

Social Workers, Race Discrimination, and International Human Rights Conventions: A Canadian Perspective

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Abstract

Racial discrimination continues to haunt Canada, calling for effective and new solutions. There are clear and real limitations to the current domestic avenues of redress. This paper reviews the effectiveness of the International Convention on the Elimination of All Forms of Racial Discrimination. We argue that the treaty contains comprehensive and legally effective provisions to combat racial discrimination. Social workers, along with other professionals, should engage with the international legal regime to assist their clientele to combat racial discrimination.

Internationally, progress toward racial equality has been made in the last two decades, symbolized partly by the collapse of the apartheid regime in South Africa. But the belief that racism and racial discrimination are very much under control is as erroneous as it is pervasive (Tang, 2003). Xenophobic and racially motivated acts of violence continue to plague people in all parts of the world. In the United States, the fact remains that racial discrimination is deeply entrenched, characterized by disproportionate incarceration of blacks, police violence, and poverty (Gordon, 2000). Likewise, racial discrimination in Canada is more than isolated instances of racist behavior by aberrant individuals or the acts of extremist groups. Scholars like Anand (1998) find much evidence of racism and discrimination in Canadian society that includes government-sanctioned discrimination as well as racial hatred.

Canada's Human Rights Process

As a result of the horror which followed from the extermination of Jews and gypsies and other groups by the Nazi regime in Germany, several key events occurred in the period immediately following World War II which pushed the development of human rights legislation and mechanisms in Canada. In the development of the UN Charter in 1945, specific language was included in Article 1 to deal with human rights. This was followed in 1948 by the introduction of the UN Universal Declaration of Human

Rights. The anti-discrimination legislation in Canada was introduced in 1944 in Ontario in the form of the Ontario Racial Discrimination Act which prohibited the publication and display of signs, notices and other representations of racially and religiously discriminatory nature. In the 1950's and 1960's, several provinces introduced Fair Employment Practice Acts and Fair Accommodation Acts. These Acts allowed for the investigation, conciliation and arbitration of cases. Unfortunately, these Acts resulted in few complaints being filed for several reasons. First, the Acts were not well advertised. Secondly, a great deal of the responsibility for pursuing the complaint fell on the complainant, while the officials responsible acted in a facilitative role. Thirdly, the earlier Acts required a criminal standard of proof, which is an extremely difficult standard to prove in many discrimination cases (Tarnopolsky & Pentney, 1989).

It was not until 1962 that Ontario passed the provincial first human rights legislation as we know it today. It also established the first formal institution exclusively devoted to administering human rights legislation, the Ontario Human Rights Commission. B.C. passed its first Human Rights Act and established its first commission in 1966. By 1975, every province had human rights legislation and a human rights commission in place. The Federal government enacted the Canadian Human Rights Act in 1977 to cover discrimination (Mendes, 1995).

Besides human rights legislation, Canada has passed other types of legislation which signals its commitment to addressing racism. The Multiculturalism Act of 1992 includes provisions that recognize discrimination as a factor in Canadian life and commits the government to addressing barriers in service and employment. (Multiculturalism and Citizenship, Canada 1989-90). The Canadian Bill of Rights, introduced in 1960 by Prime Minister John G. Diefenbaker prohibited racial discrimination, but had limited impact because it did not have constitutional status and did not apply to provincial jurisdiction. The Canadian Charter of Rights and Freedoms of 1982 finally enshrined the principle that racial discrimination was unconstitutional.

With regards to human rights processes, Canada has distinguished itself from other countries in the way it has chosen to deal with race discrimination in two ways. Firstly, it has chosen a generic human rights process that deals with discrimination based on several grounds (e.g. gender, disability, sexual orientation, marital status) versus a process solely devoted to race discrimination as is the case in the United Kingdom and the United States. Secondly, Canada has allowed the development of provincial human rights commissions instead of developing a single national human rights body.

Provincial human rights codes provide a type of 'code of conduct' to which members of society are expected to abide. While the prohibited

grounds of discrimination are somewhat different depending on the province studied, all jurisdictions ban discrimination in the provision of accommodation, facilities, services, contracts, and employment. All of the codes prohibit discrimination on the basis of race, creed, color, ethnicity, religion, gender, disability and sexual orientation. Provincial human rights codes have quasi-constitutional status and have traditionally been interpreted to have primacy over other provincial legislation. All codes are, of course, subject to the Canadian Charter of Rights and Freedoms, which in Section 52 states that the Constitution is the supreme law of Canada.

