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The Paradox of Exclusion Within Equity: Interrogating Discourse at the Canadian Human Rights Tribunal

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THE PARADOX OF EXCLUSION WITHIN EQUITY: INTERROGATING DISCOURSE AT THE CANADIAN HUMAN RIGHT TRIBUNAL

by

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Abstract

Employment discrimination has been a challenge in Canada for many groups and for government agencies who propose to adhere to a human rights agenda. To address this concern, the federal government initiated various anti-discriminatory policies and programs to counteract employment discrimination for four designated groups: Aboriginal people, "visible minorities," women, and people with disabilities. The Employment Equity Act and the Canadian Human Rights Act were the legislation, and the Canadian Human Rights Commission and the Canadian Human Rights Tribunal the institutions designed to deal with employment discrimination for federal employees. When employees file a claim, it is initially processed at the Canadian Human Rights Commission; if the Commission is unable to deal with the complaints due, for example, to the complexity of the claim, it is forwarded to the Tribunal. Although these policies and programs have been in place for more than 10 years, "visible minorities" continue to experience racial discrimination in the workplace, and some who have filed a claim feel that the institutions that were created to protect them have instead perpetuated discrimination.

The purpose of this study is to identify the mechanisms through which racism is reproduced at the Canadian Human Rights Tribunal level. Using a critical race theoretical framework and the methodology of critical discourse analysis, I uncover the ways in which racism is reproduced by the Tribunal. I draw upon two categories to identify how racism is

reproduced at the Tribunal when visible minorities bring their complaints to be heard in the quasi judicial process: institutional practice and institutional discourse. The research indicates that the perspective of the Tribunal adjudicators, which deeply influences how they hear and respond to complaint cases, allows them to ignore everyday racism in the workplace, normalize racist action and policies, and blame the complainants for their experiences. I conclude that until the way in which these cases are heard changes, including the standard for accepting evidence, visible minorities will continue to be re-victimized in the Tribunal adjudication process as the majority of cases are dismissed.

Acknowledgments

My deepest gratitude goes to my two daughters Eboni-Rai and Renee who endured the uncertainty of my schedule; spent many hours quietly entertaining themselves at home, allowing me to study, research or write; and expressed unconditional understanding that when I said "this is the last paper...," I only meant for today. When I went to university for the first time in 1998 as a mature student, and I enrolled in part-time studies, my daughters Renee and Eboni-Rai were nineteen and three years old respectively. After my first course, I left my full-time job and bid goodbye to employment security, week ends and most holidays off, full benefits and four weeks of paid vacation in pursuit of higher education. I recall Eboni-Rai's enthusiasm for her idea of studying along side me (making large marks on her colouring books and art paper) while attempting to repeat the words "brilliant one," which I affectionately and deliberately called her. She survived six different childcare providers' homes over a two year period and still remained energetic, loving and stable. Today, both my daughters are well adjusted, loving, happy and giving people. In the end, they both helped with editing the manuscript – references and tables specifically. I would like to think that the challenges they experienced living with an unpartnered (single) mother, attending full-time university, have aided their strength, growth and perseverance.

My thesis committee Dr. Abbie Bakan, Dr. Patricia Daenzer, Dr. Iara Lessa, Dr. Sarah Maiter and Dr Anne Westhues (chair), have been simply outstanding in their support

of me and for the work that I embarked on. They have offered support and encouragement beyond their prescribed role by meeting with me individually, reading draft chapters of the manuscript, and offering ideas and criticisms. This committee is special in its own right – it comprises five members, one more than the expected amount, yet they worked exceptionally well together in a collaborative manner from the committee's initial meeting to the end of the process. It was important for me, the student, to work with a group of academics who is not only well established and respected in each of their areas of study but also worked cooperatively with each other and without the customary tensions that a thesis committee could potentially bring. Special thanks to: Abbie for understanding that my many emails and phone calls were meant to connect and not intrude and for her specific suggestions that helped to expedite the thesis process; Pat for being there from the beginning, planting the seed of equity and persevering with me to the end – never giving up once; Iara for helping to pave the way that would fuel my excitement for critical discourse analysis and helped me to hone my understanding and appreciation for the subject matter itself; Sarah for being professional in such a way that humbled me, for being honest with me always and for keeping the light on, enabling me to return; and finally, Anne who my ancestors placed in my life at this time knowing that I would need this unique individual for this journey. Anne has literally being my foundation, what Jamaicans would call my "backbone." We spent countless hours communicating by email and phone and many more meeting in three and four hour blocks of time. When I felt impatience with

myself, frustration with bureaucracy and tired from the aggravation and exhaustion of being a full-time student and a mother (among my many roles), fighting for my place in academe, she was gentle yet persistent; encouraging and hopeful yet critical; quizzical and challenging but respectful and forthright – just what I needed. My committee demonstrated a strong example of anti-racist (your anti-oppression) social work practice.

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Glossary

Complaint Case: a complaint by a racialized woman or man filed with the Canadian Human Rights Commission and which was later recommended to the Canadian Human Rights Tribunal for resolution.

Employment Equity Act: a Canadian federal legislation passed in 1986, and reviewed in 1995, designed to acknowledge and circumvent employment related discrimination for four designated groups: Aboriginals, people with disabilities, visible minorities (racialized people), and women.

Employment Discrimination: unfair or differential treatment of an individual based on race, gender (sex), national origin, religion, age, or disability. Employment discrimination takes many forms including lack of promotion, pay inequity, termination, lack of accommodation and harassment.

Employment Equity Program: a series of programs recommended by the federal government for implementation in federal and federally regulated employment sectors. These programs are not legislated by the government.

Equity: is a demonstration or act of fairness that upholds social justice and requires

differences in treatment that may appear to be unequal (England & Gad, 2002).

Exclusion: actions, activities or policies that cause barriers that, directly or indirectly, prevent individuals or groups from fully participating in society.

Human Rights: in 1948 The United Nations General Assembly proclaimed the Universal Declaration of Human Rights, which was intended to be practiced world wide. The declaration sets out international codes of conduct to guide how people are treated and specifically to deter and circumvent political, social and legal abuse or persecution of various groups and individuals, including but not limited to children, people with special needs, prisoners of war, seniors, women, sexual minorities, and racialized people. The proclamation is intended for governments to use ensuring that citizenship rights and freedom are not violated (United Nations, 1948, http://www.un.org/Overview/rights.html).

Immigrant: an individual who formally relocates from another nation state to Canada and who is eligible to receive legal documents enabling residency or citizenship permanently.

Newcomer: immigrants who have legally resided in Canada for 10 years or less.

Race/Colour: Defined by the Canadian Human Rights Commission as having a visible minority or racialized status but excluding Aboriginal peoples.

Racial discrimination – unfair and differential treatment or behaviour toward an individual based on his or her racial background and/or racial features.

Racialized people – people who are thought of and referred to by reference to their social and economic experiences based on their race. The term also signifies that race is a biological trait but also recognized as a social construct and people are being socially forced into this construct. The government of Canada refers to racialized people as "visible minorities" and people of colour, one of the four designated groups that judge Abella identified for Employment Equity purposes. The other three are Aboriginals, people with disabilities and women. For the purpose of this project, racialized people will be used instead of visible minorities or people of colour except in situations where reference is being made to Canadian legislation or policies that specify visible minorities or minorities as categories.

Systemic discrimination – unfair structures in society and institutions that honour the norms and values of some groups over others. For example, the normative assumptions of necessary space, which enables narrow office hallways to be created that do not permit wheel chairs to move freely.

Visible Minority: "persons, other than Aboriginal peoples who are non-Caucasian in race or non-white in colour" (The Employment Equity *Act, 1986).*

Acronyms

CMA - Canadian Multiculturalism Act

CCCC - Advisory Committee on Co-operation in Canadian Citizenship

CHRA - Canadian Human Rights Act

CHRC – Canadian Human Rights Commission

CHRT – Canadian Human Rights Tribunal

EE – Employment Equity

EE Act/EEA – Employment Equity Act

EEP – Employment Equity Program

FCP – Federal Contractors Program

FPS – Federal Public Service

FPSC – Federal Public Service Commission

Chapter 1 – Colonisation in Reverse

Jamaicans, who have been migrating since the late 19th century (to Panama, Central America or the U.S.A.), turned to Britain in the early 1950's, where some 200, 000 first generation Jamaicans now reside. Truly a paradox of colonial history – this colonisation in reverse to the Mother Country which once settled her colonies, including Jamaica, with Britons who came as planters, traders, administrators, technicians, etc.... (Bennett, 1966, p.179).

Colonization in Reverse*
Louise Bennett (Miss Lou)

Wat a joyful news, miss Mattie,
I feel like me heart gwine burs
Jamaica people colonizin
Englan in Reverse

By de hundred, by de tousan
From country and from town,
By de ship-load, by de plane load
Jamica is Englan boun.

Dem a pour out a Jamaica,
Everybody future plan
Is fe get a big-time job
An settle in de mother lan.

What an islan! What a people!
Man an woman, old an young
Jus a pack dem bag an baggage
An turn history upside dung!

Some people doan like travel,
But fe show dem loyalty
Dem all a open up cheap-fare-

To-England agency.

An week by week dem shippin off
Dem countryman like fire,
Fe immigrate an populate
De seat a de Empire.

Oonoo see how life is funny,
Oonoo see da turnabout?
Jamaica live fe box bread
Out a English people mout'.

For wen dem ketch a Englan,
An start play dem different role,
Some will settle down to work
An some will settle fe de dole.

Jane says de dole is not too bad
Because dey payin she
Two pounds a week fe seek a job
dat suit her dignity.

me say Jane will never fine work
At de rate how she dah look,
For all day she stay popn Aunt Fan couch
An read love-story book.

Wat a devilment a Englan!
Dem face war an brave de worse,
But me wonderin how dem gwine stan
Colonizin in reverse.

Conceptually, colonization in reverse does not exist and, specifically, Jamaicans did not colonize Britain when they began immigrating. Miss Lou is speaking metaphorically about the immigration trends from the Caribbean to Britain and using a play on words to suggest that African descendant immigrants from Jamaica and other parts of the Caribbean have had a political impact on British culture.

Introduction: Situating Myself in the Research

I saw and felt the effects of employment discrimination at age 16 when I filled out numerous applications for employment without being called for a single interview. I was unable to find work in the standard places that many other teenaged students were hired. Eventually, with the help of one of my mothers, who worked in a nursing home, I was hired as a nurse's aid. One set of memories remained with me throughout the years and was the catalyst that propelled me away from nursing, the profession I gravitated to at an early age. The majority of the women, including myself, who did the dirtiest work and the heaviest lifting on the frontlines in the nursing home were Black Caribbean Canadian women and Filipino women; everyone on the overnight shift (when I was scheduled to work) was a Black woman and every registered nurse, physician, office personnel and administrator that I ever saw was White. The memories that I carry with me from my first job, as a new immigrant, will remain a part of me until my final day.

