



Canadian Human Rights Commission

**Submission to the Human Rights Committee in
advance of the Committee's development of the List
of Issues Prior to Reporting for Canada's 7th Periodic
Review**

May 2021

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1. THE CANADIAN HUMAN RIGHTS COMMISSION

The Canadian Human Rights Commission (the Commission) 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 Commission 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 Commission, pursuant to the CHRA, has jurisdiction 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 Commission 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 racialized people.³

In 2019, the Commission was mandated with several new responsibilities under the Accessible Canada Act, the Pay Equity Act, and the National Housing Strategy Act. The Commission was also designated as a body responsible for monitoring the Government of Canada's implementation of the United Nations Convention on the Rights of Persons with Disabilities, in accordance with article 33.2 of the Convention.

The Commission's efforts to promote and protect human rights include investigating discrimination complaints and representing the public interest in the mediation and litigation of complaints, issuing public statements, tabling special reports in Parliament, conducting research, developing policy, and consulting with rights holders and stakeholders. The Commission is committed to working with the Government of Canada, as well as domestic and international partners and stakeholders, to ensure continued progress in the protection of human rights, including those rights enshrined in the International Covenant on Civil and Political Rights (ICCPR). It is in the spirit of constructive engagement that the CHRC submits this report to the Human Rights Committee (the Committee) on the occasion of its consideration of Canada's 7th periodic report.

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.

³ The Commission notes that the terms "visible minority" and "Aboriginal" are increasingly outdated, and as such, they are used only to reflect their official usage in Canadian legislation and in Statistics Canada survey data. Where other terms (such as Indigenous or racialized) can be used, the Commission supports this.

2. THE RIGHT TO LIFE (ARTICLES 1, 6)

The CHRC recognizes that COVID-19 has had – and continues to have – a disproportionate impact on the enjoyment of a wide range of human rights for marginalized communities and people living in vulnerable circumstances across Canada, including in relation to access to healthcare, social supports and housing. This includes Indigenous people, members of Black and racialized communities, people with disabilities, those dealing with mental health and addiction issues, women and children experiencing domestic violence, those facing economic hardship, individuals identifying as 2SLGBTQI⁴, and youth.

Adequate housing is a fundamental human right for every person in Canada, and is crucial to upholding the right to life, health and dignity, further reaffirmed in the National Housing Strategy Act. However, the COVID-19 pandemic has both highlighted Canada's housing and homelessness crisis, and exacerbated pre-existing risks to the right to life and dignity of those without adequate housing. In Canada, the groups referenced above are disproportionately represented among the 35,000 people facing homelessness on any given night.⁵ In addition, rates of COVID-19 infection and death are higher among homeless populations and in neighbourhoods with overcrowded housing.⁶ The CHRC is also deeply concerned by recent reports that an increasing number of people experiencing homelessness in Canada have died of exposure and unsafe living conditions.⁷

The CHRC is of the view that these tragedies can be prevented by upholding the rights of persons experiencing homelessness, ensuring they have access to adequate housing, and providing the services they need to live in dignity. The CHRC notes, however, the impact the pandemic has had in this area. With the closure of public spaces, the reduction of various services, and outbreaks in shelters, more people find themselves living in tents and makeshift shelters. Measures meant to limit the spread of

⁴ The acronym 2SLGBTQI refers to a wide community of individuals who may experience stigma and discrimination based on sexual orientation, gender identity or expression, or sex characteristics. This acronym reflects a development in the CHRC's language to better recognize Indigenous and two-spirit (2S) communities in Canada.

⁵ See: <https://www.homelesshub.ca/about-homelessness/homelessness-101/how-many-people-are-homeless-canada>.

⁶ See: <https://www.wellesleyinstitute.com/healthy-communities/crowded-housing-and-covid-19-impacts-and-solutions/>; and <https://www.cbc.ca/news/canada/toronto/ontario-s-homeless-5-times-more-likely-to-die-of-covid-19-study-finds-1.5869024>.

⁷ See, for example: Raphael Napa Andre, 51, died January 17 in Montreal, in a porta-potty near a drop-in centre that was closed when he sought refuge there due to a COVID-19 related curfew, available at: <https://montreal.ctvnews.ca/man-freezes-to-death-steps-from-montreal-shelter-after-public-health-makes-beds-off-limits-1.5271305>; Kimberley Squirrel, 34, froze to death January 23 in Saskatoon, after being released from Pine Grove Correctional Centre with no housing plan, available at: <https://www.cbc.ca/news/canada/saskatoon/pinegrove-release-death-1.5914073>; Encampment fires also claimed lives in Vancouver (January 22, 2021), Winnipeg (February 16, 2021) and Toronto (February 17, 2021).

COVID-19, such as curfews or restricting the availability of services and facilities, should not put people living in precarious circumstances at a disadvantage.

The CHRC continues to urge governments at all levels to ensure a coordinated and swift response to ensure the right to safe, dignified and secure housing for people facing homelessness across Canada. This includes ensuring fulfillment of the obligations as outlined in the National Protocol for Homeless Encampments in Canada,⁸ issued by the former UN Special Rapporteur on the Right to Adequate Housing.

Recommended Question #1: Please provide details of the steps being taken to ensure the right to life and dignity for people living in inadequate housing and those facing homelessness across Canada, including those living in encampments. What steps are being taken to provide populations at risk of homelessness with safe, dignified and secure housing? What efforts are being made to ensure coordination between the various jurisdictions in Canada in relation to this issue?

3. THE RIGHTS OF INDIGENOUS PEOPLES (ARTICLES 1, 2, 24, 26)

The CHRC views the situation of Indigenous peoples⁹ in Canada as one of the most pressing domestic human rights issues. Indigenous peoples continue to be significantly disadvantaged in terms of education, employment and access to basic needs such as water, food security and housing. In addition, Indigenous peoples continue to face systemic anti-Indigenous racism. Indigenous women and girls continue to experience systemic discrimination, bear a disproportionate burden of violence and are murdered or go missing at a disproportionately high rate. The root causes of this racism, discrimination and violence are varied, complex, and intersectional.

Canada also has a long and dark history of institutionalized child neglect, abuse and discrimination, including systematically separating Indigenous children from their families, culture and identity. The legacy of the residential school system looms large over many aspects of Indigenous lives, and continues to have a detrimental effect on the well-being of Indigenous communities in Canada.

⁸ Available at: <https://www.make-the-shift.org/wp-content/uploads/2020/04/A-National-Protocol-for-Homeless-Encampments-in-Canada.pdf>.

⁹ The term “Indigenous” or “Indigenous peoples” is used throughout this submission to refer to First Nations, Inuit and Métis peoples in Canada. In specific areas of this submission, the terms Aboriginal or First Nations may be used, such as where this is the official terminology used in a referenced law, where the term provides greater specificity, or where a law or program is applicable only to a particular Indigenous population. However, the CHRC notes that the term “Aboriginal” is increasingly outdated, and as such, where other terms such as Indigenous can be used, the CHRC supports this.

3.1. Equitable and Adequate Services

Across the country, many First Nations communities continue to live without equitable and adequate housing, safe drinking water or access to quality education, child welfare, and other social services.

