

South Asian Legal Clinic Ontario

TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION OF WOMEN (CEDAW)

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JOINT SUBMISSION

By

COLOUR OF POVERTY - COLOUR OF CHANGE (COP-COC)

And

BLACK LEGAL ACTION CENTRE (BLAC)

CHINESE & SOUTHEAST ASIAN LEGAL CLINIC (CSALC)

COUNCIL OF AGENCIES SERVING SOUTH ASIANS (CASSA)

ONTARIO COUNCIL OF AGENCIES SERVING IMMIGRANTS (OCASI)

SOUTH ASIAN LEGAL CLINIC OF ONTARIO (SALCO)

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Racial equity, human dignity, social justice

Table of Contents

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Overview of Coalition

Established in 2007, Colour of Poverty – Colour of Change (COP-COC) is a network of community-based NGOs working for racial equity, human dignity and social justice by helping to build community-based capacity to address systemic racism, the growing racialization of poverty and the resulting increased levels of social exclusion and marginalization of racialized communities – both Indigenous Peoples and peoples of colour – in Ontario, Canada.

Established in 2017, the Black Legal Action Centre (BLAC) is an independent not-for-profit community legal clinic that combats individual and systemic anti-Black racism by providing free legal services, conducting research, developing public legal education materials, and engaging in test case litigation and law reform. BLAC is the successor to the African Canadian Legal Clinic which was accredited to the 1981 UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

The Chinese & South East Asian Legal Clinic (CSALC) – formerly known as the Metro Toronto Chinese & Southeast Asian Legal Clinic (MTCALC) – is a Canadian NGO mandated to provide free legal services to low income members of Chinese and Southeast Asian communities in Ontario. Apart from providing legal services, CSALC also engages in systemic advocacy to advance the rights of immigrants, racialized communities and other disadvantaged members of society. CSALC has ECOSOC consultative status at the UN.

The Council of Agencies Serving South Asians (CASSA) is an umbrella organization that supports and advocates on behalf of existing as well as emerging South Asian agencies, groups, and communities in order to address their diverse and dynamic needs. CASSA's goal is to empower the South Asian Community. CASSA is committed to the elimination of all forms of discrimination from Canadian society.

The OCASI - Ontario Council of Agencies Serving Immigrants is a council of autonomous immigrant and refugee-serving organizations in Ontario and the collective voice of the immigrant and refugee-serving sector in the province. Formed in 1978, OCASI has 240 member organizations across the province of Ontario. OCASI's mission is to achieve equality, access and full participation for immigrants and refugees in every aspect of Canadian life. For more than four decades, OCASI has engaged in public education and advocacy to identify and address systemic and structural racism and discrimination.

The South Asian Legal Clinic of Ontario (SALCO) is a not-for-profit organization mandated to enhance access to justice for low-income South Asians in Ontario. SALCO was established in 1999 and provides direct legal services to low-income South Asians in Ontario in a number of areas of law including human rights discrimination, income security, housing, employment, family, and immigration. SALCO also participates in larger-scale law reform, community development, and legal education to address systemic racism and discrimination, which are at the root of the experiences that our communities face across Canada. SALCO has ECOSOC consultative status at the UN.

Executive Summary

The focus of COP-COC's submission lies in our experience serving and advocating for racialized and immigrant women – including Indigenous women, Black women and women of colour. Since Canada's last report to the Committee, considerable changes have taken place including the creation of the National Action Plan to end Gender-Based Violence, the creation of the Missing and Murdered Indigenous Women, Girls, and 2SLGBTQQIA+ People National Action Plan, the report of the Mass Casualty Commission, and a National Anti-Racism Strategy. Dismayingly, the rates of gender-based violence, intimate-partner violence, and hate crimes have continued to rise. While Canada recognises the issue and its extent, progress on addressing these issues remains slow.

To truly improve the lives of women in Canada and eliminate all forms of discrimination, it is vital to implement the recommendations and strategies of these policy documents in a manner that is effective for all women, but especially those most marginalized. It is also important to ensure the economic empowerment of women by ensuring government transfer is available and effective and by improving labour market outcomes for racialized and immigrant women. Finally, Indigenous women, Black women and women of colour continue to face heightened issues accessing legal recourse including chronic under-reporting to police and other authorities, lack of culturally and linguistic support services and over-policing of sex work.

