

Barbra Schlifer Commemorative Clinic

Submission to the Convention on the

Elimination of All Forms of Discrimination against Women (89th Session) Barbra Schlifer Commemorative Clinic

Introduction

The Barbra Schlifer Commemorative Clinic (the Clinic) provides frontline services to women who have experienced intimate partner violence, family violence, and structural violence. These services include legal representation, professional counselling, and language interpretation, catering to women from diverse racial, ethnocultural, and socio-economic backgrounds. The Clinic is dedicated to addressing gender-based and sexual violence comprehensively, considering the intersecting inequalities affecting women.

As part of the Clinic's strategic plan, it is necessary to align with international instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Established by the United Nations in 1979, CEDAW advocates for women's rights and sets a roadmap for national efforts to achieve gender equality. CEDAW has a significant impact at the grassroots level, providing a common framework to advocate for women's rights and gender equality and supporting inclusive measures that respect and amplify the voices of marginalized and vulnerable women.

The Clinic aims to ensure local practices adhere to international human rights standards, driving systemic change and improving outcomes for women in the community. By aligning its initiatives with CEDAW's principles, the Clinic strengthens its advocacy efforts and ensures that Canada's international commitments are upheld. Participating in CEDAW's reporting and review processes allows the Clinic to spotlight local issues globally, adopt best practices, elicit international solidarity, and create the necessary pressure for change.

Key Recommendations Made by CEDAW in 2015

In its 2015 Report, CEDAW called upon Canada to consider and implement various recommendations to improve the socioeconomic circumstances of Aboriginal women and address the issue of missing

and murdered Indigenous women and girls (MMIWG), as well as other forms of violence that Aboriginal women experience. The recommendations were comprehensive and aimed at addressing systemic issues.

CEDAW recommended several measures to combat the crisis of MMIWG¹, including reforming police services and the justice system, increasing awareness through the collection and dissemination of information, addressing harmful stereotyping, increasing victim services, and providing greater protection and resources for Indigenous women and girls involved in sex work and trafficking.

The Committee also advised comprehensive measures to improve the socioeconomic conditions of Aboriginal women both on- and off-reserve.² This included collecting data on the variation of socioeconomic status, implementing national strategies to address contributing factors such as housing and food security, and targeting barriers that Indigenous women face when seeking help and resources.

Additionally, CEDAW highlighted the importance of overcoming the legacy of the colonial period to eliminate discrimination against Aboriginal women. Recommendations included measures to break the distrust between authorities and Aboriginal communities through meaningful dialogue and improved avenues of communication,³ Information campaigns educating the public on the history of oppression and marginalization, ensuring respect in the media for Aboriginal women and their portrayal, amending the Indian Act to eliminate discriminatory provisions, and promoting the use of the Canadian Human Rights Act by Aboriginal women as a tool to combat discrimination and violence.

Finally, CEDAW called for the establishment of a national public inquiry into cases of MMIWG that is fully independent from political processes.⁴ The Committee recommended the inclusion of a commissioner selected based on the views of Aboriginal community representatives. The findings of

1 Committee on the Elimination of Discrimination against Women, Report of the Inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (30 March 2015), at 54.

2 Ibid at 57.

3 Ibid at 57.

4 Ibid at 58.

the inquiry should aid in developing an integrated national plan of action and a coordinated mechanism to address all forms of violence against Aboriginal women, ensuring the allocation of sufficient resources to implement a plan of action and including a mechanism for monitoring and evaluating the implementation.

Action Canada Has Taken to Comply with the 2015 Recommendations

Canada submitted reports (2022⁵ and 2024⁶) on its progress in implementing the recommendations made by CEDAW. Canada's federal, provincial, and territorial governments have undertaken measures to attempt to address gender-based violence, socioeconomic conditions, MMIWG, and discrimination in the Indian Act.⁷

Canada has taken a broad approach to combating GBV. In response to gender-based violence (GBV), the federal Government created the federal GBV strategy titled "It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence." This strategy builds upon existing efforts to combat GBV, focusing on preventing GBV, supporting survivors, and promoting responsive legal and justice systems.⁸ In 2021, the Canadian ministries responsible for the status of women endorsed the Joint Declaration for a Canada Free of GBV, and the framework for a National Action Plan to End Gender- Based Violence (GBV NAP) was created to ensure reliable and timely access to protections and services nationally.⁹ The Government has taken initiatives to target sexual violence and Intimate partner violence ("IPV"), through increased education for legal actors including amending the Judges Act¹⁰ to mandate continuing education for those appointed to the provincial superior courts of justice as well as training for lawyers on navigating cases involving IPV and sexual violence, combating stereotypes, international human rights law, CEDAW, domestic equality, and non-discrimination

5 Committee on the Elimination of Discrimination against Women, Tenth periodic report submitted by Canada under article 18 of the Convention, due in 2020, (August 10, 2022) [2022 Report].

6 Committee on the Elimination of Discrimination against Women, Inquiry concerning Canada under article 8 of the Optional Protocol to the Convention, Follow-up report submitted by Canada, (January 23, 2024) [2024 Report].

7 Indian Act, RSC 1985, c 1-5.

8 2022 Report, *supra* note 5 at 14.

9 Ibid.

10 Judges Act, RSC 1985, c J-1.

laws. The Criminal Code¹¹ has also been amended to clarify certain aspects of sexual assault law, enhancing measures to better respond to IPV.

To address socioeconomic conditions, the Government of Canada launched the Indigenous Skills and Employment Training Program to help close the education, skills, and earning gaps between Indigenous and non-Indigenous people. Provincial and territorial governments have also implemented education initiatives through legislation, aid measures, and increased resources. Various strategies and programs working to ensure access to post-secondary education for Indigenous people and to support and encourage students to stay in school have also been implemented. Additionally, programs across some provinces assist women's participation and access to the labour market, and initiatives working to reduce poverty, homelessness, and inadequate nutrition have also been implemented and/or funded.