The CHRC has received a number of complaints relating to the availability of federal funding and supports for a broad range of public services delivered to First Nations peoples ordinarily resident on reserve. For instance, complaints have been filed regarding the adequacy of federal funding and supports for education, health, home and community care, and other services.¹⁰

One such case has generated a series of ground-breaking decisions from January 2016 to the present. In its initial rulings, the Canadian Human Rights Tribunal (the Tribunal) found the federal program and funding for child and family services on reserve and in the Yukon to be discriminatory. It also found the government liable for failing to properly implement Jordan's Principle – a child-first principle that promotes substantive equality by ensuring First Nations children get the services they need, taking into account their geographic, historical and cultural circumstances. These initial rulings then led to numerous implementation decisions, finding the government had not done enough to remedy the discrimination, and giving further and more detailed directions.¹¹ Additional rulings are expected in the coming months, relating to various aspects of the required program reforms.¹²

¹⁰ For a few examples: (1) An Ontario First Nation alleges the federal government discriminates by using an interim education funding formula in Ontario that fails to ensure First Nations children residing on Ontario reserves receive substantively equal education services that take into account their geographic, historical and cultural needs. (2) A Manitoba First Nations woman living on reserve filed a complaint on behalf of her young son, alleging that the federal government discriminates by failing to provide sufficient funding and supports to enable the delivery of appropriate special education services, and various health and home and community care services, to First Nations children residing on Manitoba reserves. (3) First Nations claimants in Ontario and Québec alleged the federal government discriminates by failing to provide sufficient funding and supports to enable the delivery of substantively equal policing services to First Nations people living on reserve. The Québec case has been argued before the Canadian Human Rights Tribunal, which has not yet rendered its ruling at the date of this Submission.

¹¹ *First Nations Child and Family Caring Society of Canada and Assembly of First Nations et al. v. Attorney General of Canada*: [2016 CHRT 2](#) (re liability); [2016 CHRT 10](#) (first ruling on remedy); [2016 CHRT 16](#) (second ruling on remedy); [2017 CHRT 7](#) (Choose Life); [2017 CHRT 14](#) (ruling on Jordan's Principle compliance); [2017 CHRT 35](#) (Jordan's Principle amendments); [2018 CHRT 4](#) (ruling on child and family services compliance); 2019 CHRT 1 (obstruction and costs); [2019 CHRT 7](#) (interim ruling on eligibility under Jordan's Principle); [2020 CHRT 20](#) (ruling on Jordan's Principle eligibility); [2020 CHRT 36](#) (proposed Jordan's Principle eligibility criteria); 2021 CHRT 12 (consent order regarding Jordan's Principle eligibility process).

¹² In addition, in a series of rulings beginning in September 2019, the Tribunal ordered the federal government to pay financial compensation to individual victims of the government's discriminatory practices: [2019 CHRT 39](#) (ruling on compensation); [2020 CHRT 7](#) (eligibility for compensation); [2020 CHRT 15](#) (Jordan's Principle compensation definitions); [2021 CHRT 6](#) (trusts); and [2021 CHRT 7](#) (compensation framework approval). The federal government is trying to overturn the Tribunal's decisions concerning financial compensation. It is also trying to overturn the Tribunal's finding that the government used unduly narrow criteria when deciding which First Nations children are eligible to receive services under Jordan's Principle. The Federal Court of Canada is set to hear these two cases in June of 2021.

The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls¹³ (Report) highlighted that the crisis of child welfare, the chronic underfunding of essential services, and the many health disparities currently facing Indigenous communities can all be attributed to the legacy of colonialism and the intergenerational effects of trauma and genocide.

For instance, according to the Report, researchers found that, compared with those who did not attend residential school, residential school survivors are more likely to suffer various physical and mental health problems, to report higher levels of psychological distress and poorer self-rated health, and to be diagnosed with various chronic health conditions. Although access to culturally appropriate and relevant services was identified as one of the most important factors for healing for residential school survivors, the Report found that 1) there are not enough culturally relevant treatment and healing centres for Indigenous people across Canada, and 2) stable, sufficient and reliable funding is a barrier for those that do exist.

The Report also found that Canada has failed to ensure that Indigenous women, girls, and 2SLGBTQQIA¹⁴ people have access to services and resources that are equitable to those received by non-Indigenous people. It stated that “[c]urrent health and wellness services are grossly lacking and often inappropriate and inaccessible, which contributes directly to the decreased safety and security of, and the violence experienced by, Indigenous women, girls, and 2SLGBTQQIA people.”¹⁵

The CHRC recognizes that An Act respecting First Nations, Inuit and Métis children, youth and families (the Act), which entered into force on January 1, 2020, provides an opportunity to improve the child welfare system. Among other things, the Act establishes national standards for the provision of child and family services to Indigenous children, and affirms Indigenous jurisdiction over child and family services. Many features of this new legislation are encouraging, including its emphasis on substantive equality, preventive care and the need for continuity of culture and language. However, the CHRC also shares the concerns of stakeholders that this legislation does not adequately address the need for reliable funding, which is critical for implementation. The Tribunal, as well as other respected bodies such as the Truth and Reconciliation Commission of Canada (TRC) and this Committee, have all stressed the need for Canada to provide adequate resources for Indigenous child and family services.

Recommended Question #2: Please provide details of the steps being taken to ensure that services in Indigenous communities are equitable, adequate and appropriate. What steps are being taken to ensure that child and family services

The CHRC will join other parties in responding to the federal government’s attempt to set aside these rulings.

¹³ Available at: <https://www.mmiwg-ffada.ca/final-report/>.

¹⁴ This acronym is used throughout the Report.

¹⁵ *supra* note 13, at p. 498.

are equitable, adequate and appropriate, including by ensuring reliable funding for these services?

3.2. Self-determination and the Implementation of Indigenous and Treaty Rights

For generations, Indigenous peoples in Canada have been pushing for the recognition of their inherent right to self-determination and the full realization of their human rights, which are indivisible and interdependent. The CHRC acknowledges that the collective rights of Indigenous peoples and the individual rights of Indigenous persons of all ages, genders and abilities will only be adequately protected or properly fulfilled when Indigenous peoples are able to make their own decisions – through their own institutions and according to their own values and traditions.

The inherent right to self-determination is a right enshrined in the treaties that have been negotiated between Indigenous peoples and the Crown. The CHRC maintains that Canada has a clear obligation to honour those treaties and to ensure their full implementation. In addition, Article 37 of the United Nations Declaration on the Rights of Indigenous Peoples (the UN Declaration) further affirms the right of Indigenous peoples to the recognition, observance, and enforcement of the treaties they have concluded with States or their successors.

The CHRC therefore recognizes that implementing the UN Declaration, including through the adoption of Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples,¹⁶ by Parliament, would represent a vital step towards promoting and protecting Indigenous rights in Canada, and would signal a clear commitment to advancing reconciliation. The CHRC fully supports the view, as stated by the TRC in its Principles for Reconciliation, that the UN Declaration provides the framework for reconciliation.

The CHRC acknowledges that Canada has repeatedly expressed formal support for the UN Declaration, first in 2010, then in May 2016 without qualification, and more recently in legislation, such as the Indigenous Languages Act. The CHRC further acknowledges that Bill C-15 confirms this commitment and charts a path towards full implementation. As a result, the CHRC has joined various Indigenous nations, organizations and advocates¹⁷ in calling for the expeditious passage of Bill C-15 through Parliament, and continues to be of the view that implementing the UN Declaration in Canada is long overdue.

Recommended Question #3: Please provide details of the steps being taken to recognize and affirm the inherent right to self-determination of Indigenous

¹⁶ Available at: <https://parl.ca/DocumentViewer/en/43-2/bill/C-15/first-reading>.

