

**Submission by
the Canadian Human Rights Commission
to the
United Nations Committee on Economic, Social and Cultural Rights
on the
Fourth and Fifth Periodic Reports of Canada
under the
International Covenant on Economic, Social and Cultural Rights
April 2006**

Introduction

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

The CHRC was instrumental in the development of the *Principles relating to the status and functioning of national institutions for the protection and promotion of human rights* (the Paris Principles²) which were incorporated into General Assembly resolution 48/134 of 20 December 1993. Since 1993 the CHRC has developed an ongoing relationship, bilaterally and multilaterally, with National Human Rights Institutions (NIs) around the world.

The Commission acknowledges, as outlined in the fourth and fifth periodic reports, the considerable efforts of the Government of Canada to ensure full realization of the ICESCR and is committed to continue to work with the Government of Canada to ensure continued progress in that regard. It is in the spirit of constructive engagement that the Commission wishes to bring to the attention of the Committee the following comments with regard to some of the issues raised by the Committee with regard to Canada's periodic reports.

1. Issue 10 of the list of issues regarding Canada's Fourth Periodic Report: Discrimination under the Indian Act^t

What measures does the State Party envisage adopting to remedy the effects of the Federal Indian Act that are discriminatory against Aboriginal women and their children, and in particular to address the issue of second and third generation loss of reserve membership if the Aboriginal woman marries outside her reserve community?

In regard to this issue, the Commission wishes to call to the Committee's attention a provision of the *Canadian Human Rights Act* that prevents Aboriginal women, and others, from filing complaints under the *Canadian Human Rights Act* alleging that the *Indian Act* is discriminatory.

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

² List of issues to be taken up in connection with the consideration of the fourth periodic report of CANADA concerning the rights referred to in articles 1-15 of the International Covenant on Economic, Social and Cultural Rights (E/C.12/4/Add.15)

Under section 67 of the *Canadian Human Rights Act (CHRA)* the rights of people living in on-reserve First Nations communities (communities recognized under the federal *Indian Act*) are restricted. Section 67 excludes them from filing a complaint with the Commission relating to any action arising from or pursuant to the *Indian Act*.

When the legislation was enacted in 1977 the reason given for this unusual exemption was that the government of the day needed time to address issues regarding sexual discrimination against women who married non-Indian men. At the time, discussions were underway with First Nations organizations to resolve this issues. Section 67 was to be a temporary measure. However, 29 years later, despite repeated requests by the Commission for repeal, section 67 is still in the *CHRA*.

The Commission issued a special report on this matter in October 2005: *A Matter of Rights: A Special Report of the Canadian Human Rights Commission on the Repeal of Section 67 of the Canadian Human Rights Act*. A copy of the Report is being provided with this submission. In issuing the Report the Chief Commissioner, Mary Gusella, stated:

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

The key recommendation of the Commission report is the immediate repeal of section 67. The Special Report also recommends that there be an 18 to 30 month transition period to allow the Commission and First Nations to properly prepare for the application of the *CHRA* in areas from which it was previously excluded.

The Special Report highlights the need to ensure that human rights protection is introduced in a way that respects the rights and interests of First Nations including the inclusion of an interpretative provision to guide the Commission, the Human Rights Tribunal and the courts to apply the Act in a way that appropriately respects the legitimate collective rights and interests of First Nations communities.

During the proposed transition period, the Commission recommends that the government carry out consultations with First Nations on interpretation issues. The report is the first phase of an ongoing process. The next phase, once the repeal has occurred, will focus on implementation, but to make it happen, First Nations will have to be fully involved at every step of the process.

Whenever possible the Commission encourages parties to a human rights complaint to try to resolve the matter through their own dispute resolution process rather than using the more formal statutory process under the *CHRA*. Filing a complaint with the

Commission should be a last resort, to be used when other forms of dispute resolution have not been successful. The Commission is committed to working with First Nations communities, if they so wish, to put in place their own processes for resolving human rights issues in a manner that is sensitive to the particular situation and needs of specific First Nations.

In issuing this report, the Commission emphasised that its aim in seeking the repeal of section 67 is to remedy a long-standing and unacceptable gap in human rights protection. A solution to this issue may or may not result in more responsibilities for the Commission. The Commission does not have a proprietary interest in how this problem is resolved. Its only concern is that it is resolved.

2. Issue 4 of the List of Issues regarding Canada=s Fourth Periodic Report^t: Inclusion of economic, social and cultural rights in human rights protection

During the previous dialogue held with the Committee, the State Party indicated that it would consider, as part of a comprehensive review of the Canadian Human Rights Act, the Canadian Human Rights Commission=s recommendation that the ambit of human rights protection in Canada be expanded to include economic, social and cultural rights. Please provide updated information on this issue.

