

**IACHR/MCGILL UNIVERSITY SPECIAL FORUM ON RACE  
DISCRIMINATION AND ESC RIGHTS IN NORTH AMERICA**

**MCGILL UNIVERSITY FACULTY OF LAW**

**NOVEMBER 22 -23, 2013**

## Table of Contents

Prof. Daniel Jutras .....	5
Commissioner José de Jesús Orozco Henríquez.....	7
Prof. François Crépeau.....	11
Commissioner Rose-Marie Belle-Antoine .....	16
Prof. Tanya Hernandez .....	20
Prof. Joanne St. Lewis .....	20
Mr. Fo Niemi.....	23
Ms. Katya Salazar .....	23
Mr. Carlos Quesada .....	23
Prof. Bernard Duhaime.....	26
Ms. Teresa Edwards .....	38
Mr. Michael Smith.....	39
Prof. Grace-Edward Galabuzi.....	41
Prof. Martin Gallie .....	50
Ms. Margaret Parsons.....	60
Prof. Adele Blackett .....	63
<i>Prof. Marie-Thérèse Chicha .....</i>	<i>63</i>
Ms. Natalicia Tracy .....	63
Prof. Dalia Gesualdi-Fecteau.....	66
Mr. Jacques Frémont.....	70
Prof. Vrinda Narain .....	72
Ms. Pearl Eliadis .....	75
Mr. Julius Grey .....	80
Mr. Mohamed Jama .....	82
Prof. Paul Eid .....	84
Ms. Avvy Go .....	87
Commissioner Belle Antoine .....	87

# **DAY 1**

# Opening Remarks

Prof. Daniel Jutras, Dean, Faculty of Law, McGill University

Commissioner José de Jesús Orozco Henríquez, President, Inter-American Commission on Human Rights

Prof François Crépeau, United Nations Special Rapporteur on the rights of migrants (video)

**Prof. Daniel Jutras**

Summary:

The issues that will be addressed in the coming days affect North America in its entirety. This elicits that human rights violations are not only other people's problems, but also relevant to our local experience as Canadians. We are happy to receive colleagues from other universities and NGOs, from within and outside Quebec, as well as the Commission des droits de la personne et des droits de la jeunesse du Québec (CDPDJ). I finally would like to thank my colleague Prof. Adelle Blackett and Commissioner Belle Antoine for the organisation of this event.

---

This is a very special occasion, as the faculty is extremely pleased and honored to host the Inter-American Commission on Human Rights. This is a great project that was brought to us by my colleague Adelle Blackett. We immediately thought it would be an extraordinary opportunity to delve into the relevance of the Inter-American Commission on Human Rights on issues of great significance in the law of human rights.

I look at the program and want to emphasize one dimension which perhaps is particularly significant from our point of view: the fact that the issues that are going to be addressed over the next few days are issues that truly concern human rights in North America in the strictest sense. This is something that perhaps needs to be underlined, because we in universities often tend to talk about human rights issues as though they are someone else's problems, or as things that happen elsewhere in other governances or political contexts that are much more difficult than the ones that we experience in North America. So I am particularly pleased that there will be conversation held here on issues related to discrimination and race in the economic, social and cultural rights of North America, therefore in a context that is particularly relevant to our local experience.

I also want to emphasize how happy we are that this is an opportunity for colleagues from other institutions and important organizations to come here and participate in that conversation, both from various institutions of higher learning inside and outside of Quebec, and from other faculties of law across Canada, as well as our friends from NGOs that are very often partners of ours in our efforts to insert these issues in the educational experience of our students. I am particularly pleased that we will have with us our friends from [French name of institution], an organization that is extraordinarily significant locally and I think benefits from the great insight of the people whom you will hear over the next few hours and until tomorrow.

[Speaking French] I would like to thank my colleague Adelle Blackett who was so generous in bringing this together in the middle of her sabbatical leave, and therefore a time that would not normally entail the kind of administrative effort that is involved in putting together something of this nature. I would also like to thank Commissioner Rose-Marie Belle Antoine, who is the head of the Rapporteurship on the Rights of Persons of African Descent and Against Racial Discrimination, who was the inspiration from the very outset in thinking to bring this to a university-setting so that this conversation could take place in an environment that is not the usual environment of the Commission. We are very pleased that she thought of McGill as an appropriate location for this.

So without further delay in the proceedings, please give a warm welcome to Commissioner José de Jesús Orozco Henríquez, who will deliver a few remarks as President of the Inter-American Commission. Welcome to McGill.

**Commissioner José  
de Jesús Orozco  
Henríquez**

Opening Remarks

Summary:

This event is an important step for the IACHR's process of deepening relations with issues of racial discrimination in North America. We are grateful to the organisers of this event, including Commissioner Belle Antoine and Prof. Blackett, along with the Labour Law and Development Research Laboratory.

The IACHR was established in 1959 as an autonomous body of the OAS, and is composed of 7 members acting in their independent capacity. Its mandate is to promote the observance and protection of human rights, through individual petitions, thematic reports, and priority issues. In 1990, the IACHR started creating thematic Rapporteurships on specially vulnerable groups, reaching the number of 10 today, and including on the rights of peoples of African descent and on Indigenous peoples.

The Rapporteurship on the Rights of Persons of African Descent and Against Racial Discrimination was established in 2005 and has carried out many activities since its establishment, including technical assistance to the OAS working groups on the Convention on Racial Discrimination and the Convention against all forms of Discrimination, both adopted in June 2013. Similarly, Commissioner Shelton has recently led a special visit to Canada to address the issue of murdered and missing Indigenous women in British Columbia. Thank you once again for the organisation of this event.

---

*0:21:07 (Day One)*

Good Morning Professor Daniel Jutras, Dean of the Faculty of Law at McGill University, Professor Adele Blackett, fellow Commissioner Rose-Marie Belle Antoine, special guests, panelists and participants, ladies and gentlemen. Thank you all for coming for this historic event, which has arisen from the very first collaboration between the Inter-American Commission on Human Rights and McGill University. For the Inter-American Commission, this is an important step in deepening our engagement with North American matters of race, discrimination, and economic, social, and cultural rights. We are particularly grateful to McGill University Faculty of Law and its Labour Law Development Research Laboratory, and their commitment to stage this forum with us.

I would like to specially recognize Commissioner Rose-Marie Belle Antoine who conceptualized this forum. Commissioner Antoine is the Inter-American Commission's Rapporteur on the Rights of Persons of African Descent and Against Racial Discrimination and is also the Commissioner in charge of the Inter-American Commission's unit on economic, social, and cultural rights. We wish to acknowledge and thank Dean Jutras, who graciously agreed to cohost with

us, and paved the way for this important collaboration to take place, and without whom we would not be here today. We are also indebted to Professor Adele Blackett, the Director of the Labour Law Development Research Laboratory, who gave tremendous support in organizing the event, and whose research laboratory is one of the principal sponsors of this event.

This forum is very much in keeping with the mandate and work of the Inter-American Commission on Human Rights. Since some of us might be unfamiliar with the Inter-American Commission's mandate, permit me to offer a short overview:

The Inter-American Commission, established in 1959, is a principal and autonomous organ of the Organization of American States, whose mission is to promote and protect human rights in the Americas' hemisphere. It is composed of seven independent members who serve in a personal capacity, together with the Inter-American Court of Human Rights, which was started in 1979, the Commission is one of the institutions within the Inter-American system for the protection of human rights. So, to emphasize, the principal function of the Inter-American Commission is to promote the observance and protection of human rights in the Americas.

The work of the Inter-American Commission rests on three main pillars. The individual petition system monitoring of the human rights situation in the member states and the attention devoted to priority thematic areas. Operating within this framework, the Commission considers that in as much as the rights of the persons subjected to the jurisdiction of the member states are to be protected, special attention must be devoted to those populations, communities and groups that have historically been the targets of discrimination. It is in this regard, that starting in 1990 the Inter-American Commission created thematic rapporteurships in order to devote attention to certain groups, communities, and people that are particularly at risk of human rights violations due to vulnerability and discrimination that they have faced historically. The aim of creating the thematic rapporteurships is to strengthen, promote, and systematize the Inter-American Commission's own work on these issues.

Having regard to the foregoing, this forum falls within the promotional side of the commission's mandate, with special input from the Rapporteurship on the Rights of Persons of African Descent and Against Racial Discrimination, and the unit on Economic, Social, and Cultural Rights. Currently, the Inter-American Commission has ten thematic areas, most of which are operated by the Commissioners as Rapporteurs, or in charge of a unit. Apart from the

Rapporteurship on the Rights of Persons of African Descent and Against Racial Discrimination, and the Unit on Economic, Social, and Cultural Rights, the other thematic areas are: Rapporteurship on the Rights of Indigenous Peoples, Rapporteurship on the Rights of Women, Rapporteurship on the Rights of Migrant Workers and their Families, Rapporteurship on the Rights of the Child, Rapporteurship on Human Rights Defenders, Rapporteurship on the Rights of Persons Deprived of Liberty, Special Rapporteurship for Freedom of Expression, and the Unit on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex (LGBTI) Persons.

The Rapporteurship on the Rights of Persons of African Descent and Against Racial Discrimination was established in February 2005, while the Unit on Economic, Social, and Cultural Rights was established in November 2012 under the leadership of Commissioner Antoine. The Office of the Rapporteur was charged with dedicating itself to activities of stimulating, systematizing, reinforcing and consolidating the action of the Inter-American Commission on the Rights of Persons of African Descent and against Racial Discrimination. The Unit was established to help strengthen the Commission's work to protect and promote economic, social, and cultural rights. The decision to establish this unit was significantly influenced by the States and civil society. The Rapporteurship has carried out a number of important activities since its establishment, one of which is the publication of a thematic report on the situation of people of African descent in the Americas in December 2011, launched in St. Lucia in July 2012. The Rapporteurship was also involved in providing technical assistance to the unit of the Organization of American States working group in successfully negotiating the Inter-American convention on racial discrimination-related forms of intolerance, and the Inter-American Convention against all forms of discrimination and intolerance. Both conventions were adopted in June 2013 by the Organization of American States general assembly. The Commission considers the adoption of this convention as a historical and significant step towards the elimination of racism and all forms of discrimination in the hemisphere, as we work together to bring about justice and equality for all peoples, regardless of race or ethnicity.

While the Rapporteurship and the Unit has been at the forefront of the Commission's involvement in this forum, I must of course mention that my colleague Commissioner Dinah Shelton is the Rapporteur on the Rights of Indigenous Peoples. In this capacity, Commissioner Shelton conducted work and visited Canada in August of this year to look into the disappearances and murders of indigenous women in British Columbia. Commissioner Shelton leaves office at the end of this year, and so I would like to take this opportunity to applaud her

outstanding contribution not just to her Rapporteurship, but to the Commission as a whole. Unfortunately, she is not with us today, since her close family member died two days ago.

The topics on the agenda of this forum are undoubtedly complex and challenging, however, given the caliber of panelists, speakers, and participants present, I confidently look forward to illuminating discussions that will deepen our understanding of race, discrimination, and economic, social, and cultural rights in the context of North America.

In closing, I would like to again thank you, our hosts, McGill University Faculty of Law, and all of you who made the time to participate in this important forum. Of course, I expect that this forum will be the first of many collaborative events between the Commission and McGill University, as we seek to advance the agenda of human rights protection for all in this hemisphere. Thank you very much.

<p><b>Prof. François Crépeau</b></p>	<p style="text-align: center;">Opening Remarks</p> <p>Summary:</p> <p>Discrimination against migrants comes from Receiving State migratory policies, but also from negative perceptions in the public opinion. We should recognize that migrants go to States where there is a labour demand for them, albeit informal. As long as there are push and pull factors, migrants will continue coming. In this sense, “war on migration” is a counter-productive fantasy, which will simply push migrants further into irregularity within the receiving State, such as the experiences of prohibition and war on drugs show.</p> <p>The legal and social situation of temporary migrant workers is also especially precarious, notably because of their dependency on the goodwill of the employer-sponsor. Migrants often have to go into debt to pay fees to apply for their permit, although this is prohibited by local laws in many countries, such as Qatar. The promised contract is also often no honoured upon the arrival of the migrant worker to the Receiving State, but he or she has no other option to accept these changes of circumstances because of debts. Female domestic workers are especially vulnerable to many abuses, because their workplace is a private home. An open labour market, generating competition between employers and labour mobility, must instead be promoted.</p> <p>Since migrant workers do not have access to the democratic life of the country where they are, their legal empowerment is essential. All actors must join their forces in this sense. They many not have the right to remain in the country or to vote, but they have all the other fundamental rights guaranteed to anyone.</p> <hr/> <p><i>0:30:45 (Day One) [Pre-Recorded Video]</i></p> <p>Dear colleagues, ladies and gentlemen, I would like to say how much I regret not being able to participate in person in this special forum on race, discrimination, and economic, social and cultural rights, co-organized by the Inter-American Commission on Human Rights and McGill University. But I thank the organizers for inviting me to make a short, pre-recorded presentation in the hope that it will contribute usefully to your debates.</p> <p>I would like to address two points today which result from the experience that I have gained in the past few years as the United Nations Special Rapporteur on the Human Rights of Migrants. And I’ll be a little provocative in order to make sure to catch your attention.</p>
--------------------------------------	--

One of the major sources of discrimination against migrants results from the effect of migration policies implemented by destination states, whether as regards to regular migrants or temporary migrant workers. The public discourse demonizes irregular migration as a scourge, and we hear a lot of an exclusionary discourse that preys on public fears and brandishes threats that social science studies have disproved, but which have a very long political shelf-life: irregular migrants steal jobs, they depress working conditions, they bring illnesses, they increase crime, etc. It is rarely mentioned that if migrants come to destination states, it's because there is a labor market for them, albeit underground, because local employers actually need them, and because many low-profit-margin economic sectors actually need the competitive edge of being able to recruit cheap labor. Such is often the case of industries like construction, or agriculture, hospitality, caregiving; there are underground labor markets because there are unrecognized labor needs.

Irregular migration is actually created when push and pull factors' interplay is disrupted by barrier. The push factors are in the lack of prosperity or stability in the country of origin. The pull factors are these unrecognized labor needs. Cynics would say that this disruption is actually engineered in order to ensure that such migrants stay in the precarious situation that drives them to accept these very low wages and often times dirty, difficult, and dangerous working situations. Irregular migrants fear being detected, arrested, detained, deported, they rarely protest, hoping to be able to move on and send money home. Migrants accept conditions that residents would not, and employers prey on this vulnerability. Some destination state authorities proclaim that they want to seal their borders, preventing irregular migrants from entering. However, sealing international borders is a fantasy, and migrants will continue arriving, despite all efforts to stop them, because the push and pull factors are still present, despite the barrier.

At some point, repression of regular migration is even counterproductive, as it drives migrants further underground, thereby empowering and entrenching smuggling operations and creating conditions of alienation and marginalization that foster human rights violations such as discrimination, exploitation, trafficking, and violence against migrants. The discourse that emphasizes the protection of territorial sovereignty through combating irregular migration is actually contradictory because the framework it creates actually empowers the criminal rings that deplete the state from its power to effectively control the border. This is a lesson learned at the time of the prohibition in America, and it is a lesson that we are slowly learning from the war on drugs. It has yet to influence our debates and policies on irregular migration.