¹⁷ See: <https://www.newswire.ca/news-releases/indigenous-nations-organizations-and-prominent-individuals-support-federal-implementation-of-un-indigenous-rights-declaration-815230003.html>.

peoples, including by honouring treaties and implementing the UN Declaration in Canada.

3.3. Implementation of Calls to Action and Calls for Justice

The concerns mentioned above, including equitable and adequate service provision and the implementation of the UN Declaration, are among the Calls to Action of the TRC and the Calls for Justice of the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG). However, the lack of overall progress in implementing these Calls remains an ongoing concern. For instance, reporting shows that as of February 2021, only 10 of the TRC's 94 Calls to Action have been completed since they were issued in 2015, and work on 23 of the Calls has yet to begin.¹⁸ The CHRC remains concerned that progress on implementing the Calls to Action continues to be slow.¹⁹

The CHRC wishes to note that Canada did not meet the June 2020 deadline to launch a National Action Plan to respond to the issues identified in the Final Report of the National Inquiry into MMIWG. The CHRC further notes that work on the plan is underway but a new launch date has yet to be announced.

Recommended Question #4: Please provide details of the steps being taken to complete the remaining Calls to Action of the TRC. When does Canada expect to launch a National Action Plan to address the issues identified in the Final Report of the National Inquiry into MMIWG?

4. ISSUES IN THE FEDERAL JUSTICE SYSTEM (ARTICLES 2, 7, 9, 10, 14, 26)

In light of the anti-racism protests against police brutality that have taken place this past year across Canada and around the world, the CHRC wishes to highlight the particular experiences and concerns of Indigenous, Black and other racialized individuals, who continue to face historic and ongoing systemic and institutionalized racism and discrimination in a variety of aspects of their everyday lives, including in the federal justice system.

In Canada's federal justice system, the realities of systemic and institutionalized racism and discrimination, including against people with mental health disabilities, have been repeatedly recognized by international and regional human rights mechanisms, by civil society, and by domestic human rights institutions. Nevertheless, substantive progress towards addressing these realities remains largely elusive.

¹⁸ See: <https://newsinteractives.cbc.ca/longform-single/beyond-94?&cta=1>.

¹⁹ See: *Progress on Realizing the Truth and Reconciliation Commission's Calls to Action*, 2020, at p. 4: https://www.afn.ca/wp-content/uploads/2020/12/2020_TRC-Report-Card_ENG.pdf.

4.1. Antecedents to Incarceration and Overrepresentation

A web of complex and intersecting factors lie at the root of the over-incarceration of certain segments of the population. These factors include: historical disadvantage, systemic and institutional racism and discrimination, socio-economic disparity including inadequate housing and a lack of educational and employment opportunities, disturbingly-high rates of mental illness, a lack of appropriate and culturally-relevant health and community services and supports, and over-policing of certain groups including Indigenous people, racialized individuals, people with mental health disabilities, and those experiencing homelessness.

The CHRC notes that, across Canada, concerns continue to be raised that racial profiling by police, security agencies, and other authority figures is a daily reality, reducing public trust, and having harmful impacts on Indigenous, Black and other racialized communities. In addition, the CHRC remains deeply concerned with reports that Indigenous, Black and other racialized individuals, in particular, are “over-policed”. Of further concern are an increasing number of reports of injurious and deadly interactions between police and Indigenous, Black and other racialized individuals with mental health disabilities.

These concerns have also been expressed by the UN Working Group of Experts on People of African Descent. For instance, following an October 2016 visit to Canada, they indicated that “there is clear evidence that racial profiling is endemic in the strategies and practices used by law enforcement,” and further expressed concern over the “excessive use of force and police-involved deaths, especially when responding to cases involving vulnerable people of African descent, such as those who are mentally ill.”²⁰

Several provincial human rights commissions in Canada have also raised these concerns through various inquiries, reports and recommendations related to racial profiling and harmful policing practices.²¹ For instance, according to a 2020 report from the Ontario Human Rights Commission (OHRC) on racial profiling and racial discrimination of Black persons by the Toronto Police Service,²² Black people are more

²⁰ UNGA, *Report of the Working Group of Experts on People of African Descent on its mission to Canada*, 36th Sess, Item 9, UN Doc A/HRC/36/60/Add.1, (16 August 2017), para. 78, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/239/60/PDF/G1723960.pdf?OpenElement>.

²¹ See: Commission des droits de la personne et des droits de la jeunesse, *Review of Implementation of the Recommendations Issued in the Report of the Consultation on Racial Profiling and its Consequences*, 2020, at: https://cdpdj.qc.ca/storage/app/media/publications/bilan-profilage-racial_synthese_EN.pdf; See Nova Scotia Human Rights Commission, *Halifax, Nova Scotia: Street Checks Report*, 2019, at: https://humanrights.novascotia.ca/sites/default/files/editor-uploads/halifax_street_checks_report_march_2019_0.pdf; See Ontario Human Rights Commission, *Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario*, 2017, at: http://www3.ohrc.on.ca/sites/default/files/Under%20suspicion_research%20and%20consultation%20report%20on%20racial%20profiling%20in%20Ontario_2017.pdf.

²² Available at:

<http://www.ohrc.on.ca/sites/default/files/A%20Disparate%20Impact%20Second%20interim%20report%20>

likely to be proactively arrested, charged and subjected to uses of force in a wide range of police interactions. In addition, the data obtained by the OHRC further confirmed that Black communities are subjected to a disproportionate burden of law enforcement in a way that is consistent with systemic racism and anti-Black racial bias. All of these findings have added considerable weight to the groundswell of calls for systemic reform to policing services across Canada.

Further, with respect to individuals with mental health disabilities, police have increasingly become first responders in situations involving people with mental illness and have considerable discretion around how to respond in such situations. It has been reported that many individuals with mental health disabilities are charged with public nuisance offences related to their symptoms, rather than charges due to real criminal activity, leading to what is known as the criminalization of mental illness.²³

Recommended Question #5: Please provide details of efforts being undertaken to address and eliminate systemic and institutionalized racism and discrimination in policing across Canada. What steps are being taken to reform policing practices that disproportionately and negatively affect groups in vulnerable circumstances such as Indigenous, Black and other racialized communities, as well as individuals with mental health disabilities? What efforts are being made to ensure coordination between the various jurisdictions in Canada in relation to these issues?

4.2. Situations of Disproportionate or Unique Impact

The CHRC remains deeply concerned by reports that the recent prison population growth has been exclusively driven by increases in the composition of racially, ethnically and culturally diverse prisoners, and that the situation for certain groups, such as Indigenous prisoners, has deteriorated further.

For instance, in January 2020, the Office of the Correctional Investigator (OCI) issued a press release and statement to highlight that Indigenous overrepresentation in federal custody had reached a “new historic high”, surpassing 30% despite the fact that Indigenous peoples account for only 5% of the general Canadian population. It was further noted that this overrepresentation is even higher in institutions designated for women where Indigenous persons now account for 42% of the prison population in Canada.²⁴ Of additional concern is the overrepresentation of Black individuals in Canadian prisons, who account for 8.6% of the federally-incarcerated population, while

[on%20the%20TPS%20inquiry%20executive%20summary.pdf#overlay-context=en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black](#).

²³ See: John Howard Society of Ontario, *Broken Record: The Continued Criminalization of Mental Health Issues*, 2021, at: <https://johnhoward.on.ca/wp-content/uploads/2021/01/Broken-Record.pdf>.

