

**The Racialization of Poverty in Canada: Implications for  
Section 15 Charter protection**

**"2005 - the Twentieth Anniversary Year of Section 15 of the Canadian Charter of  
Rights and Freedoms - building a shared community-based anti-racism and anti-  
racialization agenda in Canada - where to next ?**

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*“The purpose of s. 15(1) of the Charter is to protect human dignity by ensuring that all individuals are recognized at law as being equally deserving of concern, respect and consideration. Consequently, it is the effect that an impugned distinction has upon a claimant which is the prime concern under s. 15(1)”*

(Cory and Iacobucci JJ., 1995).<sup>1</sup>

## **Introduction**

The objective of the paper is to address the growing problem of the racialization of poverty and to explore the possible implications of a section 15 remedy for the adverse harm imposed on the racialized population by the condition. Racialized poverty, understood as disproportionate exposure to low income as defined by the low income cut-off, adversely impacts racialized groups members and therefore represents a harm to their dignity and a violation of their *Charter* rights as an identifiable group.<sup>2</sup> Because racialized group members are two to three times more likely to be exposed to poverty than other Canadians, not only does poverty compromise their dignity as an identifiable group, it calls into question any claim to equal citizenship they can make in Canadian society. The paper takes the position that the socio-economic impact of the racialization of poverty and the inadequacy of state action to address amounts to denial of protection otherwise guaranteed by the *Canadian Charter of Rights and Freedom* and the international human rights protection regime to which Canada is a signatory.

The paper calls for judicial review of the racialization of poverty based on the Canadian state’s obligation to address the harm to the dignity of the victims of racialized poverty on the basis of both substantive equality claims under section 15 as well as the international human rights treaty obligations that the Canadian state is signatory to. While addressing a particular group of victims of poverty and a form of poverty arising from the distinctive vulnerabilities imposed on racialized groups in Canadian society, the proposed claim is consistent with some of the claims put forward by anti-poverty advocates, at least with respect to the state’s responsibility to guarantee the dignity of the victims of poverty. The argument here is that the racialized character of the experience with poverty opens the door for considering race as grounds for the claim.

I start the discussion by establish the context for the connection I am drawing between the racialization of poverty and section 15 rights, based on a conception of citizenship that imposes certain basic obligations on the state in a liberal democratic society, among which are the protection of such citizens rights as equality and dignity of person and that the violation of these obligations creates conditions of social exclusion that must be remedied through the courts. The courts, as the guardians of these rights, have tended to interpret this state responsibility substantively.<sup>3</sup> I present both a demographic profile of the racialized group in Canada and a sketch of the socio-economic experience of

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<sup>1</sup> *Thibaudeau v. Canada* (1995) 2 S.C.R. 627

<sup>2</sup> Racialized group members are persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in Colour as defined by the *Employment Equity Act*

<sup>3</sup> See, Hurley, M. *Charter Equality Rights: Interpretation of Section 15 in Supreme Court of Canada Decisions*. (Ottawa: Parliamentary Information and Research Service, 2005)

racialized groups in Canada in the new century including the emergence of the racialization of poverty as a key feature of that experience intensifying other dimensions of social exclusion as manifest in the labour market, housing and health status. I then explore some of the arguments relating to the appropriate consideration of Section 15 remedies for the growing social exclusion of racialized groups and the racialized poverty.

## **Citizenship and citizen rights**

To be a citizen presupposes being part of a specific political community, participation in its economic and social life and the enjoyment of its support in case of need. Some have referred to this dimension as denoting a form of social citizenship, which, along with the concept of equality helps define the contours or boundaries of social inclusion/exclusion (Byrne, 1999)<sup>4</sup>

Citizenship, here is understood as a:

“relationship between the individual and the state as well as among individuals, is the concrete expression of the fundamental principle of equality among members of the political community” (Jenson & Papillon, 2001).<sup>5</sup>

Jenson (2002) has discussed the notion of citizenship in terms of three key dimensions: The first dimension is one of rights and responsibilities. The second one relates to equal access and the third one speaks to a sense of belonging or identity.<sup>6</sup>

These processes are dynamic so neither equal access nor belonging are automatically achieved. Societies require agency to foster equality and improve access in the same way they need strategies to ensure meaningful participation in the democratic process and the full exercise of citizenship rights, all which vary over time and place. Moreover, given the nature of power relations and unequal social relations in societies, various social forces engage in struggles to gain better access for certain categories of citizenship on the one hand, and to the transform oppressive structures, institutional practices and change the boundaries of access on the other. That is why the boundaries of social exclusion vary from society to society, as well as over time within any given society (Jenson & Papillon, 2001).

For our purposes, the second dimension of citizenship, which corresponds to equal access to the resources of society, is the focus because it is fundamental to any claims of equality. It is built on the civic recognition that basic levels of material well being are essential to sustaining meaningful access to full citizenship and to fostering participation.

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<sup>4</sup> Byrne, D. *Social Exclusion*. Buckingham, U.K. : Open University Press, 1999

<sup>5</sup> Jenson, J., and Papillon, M. *The Changing Boundaries of Citizenship. A Review and a Research Agenda*. Canadian Policy Research Networks, 2001 (CPRN) <[www.cprn.org](http://www.cprn.org)>.

<sup>6</sup> Jenson, J., *Citizenship: Its Relationship to the Canadian Diversity Model*. Canadian Policy Research Networks, 2002 (CPRN) <[www.cprn.org](http://www.cprn.org)>.

The degree of access varies within and across political communities, depending on institutional design, and according to the support given by the state and the community to the groups excluded by the social, economic or cultural structures within the society.

That said, this notion of citizenship invokes the state as guarantor of the principles of equality among members and dignity for the individual or group. These concepts are time and space specific, and Kymlicka and Norman, (1995) have argued that the “return of the citizen” in popular political discourse is the result of major transformations in modern politics and political economies brought about by neo-liberal globalization. It is both a signal and a symptom of profound changes in industrial societies. However, this follows a trajectory of liberal democratic conceptions of citizenship that began with the connection between full citizenship and access to political power, an understanding of the idea, which led to the replacement of divine authority with the secular institutions of self-government.

The state as the central institution through which the solidarity of citizenship is expressed plays an essential role in determining the extent of equality, the boundaries of belonging, the creation of political identities, as well as the distinction between members and non-members. The state assumes the role of guarantor of the rights of all those defined into this community of people – the citizens. This socially constructed common identity then becomes the basis for maintaining social solidarity despite significant and in some cases enduring cultural, economic and social differences among people, which often translated into competing interests.

As Jenson & Papillon (2001) have observed, over time access to the social, economic, cultural and political resources of the society was broadened to cover social and economic dimensions citizen equity as social mobilization forced the recognition of additional categories of the population which merited full inclusion in the polity. Thus the shift from ‘free men’ to ‘all men’, from ‘property owners’ to ‘non-propertied men’, from white men to racialized men, from men to women, from native born to naturalised, from heterosexual to homosexual, from adult to youth, from able-bodied to disabled, as full political rights were nominally gradually extended. Giving these rights substantive meaning followed a process that crystallised through the emergence of the labour movement, the civil rights movement, the feminist revolution, the aboriginal rights movement and more recently the disabled movement and the gay and lesbian rights movements.

It is on the basis of this formulation that citizens can claim both a right to equity and dignity. The economic claims that the anti-poverty advocates have made as well as the right to equity claims made by equality seeking groups are rooted in these conceptions of citizenship. These, it is argued are codified in Section 15 of the *Canadian Charter of Rights and Freedoms* and more generally in the *Constitutional Act, 1982*. They are also rooted in the international human rights regime to which Canada is a signatory and whose norms and conventions it purportedly observes. These two positions therefore inform the project this paper is engaged in: To, once the existence of racialized poverty is established, seek a basis for judicial remedy.

## **Racialized Canada - a demographic profile**

In 2001, Canada was home to about four million racialized group members, or 13.4% of the Canadian population, a 24.6% increase since 1996. This increase far outpaced the Canadian rate of 3.9% over the five year period. During the last census period (1996-2001), the growth rate of the racialized component of the labour force accounted for (males 28.7%/females 32.3%) compared to (5.5% and 9% ) respectively for the Canadian population. While the growth was highest in Ontario (28%) it was significant in British Columbia (26.6%), Alberta (22.5%), New Brunswick (18%), Quebec (14.7%) and Manitoba (12.6%) among others, only falling in Prince Edward Islands (-22%).

Racialized group share of the population is projected to rise to 20% by 2016. Much of that growth can be accounted for through immigration but also higher than average birth rates. Canada welcomes an annual average of close to 200,000 new immigrants and refugees over the 1990s. While Canada welcomed 13 million immigrants in the last century, 2.2million of them came in the last decade of the century – the largest amount of any decade. Immigration accounted for more than 50% of the net population growth and 70% of the growth in the labour force over the first half of the 1990s (1991-96), and according to a study by the Human Resources and Skills Development Canada, it is expected to account for virtually all of the net growth in the Canadian labour force by the year 2011 (HRSDC, 2002). Over much of the last 15 years, over 75% of Canada's newcomers were members of the racialized groups.

According to the 2001 census, immigrants made up 18.4% of Canada's population, projected to rise to 25% by 2015. Immigrants constituted 18.4% of the Canadian population, the largest share in more than 50 years. Of particular note is the fact that, since the 1970s, increasing numbers of immigrants to Canada have come from Asia and the Middle East. Asian born immigrants accounted for more than half (57%) of the immigrants who arrived since 1991.<sup>7</sup> In 2001, the five largest racialized groups in Canada are, in order of size: Chinese (1.029M); South Asian (917, 000); Black or African Canadian (662,000); Filipino (309, 000); Arab/Middle Eastern or West Asian (304,000) and Latin American (217,000). According to the 2001 Census, about one third (34%) of racialized group members immigrated to Canada after 1990, while 33% entered Canada before 1990 and the last third 33% were Canadian born.

The percentage of racialised minorities in the Canadian population, which was under 4% in 1971, grew to 9.4% by 1991, hit double digits (11.2%) by 1996, and is now projected to be 20% by 2016. With Canada's continued reliance on immigration for population growth and with globalisation escalating, these trends are likely to continue. Canada's racialised groups are mainly concentrated in urban centres, with Toronto, Vancouver, and Montreal accounting for about 75% of the total racialised population (Toronto 42%, Vancouver 18%, and Montreal 13%). In 2001, racialized groups accounted for an

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<sup>7</sup> Statistics Canada, 2003: 2001 Census data.

increasing number of people in the major Canadian urban centres as well as the most populous provinces (see table 2).

<b>Table 1. Total Population 15 Years and Over by Racialized Population , 2001 Census</b>			
<b>Geography: Canada</b>			
	<i>Total Population</i>	<i>Total Racialized Population</i>	<b>Percentage</b>
Total - Both Sexes	29,639,030	3,983,845	13.4
Males	14,564,275	1,945,510	13.4
Females	15,074,755	2,038,340	13.5

Overwhelmingly, the changes in immigration composition have been most felt by Canada's three biggest urban areas —Toronto, Vancouver, and Montreal. The cumulative increase in the number of racialised group members over the last 30 years is most noticeable in the major urban areas, where, in the 1990s, more than 80% chose to settle. They have transformed these areas into diverse cultural centres, and their increased contributions to the life and economies of cities like Toronto have led many Torontonians to proclaim diversity as their city's strength.