Fighting labor exploitation of migrants by sanctioning exploitative employers and by considering irregular migrant workers as workers who should benefit from all labor standards and related social laws even though they might not have the right to stay in the country often seems to be a yet-unfulfilled state obligation. Acknowledging the unrecognized labor needs through opening legal channels for blue collar labor migration and fostering a social debate on how to ensure a viable future for some soft economic sectors without labor exploitation still seems politically unfeasible, yet, if we are serious about reducing irregular migration and labor exploitation in destination states, such avenues would contribute greatly in reducing the pull factor of irregular migration and diminish the power of smugglers over migrants by reducing the underground labor markets that attract irregular migrants.

A second issue that I have recently observed during an official mission in Qatar, but which exists in many destination countries all over the world, north and south, is the precarious legal and social situation that is created for temporary migrant workers, especially blue collar ones, again often in the construction or agriculture, or caregiving industries, through the exclusive link between the employer who sponsors the foreign worker and the sponsored migrant workers. The exclusivity of the link creates a space of precariousness, as the employer wields great power over the future lives of the sponsored individuals: he can fire them, and this will trigger the end of the residence and work permits, which in turn triggers their removal to the state of origin, often after a period of detention. The dependency of the migrant workers' fates on the goodwill of the sponsor creates a power imbalance that is too often exploited by unscrupulous employers. Very often, such migrant workers pay huge amounts as recruitment fees in order to secure such jobs. They have to sell property or go into debt in order to raise such money. Such fees are prohibited by national legislations, such as the one in Qatar, yet this remains an extremely common practice, as unscrupulous recruitment intermediaries take a cut at all levels of the journey towards the country of destination.

Upon arrival in the destination country, the contract that had been promised often fails to materialize. It is replaced by a much less favorable one: wages are lower, travel expenses are not reimbursed, job description is different, working conditions are much worse, and housing condition can be horrible. Yet the temporary migrant worker has little choice but to accept it, as he or she needs to pay back the debts accumulated to fund the migration journey. Many unscrupulous employers confiscate the ID and travel documents of the migrants in order to secure their power over them more firmly. They often threaten such migrants with dismissal and consequent removal to the country of origin in order

to obtain more concessions: extended working hours, more duties, work in other employer's outfits. Many suffer abuse of all kinds: verbal abuse, psychological violence, threats, physical violence, and sexual abuse. Female domestic workers are especially vulnerable to such abuse as the work place is a private home. Discrimination is rife in such environments.

In Qatar, for example, I've heard stories about how many maids are paid according to a scale, which depends on their ethnic origin, with the Filipino maids being paid the highest wages, and the East African maids the lowest. In construction work, Nepali workers are paid the lowest wages. These sponsorship programs have been denounced for numerous years, yet they endure as state authorities see little alternatives to subsidize unsustainable industrial sectors or practices. As I have recommended to the Qatari authorities, the precariousness of temporary migrant labor contracts should be eradicated through a series of measures. The abolition of the sponsorship system, and its replacement with an open labor market where mobility is actually valued in order to provoke a virtuous circle of competition between the best employers. This, in turn, will again require fostering a social and political debate on how to make sustainable certain industries which have been thriving only through exploitative practices.

I will conclude by repeating one of my mantras. Since migrants don't have access to the political stage (they don't vote, they can't be elected), legal empowerment is key to the change in their predicament. Lawyers, judges, national human rights institutions, ombudsmen persons, social workers, labor inspectors, non governmental organizations, civil society organizations, and all the other actors who can impact legally on the condition of migrant workers, need to work together to create legal avenues which will empower migrants to fight for their own rights without fear of being arrested, detained, or deported for doing so. They may not have the right to stay in the destination country, but they have the same fundamental rights as the citizens, except the right to vote and be elected, and the right enter and stay in the country. They may not have access to all the government program entitlements, as these are not always based on a fundamental right, but they have the right to equality, in all its dimensions, including the prohibition of all forms of discrimination.

We still have a lot of work to do to make this a reality, and I thank the organizers and the participants in this workshop for contributing your energy, your determination, and your imagination to finding better solutions for actually protecting the rights of migrants. I wish you the best for your debates, and I thank you for your kind attention.

# **Keynote speech: Setting the stage—an overview of race, discrimination, and ESC in North America**

Commissioner Rose-Marie Belle Antoine, IACHR Rapporteur on the Rights of Persons of African Descent and Against Racial Discrimination Head – IACHR Unit on Economic, Social and Cultural Rights

## Discussants:

Prof. Tanya Hernandez, Fordham University

Prof. Joanne St. Lewis, Faculty of Law, University of Ottawa

**Commissioner  
Rose-Marie Belle-  
Antoine**

Keynote Speech: Setting the Stage—an Overview of Race, Discrimination and  
ESCR in North America

Summary:

Thank you to all for your commitment towards human rights, demonstrated by your presence today. We hope that this event will result in future collaboration. The IACHR, in its reports on racial discrimination in the Americas, seeks to fight the incivility which people of African descent suffer in the continent, as well as the violations of the economic, social, and cultural rights. Why should we speak about race in North America in 2013, a region seen as a beacon of democracy? Has enough progress being made, or are we wilfully blind? Invisibility seems to have become a question of subtle and internalised inequities. Can civil liberties still be eroded under a façade of formal equality? We cannot achieve equality in a civil and political sense so long as social inequality persists. In many countries of the region, people of African descent are denied the right to vote or private services for the way they dress. The Trayvon Martin trial in the U.S.A. also confirms our fears. The IACHR has observed that people of African descent face structural, direct, and indirect discrimination, both in countries where they are the minority and the majority. The question of persistent poverty of Afro-descendant and Indigenous persons in the Americas is at the heart of the reflection on discrimination. Newer paradigms and deconstructing invisibility in all its facets are necessary. In many case, large-scale, influential, and powerful companies contribute to practices negatively impacting human rights and generating discrimination and violence in the entire region. I believe that this raises international human rights issues with regards to these corporations' home States, and that the IACHR's jurisdiction must be extended beyond borders. The Haiti-Dominican Republic question, and the problem of Statelessness that some Dominicans face, must also be addressed.

The IACHR appears to be still afraid to make such a strong determination as a finding of racism. It seems to be sometimes easier to address human rights violations by framing them otherwise than as racism.

---

Good morning, Dean Dutra, President Orozco, all of my distinguished colleagues from academia, special guests. I want to make special mention to my colleague and friend, Professor Bracket who worked so hard and Marie who also worked so hard to help bring this on board. And to all you members of civil society who are here with us today, students, if we have any, I am really happy to be here as the Rapporteur on the Rights of People of African Descent and Against Racial Discrimination, and also, coincidentally, Head of the Unit of Economic, Social, and Cultural Affairs, which is a new unit that we have created at the OAS, and I also happen to be the Rapporteur for Canada. I want to welcome and behalf of my staff attorney who are here with us, Mr. Hilaire Sobers who you have just seen and heard, and also Mr. Mario Dupes who works with the Canada unit as well,

and Hilaire works with the Rapporteurship.

I am really happy and honored to be here today. I don't usually read speeches, but today I was warned that I should post my address online so I am going to have to try to have to be a little disciplined and contain myself to the written word because of that and this is for members of civil society who cannot be here but wish to know what is happening, so I am mindful of that request. I thank all of you for your demonstration of a commitment to what is a very issue by simply attending this event and on behalf of my Rapporteurship and the entire Commission, we believe that in partnering with such a significant community actor as McGill University, that we can make more meaningful gains in advancing what is very important work of the commission, and of course many others in this room, to foster equality and justice, and in particular, to irradiate discrimination on the basis of race. This is just the beginning, albeit a small step to future collaborations, but not just collaborations in an academic sense, but it is my hope that we can stimulate interest from McGill University and from other universities to bring cases, petitions, hearings, to the Commission in Washington, right now many universities do, leading universities, and to help leave groundbreaking jurisprudence on this issue and to add to some of the what really is emblematic case law that the Commission and the Inter-American Court already has in many other areas.

This special forum is an important vehicle in addressing the objectives and the issues highlighted in our report that was mentioned by the President on the situation of peoples of African descent in the Americas, and the background to that report really was the regional conference to the world conference against racial discrimination held in 2000, which provoked the governments of the Americas to advance substantively towards the establishment of a conceptual framework in order to raise the visibility of persons of Afro-Descent and to recognize the persistence of racism and of course to work towards eliminating it. The Rapporteurship was created in 2005, one of the more recent ones, to respond to this need, and of course our first report in 2012.

The problem of invisibility is very much a focus of that report, it aims at "increasing visibility on these issues" and the report and forums such as these help to support this objective and indeed the ownership of human rights by persons of African descent in the Americas and also other minority groups such as indigenous peoples who are represented here as well, to give a strengthening and to give persons of African descent a tool for empowerment.

Although invisibility is such an important theme, in another sense the issues that

we are speaking about in this forum intertwine with economic, social, and cultural rights, so the interplay between race and economic, social, and cultural rights, in a sense is anything but invisible. We could say for example that the inequities, especially when we are talking about economic, social, and cultural rights, are glaringly obvious, and that I think is one of the contradictions, or perhaps the paradoxes. I also wanted to mention, as I speak here in Canada, I cannot help but be reminded that the black power movement of the 1970s in which many ways revolutionized attitudes about race in the Caribbean and certainly my home place [Trinidad and Tobago], started right here in Canada, at Canadian universities. I don't know how many of you are aware of that, and I think that that is good proof that academia can indeed propel real change, so we are not just about talk shops [?].

So we will ask why, in 2013, at a time in North America, a sub region which stands as a beacon for democracy, where there are adequate laws in place, should we wish to speak in a general way about race? We often hear, "race is no longer relevant," "we have equality, don't we?" "It's no longer about race, it's about class." These are some of the refrains that one hears when the subject of race is raised. Race discrimination is a subject on which everyone is eager to agree that yes, it is wrong, but few are willing to actively engage in further progress, or even to debate the issues. Why the deafening silence? Is it because of a genuine belief that enough progress has been made, a tacit acceptance that nothing else can be done, or is it simply a case of willful blindness? The problem of invisibility as a significant obstacle in achieving progress to what actually equality, meaningful equality, remains, and so this paradox. Racist discrimination continues to go largely unacknowledged, the inequities clearly stratified by race in the context of tangible economic rights are increasingly apparent. Persons of African descent and indigenous peoples are relegated to the worst schools, have inferior health programs, the worst paying jobs. Surely, the question of invisibility may mean different things to different groups of people of African descent. For example, on the one end of the spectrum, in the Caribbean where we do have a majority in terms of persons of African descent, and equality has been a historical goal, at this time the debate seems to be somewhat diluted because of the advent of self-governments and the initiative of education, there's a perception that formal equality has been achieved. And so invisibility here is really more about subtle inequities and the former ... of governance and the ... of social interaction, which nevertheless have felt internalized.

On the other hand, countries, for example, like Canada, and in the US, where persons of African descent constitute large minority groups, but exist within a long, hard-fought struggle towards formal equality in the form of a civilized

liberties regime; we appear to have arrived at a pressure point of crossroads. The notion that perhaps we can do more, what more is there to do, we've done enough. This, perhaps, explains the fear that current time there's a risk that civil liberties can be eroded under a façade of formal equality, that is, in the eyes of the law, all are already equal, while society remains deeply in trouble. The reluctance of formal institutions, including courts, to see these inequities in ways that can be addressed under governance structures is a form of invisibility.

At another point of the spectrum we have, in the sub region, and of course, I speak from the standpoint of the OAS, we have the countries of Latin America, and on this subject, Mexico, part of North America, probably more resembles this group, where there are minority groups which have not engaged in the kind of historical struggles for equality that we saw in North America, where there's a kind of apathy and inability to acknowledge the need for equality until fairly recently, and we have some powerful NGOs who can speak more clearly to this, I see global rights and others here we have rule of law, who are very familiar with these issues. Here the issue of race equality was forgotten, ... seen in the most obvious of ways. So we need to assess formal equality as opposed to actual equality, is formal ... as efficient.

It is incontestable that strides have been made. In every country in the region there are laws about racial discrimination and different treatment on ground of race. Need I remind this gathering that we now have a US President who is a person of African descent? And periodically, we issue press releases celebrating the appointment of some person of African descent in some high post, and most recently one we did was the Brazil Supreme Court Judge, the first one.

Yes, these are successes. In a sense, however, the fact that they are newsworthy is a sad reflection that they are not the norm. While some, yes, may have broken through the barriers, when considered as a class or group of people, much more needs to be done before the true objectives of the quality agenda are to be achieved. Indeed, it is my belief that we cannot achieve equality in this civil and political sense if we allow the current huge inequities in the tangible human rights, economic rights in particular, to endure.

So, this forum comes at a significant point, when many of these issues are coming once again to the forefront. To give you an example, recent source of headlines, we've had a US Supreme Court decision on affirmative action, asserting the principle of strict scrutiny, whatever the subject of affirmative action crystalizes that existence of race inequities in a society, despite this agreements as how to treat it.