²⁴ OCI Annual Report 2019-2020 at p. 20, available at: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20192020-eng.pdf>.

making up only 2.9% of the general population²⁵. In contrast, there has been a relative and proportional decline in the number of White prisoners, which has steadily decreased over the past 10 years.²⁶ Further, the CHRC notes that the proportion of prisoners with disabilities – and mental health disabilities in particular – continues to increase in federal prisons, with mental health issues more prevalent in Canadian prisons than in the general population.²⁷

As noted above with respect to the incarceration and overrepresentation of certain segments of the population, there are complex and intersectional factors underlying these realities. However, beyond overrepresentation, these populations also experience discrimination in relation to their conditions of confinement, including with respect to classification and treatment. For instance, Indigenous and Black prisoners in particular are more likely to be over-classified as maximum security and are more likely to be involved in incidents of use of force.²⁸ Various oversight bodies, including the OCI and the Auditor General of Canada, have also noted that culturally-relevant programming and services are both limited for Indigenous and Black prisoners and not reflective of their rehabilitative needs.²⁹ The CHRC has received a number of complaints which allege that the Correctional Service of Canada (CSC) fails to provide culturally relevant services and fails to accommodate certain religious or spiritual practices.³⁰

Without access to these programs and services, Indigenous and Black prisoners are ill-prepared to reintegrate in their communities, placing them at a higher risk of reoffending and further contributing to their overrepresentation in the correctional system.³¹

²⁵ OCI Annual Report 2016-2017 at p. 56, available at: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20162017-eng.pdf>.

²⁶ OCI Annual Report 2018-2019 at p.79, available at: <https://oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20182019-eng.aspx>.

²⁷ OCI Annual Report 2014-2015 at p.13, available at: <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20142015-eng.pdf>.

²⁸ OCI Annual Report 2019-2020 at p. 20, available at: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20192020-eng.pdf>; and OCI Annual Report 2016-2017 at p. 56, available at <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20162017-eng.pdf>.

²⁹ See, for example: *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries*, available at <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx#toc1>; *2016 Fall Reports of the Auditor General of Canada: Preparing Indigenous Offenders for Release*, available at http://www.oag-bvg.gc.ca/internet/English/parl_oag_201611_03_e_41832.html.

³⁰ The CHRC has received complaints filed by or on behalf of Indigenous persons relating to adverse differential treatment in the Federal corrections system. For but one example: an Indigenous man serving a sentence as a federal prisoner filed a complaint alleging, among other things, that CSC has: i) failed to provide him with adequate mental health care, including culturally appropriate treatment; ii) placed him in administrative segregation for excessively long periods of time; and iii) failed to provide him with sufficient access to Indigenous cultural and spiritual practices. The CHRC is participating in the hearing of this complaint before the Canadian Human Rights Tribunal. The hearing will consider the complaint alongside a related complaint, filed on behalf of prisoners with mental disabilities in the federal corrections system, alleging that CSC discriminates against prisoners in the areas of security classification, access to treatment, use of administrative segregation and use of force, based on disability, race, national or ethnic origin and religion: [2021 CHRT 3](#) (ruling on single inquiry).

³¹ See: Interim Report of the Standing Senate Committee on Human Rights, *Interim Report – Study on the Human Rights of Federally-Sentenced Persons: The Most Basic Human Right is to be Treated as a*

The CHRC further notes that individuals with mental health disabilities are one of the most vulnerable populations within correctional facilities. However, the OCI has repeatedly noted that correctional institutions lack the appropriate capacity, resources and infrastructure to manage serious mental health conditions, and, as a result, many prisoners are incarcerated in settings that are ill-equipped to respond appropriately to their symptoms and behaviours, which can often exacerbate or amplify their mental health disabilities. Additionally, in 2019, the CHRC and OCI released a joint report³² highlighting challenges associated with older prisoners, including the management of chronic health conditions, accessibility and accommodation of disability, reintegration barriers, end-of-life care and dying with dignity in prison. The report provides CSC with a number of recommendations on how best to balance public safety while respecting the unique needs of this group of prisoners.

The CHRC recognizes that COVID-19 has had a disproportionate impact on the prison population, and that COVID-related restrictions on movement and programs have created harsher conditions of confinement, further exacerbating the vulnerability of the populations mentioned above. While the CHRC acknowledges the challenges facing correctional facilities during the pandemic, it maintains that the health and human rights of everyone in these facilities must remain a priority when implementing COVID-19 measures.

The CHRC wishes to highlight a 2019 interim report³³ from the Standing Senate Committee on Human Rights echoing the above-mentioned concerns and detailing the systemic and institutionalized racism and discrimination in Canada's correctional system. The CHRC encourages Parliament to release the final report, which aims to include more information on vulnerable groups and provide recommendations to the Government of Canada.

Recommended Question #6: Please provide details of efforts being undertaken to address and eliminate systemic and institutionalized racism and discrimination in prisons across Canada. What steps are being taken to develop a concrete and holistic strategy to address the over-incarceration of certain groups? What steps is Canada taking to develop a concrete and specific strategy to ensure that its policies and practices meet the special needs of prisoners in vulnerable circumstances in relation to their conditions of confinement?

4.3. Changes to the use of Solitary Confinement

Until recently, the Corrections and Conditional Release Act (CCRA), which regulates the federal prison system, provided for a regime known as “administrative segregation” to isolate prisoners who were deemed to pose a risk to the safety and security of

Human Being, February 2019, at:

https://sencanada.ca/content/sen/committee/421/RIDR/Reports/RIDR_Report_Prisoners_e.pdf.

³² Available at: <https://www.chrc-ccdp.gc.ca/sites/default/files/publication-pdfs/oth-aut20190228-eng.pdf>.

³³ *supra* note 31.

themselves, others, or the institution in which they were housed. The CHRC has long expressed concern that this regime is tantamount to solitary confinement as defined within the international human rights system. The CHRC has also expressed concern for many years that this regime was being used to manage prisoners with mental health disabilities.

The Courts in the Canadian jurisdictions of Ontario and British Columbia have ruled that the administrative segregation regime used in federal prisons is akin to solitary confinement and violates provisions of the Canadian Charter of Rights and Freedoms that protect life, liberty and security of the person.

In response to these decisions, the federal government has passed legislation that purports to end the practice of solitary confinement by ending the existing regime of administrative segregation and replacing it with an alternate regime in which prisoners who are deemed to pose a risk will be housed in “Structured Intervention Units” or SIUs. Once in an SIU, prisoners are to be isolated for fewer hours a day than under the previous regime, have greater access to “meaningful human contact” and receive “appropriate interventions” including access to correctional programming.

However, the CHRC is deeply concerned by recent reports that prisoners being held in SIUs continue to experience conditions of solitary confinement. The CHRC is also concerned by reports that CSC did not provide the necessary data within the agreed upon timeframe to allow the SIU Implementation Advisory Panel to properly serve its oversight function, resulting in the absence of systematic information about the operation of this new regime. The CHRC further notes that the Panel’s mandate expired in mid-2020, and has not since been re-established or renewed in any other form.