**Table 2: Racialized group population as percentage of total population, 2001**

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	<b>Total Population</b>	<b>Racialized Population</b>	<b>Racialized Group Share of Total Population (%)</b>	<b>Regional Racialized Population as Share Canada Total (%)</b>
<b>Canada</b>	30,007,094	3,983,845	13.4	100
<b>Newfoundland</b>	512,930	3,850	0.8	0.1
<b>P.E.I</b>	135,294	1,180	0.9	0.0
<b>NovaScotia</b>	908,007	34,525	3.8	0.9
<b>NewBrunswick</b>	729,498	9,425	1.3	0.3
<b>Quebec</b>	7,237,479	497,975	7.0	12.5
<b>Ontario</b>	11,410,046	2,153,045	19.1	54
<b>Manitoba</b>	1,119,583	87,110	7.9	2.1
<b>Saskatchewan</b>	978,933	27,580	2.9	0.7
<b>Alberta</b>	2,974,807	329,925	11.1	8.2
<b>B.C.</b>	3,907,738	836,440	21.6	20.9
<b>Yukon</b>	28,674	1,025	3.6	0.0
<b>N.W.T.</b>	37,360	1,545	4.2	0.1

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Source: Census 2001 Statistics Canada, 2003

**Table 2: Racialized group population as a percentage of Census Metropolitan Areas (CMA), 2001**

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<b>CMA</b>	<b>Racialized Groups as Share CMA Population (%)</b>
<b>Canada Total</b>	13.4
<b>Vancouver</b>	36.9
<b>Toronto</b>	36.8
<b>Calgary</b>	17.5
<b>Edmonton</b>	14.6
<b>Ottawa-Hull</b>	14.1
<b>Montréal</b>	13.6
<b>Windsor</b>	12.9
<b>Winnipeg</b>	12.5
<b>Kitchener</b>	10.7
<b>Hamilton</b>	9.8
<b>London</b>	9.0
<b>Victoria</b>	8.9
<b>Halifax</b>	7.0
<b>Oshawa</b>	7.0
<b>Saskatoon</b>	5.6
<b>Regina</b>	5.2
<b>Kingston</b>	4.7
<b>St.Catharines-Niagara</b>	4.5
<b>Saint John</b>	2.6
<b>Sherbrooke</b>	2.6
<b>Thunder Bay</b>	2.2
<b>Greater Sudbury</b>	2.0
<b>Québec</b>	1.6
<b>St. John's</b>	1.4
<b>Trois-Rivières</b>	0.9

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Source: 2001 Census data, Statistics Canada, 2003

In 1996, the Toronto CMA, which roughly covers the area that is the Greater Toronto Area (GTA), was home to 1.3 million racial minorities, who constituted 32% of its total population. That number had risen to 1.7 million by the year 2001. Five out of every 10 recent immigrants settled in the Toronto CMA over the last ten years, with 60% of them from Asia and the Middle East. The other big magnet for recent immigrants is Vancouver, which received 18% of all recent immigrants to Canada between 1991-96, 80% of whom were Asian born.<sup>8</sup>

But with these demographic shifts, has come a noticeable lag in social economic performance among racialized groups. And these patterns of poor socio-economic performance seem to be holding both during and after the recession years of the late 1980s and early 1990s as well as the boom years of the late 1990s and early C21st.

### **Factors affecting declining social economic status of racialized groups**

There is mounting evidence that the bouts of economic restructuring Canada has endured in the last two decades have intensified processes of racialization and feminization in the labour markets, leading to increased economic, social and political inequality and immiseration of vulnerable populations of women, men and children. The patterns of intensified inequality suggest that racialized groups, immigrants, refugees and women have borne the brunt of the economic restructuring and austerity. Not only has global economic restructuring escalated the process of informalization of economies and the emergence of 'precarious work' - temporary, part-time, contract, casual, types of work with low pay, few or no benefits, little or no job security, and poor working conditions, it has also exacerbated previous fissures of racial and gender inequality based on systemic discrimination. Various Canadian studies suggest that the emergence of flexible work arrangements as a major feature of the labour market, facilitated by the state deregulation and re-regulation of the labour market, have had a particularly adverse impact on racialized groups and especially racialized women.<sup>9</sup> Coupled with the persistence of historically racial and gender discriminatory in the labour market, what emerges is a deepening of the process of social inequality, manifested through the segmentation of the labour market along racial line, intensification of income inequality and along with it the racialization of poverty, the racialization and segregation of low income neighbourhoods

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<sup>8</sup> Statistics Canada, The Daily, November 4, 1997

<sup>9</sup> See literature review by Zeytinoglu, I & J. Muteshi "Gender, race, and Class Dimensions of non-standard work' Industrial Relations, Vol. 55, Issue 1, Winter 2000 p133-166; L. Vosko Temporary Work: The Gendered Rise of a Precarious Employment Relationship (Toronto: University of Toronto Press, 2000); de Wolff, A., Breaking the Myth of Flexible Work (Toronto: Contingent Workers Project, 2000); B. Fox & P. Sugiman "Flexible Work, Flexible Workers: The Restructuring of Clerical Work in the large telecommunications Company" Studies in Political Economy Vol. 60 Autumn, 1999 pp59-84; M. Ornstein, Ethno-racial Inequality in Toronto: Analysis of the 1996 Census (Toronto: Access and Equity Centre of Metro Toronto, 2000); Galabuzi, G., Canada's Creeping Economic Apartheid: The Economic Segregation and Social Marginalization of Racialized Groups (Toronto: Centre for Social Justice, 2001); K. Hughes Gender and Self Employment: Assessing Trends and policy implications (Canadian Policy research Network, November, 1999)

with higher health risks, disproportionate contact with the criminal justice system and the overall intensification of processes of group marginalization and social exclusion.

The labour market experience forms a key part of the explanation as to why these social inequalities are intensifying. There is a persistent racialised income gap as well as a gap in labour market participation, unemployment rates and sectoral concentration.

## **Economic exclusion in the labour market**

In 1984, the Abella Commission stated that the differences in unemployment rates and incomes between racialized group members and the non-racialized should be understood as 'social indicators' of job discrimination and that, furthermore, such discrimination can be characterized as systemic. The same year, a parliamentary committee report, titled *Equality Now*, concluded that similarly that racialized group members were disadvantaged in the labour market because of racial discrimination in employment.

State responses to racism and racial discrimination in employment have been varied and inconsistent at best. Key legislative instruments such as the *Charter of Rights and Freedom*, and the *Multiculturalism Act, 1988* and the various provincial human rights legislation and commissions have provided a basis for a culture of tolerance, by imposing sanctions on certain forms of racial expression and racially motivated action. However, what is still elusive is a systematic commitment to building an anti-racism culture, in the workplaces, in the schools, in all other state and social institutions, as well as the key cultural institutions –such as the media - that are central to intervening in public debates and discourses that determine public policy.

Employment equity is a Canadian designed response to discrimination in employment. Although the federal *Employment Equity Act, 1986* and related affirmative action programs since implemented were motivated by the goal of removing inequalities in income and occupational status between racialized group members and the non-racialized that had been identified by the Royal Commission, their effectiveness has been largely limited.<sup>10</sup> Seven provinces have employment equity policies (British Columbia, Manitoba, Saskatchewan, Quebec, Nova Scotia, New Brunswick, and Prince Edward Island). Most of these policies apply to the public sector and only British Columbia has employment equity legislation. There is wide variation in policies although most policies require some level of planning and reporting or monitoring, focussing on recruitment, retention, and promotion. Most also attempt to address pay equity as an aspect of employment equity, with some provinces having specific legislation addressing pay inequity. Their impact on discrimination in employment has been constrained by the lack of adequate enforcement mechanisms – most are not legislated but voluntary programs and because they are not comprehensive.<sup>11</sup>

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<sup>10</sup> Abella, R. *Commission Report on Equality in Employment* (Ottawa: Supply & Services Canada, 1985); House of Commons. *Equality Now! Report of the Special Committee on the Participation of Visible Minorities in Canadian Society* (Ottawa: 1984)

<sup>11</sup> Bakan, A. & A. Kobayashi. *Employment Equity Policy in Canada: An Inter-provincial Comparison*. (Ottawa: Status of Women Canada, 2000).

Ontario has gone the furthest in attempting to implement employment equity with its Employment Equity Act 1993. The Act called for a mandatory program covering public sector, broader public sector and all workplaces with 50 or more employees. It focused on data collection, employment systems reviews, reporting and setting targets for building representative workplaces. However, it was repealed in 1995 before its impact could be established. In many of the workplaces where work had begun, management reversed course. So because of inadequate state response, economic exclusion has not diminished but intensified.<sup>12</sup>

Today, racialized economic exclusion takes the form of labour market segregation, unequal access to employment, employment discrimination, disproportionate vulnerability to unemployment and underemployment, income inequality and precarious employment. These act both as characteristics and causes of exclusion. Attachment to the labour market is essential to both livelihood and to the production of identity in society. It determines both the ability to meet material needs as well as a sense of belonging, dignity and self-esteem. Labour market related exclusion also has direct implications for health status not just because of the impact on income inequality as a social determinant of health, but also because of the extent to which working conditions, mobility in workplaces, fairness in the distribution of opportunities, utilization of acquired skills all have a direct bearing on the levels of stress generated in workplaces.

The neo-liberal restructuring of Canada's economy and labour market towards flexible labour markets has increasingly stratified labour markets along racial lines, with the disproportionate representation of racialized group members in low income sectors and low end occupations, and under-representation in high income sectors and occupations. By accentuating the vulnerabilities arising from racial discrimination in employment identified by the Abella report, economic restructuring has intensified the racialization (and feminization) of labour market segregation leading to occupational and sectoral segregation or the ghettoization of racialized groups in low income, low status sectors with poor working conditions, and low levels of unionization.

These labour market patterns emerging out of a context of neo-liberal restructuring of the economy are conditioned by global competition and demands for flexible deployment of labour, persistent racial inequality in access to employment, and the growing predominance of precarious forms of work in many of the sectors racialized group members are disproportionately represented. Hence the disproportionate racialized group representation in low income sectors and occupations point to racially unequal incidence of low income and racially defined neighbourhood selection.

In the 1990s, the fastest growing form of work in Canada was precarious work also referred to as contingent work or non-standard work - contract, temporary, part-time, and

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<sup>12</sup> Agocs, C. "Canada's Employment Equity Legislation and Policy, 1986-2000: Unfulfilled Promises" in C. Agocs (ed) Workplace Equality: International Perspectives on Legislation, Policy and Practice (The Hague: Kluwer Law International, 2002).

shift work with no job security, poor and often unsafe working conditions, intensive labour, excessive hours, low wages, and no benefits. In the early 1990s, it grew by 58%, compared to 18% for full time employment. (Vosko, 2000; de Wolf, 2000).<sup>13</sup>

Labour market research shows disproportionate participation of racialized groups in such industries increasingly dominated by non-standard forms of work as textiles, clothing, hospitality, and retailing industries. These tend to have average lower wages because of the characteristics of precariousness and insecurity – temporary, part time-time, contract work with little job security and low unionization rates. On the other hand, racialized groups are under represented in such high income sectors as the public service, automobile making, metal working, which also happen to be highly unionized and so more job secure.<sup>14</sup>

Most of this work is low-skilled and low paying and the working conditions are often unsafe. Such non-regulated service occupations as newspaper carriers, pizza deliverers, janitors and cleaners, dish washers, parking lot attendants, are dominated by racialized group members and recent immigrants who work in conditions with little or no protection, - condition similar to low end work in the hospitality and health care sectors, light manufacturing assembly plants, textile and home-based garment work. Many employees are 'self-employed' or sub-contracted on exploitative contracts by temporary employment agencies, with some assigning work based on racist stereotypes.

