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Written statement submitted by the Canadian Human Rights Commission*

Note by the secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Canadian Human Rights Commission,** reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

* National human rights institution with “A”-status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

** Reproduced in the annex as received, in the language of submission only.

Annex

Introduction to gender integration

Equality between women and men is a fundamental human right. Although progress has been made toward achieving gender equality in Canada, women continue to face obstacles. Equality is particularly difficult to attain for women facing discrimination on multiple or intersecting grounds—for example, women with disabilities, Aboriginal women, women from visible minority communities, elderly women, single mothers, women living in poverty and sexual minorities.

The Commission has always promoted and protected the right to gender equality. It has issued reports to Parliament, developed policies and participated in important cases at Tribunal. These activities are an integral part of our work.¹

Gender equality engages all persons: men and women, boys and girls. It also pertains to more than two genders. In *Montreuil v. Canadian Forces*, the Tribunal stated: “*In human rights, it is possible for more than two genders to be recognized since, regardless of a person’s gender, whether the person is male, female, transgendered, transsexual, in between the two or both simultaneously; the person has a statutory right to respect as a human being, everywhere and in all circumstances....*”²

Gender equality will be achieved only if both women and men are allies for gender equality and are actively involved in promoting it.

Applying a gender integration lens to the work of the Canadian Human Rights Commission (CHRC) means looking at the potentially different impacts our policies and decisions may have on men and women. It recognizes that sex and gender, as well as factors such as race and disability, are important factors to consider. Understanding and taking them into account requires better understanding the realities of all Canadians and how our policies and decisions might affect them.

A survey of accepted complaints at the Commission in 2010 reveals that

- Out of 853 accepted complaints, 105 (12%) were based on the ground of sex; and
- 37 of those 105 complaints were based on sex and one or more other grounds.

By introducing its gender integration framework, the Commission is taking a systematic approach to ensuring that gender and intersectional issues are considered in all aspects of its work.

1. Purpose and key concepts

1.1 Purpose of the CHRC’s Gender Integration Framework

The Commission’s Gender Integration Framework strengthens and promotes our commitment to gender equality by ensuring that we systematically assess the differential impacts on women and men of our policies, programs and decisions. It also ensures that we

¹ See: Protecting Their Rights, A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women. See also: Ruth Walden et al v. Social Development Canada, 2010 CHRT 19

² *Montreuil v. Canadian Forces*

consider any adverse impacts produced by other intersecting grounds. We are thereby moving gender analysis into the mainstream of our daily work.

1.2 What is Gender Integration?

Gender integration is the process of promoting gender equality by making the consideration of women's and men's lived experience an integral part of our work. Its aim is to ensure that women and men benefit equally and inequality is not perpetuated.

Gender integration is required at all levels and stages of our work, including decision-making. Rather, it aims to ensure that gender factors are an integral part of all processes, not just an afterthought.

In some instances, gender may be integral to the issue being considered, and may play an important role in determining next steps. In other cases, gender may be less significant to the outcome, constituting one of several factors to be weighed. While gender implications may not be obvious at first, we must remain alert to their potential relevance in all cases.

1.3 What is Intersectionality?

The concept of 'intersectionality' refers to a situation in which several grounds interact in such a way that their impacts are inseparable. An intersectional approach enables the particular experience of discrimination arising from multiple grounds to be acknowledged, understood and factored into decision-making.

The *Canadian Human Rights Act* (CHRA) explicitly prohibits discrimination based on multiple grounds or on their compounded effects. It states: "*For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds.*"³

The combined effects of multiple grounds of discrimination can have a greater impact than discrimination based on a single ground. The Supreme Court of Canada has acknowledged this, and encourages a broad and liberal approach to human rights interpretation rather than a narrow or exclusionary one. It has stated that in cases of more than one ground of discrimination, "*it is not really meaningful to assert that it is one or the other. It may be more realistic to recognize that both forms of discrimination may be present and intersect.*"⁴

The international community has recognized "complex and aggravated" forms of discrimination in a number of United Nations human rights documents.⁵ These documents call upon States Parties to pay particular attention to the issue of multiple and intersecting grounds of discrimination, and to take measures to ensure that they do not impede the full and equal enjoyment of human rights and fundamental freedoms.