This research you are about to read is important to me as an African Canadian woman. I am an African descendant born in Jamaica who has called Canada "home" for most of my life. For me, there is a particular challenge in socially self-identifying as an immigrant or as the child of immigrant parents. There is some suggestion that the collective "we" are all immigrants; however, racialized Canadians, regardless of their family history, are seen as "other" and are often thought to be more recent immigrants (James,

1996; Jones, 2000). Many Canadians identify themselves with hyphenated identities. For example, Jamaican descendants living in Canada are referred to as African-Canadians, Caribbean-Canadians, Jamaican-Canadians or any number of other hyphenated terms.

The application of these terms that simultaneously identify and make visible an individual can be destabilizing. The "peculiarity" of location rests primarily on the individual's feeling of uncertainty and displacement. When individuals are identified as "non-citizens" in a country like Canada, they hesitate to leave their historical countries behind for fear of losing an attachment to a place that they know (or, in many cases, knew) intimately where they are accepted and feel a sense of belonging. They hesitate to attach themselves to Canada as they are invariably reminded that they are not "real" Canadians and do not belong (Tator & Henry, 2006).

Most recently, after the events of September 11, 2001, the Canadian government instituted the Anti-Terrorism Act, Bill-C36. This policy continues to infringe on the civil liberties of hyphenated Canadians and particularly those with Arabic backgrounds. Canadians from these communities have been detained without charge, tried and convicted without knowing the evidence against them, and/or deported to their birth countries on charges of terrorism (Anti-Terrorism Act, Department of Justice, 2001). Canada finds other ways to remind those that are "othered" of their lineage. Many Caribbean people still recognize Ben Johnson as the fastest man in the world after his victorious 100-

meter dash in Seoul South Korea during the 1982 Olympic Games. Ben's citizenship status was questioned and quickly downgraded from "Canada's Ben Johnson" to '"Canada's shame" and "the Jamaican immigrant" after banned substances were found in his blood stream (Jackson, 2004). The former athlete has since never been referred to as "Canada's Ben Johnson" but quite frequently the media refers to him as "the disgraced sprinter" (Jackson, 2004). With such negative descriptions and categorization, many Canadians still feel the longing for another place that is often referred to as "back home." Racialized people who are born in Canada or those who immigrated at a young age have no option but to cling to Canada as a place to call home.

Regardless of our shifting status or our hesitation and uncertainty, we must choose to align ourselves with realities that best fit our feelings and social location at any given point in time; as such, we must find categories and definitions that provide an enabling identity. My challenge as an African Canadian rests on confidently articulating myself and taking responsibility to publicly expose the systemic barriers that impede racialized people's full participation in Canadian society. I am interested in investigating the paradox of equity for racialized Canadian women and men. As an African Canadian, I am a stakeholder in this research -- my position is not neutral. My lack of neutrality is evident with my choice of theoretical foundations and epistemology for this project.

My scholarly work and the need to facilitate radical change have been influenced by many producers of texts and language that are cited in this document, including Louise Bennett Coverley (Miss Lou), George Dei, Carl James, Toni Morrison, Afua Cooper, Patricia Hill Collins, Julia Sudbury, Ron Bourgeault and Chinua Achebe to name a few. Following in their footsteps, this research surpasses the mundane critique of structural inequalities and incorporates tools to aid in dislocating racial injustices in employment. I am interested in developing theories that take into account political, social and historical contexts to explain the existence of systemic and racial employment discrimination and colour-blind laws in the quasi-judiciary process of the Canadian Human Rights Tribunal. Critical race theory will help me to analyze the social realities of employment discrimination, a form of legalized racial discrimination that is influenced by the societal identities of race and gender (Razack, 2003; Zine 2005). My positioning in this research suggests that racism exists and that such practices disempower racialized people. This research, therefore, offers a strong critique of the institutional racism that has traditionally existed in Canadian society and is manifested through language, culture, and education in the workplace and legal system.

Racialized people have contributed to the Canadian nation state in various ways. In spite of their essential role in building Canada, many racialized people, immigrants and Canadian born, encounter difficulties in finding employment that recognizes their skills and

experience. Acknowledging these difficulties, the federal government has instituted legislation and policy to address systemic employment discrimination among members of designated groups who the government employs directly, or who are employed in industries that are federally regulated. Legislative expectations and accountability measures require that various government agencies publish annual reports about employment discrimination and Canada's progress towards reducing discrimination for the four designated groups, namely, Aboriginal peoples, people with disabilities, visible minorities and women. In spite of these strategies, there is mounting evidence that this legislation and programs as well as the bodies charged with implementing and monitoring them are not succeeding in providing the intended employment protection to the four designated groups.

Changing Demographics of Canada: Racialized People in Canada 1981- 2001, 2006

This section begins with a demographic explanation of Canada's racialized population which briefly outlines the rapid increase in racialized people over a 20 year span. Following this discussion, a summary description of Canada's human rights legislation along with their intent and resulting effects are presented. In 2001, racialized people accounted for 13.4% of the Canadian population (Table 1.2). Between 1981 and 2001 Canada's racialized population increased from 1,100,000 to 3,983,845 for a total increase of nearly 2.9 million or a 360% increase over a 20 year period. Statistics Canada (2005) notes that the increase in racialized populations is outpacing that of the total

Canadian population: Between 1991 and 1996 and 1996 and 2001, the total population increased 6% and 4%, respectively, while in the same time period the racialized population rose 27%, six times faster and 27%, respectively. Furthermore, the population of racialized people is expected to increase to between 6.3 million and 8.5 million by 2017. In that year, an estimated 21% to 26% of Canadians will be immigrants and the majority will continue to be from non-traditional host countries: Chinese, South Asians and Blacks will still be the three largest racialized immigrant groups. Arabs, Koreans and West Asian groups are estimated to be the three fastest growing racialized groups, projected to increase to approximately 425,000 in 2017 (Table 1.3). It is also estimated that approximately one million racialized people will be born in Canada by 2017 (Statistics Canada, 2005).

Table 1.1: Racialized People in Canada, 1981- 2001, 2006

Year	Total Canadian Population	Total Racialized Population	Increase	Percent of Total Population
1981	24,083,495	1,131,825	N/A	4.7%
1986	25,021,915	1,577,715	445,89	6.3%
1991	26,994,040	2,525,480	1,400,000	9.4%
1996	28,528,125	3,197,848	697,840	11.2%
2001	29,639,030	3,983,845	1,483,845	13.4%
2006	31,612,897	5,068,100	1,084,255	16.2%

Source: Statistics Canada. (2003a). Visible Minority Groups (15) and Sex (3) for Population, for Canada, Provinces, Territories, Census Metropolitan Areas and Census Agglomerations, 2001 Census - 20% Sample Data; Statistics Canada. (2008). Census Data Products, various tables

Table 1.2: Racialized Group by Ethnic Origin, 2001, 2006

Racialized People by Group	**2001**	**2006**
Total Racialized population	3,983,845	5,068,100
Chinese	1,029,395	1,216,570
South Asian	917,075	1,262,865
Black	662,210	783,795
Filipino	308,575	410,695
Latin American	216,975	304,245
Southeast Asian	198,880	239,935
Arab	194,680	n/a
West Asian	109,285	n/a
Korean	100,660	n/a
Japanese	73,315	n/a
Visible minority, n.i.e.*	98,920	n/a
Multiple visible minority **	73,875	n/a
All Others* **	25,655,185	

Source: Statistics Canada. (2003b). Statistics Canada 2008. Census Data Products: Various tables *, **, *** See Appendix A

There should be no mistaking that many racialized immigrants are not newcomers to Canada. In 2001, for example, only one in five Blacks and 1 in 10 Japanese had come to Canada within the last 10 years. These groups have lived in Canada in excess of 10 years, yet many Canadians of European background, whether newcomers or generational Canadians, see racialized Canadians as immigrants (James, 1996; Jones, 2000). Table 1.4 shows that a large percentage of racialized people are Canadian born. The continued exclusion and marginalization of these groups is hardly the kind of progress Abella (1984)

envisioned with her groundbreaking report focusing on employment discrimination and containing proposals to eradicate racism, sexism and discrimination towards Aboriginals, persons with disabilities, "visible minorities" and women.

Table 1.3: Canadian Born Racialized People – 2001

Racialized People by Group	Total
Japanese	65%
Blacks	45%
South Asians	29%
Chinese	25%
Arabs and West Asians	21%
Latin Americans	20%
Koreans	17%

Source: Statistics Canada. (2003a). Visible Minority Groups (15) and Sex (3) for Population, for Canada, Provinces, Territories, Census Metropolitan Areas and Census Agglomerations, 2001 Census - 20% Sample Data.

Expanded Problem Definition

As federal employees, racialized women and men continue to encounter the elusive "glass ceiling" (Dalton & Daily, 1998; Maume, 1999) in the employment environment. They rarely advance to upper level management positions; they are often hired in "bad job" categories; they experience discriminatory labour practices, such as unfair evaluations or

are denied promotions; and they are often the first to be terminated (laid-off) because they tend to be hired as contract or temporary workers (MacDonald, 2004; Maume, 1999; Robinson, 2004). In spite of the legislation, programs, monitoring and evaluations, discrimination based on race remains a problem in the Canadian federal employment environment. Stakeholders continue to challenge the failure of the government's Employment Equity (EE) programs by suggesting that the dream of the federal EE Program and the premise of the Canadian Human Rights Act (CHRA) to provide equity for the four designated groups remains a daunting task, yet to be realized in the Canadian context (Agocs, 2002a). There are structural differences, among the EEA, the Federal Contractors Program (FCP) and the CHRA, and this difference is clearly evident in each group's premise. The EEA acknowledges and identifies systemic racism and outlines specific mechanisms to reduce the victimization and marginalization of the four designated groups in federal employment settings. There is no enforcement mechanism to ensure that employers adhere to the premise of the EEA, which is intended to help employers recruit, promote and retain members of the designated groups. Employers clearly do not believe that systemic discrimination exists (Agocs, 2002a, 2002b) and since the federal government has not implemented any mechanisms through which employees can seek redress through the EEA, individuals who believe that they have been discriminated against must seek redress through the Canadian Human Rights Commission (CHRC), which is guided by the CHRA. Unlike the EEA, the CHRA is based on a liberal understanding of

discrimination, meaning that discrimination, if evident, is limited to individual behaviour; that is, discrimination is defined as one person acting in a discriminatory manner towards another rather than infused throughout the policies and practices of workplace organizations.