<p><b>Prof. Tanya Hernandez</b></p>	<p style="text-align: center;">Discussant</p> <p>Commissioner Belle Antoine has raised a paradox: racial discrimination is now a cultural taboo, but it is at the same time present in social inequities. The post-racial rhetoric, or “Obama effect”, gravely hinders the application of anti-discrimination laws. Many social justice scholars are urging academics to take into account social sciences on implicit bias and unconscious racism, as a justification for continued affirmative action. Most people do not realize their implicit biases, and call them “intuition”. The Project Implicit shows how people associate pictures of people with positive or negative words, and the results reveal more frequent automatic preferences for white than black persons<sup>1</sup>. Fair minded people are often unable to detect bias in their own decisions, which aggregated data can achieve. As a result, much discrimination occurs on the labour market or in education. Teachers hold different expectations towards ethnic minorities. This said, remaining aware of one’s bias helps counter it. A race-conscious admissions policy helps to underline the achievements of racial minority candidates.</p> <p>People often use slippery semantics, for instance by not identifying themselves as Afro-descendant or Black, but at the same time using those words to describe their personal experiences. This does not mean that today’s youth should be retrofitted in the 1960s civil right and Black movements, but that they should be met where they are today.</p>
<p><b>Prof. Joanne St. Lewis</b></p>	<p style="text-align: center;">Discussant</p> <p>Anti-Black racism is its own very unique creature. It is not simply about colour or space, but a repetition of the colonial moment and a negation of it. The Americas reveal a context of heightened vulnerability towards Blacks and Indigenous peoples. Stories of success, like my own, are not tributes to the success of the Canadian system, but rather of the “sucking up” of Black people to a racist system. The problem is that those who name racism are stigmatised as disturbing.</p> <p>In Canada, there has been no policy in favour of racialised peoples. The government of Canada has a restrictive vision of the Canadian public and of the common good that it is pursuing, which is made explicit by its cutting of programs supporting access to justice or its litigation against Indigenous self-government initiatives. This all starts with the absence of minority judges, university professors, students, etc. The Canadian education system is not building strong Black students.</p> <p>The Black liberation movements of the 60s and 70s were supported by a lot of theory, in comparison with movements like “Idle No More” or “Occupy Wall Street”. It has yet to be clarified if these are liberation struggles or about fitting within the neoliberal system.</p> <p>I arrived to the University of Ottawa as an administrator, to establish an equality program. As a result, some Black students felt that I should tone down my claims</p>

<sup>1</sup> <https://implicit.harvard.edu/implicit/>.

	and protect myself. The Black Law Students Association was founded 23 years ago, and one of the necessary steps to frame their claims was their acknowledgment of their own personal experience of racism.
--	--

# **Race and the criminal justice system**

Chair and discussant

Prof. Alana Klein, McGill University

Presenters:

Mr. Fo Niemi, Centre for Research and Action on Race Relations

Ms. Katya Salazar, Due Process of Law Foundation

Mr. Carlos Quesada, Global Rights

<p><b>Mr. Fo Niemi</b></p>	<p>Many factors bring a certain closure of the minds with regards to racial discrimination. As the Western world is aging, it is becoming more conservative and more insecure. Similarly, the rise of identity politics also increases the degree of ideology in public debates. The notion of race is not unanimously accepted. Finally, the data collected on racial discrimination is often not disseminated.</p> <p>Concrete problems linked to racial discrimination include: 1) inadequate resources, 2) lack of capacity, 3) colour blind / formal equality approach, 4) lack of public accountability in budgeting authorities, and 5) ineffectiveness of training of public officials.</p> <p>The notion of excessive use of force against racial minorities still needs to be addressed. Background checks for “good conduct” are becoming standard to access employment, which excludes judiciarised individuals. A lot of the change will come through individual empowerment and reconstruction of pride. Many individuals think, as part of their understanding of integration, that they have to assimilate. Another challenge is to go beyond social media, into social action. Social media makes you socially awkward, and may increase the problems of social exclusion of racialised persons.</p> <p>As part of the discussion, a participant recommended <i>We Charge Genocide</i>, 1951, on the request to the UN to investigate into the slave trade, and the book of Michelle Alexandra on incarceration (The New Jim Crow: Mass Incarceration in the Age of Colorblindness).</p>
<p><b>Ms. Katya Salazar</b></p>	<p>Almost 10 million people in Mexico are members of an Indigenous community, or almost 10% of the population, and speak 60 different languages. These are mainly in the States of Yucatan, Quintana Roo, and Oaxaca, and many of these persons do not speak Spanish.</p> <p>The traditional challenges to access to justice are: lack of access to counsel or translator, cultural barriers, etc. These are not extremely difficult to remedy, but would need political will. Moreover, a major contemporary challenge includes social conflicts related to the extraction of natural resources, which aggravate the situation of special vulnerability of indigenous peoples, and the use of the criminal justice system to repress such protests.</p> <p>The idea of control of conventionality and the national reform of criminal procedure are strong opportunities to address these issues in Mexico. Moreover, in this country, Indigenous peoples have the jurisdiction to resolve conflicts using their own customary law.</p>
<p><b>Mr. Carlos Quesada</b></p>	<p>People think mostly of prison conditions and police brutality when they think about discrimination, but racial minorities face many other challenges and forms of exclusion. Within the judiciary system, this includes more frequent investigation, “stop and frisk”, detention in police custody, decisions to press charges, and harsh sentences. This affects the credibility of the justice system. Updated data on these phenomena is a prerequisite to address them.</p> <p>Some of the problems identified in the Americas include: 1) the lack of ethnic</p>

data within the administration of justice institutions (except in the USA), 2) racial profiling by law enforcement officers, in contradiction with the Durban Declaration and Programme of Action, 3) disproportionate police brutality, 4) discrimination by the administration of justice system (lack of representation), 5) ineffective legal remedies, 6) specially harsh prison conditions, including segregated prison pavilions, 7) lack of faith in the administration of justice.

A study of “stop and frisk” discrimination in the state of New York reveals the following: highway patrols stop 51% of Black people, 33% of Hispanic, 9% of Latino. Only 2% of the 685 000 people stopped for the period studied were accused of crimes. A total of 2,1 million people are in jail in the USA, and 40% of these are African American. There are more African Americans in jail than in college. A proportion of 1/9 of African American men will be in jail between the age of 20 and 34, for 1) drug offenses, 2) violent crimes, 3) property crimes. How can this be translates into social change? By documenting, pushing, firing public servants that discriminate, and training public servants.

# **Discrimination against indigenous peoples in North America**

## Chair and Commentator:

Commissioner Renée Dupuis, Vice-President, Commission des droits de la personne et des droits de la jeunesse

## Discussants:

Prof. Bernard Duhaime, Université du Québec à Montréal

Ms. Teresa Edwards, Native Women's Association of Canada

Mr. Michael Smith, Senior Policy Analyst, National Aboriginal Initiative  
Canadian Human Rights Commission

**Prof. Bernard  
Duhaime**

Summary:

Indigenous women in Canada are subject to double discrimination. For instance, Inuit women are very vulnerable when they arrive to cities of the South, and the authorities' response has been unsatisfactory. The IACHR and the IA Court have both recognized the existence of double discrimination, although they still need to go further and adopt the angle of intersectionality. Rather than analyzing each form of discrimination independently, this approach allows to take into account the social context and to recognize the unique experience of the individual based on all relevant grounds. The situation of victims of multiple discrimination is complex, and categorizing an experience as primarily gender-based or primarily race-based is inadequate. The harm from intersectionality is greater than the sum of both, as the project led with the Quebec Native Women Association reveals.

I. Introduction

Since 2005, we have been collaborating with several indigenous women organizations in the Americas, including Quebec Native Women, supporting efforts that address the different types of discrimination many indigenous women still face today.

In Canada, the indigenous population is estimated at more than one million and subdivided into roughly fifty different nations, while the Province of Quebec has an indigenous population of approximately 100,000, subdivided into roughly eleven nations. The great majority of indigenous peoples live in reserves in remote areas of the northern part of the country.

As is the case with the rest of the continent, the problems facing indigenous peoples in Canada and Quebec are considerable, particularly regarding economic, social, and cultural rights. Indigenous women are exposed to great vulnerability in this context, as poverty, violence, and exclusion tend to exacerbate the other rights violations that they face.

This article will discuss our experience addressing the issues of double discrimination and of equality rights of indigenous women in Quebec. We propose to explore the notion of double discrimination through an intersectional approach by analyzing three specific case studies of indigenous women in this province. Hopefully, this discussion will contribute to a better understanding of how institutional violence persists in different aspects of the private lives of women. This article is based on the research that we have been undertaking with several partners, including Quebec Native Women and University of Quebec at Montréal's (UQAM) Service aux collectivités, in a project called Wasayia. This project was part of a broader initiative in which the Continental Network of

Indigenous Women, the Canadian organization Rights and Democracy, UQAM's International Clinic for the Defense of Human Rights, and the International Development Research Center in Canada all participated.

## II. Indigenous Women Face Double Discrimination

In Quebec, as in the rest of the Americas, indigenous women experience multiple forms of human rights violations. It is suggested that they are very often victims of double discrimination because they are both women and because they are indigenous, which of course contributes to their greater marginalization in society. This discrimination is interconnected with the multiple forms of human rights violations indigenous women face, increasing the effect of these violations on the population.

For example, indigenous women may face limitations in the exercise of their right to health or education because—like the majority of indigenous persons—they live in remote, less accessible areas and because the public services or programs are not adapted as far as gender or culture are concerned (for example, regarding reproductive rights). The multiple forms of discrimination are not always interrelated and may affect persons in independent or parallel manners. Sometimes, however, one kind of violation exacerbates or aggravates the other.

For example, this is the case of indigenous women who face involuntary displacement in situations of armed conflicts. In this context, women of course face situations of considerable vulnerability, whereby extreme poverty, persistent conditions of isolation, culturally inadequate services, and other factors expose them in greater proportions to sexual violence and impunity.

In Canada, indigenous women who face other forms of involuntary displacement are exposed to great levels of vulnerability. For example, there are many reports of displaced Inuit women who have left their isolated northern Quebec communities because they were facing situations of family violence. When they arrive to major urban areas like Montréal, most have little or no resources, and many are totally unable to integrate themselves into urban society, incapable of speaking French or English, lacking the cultural references or tools to understand a city of the south, and so forth. Many end up in the street, exposed to alcoholism, drug abuse, abusive relationships, or prostitution, among other problems which keep them in situations of marginalization. Public services are already insufficient and not equipped to deal with such complex cultural situations. In this context, many Inuit women have faced additional sexual violence, have disappeared, or have died in unexplained circumstances. This phenomenon of double discrimination facing indigenous women has been generally denounced by

indigenous women organizations in Quebec, Canada, in the Americas, and in the rest of the world, including during the Beijing 1995 conference with the adoption of the Beijing Declaration of Indigenous Women. Many international human rights bodies and experts have recognized the alarming nature of this problem, including the U.N.

Secretary General, the U.N. Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples, the U.N. Permanent Forum on Indigenous Issues, and UNIFEM. In its General Recommendation No. 25, the U.N. Committee for the Eradication of Racial Discrimination indicated that women may suffer different forms of racial discrimination due to their gender. It offered to assist State parties to develop “a more systematic and consistent approach to evaluating and monitoring racial discrimination against women, as well as the disadvantages, obstacles and difficulties women face in the full exercise and enjoyment of their civil, political, economic, social and cultural rights on grounds of race, colour, descent, or national or ethnic origin.” In the Americas, the Inter-American Commission and Court of Human Rights have similarly recognized the phenomenon, although in our view, neither has yet addressed its complexity in an extensive and appropriate manner.

### III. Why Address Equality Rights of Indigenous Women from an Intersectional Approach?

Understanding the specific conditions experienced by indigenous women and trying to address them adequately is far from easy. Traditional legal approaches to discrimination are frequently maladapted for this exercise. Legal perspectives often tend to take for granted that indigenous people’s experiences are the same for men and women and, a contrario, they forget to take into consideration the racial aspects of gender discrimination.” Often, however, there is little direct information about marginal women, a factor exacerbated by the fact that standard reporting and assessment tools cannot uncover experiences that are not already catalogued to reflect either the multiple identities of marginalized women or the range of unique burdens they often experience.” These limitations and omissions have of course contributed to the further silencing and marginalization of indigenous women’s experiences, exacerbating their vulnerability.

It is submitted that, rather than analyzing each form of discrimination independently, it is preferable to analyze where and how these forms of discriminations are intersecting, in part because “individuals do not experience neatly compartmentalized types of discrimination based on mutually exclusive forms of, for example, racism and sexism. Rather, individuals experience the complex interplay of multiple systems of oppression operating simultaneously in the world.”

In our project, we have thus favored an intersectional approach; that is, one that seeks to analyze the “intersectional oppression [that] arises out of the combination of various oppressions which, together, produce something unique and distinct from any one form of discrimination standing alone . . .” As put by the Human Rights Commission of the Province of Ontario, “[a]n intersectional approach takes into account the historical, social and political context and recognizes the unique experience of the individual based on the intersection of all relevant grounds. This approach allows the particular experience of discrimination, based on the confluence of grounds involved, to be acknowledged and remedied.” As former Canadian Supreme Court Judge Claire L’Heureux-Dubé explained, [C]ategories of discrimination may overlap, and . . . individuals may suffer historical exclusion on the basis of both race and gender, age and physical handicap, or some other combination. The situation of individuals who confront multiple grounds of disadvantage is particularly complex. Categorizing such discrimination as primarily racially oriented, or primarily gender-oriented, misconceives the reality of discrimination as it is experienced by individuals.

This approach has been favored by specific schools of thought within the feminist movement, more particularly by those of Critical Race Feminism and of Black Feminism Thought, as well as by that of the Third World Feminism. For example, Kimberlé Crenshaw considers that “[b]ecause the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated.” This approach is obviously particularly useful in analyzing the effects of the multiple discrimination experienced by indigenous women, considering the fact that “[t]o understand the ideology of sexism and its effects on women’s lives . . . we also have to understand how it interacts with and sustains other forms of domination, such as racism, classism, colonialism, and imperialism.”

One could illustrate the relevance of this approach regarding Canadian indigenous women by recalling the massive pattern of disappearances of such women in the past forty years. Since the 1970s, there have been more than 580 reported cases of indigenous women gone missing or murdered. Many cases have not been solved. The disappearance of indigenous women in Canada can be explained by several factors, practices, and assumptions which, when combined, are instrumental in putting indigenous women in situations of greater vulnerability to sexual violence. These can be, for example, poverty, overcrowded and precarious housing conditions, and lack of access to government services on reserves, which all may encourage indigenous women to leave their communities. Similarly, the existence

of prejudices against indigenous women—for example, assumptions that they are promiscuous and open to enticement through alcohol or violence, or views that they are simple sex objects—increases their chances of being exposed to sexual violence. Another contributing factor is also the lack of investigation by the police authorities, who may assume that indigenous women who have gone missing are drug addicts or prostitutes, and therefore pay less attention to them and consequently encourage impunity and future repetition of such crimes. The intersectional discrimination here is obvious, and one cannot address the sexual violence issue among indigenous women by focusing solely on their gender because indigenous identity plays a role that is just as significant.

#### IV. Overview of Three Situations of Double Discrimination Faced by Indigenous Women in Quebec

When we started to work in collaboration with Quebec Native Women, we decided to focus on three specific situations of double discrimination, which indirectly flow from public policies put forward by both federal and provincial governments. These are the problems indigenous women face when trying to transmit their Indian Status under the Federal Indian Act: the impact of the Quebec provincial youth protection regime on women facing family violence and the inapplicability on reserves of Quebec legislation protecting indigenous women's rights to matrimonial real property.

##### A. The Transmission of Indigenous Women's Indian Status Under the Federal Indian Act

In Canada, the Indian Act regulates almost all the relevant aspects of the lives of indigenous people. The Act provides certain benefits and services to individuals who qualify for Indian Status as defined under section 6. More importantly, qualified Indians may live on a reserve. Until 1985, indigenous women who married non-indigenous men lost their Indian Status and were considered non-indigenous, while indigenous men who married non-indigenous women automatically transmitted Indian Status to their wives. Children born to couples composed of indigenous women and white men could not obtain Status, while children of the latter couple could gain Status. This situation was, of course, patently discriminatory and denounced successfully by the U.N. Human Rights Committee.

With the adoption of Bill C-31 in 1985, women who had lost their status through marriage regained full Indian Status under the new section 6(1) of the Indian Act. Their children, however, regained a new semi-Status under the new section 6(2) of the Act, meaning that they were granted Status but could not transmit it to the next generation unless they married an Indian with Status. On the other hand, non-

indigenous women who married indigenous men prior to 1985 kept their full Status, as did their children. This situation continued to be discriminatory, considering, inter alia, that each scenario resulted in children and grandchildren with different statuses. The issue was taken to the Canadian courts, which ruled, in *McIvor v. Canada*, that this regime was discriminatory and obligated the federal government to change the law. This situation can be illustrated as follows: [See diagram on p. 914].

