

**Submission by
the Canadian Human Rights Commission
to the
United Nations Committee on the Elimination of Racial
Discrimination
on the
Seventeenth and Eighteenth Periodic Reports of Canada
under the
International Convention on the Elimination of All Forms
of Racial Discrimination**

January 2007

Introduction

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

The CHRC was instrumental in the development of the *Principles relating to the status and functioning of national institutions for the protection and promotion of human rights* ("the Paris Principles") which were incorporated into General Assembly resolution 48/13 of 20 December 1993. Since 1993, the CHRC has developed an ongoing relationship, bilaterally and multilaterally, with National Human Rights Institutions (NHRIs) around the world.

The Commission acknowledges, as outlined in the Seventeenth and Eighteenth Periodic Reports, the considerable efforts of the Government of Canada to ensure full realization of the rights guaranteed under the ICERD and is committed to continue to work with the Government of Canada to ensure continued progress in that regard. It is in the spirit of constructive engagement that the Commission wishes to bring to the attention of the Committee the following comments with regard to some of the matters raised in Canada's report.

Article 2: Legislative, administrative, judicial and other measures

(Reference: paragraphs 45 - 49)

REPRESENTATION OF ABORIGINAL PEOPLE AND ETHNIC/RACIAL GROUPS IN THE FEDERALLY REGULATED WORKFORCE

The year 2006 marks the 20th anniversary of the *Employment Equity Act (EEA)* and the 9th anniversary of the CHRC's mandate to audit federally regulated employers pursuant to the *Act*. The *EEA* requires all federally regulated employers, including the Government of Canada, to take measures to ensure an equitable representation of members of four target groups in the workplace, including visible minorities, Aboriginal peoples, women and persons with disabilities. Although the representation of designated groups has increased in several areas since the *Act* was passed in 1986, under-representation remains in many sectors, and much more work remains to be done.

In December 2005, 588 employers were subject to the *Act*. Of those, the Commission had audited 40%, but given that the Commission initially targeted the largest employers, its audits now cover 76% of employees subject to the *Act*.

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

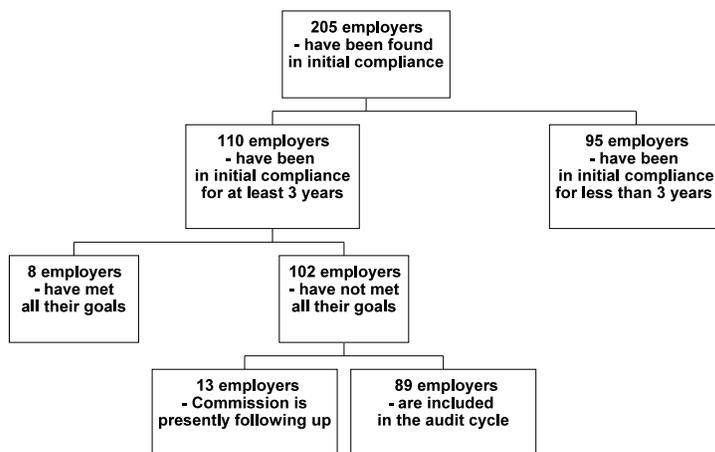
Most of the employers audited had not met the requirements of the *Act* at the time the Commission began its audit. Of the employers who were audited, 205 subsequently took the necessary measures to be deemed in initial compliance with the *Act*. The remaining are in the process of doing so. This means, among other things, that they had prepared an employment equity plan and set numerical goals to correct the under-representation in their workforce.

The *Act* then requires that employers make all reasonable efforts to implement their employment equity plans, a requirement that the Commission can verify by monitoring their progress in meeting their numerical goals and intervening if they do not achieve reasonable progress.

By June 2006, the Commission had monitored over a three-year period the progress of 110 of the 205 employers it had deemed to be in initial compliance. It found that only eight employers (or 7%) had met all their goals.

The limited progress made by employers is a concern for the Commission because it means it will take even longer for them to attain employment equity. The Commission believes that what is important now is to focus more on the attainment of results than on the auditing of processes.