The main effort in human rights legislation is to ensure that a complainant is fully compensated for the effects of the discrimination encountered rather than to punish the discriminator. The remedies offered in such cases include an order to cease the discriminatory acts or practices, and can include making the right, opportunity or privilege denied (i.e. a job or rental accommodation), compensation for any wages, salaries or expenses lost, and compensation for injury to dignity, feelings and self respect (there are usually monetary limits set on this compensation) (Government of British Columbia, 2003). A human rights board of inquiry or tribunal can also order an employer to establish an employment equity program or other special program to address instances of widespread discrimination, although in practice, this is done rarely.

Problems with the Canadian Approach to Race Discrimination

Many commentators have offered anecdotal information that suggests that many racial communities have lost faith in Canadian human rights processes (Henry, 1992, Alyward, 1999, Mendes, 1995). In 1992, the Ontario government commissioned a report by Mary Cornish which addressed, among other things, the lack of faith which members of various racial communities expressed in the human rights process (Government of Ontario, 1992).

These negative appraisals are borne out by a statistical study undertaken by the Canadian Human Rights Commission. In a review of their own case dispositions, the authors of the study found that in 1991, 36% of race cases were rejected for lacking substance compared to 20% of complaints based on other grounds. In particular, it was found that complaints based on race were dismissed without a hearing more often than those based on other grounds. They compared the record of the federal commission with those of the Ontario and Nova Scotia and found that the same pattern held in these two provincial jurisdictions as well; race complaints were dismissed more often than other types of complaints. In the case of Nova Scotia, race based complaints were dismissed at a rate

of 17.2% whereas other types of complaints were dismissed at a rate between 4 and 5%. Hearings were appointed in only 1.7% of race complaints, compared to 6% of cases involving gender discrimination and 9% in disability cases (Canadian Human Rights Commission, 1992). In 1988, the Quebec Human Rights Commission commissioned a study of 174 cases from 1985 to 1986. The authors found that 49% of the race cases in their sample were decided to be unfounded by the Commission, in comparison to 35% of complaints based on other grounds. They also found that delays in race cases in their sample were twice as long as for other types of cases (Cote and Lemonde, 1988).

More recently, a study was conducted by the BC Human Rights Commission into its handling of race discrimination (Mohammed, 2000). The author reviewed 71 complaint files, 37 involving race based harassment and 34 involving sexual harassment. Among its most startling findings, it found that only 3% of the race complaints were successful in their final disposition as compared to 53% of the sexual harassment complaints. 56% of sexual harassment complaints were settled, while only 3% of race complaints were settled (Mohammed, 2000).

Problematic Aspects of the Canadian Human Rights Process

Many of the problems which face communities of color seeking justice from human rights commissions are the same problems facing other equality seeking groups. There are the issues of lengthy delays in case processing and the myriad of often incompatible roles which commissions try to fulfill as impartial investigators, mediators, educators, and promoters of human rights. Other groups have also complained that the exclusive jurisdiction which human rights commissions have over human rights cases is oppressive and that complainants should be given the option of presenting their case before a court of law. This is, in fact, the case in Quebec. A related concern is that, under the present process, the investigation, conciliation and the decision making process for deciding whether to hold a hearing resides with the Commission and its staff, and the complainant has little direct say in these key decisions. Still another concern is that with shrinking resources, commissions are often forced to push complainants towards settlement before issues are properly resolved in mediation. Finally, there is the concern that awards in human rights cases for the mental anguish suffered by complainants are far too low and do not act as a deterrent (Thornhill, 1992).

There are, however, other larger issues which affect the ability of Canadian human rights bodies to address race discrimination complaints effectively. Perhaps most importantly, there is a perception in Canadian

society that race discrimination is an ‘abnormal’ occurrence in Canadian society. Canadians generally are unaware of their country’s racist past or present (Berger, 1982, Mendes, 1995) Most Commission staff and tribunal members therefore consider an accusation of racism to be a very serious threat to a respondent’s reputation and appear to be less concerned about the effect of the racist behavior on the complainant.

Obviously, pursuing a race discrimination case through an international body or mechanism may be one way to overcome this national sense of ‘racial myopia’ which appears to affect many Canadian human rights bodies. An international body is less likely to be affected by the ‘national myth’ of a racist free past and present. A second critical issue which affects the processing of race complaints is the issue of intersectionality; that is, complaints which involve more than one ground. Women of color, in particular, have suggested for many years that human rights processes do not take into account the way that stereotypes and historical barriers based on both their gender and race combine to impact on ways that are unique and different than those faced by men of color or white women. This need to particularize the unique ways in which multiple forms of discrimination affects many individuals with many types of group characteristics. For example, a white woman with a physical disability is affected by a combination of ableist and sexist stereotypes and assumptions that indeed are different than those faced by a white male with a physical disability.