Very recently, on January 31, 2011, Bill C-35 entered into force. This legislative amendment to the Indian Act and to former Bill C-31 tried to redress the discrimination illustrated above. While Bill C-31 is certainly a step in the right direction, it is far from solving all the discriminatory aspects of the dynamic. Essentially, this amendment to the Indian Act re-establishes, as full 6(1) Status Indians, first-generation children of indigenous women who lost their status as result of a pre-1985 marriage. In the previous illustration, Jacob would thus regain a full 6(1) Status. The legislative amendment also grants a semi-Status (as described in section 6(2) of the Act) to some grandchildren of women who lost their status prior to 1985 (Sharon's grandchild, in the previous illustration). This situation can be illustrated as follows: [See diagram on p. 915].

The new legislative amendments do not address other problematic situations, mainly because they have been tailored exclusively to address problems raised by the *McIvor v. Canada* case. As a result of this approach, the new Act reinstates as full-Status Indians first-generation children of indigenous women who lost their Status as a result of a marriage to a non-indigenous man, but only if such first-generation children themselves had children (as Jacob in the previous case). Such reattribution of the full 6(1) Status does not apply to similar first-generation children who did not themselves have children. Similarly, as a result of the C-31 amendments, children of indigenous mothers married to non-indigenous fathers prior to 1985 now benefit from a 6(1) Indian Status, while similar children born of a mixed couple married after 1985 are not covered by the C-31 amendments and benefit from a 6(2) Indian Status rather than a full one. In addition, the amendments do not address the situation regarding children of indigenous mothers and non-indigenous fathers (common-law unions, for example) who retain a 6(2) Indian Status. Further, these amendments do not address the differentiated Status of male and female children born prior to 1985 of common-law unions between indigenous fathers and non-indigenous mothers. The law can thus still be considered discriminatory in many respects, and a case has been brought to the United Nations Human Rights Committee.

Another discriminatory aspect of this system resides in the registration process of

the Status because, according to the information received from our indigenous women partners, federal civil servants presume that a child's father is non-indigenous if its birth certificate does not identify the father as Status Indian. In such situations, the child will be granted a semi-Status under section 6(2) of the Indian Act and will not be able to transmit his or her Status to the next generation unless he or she marries a Status Indian. Of course, if the mother was already a semi-Status Indian under section 6(2), the white- father presumption will make her child non-indigenous for the purposes of the Indian Act, excluding him or her from future benefits and services under this legislation and, most likely, excluding him or her from his or her reserve when reaching age eighteen.

#### B. The Quebec Youth Protection Regime

The other situation addressed in our project is the Quebec youth protection regime. The government of the Province of Quebec established this program under the Youth Protection Act, which provides for the removal of children facing situations endangering their development, including family violence and negligence or similar treatment. Such children can be placed temporarily in foster families while biological families resolve the problematic situation.

This regime is often maladapted to the reality of indigenous families for many reasons. First, the notion of the "best interest of the child" corresponds to non-indigenous concepts, which can sometimes clash with the indigenous reality (regarding strict attendance to school during hunting season, for example).

Second, public servants implementing the Youth Protection Act are not always familiar with the day-to-day reality of indigenous families living in remote reserves and apply criteria that are, again, culturally maladapted. For example, in a context where Indian reserves drastically lack public funding and where there are severe housing shortages, many families will often share housing and place many children in the same room, both of which are factors taken into account negatively by public servants implementing the Youth Protection Act and assessing the best interest of a child.

Third, indigenous families are often the object of prejudices, perceived by the authorities as incapable of taking care of their children, often because of alcohol or drug abuse. Fourth, since very few indigenous families can qualify as foster families under the Act, for all sorts of reasons (including, for example, the lack of housing on reserves), many if not most children are placed in non-indigenous foster families outside of indigenous communities.

Finally, recent amendments to the Youth Protection Act shorten the time period

during which children are placed in foster families. Biological families thus have less time to resolve their problems, including those related to family violence. After a now-reduced period of time, children can be placed in adoption, most often with non-indigenous families outside of the community. It is needless to say that in remote reserves where public authorities provide little social and psychological support, indigenous parents who lost their children because of family violence stand almost no chance to resolve their problems in the time period provided by the law. It is not unlikely that such children will end up adopted by non-indigenous foster families outside of the community.

### C. Matrimonial Real Property Rights

The last situation addressed in our project deals with the protection of matrimonial real property rights of indigenous women living on reserves. In the Province of Quebec, there is a de facto regime protecting the real property rights of each person in a married couple: the matrimonial patrimony. Article 415 of the Quebec Civil Code provides that, upon separation, divorce, or annulment of a marriage, the family real property and the movable property used by the family (car, appliances, etc.) are divided equally between both members of a couple, irrespective of written deeds.

The situation is a bit more complicated on Indian reserves as, in accordance with the 1867 Canadian Constitution and section 88 of the Indian Act, provincial laws are not applicable to Indians and to Indian reserves. In fact, technically, Indian reserve lands are the property of the Federal Crown, which holds such lands in trust for the Indian bands and therefore cannot be seized by application of provincial laws. Indians living on reserves are generally not owners of their private lands and houses but are granted permission to use these properties by band councils, in accordance with possession certificates. Consequently, the Canadian Supreme Court ruled that provincial laws regulating real matrimonial property could not be applied to Indian reserve lands and the houses built on them.

In these circumstances, there is a legislative vacuum regarding the protection of real matrimonial property rights on reserves. What usually happens is that upon separation or divorce, the judicial authorities will grant the use of the house to the person whose name appears on the possession certificate, which—in most cases—is the husband's. In the context of housing shortages on reserves, most indigenous women are either forced to go back to their parents' house—if there is room with them, that is—or leave the reserve and seek housing outside of the community.

The Canadian Parliament is currently considering adopting legislation to fill the

legislative vacuum. Bill S-4 will enable band councils to adopt their own regimes of protection and will also provide for an interim regime, which will allow judicial authorities to take into consideration factors equivalent to those provided under the provincial matrimonial patrimony regime when dividing the assets of a separating or divorcing couple.

\* \* \*

The three situations described above illustrate well the different ways in which public legislation or actions of public officials may have discriminatory effects on indigenous women. Most of these contexts involve very private aspects of the lives of indigenous women. They relate to the women's capacity to enjoy and fully exercise their human rights, such as the right to culture and language, including the right to transmit one's culture and language to children, the right to housing, to family life, to property, and so forth. The maladapted laws and regulations—or the absence thereof—and the culturally inadequate actions of civil servants implementing public policies limit the capacity of indigenous women to exercise these rights. In each scenario, the end result is unique to the reality of indigenous women, contrary to that of indigenous men or of non-indigenous women.

#### V. Forcing a Choice of Identity

The three situations reveal, to differentiated degrees, how multiple forms of discrimination coexist and interact, having adverse effects on women. The first scenario deals with legislation applicable only to indigenous peoples (providing Indian Status), which regulate men and women differently because of historical discriminatory provisions. The second deals with a public policy regarding the protection of children, a subject matter central to the private lives of women (i.e., their role as mothers), which, while intended for all Quebecers, is maladapted to the indigenous reality (culturally inadequate responses, absence of adapted resources, etc). The last scenario deals with the lack of legislation applicable to real matrimonial property rights on Indian reserves regarding indigenous persons. Experience has shown that, in this context, women remain unprotected in the case of separation or divorce, losing their rights to the place they used to live in, and often must leave the reserve to find housing elsewhere.

In each scenario, the end result is caused by a racial and a gender component, the first triggering or aggravating the second, or vice versa. The intersectional discrimination—the uniqueness of the combined effect of both types of discriminations—is patent.

This being said, the double-discrimination effect is multiplied in contexts of

family violence, which mainly adversely affects indigenous women. The Indian Status scenario illustrates quite bluntly this tendency. Let us recall that there is a de facto presumption of non-indigenous paternity in cases where birth certificates do not indicate the name of the father. Such children of full-Status mothers are automatically registered as semi-Status Indians under section 6(2) of the Indian Act. If the mother is already a semi-Status Indian, the child will not be registered as Indian under the Act. Consequently, an indigenous women who has a child as a result of domestic violence and who has preferred not to inform the father, in order to protect herself or to cut ties with the violent man, will be faced with an impossible dilemma when filing the child's birth certificate and registering it to Indian Affairs. She either reveals the father's identity, exposing herself to future contact with the violent father and perhaps to further violence, or she indicates that the child has an unknown father and consequently limits its right to Indian Status. In other words, the adverse effect of the Status policy forces women in contexts of family violence to choose between their personal security, physical, sexual, and moral integrity, or their cultural and national identity. Indigenous men do not face such decisions. Similarly, non-indigenous women do not have to sacrifice their personal security to transmit their Canadian citizenship to their children.

The same can be said of the second scenario, regarding the provincial youth protection regime. Considering the fact that family violence is an important factor taken into consideration by youth protection officers in determining whether to place a child in a foster family, considering the short time the legislation gives to parents to redress family violence before an eventual adoption of their child, and considering the lack of resources available in indigenous communities to address this type of problem, indigenous women also face a similar dilemma. Either they denounce family violence in order to protect their personal security and face the possibility of seeing their child being taken from them, and placed in and later adopted by a non-indigenous foster family outside of the community, or they continue to endure the violence to avoid losing their child to a new non-indigenous environment and culture.

Finally, with respect to the last scenario dealing with the lack of adequate applicable legislation protecting women's matrimonial real property rights on Indian reserves, indigenous women must either denounce the family violence and run the risk of being expelled of their house (and because of lack of housing on reserves, run the risk of being forced out of the community as well), or they must endure the violence to stay in their community and raise their children in their native language and culture.

All three scenarios deal with the private lives of indigenous women. But all three also illustrate how, in contexts of family violence, inadequate public policies force these women to choose between their identity as women and as indigenous persons, between the right to preserve one's personal, sexual, and moral integrity; or the right to live in one's culture and language, and to transmit these to the next generation. This impossible choice—this identity dilemma—is specific to the condition of indigenous women. It is not faced in similar ways by indigenous men or by non-indigenous women in Quebec.

Is this not precisely the type of intersectional discrimination we referred to in the beginning? Trying to redress such a situation commands an intersectional approach, which seeks to avoid the sub-classification of discrimination in specific categories of gender and racial discrimination. This is precisely the type of identity dilemma that the Critical Race Feminists have tried to put to light and have condemned. As put by Patricia Hill Collins, the “[e]ither/or dualistic thinking, or what I . . . refer to as the construct[ion] of dichotomous oppositional difference, may be a philosophical lynchpin in systems of race, class, and gender oppression.”

#### VI. Conclusion

Understanding the phenomenon is, of course, a step in the right direction, but too small of a step. Working in collaboration with Quebec Native Women, we have decided to take these issues to the women of Quebec's indigenous communities. One of our initial conclusions was that, apart from the very publicized debate regarding the transmission of the Indian Status, very few women were aware of the issues described above. In fact, very few were aware of their equality rights in general. The project was thus adapted to raise awareness in indigenous communities about women's rights, in particular about equality and about the obligation of the State to prevent discrimination, including discriminatory effects of its law, policies, and actions in the women's private lives.

With the financial support of the Quebec Ministry of Education, a training guide was prepared in collaboration with Quebec Native Women and the University of Quebec at Montreal, which was designed to equip indigenous women leaders with the legal tools to publicize these issues in their respective nations. In 2010, French-speaking leaders representing the Innu Nation, the Atikamekw Nation, the Huron Wendat Nation, and the Abenakis Nation were trained in the Mohawk community of Kahnawake. We later accompanied them back to their communities to support their presentation to groups of indigenous women there. The results were very encouraging. In addition to considerable positive feedback from the participants, many indigenous women later contacted Quebec Native Women to

know more about their right to equality. In 2011, the same is being done with English-speaking indigenous leaders from the Mohawk (or Kanien'keh'a:ka) Nation, the Algonquin Nation, the Cree (or Eeyou) Nation, the Micmac (or Mi'gmaq) Nation, and the Naskapi (or Mushuau Innuts) Nation.

Aside from capacity-building of leaders, the next challenge remains, of course, documenting particular cases and addressing the issue in political and judicial fora. This is part of a broader continental Endeavour undertaken with the Continental Network of Indigenous Women of the Americas, with which we are trying to do the same (analyzing, strengthening capacities, documenting) in other regions and on other themes. These efforts include addressing access to education of indigenous girls in Argentina, access to health of Mexican indigenous women, and the impact of sexual violence on indigenous women in the Colombian conflict.

While the prospects of documenting interesting results of intersectional discrimination seem—unfortunately—promising, other important challenges lie ahead. For example, this process will require establishing adequate methodological tools to fully assess the collective-impact violations of indigenous women's human rights can have on their respective communities. Indeed, as the research progresses in each project of the Continental Network, our indigenous partners all agree on one thing: Indigenous women experience human rights violations in both an individual and a collective—indigenous people—manner. This begs the question: Is the intersectional approach suggested by schools of thought such as the Critical Race Feminism well-adapted to address collective concerns of indigenous women and their peoples? Do indigenous women experience racial discrimination in a classic racial or cultural perspective, or do issue specific to indigenous peoples, such as self-determination and cultural sovereignty, come into play? Obviously, the debate is far from over.

**Ms. Teresa Edwards**

Summary:

NWAC emerged because, historically, the Assembly of First Nations (AFN) did not fully represent the demands of Indigenous women. NWAC brought the claim in the Corbière case to the Supreme Court of Canada, at the intersection of gender and racial discrimination. Today, NWAC has 12 regional member associations, who themselves oversee local women’s associations. In December 2012, bill C-45 changed many laws without consultation and is facilitating the actions of corporations on the territory, including the construction of pipelines. Furthermore, a very high proportion of persons in jail are Indigenous women, convicted for poverty-related offenses. At the same time, investment by the federal government towards Indigenous women is limited.

5:48:00

- Opening to acknowledge the Mohawk people whose territory we are gathered on today for the forum.
- NWAC- Native Women’s Association of Canada
- Created to bring concerns of specific aboriginal women to spotlight
- The intersectionality of race and gender, and how indigenous people, or other marginalized and racialized populations, are continuing to be highly discriminated against through policy and legislation, and this is how NWAC came to be
- Not just indigenous people, but specifically discrimination against indigenous women
- Progress of NWAC and reactions from Canadian government
- Huge movement with governments, corporations, media, that have controlled where Canada has gone with its economic development, and indigenous people, specifically indigenous women, have bore the brunt
- Words vs. actions
- Government investments- where are the funds being allocated? Very small amount going to aboriginal women
- We are not investing in the very people that we need to reach in order to have a bright future, which requires economic skills and teaching to indigenous women
- Huge link to poverty and the overrepresentation of native women in prison; it’s not because our women are more criminal, but because they live in poverty
- They are in there for poverty offenses—fraud, theft—not violent crimes, as opposed to indigenous men
- High rates of trafficking of indigenous women in Canada, has a huge

	<p>correlation to high rates of missing and murdered women</p> <ul style="list-style-type: none"> <li>• Must invest in economic security, development, skills, training in order to alleviate problems that we are dealing with in terms of trafficking, etc.</li> <li>• Ripple effect of discrimination</li> <li>• Need for willingness to understand and learn about indigenous people and where they come from, and the intersectionality of indigenous woman</li> </ul>
<p><b>Mr. Michael Smith</b></p>	<p>The Canadian Human Rights Commission is a national institution that, in association with provincial institutions, has established an enquiry into the missing and murdered Indigenous women crisis. It has engaged in meetings with stakeholders and has heard many examples of obstacles to access to justice. It is also looking at inequity in access to public services and over-representation in penitentiary establishments.</p> <p>The Canadian Human Rights Act contained an absolute bar for complaints against the Indian Act, which was lifted in 2008. The bar on complaints against tribal councils was also lifted in 2011. The Canadian Association of Human Rights Institutions has urged the government of Canada to work jointly with Indigenous peoples to develop an action plan against discrimination and abuse of missing and murdered Aboriginal women and girls in Canada.</p> <p>Compared to non-Indigenous peoples, Indigenous peoples in Canada have lower income, are more exposed to abuse, have worst living conditions, are more incarcerated, etc. Because the root cause is generally socioeconomic conditions and because this is not a basis for discrimination in the Canadian Charter, some other grounds for discrimination often have to be used, such as race or gender.</p> <p>Addressing today's challenges requires creativity in the use of the bundle of rights accessible to Indigenous peoples, both domestic and international. The Beaver Lake Cree Nation in Alberta, where I am from, faces many problems in the context of oil sands and has mobilised its treaty rights. The law moves fast and can be very surprising, such as what was accomplished in Gladue with regards to rules for sentencing of Aboriginal persons<sup>2</sup>.</p>

---

<sup>2</sup> R. v. Gladue, [1999] 1 S.C.R. 688.