Follow up on the progress of employers as of June 2006

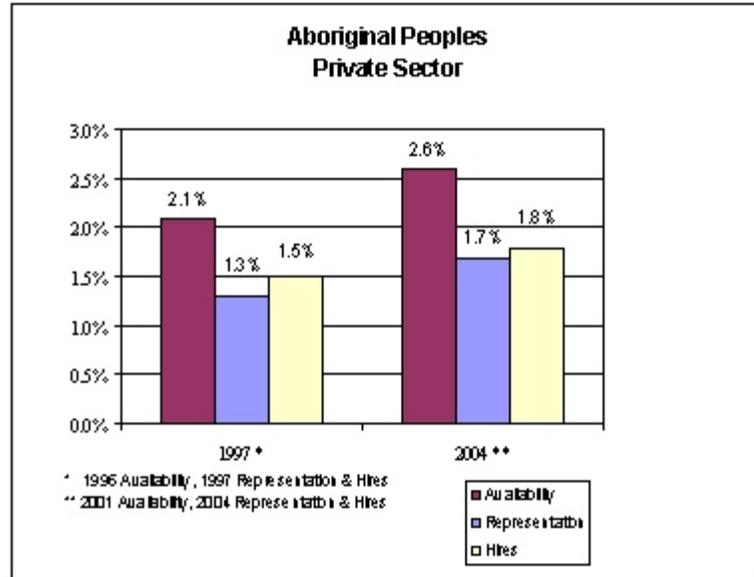


Representation of Aboriginal Peoples and Visible Minorities

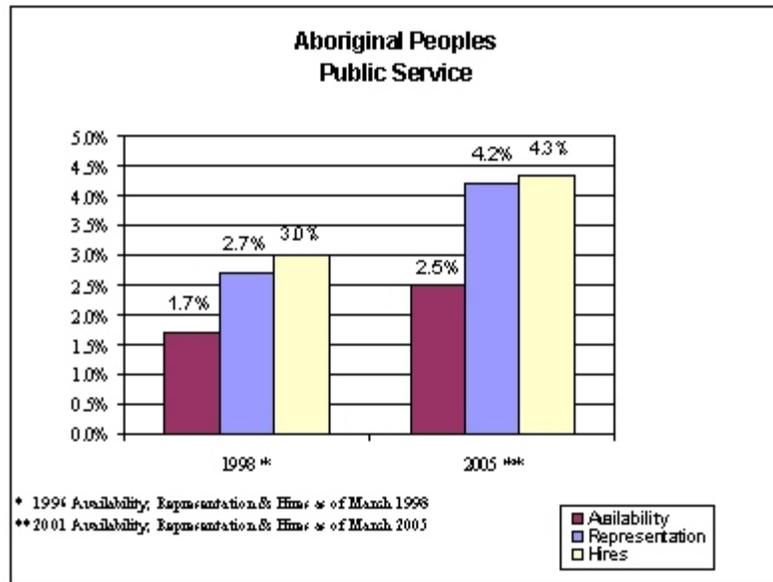
Although some increase in representation has been achieved, significant problems still exist with regard to the representation of Aboriginal peoples and Visible Minorities in the federally regulated workplace. Following is a summary of the current situation for these two groups:

Aboriginal Peoples

- The share of jobs held by Aboriginal peoples in the private sector increased from 1.3% in 1997 to 1.7% in 2004, but this share is still well below the Census availability of 2.6%.
- The share of hires received by Aboriginal peoples in 2004 is 1.8%, which is below the 2.6% availability, suggesting that under-representation will persist.
- The situation is the same in most of the occupational categories and industrial sectors.