Recently, the Ontario Human Rights Commission issued a discussion paper on what they term ‘An Intersectional Approach to Discrimination’ which they hope will serve as a starting point in incorporating an intersectional approach to investigations, litigation and policy development (Ontario Human Rights Commission, 2002).

Interestingly, this discussion paper points out that international bodies such as the United Nations Human Rights Committee and European Court of Human Rights have also not developed an approach to multiple ground complaints that takes into account the way in which these grounds combine to form unique impacts. As an example, they point out that the famous case of *Sandra Lovelace v. Canada* only considered the loss of status for First Nations women marrying non-First Nations men as discriminatory because it represented a diminution of their right to culture, language and religion. The UN Human Rights Committee did not take into consideration the fact that the loss of culture was directly related to Lovelace’s social position as a woman.

Another issue of concern in making the human rights process more effective in dealing with race complaints is the fundamental question of whether relying on the filing of individual complaints to address discrimination is appropriate. The current individual complaint-driven

system is based on a liberal ideology which is premised on the notion that racial equality is the norm in Canadian society and that instances of discrimination are simply aberrations (Aylward, 1999). This ideology flies in the face of most of the current literature on racism which finds racism embedded in the ideology, cultures and operating principles of Canadian institutions (Henry et al., 2000).

Given the embedded nature of racism, many human rights experts (Black, 1992) have suggested that the present reactive individual complaint human rights process is not likely to result in addressing discrimination in any substantive sense. (Black, 1992) They suggest that commissions should be free to prioritize cases based on the likely overall impact of each case on the social condition of racial communities. In addition, they suggest that commissions should devote resources to identifying areas of particular concern (particular employment sectors, for example) to people of color and proactively initiate complaints themselves. Remedies would focus on establishing monitoring mechanisms, training programs, and employment and service equity programs. Rather than seeing the human rights process as a means to settle individual complaints of discriminatory treatment, it is suggested that human rights commissions and process become proactive in identifying and addressing issues of inequality facing people of color.

These are some implications from Canada's experience with systemic complaints to those involved in the development of international human rights processes. Firstly, it is clear that relying on individuals filing complaints as the main means by which to address race discrimination is likely to have limited impact. Secondly, international bodies must be prepared to engage in a proactive manner to monitor, initiate, investigate and conciliate issues of inequality faced by racial minorities. Thirdly, they will need to face the issues involved in reallocation of resources towards systemic initiatives and the corresponding backlash they will undoubtedly face as a result.

International Law and Anti-Racism Efforts

In view of the above discussion, it is important for us to consider international solutions to the problem of racial discrimination. Admittedly, the United Nations has taken the lead in promoting racial equality by setting up international human rights standards. International human rights laws pertaining to racial discrimination have grown rapidly since 1945 (Banton, 1999). The United Nations General Assembly adopted the Declaration on the Elimination of All Forms of Racial Discrimination in 1963 and called racism an offence to human dignity. Two years later, it adopted the United Nations Convention on the Elimination of All Forms

of Racial Discrimination (the Convention). The Convention entered into force on January 4, 1969. As of December 5, 2002, 165 countries had ratified this international treaty. It largely repeats the anti-discrimination provisions of the two International Covenants (i.e. International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights) but its status as a separate instrument indicates the importance that the international community places on racial discrimination.

The preamble of the Convention states that all human beings are equal before the law and are entitled to equal protection. Equality of all races before the law is a fundamental value. It has a comprehensive definition of racial discrimination. Racial discrimination is seen as practices that have a discriminatory purpose or effect. According to Article 1 of the Race Convention: *“the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”* This definition is broad enough to cover discrimination based on colour, descent, national and ethnic origin. As a matter of fact, discrimination on the basis of “race, colour, descent or national or ethnic origin” lies at the foundation of many other human rights violations (Farrior, 1999).

Article 4 provides for the revision of laws and policies tending to create or perpetuate racial discrimination. It asks state parties to “condemn all propaganda and all organizations which are based on ideas or the theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred.” Academic scholars identify three kinds of obligations under Article 4: to punish dissemination of racist ideas, incitement to racial discrimination and racial violence and activities; to declare illegal racist organizations and propaganda; and to prevent official bodies from engaging in racial discrimination.