# **Race and discrimination in matters of health, housing and education**

Chair and discussant

Prof. David Austin, Vanier College

Presenters:

Prof. Grace-Edward Galabuzi, Ryerson University

Prof. Martin Gallie, Université du Québec à Montréal

Ms. Margaret Parsons, African Canadian Legal Clinic

**Prof. Grace-Edward Galabuzi**

Summary:

The central need of African Canadians is to address issues of economic, social, and cultural justice. These are, along with race, mutually constitutive social determinants of health. Mainstream society does not understand the outcome of structural racism as such, but as the result of cultural traits. It is seen as an individualistic, essentialist, intentional and race-targeted phenomenon, rather than as institutional or even structural. The White left has tended to adopt these neoliberal assumptions. We lived in a colour-coded Canada, where inequality is determined racially: Who lives where? Who works where?

Neighbourhood selection has impact on income disparity and health, despite the existence of a universal healthcare system. Racism is a major health risk in that it creates barriers to healthcare, health education, and information for racialised people. It is also a barrier in access to the labour market, where racialised women earn 54% of what White men earn (23 000 \$ v. 45 000\$). This definitely impacts health.

Three dimensions of racism can be identified: 1) social inequalities, 2) socio-psychological attitudes, creating everyday stress and distress, and 3) racial climate, of micro-aggressions provoking alienation and low self-esteem.

We need new conceptual bases to think about racialisation, and reflect the reality of people's experiences. We also need to conduct community-focused research. We need to go towards a new national housing policy, to address poverty, homelessness, and discrimination jointly.

---

Racial Discrimination, Social exclusion, Housing and Health Disparities among Racialized Communities in Canada

Racial Discrimination, social exclusion, housing and health disparities

- Racialization and racial discrimination in health, housing, education
- Contextual framework: Social Determinants of Health (SDOH)
- Labour market participation, income insecurity and racialization of poverty
- Social exclusion and health disparities
- Social exclusion and housing disparities

Context

- Social exclusion, poverty and racial status as mutually constitutive Social determinants of health
- The intersection of poverty, racism, social exclusion contribute to housing and health risks and adverse impacts on life chances

	<p>Theoretical framework: Racialization, discrimination and unequal outcomes</p> <ul style="list-style-type: none"> <li>• <b>Structural racism</b> as the establishment of a racial regime whose logic is internalized by the dominant economic and social structures of society, leading to racially inequitable outcomes:</li> <li>• the social order is organized along racial assumptions and norms</li> <li>• institutional and social arrangements that determine distribution of societal resources, benefits and burdens are based on racial concept</li> </ul> <p>Colorblind Multicultural Regime</p> <ul style="list-style-type: none"> <li>• A contending racial ontology is rooted in an understanding of racialization as: <ul style="list-style-type: none"> <li>• Individualist</li> <li>• Essentialist</li> <li>• Intentional</li> <li>• Race-targeted</li> </ul> </li> </ul> <p>The Question of Race</p> <ul style="list-style-type: none"> <li>• Race as a category is diffuse and dynamic, across time and space</li> <li>• Proxy for ethnicity, class, culture, genotype, etc.</li> <li>• Measures socially constructed and imposed identity with consequent societal constraints and advantages</li> <li>• Racial consciousness reflects these categories in any given society. Need to acknowledge its prevalence and impact.</li> <li>• Historically, <i>structural racism and everyday forms of racism</i> have restricted the socio-economic mobility and full enjoyment of well-being for racialized groups</li> <li>• Race is a contextual variable not an individual characteristic</li> </ul> <p>Color coded Canada: Racially determined inequality</p> <ul style="list-style-type: none"> <li>• Data show that '<b>Racial identity</b>' matters in Canadians' lives, as demonstrated by the structural barriers to access to opportunity and differential socioeconomic status</li> <li>• The experiences of racialized individuals arising from institutional and structural racism are consistent with economic hardship and low socioeconomic status</li> <li>• In particular, what I have referred to as the 'racialization of poverty' arises out of a racialized growing gap between rich and poor, and affects access to housing, education and health outcomes.</li> </ul> <p>Racial disparities- race associated differences</p> <ul style="list-style-type: none"> <li>• Labour market participation – declining social economic status</li> </ul>
--	--

- Access to housing and neighbourhood selection
- Educational attainment and utilization
- Immigrant integration (highly racialized category)
- Health disparities - Immigrant health effect

Neighborhood selection, income insecurity and health risks

Context: social determinants of health and wellbeing

- Social determinants of health are the economic and social conditions that influence the health of individuals, communities, and jurisdictions as a whole.
- Social determinants of health also refer to the quantity and quality of resources that a society makes available to its members.
- Health inequity is closely linked to socio-economic inequality
- Canada has a universal health care system
- A social determinants of health approach (SDOH), considers the full range of modifiable economic and political conditions that otherwise lead to poor health outcomes and systemic health disparities
- Consistent with the vision of the UN Covenant on economic, social and cultural rights

Social inequality and health disparities

- *“Health inequalities result from the differential accumulation of exposures and experiences that have their sources in the material world”* JW Lynch, et al (2000)
- *“The effect of income inequality on health reflects a combination of negative exposures and lack of resources held by individuals, along with systemic disinvestments across a wide range of human, physical, health and social infrastructure”* Lynch, et al (2000:1220-1224)

Social determinants of Health Framework (Dennis Raphael, 2004)

- Early life
- Education
- Employment and working conditions
- Food security
- Health services
- Housing
- Income and income distribution
- Gender
- Social exclusion
- Aboriginal status

- Social safety net

#### Racial inequalities and health disparities

- Social exclusion, racism and other forms of oppression undermine the health and wellbeing of Aboriginal people, racialized group members, women, children and the poor (Karlsen & Nazroo, 2002; Krieger, 2003; Galabuzi, 2004; McCormack, 2010)
- Racial discrimination shapes the health of racialized people in Canada
- Racism is a major health risk in that it creates barriers to access to quality healthcare, health education and information for racialized people (Williams & Mohammed, 2009; Hyman & Wray, 2013, Nestel, 2012) .

#### Racism as a determinant of health

- While 'race' has been considered a health risk factor for sometime, a number of recent studies now clearly identify racism as a key social determinant of health (Gee, 2002; Harrell et al., 2003; Nazroo, 2003; Peters, 2004; The Calgary Health Region, 2007).
- Using data from the National Survey of Ethnic Minorities, Karlsen and Nazroo (2002) conclude that experiences of racism - and not ethnic identity as traditionally assumed - are directly related to poor health outcomes, incidences of diabetes and hypertension, regardless of the health indicators used.

#### Racism as a determinant of health: dimensions

- **Social inequalities:** unequal access to labour market, education, housing, health service utilization lead to negative health outcomes
- **Socio-psychological:** historical and enduring modes of oppression and marginalization – colonization, everyday forms of racism and sexism, displacement account for traumas, stresses and distresses that influence health outcomes
- **Racial climate:** Micro-aggressions structure low self-esteem and alienation from civic participation

#### Health inequities

- *“Systematic, potentially avoidable differences in health or in the major socially determined influences on health, among people...”* (Braveman, 2006)
- Distribution of socio-economic status by race
- Unequal hospital utilization
- Unequal access to medical screening
- Lack of adequate resources for translation

- Lack of cultural competence
- Racist environment

#### Racism as a determinant of health

- Racial discrimination in housing, work and society impinge on the life chances of racialized group members through key economic, political and social processes
- Racism undermines self-confidence and threatens emotional and mental wellbeing of its victims
- Everyday racism and structural racism reinforce each other leading to racially defined outcomes
- Widespread ‘evidence’ for the effects of structural racism in employment and low income status with health implications
- Racism intensifies and entrenches poverty

#### Color coded labour market: the changing nature of the labour market

- The changing nature of work is a key factor responsible for the racially unequal outcomes.
- Precarious employment is on the rise - contract, temporary work arrangements with low wages, limited job security, and no benefits.
- Racialized groups are disproportionately represented in sectors of the economy where these forms of work are a major feature.
- Aboriginal and racialized groups suffer higher levels of unemployment, underemployment and low income

#### Differential labour market outcomes as a social determinant of health

- *“Employment and working conditions have powerful effects on health and health equity. When these are good they can provide financial security, social status, personal development, social relations and self-esteem and protection from physical and psychological hazards – each important for health. In addition to the direct health consequences of tackling work-related inequities the health equity impact will be even greater due to work’s potential role in reducing gender, ethnic, racial and other social inequities.”* **World Health Organization Commission on the Social Determinants of Health**

#### Employment and health

- Work affects our health through a number of pathways. These include:
  - The nature of work we do -- whether it is full-time, part-time or contract
  - The income we get from work – low income

- The physical or psychological strain of work
- The conditions of work – occupational health and safety concerns

#### Income insecurity and long-term health impacts

- Protracted forms of employment (precarious employment) and related income insecurity can lead to persistent negative health exposures
- These mutually reinforce in ways that lead to disempowerment and long-term deterioration of health
- This is particularly the case among population groups at risk of precarious employment and income insecurity such as racialized groups, Aboriginal people, immigrants and women

#### Poverty is not color blind: racialization of poverty

- The **Racialization of poverty** refers to the persistent and disproportionate exposure to low income experienced by racialized group and Aboriginal people in Canada.
- It points to the significance of racialization as a key structural determinant of poverty in Canada and the **differential experience** of poverty
- Racialized groups and Aboriginal people are **two to three** times more likely to be poor than other members of the community – for racialized families in 2005 that meant 19.8% compared to 6.4% for non-racialized families

#### Housing disparities

- Income segregation is significant in Canadian cities and it is highly racialized in many urban areas (Dunn, 2002; Galabuzi, 2006; Ornstein, 2000).
- A significantly high proportion of racialized people in Canada live in poor neighbourhoods with poor quality, over priced and marginal housing conditions (AAMCHC, 2005; Dunn, 2000; Novac, 1999; Hulchanski, 2012).
- Poor housing in Canada is related to low income, which is in turn related to poor health outcomes

#### Race, poverty and urban neighborhoods

- The spatial concentration of poverty is the result of a decline in the traditional manufacturing, a loss of local job opportunities and gentrification
- Low skilled, service sector occupations now predominate.
- Precarious forms of employment a growing source of livelihood (PEPSO,

2013)

- Related to these developments is a deep process of gentrification which is displacing lower income populations in many urban centres

#### Housing disparities

- Aboriginal and racialized group members as well as immigrants experience barriers to housing due to the intersecting oppressions of race, gender, class, Aboriginal status, and ethnicity
- These limit their ability to access adequate, suitable and affordable housing
- Issues of differential housing tenure (who owns, who rents)
- Single parent households and housing
- Studies show that discrimination against people on social assistance and racism prevent many individuals and families from accessing quality housing in good neighbourhoods (CERA, 2010).
- Differential access to suitable and affordable housing exists due to discrimination based on race, gender, Aboriginal status, receipt of social assistance, single parent status
- The effect is amplified for racialized groups who are disproportionately poor and single parent families.
- Canada Mortgage and Housing Corporation (CMHC) uses the 'Core Housing Need' as a measure for conditions that constitute acceptable housing in Canada
- Three standards:
  - Affordability: Cost of dwelling as a share of household income
  - Suitability: Size of the dwelling
  - Adequacy: Physical condition of the dwelling
- CMHC deems a household to be in core housing need if the dwelling fails to meet one of these three stands and it has to spend 30% or more of its income on housing

#### Housing disparities (Ontario)

- Canadian research shows that Aboriginal and Racialized groups are the largest proportion of Canadians in core housing need in urban centres
- Housing need aggravates cycle of deprivation
- Poor housing is a pathway to poor health
- There are more racialized group members (19.0%) in core housing need compared to (12.5%) non-racialized
- Among racialized group members, 20.5% are in core housing need due to affordability as compared to 17.9% among non-racialized

#### Core housing need

- Among racialized immigrants 16.1% report suitability as the major reason for core housing need compared to 4.2% non-racialized immigrants
- The largest racialized group reporting core housing need due to affordability and adequacy were African-Canadian
- The largest proportion of racialized groups reporting core housing need due to suitability were South Asians

#### Youth and neighborhood dynamics

- Low income neighbourhood contested space
- Intersection of low income and racialization
- Neighbourhood focused policing – police brutality
- Micro-aggressions in public space, schools, malls

#### Mental Health and other impacts related to racism and income insecurity

- Mental health issues identified as a key problem
- Stress is widespread along with depression and low self-esteem common.
- Weight loss as well as weight gain due to stress
- Missing family; feeling lonely and alienated

#### Educational disparities

- Racialization and colonization are manifest within schools and across the education system in the way they act to deny Aboriginal and racialized students the full benefit of the learning experience.
- A 2004 Ontario survey of adults who had completed their schooling found that less than 5 percent of Aboriginal students obtained a university degree, compared to around 25 percent for the general population (WALL 2005)
- The achievement gap among some racialized groups
- Racial disproportionality in streaming into Applied and Academic streams and outcomes
- The expansive use of special education to disproportionately designate racialized students to these programs
- The deployment of ‘youth at-risk’ discourses and interventions;
- The use of safe schools discourse and the zero tolerance policies that structure differential learning opportunities and school to prison pipelines

#### Policy implications

- A new conceptual consensus on racialization/racial discrimination
- Anti-racism policies and programs

- |  |   |
|--|---|
|  | <ul style="list-style-type: none"><li>• Targeted poverty reduction strategies</li><li>• Employment equity</li><li>• Disaggregated data collection</li><li>• Multi-sector strategy, priority setting and action</li><li>• Community focused research on health and housing</li></ul> |
|--|---|

**Prof. Martin Gallie**

**Summary:**

Presented a study on patterns of discrimination of the Inuit by the Quebec Housing Board, who get expelled from their housing. Most Inuit people do not attend the hearings and are not represented by counsel.

**Good afternoon,**

I am really sorry to talk in French but as you can hear my English is really not good.