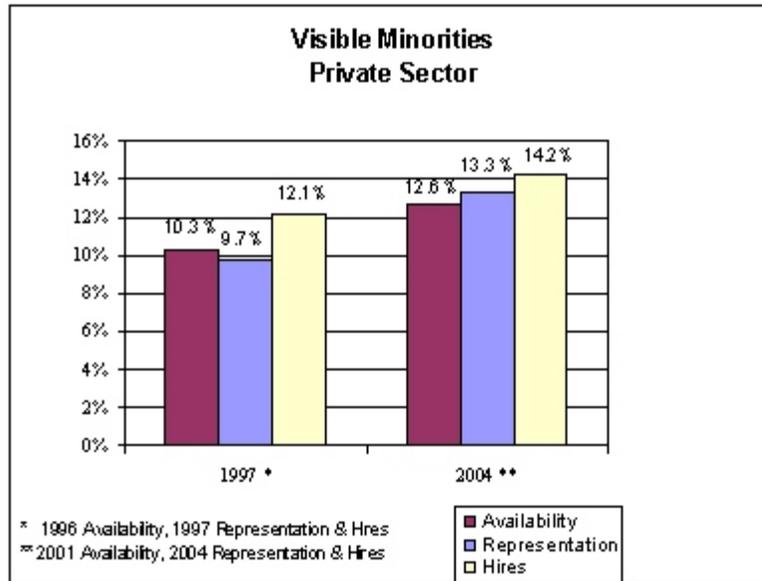


- The situation is different for Aboriginal peoples in the public service, where their representation increased markedly, from 2.7% in 1998 to 4.2% in March 2005, exceeding the availability of 2.5%.
- Their share of hires (4.3%) is well above availability (2.5%), and as a result, their representation continues to increase year over year.

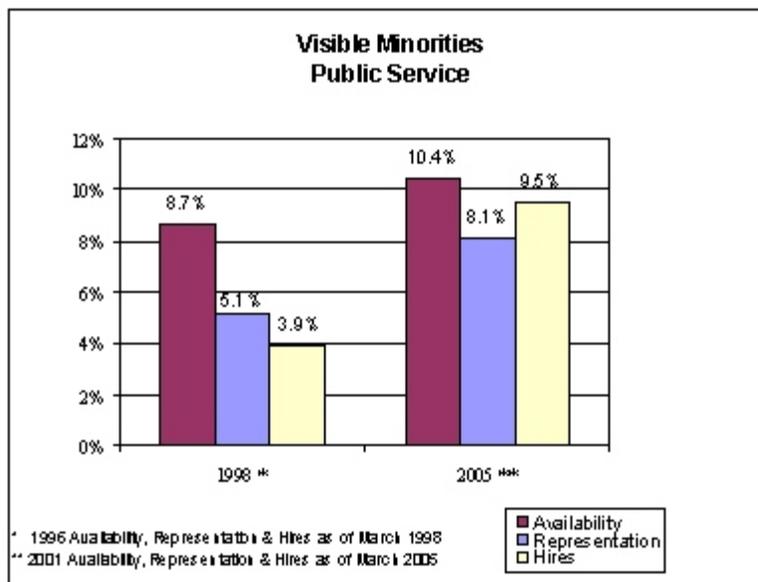


Visible Minorities

- Overall, the share of jobs held by visible minorities increased from 9.7% in 1997 to 13.3% in 2004, slightly higher than the Census availability of 12.6% in the overall workforce.
- Members of visible minorities received 14.2% of all hires in 2004. Since 1997, their share of hires has been consistently higher than their availability, which suggests that their overall representation will continue to rise.
- Again, the situation varies from one industrial sector to another, and from one occupational category to another. For example, even though their share of senior management positions has increased steadily from 2.8% in 1997 to 4.4% in 2004, visible minorities remain under-utilized in this category compared to availability at 8.2% in this occupational category.



- Progress has been made since 1998 for visible minorities in the public service: representation rose from 5.1% in 1998 to 8.1% in 2005, but in both cases, it is below availability, which is now 10.4%.
- Moreover, hires (9.5% in 2004-05) are also below availability (10.4%); as a result, under-representation will persist over the next few years.



Article 4: Prohibition against promotion of racism

(Reference: paragraphs 56 - 58)

HATE ON THE INTERNET AND SECTION 13 OF THE *CANADIAN HUMAN RIGHTS ACT*

The Canadian Human Rights Commission has a unique role in combatting hate on the Internet. Section 13 of the *Canadian Human Rights Act* empowers the Commission to investigate complaints regarding the use of the Internet to transmit messages likely to expose individuals to hatred or contempt. To the best of the Commission's knowledge, this is the only non-criminal legislation in the world that deals specifically with hate on the Internet.

