada.

## **HUMAN RIGHTS: THE ELIMINATION OF THE COURT CHALLENGES PROGRAM**

16. Many civil society organizations were disturbed by the elimination of the Court Challenges Program (CCP). Since 1978, the CCP had made major contributions to constitutional law in Canada by advancing equality rights, women's human rights, minority French and English language rights, Aboriginal rights, the rights of people with disabilities, and other forms of equality rights. The CCP was funded solely by the Government of Canada, to whom it was accountable. Through the program, groups and individuals could secure funds for litigation and thus have access to the interpretation and application of constitutional rights, including Canada's lauded Charter of Rights and Freedoms. The CCP also facilitated scholarship, debate and education on equality issues. As Canada has told UN treaty bodies many times, the CCP helped ensure equal access to the courts and provided effective remedies under international human rights treaties.

17. As a result of CCP, in Canadian courts have developed a contextualized, harm-based test to determine whether or not material is obscene; this contributes to women's

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<sup>3</sup> For reasons too complicated to explain here, the Labrador Inuit, for example, were excluded from this apology.

equality (R v. Butler [1992] 1 S.C.R.452). Equality rights were also advanced when the court ruled that the accused should have the opportunity to challenge jurors' impartiality in cases where bias may exist. This ruling came from a case brought by an Aboriginal man charged with robbery (R v. Williams [1998] 1 S.C.R.1128). CCP devoted significant resources to minority language rights. One resultant ruling was that Summerside, PEI francophone children had the right to be educated in a local French language school instead of being bused 30 kilometres away (Arsenault-Cameron v PEI [2000] 1 S.C.R.3).

18. The Government of Canada eliminated the CCP in 2006. Save the Court Challenges Program, a coalition of dozens of national and regional organizations, formed immediately after the elimination of the program. Its members include: the Canadian Association of Law Teachers; Canadians for Equal Marriage; the Charter Committee on Poverty Issues; the Canadian Council for Refugees; the Council of Canadians with Disabilities; the Income Security Advocacy Centre; the African Canadian Legal Clinic; the Urban Alliance on Race Relations; the Women's Legal Education and Action Fund; and many others. The Supreme Court of Canada has stated that Canadians' constitutional right of equality is more than merely stopping discrimination; it also involves a genuine and active commitment to promoting and advancing these rights. The very fact that these constitutional rights exist implies both that they are valued and that they are in need of protection. Without the Court Challenges Program, equality of access has been badly damaged. Related to this is the Government's 2006 elimination of the Law Commission of Canada, a legal research body.

## **HUMAN RIGHTS: CANADA AND CANADIANS IMPRISONED ABROAD**

19. **Canadians facing the death penalty:** In 2007, Canada was one of over 70 countries that asked the UN to call for an international moratorium on the death penalty but, departing from precedent, refused to sponsor the motion<sup>4</sup>. That same year, the Government of Canada announced that it will no longer seek clemency for Canadians who face the death penalty in "stable, democratic" countries; this represents a departure from long-term policy. Accordingly, in 2007, Canada refused to intervene in the case of Ronald Allen Smith on death row in Montana.

20. **Former child soldier Omar Khadr:** Omar Khadr is a 21 year-old Canadian imprisoned under U.S. military law at Guantanamo Bay. Khadr was captured at 15 during a battle near the Pakistan-Afghanistan border and is charged with murder, conspiracy, and supporting terrorism. The U.S. military commission that will try him disregards his age and considers him an "unlawful participant in an international conflict." Khadr was interrogated by Canadian officials in 2003 and 2004; according to court documents, these officials were aware that Khadr was being subjected to "stress and duress" techniques. Canada is alone among western countries in refusing to intervene in its citizens held at Guantanamo Bay. Noting that Canada has ratified the Convention on the Rights of the Child, Amnesty International has called for Khadr's immediate repatriation.

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<sup>4</sup> The death penalty has been banned in Canada since 1976.