But if I had to say one thing in English, I would like to show how a social right, more specifically the right to housing, is used by the State of Quebec, against racialized people: the Inuit in Nunavik.

I will continue in French.

As I was trying to say in English, I would like to show in this brief presentation how a social right *par excellence*, the right to housing, is used, or rather usurped, by the Quebec government against the indigenous people of northern Quebec, the Inuit.

More precisely, I would argue that this use of housing law and rental-related prosecution is symptomatic of the discrimination the Inuit face in this area.

This study follows on a hearing conducted by the *Commission populaire sur le droit du logement du FRAPRU* on housing rights. At that hearing, in October 2012, about 10 Inuit people described to the commission members, myself among them, the tragic housing conditions in which they lived.

In response to these accounts, we, together with a former law program masters' student, Marie-Claude Plessis-Bélair, decided to study how, in practice, the Inuit might use the "weapon of housing rights" to exercise their rights.

This will be a three-part presentation.

In the first part, I will briefly outline the housing and living conditions of the Inuit of Nunavik. In the second and third, I will return to our research findings.

**Part I: The housing and living conditions of the Inuit**

The region in question is in far northern Quebec.

It is an isolated place that can be reached only by aircraft and, in certain months of the year, by boat.

The map shows the other regions inhabited by the Inuit.

- **The living conditions of this indigenous population**

I will speak very briefly on this point.

**The data are entirely consistent, so I will simply provide a few examples.**

**In 2004, 63% of the population lived in poverty** and 33% of its children lacked nutritional security.

In terms of health, **the bottom line** is that the average Inuit life span is **14 years shorter than that of the rest of the Canadian population.**

- **Housing today**

Nearly all the 11,000 inhabitants of Nunavik, who are 90% Inuit, and who reside in 14 villages, live in government housing.

- 2,373 government housing units
- 80 privately owned housing units
- Some employer-subsidized units

There are only a few private homes. Essentially, there is only one landlord: the Quebec government.

These dwellings have belonged to Quebec since 1981. But the responsibility for these homes (construction, maintenance) is a matter of lively dispute between the federal and provincial authorities. Recent arbitration reconfirmed that the question is nowhere near clarification.

Regardless of who is responsible, the housing conditions are disastrous.

- **Unhealthy conditions**

**46% of the Inuit live in unhealthy dwellings.**

To give one example, in March 2013, the local newspaper reported that the **doors of some government units would no longer open in the winter**, which meant the tenants could not get out<sup>3</sup>.

To give another, according to the United Nations **special report** on housing rights, **34% of Inuit persons in northern Canada lack access to safe drinking water.**

- **Overpopulation**

Close to half of the Inuit live in overcrowded housing.

<sup>3</sup> Jane George, « Lots of problems with social housing units in Nunavik: regional councillors - Councillors cite bad doors, "useless sheds," poorly-done renovations, rising rents » (March 11, 2013), online : Nunatsiaqonline, <[http://www.nunatsiaqonline.ca/stories/article/65674lots\\_of\\_problems\\_with\\_social\\_housing\\_units\\_in\\_nunavik\\_regional\\_council/](http://www.nunatsiaqonline.ca/stories/article/65674lots_of_problems_with_social_housing_units_in_nunavik_regional_council/)>

To offer concrete examples of the consequences, at the hearings held by the traveling people's commission on housing rights, witnesses reported having **to sleep in shifts, that is, they had to take turns sleeping because the houses had too few spots.**

We were also **told that young girls had babies in the hope of moving their names up on the waiting list** for low-rent housing (HLM).

Also reported was that **women had to sleep on friends' couches to get away from spousal assault.**

- **This situation reveals an outlandish form of discrimination against indigenous people.**

And it takes place at two levels.

**First, between the Inuit and the rest of Canada's inhabitants.**

For example, the housing units require **twice as many repairs** as in the rest of Canada and 90 times more indigenous people lack access to **running water.**

The number of people in each unit is, on average, 30% higher than in the rest of Canada.

**Second, and even more visibly, between the "whites" of Nunavik and the Inuit.**

« This means that in Nunavik, 97 per cent of the region's population occupy housing that's built, owned and maintained by agencies of the Quebec state. This includes, of course, staff housing occupied by highly-paid, perk-laden teachers, nurses and government administrators. Such

generously subsidized government staff housing is regarded as a minimum entitlement, to be delivered on demand to new workers who arrive from the South. This in turn, produces local resentment and ethnic tension — a classic example of how perverse economic policy leads directly to perverse social consequences »<sup>4</sup>.

Associations like the FRAPRU Commission have all witnessed the sense of injustice generated by the provision of decent housing to government staff and "white" employees of private companies while the Inuit must cram in together.

**Part II: Prosecution of the Inuit**

- **The volume of rental-related litigation**

A quick study shows a considerable volume rental-related litigation in Nunavik.

**Number of housing authority rulings involving  
the *Office municipal d’habitation kativik* in Nunavik, by year<sup>5</sup>**

<b>YEAR</b>	<b>Number of rulings issued</b>	<b>YEAR</b>	<b>Number of rulings issued</b>
<b>2000</b>	<b>6</b>	<b>2007</b>	<b>754</b>
<b>2001</b>	<b>218</b>	<b>2008</b>	<b>938</b>
<b>2002</b>	<b>357</b>	<b>2009</b>	<b>0</b>
<b>2003</b>	<b>676</b>	<b>2010</b>	<b>92</b>
<b>2004</b>	<b>557</b>	<b>2011</b>	<b>772</b>
<b>2005</b>	<b>612</b>	<b>2012</b>	<b>708</b>
<b>2006</b>	<b>636</b>	<b>Total :</b>	<b>6326</b>

To give you an idea, over the past 10 years, around 500 housing authority rulings have been issued each year. In the past two years, there have been over 700 rulings.

<sup>4</sup> Nunatsiaq News Editorial, « Social housing: time for a reality check » (February 8, 2011), online :  
NunatsiaqOnline<[http://www.nunatsiaqonline.ca/stories/article/98789\\_social\\_housing\\_time\\_for\\_a\\_reality\\_check/](http://www.nunatsiaqonline.ca/stories/article/98789_social_housing_time_for_a_reality_check/)>.

<sup>5</sup> Number of decisions listed on June 3, 2013.

Let's remember that there are only 2,400 leases (units) in Nunavik.

- **But when we look at the substance of the litigation, the data are even more troubling.**

In **all** of the cases studied, it is the **Municipal Office, the owner (the Quebec government), who brings suit against the tenants.**

**Example :**

[1] The lessor has filed an application to terminate the lease, to recover rent owed up to the date of the hearing, with interest and costs and provisional execution notwithstanding appeal.

[2] The parties are bound by a lease from July 1, 2011, to June 30, 2012, at a monthly rent of \$549.

[3] The lessor established that the lessee owes \$6,468, the amount covering the period from March 1, 2011, to October 31st, 2011, inclusively.

[4] The lessee has consequently delayed payment of the rent for more than three weeks, which justifies the termination of the lease (article 1971 C.c.Q.).

[5] Nevertheless, the lessee may avoid the termination of the lease by paying the amount owed before the decision pursuant to article 1883 C.c.Q.

**FOR THESE REASONS :**

[6] The lease is terminated and the lessee and all occupants are ordered to vacate the dwelling;

[7] The present order to vacate is executory even if appealed in 10 days;

[8] The lessee is condemned to pay to the lessor the sum of \$6,468 with interest at the legal rate and the additional indemnity provided for in article 1619 C.c.Q., from the date of the present decision and the lessor's costs in the amount of \$72<sup>6</sup>.

In **all** the cases studied, the Municipal Office **petitions for the same thing--**

<sup>6</sup> Kativik (Municipal Housing Office of) c. Cruickshank 2011 QCRDL 45970

cancellation of the lease and eviction of the tenants.

**The grounds are always the same:** nonpayment of rent for more than three weeks.

Lastly, in every instance, **the Office wins the case and is awarded payment of amounts due and eviction of the tenants.**

At best, it seems an act of violence for the government, which is supposed to promote and protect housing rights, to want to evict people in an area where the winter temperature is -30°, winter lasts nine months, and **there is no housing.**

**In a place cut off from the world ...**

- Certainly aware of these problems, **the Office never executed the rulings ... until 2010.**
- **Since 2010, the Office has been engaged in selecting those with poor payment records and has begun evictions.**
  - ▶ 5 families evicted in 2010;
  - ▶ 16 families in 2011;
  - ▶ 14 families in 2012.

As for the 500 or 600 rulings per year, an obvious conclusion is that this justice is **selective at best.**

And one must admit that this **use of the justice system is totally indifferent to the social consequences**, since:

- the evicted persons have **nowhere to go in Nunavik**; and
- in Quebec, **low-rent** housing allocation regulations exclude, **for five**

**years**, anyone who owes a debt to the Office. (*Règlement sur l'attribution des logements à loyer modique*, RRQ, c S-8, r 1, art. 16).

- **The reasons for this systematic litigation?**

So what is the purpose of this **litigation** and **this selective execution of rulings**?

It is difficult to understand.

**One might propose that the objective** here is not so much to use the judicial system to obtain justice, to pursue reparations for damage incurred, but **to intimidate**.

In fact, these evictions have greatly shocked the population.

They have also **heightened tensions between the « good payers » and the « bad payers », between those who don't pay their rent and those who are desperately waiting for government housing.**

In short, the housing law clearly seems to be **used, for example, to identify «scapegoats », and for exclusively repressive purposes.**

**Part III : Lack of recourse to housing rights for the Inuit**

We have been **unable to find a single lawsuit** brought by the Inuit against the housing authority.

The Inuit **are totally defenseless in the legal system.**

They are **never represented** by an attorney. They are **almost never present at the hearings**, while **the landowner, the Municipal Office, attends regularly.**

**- So how can we explain this situation?**

The situation is known to the authorities – both federal and provincial.

**Both levels of government, since the 1980s, have conducted multiple studies that always emphasize the same point: indigenous people have no access to the courts.**

The explanations vary, but we know that the governments often cite cultural reasons.

But this, especially for the Inuit, is **first and foremost a material problem.**

**In all the cases, we must ask why the Inuit would want to participate in a legal system that never explains its decisions and systematically rules in favor of the lessor/owner – no matter the condition of the dwellings.**

**Furthermore, considering the lack of housing and the existence of only one landowner, appealing to the judicial system would seem reckless at best.**

**Above all, this judicial system clearly will not allow them to learn how it arrived at its decisions.**

**IV. Conclusion**

So, to conclude, one has to see that **it is in full knowledge of the facts, knowing full well that the Inuit never appeal to the justice system, that the provincial government has undertaken an enormous program of prosecuting indigenous persons.**

I propose that this strategy of prosecution, like the choice of vulnerable persons not to go to court, **is symptomatic of a government social apparatus that is**

	<p><b>failing and habitually conceals the systematic discrimination of which the Inuit tenants are victims.</b></p>
--	---

	<p><b>Quite clearly here, the prosecution is intended to personalize a social problem– the lack of housing and the unhealthy conditions – and attach responsibility for the lack of financing in this area to the Inuit alone.</b></p>
--	--

**Ms. Margaret  
Parsons**

We welcome the Special Rapporteur and highlight that Canada is not the great bastion of human rights that it pretends to be. The Ontario education system adversely influences the lives of African Canadian children. It is a direct legacy of the slavery period in Canada and the first legislations that entrenched segregation in the 19<sup>th</sup> century. It was not until 1965 that the last segregated school in Ontario closed, but Black students continued facing a wide array of obstacles in the post-segregation era. The Toronto District School Board is one of the rare that are collecting disaggregated racial data, which speaks to the importance of such data at all levels. This shows that, for 2012, the dropout rate was 20% greater for Black children than White. English-speaking children from Caribbean origin were the least successful. For any community, this would be seen as a crisis, but somehow it was not. The Fraser Institute indicates that 50% of low-achieving schools are located in priority areas.

The 2001 Safe School Legislation, or “Zero Tolerance” approach, gives more leeway for professors to suspend or expel students. This has disproportionately affected Black and Indigenous students, along with students with disabilities. The rate of suspension for Blacks was 3 times that of Whites. The Ontario Human Rights Commission did an investigation on the Ontario State Schools Act in 2003 and examined differential treatment. Black students were 17 times more likely to undergo discriminatory procedures in expulsion. Some reasons for expulsion are mandatory, like bringing a gun to school, while others are discretionary, which are the most problematic. Examples of this last category include suspending children because parents do not come to school meetings or because of gestures linked to sexual-harassment (comments, touching, etc.) This has the effect of a “gang recruitment pipeline”, because of the dramatic social impact of not having completed basic education.

An afro-centric school was established in Ontario, for children expelled from other schools, and was met with enormous resistance and racism, although there already are Indigenous and LGBTI schools. This said, the school was an overwhelming success: 69% of students, who were deemed unable to study elsewhere, were reaching or exceeding the provincial standards.

The Special Rapporteur should engage in an on site visit to Canada to investigate this all this data. These are the same problems across the Americas. The Rapporteur should also support and encourage the collection of data, the repeal of the Safe School Legislation, and conduct a thematic study on these issues.

Non-racialised people need to start earnest conversations among themselves about their allyship with racialised groups, and about what they can do about the problems of discrimination mentioned. These are questions that compel all.

# DAY 2

# **Race discrimination in the workplace**

Chair and commentator:

Prof. Adelle Blackett, Faculty of Law, McGill University & Commissioner, Commission des droits de la personne et des droits de la jeunesse

Discussants:

Prof. Marie-Thérèse Chicha, Université de Montréal

Ms. Natalicia Tracy, National Domestic Workers Alliance

Prof. Dalia Gesualdi-Fecteau, Université du Québec à Montréal

<p><b>Prof. Adele Blackett</b></p>	<p>An example from Quebec illustrates the level of invisibility of racial discrimination in this society. A so-called family farm employed workers of Haitian descent only for its hardest tasks, with very precarious contracts. However, the Quebec Human Rights Tribunal failed to find a violation of the right to equality, thereby reinforcing the discrimination faced.</p>
<p><b>Prof. Marie-Thérèse Chicha</b></p>	<p>1:32:10 (Majority in French, but introduction in English)  Have programs had impact, or if not, why have they not done as well as believed at the beginning?  Labor markets and unemployment rates  Professional segregation  Look at the statistics—concentrated in three places  House workers are at high risk  Switches to French</p>
<p><b>Ms. Natalicia Tracy</b></p>	<p>Summary:  At the age of 17, while I had not finished high school, I was offered an opportunity to leave Brazil and work as a nanny in the USA. I was paid 25\$ a week, worked everyday, was not allowed to call home, and slept on the porch. After 2 years, I was able to make my way out of this situation, but I know that so many other women and girls live the same situation. The National Domestic Workers Alliance helps workers capacitate themselves to defend their right, and advocates for policy change.</p> <p>Domestic workers can be defined generally as those who work in someone else’s home, taking care of children, the elderly, etc. There are about 53 millions of them in the world, and 2,5 millions in the USA. This figure is growing with the aging of the baby-boomers. The “care economy” is now globalized, and women from the Global South migrate to take part in it all around the world. This has to be understood in the context of the historical exclusion of farm workers and domestic workers in the USA, as opposed to domestic workers, throughout the segregation period.</p> <p>ILO Convention 189, Convention concerning decent work for domestic workers, became effective in 2013, and 10 countries have adopted implementing legislation. Most domestic workers do not have overtime pay and do not report abuse out of fear. There is a movement to have a bill passed in Massachusetts to guarantee overtime pay, privacy, access to discrimination complaint, etc.</p> <hr/> <p>Racial discrimination and intersctionality as it relates to domestic workers</p> <p>She had problems when she came to the USA as some of these workers, so she feels it is her moral responsibility to speak up.</p>

she thinks it's part of an epidemic across the country  
support literature among workers, promote this type of support, help by teaching them how to do it themselves

She works for an organization that supports and promotes dignity and fairness for workers, most of whom are women.