A closer review of the EE policies reveals another concern. All "visible minorities" are placed in one category; therefore, the government has developed and implemented a single set of action plans to reduce systemic racial discrimination in employment for everyone in the designated groups. However, it is clear that all racialized people do not experience the same level and type of discrimination in any setting. In all age categories Japanese, Koreans, and Filipinos, for example, are below the national unemployment average while Latin Americans, Arabs/West Asians, Blacks and South Asians fall significantly above the national average (Table 1.4). Hum & Simpson (2000) also show that not all racialized people are disadvantaged in the workplace and suggest that these differences result from strategies adopted by various ethno-racial groups. Some "visible minorities" are more likely to assimilate – to become more like those who represent the status quo, in order to experience less discrimination. This concept blames people for their visibility since individuals who are obviously racially visible are less able to hide or blend in through assimilation. Not all racialized groups experience discrimination similarly; any discussion of discrimination must account for these differences.

Table 1.4 - Labour Force Participation by Racialized Group 2001

Title	Total Population	Total Visible Minority Population	Chinese	South Asian	Black	Filipino	Latin American	South Asian	Arab	West Asian	Korean	Japanese	Multiple Racialized	All others
Total population 15 years and over by labour force activity	23,901,360	3,041,650	834,140	688,730	467,095	239,780	168,530	148,755	141,470	85,920	81,135	60,580	48,305	20,859,71
In the labour force	15,872,070	2,006,300	494,945	469,160	329,410	182,270	118,590	99,785	86,960	53,950	45,660	36,440	34,160	13,865,77
Employed	14,695,130	1,815,880	453,315	423,955	291,385	172,070	106,190	90,025	74,515	46,675	41,680	34,210	31,320	12,879,25
Unemployed	1,176,940	190,420	41,625	45,205	38,020	10,200	12,400	9,760	12,445	7,275	3,985	2,230	2,840	986,520
Not in the labour force	8,029,290	1,035,355	339,195	219,570	137,685	57,510	49,940	48,975	54,510	31,965	35,475	24,145	14,145	6,993,935
Participation rate	66.4	66.0	59.3	68.1	70.5	76.0	70.4	67.1	61.5	62.8	56.3	60.2	70.7	66.5
Employment rate	61.5	59.7	54.3	61.6	62.4	71.8	63.0	60.5	52.7	54.3	51.4	56.5	64.8	61.7
Unemployment rate	7.4	9.5	8.4	9.6	11.5	5.6	10.5	9.8	14.3	13.5	8.7	6.1		7.1

Source: Statistics Canada (2003a). Selected Cultural and Labour Force Characteristics (58), Age Groups (5A), Sex (3) and Visible Minority Groups (15) for Population 15 Years and Over, for Canada, Provinces, Territories and Census Metropolitan Areas, 2001 Census - 20% Sample Data. 2001 Census of Canada. Catalogue number 97F0010XCB2001047. Ottawa.

The Canadian Human Rights Commission (CHRC) and Canadian Human Rights Tribunal (CHRT) are the institutions charged with ensuring that "visible minorities" are treated in non-discriminatory ways in the workplace; they are expected to create and provide fair circumstances that enable these groups to receive validation of their experiences involving unfair labour practices. These institutions enforce EE through legal means, policies and programs by implementing complaint processes where individuals have experienced discrimination can attempt to seek redress. There is mounting evidence that these institutions are not adequately addressing the EE concerns of the general Canadian population who see Canada as a leader in the implementation of anti-discrimination legislation (Argos, 2004). Government and community reports offer evidence to suggest that there is a widening employment and income gaps between different groups of "visible minorities", the majority of whom are second generation Canadians (Statistics Canada, 2003c; Mahtani, 2002; 2004), employment equity measures become of fundamental importance. Canada has long recognized the need to implement legislated programs to address systemic discrimination in employment and that recognition culminated with the Employment Equity Act (1986; 1995) and later the Federal Contractors Programs(FCP)/Employment Equity Programs (EEP) (1996) and a more recent Antiracist Strategy (Government of Canada, 2005). Unfortunately, these programs are implemented with insufficient resources to make a significant difference in the reduction of work-related, race based, discrimination of designated groups in the employ of the federal government and their federal contractors (Agocs, 2002b; Bakan & Kobayashi, 2000;

England, 2003; Haddow & Klassen, 2004). This research focuses on the CHRT, the body charged with investigating the most complex and difficult cases that are referred from the CHRC.

Statement of Purpose and Significance

The aim of this research is to explore and document the paradox of exclusion within equity in the mechanisms of the CHRT adjudication process.

The purpose of this research is to deepen the understanding of the functioning of the CHRT and to explore the possibility of the paradox that the institutions created to address concerns of employment discrimination may continue to promote exclusion. I explore its various mechanisms and expose those that have failed in their intent and continue to reproduce discrimination through the various processes. Specifically, this research project demonstrates how racial discrimination is recreated in the federal government and federally regulated settings through the very federal legislation and policies designed to combat discrimination. It is important to highlight that the federal government is the only level of government that has implemented equity based policies to combat or reduce employment discrimination among disadvantaged groups and its initiatives are a model for all the other employment sectors. While the federal public sector

is relatively small in number when compared to the larger Canadian labour force, it is important to understand the systemic workings of racism in a delimited setting before broader recommendations can be generated.

The Canadian government's unique experience in addressing the specific concerns of racialized people in employment – the CHRT – is, hence, of particular importance to understand government programs initiated to that end. Furthermore, the lens through which current discussion is articulated is limited. Government and researchers alike often focus on specific members of designated groups but there is little attention focused on the multi-layered experiences of these populations. This research analyzes discrimination based on race as a specific category. The strategies and commitment to eliminate systemic employment discrimination requires an integrated analysis which identifies, recognizes and incorporates multiple systemic barriers based on employees' social locations. This study has unique characteristics as it explores and identifies the systemic disadvantages regarding racialized people from a policy perspective and how policies that are implemented to protect the group's human rights are ineffective.

This work will contribute to the scholarly literature and social work practice by drawing attention to and exposing how racism and institutional discrimination are maintained through discourses even in cases where policies are implemented to reduce racism and discrimination. This work builds on the knowledge base focusing on

employment policy changes specific to racialized people and complements previous research that has demonstrated that the employment equity needs of racialized people must be separated from the needs of other designated groups (Hum & Simpson, 2000; Anon, 1999). Furthermore this work contributes to the body of the work of critical race theory, specifically given its focus on offering alternative mechanisms to recognize, understand and improve race based discrimination in employment and the judicial process.

Business and community organizations interested in improving the outcomes of the EE programs or implementing more progressive programs may find this research useful. Canadian government agencies that formulate policies may find the research helpful in developing better guidelines and outcome measures for the CHRT adjudication process and the EE Program and by extension to assess its effectiveness for members of the four designated groups: Aboriginals, disabled people, "visible minorities" and women.

As a major scholarly and social contribution, the findings can be used to generate organizational standards, benchmarks and tools. These standards and benchmarks can be used to assess institutional practices and, in turn, determine how racism is manifested via institutional norms and values. Subsequent to such analyses, tools could be developed and implemented to enact policies and programs that reduce racial discrimination in the work place and at the Tribunal level. These tools will promote greater employment equity for various groups of Canadians. Further, the focus on the Tribunal will provide clear examples

of how the adjudication process can disadvantage racialized people, which will facilitate the development of strategies that will enable the Tribunal to view racial discrimination in the judicial process and the workplace through a more equity-based lens. Ultimately, this study aims to promote greater social inclusion and greater social justice in Canadian employment settings and the Tribunal process.

Conclusion

This chapter highlighted the extent to which Canada is a nation of mixed and multiple racialized groups and discusses challenges that some groups of racialized people encounter in the labour market. The traditional countries of origin for immigration have been primarily European but, for example, since the mid 1800s, China has been among the countries sought out as a source of cheap labour. This history of immigration is reflected in the ever-changing demographic profile of the Canadian population. The demographic shift from a predominantly European base in some areas (Aboriginal people have a presence in Canada predating European settlement) to a more racially diverse population has exacerbated old tensions in various aspects of society, including the labour market. The Canadian government is attempting to address disparities in the labour market through legislation and identification of four designated groups: Aboriginal peoples, people with disabilities, "visible minorities" and women; this is still a work in progress. In spite of the federal government's legislative attempts to reduce employment discrimination, its

prevalence remains a daily reality for racialized people. This research explores how racial discrimination is reproduced in the processes of the Canadian Human Rights Tribunal. This study is organized as follows:

Chapter 2 – Contextualizing Canada's Human Rights Legislation describes each issue by situating it in a theoretical, historical and political context. The chapter broadly exposes the central problem of the thesis, its background, its importance, and various other aspects. A brief description of Canada's human rights legislation that specifically pertain to eradicating employment discrimination is offered. The only piece of legislation discussed that is not specifically aligned with this purpose is the Canadian Multiculturalism Act (CMA) (1988). This Act is included in the discussion in order to recognize that Canada has attempted, at least theoretically, to address racial and cultural discrimination through the implementation of this policy. The Act is relevant to anti-discrimination regulations. The CMA is the intention and the Human Rights Commission and Tribunal are the implementation mechanisms, following the description of these laws, critical reflections are offered.

Chapter 3 -- Conceptual Framework discusses the genealogy of race theory. The definition of race is grounded here, concepts of discrimination are developed and structural issues disclosed. The chapter concludes with a full discussion of critical race theory, its development and suitability for this research.

Chapter 4 – Literature Review exposes the insidiousness of employment discrimination and in particular, racial discrimination. A detailed description of the employment situation in Canada in terms of race and gender and an explanation of the widening employment gaps are discussed. Employment in the federal public service is reviewed, again, with an emphasis on the genderization and racialization of employment in the Canadian workforce and specifically in the public service.

Chapter 5 -- The Methodology used to examine the proceedings of the tribunal is explained. A more focused discussion of the research issue is offered. This chapter also explains critical discourse analysis and shows it to be a powerful and appropriate analytical tool for this research. The chapter concludes with an explanation of the sampling process, challenges associated with the research, and how these challenges were addressed and integrated throughout the research process.