Following the expiration of the mandate of the Panel, two of its members released three reports³⁴ regarding the implementation and operation of the SIUs, which raise a number of serious issues that the CHRC wishes to bring to the Committee’s attention. For instance:

- when applying the United Nations Standard Minimum Rules on the Treatment of Prisoners (the Mandela Rules) to CSC’s data, 28.4% of the SIU stays qualified as “solitary confinement”, and an additional 9.9% of stays fall under the definition of “torture or other cruel, inhuman or degrading treatment”;
- those sent to SIUs tended to be disproportionately male, young, and Indigenous;
- within a relatively short period of time (9 months), multiple stays in SIUs were fairly common, and those who had multiple stays tended to be male and had identifiable mental health needs before being transferred to an SIU;
- there were large regional differences in the use of SIUs, and the stated reasons for transferring prisoners to SIUs varied substantially across regions; and

³⁴ Available at: <https://crimbrary.blogspot.com/2020/11/solitary-confinement-continues-in.html>; and <https://johnhoward.ca/drs-doob-sprott-report/>.

- the requirement for prisoners who are transferred to SIUs to be provided with a minimum of four (4) hours out of their cell, with two (2) of those hours engaged in “meaningful human contact”, was seldom met.

Therefore, the CHRC wishes to express the following ongoing concerns with respect to the SIU regime.

There is a need for continued systematic monitoring and independent oversight of the SIU regime. The failure to achieve four (4) hours out of the cell and two (2) hours of meaningful human contact is of particular concern, making an independent oversight body with a mandate to monitor and carry out research to track the operation of this new regime all the more necessary. It is also crucial that CSC implement effective and timely data collection and public reporting practices to facilitate the analysis and monitoring of the experiences of prisoners placed in SIUs, so that such an oversight body is able to effectively serve its mandate. It is also crucial for recommendations and decisions that are made through such a review, and which are related to conditions and duration of confinement, be both timely and binding.

The SIU regime also continues to give wide discretion to CSC to decide whether, when and for how long a prisoner should be confined in isolated and restrictive conditions. However, given that various groups within the prison population experience intersectional vulnerabilities, the CHRC is of the view that special attention must be given to how the following specific groups are experiencing conditions of isolation: Indigenous and racialized prisoners, women, trans and gender non-binary prisoners and those with serious physical, mental health and intellectual disabilities.

Recommended Question #7: Please provide details of the steps being taken to ensure that the current SIU regime does not continue to create conditions of de facto solitary confinement for prisoners. What steps are being taken to ensure effective and timely data collection practices to facilitate the analysis and monitoring of the experiences of prisoners placed in SIUs, including Indigenous and racialized prisoners, women, trans and gender non-binary prisoners, and those with physical, mental health and intellectual disabilities?

Recommended Question #8: What steps are being taken to establish an independent oversight body to monitor the operation of the SIU regime?

5. PEOPLE WITH DISABILITIES (ARTICLES 2, 25, 26)

5.1. Medical Assistance in Dying

On March 17, 2021, Bill C-7, which proposed changes to Canada's Criminal Code provisions on Medical Assistance in Dying (MAiD), received Royal Assent.³⁵ The CHRC appeared before the Senate Standing Committee on Legal and Constitutional Affairs to participate in discussions on the proposed legislation. The CHRC wishes to reiterate several key points that were shared with the Committee, many of which are also shared by people with disabilities, organizations that advocate on their behalf, and UN experts.

First, the CHRC remains concerned that people with disabilities – who too often do not have access to adequate medical and community supports – might choose MAiD more often, simply because it is easier to access than needed social services, which may serve to further entrench the stigma, ableism, and systemic inequality that already affects far too many people with disabilities in Canada. Accessing MAiD should not result from the existence of systemic inequality, nor should it be a default for a State's failure to fulfill its human rights obligations under the United Nations Convention on the Rights of Persons with Disabilities (CRPD), the Canadian Charter of Rights and Freedoms, or human rights codes. This is why the CHRC maintains that Canada must ensure that the choice to request and receive MAiD is meaningful and truly voluntary.

Second, while the CHRC acknowledges that the legislation does include provisions related to monitoring and reporting on MAiD – including the collection of data pertaining to race and disability for those who are accessing MAiD – the CHRC maintains that this monitoring and reporting system must be built using a human rights based approach, for example by: including the meaningful input of diverse people with disabilities and valuing their lived experiences; revealing the complex socioeconomic and cultural factors that bring individuals to request MAiD; and gathering disaggregated data in order to reveal unique impacts on particular populations who experience intersecting inequalities.

Finally, the CHRC urges Canada to include people with disabilities themselves, especially those who experience multiple and intersecting forms of discrimination, in further reviews of the application of the legislation. This should include women, Indigenous peoples, prisoners, 2SLGBTQI and racialized people with disabilities – and importantly, those with disabilities living in poverty. The CHRC maintains that ensuring meaningful participation is fundamental to Canada's obligations to promote, protect and fulfill human rights, including those in the CRPD.

Recommended Question #9: Please detail the plans to monitor, review and report on the impacts of MAiD on various groups, including people with disabilities. What efforts are being made to ensure that all factors, including socioeconomic

³⁵ Available at: https://parl.ca/Content/Bills/432/Government/C-7/C-7_4/C-7_4.PDF.

factors, are included in this monitoring regime? What efforts are being made to ensure that communities who are impacted by MAiD are involved in this work?

5.2. Access to Election Process for People with Disabilities

Aspects of the entire election process in Canada – from the distribution of pre-election material, to participation in debates, to the accessibility of voting centers and the ways in which ballots are cast – have been criticized by people with disabilities and organizations that advocate on their behalf as being inaccessible and exclusionary. Despite modifications being made to some buildings and polling stations, staff training on accessibility for people with disabilities, and a range of information, education and accessibility services being made available, barriers to full and equal participation in the democratic process remain.

The CHRC commends the recent passage of the Elections Modernization Act,³⁶ which includes measures to reduce barriers to participation and increase accessibility in the voting process for people with disabilities. The CHRC also notes that alternative methods of casting one's vote – through telephone, online, or through the use of technology – are currently being used in a growing number of jurisdictions, both in Canada and abroad, enabling electors with certain disabilities to vote privately and independently. However, at the federal level, these alternative voting methods have not been implemented to any great extent, and when attempts to use new technology are considered, they are often not recognized or well understood by polling staff. For instance, concerns have been brought to the attention of the CHRC regarding the accessibility of polling stations for individuals with visual impairments, and the failure to provide the necessary tools and supports to allow such individuals to vote privately and independently.

In 2020 – as a part of its work as the National Monitoring Mechanism for the CRPD – the CHRC conducted an engagement process with people with disabilities and organizations that advocate on their behalf. When asked to share examples of barriers to taking part in an activity, many respondents expressed concerns about the barriers to voting detailed above.³⁷

Recommended Question #10: Please detail the steps being taken to ensure that people with disabilities are able to participate in elections in an accessible manner. What steps is Canada taking to reduce barriers to participation in the democratic process for people with disabilities more generally? What efforts are being made to ensure coordination between the various jurisdictions in Canada in relation to this issue?

³⁶ Available at: https://laws-lois.justice.gc.ca/PDF/2018_31.pdf.

³⁷ For some of the key findings from this engagement process, please see: <https://www.chrc-ccdp.gc.ca/en/resources/infographics>.

6. PAY EQUITY (ARTICLE 7)

The gender wage gap continues to be a persistent problem in Canada. Women, on average, earn \$0.87 for every dollar earned by men,³⁸ and the gap is even more pronounced for women with disabilities and Indigenous, racialized and newcomer women in Canada.³⁹ The current pandemic has augmented these disproportionate effects and has reversed decades of work that has advanced women's economic security, their rights and gender equality.⁴⁰

The CHRC notes that pay equity can contribute to the social and economic recovery of Canada by reducing the gender wage gap. Closing the wage gap would provide a significant boost to women's purchasing power, which would promote economic growth and help fuel Canada's recovery.