Intersectionality is integral to the Commission's approach to gender integration. When dealing with issues based on sex, other intersecting grounds (such as disability, race, ethnic origin and family status) should be factored into the analysis.

³ *Canadian Human Rights Act, RSC 1985, c.H-6, s.3.1*

⁴ *Canada (Attorney General) v. Mossop, [1993] 1 S.C.R. 554.*

⁵ These include the Convention on the Rights of Persons with Disabilities (CRPD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), and the Declaration on the Rights of Indigenous Peoples (UNDRIP).

Intersectional analysis can also be used as a stand-alone approach in instances in which sex is not one of the listed grounds, but multiple other grounds intersect.⁶

1.4 Definitions

SEX refers to the biological and physiological characteristics that define men and women (including, for example, breast development, genitalia, bone size etc.).

GENDER refers to the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women. It can result in stereotyping and limited expectations about what women and men can and cannot do. (For example, some people think it is inappropriate for women to work in male-dominated professions.)

GENDER EQUALITY refers to the equal rights, responsibilities and opportunities of women and men.

GENDER IDENTITY is linked to a person's sense of self, particularly the sense of being male or female. Persons' gender identity may be different from their biological/physiological sex at birth.

INTERSEX is defined as a congenital anomaly of the reproductive and sexual system. Intersex people are born with ambiguous genitalia or both male and female sex organs.

TRANSGENDER and TRANSSEXUAL are terms for persons whose desired gender differs from their biological sex. It includes those who have undergone sex change surgery.

LGBTTIQQ2S is an acronym standing for the categories of lesbian, gay, bisexual (those who are attracted to both men and women), transgender, transsexual, intersex, queer (a self-identifying term used in some gay communities, typically by younger persons), questioning (persons unsure of their gender, sexual orientation or sexual identity) and two-spirited.

TWO-SPIRITED is a term used by some Aboriginal cultures for a person who displays any of the gender characteristics in the LGBTTIQQ2S categories.

GENDER-SENSITIVE LANGUAGE⁷ is language free of gender bias. For example, a job posting for a "cleaning lady" is biased, while one for a "cleaner" is bias-free.

GENDER-SENSITIVITY TRAINING makes employees and employers aware of gender concerns.

2. Rationale

2.1 Why is Gender Integration Important?

There are six important reasons for ensuring that gender integration is a part of the CHRC's daily work:

⁶ The Ontario Human Rights Commission is an example of a human rights body that has successfully integrated an intersectional approach to discrimination. For more information, see: An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims: http://www.ohrc.on.ca/en/resources/discussion_consultation/DissIntersectionalityFtnts/pdf

⁷ UNESCO, Gender Sensitivity Training Manual: <http://unesdoc.unesco.org/images/0012/001281/128166eb.pdf>

- First, equality between women and men—in terms of equal rights, opportunities and responsibilities—is a matter of human rights and social justice.
- Second, the concepts of sex and gender are overarching. They can intersect with all other personal variables, such as race, national or ethnic origin, colour, religion, age, sexual orientation, marital status, family status, disability, conviction for which a pardon has been granted or in respect of which a record suspension has been ordered.
- Third, the Commission's Gender Integration Framework must be aligned with Canada's commitments as set out in the *Federal Plan for Gender Equality*.⁸ The Federal Plan outlines a number of objectives for federal government departments and agencies, one of which is the use of gender analysis to guide legislative, policy and decision-making processes. In accordance with the Federal Plan, the Auditor General made recommendations on gender-based analysis in 2009. As well, the Privy Council Office, Treasury Board Secretariat and Status of Women Canada jointly developed a Departmental Action Plan to improve the practice of gender-based analysis⁹ in all departments and agencies. The Commission may be called upon to demonstrate (through audits or other activities) its compliance with the Federal Plan.
- Fourth, the Commission's Framework is in line with international human rights principles of gender equality as set out in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It also respects international obligations to protect vulnerable populations identified as at risk of experiencing complex forms of discrimination in which intersecting grounds are involved. These obligations are described in a number of UN instruments, including the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Rights of Persons with Disabilities (CRPD) and the Declaration on the Rights of Indigenous Persons (UNDRIP).¹⁰
- Fifth, the CHRC should be a leader in the development of best practices relating to gender equality. As Canada's national human rights institution, the CHRC should ensure that its work, including its policies and publications, is a model for other human rights agencies and organizations. Its decisions should systematically take into account potential adverse impacts on women and men, as well as potentially intersecting grounds of discrimination.