Racialized women are particularly over-represented in another form of self-employment - unregulated piecework in the home. Gendered racism and neo-liberal restructuring have conditioned the emergence of what some have called Canada's sweatshops, especially in the garment and clothing industry (Yanz, et al, 1999; Vosko, 2000). The intensity of the experience of exploitation imposes stressors especially on racialized and immigrant women who continue to carry a disproportionate bulk of house work, to go with the sub-contract wage work, and many of whom are single parents.<sup>15</sup>

### **Inequality in access to employment**

The difference in unemployment rates between racialised groups and non-racialized groups in Canada dramatically demonstrates the unequal access to work opportunities. In

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<sup>13</sup> de Wolff, A. *Breaking The Myth of Flexible Work: Contingent Work in Toronto* (Toronto: Contingent Worker's Project, 2000); Vosko, L. *Temporary Work: The Gendered Rise of a Precarious Employment Relationship* (Toronto: University of Toronto Press, 2000).

<sup>14</sup> Zeytinoglu, I & J. Muteshi "Gender, race, and Class Dimensions of non-standard work' *Industrial Relations*, Vol. 55, Issue 1, Winter 2000 p133-166; L. Vosko *Temporary Work: The Gendered Rise of a Precarious Employment Relationship* (Toronto: University of Toronto Press, 2000); de Wolff, A., *Breaking the Myth of Flexible Work* (Toronto: Contingent Workers Project, 2000); B. Fox & P. Sugiman "Flexible Work, Flexible Workers: The Restructuring of Clerical Work in the large telecommunications Company" *Studies in Political Economy* Vol. 60 Autumn, 1999 pp59-84; K. Hughes *Gender and Self Employment: Assessing Trends and policy implications* (Canadian Policy research Network, November, 1999)

<sup>15</sup> Yanz, L, B. Jeffcoat, D. Ladd, J. Atlin & the Maquila Solidarity Network. *Policy Options to Improve Standards for Women Garment Workers in Canada and Internationally*. (Status of Women Canada: January, 1999);

1991, the unemployment rate for racialized group members was 16%, compared to 9.6% for the general population.<sup>16</sup> While both rates fell by 2001, bringing the general population rate down to 6.7% , it contrasted with the 12.6% rate for racialized groups, almost twice as high (table 5 below). The data show that the levels of unemployment were much higher among specific racialised groups, including women, youth and those without post-secondary education in 1996 but leveled off in 2001 except among recent immigrants (those in the country for five years or less). For instance, while the 1995 rate for racialised women shows a gender gap of 15.3% compared to 13.2% for racialised men, both were that much higher compared to 9.4% for other women and 9.9% for other men.<sup>17</sup> In 1991, the participation rate for the non-racialized group adult population was 78% compared to 70.5 percent of the racialized adult population. The participation gap grew in 1996, with the participation rate for the non-racialized group adult population dropping to 75% compared to 66 percent of the racialized adult population. While the participation rate for the total population improved to 80% in 2001, racialized participation rates lagged at 66% (table 4

**Table 4. Labour force participation rates for Immigrants, Non-Immigrants, and Racialized groups (%)**

	1981	1991	2001
Total labour force	75.5	78.2	80.3
Canadian born	74.6	78.7	81.8
All immigrants	79.3	77.2	75.6
Recent Immigrants	75.7	68.6	65.8
Racialized groups	n/a	70.5	66.0

Source: Statistics Canada, 2003: The Changing Profile of Canada's Labour Force and The Conference Board of Canada, April 2004, Making a Visible Difference The Contribution of Visible Minorities to Canadian Economic Growth.

**Table 5. Unemployment rates for Immigrants, Non-Immigrants, and racialized groups (%)**

	1981	1991	2001
Total labour force	5.9	9.6	6.7
Canadian born	6.3	9.4	6.4
All immigrants	4.5	10.4	7.9
Recent Immigrants	6.0	15.6	12.1
Racialized groups	n/a	16	2.6

Source: Statistics Canada, 2001 Census Analysis Series. The Changing Profile of Canada's Labour Force, February, 11, 2000 and 2001 Employment Equity Act Report, Human Resource and Development Canada.

<sup>16</sup> Dibbs, Ruth and Leesti, Tracey, "Survey of Labour and Income Dynamics: Visible Minorities and Aboriginal Peoples," Statistics Canada, 1995.

<sup>17</sup> Jennifer Chard, Women in Visible Minorities, in Women in Canada, Statistics Canada, Ottawa, 2000: A gender based statistical report.

## Racialized Youth and employment discrimination

Racial discrimination is a key determinant of opportunity for racialized youth in the labour market as well. General youth wages are 56.7% of other workers, 15.9% of whom are racialized youth and 41% are Canadian born. Despite higher educational attainment, they experience lower labour participation rates, lower than average incomes, and their unemployment rates are higher than average. This is especially true for black youth with almost twice the unemployment rates of all young workers.

**Table: Racialized Youth in the Labour Market, 2001**

Age 15-24	Labour Market Participation	Unemployment Rate
All persons	58.4%	13.3%
Immigrant Youth	55.0%	14.8%
Racialized Youth	43.7%	16.1%
Racialized youth – Can born	48.4%	15.5%
Black Youth – Can. Born	33.2%	21.4%

Source: Census of Canada. Catalogue 97F0012XCB200102.

**Table: Racialized Youth in the Labour Market, 2001**

Age 20-24	Labour Market Participation	Unemployment Rate
All persons	72.9%	12.5%
Racialized Youth	67.3%	15.4%
Racialized Youth – Can. Born	64.7%	14.6%
Black Youth – Can. Born	64.8%	16.5%

Source: Census of Canada. Catalogue 97F0012XCB200102

## Income inequality

Racialized Canadians in 1996 received pre-tax average earnings of \$19,227, while non-racialized Canadians made \$25,069, or 23% more or \$5,464 - equal to about 6 months rent for average earners. In 1997, the gap grew to 25% or \$6,189. In 1998, it fell back somewhat to 24% or \$5,650. The median before tax income gap remained statistically stagnant (29% in 1996 and 28% in 1998) and with the government intervention effect, the median after tax income gap grew from 23% to 25%. By 2000 the median after tax income gap was 13.3% and an average after tax income gap of 12.2%. The gap was highest among male youth (average after tax income gap 42.3% and median after tax income gap 38.7%), as well as those with less than high school education (median after

tax income gap 20.6%) and those over 65 years ( average income gap 28% and median income gap 21%).<sup>18</sup>

Recent Statistics Canada analyses show that male recent immigrant full time employment earnings fell 7% between 1980 and 2000. This compares with a rise of 7% for Canadian born cohort.<sup>19</sup> Among those with university education the drop was even deeper at 13%. For female recent immigrant full time employment earnings rose but by less than the average full time female earnings. The exposure to low income implications of these trends are alarming.

### **Labour market segmentation and precarious forms of employment**

Racialized group members are over represented in many low paying occupations, with high levels of precariousness while they are under represented in the better paying occupations with more secure jobs. Racialized groups were over-represented in the textile, light manufacturing and service sectors occupations such as sewing machine operators (46%), electronic assemblers (42%), plastics processing (36.8%), labourers in textile processing (40%), taxi and limo drivers (36.6%), weavers and knitters (37.5%), fabrics, fur and leather cutters (40.1%), iron and pressing (40.6%). They were under-represented in senior management (2.0%), professionals (13.8%), supervisors (6.3%), fire-fighters (2.0%), legislators (2.2%)

Precarious employment is generally defined by such conditions as low pay, no job security, poor and often unsafe working conditions, intensified work schedules, excessive hours of work, low or no benefits, and low or no control over work for workers in the workplace. Precarious employment depresses wages in the sectors in which it becomes generalized. Recent immigrant workers, especially women, are disproportionately represented among the occupations and sectors that are highly dependant on precarious work arrangements, such as commercial and retail, hospitality and other service industries, light manufacturing, textile and garment, domestic work), as well as the low-status highly precarious occupations (such as manual, sales, clerical, janitorial, food service, harvesting, low-end health care workers, domestic workers).

### **Union Density**

It is among unionized racialised workers incomes that the wage differential is single digit. In fact, in 1996, the average wages of racialized unionized workers were comparable to those with university degrees, suggesting that unionization is a serious nongovernmental option to deal with the racialized income gap. Yet racialised group members are underrepresented in unionized work. Between 1996 and 2001, the proportion of racialized workers among paid workers rose from 8.4% to 9.3%. Union coverage among

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<sup>18</sup> Galabuzi, G. Canada's Creeping Economic Apartheid: The economic segregation and social marginalization of racialized groups. (Toronto: CJS Foundation for Research & Education, 2001)

<sup>19</sup> Frenette, M & R. Morissette. Will they ever converge? Earnings of immigrants and Canadian-born workers over the last two decades. Statistics Canada (2003). Analytical Studies paper No. 215

racialized workers rose slightly from 19.7% to 21.3%. representing about 6.9% of all unionized workers (up from 5.8% in 1996). However, this is still much lower than the over rate of union density at 32.2% in the Canadian economy.<sup>20</sup>

What is being argued here is that racialized people experience higher rates of unemployment than the average Canadian and those who are employed earn considerably less on average than the average Canadian. These lower employment incomes occur even among those with comparable education levels. The growing labour market segregation means that racialized group members are disproportionately employed in low income and low status jobs compared to the Canadian averages. Because of income constraints, racialized people often face inadequate nutrition, substandard housing, higher unemployment and poverty, along with racial discrimination in accessing services, culturally inappropriate services and service deficits, high school drop out rates and subsequent high health risks including rates of physical, social, mental illness and violence.

These developments have had numerous adverse social impacts, leading to differential life chances for racialized group members such as:

- A double digit racialized income gap
- Higher than average unemployment
- Disproportionate exposure to low income
- Differential access to housing leading to Neighbourhood racial segregation
- Disproportionate contact with the criminal Justice system (criminalization of youth)
- Higher health risks

These are characteristics of a deepening condition of poverty. It is the broader socio-economic processes that both reproduce and explain the emergence of the phenomenon we refer to as the racialization of poverty - whose key indicators include the disproportionate and recurring incidence of low income and racialized spatial concentration of poverty in key neighbourhoods in Canada's urban centres.

## **The Racialization of Poverty**

Perhaps the most significant development arising out of these labour conditions is the one described as the racialization of poverty. The racialization of poverty is a process by which poverty becomes more concentrated and reproduced among racialized group members, in some cases inter-generationally. The racialization of poverty emerges out of structural socio-economic features that pre-determine the disproportionate incidence of poverty among racialized group members. What seems to explain these trends are those structural changes in the Canadian economy identified above and the compound impact of these forces which accentuate historical forms of racial discrimination in the Canadian

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<sup>20</sup> Jackson, A. & S. Schetagne. *Solidarity for Ever? An Analysis of Changes in Union Density.* (Ottawa: Canadian Labour Congress, 2003)

labour market to create a process of social and economic marginalization the result of which is this disproportionate vulnerability to poverty among racialized group communities. Racialized groups are also disproportionately highly immigrant communities (67%) and suffer from the impact of the immigration status. Moreover, current trends indicate that the economic inequality between highly racialized immigrants group and those who are Canadian-born is becoming greater and more permanent. That was not always the case. Infact, traditional trends suggest that immigrants tended to outperform Canadian-born counterparts, over a ten-year period because of their high educational levels and age advantage. Increasingly, racialized people live on the margins of society, surrounded by others in similar circumstances, excluded from the job market and other "avenues of upward mobility." Increasingly they live, in neighbourhoods of deep poverty with high unemployment rates, significant welfare dependency and high school dropout rates, condition that reproduce poverty.

