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WOMEN'S LEGAL EDUCATION AND ACTION FUND**

**IN RESPONSE TO THE
CANADIAN HUMAN RIGHTS COMMISSION'S
PROPOSED CANADIAN HUMAN RIGHTS REPORT CARD**

May 22, 2009

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A. INTRODUCTION

The Women's Legal Education and Action Fund (LEAF) is a national organization dedicated to promoting substantive equality for women through legal action, research and public education. LEAF has intervened in over 150 cases on substantive equality since it was founded in 1985 and is a leading expert in the inequality and discrimination experienced by women in Canada. Central to LEAF's commitment to substantive equality is addressing the inequalities suffered by women who experience discrimination on multiple and intersecting grounds, such as on the basis of Aboriginal identity, poverty, disability, race, sexual orientation and religion.

One of the challenges of advancing the rights of women, and particularly promoting the equality of women who experience multiple forms of discrimination, is the absence of easily accessible, reliable and consistently disaggregated data on key indicators of women's inequality. Significant data gaps exist. Domestically and in the context of Canada's reporting under international human rights mechanisms, improved research and information could assist equality-seekers in distinguishing data on state action (for example amounts of funding for particular education initiatives) and data which measures the extent to which rights are in fact being realized by protected groups within Canada, particularly the most marginalized. At the same time it is important to be cognizant of the limitations of indicators and, as much as possible, to ensure that the proposed human rights report card is developed and presented in a way which reflects the lived experience of those who suffer inequality and violations of their human rights.

LEAF has approached this consultation on the basis that the Canadian Human Rights Commission's report card project is underway and that equality seeking groups are being consulted to improve and provide feedback on the proposed framework. LEAF commends the Canadian Human Rights Commission for aiming to provide a "comprehensive picture" of human rights in Canada. Such a report card, if developed and resourced properly, should be a useful tool for equality-seekers and governments to monitor progress and setbacks, identify gaps, and develop legal and policy responses.

Given the potential weight and attention that the proposed report card will be accorded domestically and internationally, it is imperative that the card in fact "chart Canada's progress in achieving its aims to reduce discrimination and promote equality". In particular, it is essential that the report card adequately track the key indicators of women's inequality. To date, substantial gaps between women and men persist on most socio-economic variables¹, and particularly so when sex inequality is combined with other prohibited discrimination such as that based on race, Aboriginal status, sexual orientation, disability, ethnic origin and religion. LEAF's submission, therefore, is attentive to whether the proposal adequately considers and tracks women's lived experience of inequality, and especially that of the most marginalized of women. LEAF respectfully suggests the Commission give high priority to ensuring its report card measures the progress of women's equality and that the report card be further developed in response to the gaps and concerns identified in this submission.

¹ Statistics Canada, *Women in Canada: A Gender Based Statistical Report*. (March 2006) at p.17

The proposed report card will be referred to alternatively in this submission as the “report card” or the “proposal”². LEAF’s comments on the proposal are divided into two categories. First, we provide our overarching considerations and concerns. Second, LEAF’s submission provides comments on specific proposed “dimensions” and “indicators”.

Due to time constraints, most of LEAF’s attention has been directed to the report card’s general framework. We have provided some feedback on other significant aspects of or gaps in the proposal, but our comments do not purport to be comprehensive.

B. OVERARCHING CONSIDERATIONS

Available Data and Identifying Data Gaps

The categories of data collected in Canada, and how that data is analysed and disaggregated, engage human rights concerns. Gaps in data are significant indicators of failures in Canada’s commitment to identify and address specific conditions of inequality. While we agree the report card should rely on existing, reliable and accessible data, the report card must include all key indicators across the spectrum of human rights, even where data is currently unavailable.

LEAF commends the Commission for not restricting itself to existing Statistics Canada data and for acknowledging that “the data needed to prepare a comprehensive report card on human rights in a repeatable manner are not currently available” and describes the report card’s framework in this regard as “theoretical”. The report card is in part a normative and a transformative exercise. It should be developed on the basis of what data would most fully achieve the goal of comprehensively tracking human rights, without regard for cost and current availability. New data sets have the possibility of altering and/or deepening our understanding of who is experiencing discrimination and inequality in Canada, in what realms of life, and to what degree. Where certain data continues to be unavailable, the recording of such data gaps year over year is a significant measure of Canada’s lack of progress with respect to the human rights indicators in question.

LEAF Recommendation: The report card framework must start from a position of using the most appropriate and accurate indicators. Gaps in the necessary data should then be highlighted and addressed over the medium term. Existing gaps in the data relate disproportionately to the barriers and inequalities suffered by marginalized women (e.g. access to childcare, the impact of caregiving roles, discrimination in housing and in general tracking the impacts of poverty). Relying only or mostly on indicators for which data is currently available would thus continue and enhance existing patterns of inequality.

² A copy of the Canadian Human Rights Commission’s Proposal can be found at http://www.chrc-cddp.ca/pdf/proposal_reportcard_en.pdf.