In 2016, the Canadian Government launched the National Inquiry into MMIWG to assess the systemic and root causes of all forms of violence against Indigenous women, girls, and 2SLGBTQQIA+ people. In 2019, the Inquiry

released its Final Report, highlighting the urgent need for a complete paradigm shift to dismantle colonialism and bring an end to the MMIWG crisis.¹²

Canada amended the Indian Act to address discrimination in the registration provisions. In 2017, Bill S-3 was partially implemented to address sex-based inequities of the Act following the decision in *Descheneaux c Canada* (Procureur general).¹³ In 2019, the removal of the 1951 cut-off came into force. In 2020, Parliament determined that all sex-based inequities in the registration provisions of the Indian Act were eliminated. Additionally, in its 2022 response, Canada acknowledged the impact of past sex-based discrimination in registrations on First Nation women and their descendants. However, measures to provide reparations were not being considered.

11 Criminal Code, RSC 1985, c C-46.

12 The Native Women's Association of Canada, An annual report outlining the Federal Government's progress on implementing the commitments made in their MMIWG2S National Action Plan (2022) online: [https://nwac.ca/assets/knowledge-centre/FEDERAL ANNUAL SCORECARD ACTIONPLAN 2022 2022-06-03- 132116 mfnq.pdf](https://nwac.ca/assets/knowledge-centre/FEDERAL_ANNUAL_SCORECARD_ACTIONPLAN_2022_2022-06-03-132116_mfnq.pdf) at 3.

13 2015 QCCS 3555.

Recommendations Not Fully Addressed

Despite these efforts, Canada has not fully addressed several of CEDAW's recommendations, particularly those regarding access to justice and reforming police services' policies and procedures or implementing resources for victims of GBV.

Improving Access to Justice & Reforming Police Services' Policies and Procedures

Canada has not fully addressed the CEDAW recommendations regarding improving access to justice and reforming police policies and procedures. While acknowledging that strong legal aid is an important pillar of the justice system, Canada has not provided evidence of implementing CEDAW recommendations. Additionally, recommendations regarding improving police services' interaction with and service of Indigenous communities have seen limited efforts. Rather than an impartial external oversight body, the RCMP created the National Office of Investigative Standards and Practices to act as an internal oversight body. The Government also funded a review of police policies to identify gaps and challenges, but there is no information on whether the findings have been implemented.

Providing Resources for Victims of GBV

Furthermore, Canada has not fully addressed expanding resources for victims of GBV. While the Government has made efforts to implement the Committee's recommendations on prevention, including committing to funding for shelters and affordable housing, investments into safety and security concerns, and strengthening the capacity of Indigenous women's organizations to provide GBV prevention programs, areas not fully addressed include the provision of culturally appropriate counselling and rehabilitation services and the consideration of a victim's bill of rights aimed at increasing access to victim services. In 2023, the GBV NAP provided the Government with a recommendation of 100 policy actions to achieve a Canada free of GBV, but the implementation status has yet to be reviewed.

Areas Where the Government Should Focus Efforts for Full Compliance with CEDAW

To fully address all of CEDAW's recommendations, Canada and its governments should focus efforts on fully removing discriminatory provisions of the Indian Act and providing reparations to those historically impacted by them. They should also prioritize the implementation of the 231 Calls for Justice from the National Inquiry on MMIWG.

Canada should prioritize efforts to eliminate and rectify the discrimination present in, and caused by, the Indian Act. In March of 2022, CEDAW found that there were provisions of the Indian Act that were discriminatory to the descendants of Indigenous women who had been disenfranchised.¹⁴ Bill C-38, An Act to amend the Indian Act (new registration entitlement), was introduced in 2021, and is currently at the second reading in the House of Commons (as of March 2024). Bill C-38 is intended to address the remaining effects of sex-based discrimination, namely rectifying the status of those impacted by the previous registration provisions. Canada should prioritize passing Bill

C-38 to comply with CEDAW's recommendations.

Furthermore, the Government of Canada should prioritize the implementation of the Calls for Justice from the Final Report of the National Inquiry into MMIWG released in 2021. In an assessment of the Government's performance, the Native Women's Association of Canada deemed it to be a failure.¹⁵ The Government has failed to adequately address the 231 Calls for Justice, with only a few actions taken thus far, most of which being budget allocations. Significant amounts of resources and work are needed to fully address the legal obligations and Government's proposed actions to answer the Calls to Justice.¹⁶ Successful implementation of the Calls for Justice would additionally comply with, and address, all CEDAW recommendations.

¹⁴ United Nations Press Release, UN women's rights committee urges Canada to amend transgenerational discriminatory Indian Act, (March 3, 2022) online: <https://www.ohchr.org/en/press-releases/2022/03/un-womens-rights-committee-urges-canada-amend-transgenerational> .

¹⁵ Ibid.

¹⁶ Ibid at 33.

Conclusion

In their 2015 Report, CEDAW made recommendations to Canada on combating the crisis of MMIWG, improving the socioeconomic conditions of Indigenous women, overcoming the legacy of the colonial period, and establishing a national inquiry into MMIWG. Canada has made efforts to address these recommendations through GBV prevention initiatives, funding to improve socioeconomic conditions, implementing a national inquiry into MMIWG, and amending the Indian Act. However, areas such as improving access to justice, police reform, and expanding resources for victims of GBV remain inadequately addressed. Going forward, Canada should focus on removing all discriminatory provisions of the Indian Act, providing reparations to those impacted, and implementing the 231 Calls for Justice from the Final Report of the MMIWG National Inquiry.

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