Chapter 6 – Analyses documents pertaining to employment related discrimination cases filed with the Canadian Human Right Commission (CHRC), a small percentage of which are forwarded to the CHRT, and discusses the results. A brief introduction to the CHRC is provided, including data about the number of cases processed. This introduction includes: complaint cases filed with the Commission, cases resolved, cases dismissed or cases referred to the Canadian Human Right Tribunal (CHRT, the Tribunal), and the rationale for dismissal or referral.

Chapter 7 – Offers a descriptive analysis of the demographic of the complainants, the respondents and the cases themselves.

Chapter 8 – Analyses and provides a discussion of the Tribunal reports and demonstrates how the innate racist notions and practices of the Tribunal itself make it almost impossible for race based discrimination complainants to succeed with their complaint cases.

Chapter 9 – Provides a conclusion, enlarges the discussion and makes recommendations for further research, and finishes with a discussion of the implications of this research on social work practice and social justice programs.

Chapter 2 – Contextualizing Canada's Human Rights Legislation

...that until the philosophy which holds one race superior and another inferior is finally and permanently discredited and abandoned; that until there are no longer any first-class and second-class citizens of any nation; that until the basic human rights are equally guaranteed to all, without regard to race -- until that day, the dream of lasting peace and world citizenship and the rule of international morality will remain but a fleeting illusion to be pursued but never attained. His Imperial Majesty Haile Selassie I, 1963

Introduction

The Canadian Multiculturalism Act (1988), The Canadian Human Rights Act (1985), The Employment Equity Act (1985, 1995), The Federal Contractors Program (1986, 2003), and the Canadian Human Rights Tribunal (1996) are the major government initiatives formulated to reduce employment discrimination among Aboriginal peoples, people with disabilities, "visible minorities" and women. These initiatives placed Canada among the most progressive countries in the world to address employment as it relates to marginalized groups. In spite of these legislative and program initiatives, research continues to expose the entrenched nature of racism and sexism in the Canadian work place (Agocs, 2002a; Bakan & Kobayashi, 2000, Billingsley & Leon, 1985; Boyd, 1984). Social activists criticize the continued structural inequalities and inadequacies of the laws written to minimize employment related discrimination, especially in light of the ever increasing

racial and cultural diversity of the Canadian landscape (Agocs, 2002b). This section discusses the evolution and implementation of some key human rights legislation and offers a critique of each legislation identified.

Canada's Initiatives to Address Employment Discrimination

Canadian Multiculturalism Act - 1988

Canada began its quest to honour diversity in the 1960s amidst social tensions between French and English speaking Canadians. Pierre Elliot Trudeau and his Liberal Party made a statement on the floor of the House of Common supporting the premise of the first Canadian Multiculturalism policy in 1971, which was later amended and implemented in 1988 by the Conservative government under the leadership of Brian Mulroney. This Act placed Canada on the world stage, allowing the country to be "routinely cited as a world leader in Multiculturalism, exuding a discourse of relatively peaceful coexistence of multiple ethnicities, religions, and so on" (Wood & Gilbert, 2005, p.680).

The Canadian Multiculturalism Act (CMA) was a response to increased immigration from non-European countries, which represented a more racially and ethnically diverse population than the predominant 1950s and 1960s immigration patterns, which were "primarily European immigrant groups" (Vallières, 1968; Drache, 1972 as cited by Goonewardena & Kipfer, 2005, p.2). In 1962, in response to Quebec nationalism, the Royal Commission on Bilingualism and Biculturalism was struck in an attempt to explore Canadian identity and acknowledge differences within a unified framework

(Mahtani, 2002). Politically, the focus of the Royal Commission and the subsequent investigation of Canadian multiculturalism were intended to address the growing tensions between Francophone and Anglophone Canadians, a focus that excluded all other ethnic groups in Canada. Non-Francophone and Non-Anglophone Canadians were recognized in the fourth volume (1971) of the report published by the Royal Commission on Bilingualism and Biculturalism. As well, while the parliamentary discussion around a multicultural policy was in process, ongoing racist and discriminatory attitudes and behaviour prevailed and were enacted upon the very ethnic and racial groups who were partially the focus of the discussion. Politicians failed to include discussions about possible compensation for the injustice and indignities that many groups had experienced in previous years (Wood & Gilbert, 2005).

In 1969 other "ethnic" groups were included in the discussion, following much political activism. These groups sought assurance that their contributions in building the Canadian nation state would be recognized in the policy documents. Woods & Gilbert (2005) take a critical, if not cynical view of the CMA by arguing that:

> Prime Minister Trudeau's primary concern in 1971 was the tense, even hostile relationship between English and French, which manifested itself in a battle between Quebec and the rest of Canada (principally the federal government). When he declared multiculturalism to be an official policy of Canada, its context was

> multiculturalism within the bilingual framework adopted two years previous. For the Liberals, multiculturalism was not a goal or a vision in and of itself. It was a politically necessary addition to a national bilingual policy introduced to recognize Francophones and Quebec. Multiculturalism was introduced so that bilingualism would not create extra problems. It was coincidentally fortunate that it fit nicely into a Liberal tradition of immigration and citizenship programs. Nevertheless, as a consequence, a fragile vision of a diverse Canada continued to hold sway, and funds continued to flow towards 'other ethnic groups'. (pp. 681-682)

Many Canadians, newer and older ones, excluding Aboriginal people, appear to have earned, at least in theory, a place in the ever developing Canadian landscape through this legislation. In order to further the interests of "ethnic" groups, the CMA:

(a) recognize and promote the understanding that multiculturalism reflects the cultural and racial diversity of Canadian society and acknowledges the freedom of all members of Canadian society to preserve, enhance and share their cultural heritage;

(b) recognize and promote the understanding that multiculturalism is a fundamental characteristic of the Canadian heritage and identity and that it provides an invaluable resource in the shaping of Canada's future;

(c) promote the full and equitable participation of individuals and communities of all origins in the continuing evolution and shaping of all aspects of Canadian society and assist them in the elimination of any barrier to that participation;

(d) recognize the existence of communities whose members share a common origin and their historic contribution to Canadian society, and enhance their development;

(e) ensure that all individuals receive equal treatment and equal protection under the law, while respecting and valuing their diversity;

(f) encourage and assist the social, cultural, economic and political institutions of Canada to be both respectful and inclusive of Canada's multicultural character;

(g) promote the understanding and creativity that arise from the interaction between individuals and communities of different origins;

(h) foster the recognition and appreciation of the diverse cultures of Canadian society and promote the reflection and the evolving expressions of those cultures;

(i) preserve and enhance the use of languages other than English and French, while strengthening the status and use of the official languages of Canada; and

(j) advance multiculturalism throughout Canada in harmony with the national commitment to the official languages of Canada (Canadian Multiculturalism Act, 1985, c. 24 (4th Supp. Section 3.1).

The objectives of the CMA signify Canada's intent to address the needs of an increasing culturally diverse population. The reflection below describes some of the gains made and challenges that various groups experienced in their attempts to integrate into what was described in the 1980s as a progressive Canadian mosaic. Government directorate, ministries and committees which were formed and financed will also be discussed through this reflection.

Critical Reflection

Canadian multiculturalism policy, while ambiguous, acknowledges and promotes cultural and "ethnic" ties and simultaneously encourages individuals to identify strongly as Canadians. "Multiculturalism *in Canada* is best understood as an influential, liberal-cosmopolitan component of 'bourgeois urbanism': an ensemble of strategies, knowledge forms and everyday sensibilities that has absorbed subcultural practices and socio-political aspirations into dominant processes of capitalist urbanization and popular milieus shaped by elite and new middle-class factions" (Goonewardena & Kipfer, 2005, p.2). The essence of the CMA encourages full involvement of ethno-cultural and racialized people in Canadian society and a reduction in systemic barriers that prevent these groups from fully

participating in Canadian society. As a demonstration of its commitment to multicultural policies, the federal government created a Multicultural Directorate and the Ministry of Multiculturalism in 1972 and 1973 respectively; both were intended to monitor the multicultural policy implementation. Furthermore, the government created linkages with ethno-cultural community organizations such as the Canadian Consultative Council on Multiculturalism (Dewing & Leman, 2006).

The Act, however, has been heavily criticized for its lack of clarity, failure to recognize inter-group distinction, having a distinct "colour-blind approach"; ignoring racialized differences; and experiences of colonialism. The racist nature of the Canadian Multiculturalism Act is exemplified by the exclusion of Aboriginal peoples, including their histories, and the assimilationist programs imposed by White settler society (De Zwart, 2005). According to Goonewardena & Kipfer (2005):

> Canadian cities such as Toronto and Montreal can boast of a political history wherein longstanding subaltern traditions were joined in the early twentieth century by the radicalizing immigrant experiences of Jewish and East European Diasporas. From the Métis rebellions in Manitoba to the more recent struggles of Chinese, South-Asian and African-Canadian civil rights activism, large Canadian cities have benefited for over a century from the everyday practices and forms of resistance emerging from a wide variety of non-European populations. (p.670)

Yet, the CMA stereotypes and even obscures the experiences of these groups; specifically, the recognition of multiculturalism emphasizes the exoticism of foods and cultures while keeping the status quo power structures intact and, thus, maintains the façade that Canadian society accepts difference.

Sunera Thobani (2007) argues that "the success of multiculturalism lies in its facilitation of the integration of immigrants on the nation's terms; it remains dependent on the derailment of the struggles of people of colour against the racism of the nation-state" (159). Under these circumstances, the premise of Canadian multiculturalism was destined for failure as it was based on the premise of Euro-Canadian cultural and racial superiority. Even though the CMA proposed to recognize ethnicity, differences and individuality of specific cultures, it fundamentally failed to do so at the simplest level. While the federal government initiated programs apparently in support of multiculturalism, these policies and programs were limited and "promoted ethnic events and cultural expressions through food, family, personal and religious practices"; in addition, these initiatives forced ethnic allegiances (Mahtani, 2004, p. 2). These programs manifested as small grants to ethno-cultural communities, which were mainly focused on job training skills, English language training, and cultural celebrations. These celebrations were limited in scope and spatially challenged. For example, cultural dress such as the sari and certain cultural hair styles such as cornrow braids were not seen as acceptable business attire. However, these same attires were encouraged at multiculturalism festivals and activities. In this sense, multiculturalism

was encouraged as an entertainment occasion rather than an integral part of life. The Chin Picnic, held annually in Toronto, is an example of such exoticism in which organizers encourage groups to dress in their cultural clothes and celebrate by sharing cultural foods. Yet after the day's activities, this same attire is frowned upon in many employment areas.