Qualitative Methodology

The report card relies heavily on quantitative data. While quantitative data is appropriate and useful, LEAF is concerned that little use seems to be made of qualitative research. It is well settled that mixed methods provide the most effective and reliable approach to research, and particularly in the human rights context.³ Quantitative data developed without an adequate qualitative underpinning risks obscuring the discrimination experienced by the most marginal populations, including women. And whichever methods are used – quantitative or qualitative – they must be appropriate to the types of information this report card aims to assemble. Throughout our remaining comments, LEAF highlights areas where the possible data sources identified may be inappropriate to the types of information solicited.

LEAF Recommendation: The data on which the Report Card relies must be produced through a mixture of research methods, including both quantitative and qualitative. Second, as a component of the overall report card project, qualitative research should be undertaken with the participation of the relevant stakeholders and constituencies to ensure that the indicators being tracked accord with the human rights issues as identified by those who suffer discrimination.

Disaggregation of All Data on the Basis of Sex

It is unclear to what extent the data measuring the indicators in the proposed report card will be disaggregated on the basis of sex. The framework chart at section five of the proposal suggests that in some areas data will be disaggregated by sex, in other areas the data will be “disaggregated by sex as appropriate” and in yet other areas, the data will not be disaggregated by sex at all.

The importance of disaggregating **all** data on the basis of sex cannot be sufficiently underscored. Without disaggregated data, the report card will simply not “comprehensively” chart Canada’s human rights progress and its usefulness and credibility will be drastically reduced.

Sex is an essential cross-cutting variable. For example, the first dimension of “Discrimination” is measured by the indicator “perceptions of discrimination”. The data set (to be developed) will measure the percentage of members of protected groups who perceive they have experienced discrimination or unfair treatment on the basis of a single human rights ground. The framework indicates this data will not be disaggregated by sex. Accordingly, the data will provide information on perceptions of discrimination by women, Aboriginal people and persons with

³ Michael Bamberger and Jim Rugh, *Real World Evaluation: Working under Budget, Time, Data and Political Constraints*. Sage Publishers, 2008; Toby Epstein Jayaratne and Abigail J Stewart. “Quantitative and Qualitative Methods in the Social Sciences: Current Feminist Issues and Practical Strategies” in Alison M. Jaggar ed., *Just Methods: An Interdisciplinary Feminist Reader*. Boulder, CO: Paradigm Publishers, 2008; Rajeev Malhotra, “Toward Implementing the Right to Development: A Framework for Indicators and Monitoring Methods” in Bard A. Andreassen and Stephen P. Marks (eds), *Development as a Human Right: Legal, Political and Economic Development* (Cambridge, MA: Harvard School of Health).

disabilities, but will provide no information on the perceptions of discrimination by Aboriginal women, women with disabilities etc. With the greatest respect for the importance of the Commission's undertaking and the challenge of making the report card both manageable and meaningful, obscuring the data with respect to the most marginalized is unthinkable.

In many other dimensions, the proposed data will be similarly unhelpful and inadequately representative without disaggregation on the basis of sex. For example, only some of the employment indicators will be disaggregated by sex "as appropriate" (the meaning of which is unclear) and others, such as access to employer-sponsored health plans and supplemental benefits, and experience of discrimination in the workplace, will not be disaggregated at all in the current proposal. By way of example, disabled women are disproportionately without employment and poor as compared to women as a whole and as compared to disabled men.⁴ Surely it is essential to know the extent to which disabled *women* (as opposed to disabled persons as a whole) have access to health and pension benefits and experience discrimination in the workplace (especially given the drastically high rate of sexual harassment and abuse suffered by women with disabilities).⁵

In the context of income, the framework currently proposes measuring the percentage of group members that are "low income" and have "persistent low income" without disaggregation on the basis of sex on all grounds. Accordingly, the report card will effectively erase the particular and critical poverty and vulnerability of groups of women, such as Aboriginal women, women with disabilities and newcomer women.

LEAF Recommendation: Give the highest priority to disaggregating all data on the basis of sex in respect of all human rights grounds.

Additional Dimension: Access to Quality and Affordable Childcare

The proposed report card aims to track the inequalities faced by women in employment and education, including comparisons between the income and promotion of women and that of men, the representation of women in part-time and precarious labour, and access by various groups of women to public and private maternity and parental leave benefits.

A key barrier to women's participation in the labour market is access to childcare. Access to childcare is also directly relevant to many other indicators, including women's income and educational achievements, particularly at the post-secondary levels. The report card does not track access to childcare as an indicator of women's equality. This is a serious omission. Women's overrepresentation in part-time employment, the gendered pay gap, and women's disproportionate poverty are directly related to women's role as caregivers. In 2004, 18% of employed women said that they worked part-time either because of child care or other personal

⁴ *Women in Canada: A Gender Based Statistical Report*, pages 294, 296

⁵ Government of Canada, National Clearing House on Family Violence, *Violence Against Women with Disabilities* (2004), which estimates that that 83% of women with disabilities will be sexually abused in their lifetime.

or family responsibilities, as compared with only 2% of males employed part-time.⁶ Access to quality and affordable childcare is central to women's equality in all areas of public and private life. The data with respect to women's employment, income, education and political participation will not be complete without a correlation to women's access to childcare.