⁸ Setting the Stage for the Next Century: The Federal Plan for Gender Equality (1995), <http://dsp-psd.pwgsc.gc.ca/Collection/SW21-15-1995E.pdf>.

⁹ The Government of Canada has used the language of gender-based analysis (GBA) in its documents. However, in order to be consistent with human rights language terminology at the international level, the Commission has adopted the language of the Office of the High Commissioner for Human Rights. The OHCHR's Gender Equality Policy (September, 2011) states: "A 2008 evaluation of OHCHR's performance in mainstreaming human rights within the UN noted that staff avoided using the term "mainstreaming" due to lack of clarity about its meaning. Throughout this Policy the term "gender integration" is used rather than "gender mainstreaming"."

¹⁰ Article 6(1) of the CRPD provides: "States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms." The preamble of the CRPD at (p) states: "Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status". Article 21(2) of the UNDRIP states: "Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities".

- Sixth, gender integration enriches our work. Results of our analysis improve policies pertaining to other work that we do (for example, family status policy).

3. Gender integration in your work

3.1 How do I Undertake Gender Integration?

For all Commission employees:

You will most often use a tool called Gender Relevance Assessment (GRA). It consists of answering the four questions outlined below.

Gender relevance assessment

Questions:

1. What is the project/issue you are working on?
2. Do there appear to be differences in the life experiences of women and men, and/or differences in potential impacts?
3. Do multiple/intersecting grounds appear to be present? If so, what are they?

If the answer to question 2 and/or 3 is YES, proceed to the next question.

4. How could you address this reality in your work?

Example

Public Interest Statement for Older Persons

BEFORE

Older persons have the same rights as everyone else.

Demographic change in Canada is resulting in unprecedented numbers of older people who will need opportunities to engage in employment, should they wish to remain employed, and will need to have access to benefits on an equal basis with all other employees.

Age discrimination in employment can result in financial hardship, and psychological and emotional distress. Employers should ensure the promotion and protection of human rights of older persons within the workplace. Employer policies, standards or practices to address these issues should recognize the active economic and social contributions that older persons can make to their workplaces and to society as a whole.

AFTER**Public Interest Statement for Older Persons**

Older women and men have the same rights as everyone else.

Demographic change in Canada is resulting in unprecedented numbers of older people who will need opportunities to engage in employment, should they wish to remain employed, and will need to have access to benefits on an equal basis with all other employees.

Age discrimination in employment can result in financial hardship, and psychological and emotional distress. In particular, employers should be aware of the intersecting and compound effect of aging on certain groups such as older women,¹¹ older persons with disabilities and older persons from minority backgrounds.

Employers should ensure the promotion and protection of human rights of older persons within the workplace. Employer policies, standards or practices to address these issues should recognize the active economic and social contributions that older women and men can make to their workplaces and to society as a whole.

3.2 When do I use Gender Integration?

If the answer to questions 2 and/or 3 in the Gender Relevance Assessment is ‘yes’, gender is relevant to your issue. It should be considered throughout your work, and before decisions are finalized. Some parts of your work may appear at first glance to lack gender implications, but you should continue to look at possible gender impacts at every stage.