The racialization of poverty is also linked to the entrenchment of disproportionate privileged access to the economic resources of Canadian society by a minority but powerful segment of the majority population on the other, which also explains the polarizations in income and wealth in the society as a whole. The concentration of economic, social and political power that has emerged as the market has become more prominent in social regulation in Canada explains the growing gap between rich and poor as well as the racialization of that gap (Yalnyzian, 1998; Kunz et al, 2001; Galabuzi, 2001, Dibbs et al, 1995; Jackson, 2001).<sup>21</sup> Racialized community members and aboriginal peoples are twice as likely to be poor than other Canadians because of the intensified economic and social and economic exploitation of these communities whose members have to endure historical racial and gender inequalities accentuated by the restructuring of the Canadian economy and more recently racial profiling. In the midst of the socio-economic crisis that has resulted, the different levels of government have responded by retreating from engagement and abandoning anti-racism programs and policies aimed at removing the barriers to economic equity. The resulting powerlessness, socio-economic marginalization and loss of voice has compounded the groups' inability to put issues social inequality and, particularly the racialization of poverty on the political agenda. They are unable to seek remedy effectively through political representation.

## **The experience of low income<sup>22</sup>**

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<sup>21</sup> Kunz, J.L., Milan, A. & Schetagne, S. *Unequal Access: A Canadian Profile of Racial Differences in Education, Employment and Income* (Toronto: Canadian Race Relations Foundation, 2000); Dibbs, Ruth and Leesti, Tracey, "Survey of Labour and Income Dynamics: Visible Minorities and Aboriginal Peoples," Statistics Canada, 1995. Galabuzi, G. *Canada's Creeping Economic Apartheid: The Economic Segregation and Social Marginalization of Racialized Groups* (Toronto: Centre for Social Justice, 2001); Jackson, A. "Poverty and Racism" *Perception* (Canadian Council on Social Development) 24, 4, 2001; Yalnyzian, A., *The Growing Gap: A Report on the Growing Income Inequality Between the Rich and Poor in Canada* (Toronto: Centre for Social Justice, 1998).

<sup>22</sup> In this paper, poverty denotes exposure to low income as measured using the Statistics Canada Low Income Cut Off (LICO), which varies by Census Metropolitan Area. Other research uses the Low Income Measure – a relative measure of low income set nationally at 50% of the median family income (\$29, 370 in 2000 dollars).

“Poverty has many faces. It is much more than low income. It also reflects poor health and education, deprivation in knowledge and communication, inability to exercise human and political rights and the absence of dignity, confidence and self-respect”  
(Human Development Report 1997:iii).

***Racialized group members were twice as likely as other Canadians to live in poverty.***  
(Lee, 2000)

Poverty is a much more complex phenomenon than simply income deprivation.<sup>23</sup> Poverty entails lack of empowerment, lack of knowledge and lack of opportunity as well as lack of income and capital relative to the others in society and so infringes the dignity of its victims. Our concern is about the intensity of poverty among racialized group members as measured by incidence of poverty, depth of poverty and experience of inequality. From a materialist approach, we know that income inequality and incidence of low income are simply manifestations of underlying historical socio-cultural, economic and political structures and processes of inequality that are responsible for the depth of poverty. Here I look at some of various dimensions of the experience of poverty, beginning with the most obvious: income deprivation, but also housing, neighbourhood selection, health and contact with the criminal justice system. National low income data show that in 1995, 35.6% members of racialized groups lived under the low income cut off (poverty line) compared with 17.6% in the general Canadian population. The numbers that year were comparable in urban areas - 38% for racialized groups and 20% the rest of the population, a rate twice as high (Lee, 2000). In 1996, while racialized groups members accounted for 21.6 per cent of the urban population, they accounted for 33 per cent of the urban poor. That same year, 36.8% of women and 35% of men in racialized communities were low-income earners, compared to 19.2% of other women and 16% of other men. In 1995, the rate for children under six living in low income families is an astounding 45 per cent - almost twice the overall figure of 26 per cent for all children living in Canada. In Canada's urban centres, in 1996, while racialized groups members account for 21.6 per cent of the population, they account for 33 per cent of the urban poor. The improvements in the economy have not dented the double digit gap in poverty rates. Family poverty rates were similar – in 1998, the rate for racialized groups was 19% and 10.4% for other Canadian families (Lee, 2000; Jackson, 2001).<sup>24</sup>

***Approximately 50% of racialized children live in poverty.*** (Lee, 2000)

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<sup>23</sup> There are three generally recognized approaches to poverty: Absolute poverty – understood as having less than the absolute minimum using a market basket measure - based on minimum set of necessities; Relative poverty – understood as having significantly less than others in society – less than some percentage of median income; and Subjective poverty – understood as not having enough to get along as determined by the victims of poverty themselves

<sup>24</sup> Lee, K., Urban Poverty in Canada: A Statistical Profile (Canadian Council on Social Development, 2000).

The Ornstein report (2000) revealed that high rates are concentrated among certain groups such as Latin American, Africans Blacks and Caribbeans, and Arabs and West Asians – with rates at 40 per cent and higher in 1996, or roughly three times the Toronto rate. Similarly, racialized women who are doubly disadvantaged in the labour market sustain higher levels of low income. So are children whose parents find themselves in these conditions. This is especially the case among those in lone parent led families. The poverty rates among racialized children are as high as 50%. These findings are confirmed by accounts in the popular press, which reveal a dramatic increase in the use of food banks by highly-educated newcomers (Quinn, 2002).

Racialized group families are twice as likely to be poor as are other Canadian families. In some urban areas and among some groups of racialized group members, the rate is three to four times. The situation is particularly adverse with single parent families, most of which are women led.<sup>25</sup> Townson (2000) points out that we seem to overlook the fact that children are poor because their parents are poor. It is the poverty of women that is behind the poverty of so much of what we refer to as child poverty.<sup>26</sup>

**Incidence of Poverty Among Lone Parents by Ethno-racial group  
Toronto, 1996. % Below Low Income Cut-Offs**

Ethno-Racial Group	Female Lone parents with one or more children under 19
Latin American Origins	75.4
Arab & West Asian	74.1
African, Black and Caribbean	70.8
East & Southeast Asian, Pacific Islander	60.2
South Asian	58.7
<u>European</u>	<u>47.7</u>

Source: Statistics Canada 1996 Census; Tabulation by Michael Ornstein, Institute for Social Research, York University<sup>27</sup>

In urban centres like Toronto, Vancouver, Montreal, Calgary where racialized group populations are statistically significant, the cumulative impact of the normalization of racially segmented labour markets, accounting for the income and employment gap between these groups and whites, is not just the racialization of poverty, but combined with other social patterns such as the sustained school drop-out rates, the racialization of penal system and the criminalization of racialized youth, and the racial segregation of urban low income neighbourhoods. These conditions have created a deepening social marginalization such that in a number of low income neighbourhoods in Toronto where racialized group members are disproportionately represented as tenants of poorly maintained public and sub-standard private housing, the process of immiseration,

<sup>25</sup> Ornstein, M., *Ethno-Cultural Inequality in Toronto: Analysis of the 1996 Census* (Toronto: Access and Equity Unit, City of Toronto, 2000)

<sup>26</sup> Monica Townson, *A Report Card on Women and Poverty*, Canadian Centre for Policy Alternatives, April 2000:1

<sup>27</sup> Michael Ornstein, 2000

desperation, hopelessness, disempowerment, has degenerated into a level of violence that claimed many young lives and threatens to spiral out of control. These are all signs of what has been referred to as deep poverty (Ley & Smith, 1997).

According to a recent United Way of Greater Toronto report titled *Poverty by Postal Code*, in Toronto in 2001, racialized groups members and immigrants were almost three times as likely to live in poverty whether they are employed or not. About 29.5% of them lived below the poverty line, 24% of immigrants compared to the overall average of 11.6% among non-racialized. The overall Toronto poverty rate at 19% was higher than the Canadian rate at 14.7%. While the poverty rate for non-racialized population fell by 28%, poverty among racialized families rose by 361% between 1980 and 2000.<sup>28</sup>

Some of the highest increases in low income rates in Canada have occurred among recent immigrants, 75% of who are racialized group members. Low-income rates rise among successive groups of immigrants almost doubled between 1980 and 1995, peaking at 47% before easing up in the late 1990s. In 1980, 24.6% of immigrants who had arrived during the previous five-year period lived below the poverty line. By 1990, the low-income rate among recent immigrants had increased to 31.3%. It rose further to 47.0% in 1995 but fell back somewhat to 35.8% in 2000. In 1998, the annual wages of racialized immigrants were one-third less those of other (non-racialized) immigrants, partly explaining why the poverty rate for racialized immigrants arriving after 1986 ranged between 36% and 50% (Jackson, 2001). This is happening at a time when average poverty rates have been generally falling in the Canadian population. While low income rates among recent immigrants with less than high school graduation increased by 24% from 1980 to 2000, low income rates increased by 50% among high school graduates and a whopping 66% among university educated immigrants!<sup>29</sup>

Recent immigrants rates of employment declined markedly between 1986 and 1996, coinciding with the shift towards racialized immigrant as the predominant source of Canadian immigration. The result is that Canada's immigrants exhibit a higher incidence of poverty and greater dependence on social assistance than their predecessors, in spite of the fact that the percentage of university graduates among them is higher in all categories of immigrants including family class and refugees as well as economic immigrants than it is for the Canadian-born. This deterioration of their socio-economic status has occurred during a period when immigrants have more educational attainment than any of their predecessors. The percentage of recent immigrants with a university degree rose to 34.1 per cent in 2000 from 7.6 per cent in 1980 (CIC, 2002).

Studies show that former waves of immigrants were subject to a short term 'immigration effect' which over time - not longer than 10 years for the unskilled and as low as 2 years for the skilled - they were able to overcome and either catch up to their Canadian born

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<sup>28</sup> United Way of Greater Toronto. *Poverty by Postal Code: The Geography of Neighbourhood Poverty 1981-2001* (Toronto: UWGT /CCSD, 2004).

<sup>29</sup> Picot, G. & F. Hou. *The Rise in Low-Income Rates Among Immigrants in Canada*. Statistics Canada (2003).

counterparts or even surpass their performance in the economy. Their employment participation rates were as high or higher than the Canadian-born, and their wages and salaries rose gradually to the level of the Canadian-born.

However recent research indicates persistent and growing difficulties in the labour market integration of immigrants, especially recent immigrants. Rates of unemployment and underemployment are increasing for individual immigrants, as are rates of poverty for immigrant families. So the traditional trajectory that saw immigrants catch up with other Canadians over time seems to have been reversed in the case of racialized immigrants. Of course the irony is that over that period of time, the level of education, usually an indicator of economic success, has been growing.