Access to childcare is not only an indicator of women's human rights, but is also relevant to the (internationally recognized) human rights of children. Studies have confirmed that for many children, access to quality childcare may have a lifelong beneficial impact on their educational achievement and on reducing conditions of child poverty.⁷

Canada currently ranks among the lowest of OECD countries on provision of early childhood education and care, a woeful state of affairs recently acknowledged by the Senate Standing Committee on Social Affairs, Science and Technology.⁸ This same Senate report also notes that according to the UK children's rights organization, Save the Children, Canada's ranking on its child index fell from 5th to 25th in 2007 due to the lack of investment in and of access to early childhood education and care.

One of the purposes of the report card is to assist Canada in meeting its "domestic and international human rights obligations". Women's and children's rights to childcare are recognized as fundamental human rights in United Nations instruments ratified by Canada.⁹ And yet, various UN human rights treaty bodies have found Canada to be failing its obligations to provide appropriate child care.¹⁰

Recommendation: LEAF accordingly recommends that "childcare" be added as a dimension to the report card with an indicator tracking access to childcare by women, disaggregated on the basis of all grounds, as well as on the basis of low income status.

⁶ Statistics Canada, *Women in Canada: A Gender Based Statistical Report*. (March 2006) at p.109

⁷ UNICEF, *The Child Care Transition*, Innocenti Report Card 8, 2008, found at www.unicef-irc.org

⁸ Senate Standing Committee on Social Affairs, *Early Childhood Education and Care: Next Steps* (April 2009), downloaded from <http://senatorarteggleton.ca/Resources/Documents.aspx> at pp. 6 and 19

⁹ Article 11 of the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires State Parties to prevent discrimination against women on the basis of marriage or maternity and to ensure the effective right of women to work, including by taking appropriate measures: "To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, **in particular through promoting the establishment and development of a network of child-care facilities.**" (emphasis added). Article 18 of the United Nations Convention on the Rights of the Child similarly recognizes the importance of access to childcare as a basic human right, requiring State Parties to: "...render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and ... ensure the development of institutions, facilities and services for the care of children"; and "...take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible".

¹⁰ See for example the Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Canada, November 7, 2008, CEDAW/C/CAN/CO/7 at para. 39 which noted the direct connection between the economic empowerment of women, particularly low income women, and access to quality and affordable childcare and housing. The Committee expressed particular concern over the impact of the lack of affordable childcare and affordable housing on low-income women with families in Canada

An Additional Ground: Income

The feminization of poverty is a very real phenomenon. Canadian women are poorer than men in every group, community or segment of society. Canadian women are disproportionately represented among the poor. The experience of the feminization of poverty is even more severe for women who are disabled, Aboriginal, elderly, single mothers, newcomers, or of colour.

LEAF submits that the experience of the feminization of poverty in Canada is one of the most critical forms of discrimination experienced by women in Canada. The feminization of poverty is a result of the systemic discrimination experienced by women in general and is inextricably related to women's inequality in other areas (dimensions) such as education, health, political participation and engagement, equal access to housing, etc.

LEAF acknowledges the Commission's deliberate choice not to include "social condition" or other similar ground in its framework. Nevertheless, the framework as currently drafted correctly includes "low income" as a ground for specific dimensions and indicators on a case by case basis. For example, low income status is included as a ground in the following dimensions/indicators:

- Employment: Mainstreaming of disabled students;
- Health: Neonatal mortality rate; Life Expectancy at birth; Newborns with low birthrate (seeking data on low income status of mother); Adult obesity; Populations with sustainable access to an improved water source and sanitation;
- Justice: Incarceration rates; differential rate for security classifications; Administrative disciplinary penalties;

Accordingly, the Commission is appropriately correlating low income status with certain indicia of inequality.

LEAF submits that given the pervasive poverty of women, particularly women who experience compounded discrimination, it is extremely important the report card track the relationship between women's poverty and their enjoyment, or lack of enjoyment, of other basic rights.

Given that "low income status" is a variable for some indicators, it is unclear why the Commission chose not to consider the significance of poverty on discrimination and inequality in other dimensions. For example, "Discrimination" does not currently track experiences of discrimination on the basis of low income status (disaggregated on the basis of sex). Nor does the framework intend to track the effect of poverty on political engagement and social inclusion or inequalities in education. Given the inextricable connection between poverty, inequality and discrimination, LEAF submits that a comprehensive picture of human rights in Canada must provide a more complete account of the human rights of the poor.¹¹

¹¹ It is also noted, as the Commission itself acknowledges, that various provincial human rights statutes explicitly prohibit discrimination on the basis of poverty, whether framed as "social condition" (Quebec) or "receipt of social assistance" (in the context of discrimination in housing in Ontario).