The first hate on the Internet complaint dealt with by the Commission was against Ernst Zundel who ran the so-called Zundelsite. Among the publications posted on that site was *Did Six Million Really Die?*, a classic work of holocaust denial. The Canadian Human Rights Tribunal rendered a decision in January of 2002 finding that Zundel had contravened the *Canadian Human Rights Act*. The Tribunal decision confirmed the Commission's jurisdiction over hate on the Internet. Coincidentally, in December 2001, the statute had been amended to make this clear when Parliament enacted the *Anti-Terrorism Act*.

Since 2001, the Commission has been actively involved in the handling of complaints regarding the electronic transmission of hate messages:

- 55 complaints have been filed with the Commission since 2001;
- 29 complaints were referred to the Canadian Human Rights Tribunal for a hearing:
 - the Tribunal has issued 12 decisions, determining, in all cases, that the respondents had contravened Section 13 of the *Act* and ordering them to cease and desist from their activities;
 - the remaining 17 cases are still before the Tribunal;
- 7 cases are under investigation or awaiting a Commission decision;
- 13 cases were closed because there was insufficient evidence to proceed; and
- 6 cases are pending decisions on admissibility.

If the Tribunal finds that Section 13 has been violated it may order the respondent to:

- cease any activities contrary to Section 13 and to desist from operating any website that contains similar information (a cease and desist order);
- compensate a victim specifically identified on the website up to \$20,000 if the actions of the respondent have been found to have been wilful or reckless (special compensation); and
- pay a penalty of not more than \$10,000.

To facilitate the processing of Section 13 complaints, the Commission has launched a strategy that includes, among other actions:

- the establishment of a Section 13 Complaints Team that includes investigative, legal and policy officers with specialized expertise in issues relating to Section 13;
- the review of investigative procedures to ensure cases are dealt with expeditiously and thoroughly;
- ongoing discussions with Internet service providers on ways to cooperate to combat hate; and
- meetings with organizations representing groups that are, or may be, targets of hate on the Internet.

The Commission has also been pursuing innovative legal approaches at the Tribunal and in the Courts, including, most recently, a successful application for an injunction ordering Tomasz Winnicki to cease his activities pending a Tribunal determination of the complaint against him. When the respondent continued to publish messages on the Internet, even after a Tribunal decision, the Commission applied to the Federal Court for enforcement. The respondent was found in contempt of court and sentenced to nine months in prison.

As part of its strategy, the Commission convened a conference entitled [*A Serious Threat: A Conference on Hate on the Internet and Section 13 of the Canadian Human*](#)

[Rights Act](#). The conference took place in Ottawa in December of 2005. Copies of the proceedings of the Conference are being provided to members of the Committee.

The work of the Commission is, of course, only a part of a much broader fight against hatred. It is not just the domain of the Commission, other human rights commissions, the police and the justice system. They, along with civil society and all levels of government, must work together if there is any hope of success. It also requires international cooperation and coordination with like-minded governments and organizations around the world.

Article 5: Equality before the law

(Reference paragraphs 63 - 67)

SECTION 67 OF THE CANADIAN HUMAN RIGHTS ACT

Canada's report does not note a gap in the human rights protection within First Nation communities. Section 67 of the *Canadian Human Rights Act (CHRA)* prevents some First Nations people from full access to the human rights redress process provided by the *Act*. Section 67 excludes these First Nations people from filing a complaint with the Commission relating to any action arising from, or pursuant, to the *Indian Act*. As is discussed below, in December 2006, the government introduced legislation to repeal Section 67.

When the legislation was enacted in 1977, the reason given for this unusual exemption was that the government of the day needed time to address issues regarding sexual discrimination against women who married non-Indian men. At the time, discussions were underway with First Nations organizations to resolve this issue. Section 67 was to be a temporary measure. However, 30 years later, despite repeated requests by the Commission for repeal, Section 67 is still in the *CHRA*.

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

"First Nations people living on-reserve are the only group of people in Canada who are legislatively excluded from filing human rights complaints in some circumstances. This situation is an embarrassment to Canada. How can Canada, in good conscience, promote respect for human rights

both at home and abroad while excluding First Nations people from full human rights protection?”

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

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

During the proposed transition period, the Commission recommends that the government carry out consultations with First Nations on interpretation issues. The report is the first phase of an ongoing process. The next phase, once the repeal has occurred, will focus on implementation.