List of Recommendations

The Colour of Poverty – Colour of Change network recommends the Committee ask Canada to implement the following:

Intimate Partner Violence and Gender-based Violence

Fully implement the Missing and Murdered Indigenous Women, Girls and 2SLGBTQQIA+ People National Action Plan and the calls for justice that prioritize Indigenous women's safety and healing;

Create a robust and independent oversight and accountability mechanism to ensure that efforts and investments made under the NAP-GBV are effective;

Evaluate and ensure the equitable distribution of adequate funding and support for Indigenous, Black and racialized survivors of GBV and IPV;

Establish an equitable, broad-based and accessible immigration status regularization programs for survivors of GBV, IPV and human trafficking;

Include the protection of racialized women and girls in its Online Harms Bill; by obligating social media platforms to remove content that incites violence or hate against women and girls, including hate that intersects gender identity,

faith, and race;

Introduce a broad, equitable and inclusive immigration status regularization program that would allow sex workers with precarious immigration status to gain permanent residence and be protected from exploitation; and

Make permanent public policies in immigration that provide for immigration protection for women trying to leave situations of violence who have no or precarious immigration status including the temporary resident permit in family violence, the fast-tracked permanent residence on humanitarian and compassionate grounds for women facing intimate partner violence, and the open work permit program for workers facing violence.

Women and Income Assistance: The Canada Child Benefit

Amend the Income Tax Act by repealing s.122.6(e) which ties eligibility for the Canada Child Benefit (CCB) to the immigration status of the applicant parent/caregiver. Every parent/caregiver in Canada who is considered a resident for tax purposes should be eligible for the CCB, regardless of immigration status.

Allocate funds for women in precarious status leaving abusive relationships. Funds should be available for interim/emergency CCB payments for women leaving abusive relationships while their CCB application is being processed.

Labour Market Discrimination

Require provincial and territorial governments to introduce and enforce robust and effective employment equity legislation;

Include a recognition of intersectional discrimination/oppression as experienced by members of the designated groups – Indigenous Peoples, peoples of colour, women, persons living with disabilities, 2SLGBTQI+ individuals and those of diverse faith backgrounds, in employment equity legislation. Such recognition is important to advance employment opportunities for those most marginalized;

Remove the barriers to the recognition of international training as currently practiced by institutions, regulatory bodies and employers;

Strengthen enforcement of employment standards laws through increased investigations and prosecutions, higher fines and penalties, public databases for employers with outstanding orders to pay, and automatic corporate Board of Directors' liability for owed employment standards entitlements; and

Decriminalize all aspects of sex work.

Disaggregated Data Collection

Require the Federal, Provincial, Territorial and Municipal governments collect and track disaggregated data with respect to ethno-racial and faith backgrounds across all Departments,

Require Ministries, Divisions and relevant institutions to use this data to develop strategies for addressing systemic racism/faithism and human rights violations;

Ensure that data is collected in a consistent/coherent way that enables analysis of the intersecting effects of ethno-racial and faith backgrounds with gender identity, sexual orientation, socioeconomic status, immigration status, age, and (dis)ability;

Use disaggregated socio-demographic data to develop strategies to address systemic racism and faithism;

Ensure community governance of such data (e.g., the OCAP framework as developed and applied by Indigenous Peoples in Canada, the EGAP framework as proposed by the Black Health Equity Group in Ontario) by Indigenous and equity seeking (and of course deserving) communities is in place to ensure community ownership, control, access, use, and interpretation to prevent misuse, misinterpretation, and commercialization of data.