LEAF Recommendation: LEAF proposes that the ground “low income status” be included in key areas where poverty intersects with other human rights dimensions in order to ensure that the human rights of the most vulnerable are appropriately identified and tracked. Low income status thus used should be disaggregated on the basis of sex and, where possible, other grounds.

Another indicator, which the Commission may wish to develop at a later stage, is age of first birth. Statistically, the age at which a woman first gives birth has a significant impact on the woman’s education, employment, income, housing and health, among other factors.

C. CONSIDERATIONS REGARDING SPECIFIC DIMENSIONS AND GROUNDS

1. **Discrimination:**

The Commission’s entry point for its human rights report card - perceptions of discrimination by members of protected groups – is an excellent choice.

The first measure of this indicator – which LEAF expects will involve a qualitative study to develop the eventual quantitative measure – will properly engage those whose rights are most affected. LEAF emphasizes the importance of a qualitative methodology with respect to this indicator. For example, participants should be asked why they believe they were discriminated against and about the circumstances of the discrimination.¹²

The second measure of the indicator “perceptions of discrimination by members of protected groups” is complaints filed with human rights commissions in Canada.

The reliance on numbers of complaints filed with human rights bodies as a measure of who is experiencing discrimination in Canada (or perceives they have been discriminated against), and to what extent, is problematic. The difficulties faced by claimants seeking to redress human rights violations through human rights complaints are well known.¹³ LEAF submits that reference to the number of human rights complaints filed would not appear to measure the experience of discrimination across Canada and does not offer objective “reliability” of the experience of discrimination as suggested by the proposal. Such data primarily reveals information about the users of human rights commission complaints-processes. To list only a few problems with reliance on human rights complaints as a measure of discrimination in the context of this report card:

¹² It may also be useful as part of this study (the methodology and scope of which are not discussed in the CHRC proposal) to ask participants how they responded to the experience of discrimination (i.e. what they did about it, if anything) and their perceptions of the effectiveness of using domestic human rights mechanisms or any other available remedies or avenues of redress.

¹³ See for example, Canadian Human Rights Act Review Panel, *Promoting Equality, A New Vision* (June 2000) at Chapter 9, available at <http://dsp-psd.pwgsc.gc.ca/Collection/J2-168-2000E.pdf>

- It does not consider the substantial barriers (financial, linguistic, cultural, level of education) that may prevent people from making a complaint;
- It is difficult to reconcile what we know about the pervasiveness of experiences of discrimination by members of protected groups with the statistics on the kinds of complaints made. For example, across Canada 70-80% of all complaints filed relate to discrimination in employment. Does this mean that members of protected groups do not experience significant discrimination in their access to housing? Or other services? Or does this say more about the situation or condition of those who are able to make a human rights complaint arising from their experience of discrimination?;
- It discounts the chilling effect on potential claimants of such factors as the length of time required for complaints to be resolved, the bureaucratic and procedural steps/hurdles, and the level of available redress;
- It presupposes that everyone has the same knowledge about their rights and the same ability to seek redress, which is not the case;
- It fails to take into account concerns that the most marginalized are the least likely to file a human rights complaint.

Nevertheless, over time, data on complaints filed, resolved and determined may yield helpful information on the use of domestic human rights mechanisms by complainants and on trends in the resolution of complaints. If data on filed complaints is included in the report card, LEAF submits that a central purpose of the collection of this data must be to track how well human rights commissions are serving vulnerable groups and achieving their goals of protecting and promoting human rights.

LEAF Recommendation: Accordingly, LEAF suggests that data related to the filing and resolution of complaints should be considered only in conjunction with further and better research and data, including data which tracks:

- the perception of the effectiveness of human rights mechanisms and remedies among members of protected groups;
- delays and barriers to pursuing human rights claims;
- institutional supports for complainants and potential complainants;
- the filing and determination of complaints made on multiple grounds of discrimination;
- the extent to which members of protected groups who experience discrimination choose not to file human rights complaints and why;
- complaints filed on the basis of both the ground and the complaint (eg employment, housing, etc.)
- successful complaints as determined by human rights tribunals, correlated by ground(s) and basis of complaint (eg. employment, housing, etc.)

Reliance on filed complaints to measure discrimination in housing and employment: The report card similarly purports to measure the prevalence of harassment and discrimination in the workplace and in access to housing (under the Employment and Housing dimensions respectively) by reference to complaints filed with human rights commissions. LEAF's submissions above apply equally to the data sets under these two dimensions.

2. Education

LEAF is concerned that the indicators for education should more fully track the multiple and intersecting inequalities experienced by protected groups *within* education (as opposed to only at the front and back-end of enrollment and drop-out rates), including, among possible indicators:

- Inequalities in the quality of education provided;
- Rates of sexual harassment and sexual assault (in addition to bullying)¹⁴; and
- Tracking students who move from mainstream into special education.