Multiculturalism in contemporary Canada is not unlike the brand of multiculturalism found in other Western nations (Banting, 2005, p.2). But while multiculturalism expanded to other nations, it suffered increasing attacks among anti-immigrant proponents. Anti-immigrant attacks include arguments that those from the Global South gravitate to Western nations with strong welfare states in their quest for economic assistance and that Western countries with high immigrant and racialized populations tend to spend more on social spending than those nations with less racially diverse populations (Alesina & Glaeser, 2004; Easterly, 2001). Banting (2005) suggests that the increase in racial and ethnic diversity in the Global North has caused a shift in political ideology and social thought and has therefore continue to weaken commitment to redistributive measures in the welfare state. He further argues that multiculturalism policies supporting diversity in some countries could divide potential welfare state supporters and exacerbate tensions when redistribution is linked to ethnic diversity. These challenges are divisive and have resulted in reduced support for multiculturalism, immigration and the welfare state by traditional left of centre coalitions and groups. Furthermore, there are claims that multiculturalism reduces community cohesion while increasing mistrust among citizens and rendering a social policy agenda impotent (Banting, 2005). Murphey (2005)

offers a more damning opposition to an ethnically and racially diverse Westernized population:

> What is of issue, of course, is the continued existence of peoples, as peoples, who are being demographically invaded. If they don't care about their continuing, no one will; certainly it is not something that bothers the millions that are arriving, or the intellectual culture that for ideological reasons welcomes the undercutting of the existing societies. This is not a matter of science, but of the heart. It relates to values, loyalty, and heritage. (p. 218)

In this statement, Murphey (2005) is lamenting the many different ethnic and racial groups who are converging on Westernized nations and, therefore, diluting Whiteness as a historically privileged way of being. In fairness, North America and Europe experienced conflicts in the post war era while attempting to assimilate different cultural groups into their societies. While these groups were of European descent, the differences in culture motivated the host countries to institute discriminatory practices against newcomers. The English settlers discriminated against Germans, Irish and Polish immigrants when they initially arrived in Canada (Satzewich, 1991). However, racialized people were barred from immigrating to Canada, and this prohibition is an indication of the different levels and complexity of discrimination. This complexity exposes the state's attempts to maintain Whiteness so that even when the government was opposed to the presence of certain

"ethnic" Whites and merely tolerated such groups, there was no equivalent arrangement for racialized people. Opposition and resistance to multicultural or racially and ethnically inclusive policies and practices in Canadian society have been ever present. It is, therefore, not coincidental that the CMA was implemented with little or no political commitment from politicians to structurally change barriers in Canadian society. Pierre Trudeau, leader of the Liberal party and prime minister of Canada in 1971, is credited with forwarding the idea of multiculturalism. However for Trudeau:

> The Canadian Multiculturalism Act was a necessary appendix to the Official Languages Act, and, as such, it did not contribute to Trudeau's formulation of Canadian nationalism. Indeed, the policy was more about acknowledging past tensions than it was about developing an alternative vision for the future. (Wood & Gilbert &, 2005, p.679)

Jain (1990) further argues that the approach, implementation:

> [The] institutionalization of multiculturalism has moved the federal government policy from cultural retention (a "song and dance" approach of the 1970s) to social policy aspects such as removal of barriers to full participation of all Canadians, especially participation by increasing numbers of immigrants from 3rd world countries [sic] and native-born non-white [sic] Canadians" (p. 47).

While humanitarian words and concepts are documented in various Canadian anti-discrimination social policies, the effects of these policies are less visible (Agocs, 2004; Bakan & Kobayashi, 2000). This is evident, for example, in the numbers of people from disadvantaged groups who use some form of institutional mechanism to challenge discrimination based on ability, race, ethnicity and country of birth (Canadian Human Rights Act, 1985). The continued disadvantages that "visible minorities" experience in Canada demonstrate the weak and ineffective premise of the CMA and the lack of resources and accountability mechanisms that would ensure successful integration of all Canadians.

The conceptualization, implementation, monitoring and evaluation of the Canadian Multiculturalism policy have been flawed, in that the government has not only failed to adequately preserve the rights and distinctiveness of ethnocultural groups but has also superimposed similarities as sameness. The EEA is one such example where all racialized groups are paradoxically lumped together under the same category of distinctiveness. However, it cannot be denied that there was an effort to integrate ethno-cultural and racialized groups in Canadian society at the policy level and that this effort ignited many other anti-discrimination policies including the Employment Equity Act of 1986.

Canadian Human Rights Act, 1985

The Canadian Human Right Act (CHRA, the Act) was a bold statement from the Canadian government to reduce, and ultimately eliminate, discriminatory practices in Canadian society. This commitment followed shortly after the approval of the CMA. In principle, the CHRA ensures equality of opportunity for all Canadians so that they may fully participate in Canada "as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted" (Canadian Human Rights Act, 1985). In 1996 the Act was also changed with the revised EEA. The Act remains a foundation of Canada's human rights legislation and is administered by the Canadian Human Rights Commission.

Critical Reflection

Then and now, the CHRA emphasizes the promotion of human rights for the "victim" (complainant, individual), because it reviews acts of discrimination individually rather than systemically (Bakan & Kobayashi, 2000). For example, only recently the Act began to include group access to opportunity (e.g. pay equity for women) and demand redress for those individuals and groups who have experienced employment related discrimination (Agocs, 2004). The Act is implemented passively; a complaint has to be

brought before the CHRC before any potential discrimination under the Act is acknowledged. The CHRA, as implemented, does not allow anyone to initiate any actions as a result of research and investigation that violates the premise of the CHRA. However, the CHRA remains one of the federal government's policy cornerstones in its attempt to eradicate systemic discrimination and often this Act is the only beacon that guides disadvantaged people through their claims for inclusion and the dismantling of the status quo. The Canadian Human Rights Commission is charged with that task.

Canadian Human Rights Commission, 1985

The Canadian Human Rights Commission (CHRC, the Commission) administers the CHRA and is responsible for ensuring compliance with the Employment Equity Act. In its role, the Commission is responsible for resolving complaints based on employment discrimination for federally regulated employees. When individuals believe that they have experienced employment discrimination, they contact the Commission first and it tries to resolve the complaint case. If the Commission is unable to resolve the case, it is referred to the Canadian Human Rights Tribunal (CHRT). Commissioners are appointed by the Minister of Justice and Attorney General of Canada for a full term of not more than seven years. Commissioners can also be reappointed full time or part time for specific durations. There are five commissioners in total: one chief commissioner and four commissioners. Once a complaint case is filed, investigators determine if the case falls under the

jurisdiction of the Commission and the most appropriate resolution mechanism to utilize. The process which the Commission follows to resolve complaint cases is discussed in detail in chapter six. It is debatable as to whether or not the Commission has significantly influenced the effects of employment discrimination given the large numbers of cases that are seen as illegitimate. A second concern is the large number of cases that are filed but are discarded for various reasons. Therefore, the majority of cases that are filed are not dealt with (CHRC, 2005).

Critical Reflection

The Commission has provisions allowing it to initiate a complaint process when institutional discrimination is evident. However, this rarely occurs given the Commission's lack of resources (Hucker, 1997). The restrictions that manifest in the form of an unsupportive political climate and resource depletion have helped to create a backlog of cases that ensures many complaints are not responded to for years. For example, the Canadian Human Rights Commission (CHRC) reports a decrease in case backlog beginning in 2003. The Commission reports that the average case took approximately nine months to get resolved in 2005, whereas in 2002 such cases took over two years to get resolved and in earlier years, even longer (Canadian Human Rights Commission Annual Reports, 1997 - 2006). Even when a complaint is resolved within two years, the strain of working in the environment while the complaint is being heard has to be emotionally

exhausting for the complainant. The improvement in time to resolve cases beginning in 2002 resulted from the Commission implementing a new strategy to reduce case backlogs by streamlining cases into specific categories. This reduction in case backlog is not necessarily positive for complainants. Further discussion of how the new process disadvantages complaint will follow in chapter six. The field of Social Work, in general, has a particular interested in the outcome of redress legislation. Members of the profession are concerned with individuals and groups who experience marginalization and how these disadvantages can be eliminated. People who are marginalized are further disadvantaged by the streamlining of these redress mechanisms that create additional challenges in the process of seeking redress. Therefore, this legislated protection from employment discrimination remains inaccessible to those who need it most.

Federal Employment Equity Act – 1986, 1996

In the early 1970s Canada experienced a dramatic shift in demographic profile, which resulted in an increasingly diverse workforce. The catalyst to this shift was twofold: an increase in the number of women who entered the Canadian workforce and an increase in immigrants from countries of origin other than Europe (Armstrong & Armstrong, 1984; 1990; Evans & Wekerle, 1997). Following considerable pressure from advocacy groups, the Canadian government recognized that some groups were experiencing greater employment disadvantages than others. Two schools of thoughts dominated the discussions

regarding hiring and promotion: a) meritocracy – hire and promote only based on "objective", established standards and b) equity – recognize social constructs such as race, gender and ethnicity when hiring and promoting (House of Commons, 1984; Leck, 2002). However, these ideas and guidelines are not without biases.

Hiring practices are not without biases and the idea of merit has little basis or foundation in objectivity. The idea of merit is embedded in the notion of equality; however, there is a difference between equality and equity. Equality is a liberal concept that refers to the same or similar treatment of individuals regardless of their gender, race or other social constructs that limit full participation in society. Equity is more than equality or sameness – it embodies a sense of fairness and social justice and often includes or calls for differences in treatment that may appear to be unequal (England & Glad, 2002). However, "the existence of systemic discrimination reflects the reality that the work place was designed by and primarily for a working population that was white, Christian, able-bodied, male and supported by a full-time domestic worker – 'the housewife'" (Agocs & Burr, 1996, p.31). Given this premise, EE policies and programs are required to accommodate the employment needs of racialized members of the designated groups.

Rosalie Abella (1984) was given the task of determining the most equitable approach to the promotion of Employment Equity (EE) for members of four designated groups: Aboriginals, "disabled people," "visible minorities" and women. Judge Abella

chaired the Commission on Equality in Employment and in 1984 tabled the *Report of the Commission on Equality in Employment* (herein referred to as the Abella Report). Its recommendations included mandatory federal government policy to reduce systemic discrimination in the workplace. In 1986 the federal government passed the Employment Equity Act (EEA) intending to achieve equity in the workplace so that no person would be denied employment opportunities or benefits for reasons unrelated to ability. In the fulfillment of that goal, the government intended to correct the conditions of disadvantage in employment experienced by women, Aboriginal peoples, the "disabled" and members of "visible minorities" by giving effect to the principle that employment equity does not mean treating persons the same way but rather requires special measures and the accommodation of differences (EEA, 1995). The Act regulated federal Crown corporations and federally regulated agencies.