Whenever possible the Commission encourages parties to a human rights complaint to try to resolve the matter through their own dispute resolution process rather than using the more formal statutory process under the *CHRA*. Filing a complaint with the Commission should be a last resort to be used when other forms of dispute resolution have not been successful. The Commission is committed to working with First Nations communities, if they so wish, to put in place their own processes for resolving human rights issues in a manner that is sensitive to the particular situation and needs of specific First Nations.

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

The Commission also emphasized that traditional First Nations' systems of governance already incorporate human rights principles. Furthermore, the Commission does not believe that Section 67 must be repealed because First Nations have a special problem regarding discrimination. There are problems of discrimination in First Nations communities, but this is not unique to First Nations, as the Commission's work amply illustrates.

In December 2006 the Government of Canada introduced legislation in the House of Commons to repeal Section 67 ([Bill C-44: An Act to Amend the Canadian Human Rights Act](#)). The Commission welcomes the introduction of this legislation. However, the Commission remains concerned that the proposed legislation does not provide a long enough transition period to ensure the effective implementation of new community based human rights processes in First Nations communities. The Commission will be raising this concern during the expected review of the legislation by a House of Commons Standing Committee likely to occur in the first quarter of 2007.

Article 6: Effective protection and remedies

(Reference: paragraph 78 - 79)

CHRC MEASURES TO ENSURE EFFECTIVE RESOLUTION OF COMPLAINTS

Canada's report notes that in 2002 the Commission initiated a change process aimed at ensuring that all allegations of discrimination filed under the *CHRA* be resolved quickly, efficiently and fairly. The Commission wishes to bring to the Committee's attention further progress in achieving this aim.

Since it was established in 1978, the Commission has played a key role in protecting human rights in Canada by responding to the evolving needs of the public. However, the Canadian human rights landscape has changed fundamentally since the Commission was created 30 years ago. The initial approach to investigating human rights complaints, which became largely reliant on litigation and conflict resulted in lengthy investigations and recurring backlogs. It did not respond to the legitimate demands of Canadians for timely and effective service. Dealing with human rights complaints on a case-by-case basis consumed a tremendous amount of time and resources, leaving many of the Commission's broader objectives and purposes unmet.

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

The new approach also involves improving the investigation process for handling complaints, the traditional bedrock of the Commission's work. Since 2002, the combination of an expanded mediation program, a streamlined investigation process

and faster decision-making fuelled the Commission's drive toward eliminating its backlog of human rights cases and processing cases in a timely manner.

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

- the average age of cases has been reduced by 64%, from 25 to 9 months since December 2002;
- active cases aged two years and older were reduced by 85%, and now represent 4% of the active caseload compared to 27% in 2002;
- the active caseload has been reduced by 51% from 1287 to 636 cases since 2002; and
- the number of final decisions rendered annually has increased by 43% since 2002.

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

- the creation of a comprehensive prevention initiative that focuses on working with employers to put in place human rights policies and procedures aimed at reducing and preventing discrimination. This initiative included the provision of training and resources aimed at preventing and resolving racial conflicts in the workplace. Early results of this initiative indicate a reduction in the number of complaints filed against employers who are participating in prevention activities.
- the creation of a corporate Knowledge Centre as a focus for cutting edge research and policy development on issues relevant to the Commission's mandate. One of the first projects undertaken by the Centre was a research report entitled: [National Security and Human Rights Concerns in Canada: A Survey of Eight Critical Issues in the Post 9/11 Environment](#). The report examines, among other issues, the possible impacts of security legislation on the rights of religious and racial minorities.

- the initiation of a number of strategic projects aimed at highlighting key human rights issues and working cooperatively with government and civil society to resolve them, including a major initiative regarding hate on the Internet.

Conclusion

The Commission appreciates the opportunity to bring these matters to the attention of the Committee.

Attachments:

1. Canadian Issues, Spring 2006: Hate on the Internet
2. A Matter of Rights: A Special Report of the Canadian Human Rights Commission on the Repeal of Section 67 of the Canadian Human Rights Act

For more information on the Commission and its work see: www.chrc-ccdp.ca

Annex A: The Canadian Human Rights Commission

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

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

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