3. Employment

Except as otherwise noted, LEAF supports the indicators proposed and directs its comments below to refining the proposed indicators and data sets.

LEAF is concerned that the report card's picture of human rights in employment would be incomplete without:

- A measurement of comparative salaries.¹⁵ Alternatively an indicator/ data set measuring comparative wages could be included under the "Income" dimension (Indicator #1 – employment equity);
- Data with respect to the rates of hiring and promotion, disaggregated on the basis of sex and across all employment types i.e. full-time, part-time, seasonal temporary etc. (Indicator #1 – employment equity);
- Disaggregation of the data for indicators #6 (access to maternity and parental leave benefits) and #7 (relating to pension and healthcare benefits) by type of employment, i.e. full time, part-time, temporary, seasonal, in order to give a full picture of who is without access to these benefits;

¹⁴ For example, the report of the School Community Safety Advisory Panel of the Toronto District School Board, *The Road to Health: A Final Report on School Safety* (January 8, 2008) noted the pervasiveness of gender-based violence in TDSB schools.

¹⁵ This measurement could include salaries for members of the protected groups with degrees earned locally as compared to the general population (as is proposed for the indicator on recognition of foreign credentials and experience)

Data with respect to the percentage of women from protected groups who gave birth to or adopted a child in the last five years and who were not eligible for EI benefits. Due to women's overrepresentation in part-time and precarious employment, women are disproportionately excluded from EI benefits, despite paying into the regime (as recently noted by the Canadian Labour Congress: *The Bad News: If You're a Woman, EI isn't built for you*),¹⁶. The percentage of women from protected groups who do not qualify for EI maternity benefits is essential to complete the report card's picture of who has access to maternity benefits and who is excluded.¹⁷

4. Engagement and Social Inclusion

This dimension would appear to combine two potentially distinct concepts. For the reasons outlined in greater detail below, the distinction between social inclusion and (political) engagement should be made more clear, perhaps by referring to "engagement" more explicitly as "political representation or engagement".

"Engagement" in the proposed report card is measured by voting and running in elections. Accordingly, the dimension appears to be more narrowly one of political engagement. Social inclusion applies to those, such as newcomers, who may not be eligible to vote or run for office and who may otherwise be restricted in their ability to participate politically.

The proposal measures social inclusion in part by gauging the attachment of members of protected groups to Canada. It would be unfortunate to inadvertently conflate an attachment to or inclusion in Canada with formal political participation, from which certain groups may be excluded.

Political Representation or Engagement

LEAF suggests that the Commission consider the following with respect to the above indicator:

- The report card proposes measuring the members of protected groups who run for, or are elected to, office as the measure of political engagement. This measure on its own risks presenting a distorted picture of political representation and power in Canada. It omits an analysis (disaggregated by sex) of representation in (and exclusion from) more senior levels of government, including ministers, premiers of provinces, prime ministers, senators, senior positions in the opposition parties, etc. From a human rights perspective there is obviously a significant difference between the number of women backbenchers and the number of women cabinet ministers.

¹⁶ Canadian Labour Congress, Fact Sheet, "EI: It doesn't add up for women!" (March 2009) at <http://canadianlabour.ca/sites/clc/files/updir/EN-ei.pdf>

¹⁷ See the Statement by the Canadian Labour Congress to the House of Commons Standing Committee Regarding the Status of Women Study on Consequences and Effects the Current Employment Insurance (EI) Programs Have on Women in Canada (March 5, 2009), http://canadianlabour.ca/sites/clc/files/2009-03-05-Status_of_Women_Study_and_EI-EN.pdf

- The data on members of protected groups who run for office similarly overlooks the extent to which members of protected groups are run in strong ridings, as opposed to ridings where there is little or no chance of success. While acknowledging the difficulty of measuring this data, it would be important to know whether certain groups, such as women, are being run in predominantly weak ridings;
- In order to gauge political participation or engagement more broadly, and in a manner which would include those who are disaffected, marginalized, or not eligible to vote, a broader set of activities could be included under the definition of political activity. For example in the 2003 general survey of social engagement by Statistics Canada, such activities as signing a petition, attending a public meeting, participating in a demonstration or march, searching for political information as well as contacting a newspaper or politician were included under this heading.¹⁸

Social Inclusion

LEAF agrees with the consideration of social inclusion as an indicia of equality. However, we question how social inclusion should be measured. For example, LEAF is concerned about participation in the volunteer sector as a measure of social inclusion. There are many factors which influence volunteer participation, perhaps the most important of which may be the existence of free/leisure time. The existence of free time is in turn a function of a person's sex, employment status, income, age, language barriers and other indicators. For example, a single mother who is a recent immigrant may not have the time between childcare responsibilities, part-time employment and ESL classes to engage in volunteer work. Research in the UK has found that:

People in higher income households are more likely than others to volunteer. In 2001, 57 per cent of adults in England and Wales with gross annual household incomes of £75,000 or more had volunteered formally (such as raising or handling money for a charity or being a member of a committee) in the previous 12 months. They were almost twice as likely to have done so than those living in households with an annual income under £10,000 (29 per cent). As well as having high household incomes, volunteers also tend to have higher academic qualifications, be in higher socio-economic groups and be in employment.¹⁹

More recent Canadian research reveals that recent immigrants to Canada tend not to be included in very specific, gender-influenced modes of social participation, especially, those related to family, children, and schooling.²⁰

¹⁸ Statistics Canada. *2003 General Social Survey on Social Engagement, Cycle 17: An Overview of Findings*. Ottawa, Statistics Canada, 2004 (Cat. No.89-598-XIE).