The EE Act was reviewed in 1995 and amendments were passed; the new legislation was implemented in 1996 after critique and consultation with stakeholders, including members of community groups, trade unions, and employees. In addition to those groups already covered, the revised Act extended coverage to federal public servants such as the Royal Canadian Mounted Police, the Canadian Security Intelligence Services, universities, hospitals and the Canadian Air Force. The amended legislation gives sweeping powers to the Canadian Human Rights Commission (CHRC) to hear disputes, issue orders, analyze employers' reports, and conduct on-site compliance reviews. The revised EEA

allowed the Canadian Human Rights Tribunal to enforce compliance of the legislation and mandated a House of Commons Committee to review the legislation every five years. The House of Commons Committee review has consistently shown, statistically, the ineptness of the application of the EE. Nonetheless, the revised EE Act secured a place in Canadian history as a policy of hope, to reduce, if not eradicate, systemic employment discrimination.

Critical Reflection

In spite of the hope and expectations, this revised EE Act remains a disappointment for Aboriginals, women, persons with disabilities, racialized persons and many other stakeholders. Unfortunately, the essence of the EEA and the realization of its implementation remains a dream. For example, women are lumped under a single category in the EE legislation; however, women who need workplace accommodation because of 'dis'ability in order to operate optimally in the work environment are not readily accommodated. Benhamadi (2003) notes "the major problem facing this group lies in the lack of special accommodations and adaptive measures. Accessibility imposes various constraints linked with security, cost, personal needs and protection of individual data and confidentiality" (p.515). Employers are reluctant to invest in these accommodations for fear of affecting their profit margin.

Notwithstanding the challenges, the situation remains hopeful. The category "women" is the only designated group that has exceeded EE hiring based on workforce availability. However, the overall percentage of women hired is the extent of the success since federal agencies are challenged by the concept of equity with respect to hiring in certain job categories and promotion of women. For example, while women's hiring exceeded their workforce availability, the data show that the majority of women are hired in clerical, administrative and traditional areas of women's work (Agocs, 2002b; 2002c). The Canadian Human Rights Commission (2006) concurs that a large number of women are employed in the banking sector but primarily in clerical positions although they report with some optimism that the situation is changing. The changing Canadian political landscape and the sharp turn to the right of center political ideologies have ensured that the necessary political commitments to EEA and associated programs are left behind with nostalgic thoughts of what could have been an outstanding policy. In Ontario, this nostalgia was particularly evident among frontline service providers after the Harris government repealed the EEA passed by Bob Rae's New Democratic Party government (Hucker, 1997). The weakness of the mechanisms of enforcement, their non-binding nature, the lack of funding for enforcement and the conciliatory manner in which the challenges are handled ensures failure in genuinely achieving equity.

Federal Employment Equity Program – 1986, 1996, 2003

The federal public service provided guidelines to implement EE programs in the workplace. In 2003, a broad framework was suggested to enhance the success of the EE program for external recruits. Employment Equity Programs outline specific ways to help employers in the federal public service recruit, promote, train and retain people from the four designated groups in order to decrease the gap in workforce representation. Employers are mandated to address these gaps in representation at the departmental level or in the larger public service outlining a schedule time and numerical goals. Gaps are identified through an analysis of the department workforce and an EE plan (Senate Committee on Human Rights, 2007). Employers are required to investigate agency policies and practices that reduce the potential of designated groups to work in non-discriminatory work environments. Employers are then expected to develop and implement policies and programs to reduce institutional barriers for the four designated groups (Auditor General, 1998). These should, theoretically, eliminate and prevent systemic discrimination by changing hiring practices to accommodate training, promoting and retention of individuals from underrepresented groups in the workplace (Agocs & Jain, 2001; Agocs, 2002b; Bakan & Kobayashi, 2003). There is no emphasis on filling quotas; rather the focus is on a) increasing the numerical representation of designated groups and b) adequately reflecting the pool from which potential employees are drawn as well as reflecting the larger Canadian society (Auditor General, 1998). In spite of the lofty goals of the EE Act and

programs, it is plagued with limitations that have long been ignored by the government and its agents; the Act and programs continue to be scrutinized and criticized for their shortcomings.

Critical Reflection

The EEA and programs were expected to have strength and vigour by way of identifying and eliminating systemic discrimination in organizational practices and policy and ensure adequate representation from the designated groups in all areas of the organization (Abella, 1994; Coalition of Visible Minority Women, 1988); however, there is no political will to enforce the requirements of the Act or the program (Agocs, 2004; Bakan & Kobayashi, 2000). Another area in the workplace that is disregarded is organizational norms and culture. There needs to be consensus that current organizational structures support the cultural practices, norms and values of some groups while ignoring those of other groups (Agocs, 2004; Galazuzi, 2001; Hagey, Choudry, Guruge, Turrittin, Collins & Lee, 2001) and these practices, in turn, contribute to the continued systemic discrimination in the workplace (Agocs, Burr & Summerset, 1992; Galazuzi, 2006; Hagey, et al., 2001). However, the government implemented a number of programs including the Federal Contractor Program (FCP) to help guide employers and agencies actions to succeed in achieving the goals of the EEA.

Federal Contractor Program – 1986

The Federal Contractor Program (FCP) was implemented in 1986 and runs parallel with the Employment Act. The FCP governs employers at the provincial level who have a national workforce. The program presides over companies with more than 100 employees that successfully bid for contracts to sell goods or services worth more than $200,000 to the federal government. As a condition of receiving federal contracts, employers are required to implement EE programs in their work environments and are mandated to file annual reports to the Human Resources Development Canada which are made public and included in the annual parliamentary report to the Government of Canada. Employees covered under the Act work primarily in the telecommunications, banking, transportation, hospital, and education industries. Contractors who bid under the program are theoretically mandated to comply with the EEA. The program is monitored by Labour Standards and Workplace Equity employees as well as Workplace Equity Officers, who conduct on-site reviews of the employers' equity program. Contractors who are found to be non-compliant with employment equity may lose the opportunity to bid on future contracts (Human Resources and Skills Development Canada, 2003). The government, however, does not utilize this penalty.

Critical Reflection

Both federal Conservative and Liberal governments have demonstrated minimal commitment to enforcing the FCP. Federal contractors, for example, are only required to submit reports annually. If the reports are not submitted, employers receive extensions and a potential fine of $50,000 maximum. There is no other mechanism to hold employers accountable for not developing an EE plan or lagging behind the EEA's mandate (Agocs, 2002c). Employers are not required to adhere to their EE plan and its proposed numerical representation in situations of downsizing, poor economic conditions or when such plans would create challenges In fact, "the new Act permits employers considerable, if not excessive, latitude to re-set and modify numerical goals, or not achieve them at all" and "employers are not legally obligated to attain their numerical goals within a specified timeframe, as long as they can demonstrate 'reasonable effort'" (Lum & Williams, 2000, p. 200). With this attitude, employment gaps for the aforementioned designated groups have seen marginal change and are unlikely to move forward; however, the government remains reluctant and uncommitted to stop providing contracts to businesses and agencies who fail to comply with the FCP and the EEP. In 1996, the CHRT was given the mandate to enforce the monitoring and essence of the EEA. However, lack of resources continues to affect the potential quality of work that this agency could accomplish.

Canadian Human Rights Tribunal – 1996

The CHRC is the major organization in Canada that handles human rights complaints at the federal level. The commission only adjudicates cases originating in federal agencies or federally regulated agencies. The CHRT is an affiliate of the CHRC and was created in 1977 by parliament. In 1996, parliament expanded the Tribunal's roles to include responsibilities for adjudicating cases filed under the Employment Equity Act with organizations having more than 100 employees. The Tribunal has the jurisdiction to use the evidence presented by the complainants and case law to apply the CHR Act. The tribunal is similar to a court of law, which portends the agency's neutrality in the complaint process. The CHRC is the first point of entry for human rights complaints. That is, when the commission investigates a complaint and finds merit in the complaint but is unable to resolve the situation, the case is referred to the CHRT.

The CHRT comprises a chair person, a vice chair and 13 members (one fulltime and 12 part-time members). The chair, who is appointed by parliament, can serve in this capacity for no more than seven years. The chair's duties include hearing cases, distributing complaint cases to the other members of the Tribunal and administering the Tribunal. The vice chair is responsible for administrative duties, hearing cases and acts on behalf of the chair in case of absence. The full and part-time adjudicators are appointed for up to five years as members. All 15 members of the Tribunal have law degrees.

The composition of the Tribunal (2002) suggests that the cases that are heard at this agency involve legally complicated issues dealing with emerging social and human rights concerns. These cases are submitted under oath and require extensive times for adjudicators to review the cases before making their ruling. Both the complainant and the respondent must agree to the referral. Once the complaint is received, the Tribunal chair or vice chair assigns one or three members to adjudicate the case.

The process for hearing or adjudicating the case and offering a decision takes a specific form. The HRT adjudicator hears the case and makes a decision based on the following law and form:

> A complaint is customarily brought under Section 7 or section 14 "of the Canadian Human Rights Act, which makes it a discriminatory practice to refuse to continue to employ an individual, or to differentiate adversely in relation to an employee in the course of their employment on a prohibited ground of discrimination. In cases based on the prohibited grounds of discrimination as mentioned earlier, similar to a court of law, 'the burden of proof' is on the complainant who has to establish a 'prima facie case of discrimination,' following which the respondent has to 'provide a reasonable explanation' for the alleged behaviour (Ontario Human Rights Commission v. Etobicoke, [1982] 1 S.C.R 202 at 208 as cited by CHRT,

> Chander and Josh v. Department of National Health and Welfare, [1995] pp. 16-18).
>
> A prima facie case is one which covers the allegations made, and, if the allegations are believed, is complete and sufficient enough to justify a verdict in the complainant's favour in the absence of an answer from the respondent. The allegations made by the complainant must be credible in order to support the conclusion that a prima facie case has been established.

If the respondent "does provide a reasonable explanation for otherwise discriminatory behaviour," the complainant "then has the burden of demonstrating that the explanation was pretextual, and that the true motivation behind her employer's actions was, in fact, discriminatory" (Ontario Human Rights Commission v. Etobicoke, [1982] 1 S.C.R 202 at 208 as cited by CHRT, Chander and Josh v. Department of National Health and Welfare, [1995] pp. 16-18). The issue of reasonable explanation is open to interpretation and this individual interpretation can determine if a prima facie case is established. The Tribunal uses specific guidelines from case law to guide its process. These guidelines use a central, legal framework through which cases are and that legal perspective clearly disadvantages lay persons who are not members of the legal profession.