For Commission Employees Working on Policy, Program Development or Research

Taking a gender integration approach can involve more than just undertaking a gender relevance assessment. It may sometimes require gathering qualitative and quantitative data, questioning basic assumptions, and developing an understanding of how socio-economic factors may affect women and men.

Commission employees developing policies and in-depth research studies will undertake an eight-stage gender analysis (GA). These eight stages are not new, they are typical of policy development work. They simply amount to using a gender lens of analysis. The full process is described in Appendix A.

Gender Analysis

1. Consultation
2. Defining the Issues
3. Defining the Outcomes
4. Gathering Information
5. Conducting Research
6. Developing and Analyzing Options
7. Monitoring and Evaluating
8. Communication

¹¹ Age is one of the grounds on which women suffer multiple forms of discrimination. For more information, see: General Recommendation No. 27 on older women and protection of their human rights. <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GC1.pdf>

4. Implementation and monitoring

4.1 CHRC Implementation Approach

The Commission views gender integration as a process focused on practical outcomes in our daily work. Most importantly, it requires you to ensure that gender integration is undertaken from the outset of any project. This is particularly vital with respect to the Commission's high-priority issues, such as Aboriginal peoples and persons with disabilities.

The Commission's gender integration approach requires:

- Developing appropriate tools;
- Providing gender sensitivity and capacity building training, including gender relevance assessment, gender analysis and gender-sensitive language training as required;
- Establishing a focal point of responsibility; and
- Establishing effective monitoring and reporting mechanisms through the development of a reporting and monitoring template.

4.2 Responsibilities: Employees and Management

Gender integration is a responsibility shared among all Commission employees and management. The Knowledge Centre, along with all senior managers, has the primary responsibility for ensuring that the Commission's Gender Integration Framework is effectively implemented by employees. Managers are expected to provide leadership in promoting gender equality

by ensuring that all employees are informed about the Commission's Framework and have the necessary tools to incorporate gender perspectives in their work.

All Commission Employees

Your gender integration responsibilities include:

- Undertaking gender relevance assessments;
- Undertaking a thorough gender analysis, when appropriate; and
- Participating in gender-sensitivity training, as appropriate.

Knowledge Centre: Focal Point of Responsibility

In addition to the above-noted responsibilities, the Knowledge Centre will support the Commission at a strategic level by providing expertise and coordination on gender issues.

The Knowledge Centre's responsibilities include:

- Coordinating gender integration, including training sessions;
- Providing expertise;
- Developing support tools;
- Analyzing gender-related implications of legislative initiatives, government policies and emerging domestic and international trends; and
- Compiling data annually on gender integration activities.

4.3 Reporting and Monitoring

Reporting and monitoring will be done through the Knowledge Centre.

Appendix A

Gender analysis (GA)

Steps in the gender analysis process

Policy advisors, researchers and those developing Commission programs or initiatives must ensure that their work includes a gender analysis. This section describes the GA process, which is divided into eight stages that roughly correspond to the 'life cycle' of a policy or other initiative. We encourage you to use the sample template below (Appendix B) in order to record your undertaking of the GA process. We also encourage you to keep this record on file.

The eight steps of the GA process are:

1. **Consultations:** Is there adequate representation of women and men among stakeholders consulted?
2. **Defining the Issues:** Are both women's and men's experiences reflected in the way issues are identified?
3. **Defining the Outcomes:** What do we want to achieve with this policy, and how does this objective fit into Commission priorities? Who will be affected? How will the effects of the policy be different for women and men, girls and boys?
4. **Gathering Information:** What types of gender-specific data are available? How will the research you conduct address the different experiences of women and men? Are data on intersecting issues available? Should research be conducted on these intersecting issues?
5. **Conducting Research:** What is the research question? Are additional areas of research needed to obtain enough information relevant to both women and men?
6. **Developing and Analyzing Options:** How will each option have a different effect on women's or men's social and/or economic situation? How will innovative solutions be developed to address the gender issues you have identified? Are solutions needed to address concerns of women or men with potentially intersecting grounds of discrimination?
7. **Monitoring & Evaluating:** How will gender equality concerns be incorporated into the evaluation criteria? How can this be demonstrated? What indicators will you use to measure the effects of the policy or program on women and men? Are there effects on specific subsets of women and men (e.g. of particular ages or races) that can also be anticipated? If so, can these effects be measured?
8. **Communication:** How will the communications strategy ensure that information is accessible to both women and men?