¹⁹ Citizenship Survey, (2004) Home Office British Household Panel Survey, Institute for Social and Economic Research

²⁰ Philippe Couton & Stéphanie Gaudet (2008) *Rethinking Social Participation: The case of Immigrants to Canada* Springer Science and Business Media B.V. 2008

Deeper inequalities which may be reflected by low or no participation in volunteer work should be explored.

With respect to measuring attachment to Canada, LEAF believes it is important for the measure to identify what individuals from protected groups mean by such “attachment” and why they feel or do not feel attached.²¹

5. Health

LEAF submits that the health dimension fails to include key determinants of women’s health and women’s equality.

Reproductive Health

The health dimension makes no mention of women’s reproductive health. This is a significant omission.

The inextricable connection between women’s rights to reproductive health and women’s economic empowerment and equality is beyond question. The Beijing Declaration and Platform for Action, Fourth World Conference on Women, recognizes and reaffirms that “the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment”.²²

Articles 12 and 16.1 of the CEDAW Convention also recognize the fundamental human right of women to access health care, and in particular in the area of family planning and reproductive health.

Access to reproductive health care by women is an issue of sex equality.

Accordingly, LEAF strongly recommends the report card include indicators relating to access to reproductive health care services, including birth control, abortion and family planning. A complete human rights picture would measure:

- The extent to which women, disaggregated by all grounds plus income status, region and rural location, are able to obtain birth control, family planning and abortion care paid for by the state or at all;

²¹ Such explanations might also reveal areas of particular intersection, vulnerability or expectations. For example, in the newcomer context, first generation immigrants’ expectations of inclusion are often lower and it is their children and grandchildren who are more likely to be disaffected by systemic discrimination and barriers.

²² Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995), Declaration 17.

- Whether such services are local or whether women (disaggregated as above) have to travel distances, including out of province, to obtain such care and whether travel is paid for by the state;
- The extent to which women (disaggregated as above) have experienced coercion in relation to reproductive health, and by whom.

Access to Health Services

Canada's health care system is not equally accessible to all. Inequities in terms of access to health care reveal significant systemic discrimination issues which should be highlighted and monitored in a human rights report card.

LEAF is concerned that the report card track access to health care, disaggregated by sex on all grounds, plus low income status and rural or regional location. A related indicator could be the self-reported unmet need for medical attention.

A number of specific subsets of data within an indicator of general access to health care may also be appropriate in terms of tracking the experiences of the most vulnerable, including: (1) access to, and perceptions of satisfaction with, health care services for women who have experienced sexual violence; (2) access to specific non-insured health care, such as eye care, dental care and prescription medicine; and (3) access to insured services, for example, access to doctors, wait-times for testing and non-elective medical procedures.

Perceptions of Health

Finally, perceptions of health by members of protected groups (plus low income status), disaggregated by sex and age, is an important human rights measure, which provides a correlation to other dimensions and indicators, such as income, employment, housing and education.

6. Housing

LEAF is concerned that the report card adequately identify and measure women's homelessness. Although women increasingly suffer visible homelessness (living on the street and in rough conditions), homelessness of women with children is usually invisible.²³

Women's invisible homelessness includes:

²³ M. Callahan, L. Farha, B. Porter, *Women and Housing in Canada, Barriers to Equality* (CERA, March, 2002) at <http://www.equalityrights.org/cera/docs/barriers.htm>

“...women who are temporarily staying with friends or family or are staying with a man only in order to obtain shelter, and those living in households where they are subject to family conflict or violence. Hidden homelessness also includes situations where women are paying so much of their income for housing that they cannot afford the other necessities of life such as food; those who are at risk of eviction; and those living in illegal or physically unsafe buildings, or overcrowded households.”²⁴

Women’s homelessness continues to be severely underestimated because of a failure to acknowledge and understand the invisibility of women’s homelessness.

Although tracking access to shelters is useful information, it is not a measure of women’s homelessness.

Accordingly, LEAF recommends that the Commission ensure that its measure of homelessness includes a comprehensive account of women’s homelessness. LEAF is also concerned that the connections between violence against women and homelessness be tracked. LEAF recommends that the report card measure, for all grounds, women’s homelessness caused by violence (which is more encompassing than access to shelters) and women’s experiences of violence as a result of being homeless.