Co-founder of coalition in Massachusetts, pushing more rights in Massachusetts.

#### Definition of domestic workers

- Someone who works in someone's home, this is how they pay for their bills
- Over 52.6 million domestic workers globally, in the United States there are over 2.5 million domestic workers

#### History of inequality

- Accumulation of wealth
- 9.7 trillion dollars in America as gross domestic income
- distribution of wealth is very uneven
- 50% of Americans report income of below \$30,000 a year
- it takes a chief executive less than an hour to make \$1,000 while it can take months for domestic workers
- migrant laborers or especially vulnerable

#### Domestic exclusion

- the workforce is predominantly immigrant, and is also a large percent illegal immigrant
- development of the global north and the world increases the uneven distribution of wealth aggravates bad conditions for labor workers

#### Brief overview

- legacy of colonialism and racism
- post-abolition of slavery- Jim Crow Laws
- benefits granted to white workers, but not non-whites who were not protected under new labor laws
- domestic workers were majorly left out because most were non-white
- exclusion from federal protections creates disadvantages for many groups
- hierarchy of desirability
- whiteness as a condition of citizenship

- institutional racism is the foundation of exclusion
- exclusion of domestic workers from federal protections shows historical trends of racism and also bias against women
- workers are not accorded much respect or recognition for the importance of their work
- only 10% of domestic workers are covered under labor laws
- working hours—no clear definition of their job hours, no clear start and end time, under the table dealings, terrible conditions

#### Initiatives

- in response to exclusion discrimination, put forth condition that asks for better legislation to protect domestic workers
- countries are starting to pick up these sort of legislative initiatives, but it is a slow struggle
- trying to protect documented and undocumented domestic workers, many of whom are women
- solution is to establish a state-level industry standard that affords domestic workers dignity and fairness so that they can have high quality care of their family under their jobs
- privacy needed, employers should not have access with cameras to private space
- rights of workers after they get fired—many of them become homeless, so they are asking for warning before a worker is fired
- sexual harassment—jobs must employ at least six workers in order to qualify for these protections at the moment
- advocacy to pass legislative bills across the United States

In conclusion, racism contributes the most to institutionalized situations like these. How privileged or disadvantaged one is has to do greatly with race, religion, sexual orientation, gender, etc. Although we have many initiatives in place to stop this, we still have a long way to go.

**Prof. Dalia Gesualdi-Fecteau**

Summary:

Differential access to justice is a form of discrimination faced by temporary agricultural workers in Canada. The Canadian Temporary Foreign Worker Program included 30 000 persons in 2012, mainly from Mexico, Guatemala, Jamaica, and El Salvador. They work in food processing, agriculture, and care.

The heart of these programs, created in 1966, is that the initiative comes from the employer, based on an observed work-shortage in Canada for the position that one wishes to fulfil (positive market opinion). Once part of the program, the workers cannot change employer without authorisation. In the case of agriculture, the maximum duration is 8 months and the worker lives on the property of the employer.

Limitations to the effectiveness of labour law are based on 1) dependency upon the employer for the renewal of the work contract, 2) temporary state of employment and migratory status, resulting in the impossibility of interacting with the local environment, 3) social and linguistic isolation, 4) collective experience of workers, based on the prior experience of other workers from the same region/village.

Limitations in accessing collective bargaining include: 1) exception for non-permanent operations (declared unconstitutional), 2) lack of knowledge of the regulatory framework, 3) lack of access to institutions and resources (see *Travailleurs et travailleuses unis de l'alimentation et du commerce, section locale 501 v. La Légumière Y.C . inc.* [2007] QCCRT 0467).

The United Food & Commercial Workers Union has provided information and support services for domestic workers. The Labour Standards Commission set up *in situ* interventions with 2,800 workers. More structures, bringing together social actors, are necessary to face the systemic problems faced by domestic workers.

\_\_\_\_\_

Challenges that seasonal workers face in terms of differential access to justice  
Needed for addressing discrimination in the workplace  
55:00

recruitment agencies, workers, employers, she has interviewed many of these for her empirical research that she has conducted

foreign and temporary workers—over 200,000 workers in 2012 that had a temporary status to work in Canada  
many filled situations that filled positions that require a lower level of training,

even if they had a greater ability, therefore dequalifying effects

seasonal workers from Mexico, Guatemala, Jamaica, and El Salvador came

low-skilled workers filled jobs largely in food sector

three main programs in Canada, two which are occupation specific, the third which is more recent (temporary foreign worker program)

the general architecture of these three programs are the same  
the initiative of the employment has to be taken by the employer  
employer has to ask government authorities for labor market appointment and therefore establish shortages in the positions he is trying to fill  
these workers have restricted labor mobility, they can not change at will

these employees have temporary employment and residence status

governments, employers, unions, and different private actors (recruitment agencies) all have influence in this process

private actors that are recruiting and sub-contracting from Mexico, very important data that must be taken into account when observing these programs

temporary foreign worker program, agricultural stream which has a maximum employment of 24 months

other ones have 48 months, then 4 year waiting period before worker can come back

different entities that recruit and select the workers for the Canadian employers

influence that limit that effectiveness of labor laws

workers are put in very high state of conditionality, must depend on employer to put their name on the contract to renew, therefore very high dependency

**temporary stay of employment and stay of these employees in Canada are here for a short period, work very long hours, very little possibility of actually integrating into communities, learning French (Quebec) or English, not entitled to services because they have a temporary instead of permanent status, cannot access these classes, work over 65 hours a week, social and**

**linguistic isolation**

collective experience of workers—workers can come together and discuss, it can improve or limit the effectiveness of labor law

access to collective bargaining in Quebec

-all farm workers could not unionize or collectively bargain if the employer did not hire more than three members all year long

-during winter, farms can't really work or hire

access to labor law resources

limited knowledge of the framework and limited knowledge of the structures ensuring the implementation

help needed to mobilize labor law protections

limited knowledge of these frameworks lowers their effectiveness

must start somewhere, even if they are partial answers

systemic problems that are caused by current policies and programs

# **Race and religious accommodation in the workplace**

Chair and commentator :

Mr. Jacques Frémont, President, Commission des droits de la personne et des droits de la jeunesse

Discussants:

Prof. Vrinda Narain, Faculty of Law, McGill University

Ms. Pearl Eliadis, lawyer, human rights expert

Mr. Julius Grey, lawyer, human rights expert

Mr. Mohamed Jama, Midaynta Community Services

**Mr. Jacques Frémont**

Summary:

I was appointed three months ago and during the same period a bill was presented to formalise the criteria for reasonable accommodations, to oblige one to have a visible face when receiving public services, and to prevent conspicuous religious signs for any public employees (Bill 60). This would also include an Orwellian system of reporting by organisations of their policies on reasonable accommodations, many of whom would violate human rights. As a result, intolerant discourse and behaviour has been legitimised, and at the same time a sense of comfort that real equality has already been achieved in Quebec is growing. This will certainly generate litigation, but also may make it more difficult to protect minority rights more generally.

2:31:00

**Race and religious accommodation in the work place**

Background

Bill 16 in Quebec

Public sector

Prohibiting wearing religious signs in the public sector

Includes everyone in Quebec who is directly or indirectly working for the state

Formalize the criteria of reasonable accommodation for all Quebec society

Crystallization of the reasonable accommodation criteria for religious matters

Set up Orwellian system of reporting

So the population can understand more clearly

Seen from the perspective of a commission, they will have to deal with over 2,000 policies

Will produce more or less results, some of which will violate freedom of religion  
Very concerning for them

The impact so far—if you walk in the streets, especially in Montreal, discourse and behavior that did not exist before, or at least was much more discreet

Veiled women being assaulted

In Quebec society, there is a sense that we have achieved a real equality between men and women

People think that we are such an equal society that people come from North Africa and of Muslim societies

Gives a false sense of comfort in the discourse

Likelihood of increased litigation in the work place

One of the clear fears is that because people will not understand that it only applies to religions, there is a fear that people will think it applies to other things

	like race, etc. There will be a tightening of the situation in this part of the world It will be more difficult to justify the protection of minority rights generally Big challenge if it comes into law
--	--

**Prof. Vrinda Narain**

**Summary:**

In the R. v. N.S. case, the plaintiff was a Muslim woman who was assaulted, and the case raised the question of wearing a veil during testimony<sup>7</sup>. The Supreme Court of Canada said that doing so depended on the nature and context of the evidence, with 3 different opinions. The various aspects of this niqab controversy reveal the controversy in the way the judiciary looks at veiled women. An intersectionality approach would have allowed taking the actual situation of this plaintiff into account. The fixation on the veil pits religious freedom and equality against one another, and simplifies the reasons for which women wear the veil.

The R. v. N.S. case coins the veil as a threat to universal values and the act of unveiling as a marker of an ethnicized Canadian national identity. The reasonable accommodation approach reifies the “us-them” dialectic, and avoids the need to address systemic exclusion, inequality, and discrimination. It is inadequate because it defocuses the need to work for substantial equality.

---

**Race and religious accommodation in the work place**

2:41:30

three things in the context of the NS case given by the supreme court in September 2012

brief history

NS was Muslim woman who was assaulted

Can a woman wear a veil while testifying?

The scope of reasonable accommodation

How you can balance religious freedom with gender inequality

The various aspects of this test the toleration and accommodation of difference

The way in which the judiciary looks at veiled women

Three key issues that emerged from this decision

Balancing rights within the context of religious freedom

Intersectional frame of analysis

The framework of Intersectionality as a way to look at inequality

The multiplicity of discrimination

Also arguing that our dominant framework on multiculturalism that pits women’s freedom against gender rights

In the long term, it does not adequately confront the existing system of hegemony

---

<sup>7</sup> R. v. N.S., 2012 SCC 72, [2012] 3 S.C.R. 726.

Fixation with the veil

Those who seek to ban the veil seek to portray themselves as modern and trying to save women from their outdated traditions

Women wear the veil for different and complex reasons

Restrictions on veiling on the grounds of equality are unacceptable

Pet peeve- multiculturalism

The language of the veil does raise questions, but the simplistic language of multiculturalism is bad

The veil has multiple complex meanings

Restrictions on veiling justified on grounds of gender equality are unacceptable

Interrogating multiculturalism

The veil does raise questions of agency and choice, but prevents critical reflection when broad multiculturalism is used

Justifies the monitoring of women in the name of equality

Must be considered in the context of post-9/11 islamophobia

They frame veiling as a threat to universal values and equality

The nationalizing of gender equality as part of a hegemonic national culture results in exclusionary and racialized understanding of the national community

The idea that unveiling becomes a marker of national belonging

Demonstrated in supreme court separate opinion

Reasonable accommodation

The analytical framework of tolerance can strain the debate

Strengthens the notion of “us” and “them”

Limits of toleration animate the debate rather than a real consideration of minority and women’s rights

How it reinforces relationships of power

The terms of the debate have not challenge be reinforced

Insufficient critical understanding

Who gets to decide and what the limits of tolerance are

Focus on respect rather than tolerance

The analytical framework obfuscates what we consider the real issues of equality

Instead of focusing on what we can or can’t wear, what we need to be talking about is unemployment rates, dropout rates, access to housing, etc.

Language of accommodation

Must acknowledge the limitations of reasonable accommodation

	It does not enable those to challenge the existing, but instead provides an exception 2:53:52
--	--

**Ms. Pearl Eliadis**

**Summary:**

The politics of identity are converging towards the ethnicization of minorities, focussing on harmonization, cohesion, inter-culturalism, and now laïcité. Interculturalism was posed as an alternative to multiculturalism, whereby “the others needs to look like us”. It is based on an implicit predominance of the “Québécois” cultural identity over others. Distrust and dislike of difference is rising, since the 2008 Bouchard-Taylor Commission on Accommodation Practices Related to Cultural Differences. In 2011-2012, the proportion of complaints based on race discrimination has increased in Quebec, while it has decreased in Ontario for the same period.

Successive governments have attempted to play the identity card: In 2009, Opposition Leader Pauline Marois proposed a bill to assert some Quebec values. In 2010, Bill 94 was presented by the Quebec Liberal Party regarding having a visible face but was not passed. There has been an amendment of the Quebec Charter or Rights and Liberties’ preamble to assert the primacy of equality.

The concept that one is incapable of being professional or should not appear in public if one does not look Western is troubling. The main argument of feminists is that those defending freedom of religion are naïve with regard to the serious implications of political Islam. However, we should adopt a default position of liberty unless there is clear proof that equality rights or the liberty of others are at risk. The difference is cohesion. Women should not be obliged to wear a veil, and they should not be forced not to do so. This is an equality issue and an accommodation issue. Reasonable accommodation may have been used and misused in the public discourse but it is a meaningful and critical tool for equality-seeking groups and for the development of equality rights.

---

**Race and religious accommodation in the work place**

2:55:00

I am going to be talking about – legislative trajectory in Quebec which has led to a confluence of the politics of identity with the impact on racialized minorities in Quebec.

Quebec’s approach to identity emphasizes terms like harmonization, integration, social cohesion, laïcité. Neither laïcité nor social cohesion has any legal foundation in Quebec, or Canada. These values should fail when they encounter established constitutional rights. Long line of case law in this regard.

Quebec –values in this context – the concept of interculturalism. I think that the

reason we've encountered the kind of concerns we have in Quebec is because of the intellectual precedence given to interculturalism as a phenomenon that has attempted to replace multiculturalism.

Multiculturalism doesn't assume that a particular "them" needs to look like us. Interculturalism does.

I think this concept has done great disservice to Quebec. I believe it has done great disservice to Quebec because it assume a de facto precedence of ethnic identity that French Canadians have which gives them the ability to trump cultural values, physical appearance and ways of being of other cultures and other organizations.

From a political perspective – multiculturalism is viewed as taboo – as a dirty word.

M. Bouchard (co-chair of the 2008 Consultative Commission on Accommodation Practices Related to Culture Differences) has spoken publicly about de facto precedence...that must be translated into juridical precedence. This has led to the trajectory of the legislative instruments that I am going to mention briefly.