Access to Justice

Significantly increase the Federal Government's contribution to legal aid programs in all provinces and territories, with a significant portion earmarked for civil law and poverty law;

Work with provinces and territories to develop a centrally accredited interpretation and translation program for all courts and administrative tribunals;

End all immigration detention and immediately introduce adequately resourced, independent oversight of Canada Border Services Agency

Intimate Partner Violence and Gender-based Violence

Gender-based violence, family violence and intimate partner violence (IPV) continue to be critical areas of concern. Indigenous women face significantly higher rates of intimate partner violence and are killed at nearly 7 times the rate of non-Indigenous women. The National Inquiry into Missing and Murdered Indigenous Women and Girls concluded in 2019 and issued a final report with 231 individual Calls for Justice directed at governments, institutions, social service providers, industries and all Canadians. Very little progress has been made on the implementation and Indigenous women and girls continue to face heightened risk of violence and death.

In 2022, across Canada, overall rates of family violence and intimate partner violence were higher than in 2019 (pre-pandemic) and 2020 (the first year of the Covid-19 pandemic). This upward trend is also reflected in SALCO's internal data collection in providing legal services to South Asian survivors of GBV in Ontario, where, from 2019 – 2024 we have seen a 41% increase in client cases related to GBV. The Ontario legislature is currently considering a Bill that would recognize that intimate partner violence is an epidemic in Ontario.

Since Canada's last report to this Committee, the government has created the National Action Plan to End Gender-Based Violence (NAP-GBV). COP-COC welcomes the creation of the National Action Plan; multiple members of our coalition were involved in consultations around the plan. SALCO also participated in the Roadmap for a National Action Plan, a report outlining 100 recommendations across the four pillars of the NAP that the federal government must implement in order to achieve a Canada free of gender-based violence.

In addition to the 100 recommendations, the key takeaways of the Roadmap report were that the successful implementation of the NAP requires, among other things, independent oversight and evaluation, an all-of-government approach with cooperation and coordination among governments and the centering of the voices and experiences of the people most affected by gender-based violence - which includes Indigenous women, Black women, women of colour, women with disabilities, non-binary and trans women, 2SLGBTQI+ people, people living in rural and remote areas, and migrant women.

When Black women and women of colour report GBV or IPV, their experiences are taken less seriously within the criminal law system and perpetrators receive less harsh punishments.

In 2022-2023, the federal government started releasing funds for the implementation of the NAP-GBV through the Department for Women and Gender Equality (WAGE). While initial reporting is awaited, there continues to be a lack of clarity on how these results will be evaluated. WAGE has not currently made known any mechanism for independent oversight and evaluation of these expected results and the progress made under the NAP-GBV.

The need for a robust accountability mechanism has also been recognized by the Mass Casualty Commission Report. Recommendation V.17 of the report recommends the federal government establish by statute an independent and impartial GBV commissioner with "adequate, stable funding and effective powers" whose mandate should be developed "in consultation with the Provincial and Territorial governments, women survivors (including from marginalized and precarious communities), and the GBV advocacy and support sector".

While Canada has started to explore disaggregated data collection and made investments in the last federal budget, these efforts do not yet include data collection on the differential impacts of violence on racialized women in Canada – Indigenous women, Black women or women of colour, including those with precarious or no immigration status. There is little or no collection of disaggregated data on GBV or IPV in provincial and territorial jurisdictions. There is no data, let alone disaggregated data, on the experiences of migrant women and women with precarious immigration status in the sex trade include arrests, detentions or removals. The COP-COC network's grassroots work

in these communities reveals that these women are subject to significant rates of violence that is exacerbated by systemic racism and faithism, as well as precarious immigration status and lack of workplace protections.

Canada allows women who are trafficked to apply for a temporary resident permit, however women are often unaware of this option, the application process is difficult, the requirements onerous and very few permits have been issued.

Racialized women in Canada are also subject to disproportionate rates of digital violence and hate crimes. According to Statistics Canada, 67% of those who report online violence to police are women and girls. The harm caused by digital violence against women is significant since it can be pervasive and can re-victimize survivors every time harmful content is shared. The experiences of Indigenous, Black and racialized women is significantly under-counted in these statistics, due to various factors including fear of police, combined with systemic access barriers.