Finally, LEAF notes the report card tracks only discrimination in access to housing. This should be expanded to include discrimination in housing once access has been obtained, including sexual harassment.

7. Income

LEAF’s brief comments with respect to this dimension are that:

- As mentioned above, differences in salaries should be tracked, either under this dimension or under employment;
- In the first indicator, 7.1, LEAF assumes that “average income” (as opposed to household income) in fact means “individual” income (averaged). If this is correct, the language should be revised.²⁵

²⁴ Common Occurrence: The Impact of Homelessness on Women’s Health (Sistering, 2002) <http://www.sistering.org/advocacyandissues/commonoccurrence.php>; See also, The Street Health Report 2007, Research Bulletin #2, Women and Homelessness, <http://www.sistering.org/advocacyandissues/streethhealthbulletin.pdf>; and Novac, S., Brown J., C. Bourbonnais, *No Room of Her Own, A Literature Review on Women and Homelessness* (Ottawa: CHMC, 1997)

²⁵ LEAF flags the difficulties that can arise from a focus on “household” income. See for example, Eichler, Margrit, *Family Shifts: Families, Policies and Gender Equality* (New York: Oxford University Press 1997) at pp.101-103, which discusses the impacts of treating a household as the unit of administration. It is also flagged that a “household” is not in all cases equivalent to “family”.

8. Human Security

LEAF emphasizes the integral importance for women's human rights of tracking (and reducing and eliminating) violence against women. The Beijing Platform for Action recognizes that:

Violence against women is an obstacle to the achievements of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. The low social and economic status of women can be both a cause and a consequence of violence against women. (para. 113)

The Beijing Platform for Action also confirms the need for statistics on violence against women and recommends that governments:

Promote research, collect data and compile statistics, especially concerning domestic violence relating to the prevalence of different forms of violence against women and encourage research into the causes, nature, seriousness and consequences of violence against women and the effectiveness of measures implemented to prevent and redress violence against women (para. 130(a)).

The challenge faced by the Commission is obtaining quantitative data on violence against women which meaningfully portrays the pervasiveness and seriousness of this vastly underreported crime.

The report card intends to rely on the General Social Survey (GSS) for data on violence against women. While recognizing the limitations faced by the Commission in obtaining better data, LEAF notes Statistic Canada's own acknowledgment of the problems with the GSS (and the more comprehensive 1993 Violence Against Women Study commissioned by Health Canada), including that :

- The GSS is only conducted in the two official languages, thus presenting a barrier to the full inclusion of Aboriginal women and immigrant women;
- The GSS is conducted by residential phone, thus excluding participation by women who do not have a phone at all or only have a cell phone. This exclusion affects Aboriginal women living in traditional communities, low-income women, rural people and women living in shelters or on the street as a direct result of violence. Exclusion of cell phones affects transient populations, single adults and youth;

- The GSS is a general victimization survey and interviewers are male and female. Although participants may request a female interviewer, women may be contacted and questioned by male interviewers;
- Disaggregation of data in order to show in detail the unique experiences of, for example, immigrant, refugee, poor, disabled and aboriginal women, is not always possible.

Acknowledging the constraints of limited resources, LEAF recommends that where possible, the methodology and data collection be expanded to address the above problems and more comprehensively measure the critical problem of violence against women in Canada.

It may also be useful for the Commission to look to agencies that come into contact with victims of violence/trafficked women as a source of data. Information on the populations served by such agencies and the types of services provided may provide reliable data on the incidence of domestic violence, trafficking and sexual exploitation.²⁶

In addition, a complete picture of human security from a human rights perspective might track data on the experience of various groups or communities of being over-policed (apart from racial profiling) and/or under-served by the state in terms of protecting their security.

9. Justice

The justice dimension focuses exclusively on criminal justice and does not look at other areas such as family, child welfare, or immigration. As importantly, the cross cutting issue of access to justice, including access to legal aid, eligibility, type of matter and language for which the service is available, are not addressed. Access to justice in the family law, poverty law, child welfare, immigration and refugee and other contexts raise particular gendered concerns.²⁷ LEAF requests an opportunity to consider the indicators for access to justice more thoroughly if the report card is developed to include this important indicator.²⁸

With respect to the proposed criminal law indicators, LEAF's comments are as follows:

- Our concerns about using filed complaints to measure discrimination apply equally to the proposed data set, "Complaints about alleged profiling filed with law enforcement authorities" to measure racial profiling. People who have experienced racial profiling may be conducting a "cost/benefit" analysis and decide that there is little benefit to

²⁶ Jacqueline Oxman-Martinez, Marie Lacroix, Jill Hanley, *Victims of Trafficking in Persons: Perspectives from the Canadian Community Sector*, report prepared for Department of Justice, Research and Statistics Division, August 2005, available at http://canada.justice.gc.ca/eng/pi/rs/rep-rap/2006/tr06_3/toc-tdm.html (date access 11 January 2009)

²⁷ See for example the 2004 report of West Coast LEAF, *Legal Aid Denied* at http://www.westcoastleaf.org/userfiles/file/legal_services.pdf

²⁸ One source for access to justice indicators is Vera Institute of Justice, *Justice Indicators* (April 2005) at <http://www.undp.org/oslocentre/docs05/cross/Justice%20Indicators%20Background%20Paper.pdf>

them in making a complaint, given their perception of available remedies and barriers against bringing such complaints. Accordingly, it is questionable if the number of complaints filed provides a measure of “the degree to which profiling is a problem”.²⁹ Therefore, care must be taken to contextualize this data with the data collected under this dimension with respect to the percentage of protected groups who believe they have been subjected to racial profiling.