The drafters of the Convention realized that law alone could not address the problem of racial discrimination. Thus, Article 7 is introduced that requires state parties to undertake “immediate and effective measures, particularly in the area of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination.” Additionally, Article 8 covers education and information with a view to eliminating discrimination and to promoting understanding and tolerance, referring to the purposes and principles of the UN Charter and the Universal Declaration of Human Rights (McKean, 1983).

Other Articles in the Convention contain key obligations on the part of the state parties. For instance, Article 2 is far-reaching, beginning with a condemnation of racial discrimination and requiring that all countries that ratify this agreement to “*undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination.*” On the other hand, Article 5 identifies a wide range of specific human rights and specifically condemns segregation and apartheid policies “which shall be ended without delay.” Importantly, it underlines the basic obligations stated in Article 2, asking state parties to “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law.”

International Human Rights Standards

In assessing its potentials, some researchers have high praise of the Convention. Boyle and Baldaccini (2001:149) argues that it “marked the real beginning of the international protection of individual human rights.” This Convention represented the first time the establishment of an international mechanism for the enforcement of international human rights treaty. Generally, international human rights treaties set out desirable goals and objectives. The Convention lays down standards which are legally binding and to which state parties must adhere. State parties must take measures to implement the treaty domestically and file their progress reports (once every two years) with the monitoring body (CERD). These reports look at the status of racial discrimination in the country and the policy and legal framework of eliminating racial discrimination. The CERD is an 18-person body that operates by considering a report every two years from state parties bound by the Convention. The members are elected experts from different countries.

After filing a report, state parties are invited to defend their record before the CERD. Since the meetings are held in public, the CERD could engage in dialogue with the state parties, explaining their treaty obligations to them (Banton, 1999). The Committee issues ‘Concluding Observations’, highlighting the successes and failures of countries’ efforts at eliminating racial discrimination, and makes recommendations to specific countries on how to enhance their efforts at eliminating racism. Unquestionably, the Convention is an effective tool precisely because the CERD is in a powerful position to expose state violations of the international treaty. A case in point is the United States. In its first report to the CERD, the US government clearly acknowledges the great disparities in economic and social rights fulfillment that exists between ethnic and racial groups in the United States (Felice, 2002). This report

reveals violations of minorities' social rights, including the lack of educational opportunities and inadequate access to health insurance and health care.

The Convention has another effective procedure: individual communications. This procedure gives individuals who claim to be a victim of a violation of the Convention the right to file complaints against state parties with the CERD. As of December 5, 2002, a total of 41 countries had indicated their willingness to abide by this procedure. Canada has not indicated its wish to be abide by this process.

Upon receiving a complaint, the CERD brings it to the attention of the state party in question. After the state party to the Convention has given an explanation of its views and suggested a remedy, the Committee reviews the matter and may make suggestions and recommendations to the individual or groups concerned as well as to the state party. The hearings are held in private but the decisions of the CERD are publicized. At the time of writing, a total of 27 communications have been received and concluded by the CERD. State parties were directed to revise their law and practice in the light of the CERD's recommendations.

In sum, the Convention gives people the opportunity to bring their case to the international arena. Complaints may be filed to a judicial body that has international standing and guarantees impartiality. This procedure can be effective, not just for the complainant, but for many others affected by the same kinds of violations (Evatt, 1998).

There are many reasons why internationalizing the law against racial discrimination is important. First, since racial discrimination is universal, it calls for a global response and solution. Second, international law against racial discrimination is well grounded in customary international law. The latter comes into existence when state parties follow certain practices generally and consistently out of a sense of legal obligation. These practices are based on acceptance of and adherence to the law on the part of the international community. Legal scholars such as McDougal and his associates (1980) argue that the principles of racial equality and nondiscrimination may be considered as part of *jus cogen*. These are rules of customary law "so fundamental that they cannot be departed from or set aside by treaty" (Pritchard, 1998: 14). Legal scholars see the principle of racial equality and nondiscrimination as part of a "newly emerged general norm of nondiscrimination which seeks to forbid all generic differentiations among people ... for reasons irrelevant to capabilities and contribution" (McDougal *et al.*, 1980).

Human Rights and Social Work

Working within the parameters of the international legal regime is a critical part of an anti-racist strategy on the part of social workers. Admittedly, the law cannot eliminate all racial discrimination but the use of international law does temper racist movements and provides avenues of justice for victims of racism. Such intervention on the part of social workers would add a new dimension to international social work: they would become human rights workers at both the local and global levels. For some time, a primary focus of their intervention has been the use of anti-racist education and advocacy to promote the human rights of visible minorities (Dominelli, 1988; Midgley, 1997; Devore and Schlesinger, 1999, Al-Krenawi and Graham, 2003).