In 2004 the Commission undertook a public consultation on the future directions of the Canadian Human Rights Commission. The consultation document, *Looking Ahead*, noted the following with regard to the issue of adding social condition to the CHRA as a prohibited ground of discrimination:

There are also gaps in the [CHRA] that the Commission proposes be filled. Chief among them is the addition of a social condition as a ground of discrimination. 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

³ List of issues to be taken up in connection with the consideration of the fourth periodic report of CANADA concerning the rights referred to in articles 1-15 of the International Covenant on Economic, Social and Cultural Rights (E/C.12/4/Add.15)

legislation . . . to protect poor people . . . from discrimination because of social or economic status.

All provinces and territories now include either source of income or some form of social condition as grounds for discrimination in their respective human rights legislation.

However, in Canadian law the term "social condition" on its own is a broad and vague term which does not only refer to persons living in poverty, but also includes a wide range of groups in our society who do not require the same level of protection. One important safeguard may be to make it clear that to establish discrimination on the grounds of social condition, the victim must be a member of a socially disadvantaged group. In defining social condition in a federal context, it will be important to carefully consider the complexity of social programs, such as how the social benefit features of the income tax system could be shielded from undue interference as a result of human rights claims.

The Commission believes that more research is required on a definition of social condition and its potential impact on other statutes and social programs. As a starting point, the Commission believes the CHRA should be amended to eliminate discrimination on the basis of source of income.

3. Issue 5: List of issues relevant to Canada Fifth Periodic Report: Recourse to an effective remedy ⁴

Please indicate what measures the State party has taken at the federal, provincial and territorial levels, to ensure that victims of discrimination have adequate access to a competent tribunal and to an effective remedy for violations of their economic, social and cultural rights.

The Commission wishes to bring to the Committee's attention the initiatives it has undertaken to ensure that the Commission and the Act remain effective tools for promoting and protecting the human rights of all Canadians.

Since it was established in 1978, the Commission has played a key role in protecting human rights in Canada by responding to the evolving needs of the public. However, the Canadian human rights landscape has changed fundamentally since the Commission

⁴ List of issues to be taken up in connection with the consideration of the fifth periodic report of CANADA concerning the rights referred to in articles 1-15 of the International Covenant on Economic, Social and Cultural Rights (E/C.12/CAN/5)

was created 29 years ago. The initial approach to investigating human rights complaints, which became largely reliant on litigious approach, resulted in lengthy investigations and recurring backlogs, and no longer responded to the legitimate demands of Canadians for timely and effective service. Dealing with human rights complaints on a case-by-case basis consumed a tremendous amount of time and resources, leaving many of the Commission's broader objectives and purposes unmet.

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

The new approach also involves improving the investigation process for handling complaints, the traditional bedrock of the Commission's work. Since 2003, the combination of an expanded mediation program, a streamlined investigation process and faster decision-making, has fuelled the Commission's drive toward eliminating its backlog cases and processing cases in a timely manner.

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

§ The average age of cases has been reduced by 62%, from 25 to 9.5 months at the end of February 2006

§ Active cases aged two years and older were reduced by 86%, and now represent 7% of the active caseload compared to 27% in 2002;

§ The active caseload has been reduced by 44% from 1,287 to 720 cases at the end of February 2006;

§ The number of final decisions rendered has increased by 77%.

Resources made available as a result of a faster, more effective, and more efficient complaint process have been redirected to initiatives aimed at preventing discrimination and promoting the protection of human rights. These initiatives include:

§ The creation of a comprehensive preventive initiative that focuses on working with employers to put in place human rights policies and procedures

aimed at reducing and preventing discrimination. Early results of this initiative indicate a reduction in the number of complaints filed against employers who are participating in prevention activities.

§ The creation of a corporate knowledge centre as a focus for cutting edge research and policy development on issues relevant to the Commission=s mandate.

§ The initiation of a number of strategic projects aimed at highlighting key human rights issues and working cooperatively with government and civil society to resolve them.

Conclusion

The Commission wishes to thank the Committee for the opportunity to make this submission.

Annex A: The Canadian Human Rights Commission

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

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

The Commission is made up of a Chief Commissioner and up to six part-time members. The Chief Commissioner is appointed for a term of up to seven years; and the other Commissioners, for terms of up to three years. The Chief Commissioner is responsible for the operations of the Commission, supported by the Secretary General