The experience of poverty has many social implications and impacts on an individual, or family's or group's life chances. Low incomes cut into standard basic needs expenditure budgets, dooming many racialized people to substandard and increasingly segregated housing, poor quality diets, reliance on food banks, used clothing, unstable home life and school drop out – all of which had a direct impact on the dignity of the victims of poverty. Some of the effects identified include learning difficulties for the young, social and psychological pressures within the family, increased mental and other health risks, and an array of symptoms of social exclusion, including increased contact with the criminal justice system and an inability to participate fully in the civic and social life of the community, or to exercise democratic rights such as voting and advocacy.

These impacts on the quality of life and citizenship represent serious harm to the dignity of the individuals or groups victimized by racialized poverty. These impacts are also differential because of the racialized character of poverty.

### **Racialization of poverty and neighbourhood selection**

The racialization of poverty has had a major impact on neighbourhood selection and access to adequate housing for new immigrants and racialized groups. In Canada's urban centres, the spatial concentration of poverty or residential segregation is intensifying along racial lines. Immigrants in Toronto and Montreal are more likely than non-immigrants to live in neighbourhoods with high rates of poverty and increasingly they are concentrated in what have come to be called racialized enclaves - a growing set of racially segregated neighbourhoods (see table 6 below). As urban housing markets become more segregated, racialized groups are relegated to substandard, marginal and often over priced housing.<sup>30</sup>

The diminishing commitment by the state towards income redistribution and income supports, social services and adequate funding for health care and education are juxtaposed on racial inequality in access to work and in employment income; the racially unequal incidence of low income; the shift towards flexible labour deployment and precarious forms of work in the urban economies, and the marked increase in South-

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<sup>30</sup> Margaret Philp, Poor? Coloured? Then it's no vacancy: The Globe and Mail, July 18, 2000,

North immigration to create these isolated racially defined low income neighbourhoods that vulnerable to disintegrating of social institutions and such anti-social outcome such as violence. These growing neighbourhood inequalities limit access to social services, increase contact with the criminal justice system, social disintegration and violence and engender higher health risks.

Racialized spatial concentration of poverty means that racialized group members live in neighbourhoods that are heavily concentrated and "hypersegregated" from the rest of society and often with disintegrating institutions and increasingly dealing with social deficits such as inadequate access to counselling services, life skills training, child care, recreation, health care services (Kazemipur and Halli 1997; 2000). Increasingly these geographical areas represent racialized enclaves subject to the distresses of low income communities They also intensify the social distance between racialized groups and non-racialized groups in Canadian society, thereby reproducing residential or neighbourhood segregation.<sup>31</sup>

Recent studies by Hou & Balakrishnan (1998), Kazemipur & Halli (2000), Fong & Shibuya (2000), Ley & Smith, (1997) among others suggest that these areas show characteristics of 'ghettoization' or spatial concentration of poverty, signs of racial concentration in urban cores, high density, tightly clustered, limited exposure to majority communities. From 1980 to 2001, there was a sizeable growth in these neighbourhoods in Canada's three largest cities, with over 73% of Canada's racialized population.<sup>32</sup> The number of these racialized enclaves increased dramatically in Toronto, Montreal and Vancouver – from 6 in 1981 to 77 in 1991 up to 254 in 2001.<sup>33</sup>

Toronto (135) and Vancouver (111) had more racialized enclaves than Montreal (8) most of which reflect the three largest racialized communities in Canada – Chinese, South Asian and Black. Despite the shared socio-economic indicators as shown below (table 6), there is little overlap among the neighbourhood selection patterns of these groups.

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<sup>31</sup> Driedger, L. *The Ethnic Factor: Identity in Diversity*. (Toronto: McGraw-Hill Ryerson Ltd, 1989); Massey, D.S. "Social Class and Ethnic Segregation: A Reconsideration of Methods and Conclusions:" *American Sociological Review* 46, 5, 1981:641-650

<sup>32</sup> Kazemipur, A. & Halli, S., "The Invisible Barrier: Neighbourhood Poverty and Integration of Immigrants in Canada," *Journal of International Migration and Integration* 1, no. 1 (1997): 85-100; See also Kazemipur & Halli, *The New Poverty in Canada: Ethnic groups and Ghetto Neighbourhoods* (Toronto: Thompson Educational Publishing, 2000). Balakrishnan, T. & Selvanthan, K., "Ethnic Residential Segregation in Metropolitan Canada," in *Ethnic Demography*, eds. Hilli, S., Trovato, F. and Driedger, Leo (Ottawa: Carleton University Press, 1990); Fong, E. & Gulia, M. "Differences in Neighbourhood Qualities among Racial and Ethnic Groups in Canada" in *Sociology Inquiry* Vol. 69, No. 4, fall 1999 pp575-598; Fong, E. & M. Gulia "The attainment of neighbourhood qualities among British, Chinese, and Black immigrants in Toronto and Vancouver," *Research in Community Sociology* 6 (1996): 123-145; Fong, E., "A Systemic Approach to Racial Residential Segregation," *Social Science Research* 26 (1997): 465-86; Fong, E & Shibuya, K., "The Spatial Separation of the Poor in Canadian Cities," *Demography* 37, no. 4, November 2000:449-59

<sup>33</sup> Hou, F. & G. Picot. "Visible Minority Neighbourhoods in Toronto, Montreal and Vancouver" *Canadian social trends*. Statistics Canada. Catalogue no. 11-008. Spring 2004. These enclaves represent census tract areas with at least 30% of the population belonging to the designated group. In 2001, each census tract included about 5000 people.

**Table : Toronto Area racialized enclaves and experience of high poverty rates**

	University degree	un-employment	low income	single parent
Chinese	21.2%	11.2%	28.4%	11.7%
South Asian	11.8%	13.1%	28.3%	17.6%
Black	8.7%	18.3%	48.5%	33.7%

Source: Statistics Canada, 2003

As table 6 shows, these racialized enclaves have above average levels of unemployment, low income, single parent households and school drop out rates – all characteristics of deep and enduring inter-generational poverty.<sup>34</sup>

Young people living in these low income areas often struggle with alienation from their parents and community of origin, and from the broader society. Often the social services they need to cope with dislocation are lacking, the housing on offer is often sub-standard or if it is public housing it is largely poorly maintained because of cutbacks and they face the crises of unemployment, despair and violence. They are more likely to drop out of school and continue the cycle of poverty and because their alienation often translates into anti-social behaviour, they are disproportionate targets of contact with the criminal justice system. According to the Commission on Systemic racism in the Criminal justice System in Ontario (1995), incarceration rates for young blacks rose by 203% between 1986 and 1994. As well, young blacks in Toronto are four times as likely to be the victims of homicide than other Torontonians.<sup>35</sup>

Homelessness is said to be proliferating among racialized group members because of the incidence of low income and the housing crises in many urban areas (Lee, 2000; Peel, 2000). Homelessness is an extreme form of social exclusion that suggests a complexity of causes and factors. Increasingly, recent immigrants and racialized people are more likely to be homeless in Canada's urban centres than they were ten years ago. It compounds other sources of stresses in their lives. Homelessness has been associated

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<sup>34</sup> Clark, W. "Residential Segregation in American Cities: Common ground and Differences in Interpretation" Population Research and Policy Review 8, 1989:193-197

<sup>35</sup> Gittens, M. & Cole, D. Report of the Ontario Commission on Systemic Racism in the Criminal Justice System (Toronto: Queens Printer, 1995); Gittens, M. & Cole, D., Racism Behind Bars: The Treatment of Black and Racial Minority Prisoners in Ontario Prisons, 1994;

with early mortality, health factors such as substance abuse, mental illness, infectious diseases, and difficulty accessing health services.<sup>36</sup>

## **Racialization of poverty and health status**

*“if today’s immigrants have higher rates of illness than the native-born, the increased risk probably results from an interaction between personal vulnerability and resettlement stress, as well as lack of services, rather than from diseases they bring with them to Canada” (Health Canada, 1998).*

*A study of African Canadian Women and HIV/AIDS done by Women's Health in Women's Hands, respondents said that racist experiences with the health care system was one of the reason African Canadian women reported a reluctance to access the health care system for services like HIV/AIDS treatment, education and care*

(Tharoa & Massaquoi, 2001).

*"I have to worry about "feeding, clothing, and housing my children. I don't have time to think about AIDS"*

African-Canadian woman quoted in the Toronto study cited above

Universal access to health care is now a core Canadian value, espoused broadly by all segments of the political elite as defining Canadian society. But beyond the policy articulation of the universality of coverage, other determinants such as income, gender, race, immigrant status and geography increasingly define the translation of the concept of universality as unequally differentiated. The processes of racialization of poverty affect the health status of racialized and recent immigrant communities. There is a gap between that promise and the reality of unequal access to health service utilization, leading to inequalities in health status arising out of the inequalities in the social determinants of health. It is the gap between the promise of citizenship and the reality of exclusion that represents the extent of social exclusion and the unequal impact on the well-being of members of racialized groups and immigrants in Canada. While there is limited empirical research to draw on, there is significant anecdotal evidence to make the case.

It follows though that given the manifestations of exclusion presented above, based on the social determinants of health perspective - a synthesis of public health and social scientific literature, which suggests that the most important antecedents of human health status are not medical care inputs and health behaviours (smoking, diet, exercise, etc.), but rather social and economic characteristics of individuals and populations - there is significant convergence between the racialization of poverty and diminished racialized health status. The intensified exploitation characterized by demands for longer working hours and low pay, and or multiple part-time jobs, the intensity of work under a deregulated labour market becomes a major source of stress and related health conditions.

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<sup>36</sup> Toronto Mayor's Homelessness Action Task Force Report. Taking Responsibility for Homelessness: An Action Plan for Toronto (City of Toronto, 1999).

While empirical research is under-developed, there is significant qualitative evidence, collected from group members, service providers, and some qualitative community based research to suggest that these act as determinants of the health status for socially marginalized groups such as racialized women, youth and men, immigrants and Aboriginal peoples (Agnew, 2002; Tharoa & Massaquoi, 2001).<sup>37</sup> These conditions contribute to and mediate the experience of inequality into powerlessness, hopelessness, and despair contributing to the emotional and physical health of the members of the groups. These in turn negatively impact attempts by affected individuals, groups and communities to achieve full citizenship because of their inability to claim social and political rights enjoyed by other Canadians - including the right to physical and mental well-being of residents (Canada Health Act, 1984).