The CHRC was encouraged by the introduction of the Pay Equity Act (PEA) in Canada in 2018, and further by the appointment of the first federal Pay Equity Commissioner in 2019. Although the right to equal pay for work of equal value for men and women in Canada has been protected through a complaint-based approach under the CHRA since 1977, the proactive approach outlined in the PEA puts the onus on employers to address gender-based discrimination in their pay practices and systems by assessing, at set points in time, whether employees in jobs commonly held by women are earning equal pay for work of equal value in their workplace.

Despite these positive developments, the CHRC notes that the PEA only applies to federally-regulated workplaces, which constitute a small percentage of employment in Canada (about 8%). In addition, while some other jurisdictions in Canada have similar legislation in place, there is no consistent approach to this issue across the country.

Recommended Question #11: Please provide details of efforts being made in the pay equity regime to account for the disproportionate effects experienced by diverse groups of women in Canada, including women with disabilities and Indigenous, racialized and newcomer women. What efforts are being made to advance pay equity through Canada's social and economic recovery efforts? What efforts are being made to coordinate, advance and promote pay equity across the various jurisdictions in Canada?

³⁸ Statistics Canada, "Gender gap in average hourly wages", 2020 (Table 14-10-0340-02).

³⁹ See, for example: "The Facts about the Gender Wage Gap in Canada." *Canadian Women's Foundation*. Published May, 1 2019. Available at: <https://www.canadianwomen.org/the-facts/the-wage-gap/>; Sheila Block, Grace-Edward Galabuzi and Ricardo Tranjan. "Canada's Colour Coded Income Inequality." *Canadian Centre for Policy Alternatives*. Published December 9, 2019. Available at: <https://www.policyalternatives.ca/publications/reports/canadas-colour-coded-income-inequality>;

"Canadian Survey on Disability Reports." *Statistics Canada*. Published November 28, 2018. Available at: <https://www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2018002-eng.htm>.

⁴⁰ Sultana, A. & Ravanera, C. (2020, July 28). "A Feminist Economic Recovery Plan for Canada: Making the Economy Work for Everyone." *The Institute for Gender and the Economy (GATE) and YWCA Canada*. Retrieved from: www.feministrecovery.ca.

7. ONLINE HATE (ARTICLES 19, 20)

The CHRC continues to be deeply concerned about the rise in online hate. The CHRC notes that the proliferation of online hate has been growing rapidly over the last five years, assisted by increasingly sophisticated mechanisms for the coordination and dissemination of messages.

International bodies and mechanisms have recognized this “disturbing groundswell” and have issued a number of public statements,⁴¹ reports⁴² and guidance, including the Rabat Plan of Action⁴³ and the UN Strategy and Plan of Action on Hate Speech,⁴⁴ all of which further recognize that online and offline hate speech are intricately linked. These call for more concerted action by States and social media and technology companies and encourage greater civic awareness and responsibility in relation to this issue. Furthermore, in March 2021, the UN Special Rapporteur on Minority Issues called for an international treaty to address the growing scourge of hate speech against minorities.⁴⁵

The CHRC notes that in Canada, there has been a growth in both online and offline hate incidents in recent years, with shocking jumps in those targeting Black, Asian, Muslim and Jewish populations. For instance, a recent Canadian survey found that racialized Canadians are three times more likely to experience online hate than non-racialized Canadians.⁴⁶ In addition, while there are sanctions for hate speech in Canada’s Criminal Code, there are few civil recourse systems or remedies available, leaving hateful online activity largely unregulated.

The CHRC wishes to highlight the Standing Committee on Justice and Human Rights 2019 study on online hate, which highlighted links between online hate and real life violence. The Committee’s report noted that “witnesses stressed that we must recognize the urgent need for governments, civil society, online platforms and Internet service providers to take the necessary measures to counter the incitement of hatred through online platforms.”⁴⁷ The report recommended that government undertake legislation and program changes to: 1) establish a definition of online hate that acknowledges persons who are disproportionately targeted by hate speech; 2) increase capacity to address gaps in data collection and analysis; 3) take steps with the

⁴¹ See: Joint open letter on concerns about the global increase in hate speech, signed by 26 UN mandates, including Special Rapporteurs, Independent Experts and Working Groups, October 2019, at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25036&LangID=E>.

⁴² UNGA, *Report prepared by the Special Rapporteur on the promotion and protection of freedom of opinion and expression*, 74th Sess, Item 70(b), UN Doc A/74/486, (9 October 2019), available at: <https://www.undocs.org/A/74/486>.

⁴³ Available at: <https://www.ohchr.org/EN/Issues/FreedomOpinion/Articles19-20/Pages/Index.aspx>.

⁴⁴ Available at: <https://www.un.org/genocideprevention/hate-speech-strategy.shtml>.

⁴⁵ See: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26896&LangID=E>.

⁴⁶ See: Canadian Race Relations Foundation, *Online Hate Speech and Racism in Canada*, January 2021, at: <https://www.crrf-fcrr.ca/en/news-a-events/media-releases/item/27349-poll-demonstrates-support-for-strong-social-media-regulations-to-prevent-online-hate-and-racism>.

⁴⁷ See:

<https://www.ourcommons.ca/Content/Committee/421/JUST/Reports/RP10581008/justrp29/justrp29-e.pdf>.

provinces and territories for prevention and education; and 4) develop complaints mechanisms, civil remedies and online platform standards to monitor and address hate speech.

The CHRC has made a series of statements about online⁴⁸ and offline hate⁴⁹ directed at Indigenous,⁵⁰ Black,⁵¹ Asian,⁵² Jewish⁵³ and Muslim⁵⁴ populations, including during the pandemic. It has also partnered with organizations to examine this issue further.⁵⁵ The CHRC is of the view that this is a fundamental human rights issue and that Canada must act in accordance with its obligation to take action to address the proliferation of online hate. In an appearance before the Parliamentary Committee in 2019, the CHRC highlighted that the current legal framework is insufficient to protect people from online hate in the modern era. The CHRC urged Parliament to put in place a comprehensive approach, including measures such as platform regulation, requirements for companies to remove hate and clearly demonstrate their content moderation, civil remedies that victims can access, and coordinated public awareness and education.⁵⁶

The CHRC notes that, in 2021, the federal government announced that it would bring forth new legislation to address this issue, which would include the creation of a regulator with a proactive mandate to conduct audits and assign significant fines, an appeal mechanism for decisions made by social media platforms to remove content, and a clear definition of hate drawn from the Supreme Court of Canada's decisions.⁵⁷ The CHRC looks forward to the introduction of this legislation in Parliament.

Recommended Question #12: Please detail the legislative and other steps being taken to ensure that online hate will be addressed in a comprehensive and proactive manner, including steps that recognize the disproportionate impact of hate on marginalized communities, such as Indigenous, Black, Asian, Jewish, Muslim and 2SLGBTQI populations.

⁴⁸ See: <https://www.chrc-ccdp.gc.ca/en/resources/statement-we-must-do-more-curb-online-hate>; and <https://www.chrc-ccdp.gc.ca/en/resources/online-hate-the-time-action-now>.

⁴⁹ See: <https://www.chrc-ccdp.gc.ca/en/resources/anti-asian-hate-has-no-place-canada>.