Note

Anyone wanting additional details on gender analysis should contact the Knowledge Centre.

Appendix B

Gender relevance assessment evaluation example

1. What project are you working on?

Public Interest statement on a policy impacting older persons

2. Do there appear to be differences in the experiences of women and men that could impact them differently? Yes ☒ No ☐

According to the research consulted, older women and men may experience aging differently.

3. Do there appear to be multiple/intersecting grounds present that could potentially aggravate persons' experience of discrimination? Yes ☒ No ☐

If YES, list the grounds/factors:

Disability

If the answer to question 2 and/or 3 is YES, proceed to the next question.

4. How could you address this reality in your work?

Highlight the gender and intersecting aspects of discrimination against older persons in the public interest statement

Use Gender-specific Language

- For example, use “women and men” rather than “people”

Research

- **International:** Convention on the Elimination of All Forms of Discrimination against Women, *General Comment No. 27 on older women and the protection of their human rights*, the *United Nations Principles for Older Persons* (General Assembly Res 46/91,1991), *A Call for a Convention on the Rights of Older Persons*, *Madrid International Plan of Action on Ageing*, (MIPAA), Report of the Expert Group Meeting “*Rights of Older Persons*”
- **National:** Ontario Human Rights Commission: TIME FOR ACTION: Advancing Human Rights for Older Ontarians, THE CHANGING FACE OF ONTARIO, Discrimination and our Aging Population.

Appendix C

Cultural relevance

Culturally Relevant Gender Analysis (CRGA) enables gender differences to be understood through a culturally particular lens. For example, it can be used to help understand how gender discrimination against Aboriginal women is compounded by the effects of colonization, which altered gender roles among Aboriginal peoples.¹²

The Interpretive Provision was added to the CHRA in 2008. It creates an *explicit* requirement that every time a legal tradition or customary law is analyzed in the context of a complaint, the complaint report must include an analysis of whether the legal tradition or customary law is consistent with the principle of gender equality. This part of the provision was included in order to ensure that legal traditions and customary laws could not act as a shield against allegations of gender discrimination.

Section 1.2 of the CHRA's Interpretive Provision reads as follows:

In relation to a complaint made under the Canadian Human Rights Act against a First Nation government, including a band council, tribal council or governing authority operating or administering programs and services under the Indian Act, this Act shall be interpreted and applied in a manner that gives due regard to First Nations legal traditions and customary laws, particularly the balancing of individual rights and interests against collective rights and interests, to the extent that they are consistent with the principle of gender equality.

At the investigation stage, the Commission may seek relevant information from the parties about the legal tradition or customary law, and how it relates to the allegations of discrimination raised in the complaint.

In an Aboriginal context, the following two questions can be asked as part of a culturally-relevant gender analysis:

1. Is the legal tradition or customary law consistent with the principle of gender equality? (Does it treat men and women differently, and if so, is there a negative impact on one gender?)
2. Are intersecting grounds present that could potentially aggravate a person's lived experience of discrimination?

Culturally-relevant analysis may also be used in a non-Aboriginal context in order to consider the combined impact of gender and culture on women and men from any cultural community.

¹² The Native Women's Association of Canada (NWAC) has developed an approach to carrying out culturally relevant gender analysis using four key elements: 1) grounding all policy and legal analysis in an understanding of pre-contact gender relations; 2) identifying negative impacts on individuals, families and nations; 3) analysis of current realities and areas that requiring change in order to meet the equality needs of Aboriginal women (including through data collection and analysis of social conditions); and 4) developing strategies for solutions informed by the first three elements. Solutions may include sameness of treatment, gender- or indigenous-specific measures, or measures for women with disabilities.