- An indicator measuring charges laid, on all grounds (as well as low income status), disaggregated by sex, should be added. This measure will serve a number of functions, including providing a clearer picture of who is interacting with police and any systemic inequalities between rates of charges and convictions³⁰;
- Access to retraining programs while incarcerated should be measured;
- Access to probation and parole should be added as an indicator.

²⁹ The correlation of perceptions of profiling by police and complaints filed are more likely an indicator of perceptions of the effectiveness of filing a complaint.

³⁰ It is acknowledged that one difficulty will be that an individual may be charged with multiple offences.



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APPENDIX "A"

Summary of LEAF's Concerns and Recommendations

The Data

1. The highest priority should be given to disaggregating all data on the basis of sex. Sex is an essential cross-cutting variable, the importance of which cannot be sufficiently underscored. The usefulness and credibility of the report card will be drastically reduced without disaggregated data.
2. The report card framework should start from a position of using the most appropriate and accurate indicators, as opposed to developing indicators with regard only to available data. Gaps in the necessary data should be highlighted and addressed over the medium term.
3. The data on which the Report Card relies must be produced through a mixture of research methods, including both quantitative and qualitative approaches.
4. The highest priority should be given to ensuring the report card measures the progress of women's equality and especially that of the most marginalized women.

Additional Dimension – Childcare

5. Childcare should be added as a dimension.

Additional Ground – Low Income Status

6. The report card should include the ground of "low income status", disaggregated on the basis of sex and, where possible, other grounds, in key areas where poverty intersects with other human rights dimensions.

Discrimination

7. The two data sets relating to the filing and resolution of human rights complaints should be considered only in conjunction with further and better research and data, including data which tracks delays and barriers in access to human rights commissions, supports for complainants, complainants' perceptions of the effectiveness of filing complaints, data on those who do not file complaints, and more comprehensive data on the complaints filed and the decisions of tribunals.

Education

8. The indicators for education do not sufficiently track inequalities *within* education (as opposed to only at the front and back-end of enrollment and drop-out rates), including:

- Inequalities in the quality of education provided;
- Rates of sexual harassment and sexual assault; and
- Data with respect to mainstreaming of students into special education.

Employment

9. Additional indicators or data sets are required to sufficiently track inequalities in employment, including with respect to:
 - Salaries;
 - Rates of hiring and promotion;
 - Disaggregation of data with respect to access to benefits on the basis of type of employment (full-time, part-time, temporary, etc.);
 - Percentage of women from protected groups who do not qualify for EI maternity and parental benefits.
10. The data set relating to the filing of human rights complaints should be removed.

Engagement and Social Inclusion

11. Political engagement should measure: (a) representation at more senior levels (such as ministerial); (b) the power differentials in terms of representation of candidates in weak and strong ridings; and (c) engagement in a broader spectrum of activity.
12. The Commission should articulate the basis for its choice of volunteerism as a measure, among possible others, of social inclusion. In addition, research on volunteerism should be sensitive to the reasons for low or no volunteer participation by members of protected groups.

Health

13. Access to reproductive health care by women is an issue of sex equality and needs to be included as an indicator within the health dimension.
14. Other indicators which would provide a more complete picture of human rights and health in Canada include access to health care and self-perceptions of health.

Housing

15. The Commission should ensure that its measure of homelessness includes a comprehensive account of women's homelessness.
16. The report card should measure women's homelessness caused by violence and women's experiences of violence as a result of being homeless.

17. The report card should track discrimination in housing once access has been obtained, including sexual harassment.
18. The data set relating to the filing of human rights complaints should be removed.

Human Security

19. The methodology and collection of data on violence against women should be expanded to more comprehensively measure the critical problem of violence against women in Canada.
20. The Commission should obtain information on victims of violence/trafficking and the services used by them, from agencies that serve them.
21. A report card on human security from a human rights perspective might also track the experience of various groups of being over-policed (apart from racial profiling) and/or under-served by the state in terms of protecting their security.

Justice

22. The report does not include consideration of access to justice. Access to justice is a significant equality rights issue for women, particularly in non-criminal contexts such as family law, poverty law, child welfare, and immigration and refugee law.
23. A comprehensive report card on criminal justice should include disaggregated data on charges laid, access to retraining programs and access to probation and parole.