⁵⁰ See: <https://www.chrc-ccdp.gc.ca/en/resources/the-time-address-anti-indigenous-racism-long-past-due>.

⁵¹ See: <https://www.chrc-ccdp.gc.ca/en/resources/anti-black-racism-canada-time-face-the-truth>.

⁵² See: <https://www.chrc-ccdp.gc.ca/en/resources/racism-response-covid-19-harms-us-all>.

⁵³ See: <https://www.chrc-ccdp.gc.ca/en/resources/were-all-it-together>.

⁵⁴ See: <https://www.chrc-ccdp.gc.ca/en/resources/outrage-and-sadness-over-new-zealand-terror-attack>.

⁵⁵ See: Public Policy Forum, *Policy Approaches to Online Hate: Summary Report*, March 2019, at: https://ppforum.ca/wp-content/uploads/2019/06/PPF-Policy_Approaches_to_Online_Hate_2019_FINAL-ua.pdf.

⁵⁶ See: <https://www.chrc-ccdp.gc.ca/en/resources/presentation-standing-committee-justice-and-human-rights-study-online-hate>.

⁵⁷ See: <https://globalnews.ca/news/7593885/canadians-support-government-crackdown-social-media/>; and <https://www.lapresse.ca/actualites/politique/2021-02-01/discours-haineux/fin-de-la-recreation-pour-les-geants-du-web.php>.

8. INTERSEX, TRANS AND GENDER DIVERSE INDIVIDUALS (ARTICLES 2, 7, 26)

In 2017, the CHRC advocated for and welcomed the passage of Bill C-16, which added gender identity or expression to the Canadian Human Rights Act, marking the point when all human rights codes in Canada provided these explicit protections. Since that time, a multitude of legal and policy changes have been brought forward by federal, provincial, and territorial authorities to ensure that these rights are more fully realized, and that trans, non-binary, and gender diverse persons can more fully enjoy their human rights and their lives in Canada. The CHRC welcomes these changes.

However, the CHRC continues to be concerned about the rights of intersex, trans and gender diverse people in Canada. The CHRC notes that more change – informed by lived experience – is needed to ensure the full inclusion and respect for the rights of this population.

The CHRC notes that data on lived experience is becoming increasingly available through new and unique research. For example, in 2019, Trans PULSE Canada began the first national community-based survey on the lived experiences of trans and non-binary people in Canada.⁵⁸ Of particular interest was that almost 50% of those surveyed identify as non-binary. Members of this younger non-binary community face unique challenges within social and legal systems, which still often recognize only two binary genders. For instance, one report⁵⁹ found that despite some recent changes in policies in Canada, only 5.9% of non-binary persons had all their IDs with their preferred gender, and over 71% of non-binary people in Canada had no ID with their preferred gender.

The CHRC welcomes continued policy developments in this area, such as the Government of Canada's gender inclusive modernization,⁶⁰ which includes a third gender option, and Statistics Canada's progress on including non-binary persons in survey instruments, including the National Household Survey (the Census). The CHRC continues to advocate for the removal of sex or gender on IDs, documents, forms and systems where this information is not necessary, for the use of "gender" rather than "sex" as a default marker, for the inclusion of non-binary gender options, and for training to ensure that an inclusive approach to sex and gender take root. Additionally, the CHRC notes that there may be a need for legislative amendments to ensure that even progressive statutes, such as the new Pay Equity Act, recognize and include non-binary genders.

⁵⁸ See: <https://transpulsecanada.ca/>.

⁵⁹ See: <https://transpulsecanada.ca/results/responsive-report-non-binary-people-and-identity-documents/>.

⁶⁰ See: <https://www.canada.ca/en/treasury-board-secretariat/corporate/reports/summary-modernizing-info-sex-gender.html>.

Recommended Question #13: What steps are being taken to ensure that Canada’s social and legal systems effectively recognize and respond to the gender diversity of its population, including within the pay equity regime?

As noted above, despite advancements in some areas, the CHRC remains deeply concerned about discrimination and harassment faced by trans and non-binary persons, especially those who face intersectional barriers to their full equality in Canada. For instance, the Trans PULSE Canada report focussing on racialized trans and non-binary people⁶¹ highlighted that, overwhelmingly, they reported higher levels of discrimination, violence and assault, as well as anticipated and actual negative experiences with police and the legal system, including a lack of trust in police.

According to the report, among racialized trans and non-binary respondents:

- 39% had been physically assaulted;
- 24% experienced transphobic physical or sexual assault in the past 5 years and 84% of transphobic physical and sexual assaults were not reported to police;
- 33% avoided calling 911 for police services;
- 24% avoided calling 911 for emergency medical services;
- only 1 in 5 would trust the police and courts systems if they were physically assaulted;
- only 1 in 10 would trust the police and courts systems if they were sexually assaulted; and
- 73% worried about being stopped or harassed by police or security.

It is critical that this evidence be used immediately to create policies and inform practices that will alleviate concerns and improve the lived experiences of racialized trans and non-binary persons in Canada.

Recommended Question #14: What steps are being taken to address systemic racism affecting racialized trans and non-binary persons in Canada, including with respect to negative experiences with police and the legal system?

Finally, the CHRC wishes to highlight two specific issues that harm intersex, trans and gender diverse youth: so-called “conversion therapies”, and unnecessary surgical interventions on intersex children.

Intersex, trans and gender diverse people are often still forced to adhere to a psychopathologizing and over-medicalized model of care, that is based on cis-normative assumptions about medically “correct” or “normal” bodies. However, non-consensual medical interventions, such as coerced examinations, unnecessary surgeries and conversion therapies, are cruel and harmful to intersex, trans, and gender

⁶¹ See: <https://transpulsecanada.ca/results/report-health-and-well-being-among-racialized-trans-and-non-binary-people-in-canada/>.

diverse people.⁶² Unnecessary intersex surgeries on children have been rightly characterized as a form of cruel, inhuman or degrading treatment or punishment by Canadian and international rights advocates, as well as by UN experts.⁶³ Conversion therapy is also now denounced by UN experts, medical associations, advocacy groups, faith leaders, and by most Canadians.⁶⁴

The CHRC notes that Canada must work to reduce stigma, to recognize and normalize variations of sex characteristics and gender diversity, and to provide intersex, trans and gender diverse people with better access to appropriate care and supports that enable them to enjoy their right to health and to fully exercise their human rights. This should include legal and policy changes to ensure a full ban on conversion therapy everywhere, and a ban on unnecessary surgical interventions on intersex children.

While the CHRC welcomes the introduction of federal legislation⁶⁵ to ban conversion therapy, as well as a myriad of municipal bans, the CHRC notes that the current legislation may not go far enough to provide full prevention, healing and compensation to those who were subjected to this practice.

Recommended Question #15: What steps are being taken to ensure that there is a full ban on conversion therapies in Canada, as well as unnecessary surgical interventions on intersex children? What efforts are being made to ensure coordination between the various jurisdictions in Canada in relation to these issues?

9. TECHNOLOGY AND PRIVACY (ARTICLE 17)

It is critically important that human rights protections evolve to take into account advancements in technology, such as the increasing use of algorithms, artificial intelligence (AI) and assisted decision-making, which can impact the enjoyment of human rights.

⁶² See: <https://egale.ca/egale-canada-urges-the-federal-government-to-meet-domestic-and-international-human-rights-requirements-of-intersex-people-on-international-intersex-awareness-day/>; and <https://yogyakartaprinciples.org/relating-to-the-right-to-freedom-from-torture-and-cruel-inhuman-or-degrading-treatment-or-punishment-principle-10/>.