Before I do that I wish to note that since the publication of the Bouchard report [the *Bouchard-Taylor Report on Cultural and Religious Accommodation: Multiculturalism by Any Other Name?*] – there has been rising dislike and distrust of difference -publicly expressed – particularly in Quebec. I note that:

- Human rights complaints on race, color, nationality, ethnic origin significantly increased in the aftermath of Bouchard Taylor Report. In the period 2006-2007, the Quebec Human Rights Commission reported that complaints on these grounds accounted for 22% of all complaints. In 2011-2012 (after the publication of the Bouchard report, this number climbed to 36%.
- By comparison, similar types of complaints dropped in Ontario from 35% in 2006-2007 to 30% in 2011-2012. Ontario's level of diversity is twice as high as Quebec's.
- There has been a spate of incidents of racial profiling in Quebec that has consistently raised concern about the normalization of intolerance.
- The supposed neutrality of Quebec's secularism – has meant that public displays of non-Christian religion are far more likely to be suppressed, while aspects and symbols of its Catholic tradition are preserved, including the cross – which for now still hangs in the Quebec National Assembly; and the ongoing recital of Christian prayers in municipal

meetings.

- There have been increased demonstrations of religious intolerance, including attacks on Muslim women. This view of secularism – republicanism – has meant that it has become more acceptable in the public sphere to attack Muslim women, veiled women.

Not all of this can be laid at the feet of the Parti Québécois (PQ) government. The interest in irrendentism and ethnic nationalism began with the liberals. I will start in November 2009 with Bill 391 initially tabled by Pauline Marois – “An Act to Assert the Fundamental Values of the Quebec Nation” This represented a boldfaced attempt to occupy the nationalistic territory that had been abandoned by a nationalistic party (Action démocratique du Québec -ADQ), a populist party that had been in the process of imploding, but which had previously made gains on the back of ethnic nationalism.

Shortly after – the liberals attempted to gain back some of the ground...by amending the preamble of the Quebec Charter to institute equality as an important Quebec value as it relates to men and women

In 2010 – Bill 94 (An Act to enact guidelines governing accommodation requests within the administration in certain institutions) was proposed with an eye to creating legal requirements for reasonable accommodation. Had it been passed – it would have placed Quebec on the lower end of accommodation requests across Canada

The wish to create a hierarchy of rights and values and to amend the Quebec Charter of Human Rights and Freedoms – using those values (interculturalism, etc) is a dangerous trajectory. It’s dangerous because the Quebec Charter is supposed to be quasi-constitutional. It’s very troubling to see the government do a finesse around that quasi-constitutionality by amending the legislation that is supposed to be quasi-constitutional, so that legislation now impinges on rights/freedoms (instead of protecting them) is now quasi-constitutional.

I would suggest also that this goes against the broad liberal purpose of interpretation that the courts have repeatedly endorsed over the years which is supposed to underpin the way in which human rights legislation is supported. By placing religious neutrality as a state –sponsored value and using it to trump individual religious rights, Quebec is demonstrating a weak understanding of what religious freedoms mean.

The State is supposed to be neutral as regards its citizens. That doesn’t mean that citizens are supposed to be neutral as regards their own expression of religious freedom. And what the government has done is to take the fundamental concepts of religious freedom and simply turned them around.

There is no particular reason why in order to be neutral anybody has to look like me. I find it deeply troubling that this concept of what constitutes neutral is very

much lined up with particularly western, white, colonial influenced approach to the way in which we dress, the way in which we appear to others, and the way in which we behave. And the concept that one is less professional, less capable of delivering a public service because of those factors suggests a problem with the looker rather than the person concerned.

I also want to say that I have no problem with secularism. I also want to say that secularism is not a value. It's a state attribute. It is one that is implicit within our unwritten constitutional laws of Canada and in Quebec. And there are many respects in which secularism is very important. We do not want to have religious leaders running our policies and our public government. We don't want to have in schools creationism taught in biology classes as a legitimate form of evolution. These are all things that we don't want to have. But that's not what this Bill is about. Bill 14 which was attempted to be passed last year and which thankfully appears to have failed, similarly tried to establish some of these criteria with more of a focus on language. Again the PQ failed in that regard, and has now come back with this Charter of Values that is before us today.

Feminist advocates who support the Charter say that I and others like me are naïve because we don't understand the political reality of Islam and the negative impacts on women. With great respect, I've worked in a number of Islamic countries including most recently Sudan. As hard I will fight for the right of women not to have to veil, should they not so want to in these countries, I will fight for women who want to veil here. Because the difference is not the piece of cloth on their heads; the difference is the coercion. And when Quebec women say that they have fought for the right not to be influenced by the Roman Catholic tendencies of their forefathers and foremothers; and that they have depoliticized and "de-religionized" the cross, so that now, it is not a mere cultural symbol, the obvious question that one wants to ask is why aren't Muslim women allowed to do the same thing here. Why are people who are engaged in wearing religious symbols not permitted to choose the symbolism or the essentialism of their particular mode of dress, according to themselves and not have to be stigmatized for it.

And how is the prohibition on face covering going to work when you seek services. I want to point out the one of the public institutions that's covered by the Charter of Values is the public transit corporation (Société de transport de Montréal). You are going to have your face uncovered when you go for service there. I want to tell you that in Montreal in February that 30% of people who seek services will do so when they get on the bus with their faces covered. And how is that going to work when people go into hospitals? How is going to work when people go into day-cares, and so on, when they're asked why they're wearing what they're wearing on their heads? Or not only on their heads of course, now

that the Bill has extended to religious adornments which could include tattoos, beards, and so on. And are people going to be asked why it is they are wearing those things? And how is the check form going to work when surveying why one is entering the workplace wearing something on the head, or around the neck, or around their wrist. And how is it going to work when someone who is wearing a turban, which technically is not a religious symbol in itself, rather it's the hair; how is it going to work when they take off their turban and go to work with hair down to their waist? Because it's the long hair, of course, that's the religious symbol. But it's the turban that's forbidden. These absurdities signal a lack of understanding of the concept that we live in a liberal society where people should be able to behave in the way in which they want to behave, unless there is a compelling reason otherwise. I would submit to you there is no compelling reason; and the failure to address this issue fiercely from the outset, is going to have a significant effect on minorities in this province. I don't believe that's consistent with Quebec's otherwise great traditions.

## Mr. Julius Grey

### Summary:

In 1997, in the case of Action-Travail Femme, the Courts have established that there is no need to prove discriminatory intent<sup>8</sup>. Only the result is important. In Amselem, the Supreme Court said that there is no need for religious expert<sup>9</sup>. The important is conscience. Why do we consider that equality must always prevail on freedom of religion?

Bill 60, the Quebec Charter of Values, should never be passed, because it is immoral. If adopted, it should be challenged before every court of the country and before international forums if necessary. I hope to be part of those who would do so and I have confidence that it will be declared unconstitutional. And if passed and upheld by the courts, although it pains me to say this as a lawyer, it should be disobeyed.

---

### Race and religious accommodation in the work place

3:11:22

- it doesn't take intention, it takes result in terms of discrimination
- it doesn't matter that there are many people of Muslim origin that do not need a scarf, etc. but what matters is that statistically, this charter will have an effect on minorities, other than some of those that will not be affected
- in religion, it has to do with your conscious; it's not as simple as people would like to think
- in handicapped people, they can't just grow a hand; in religion, you can't just grow a separate conscious in order to be able to take off the veil, turban, etc.
- Why is gender equality ahead of racial equality?
- Why is one more important than the other?
- In Quebec, there is more discrimination in the private sector than in the public sector.
- However, this charter could easily bring it into the public sector and into so many more aspects of life.

---

<sup>8</sup> Canadian National Railway Co. v. Canada (Human Rights Comm.) and Action travail des femmes (1987), 8 C.H.R.R. D/4210 (S.C.C.).

<sup>9</sup> Syndicat Northcrest v. Amselem [2004] 2 S.C.R. 551.

- |  |  |
|--|--|
|  | <ul style="list-style-type: none"><li>• An implication of the public sector in what was before primarily a private sector problem</li><li>• Completely unacceptable</li><li>• Under the pretense of integration, this charter will exclude.</li><li>• [reads passage in French]</li><li>• He is not a multiculturalist, he is an interculturalist.</li><li>• If we want to integrate them, we want to integrate them as they are. We do not want to make them become a copy of us.</li><li>• Have them accept our tradition culture but we must accept theirs, too.</li><li>• To integrate, you do not have to change.</li><li>• About this immoral charter: it should not be passed. Hopefully Quebec will come to their senses and never passes it.</li><li>• If it is passed, it should be challenged at every level of court</li><li>• If adopted and upheld, this charter should not be obeyed.</li></ul> |
|--|--|

## Mr. Mohamed Jama

### Summary:

Framing the debate in cultural and religious terms avoids its racist component. The debate around reasonable accommodation is not limited to Quebec, but occurs everywhere and must be put in the context of the rise of the extreme right, the global financial crisis, and the post 9/11. A 2013 poll measured the rise of islamophobia in 68% in Quebec, and has observed an increase in the rest of Canada. The current human rights framework is not working for Somali Canadians, who are not employed because of their race and religion, and not allowed to practice their religion on the workplace.

---

### Race and religious accommodation in the work place

3:29:00

- What's race got to do with religious accommodation?
- *Arrin madaxa la qabto, majo qabsi ma leh.* (A problem cannot be seized only by its head, one cannot seize it by its tail.)
- There is not just a hint of racism in policies to secularize already deeply secular societies—racism is quite often a driving force.
- In recent years, in polarizing debates on immigration and religious accommodation issues in Western Europe, blackness has been strategically deployed to illicit fear of the Other, whether it be a sheep being kicked, black hands, black minaret, black niqab, or black/brown veiled face
- New Poll on Islamophobia in Canada
- Angus Reid Public Opinion Poll (2013):
- In 2009, 68% of Quebecers held an unfavorable view of Islam and now 69% of Quebecers hold an unfavorable view of Islam.
- In 2009, in the rest of Canada, 46% held an unfavorable view on Islam and that has risen to 54% in 2013.
- Anti-Muslim sentiment has held steady in Quebec, while rising in the rest of Canada.
- Due to biased media stories that questioned genuineness of Somali asylum seekers and violent nature of Somali culture, the Canadian government acted on those concerns by targeting Somalis (and Afghans) who were arriving in Canada without national identity documents even though there were no functioning governments in either countries to provide them.
- Somalis and Afghans, instead of being given Permanent Residency, were give Undocumented Convention Refugee in Canada status and had to wait a period of 5 years to demonstrate good behavior because they came from failed states that did not issue identity documents
- This meant Somalis and Afghans could not be re-united with children and

family members, get work permits for employment, get a ban loan, access post-secondary education and certain training programs, or travel outside of Canada

- According to the House of Commons Standing Committee on Citizenship and Immigration, in 1996, of those Bill C-86 prevented from becoming Permanent Residents, 90% were Somalis, among whom 40% were women and 40% were children
- Some Somalis who were professionals and who also had their identity papers and diplomas (many obtained by training abroad in Italy and Former Eastern Bloc countries) were denied equivalent recognition of their credentials in Canada
- Somalis, particularly women-headed households reside in City 3 neighborhoods and this can be linked to being excluded systematically from access to higher paying professions through “race-blind hiring” practices that don’t account for systemic discrimination against applicants and workers with Muslim-sounding names, Muslim dress and appearance.
- The recent history of Islamophobia and debate about reasonable accommodation, especially in Europe, tells us that the politics of Muslim marginalization is informed by ‘race thinking’ and is operationalized along ‘color lines’.
- Conclusion:
- Current human rights infrastructure isn’t working for Somali-Canadians, and most of us have given up more or less on it
- There have been individual victories here and there, but nothing really substantive and impactful
- Challenge of changing employer attitudes through use of tougher legislative tools and enforcement and education
- This is a marginalized, isolated community—hence importance of allies and solidarity
- The status quo is unsustainable for the Somali and Muslim communities, and for society
- Waste of Somali women’s and men’s talents has had wide-ranging and durable impact on the community
- Think of the lost possibilities, the costs, hidden and visible, of permanently excluding and isolating sizeable sections of our population
- In the end, its untenable for democracy and our shared sense of humanity
- Enhancing workplace religious accommodation and inclusion ISN’T antithetical to Canada’s productivity and global competitiveness

**Prof. Paul Eid**

1:13:10

In 2009, conducted an audit study in order to measure discrimination in the labor market in Montreal.

- These inequalities are explained in large part by discrimination
- Context: trying to raise human capital of migrants
- Often not trained enough doesn't know the language, etc.
- Trying to train them, teach the language, therefore raise their human capital
- **However, even when many migrants would do this to be on equal level with a native worker, they are still at a disadvantage in the labor market because of the race factor**
- Indicators show that immigrants have difficulties integrating into the labor market
- Quebec- greatest gap between natives and immigrants in employment rate
- Even when qualifications are equal, racialized immigrant is still at a much greater disadvantage
- Unemployment rate for visible minorities is almost always at least twice as much as for non-visible minorities
- This is not only an immigrant problem, but also for natives of the country
- The discrepancy remains between the visible minority and non-visible minority out of those who are born in Canada
- Even for the highest degrees, this still pertains in regards to visible vs. non-visible minorities
- European immigrant vs. racialized immigrant—huge discrepancy
- \$20,000 difference in comparing two groups that both have university degrees who are both born in Quebec
- Salary is almost the same for racialized natives and racialized immigrants
- Almost no progress in terms of income, even throughout generations
- These numbers and figures are pointing towards some sort of discrimination, operates a study to show the variables that are causing this

(Gives many facts and figures in PowerPoint on video, however, we have not received this PowerPoint. Basically repeats his point over and over.)

- Discrimination rate is high in almost every sector that they sampled in their data
- Call back rates for minorities were slim
- Up to 81% more chance for callback rate for non-visible minorities for some sectors they tested
- Private and public sectors, NGOs, tested these to see if there was a difference
- Seems to be less discrimination in terms of public sector jobs

- |  |   |
|--|---|
|  | <ul style="list-style-type: none"><li>• Surprised at results</li><li>• Is it because of affirmative action programs that mandate doing this?</li><li>• Still, too small of a sample to generalize</li></ul> |
|--|---|

# Final Reflections

Ms. Avvy Go, Colour of Poverty Campaign

Commissioner Rose-Marie Belle Antoine, IACHR Rapporteur on the Rights of Persons of African Descent and Against Racial Discrimination Head – IACHR Unit on Economic, Social and Cultural Rights

<p><b>Ms. Avvy Go</b></p>	<p>The message from the last days is very clear: racial discrimination is alive and it permeates all sectors of society. The government of Canada has not come close to acknowledging discrimination, and some of its policies contribute to discrimination. These include cutting employment equity programs, criminalisation of refugees under the faster removal procedures, and the obligation of claimants to reside with their spouse for an extended period of time. Since 2006, the government has stripped away democratic institutions, withdrawn funding from critical organisations, and cut back funds from organisations supporting vulnerable communities. Advocates must look for any opportunity to react to this phenomenon. We must work together in solidarity as advocates of racialised groups, collect disaggregated data, push for a national housing strategy, employment equity, etc. This could also entail the putting together of a national racial justice report card or petitioning the OAS.</p>
<p><b>Commissioner Belle Antoine</b></p>	<p>The IACHR wants to start a process of bringing light onto many of the issues mentioned throughout this even regarding the experience of African Canadians and of other racialised groups. People from the field, NGOs, and representatives from the governments of Canada and Mexico were present. We must respond to any wilful blindness or color blindness by naming racial discrimination. We hope that all those who prepared texts will share them with the IACHR, and seek the organisation of a special hearing on the situation of African Canadians in the near future.</p>