Recommendations:

We ask the Committee recommend that Canada:

Fully implement the Missing and Murdered Indigenous Women, Girls and 2SLGBTQQIA+ People National Action Plan and the calls for justice that prioritize Indigenous women's safety and healing;

Create a robust and independent oversight and accountability mechanism to ensure that efforts and investments made under the NAP-GBV are effective;

Evaluate and ensure the equitable distribution of adequate funding and support for Indigenous, Black and racialized survivors of GBV and IPV;

Establish an equitable, broad-based and accessible immigration status regularization programs for survivors of GBV, IPV and human trafficking;

Include the protection of racialized women and girls in its Online Harms Bill; by obligating social media platforms to remove content that incites violence or hate against women and girls, including hate that intersects gender identity, faith, and race;

Introduce a broad, equitable and inclusive immigration status regularization program that would allow sex workers with precarious immigration status to gain permanent residence and be protected from exploitation; and

Make permanent public policies in immigration that provide for immigration protection for women trying to leave situations of violence who have no or precarious immigration status including the temporary resident permit in family violence, the fast-tracked permanent residence on humanitarian and compassionate grounds for women facing intimate partner violence, and the open work permit program for workers facing violence.

Women and Income Assistance: The Canada Child Benefit

After a temporary improvement during the course of the Covid-19 pandemic due to increased government assistance, in 2022 people in female-led one-parent families were almost four times more likely (23.8%) to live below the poverty line than people in couple families with children (6.3%). While the Canada Child Benefit (CCB), a program intended to keep children out of poverty, has made a considerable difference in the lives of single mothers and children, the rates of poverty remained higher than the national average for First Nations children living on reserve (37.4 per cent), First Nations children living off-reserve (24 per cent), Inuit children (19.4 per cent), Métis children (15.2 per cent), Black children (18.6 percent) and other racialized children (15.1 per cent) in 2020.

Eligibility for the CCB program is based on the immigration status of parents/caregivers, among other criteria, and the program continues to exclude people with precarious or no immigration status, which means children, including Canadian-born children, remain affected. This eligibility criterion disproportionately affects racialized women with irregular immigration status even if they have children who are born in Canada.

People who are non-status or on an irregular immigration pathway are particularly vulnerable as they are more likely to be low income, under-employed or living in poverty while having fewer connections and resources in Canada that they can rely on. Thus, the CCB would be particularly helpful to racialized women without status and who are

struggling to provide for their children while residing in Canada, given that they tend to be more likely to live in poverty and are not eligible to receive any income supports nor access to any social and economic support programs.

There may also be a multitude of reasons why women with irregular immigration status remain in Canada including having left situations of violence, migrant workers who have been let go from employment, or those waiting for permanent residence based on a refugee claim or an application on humanitarian and compassionate grounds. Often, women without status, but who have lived in Canada for an extended period, are paying taxes despite the fact that they cannot benefit from the various tax benefits and credits such as the CCB. If the goal of the CCB is to eradicate child poverty in Canada, it should be made available to all families who are residing in Canada regardless of their immigration status. Given the ethno-racial demographics of these cohorts, the current eligibility requirements of the CCB disproportionately discriminates against racialized immigrant women and children.

Recommendations:

We recommend the Committee ask Canada to:

Amend the Income Tax Act by repealing s.122.6(e) which ties eligibility for the Canada Child Benefit (CCB) to the immigration status of the applicant parent/caregiver. Every parent/caregiver in Canada who is considered a resident for tax purposes should be eligible for the CCB, regardless of immigration status; and

Allocate funds for women in precarious status leaving abusive relationships. Funds should be available for interim/emergency CCB payments for women leaving abusive relationships while their CCB application is being processed.

Labour Market Discrimination

Despite overall improvements in labour market outcomes for women, there remains a gender gap between men and women. These gaps become compounded when accounting for immigration status, race and faith background. While labour force participation rates and employment rates improve with the length of time spent in Canada, there remains a gap between immigrant and Canadian-born women.

This disparity is more apparent when comparing immigrant and women of colour to Canadian-born white men. In 2019, the wage gap between Canadian-born white men and immigrant women was 47%. The gap increased to 61% for immigrant women of colour. Racialized women in Canada – including Indigenous women, Black women and women of colour - have lower labour force participation rates and lower employment rates, are less likely to work full-time, and experience a larger wage gap compared to Canadian-born men. A study from Statistics Canada found that the average pay for peoples of colour could be as much as 30% lower in similar sized workplaces.