Institutionalized racism in the health care system characterized by language barriers, lack of cultural sensitivity, absence of cultural competencies, barriers to access to health service utilization and inadequate funding for community health services has been identified as impacting the health status of racialized group members. Mainstream health care institutions are Eurocentric, imposing a European and white cultural norms as standard and universal and by extension, their cultural hegemony imposes a burden on racialized and immigrant communities. The cumulative burden of the subtle, ordinary by persistent everyday forms of racism, compounded by experiences of marginalization also determines health status. The psychological pressures of daily resisting these and other forms of oppression add up to a complex of factors that undermine the health status of racialized and immigrant group members. They are compounded by the low occupation status, low housing and neighbourhood status, high unemployment, and high levels of poverty. The underdeveloped cultural competencies and racist stereotypes among health practitioners also tend to impact health status negatively.<sup>38</sup>

### **Racism and health**

It is generally acknowledged that racism is a key source of stress and hypertension in racialized group communities. Everyday forms of racism, often compounded by sexism and xenophobia, and the related conditions of underemployment, non-recognition of prior accreditation, low standard housing, residence in low income neighbourhoods with significant social deficits, violence against women and other forms of domestic and neighbourhood violence, targeted policing and disproportionate criminalization and

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<sup>37</sup> Agnew, V. 2002. Gender, Migration and Citizenship resources Project: Part II: A literature Review and Bibliography on Health. Toronto: Centre for Feminist Research, York University; Adams, D. Health Issues of Women of Colour. A Cultural Diversity Perspective. (Thousand Oaks, London: Sage Books, 1995); Anderson, J.M. Gender, Race, Poverty, health and Discourses of Health reform in the Context of Globalization: A Post-Colonial Feminist Perspective in Policy Research. *Nursing Inquiry* 7(4) 2000 p220-229; Hyman, I. Immigration and Health. Health Canada. Working Paper No. 01-05. September 2001. (Ottawa: Queens Printer, 2001); Noh, S., M. Beiser, V. Kaspar, F. Hou, & J. Rummens. "Perceived Racial Discrimination, Discrimination, and Coping: A Study of South east Asian Refugees in Canada" *Journal of Health and Social Behaviour* 40, 1999:193-207; Tharoa, E. & N. Massaquoi "Black Women and HIV/AIDS: Contextualizing their realities, their silence and proposing solutions" *Canadian Woman Studies*, Vol. 21, 2, 2001:72-80

<sup>38</sup>

incarceration define an existence of those on the margins of society, an existence of social exclusion from the full participation in the social, economic, cultural and political affairs of Canadian society. They are also important socio-economic and psycho-social determinants of health.<sup>39</sup>

While there is limited literature in the Canadian context, research done internationally shows the connection between race and health more clearly. Research in the American context shows the connection between racism and health status. Wilkinson has investigated the processes of racialization, which result in the social and economic marginalization of certain social groups and shown that 'racial' differences in health status can largely be accounted for by differences in individuals' social and economic circumstances (Wilkinson 1996).<sup>40</sup>

Racism is a stress generator as are family separation through immigration, the intensification of work, devaluation of one's value and worth through decredentialism, and the very experience of inequality and injustice. Stress in turn is a major cause of a variety of health problems. It has been observed that one of the reasons the health status of immigrants declines is because of the experiences of discrimination and racism (Hyman, 2001). State imposed barriers to family reunification through immigration policy that discourage reunification in favour of independent class immigration lead to extended period of family separation. Family separation, and failure to effect reunification robs family members of their support network but also engenders separation anxiety, thoughts of suicide, lack of sufficient support mechanisms and even death.

Racism and discrimination based on immigrant status intensify processes of marginalization and social exclusion, compounding the experiences of poverty and its impacts on mental health status. The every day darts that arise from put downs and diminishing self-esteem tend to undermine the mental health of racialized group members.

### **Racism and mental health**

Many racialized group members and immigrants with mental health issues and mental illnesses identify racism as a critical issue in their lives. The magnitude of the association between these racism and poverty and mental health status was said by low income racialized group community members surveyed as similar to other commonly studied stressful life events such as death of a loved one, divorce or job loss (Healing Journey 1999).

The stigma of mental illness often bars members from seeking treatment, some afraid that that status would compound their marginalization. The Canadian Task force on Mental Health issues Affecting Immigrants identified a mental health gap between immigrants

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<sup>39</sup> See Galabuzi, G. "Social Exclusion" in Raphael, D (ed) Social Determinants of Health: Canadian Perspectives (Toronto: Canadian Scholars Press Inc, 2004: 235-251

<sup>40</sup> Wilkinson, 1996, R. Unhealthy Societies: The Afflictions of Inequality. New York: Routledge;

and Canadian born population based on the socio-economic status of immigrants. Concluding that the socio-economic status of immigrants was a determinant of mental health, it called for increased access to mental health services for immigrants, more appropriate culturally sensitive and language specific services to help close the gap. (Beiser, 1988).<sup>41</sup>

Reports on HIV/AIDS and racialized groups suggest that discrimination against people with HIV/AIDS is compounded with their racial status. A study by the Alliance for South Asian AIDS Prevention (ASAP, 1999) found that the cultural, religious, language and racial barriers the communities face in accessing health care services led to differential impacted in treatment between the South Asian communities and people from the majority community living with HIV/AIDS. While they had to deal with the cultural stigma imposed on those living with HIV/AIDS in the community, they were also vulnerable to racism and marginalization which led to withdrawal and silencing and higher health risks.<sup>42</sup>

### **Income Transfers**

According to the National Council on Welfare, welfare incomes were way below average incomes in all ten provinces in 2004. For single employable persons they ranged from a low of 15 percent of average income in New Brunswick to a high of 37 percent of average income in Newfoundland and Labrador. Rates for single parents on social assistance rate ranged from 26 percent of average income in Alberta to 52 percent in Newfoundland and Labrador. For two-parent families they ranged from 19 percent in Ontario to 32 percent in Prince Edward Island. In every case though, they were below the level of subsistence established by Statistics Canada using the Low Income Cut-off measure.<sup>43</sup>

### **Judicial remedy for the condition of Racialized poverty**

The arguments for judicial review of the racialization of poverty are similar to those made by anti-poverty advocates with regard to the Canadian state's obligation to address the harm to the dignity of the victims of poverty caused by the condition of poverty. The public debate about poverty and equality rights has been slow in gathering storm but it is increasingly joined by both advocates and the courts. It is based both in claims that can be made under section 15 equality provisions (and possibly Sec.7 – right to life provision) as well as the international human rights treaty obligations that the Canadian

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<sup>41</sup> Beiser, M. After the Door has been opened. Mental Health Issues Affecting immigrants and Refugees in Canada. Report of the Canadian Taskforce on mental Health Issues Affecting Immigrants and Refugees. (Ottawa: Health and Welfare Canada, 1998)

<sup>42</sup> Alliance for South Asian AIDS Prevention (ASAP), Discrimination & HIV/AIDS in South Asian Communities: Legal, Ethical and Human Rights Challenges, An Ethno-cultural Perspective (Toronto: ASAP/Health Canada, 1999).

<sup>43</sup> National Council of Welfare. Reports – Welfare Income, 2004. Spring 2005. Revised August 2005. Public Works and Government Services Canada. Volume # 123

state has entered into over the years.<sup>44</sup> For instance, most equality seeking groups have been calling for the inclusion of social and economic rights in the Canadian Human Rights Act, including the right to an adequate standard of living and housing.<sup>45</sup>

According to the Charter Committee on Poverty Issues (CCPI), poverty has been defined in Canadian political and judicial culture as a problem of social policy within the purview of legislatures and social policy. However, it remains on the margins of Canadian human rights jurisprudence as defined by the *Canadian Charter of Rights and Freedoms* (the *Charter*) and human rights legislation. It is in essence not widely recognized as a human rights issue of the highest order. And yet, in international human rights law based on the *Universal Declaration of Human Rights*, it is accorded the status of a top tier human rights issue. The UDHR lists a number of social and economic rights among its fundamental human rights, including the right to an adequate standard of living, including food, clothing and housing.<sup>46</sup>

The marginalization of poverty in domestic rights adjudication represents a gulf between Canada's human rights culture and the international human rights regime. The inability or unwillingness of Canadian courts and human rights institutions to address poverty especially during a period of decline in the welfare state has meant that poor people cannot count on either the political institutions to protect their rights and so requires judicial intervention.

It has been suggested that various international human rights treaty-monitoring bodies have been clear and unequivocal in their direction to the Canadian state to address the harm done to those living in poverty in Canada.<sup>47</sup> Porter has argued that Canadian courts should interpret and apply the rights in the *Charter* in a manner that "recognizes the interdependence and indivisibility of all human rights and to bring within its scope critical issues of poverty and homelessness among vulnerable groups." Economic rights to an adequate standard of living, including adequate food, clothing and housing, should be recognized as justiciable under the *Charter*, as well as through other areas of law. It

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<sup>44</sup> Essert, C. *Dignity and Membership, Equality and Egalitarianism Economic Rights and Section 15* University of Toronto, 2005

<sup>45</sup> Porter, B. *Twenty Years of Equality Rights: reclaiming Expectations*. Toronto: CERA, 2005; Porter, B. *ReWriting the Charter at 20 or Reading it Right: The Challenge of Poverty and Homelessness in Canada*. The Canadian Charter of Rights and Freedoms: Twenty Years Later. Ottawa: Canadian Bar Association, April, 2001  
Lerner, S. *Proceedings and Final Report of the Working Conference on Strategies to Ensure Economic Security for All Canadians*, Ottawa, January 31 - February 1, 2003 (University of Waterloo); Charter Committee on Poverty Issues. *Factum of the Intervener. Lovelace V. AGO*

<sup>46</sup> Charter Committee on Poverty Issues: *Submission by the Charter Committee on Poverty Issues to the Human Rights Committee on the Occasion of the Review of Canada's Fifth Periodic Report Under the ICCPR* October 17 & 18, 2005)

<sup>47</sup> Porter, B. *Twenty Years of Equality Rights: reclaiming Expectations*. Toronto: CERA, 2005; Porter, B. *ReWriting the Charter at 20 or Reading it Right: The Challenge of Poverty and Homelessness in Canada*. The Canadian Charter of Rights and Freedoms: Twenty Years Later. Ottawa: Canadian Bar Association, April, 2001

means requiring the Canadian state to address the condition of living in poverty through appropriate positive measures including policies and programs that address the various dimensions of poverty in its systemic form. It also means that the victims of poverty should lead the fight for such economic rights by getting the necessary resources to initiate social and economic rights claims as constitutional rights to dignity, equality and security.

Porter argues that emerging *Charter* and international human rights jurisprudence makes it a fundamental responsibility of courts and administrative tribunals to address social and economic rights claims as legitimate *Charter* claims.<sup>48</sup>

The foundation has been laid by the twenty years of jurisprudence arising out of the Charter of rights and freedoms. As early as *Andrews v. Law Society of British Columbia*, The Supreme Court of Canada established the principle of equality rights as substantive in nature.<sup>49</sup> It also established that equality is a comparative concept discernible through comparison with the condition of others within the relevant social or political context.<sup>50</sup>

The court went further to reiterated the importance of looking at the larger social, political and legal context of the violation of the rights of the disadvantaged *R. v. Turpin* suggesting that the Purpose of section 15 to remedy or prevent discrimination against groups suffering stereotyping, historical disadvantage and social, political and legal disadvantage in Canadian society. It also held that deciding whether a groups' rights have been violated requires us to establish, among others, "historical disadvantage or vulnerability to political or social prejudice"<sup>51</sup>

In *Miron* the Court built on that foundation suggesting that:

"To prevent the violation of human dignity and freedom by imposing limitations, disadvantages or burdens through the stereotypical application of presumed group characteristics rather than on the basis of individual merit, capacity or circumstance"<sup>52</sup>

What this opens up are possibilities of using both the substantive equality rights approach as well as the right to dignity and possibly the weight of international human rights jurisprudence to pursue judicial remedies for the racialization of poverty.