Within this arena, social workers should be active in the promoting the cause of the racialized groups through their governments and quasi-government agencies such as the United Nations and its various organs (Hick, 2002). This includes working to eliminate racial discrimination, intentional or otherwise, embedded in national policy and procedures.

As far as the monitoring of redresses is concerned, social workers can also be watchdogs of their governments. Social workers operating in an international legal regime could function by monitoring state parties' reports, supporting individual rights to complain, conducting research on racial discrimination and delivering human rights education. When governments have ratified the Convention, legal literacy campaigns are needed to educate ethnic minorities at all levels of society about their rights under international law and publicize how these can be enforced using the legal procedures. Stories about successful cases of brought under the Convention should be publicized as they occur.

As such, they would take on the roles of advocate, service provider, educator and broker in engaging with the international legal regime as well as activist. Importantly, serving as advocates for the Convention, they could take an active role in ensuring that the Convention is implemented in their countries. Social workers could also work toward wider public acceptance of the Convention. Further, social work intervention at national and local levels against racial discrimination should be multi-dimensional, involving individual counseling, hotlines, reporting racist incidents, public education campaigns, and anti-racist education programs and initiatives.

As it stands, many governments have yet to ratify the Convention. Social workers should become activists to press their governments to ratify the Convention. Methods used to great effect by social workers in the past have included public meetings and the use of media and

newsletters, campaigns to obtain petition signatures, and lobbying at national and international meetings.

Social workers should know that their practice could be considerably strengthened through international networking. The activism of international NGOs networking with local NGOs and social services agencies has helped to promote the incorporation of international human rights norms into national policy. In the process, social workers find themselves working in a wide range of national and international organizations: INGOs, NGOs, churches and other humanitarian organizations and community organizations (Hick, 2002). All in all, social workers should realize that international law cannot immediately change deep-rooted attitudes, nor can it completely eliminate racial discrimination. Strategies for social change at the national level are still necessary. These include: defining the issue; creating an active agenda for change; and making connections between national politics and local organizing efforts.

It cannot be overemphasized that social workers combating racial discrimination at the international level should become social activist. While social work generally gives the impression of being a state-mediated occupation, academics like Thompson (2002) now draw our attention to the impacts of social movement on social work: social movements would call for a stronger emphasis on social justice as well as facilitate the development of emancipatory forms of social work practice, making social work less a “bureau-profession.” Thus social workers would now be in a position to use large-scale macro approaches and seek to influence the wider social policy agenda. In this regard, they would move away from the traditional individualistic approach and act as a force for social transformation.

A recent example of a social movement where social workers could actively pursue social justice for the victims of racial discrimination involved the Head Tax and the Chinese Exclusion Act. It is worth noting that the Head Tax and the Chinese Exclusion Act represented two well-known racist pieces of legislation in Canadian history. Since the 1980s, there was a campaign demanding an apology and compensation from the Canadian government. The redress campaign relied upon a number of tactics: public forums, public rally, press release, information booklet and lobbying the public and government for support (Chinese Canadian National Council, 2003). When the ruling Liberal Government rejected their demands, a class action was launched against the federal government in 2000. At present, there is no let up in the Head Tax redress campaign and activists continue to draw public attention to the Chinese Canadian victims who suffered under the Chinese Exclusion Act and Head Tax. In the process, social workers could play a critical role. Thus

along with other professionals, they could engage with the international legal regime to assist these victims of discrimination to seek their redress through the CERD.

Conclusion

Locally and nationally, social workers are often frustrated in their practice against racial discrimination. Because of this, the relevance of international law to combat racial discrimination is now becoming more significant. Social workers have a long history of standing up for human rights in the world (Midgley, 1997). In fact, ordinary people have also used the international legal law to pursue their rights. In *Sandra Lovelace v. Canada* (1977), Canadians complained of the inconsistency existing between Canada's obligation under the International Covenant on Civil and Political Rights and the discrimination faced by Native women who marry non-Natives. Consequently, a Native woman could not claim a legal right to reside on her reserve. The complaint was forwarded to the Human Rights Committee of the United Nations which concluded that Canada was in breach of international law. Canada later amended the *Indian Act* so that Aboriginal women did not lose their Aboriginal status when they married non-Aboriginals. Importantly, the use of international human rights treaty such as the Convention can help to bring about desirable economic, social, cultural and political changes. Social workers in Canada who work hard to safeguard human rights should recognize that international law is a powerful force for securing greater racial equality.

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