Peoples of colour and immigrants are overrepresented in part-time and precarious employment characterized by lower wages, absence of benefits, and job insecurity. This also puts migrant women with temporary or no immigration status at an increased risk for workplace exploitation. Factors that contribute to making the gaps deeper and wider are systemic racism/faithism in hiring and promotion, de-skilling of immigrants due to non-recognition of international credentials and experience earned abroad; and use of police record checks to discriminate against applicants.

As of June 2024, in Ontario, the unemployment rate for women was estimated at 6.6% as compared to 7.4% for men. However, the unemployment rate among population groups designated as “visible minorities” (peoples of colour) was estimated at 9.2% in comparison to a 5.5% rate for non-peoples of colour and those that did not identify as Indigenous. Similarly, the unemployment rate for the Indigenous population was 9.3% compared to 6.9% for the non-Indigenous population. Through the pandemic and beyond, Indigenous people and peoples of colour across all regions in Canada continue to have higher rates of unemployment than “non-visible minority” communities.

Research in Canada indicates that race-based discrimination continues. For example, employers discriminate against job applicants even when they have equivalent education and experience, as proven by studies that show far fewer interviews are offered to candidates with Asian-sounding names.

Recommendations:

We ask the Committee recommend that Canada:

Require provincial and territorial governments to introduce and enforce robust and effective employment equity legislation;

Include a recognition of intersectional discrimination/oppression as experienced by members of the designated groups – Indigenous Peoples, peoples of colour, women, persons living with disabilities, 2SLGBTQI+ individuals and those of diverse faith backgrounds, in employment equity legislation. Such recognition is important to advance employment opportunities for those most marginalized;

Remove the barriers to the recognition of international training as currently practiced by institutions, regulatory bodies and employers;

Strengthen enforcement of employment standards laws through increased investigations and prosecutions, higher fines and penalties, public databases for employers with outstanding orders to pay, and automatic corporate Board of Directors' liability for owed employment standards entitlements; and

Decriminalize all aspects of sex work.

Disaggregated Data Collection

Canada has a significant and diverse population of racialized people, which is changing due to immigration. It welcomed just over 1.3 million new permanent residents between 2016 and 2021, a record high. Immigration accounts for almost 100% of Canada's labour force growth. Roughly 75% of Canada's population growth comes from immigration, mostly in the economic category. Indigenous and racialized people are the fastest growing population in Canada, including racialized women. In 2016, racialized people accounted for 22.2% of Canada's population with a projected estimate of 38.2-43% by the year 2041. The Indigenous population continues to grow faster than the non-Indigenous population, growing 9.4% between 2016 and 2021. In 2021, among women, more than 1 in 4 (25.8%) women aged 15 and older were part of the racialized population, more than one-quarter (27.1%) were immigrants, and 4.5% were Indigenous.

Recent statistics demonstrate the ethno-racial diversity of Canada:

In 2020, 92% of Canadians aged 15 and older agreed that ethnic or cultural diversity is a Canadian value.

In the 2021 Census, 2.2 million people reported Indigenous ancestry representing almost 6% of the population of Canada.

Additionally, South Asian people represented 7.1%, Chinese people represented 4.7%, and Black people represented 4.3% of the total population of Canada.

The year-over-year increase in racialized populations speaks to the necessity to collect disaggregated data in Canada, which has been recognized both by this Committee as well as by Canada in its Universal Period Review. These ethno-racial as well as intersectional identities create varying experiences of barriers to accessing help, employment/unemployment, wage gaps, violence, education and health outcomes, access to housing, and over-representation in Canada's justice system.

Canada has made strides in its collection of disaggregated data. We acknowledge the launch of the Disaggregated Data Action Plan, led by Statistics Canada. However, Canada's approach to the collection of disaggregated data has not progressed at a rate that acknowledges the growing populations of racialized people in Canada and the growing disparities in all of their life outcomes. While the Plan has an all of government approach, this type of ethno-racial data is still not collected for example, in many of the programs delivered by Canada Border Services Agency, which is tasked with immigration enforcement and the removal of people from Canada, many from racialized communities; nor in critical areas such as health and healthcare.