## **The focus of the argument – Substantive Equality and right to Dignity**

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<sup>48</sup> Ibid, 2001

<sup>49</sup> *Andrews v. Law Society of British Columbia*. (1989) S.C.R. 143

<sup>50</sup> Hurley, M. Charter Equality Rights: Interpretation of Section 15 in Supreme Court of Canada Decisions. (Ottawa: Parliamentary Information and Research Service, 2005:3)

<sup>51</sup> *R. v. Turpin* (1989) S.C.R. 1296; Hurley, 2005:4

<sup>52</sup> *Miron v. Trudel* (1995) 2 S.C.R. 418:131

The central argument to advance under Section 15, given the racial character of the victim group allowing for race as an enumerated ground and its historical position of disadvantage, then is a claim for state action to ameliorate the impacts of the racialization of poverty relating to the substantive equality obligations under the *Charter*.

There is room for congruency since the Supreme court has directed that Subsections 15(1) and 15(2) should be read as a whole, because they complement rather than contradict each other. Subsections 15(1) and 15(2) are both intended to ensure that substantive rather than merely formal equality is provided by the *Charter*. Sec.15(2) of the *Charter* can be seen as an interpretive aid that clarifies and enhances the purpose of the equality guarantee contained in s.15(1).<sup>53</sup>

Underlying both subsections is a recognition that governments must take affirmative measures to remedy the effects of discrimination and ameliorate the conditions of disadvantaged groups, in order for substantiate equality.

But given existing jurisprudence, is the enactment of programs to ameliorative the condition of those historically disadvantaged in Canadian society purely optional on the part of governments despite the socially exclusionary condition of the victim group and the implications for equality, dignity and quality of citizenship or is it an obligation that flows from constitutional imperatives?

The Charter Committee on Poverty Issues has attempted to answered this question by arguing in their factum filed in intervention in *Lovelace v. AGO*, that any approach to s.15(2) which presupposes that governments have no positive obligation to redress substantive inequalities is inconsistent with domestic human rights jurisprudence as well as with international legal norms and would mean that Canada's domestic *Charter* equality jurisprudence in conflict with our international human rights obligations. It further argues that “such a finding would have catastrophic results for the equality rights of poor people”. Such an approach to s.15(2), it says, betrays a discriminatory attitude toward poor people, because it does not recognize their entitlement dignity arising from the benefit of state action as a fundamental human right.<sup>54</sup>

## **Substantive equality rights**

It is generally established that Sec.15(1) of the *Charter* guarantees substantive and not merely formal equality and that Subsection 15(2) of the *Charter* reinforces the guarantee

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<sup>53</sup> Charter Committee on Poverty Issues. Factum of the Intervenor. *Lovelace V. AGO*.  
<http://www.equalityrights.org/ccpi/ccpifact.rtf>

<sup>54</sup> Charter Committee on Poverty Issues. Factum of the Intervenor. *Lovelace V. AGO*.  
<http://www.equalityrights.org/ccpi/ccpifact.rtf>; *Lovelace v. Ontario Attorney General (2000)* 1 S.C.R. 950 2000 SCC 28; see also C. Eboe-Osuji. *Repeal of Ontario's Employment Equity Laws: A Lesson in Denial of Equal Protection of the Law* (Toronto: Alliance for Employment Equity, 1996); Cornish, McIntyre & A. Pask. *Strategies fro Challenging Discriminatory Barriers to Foreign Credential Recognition*. National Conference: *Shaping the Future: Qualification Recognition in the C21st* (Vacalluzo Hayes Shilton McIntyre Cornish, 1999).

of substantive equality in s.15(1).<sup>55</sup>

Brodsky and Day have suggested that s.15(2):

"indicates that the amelioration of disadvantage is central to the purpose of section 15, and that it is the conditions of disadvantage, not merely distinctions in the form of law, which the equality guarantee is intended to address."<sup>56</sup>

Since *Andrews v. Law Society of B.C.*, the Supreme Court of Canada has consistently rejected the formal equality approach, recognizing that identical treatment of different groups sometimes produce serious inequality, and that differential treatment will not always result in inequality, but in subsequent cases, the Court more fully defined the meaning of substantive equality beyond a rejection of "same treatment", toward a position that positive measures addressing the specific needs of disadvantaged groups are not only acceptable, but are sometimes *required* under s.15 of the *Charter*.<sup>57</sup>

In other words, the Supreme Court has consistently recognized that s.15(1) has a "large remedial component", ruling in *Andrews v. Law Society of B.C.*, that the guarantee of equality in s.15 "entails the promotion of a society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect, and consideration."<sup>58</sup>

In *Eldridge v. B.C. (A.G.)*, the Court rejected the argument made by the British Columbia government that it had no constitutional obligation to ameliorate disadvantage that it had neither created nor exacerbated (namely, disability due to deafness). It upheld the applicants' *Charter* claim of discrimination, ruling that, where sign language interpreters are necessary for effective communication in the delivery of medical services, the failure to provide them constitutes a violation of s.15(1) of the *Charter*.<sup>59</sup>

In essence, adverse effects and harm to dignity may arise from legislative omission as the Court found in *Vriend v. Alberta*. The Court found that the Alberta legislature had violated s.15(1) of the *Charter* by failing to prohibit discrimination based on sexual orientation in its human rights legislation, thereby denying lesbians and gay men "the very protection they so urgently need because of the existence of discrimination against them in society." The Supreme Court rejected that argument, affirming that "substantive equality may be violated by legislative omission."<sup>60</sup>

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<sup>55</sup> *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143:164-69; *Eldridge v. B.C. (Attorney General)*, [1997] 3 S.C.R. 624:671; *Vriend v. Alberta*, [1998] 1 S.C.R. 493: 542-43; *Law v. Canada* (25 March 1999, SCC doc.25374):38-41

<sup>56</sup> Gwen Brodsky and Shelagh Day, *Canadian Charter Equality Rights for Women: One Step Forward or Two Steps Back?* (Canadian Advisory Council on the Status of Women, 1989:31)

<sup>57</sup> *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143

<sup>58</sup> *Ibid*:171

<sup>59</sup> *Eldridge v. B.C. (A.G.)*, [1997] 3 S.C.R. 624: 677-78

<sup>60</sup> *Vriend v. Alberta*, [1998] 1 S.C.R. 493:543-44

Porter has observed that in both cases, *Eldridge* and *Vriend*, the *Charter* claims were based on effective exclusion or *under-inclusion*. The failure of the government to act resulted in discrimination *within the existing schemes* for the provision of benefits and legislative protections. However, the Court went beyond the appellants' formulation towards a more substantive approach to equality, which mandates positive government action to address disadvantage existing independently of the legislation in question.<sup>61</sup>

So the requirement under s.15(1) of the *Charter* for positive steps to ameliorate conditions of disadvantage arises not only in the context of claims of discriminatory under-inclusion by disadvantaged groups, but also in instances where substantive inequalities would otherwise result from a government's failure to take affirmative action to address the specific needs of disadvantaged groups.

A purposive approach to s.15 of the *Charter*, along with domestic and international human rights jurisprudence, and s.36 of the *Constitution Act, 1982*, all support an interpretation of s.15 that recognizes governments' affirmative duty to adopt measures to ensure the realization of substantive equality.

## Right to Dignity

The Court's rulings, beginning with *Andrew V. Law Society of B.C.*<sup>62</sup> have taken a purposive approach to the prevention of the violation of human dignity in interpreting *Charter* rights in section 15. However, it has been suggested that subsequent jurisprudence has been 'motivated' by the desire to protect the dignity of the victims.<sup>63</sup> In more recent rulings, the Supreme Court of Canada has emphasized the role of dignity in substantiating equality. It affirmed the determining role of the human dignity in *Law. V. Canada (Minister of Employment and Immigration)*<sup>64</sup>

Hurley has suggested in her analysis of the Court's interpretation of section 15 that the Court sought to resolve earlier tensions arising from varied interpretational frames by establishing that:

- The law in question distinguishes between the claimant and others on the grounds of one or more personal characteristics, or results in substantively different treatment on the basis of such characteristics by failing to take account of the

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<sup>61</sup> B.Porter, "Beyond *Andrews*: Substantive Equality and Positive Obligations after *Eldridge* and *Vriend*" (1998) 9:3 *Constitutional Forum* 71:75

<sup>62</sup> *Andrews v. Law Society of British Columbia*

<sup>63</sup> Essert, C. Dignity and Membership, Equality and Egalitarianism: Economic Rights and Section 15. University of Toronto. 2004:2

<sup>64</sup> *Law. V. Canada (Minister of Employment and Immigration)* (1999) 1 S.C.R. 497

- claimant's already disadvantaged position" – If the law results in adverse effect discrimination
- The differential treatment is based on one or more enumerated or analogous grounds protected by section 15
  - The treatment discriminated substantively by imposing a burden or withholding a benefit in a way that reflects stereotyped application of presumed characteristics, or that otherwise has demeaning or devaluing effects on the individual<sup>65</sup>

Accordingly, she argues that post-*Law* findings of substantive discrimination underscored a heightened focus on human dignity.

In *Eldridge v. British Columbia (Attorney General)* the Court ruled that in some circumstances, section 15 requires governments to take special measures to ensure that disadvantaged groups are able to benefit from governmental services, for example by extending the scope of a benefit to a previously excluded group<sup>66</sup>

More specific to economic interest questions, the court in *Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur* clarified that in Section 15 cases involving economic interests, economic disadvantage/deprivation is not necessarily unrelated to a loss of human dignity.<sup>67</sup>

In *Vriend*, Iacobucci JJ's reasons for the majority reiterated the view that "the need for governmental incrementalism (is) an inappropriate justification for Charter violations... (G)roups that have historically been a target of discrimination cannot be expected to wait patiently for the protection of their human dignity and equal rights while governments move towards reform one step at a time"<sup>68</sup>

More recently however, the promise of movement towards affirming economic and social rights through the courts has lost some momentum and the courts remain highly ambivalent to the harm created by poverty as remediable by the Constitution. For instance, in *Auton (Guardian ad item of) v. British Columbia (Attorney General)* the Court ruled that legislatures are under no obligation to create benefits, although they may target the programs to be funded on the basis of policy, provided the resulting benefit is not delivered in a discriminatory way<sup>69</sup>

Then in *Gosselin v. Quebec (Attorney General)*, the Supreme Court of Canada handed down its first decision in an application of the *Charter* directly related to poverty issues. with the majority found against the claimants – young people whose welfare was cut to

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<sup>65</sup> Hurley, M. Charter Equality Rights, 2005:6

<sup>66</sup> *Eldridge v. British Columbia (Attorney General)* (1997) 3 S.C.R. 624

<sup>67</sup> *Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur* (2003) 2 S.C.R. 504, 2003 SCC54; see Hurley, 2005:10

<sup>68</sup> *Vriend v. Alberta*, (1998) 1 S.C.R. 493, as quoted in Hurley 2005:14.