Critical Reflection

The majority of Tribunal adjudicators are current or past members of the legal profession (e.g. judges, lawyers) and are appointed by the Prime Minister's Office for a specific duration. Members can also be reappointed for fixed terms. These members of the legal profession hear evidence from a legal perspective and this is problematic; this perspective restricts and minimizes the opportunity for lay persons to present successful cases in the Tribunal process. Legal repertoire - that is, the practices, norms and values of the judicial process - is the foundation of the legal profession; the issues of racist practices and procedures are not acknowledged. Arguably, the HRT acknowledges the insidiousness of racism and instituted specific guidelines to determine what they call the "subtle scent of discrimination" in complaint cases (Chopra v. Dept. of National Health and Welfare (2001), 40 C.H.R.R. D/396 (CHRT)).

To prove discrimination, the Tribunal uses the "balance of probabilities". That is, if the evidence is circumstantial, the Tribunal can infer discrimination if the situation seems "more probable than the other possible inferences or hypotheses" (B. Vizkelety, Proving Discrimination in Canada, 1987, p. 142 cited by CHRT, Chander and Josh v. Department of National Health and Welfare, [1995] pp. 17-18). The Tribunal also differentiates between intent and impact; therefore if the actions and decisions of the respondent are considered discriminatory, but were not directly intended, then that is insufficient evidence

for the adjudicator to render a decision in favour of the complainant. Members of the Tribunal weigh the evidence in consultation with the law to determine if discrimination has occurred. If the evidence suggests discrimination has occurred, Tribunal members determine the actions to take to rectify the situation and to prevent a recurrence.

A major disadvantage of the structure and appointment of the Tribunal involves the length of time members can be a part of the body. Membership can and often is renewed before or after the adjudicator's term is reached. They can also be promoted from member to vice chair or chair as is the case with Chairman Sinclair and vice chairman Hadjis. Adjudicator Sinclair served for the Tribunal from 1987-1999; he became vice chair in 1999 and chair in 2004. Similarly, Hadjis served as a member of the Tribunal from 1995-1998; in 1998, he was appointed to a three year term; in 2002 he became a full-time member and was appointed vice chair in 2004. These two members of the legal profession individually occupied 21 and 13 years, respectively, at the Tribunal. The exchange of adjudicators is slow and as indicated with the chair and vice chairs are non existent. It is, indeed, a challenge to envision how justice can be served when the same two individuals have occupied the two most powerful positions in the Tribunal for a combined total of 33 years.

Adjudicators continue to claim neutrality in the hearing process but the Royal Commission on Systemic Racism in Ontario Criminal Justice System (1995) surveyed people who identified as Black, Chinese and White. They found overwhelmingly that

racialized people were not treated fairly in the criminal justice system by judges: Blacks (87%), Chinese (85%) and Whites (80%). Even newly appointed judges and criminal defence lawyers perceive problems with judicial inequity along racial lines with Blacks being treated more poorly by judges than Whites. Police statistics collected in Kingston, Ontario indicated that racial profiling exists based on the fact that police officers were 3.7 times more likely to stop and question Blacks than Whites. Racial profiling occurs in other public and private places as well. In 2007 the OHRC ruled in a landmark decision that an African Canadian woman was racially profiled in a police investigation that alleged that she stole a $10 bra. There is mounting evidence that institutional racism has continually placed racialized people at a disadvantage, yet adjudicators continue to hear complaint cases in the quasi judicial process with little or no change since the Tribunal's inception.

Conclusion

Canada is a nation that was created based on much more than the two founding nations – the English and the French – that are commonly mentioned in official documents. In addition to the various groups of Aboriginal peoples that have existed in Canada prior to the settler society, many other groups of Europeans, Africans, Chinese, and East Indians for example have made Canada home and have profoundly marked the country's development and identity. Furthermore, Canada has experienced a dramatic demographic shift in the past 25 years, precipitated by the increased population of racialized immigrants.

Immigration in the last two decades has primarily been from non-European source countries. These demographic changes have exacerbated tensions that were already in place concerning race, gender, ethnicity, and citizenship status; these tensions further extend into the work place. Discrimination occurs in many ways, and has long been the experience of many groups within various levels in Canadian society, including education, public services and government programs. There are many challenges to confront before Canadians can feel confident that racist policies and practices have been eradicated. However, the labour force is a primary area in which discrimination based on race occurs, and this systemic marginalization further disenfranchises racialized groups and individuals because it bars them from the most important form of social mobility in democratic societies -- employment.

In response to various forms of discrimination, the Canadian government approved legislation and policies, including the CMA, the CHRA and the CHRC, to minimize marginalization. These policies were implemented to help reduce discrimination in areas such as housing, education, and employment and have been significant in creating milestones for equity. These policies remain controversial and are frequently critiqued for being implemented with a lack of political commitment, which has resulted in the further marginalization of the very people these policies were intended to assist. The CHRT is a legislative body that uses a quasi judicial process to resolve discrimination based complaints that have been referred from the CHRC. My project is essential as it helps to

show the need for further legislative improvements and continued critique to achieve the goals of equity in Canadian workplaces and in the CHRT adjudication process.

Chapter 3 -- Conceptual Framework

As part of the civilizing process, the politically dominant groups strive to distinguish themselves socially and culturally, both from classes that their members have subordinated at home and from communities beyond their frontiers. They portray their own members as ***refined,*** polished *and* cultured, *members of the subordinated classes and external communities are depicted* ***as uncivilized, barbaric, crude, rustic, wild*** *or* ***savage.*** *The precise characterization is historically contingent, varying from one civilization to another.* (Patterson, 1997, p. 87)

Introduction

This chapter will discuss two broad concepts. The first addresses the genealogy of race, including how race emerged and evolved as a category of practice and analysis, how race has been defined, disseminated and understood within historical and contemporary context. The second section reviews and defines critical race theory (CRT) and explores and explains the comprehension and application of CRT by academics. Finally, the chapter offers a guide that supports and informs my central research question, analysis and the data analysis process.

The Genealogy of Race Theory

Race as a concept is relatively modern, beginning in the 17th century and its roots can be found in ethnocentrism, which is based on the binaries of civility/barbarity and outsider/slave (Banton, 1977; Dei, 1996; Goldberg, 1993; Patterson, 1997). The creation of the European nation state included the categorization of people based on physical characteristics, which was initiated for political and economic reasons. In the Middle Ages, three groups described by their physical traits emerged: Mongoloid, Negroid and Caucasoid, each of which represented parts of the Near East, Africa and Europe, respectively. By the 19th century, all groups were forced into one of these three categories. Race in the early stages of colonization used biological means to classify or to differentiate humans into biopolitical groups. In the 19th century, Social Darwinism popularized ideologies supporting the hierarchical separation of races, which, in turn, supported biological superiority and eugenics. In the early 20th century race was still seen as a purely biological concept and interpreted as a natural occurrence that justified a hierarchy of races (Banton, 1977; Dei, Karumanchery & Karumanchery-Luik, 2004; Lopez, 1995). However, as the 20th century moved forward, industrialized societies world wide experienced major changes in the understanding of race, in particular:

> [A]s labour demands grew more complex and the agenda of democratization gradually assumed greater importance, biologistic racial theories became

> increasingly obsolete. The resurgence of anticolonial movements in Africa and Asia, the spreading of democratic demands to countries considered "backward" and "uncivilized," and the increased mobility (both geographic and economic) of ex-slaves and former peasants during and after the World War I, all motivated the gradual but inexorable development of a more sophisticated social scientific approach to race. (Winant, 2000, p.175)

The early theoretical concepts of race easily justified the racialized body as the other, particularly during the heights of visible and direct colonization. Jim Crow laws in the US and Apartheid in South Africa characterized racialized people as "primitive" and "uncivilized"". However, global changes - industrialization, for example - clearly motivated a shift from classical theorizing to a more empirical orientation (Winant, 2000). Sociologists of the Chicago School and, most importantly, W.E.B. DuBois' work influenced the shift in defining race as socially constructed rather than a natural, biological occurrence. In addition, Marxist discussions of race also became important in the face of increased fascism in the early 20th century and Black movements such as the Garvey repatriation to Africa (Winant, 2000). These discussions introduced challenges to the biologically-based understanding of race.

Subsequent to Dubois' salient argument concerning the social construction of race, biologically-based racial concepts were further challenged in the post World War II period,

in which the British Empire began to disintegrate. Native inhabitants of, for example, India, the Caribbean, and Latin America challenged institutional exclusion and discrimination and pressed for recognition of their human rights and political rights. These challenges also helped to influence the immigration movement, which shifted many marginalized and disenfranchised bodies into predominantly White dominated urban centres. Mobilization was shaped through demonstrations, protests, grass roots organization, coalition building and political actions (Winant, 2000).

The definition and significance of race in the 20th and 21st century was influenced by World War II, with its acts of genocide and enforcement of racism; social movements that challenged racism and colonialism; the emergence of the Cold War; imperialism; and Western governments' racialized policies that sanctioned the movement of bodies from the global south to the global north (Winant, 2000). These demands and mobilizations in the Western diaspora created political tensions, especially in traditional centres of hegemonic discourse, such as England and the United States. Social and political tensions influenced social change and motivated policy makers interested in racial and social equality to examine the traditional biologically based concept of race (Winant, 2000, p.178). A new perspective emerged introducing a human rights focus into the race discourse and while policy implementation did not significantly eliminate racial injustice, it became less overt and racism was generally stigmatized (Winant, 2000). It is within these contexts that we can understand the ongoing debate around the definition of race and racism.

Defining Race

Because the concept of race is interpreted in various ways, there is no one definition of race. Definitions of race, therefore, depend on perception, interpretation, experience, personal location and geographic location, among other influences. For example, Fields (1990), cited by Omi & Winant, (1993) interprets race from an orthodox Marxist stance. Fields argues that race as we interpret it is illusionary and that our perception is the result of false consciousness. In the understanding of false consciousness, Field suggests that negative social behaviour such as slavery occurred in the past but that racism is kept alive by ongoing discussion by the intergenerational affect of slavery rather than by social, political and economical policies. A second perspective on race, represented in the work of Fields (1990), is that race can be interpreted as an objective condition. This premise suggests that racialized groups change and adapt to socio-political conditions and can, therefore, move out of marginalized social positions through hard work. Alternatively, some individuals remain socially disadvantaged due to their lack of motivation to excel by embracing change and working hard. These theories regarding the ways in which race operates are extremely limited. They represent a narrow view that does not problematize the extent to which group identities are formed based on race and "the constantly shifting parameters through which race is understood, group interests are assigned, statuses are ascribed, agency is attained, and roles performed" (Omi & Winant, 1993; p.6) including skin colour, biological factors, physical abilities, etc.). There is also a failure to identify and

understand the relationship between the means by which race is identified and the meanings that are attributed to race. Specifically, the historical nature of racism is denied and there is no concept of the daily existence and experiences of racialized people. Therefore, any discussion of race or attempt to define race must include the historical context, the application of contemporary socio-political relations, and comprehension of globalization (Carty, 1994; Dei, 1996; Omi & Winant, 1993).