Recommendations:

We ask the Committee to recommend that Canada:

Require the Federal, Provincial, Territorial and Municipal governments collect and track disaggregated data with respect to ethno-racial and faith backgrounds across all Departments;

Require Ministries, Divisions and relevant institutions to use this data to develop strategies for addressing systemic racism/faithism and human rights violations;

Ensure that data is collected in a consistent/coherent way that enables analysis of the intersecting effects of ethno-racial and faith backgrounds with gender identity, sexual orientation, socioeconomic status, immigration status, age, and (dis)ability;

Use disaggregated socio-demographic data to develop strategies to address systemic racism and faithism; and,

Ensure community governance of such data (e.g., the OCAP framework as developed and applied by Indigenous Peoples in Canada, the EGAP framework as proposed by the Black Health Equity Group in Ontario) by Indigenous and equity seeking (and of course deserving) communities is in place to ensure community ownership, control, access, use, and interpretation to prevent misuse, misinterpretation, and commercialization of data.

Access to Justice

Racialized communities are over-represented among the low-income population and face heightened risk of homelessness, incarceration, and human rights violations. However, access to justice, and the fair representation of racialized individuals before courts, administrative tribunals and government agencies, and access to legal aid is made that much more difficult because of their Indigenous identity, race and immigration status on the one hand, and the lack of culturally and linguistically relevant, responsive and safe services and supports in the justice system on the other.

Federal and Provincial/Territorial governments in Canada use a cost-sharing program to fund legal aid across the country. In Ontario, Canada's largest province, while the majority of legal clinics provide services in such areas as housing and social assistance law, the inadequate level of funding means many still have to turn clients away. Furthermore, in other areas of law where racialization of poverty has resulted in enormous need for racialized communities, such as employment law, family law, and immigration and refugee law, the lack of resources and funding is even more pronounced. The thresholds for income-based eligibility are low and not all legal services are covered under the legal aid system, leaving low-income people without adequate legal representation, furthering vulnerability and exploitation. Further - interpreters are not available at all levels of court and tribunals. Even where interpretation is available, it is seldom available in various language dialects resulting in ineffective and often inaccurate interpretation.

Racialized sex workers, particularly Indigenous, Black and people of colour face severe rights inequities, racialized policing and barriers reporting violence to police. Migrant sex workers and those with precarious immigration status additionally often face discrimination, language barriers and privacy concerns. Research shows that decriminalizing all aspects of sex work is necessary to remove legal barriers, end punitive policing that restrict sex workers' access to recourse and safer occupational conditions.

Canada continues to detain migrants who have not been charged or convicted of any crime, and has no limits on migration detention. When provincial and territorial governments ended the practices of migrant's detention in provincial jails, the federal government began planning to hold them in federal correctional facilities. There is no independent oversight of Canada Border Services Agency, which manages migration detention. These concerns were echoed recently by members of the UN Working Group on Arbitrary Detention following their country visit to Canada.

Recommendations:

We ask the Committee recommend that Canada:

Significantly increase the Federal Government's contribution to legal aid programs in all provinces and territories, with a significant portion earmarked for civil law and poverty law;

Work with provinces and territories to develop a centrally accredited interpretation and translation program for all courts and administrative tribunals;

End all immigration detention and immediately introduce adequately resourced, independent oversight of Canada Border Services Agency

Conclusion

The Canadian government has made some progression in addressing discrimination against women. However, data tells us that Indigenous, Black, and women of colour still face disproportionately higher rates of violence, higher rates of poverty, higher rates in immigration precarity, more precarious work and lower rates of pay, and high rates of hate crime. Ultimately, they still fare worse in most life outcomes.

Canada must consider significant legislation and policy changes to address the concerns raised above and by others to address these disparities, and triage Indigenous, Black, and women of colour as a priority in combatting discrimination against women in Canada.