<sup>69</sup> *Auton (Guardian ad item of) v. British Columbia (Attorney General)* (2004) SCC 78, 19 November 2004; Hurley, 2005:12

levels below subsistence purportedly to force them into training programs. However, the minority (Bastarache, LeBel, Arbour and L'Heureux-Dube) argued that the Quebec government discriminated against the group contrary to the *Charter* and indicated that the state has a positive duty to address the contravention of Section 15 arising from such experience of poverty – in that case, to address below subsistence welfare rates. Not only did the minority argue that a cut in the welfare subsidy significantly impacted the dignity of the claimants, and contravened s.15, two of the judges found that it violated s. 7 rights to life and security of person as well and that Sec.7 imposed a positive duty on the state.<sup>70</sup>

## **Social and Economic rights – Canada's international obligations**

The Canadian state's international and domestic human rights obligations include its commitments to respect, protect and promote the human rights of all members of Canadian society, and, in particular, members of the most vulnerable and disadvantaged groups. These rights include both political, civil rights as well as social, economic and cultural rights.<sup>71</sup>

While largely de-emphasized in many capitalist countries, social and Economic rights are a category of fundamental human rights guaranteeing social and economic security and dignity. They include rights such as: The right to adequate food, clothing and housing, the right to the highest attainable standard of health, the right to education, the right to social security, the right to freely chosen work, the right to decent working conditions. Social and economic rights are recognized in many international human rights documents, beginning with the Universal Declaration of Human Rights.

Canada has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and a number of other treaties such as the International Convention on the Elimination of Racial Discrimination (ICEARD) which recognize these rights. While these covenants and conventions cannot be invoked directly in courts and tribunals, Canada and the provinces have promised to ensure that the rights are protected in domestic law, and that public policy and decision-making will be consistent with these rights.<sup>72</sup>

Based on these obligations, every Canadian has an equal right to well-being, including a right to:

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<sup>70</sup> Gosselin v. Quebec (Attorney General) (2002) 4 S.C.R. 429 2002 SCC 84; see also Day, S. Gosselin court split. The Poverty and Human Rights Project, 2004.

<sup>71</sup> United Nations *Universal Declaration of Human Rights* GA Res. 217 (111) UN GAOR, 3d Sess., Supp. No.13, UN Doc. A/810 (1948)

<sup>72</sup> United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, (ICESC); United Nations International Convention on the Elimination of All Forms of Racial Discrimination. Adopted by General Assembly resolution 2106(XX) of December 21, 1965

- a standard of living that ensures adequate food, clothing, housing, child care, support services and other requirements for security and dignity of the person and for full social and economic participation in their communities and in Canadian society;
- health care that is comprehensive, universal, portable, accessible, and publicly administered, including community-based non-profit delivery of services;
- public primary and secondary education, accessible post-secondary and vocational education, and publicly-funded education for those with special needs arising from disabilities;
- access to employment opportunities; and
- just and favourable conditions of work, including the right of workers to organize and bargain collectively.<sup>73</sup>

In recent years Canadian governments have come under increasing criticism from United Nations human rights bodies for failing to ensure that all Canadians can realize their social and economic rights. Various non-state bodies have effectively utilized the United Nations human rights reporting mechanisms to highlight the plight of various disadvantaged groups<sup>74</sup> Partly in response to presentations by non-state bodies from Canada in 1998, the United Nations Committee on Economic, Social and Cultural Rights - which monitors Canada's compliance with its social and economic rights obligations criticized Canada for its poor record of upholding these rights. The concerns expressed by the UN Committee on Economic Social and Cultural Rights included the following:

- the elimination of national standards for social programs
- cuts to social assistance and inadequate social assistance rates
- inadequate legal protections for women's rights
- inadequate minimum wages
- unfair treatment of Convention Refugees
- widespread poverty and inequality among Aboriginal communities
- cuts to services for people with disabilities
- the crisis of homelessness in Canadian communities, particularly among youth and young families
- tightened eligibility requirements for unemployment insurance
- the "claw-back" of the National Child Benefit Supplement from families receiving social<sup>75</sup>

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<sup>73</sup> ICESCR

<sup>74</sup> Recent examples include Charter Committee on Poverty Issues: Submission by the Charter Committee on Poverty Issues to the Human Rights Committee on the Occasion of the Review of Canada's Fifth Periodic Report Under the ICCPR October 17 & 18, 2005); National Anti-Racism Council of Canada: Racialized Communities in Canada: The Status of Compliance by the Canadian Government with the International Covenant on Civil and Political Rights. Shadow Report Submission to the Human Rights Committee of the United Nations. October, 2005

<sup>75</sup> United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights. Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights (Canada), 10 December 1998, E/C.12/1/Add.31).

Similarly, the United Nations Committee on the Elimination of Racial Discrimination expressed concern about the economic marginalization of Aboriginal people, the patterns of racial discrimination and number of incidences of discrimination against Aboriginal and racialized peoples, particularly those of Muslim and Arab background in the post-September 11 period, as well as the high rates of incarceration of people of African and Asian descent in Canada.<sup>76</sup> A subsequent report by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance addressed similar state failures to deal with the condition of racial discrimination and its social exclusionary implications. In his report, the Special Rapporteur stated that the “sacrificial victims” of this culture of discrimination since historical times has been the Aboriginal peoples and racialized peoples which he said “are still placed on the lowest rungs of the social economic, political and cultural ladder”<sup>77</sup>

A consensus has emerged among the most prominent U.N. human rights treaty monitoring bodies that the most critical substantive violations of human rights in Canada relate to social and economic rights. These are primarily linked with poverty and the failure of Canadian governments to meet substantive obligations toward vulnerable groups such as racialized groups. While at the international level, this emerging human rights framework for poverty issues has meant a renewed focus on poverty and poor people, this is not the case in Canada as yet. The Canadian experience with the various U.N. treaty monitoring bodies’ reports has been to consign them for “social policy review” rather than treat them as findings of violations of fundamental human rights.<sup>78</sup>

Porter (2001) argues that an integrated approach to the interpretation of human rights legislation and the *Charter* using the international norms could affirm the fundamental place of social and economic rights in both, by making the provisions of international human rights law their common reference point. In a discussion about the relationship between domestic and international human rights law in the context of *Charter* interpretation related to the adjudication of social and economic rights claims, Porter suggests that we consider this approach in order to successfully bring poverty issues properly within the scope of domestic approaches to human rights in Canada. A similar position is presented by the Charter Committee on Poverty Issues (CCPI) in its submission to the United Nations Human Rights Committee.<sup>79</sup>

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<sup>76</sup> United Nations Committee on the Elimination of Racial Discrimination. Sixty-first session, 5-23 August 2002. Concluding Observations of the Committee on the Elimination of Racial Discrimination : Canada. A/57/18, paras.315-343

<sup>77</sup> Racism, Racial Discrimination, Xenophobia and All forms of Discrimination, Report by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Commission on Human Rights, Sixtieth session, E/CN.4/2004/18/18/Add.2. 1 March 2004. para68. p.20.

<sup>78</sup> Porter, B. Twenty Years of Equality Rights: reclaiming Expectations. Toronto: CERA, 2005

<sup>79</sup> Porter, B. Twenty Years of Equality Rights: reclaiming Expectations. Toronto: CERA, 2005; Porter, B. ReWriting the *Charter* at 20 or Reading it Right: The Challenge of Poverty and Homelessness in Canada. The Canadian Charter of Rights and Freedoms: Twenty Years Later. Ottawa: Canadian Bar Association, April, 2001; Charter Committee on Poverty Issues: Submission by the Charter Committee on Poverty Issues to the Human Rights Committee on the Occasion of the Review of Canada’s Fifth Periodic Report Under the ICCPR October 17 & 18, 2005)

The emerging international human rights jurisprudence and the concerns and recommendations of U. N. human rights treaty monitoring bodies with respect to Canada, address how international norms can be integrated with domestic *Charter* jurisprudence. International human rights law gives a more prominent place to social and economic rights violations in capitalist countries such as Canada than was previously the case.

Porter (2005) has remarked that the review procedures at the Committee on Economic, Social and Cultural Rights have created a new understanding of how these rights need more than "expert review" - how they need adjudicative procedures that guarantee effective participation by those whose rights are at stake.<sup>80</sup>

These reviews by the treaty monitoring bodies of the extent to which Canada's domestic legal order conforms to international human rights obligations can provide a basis for domestic remedies to violations of human rights, and ensure that Canadian approaches to human rights are consistent with international human rights norms.

According to Porter, the recommendations of treaty monitoring bodies for more effective adjudication of social and economic rights using the *Charter* are consistent with recent Supreme Court jurisprudence. He suggests that incorporating social and economic rights into *Charter* interpretation does not involve dramatically expanding the role of tribunals and courts in Canada. "Rather, it is a matter of better focusing their gaze on the areas where both the international community and Canadians themselves find the most critical human rights issues and of applying recognized principles of *Charter* interpretation to the *Charter* claims of poor people to dignity, security and equality".<sup>81</sup>

International human rights treaty monitoring bodies have recommended adding social and economic rights to the *Canadian Human Rights Act* (CHRA) as well as to provincial human rights legislation, a recommendation endorsed by the Canadian Human Rights Commission and the majority of human rights groups across Canada. Consultations held Justice Gérard La Forest, former Justice of the Supreme Court of Canada, as part of a review of the CHRA, addressed, among other things, "the adequacy of the scope and jurisdiction of the Act." and indicated an emerging domestic consensus parallel to the international consensus, that traditional approaches to human rights in Canada which exclude poverty and social and economic rights must be reformed.<sup>82</sup>

While there is broad support for a new vision of human rights which affirms the connection between domestic and international human rights protections and includes social and economic rights in the CHRA, Porter argues that bringing poverty issues into our domestic human rights framework in Canada will require more than a refined approach to *Charter* rights, of course. Quoting Craig Scott, he observes that a "judicial transformation" which absorbs international human rights norms must be part of a

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<sup>80</sup> Porter, B. 2005

<sup>81</sup> Porter, B. ReWriting the *Charter* at 20 or Reading it Right:. April, 2001:2

<sup>82</sup> Ibid

broader transformation of Canadian politics and human rights culture.<sup>83</sup>

That means that equality seeking groups must pursue political avenues for legislative and institutional reform to broaden support for this new approach to *Charter* rights. Yet, precisely because these may not bear fruit, it is why as, Justice Wilson suggested in *Andrews* that:

“The whole point of the approach is to identify those groups in society to whose needs and wishes elected officials have no apparent interest in attending. If the approach makes sense, it would not make any sense to assign its enforcement to anyone but the courts”<sup>84</sup>

## Conclusion

The paper documents the existence of a process of racialization of poverty in Canada as manifest through a double digit racialized income gap, higher than average unemployment, differential labour market participation, deepening and disproportionate exposure to low income, differential access to housing leading to Neighbourhood racial segregation, disproportionate contact with the criminal Justice system, particularly for racialized youth leading to the criminalization of youth and higher health risks. This condition has been the subject of international human rights reports and calls attention to the need for its victims to consider judicial review of this condition in the demonstrated absence of state action. It raises the possibility of legal remedy based on the *Charter* rights to equality and its substantive interpretation based on human dignity and the racial character of the infringement of the *Charter* provisions. It argues that the foundation of Canadian citizenship is embodied in state’s responsibility to protect the right to dignity of person and the substantiation of *Charter*’s equality rights. In the case of racialized groups, the guarantee of equality rights and the right to the dignity of the person require positive state action to address the racialization of poverty. Further, that these matters are justiciable given the indivisibility of human rights as established by the international human rights norms that Canada is a signatory to which prompts the need to proceed with an integrated approach to the enforcement of human rights in Canada, one that interprets the *Charter* with the emerging international consensus on the protection of social and economic rights in mind.

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<sup>83</sup> Ibid; Scott, C. “Canada’s International Human Rights Obligations and Disadvantaged members of Society: Finally into the Spotlight?” (1999)10:4 *Constitutional Forum* 97.

<sup>84</sup> *Andrews* note 49:152 as cited in Porter, 2001.