⁶³ See: <https://egale.ca/egale-submission-to-the-un-committee-against-torture/>; <https://www.wlu.ca/news/spotlights/2019/june/professor-morgan-holmes-is-pushing-for-change-for-intersex-people,-through-research-and-activism.html>; <https://www.hrw.org/report/2017/07/25/i-want-be-nature-made-me/medically-unnecessary-surgeries-intersex-children-us>; and <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>.

⁶⁴ See: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26051&LangID=E>; <https://static1.squarespace.com/static/5bfdaab6365f02c7e82f8a82/t/5f8096b08038bb156ace2413/1602262710756/Conversion+Therapy+in+Canada+%28Oct+2%2C+2020%29+-+FINAL.pdf>; and <https://researchco.ca/2019/07/26/wrapped-in-sorrow-words-are-token/>.

⁶⁵ See: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10871883>.

The CHRC would like to highlight its concerns in this area, as governments and private companies face challenges and calls for bans on AI systems that may put people at risk and breach international and domestic human rights laws. This includes AI that amplifies or embeds bias and discrimination based on grounds such as race,⁶⁶ gender identity and sexual orientation⁶⁷ in areas such as immigration,⁶⁸ facial recognition,⁶⁹ policing⁷⁰ and criminal justice.⁷¹ These uses of AI are of particular concern when people have little information or resources about how to assert their rights. This is especially and alarmingly true for children, who are increasingly living their lives deeply affected by surveillance technology from the time of their birth.⁷²

Most recently, in its submission to the Committee on the Rights of the Child, the CHRC raised concerns about the uses of surveillance, social media, and AI technology that may violate human rights. The CHRC was also recently involved in ensuring that Facebook's advertising platform included safeguards to prevent automated discrimination in housing, employment, and credit advertisements.⁷³ The CHRC has noted that a human rights-based approach to privacy law reform is needed to address emerging concerns about how technology and the digital world are increasingly affecting our everyday lives, and will continue to advocate for robust governance and human rights protections in new technologies that can benefit humankind. The CHRC maintains that technology and privacy are fundamental to the next generation of human rights, and that everyone in Canada should be able to benefit from technology without fear.

The CHRC notes that Canada is undertaking legislative revisions of its privacy and consumer protection laws, as well as consulting on the next phase of its national

⁶⁶ See: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26548>; Royal Society of Canada Infoveillance Working Group, *AI Technologies—Like Police Facial Recognition—Discriminate Against People of Colour*, September 2, 2020, available at: https://rsc-src.ca/sites/default/files/Infoveillance_EN_0.pdf; and <https://www.politico.eu/article/europe-artificial-intelligence-blindspot-race-algorithmic-harm/>.

⁶⁷ See: <https://act.accessnow.org/page/79916/action>.

⁶⁸ See: <https://ihrp.law.utoronto.ca/news/canadas-adoption-ai-immigration-raises-serious-rights-implications#overlay-context=news/canadas-adoption-ai-immigration-raises-serious-rights-implications>.

⁶⁹ Office of the Privacy Commissioner, *Announcement: Facial Recognition and Artificial Intelligence: International Privacy Guardians Call for More Protection and Accountability*, 27 Oct. 2020, available at: https://priv.gc.ca/en/opc-news/news-and-announcements/2020/an_201027/; and Office of the Privacy Commissioner, *Announcement: Update to the Joint Statement on Global Privacy Expectations of Video Conferencing Companies*, 23 Dec. 2020, available at: https://www.priv.gc.ca/en/opc-news/news-and-announcements/2020/an_201223/.

⁷⁰ The Citizen Lab, *To Surveil and Predict: A Human Rights Analysis of Algorithmic Policing in Canada*, 1 Sept. 2020, available at: <https://citizenlab.ca/2020/09/to-surveil-and-predict-a-human-rights-analysis-of-algorithmic-policing-in-canada/>; and The Citizen Lab, *Algorithmic Policing in Canada Explained*, 1 Sept. 2020, available at: <https://citizenlab.ca/2020/09/algorithmic-policing-in-canada-explained/>.

⁷¹ See: <https://www.cbc.ca/news/politics/clearview-ai-rcmp-facial-recognition-1.5482266>.

⁷² See: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26944&LangID=E> and <https://www.unicef.org/globalinsight/featured-projects/ai-children>.

⁷³ See: http://www.ohrc.on.ca/en/news_centre/letter-facebook-enforcing-safeguards-prevent-discriminatory-housing-employment-and-credit-ad.

approach to AI.⁷⁴ Civil society organizations, human rights advocates, academic and research institutes, international and regional bodies, Privacy Commissioners, and National Human Rights Institutions all have important roles to play in these debates about how to ensure human rights are fully protected and appropriately enhanced as technology advances.

Recommended Question #16: What steps are being taken to ensure that racism and discrimination are not being perpetuated through technology? Please detail the steps being taken to ensure that human rights are fully protected in the face of technological advances, and that these advances in Canada – including the use of AI and assisted decision-making – benefit all.

10. CANADA'S IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The CHRC continues to be of the view that the current system for implementation of Canada's international human rights obligations, including those under the ICCPR, is both structurally inadequate and practically ineffective.

This system continues to contribute in a substantial way to a demonstrable lack of progress in implementing the recommendations that have emanated from the international human rights system, including those made by this Committee. To close the gap between aspiration and reality, Canada must find a new way of working by both enhancing existing systems and creating new ones.

The CHRC appreciates the voluntary commitments made by Canada during its 3rd Universal Periodic Review to strengthen intergovernmental cooperation and public dialogue on human rights. The CHRC notes the recent progress made, including the development of a protocol for following up on the recommendations Canada has received from international human rights bodies, the creation of a senior-level intergovernmental mechanism, and the hosting of more regular federal, provincial and territorial human rights ministerial meetings. While it is too early to see what the impact of these new and renewed mechanisms will be, the CHRC recognizes that they must be transparent and inclusive to lead to meaningful implementation.

While the CHRC welcomes its designation as the body responsible for monitoring the Government of Canada's implementation of the CRPD and the developments listed above, the CHRC remains concerned that the current system continues to perpetuate a patchwork approach to progress without a foundational structure of monitoring and

⁷⁴ See Government of Canada, Department of Justice, *Privacy Act Modernization: A Discussion Paper - 1. Privacy Principles and Modernized Rules for a Digital Age*, 20 Aug. 2019, available at: https://www.justice.gc.ca/eng/csj-sjc/pa-lprp/dp-dd/modern_1.html; *Proposed Legislation - Canada's System of Justice*, 10 Feb. 2017, available at: <https://www.justice.gc.ca/eng/csj-sjc/pa-lprp/modern.html>; and *The Dialogue on AI Is Open!*, *Mila*, 19 Mar. 2021, available at: <https://mila.quebec/en/the-dialogue-on-ai-is-open/>.

implementation of interdependent, interrelated, and indivisible human rights. Therefore, the CHRC believes strongly that, in order to effectively implement the recommendations made to Canada during this and other reviews, it is imperative that substantial, meaningful and coordinated progress be made in ensuring a robust implementation and monitoring framework.

Recommended Question #17: What efforts are being made to ensure that the enhanced systems being created by Canada towards a robust implementation and monitoring framework of its international human rights obligations, including those under the ICCPR, are inclusive and transparent?