A further way to theorize race considers that ancestry and appearance determines an individual's status in society, which must necessarily include personality, economic prospects, worldview, values, and family (Banton, 1977; Dei, et al., 2004; Lopez, 1995). Society's reaction to physical characteristics forces racialized people into ascribed roles based on social relations. Following this theoretical model, Lopez (1995) defines race:

> [A]s a vast group of people loosely bound together by historically contingent, socially significant elements of their morphology and/or ancestry. Social meanings connect our faces to our souls. Race is neither an essence nor an illusion, but rather an ongoing, contradictory, self-reinforcing, plastic process subject to the macro forces of social and political struggle and the micro effects of daily decisions. (p. 193)

Lopez's definition of race captures and supports what Banton (1977) and Dei et. al (2004) allude to with respect to the historical connection, the similarity within a

group and the daily social and political struggles. Alongside these definitions, various concepts interact with race to create a deeper complexity.

Three main concepts intersect with that of race: ethnicity, class and nationality. By the end of the 20th century, these limited concepts were altered and informed by socio-political occurrences of its time.

Ethnicity based discourse is the most moderate or mainstream of the discourses generated around race. Ethnicity proposes a cultural framework and collective group identity in place of race. In Western Europe and in Canada (e.g. Quebec), historical racism is ignored and "national culture" or "Canadian culture" is cited in implementing racist immigration policies. In some cases scholars propose that class differences are more important than ethnic differences. Proponents debase racialized groups for being too race conscious and criticize them for failing to take advantage of institutional policies and programs that would help them to integrate into mainstream society, which would, therefore, enable members of racially marginalized groups to achieve the Canadian dream (Allahar, 1994; Winant, 2000).

Class based discourses explore stratification and economic competition among specific groups and suggest that racial conflict is a way of expressing class based conflicts (Allahar, 1994; Hall, 1978 cited by Winant, 2000). In order to reduce social inequality and create solidarity among racialized groups, some counties in the Global North implemented

policies and programs such as affirmative action (United States) and employment equity programs. These policies and programs have failed to eliminate inequity for racialized groups and further " white commitments to racial privilege – that is, persistent racism – largely trump[ing] interracial working-class solidarity, defeating whatever potential for economic redistribution such programs as affirmative action may have offered" (Winant, 2000, p. 179). Racism is also expressed through ideas and stereotypes that appear as or expressed as social realities. Demonstrating the essence of one stereotype of Black people, Dei, et al. (2004, p. 46) note:

> The construction of the oppressed in contemporary discourse is an exercise in balancing these same fixed notions with flexible allowances for variation and anomaly. Contemporary racial/racist discourse vacillates along a continuum where the other exits within a sphere of predictability and probable 'truth': 'Of course Black people are lazy, unintelligent and violent, but some of them are OK – some of them aren't that way.

This racist discourse was demonstrated recently in Ontario. A young Black man, an honour student attending the University of Toronto, applied for a job with the provincial Liberal government. He erroneously received an email, intended for someone else, from his interviewer referring to him as "ghetto dude" (Diebel, 2007). This emails shows clearly that

social democratic ideology has failed, and this failure has allowed a nationality-based theory of racism to flourish.

Nationality oriented discourses use geopolitical terms based on decolonization processes with a focus on unifying people within the same racial grouping. This notion has been challenged by the movement of bodies in the global era (e.g. immigration), and open communication through the internet, media, and music, for example. Furthermore, racial groups that are affiliated with an ancestral land (e.g. Blacks with Africa) but have emigrated to another nation (e.g. Canada) use hyphenated names signalling a connection to both their ancestral home and their citizenship nation. Racialized groups are making connections and staking claims to the nations in which they reside and this has resulted in reduced interest in the repatriation once firmly supported by the pan-African movement of the 60s, for example.

Historically, certain groups in Canada have been labelled as ethnic or racial (or both) depending on the context, geography and time period (Carty, 1999; Miles & Brown, 2003). These labels may shift and change over time; "for example, immigrants from South Asia can be defined as ethnic, racial or religious using the terms Pakistani, Black or Muslim; Jews in different contexts can be constructed as a primarily religious, ethnic or national group" as evidenced by their positioning within the contexts of ethnicity and nationality in the Soviet Union, USA and Nazi Germany (Anthias & Yuval-Davis, 1992, p.

3-4). Redefinition and recategorization based on ethnicity and race is political in nature and primarily functions to exclude or marginalize particular groups.

Understanding Racism

We need to distinguish between the concept of race and the "question of understanding and explaining the discourses and practices of racism" (Anthias & Yuval-Davis, 1992, p. 2). In so doing, we need to distinguish between different types of racism and recognize the historical significance of how different groups have been subjected to it (Cohen, 1988, cited by Anthias & Yuval-Davis, 1992). Racism relates to the idea of how groups are described ethnically and the way that ethnic groups are inferiorized. Racism enables certain groups to be formed and valued as undesirable, which, in turn, causes these groups to be assimilated, excluded and exterminated (Carty, 1999; Goldberg, 1993b; Miles & Brown, 2003; Razack, 2003). Anthias & Yuval-Davis (1992) offers a concise definition of racism that attempts to expose the various layers of how racism operates directly and indirectly. They note that, "racism is a set of postulates, images and practices which serve to differentiate and dominate and excludes full participation in economic, social, political and cultural life by the essence that they posit" (p.15). The authors offer a deeper analysis of racism which for them involves:

> Modes of exclusion, inferiorization and exploitation that present specific and different characters in different social and historical contexts. Extermination,

> segregation and slavery are extreme examples of racism where people of different class, ethnic groups and gender experience racism differently. (Anthias & Yuval-Davis, 1992, p. 2)

While racialized people experience racism differently, racism is also manifested in our everyday life, what Essed (1991) terms "everyday racism" which focuses on racist practices and discourses that favours the politically dominant White or Western values while othering the experiences of racialized people. This may include more strictly applying rules and guidelines to racialized people, disrespecting, patronizing, contact avoidance, talking down, exclusion, isolation, assumed lack of confidence, tokenism, favouring Whites, negative image and hostile staring. Essed notes that everyday racism is manifested as "oppression, repression and legitimization" (p. 52) and is expressed discursively in what is said and how it is said; it is embedded in our power structures in our institutions, daily life, practices, values and expectations. Essed (1991) suggests everyday racism is:

> a process in which (a) socialized racist notions are integrated into meanings that make practice immediately definable and manageable, (b) practices with racist implications become in themselves familiar and repetitive, and (c) underlying racial and ethnic relations are actualized and reinforced through these routine or familiar practices in everyday situations. (p.52)

These expressions of everyday racism are evident in our Canadian educational systems by the way in which racialized students are stereotyped (negatively or positively); our legal system and our immigration system.

Bakan (2008) notes that "[the] racism and culture of hegemonic whiteness were and remain endemic to the Canadian state" (p.6); Bakan further draws a parallel between the Canadian perspective on Black refugees (slaves) who escaped from the United States and anti-Muslim sentiments after the 9/11 attacks. She concludes that Canada has never been a safe haven for of marginalized people despite what traditional Canadian history suggests. Racism is expressed differently against different groups at different times.

Since the 9/11 attacks, anti-Muslim and anti-Islam sentiments continue to drive the "global fear agenda." Mass media portrays immigrants and refugees from the Middle East and specifically Arab countries as one group comprising mainly terrorists. People from those regions who are Christians or who peacefully demonstrate and challenge Western stereotypes about Islam and Muslims are routinely dismissed. The Canadian public is exposed through the media to excessive rhetoric about bombings that kill masses of innocent civilians in the West and foiled terror plots. Freelance writers Bell & Patrick (2006) reported in The National Post a foiled Canadian terror plot indicating that the suspects "face charges of participating in the acts of a terrorist group, including training and recruitment; firearms and explosives offences for the purposes of terrorism and providing

property for terrorist purposes" (para 16). The reporters continued with an "ethnic" and indirect racial description of the alleged suspects reporting that the men are of Somali, Egyptian, and Jamaican background. A police officer noted that all are residents of Canada and mostly Canadian citizens (Bell & Patrick, 2006). As of September 2008, some of the charges had been dismissed or stayed and one youth was convicted. Because the race of these men was noted in the story, this news story exemplifies the fact that these "ethnic" groups are considered undesirable in Canada. Thobani (2007) notes terrorism now embodies a non-Westernized face and serves to promote solidarity among Westerners of European background. Along these lines, the Canadian government has adopted strong anti-terrorist policies, including the Anti-Terrorism Act, (2001) which has allowed for the publication of a list of organizations who are suspected of involvement in terrorist activities. This list is described as "a very public means of identifying a group or individual as being associated with terrorism. The definition of an entity includes a person, group, trust, partnership or fund, or an unincorporated association or organization" (Government of Canada, 2008). This list includes a large number of ethnically based organizations that operate in their local geographical areas and in the international arenas of Europe, the Philippines, Iran, Sri Lanka, Egypt, Palestine, Somalia, Columbia and Peru to name a few (Government of Canada, 2008). The names on the list and the names of the suspects (e.g. Fahim Ahmad, Zakaria Amara, Asad Ansari, and Shareef Abdelhaleen) are quite clearly non-anglicized names and are stereotypically linked with Islam and terrorism through the news media that Canadians are exposed to daily. This group of men is, therefore, linked by

ethnicity, religion and race. While a direct or explicit expression of biological inferiority is absent, the characterization of Muslim men in Canada as undesirables is unquestionable.

Another example that demonstrates racist discourse in the media occurred at the end of a lawn tennis match at the 2007 Wimbledon championships. In the Round of Sixteen, Venus Williams (African American woman) outplayed the women's number two ranked player Maria Sharapova (White Russian woman). At the end of the match, one of the commentators on ESPN television network described Venus' outstanding first serves as "constant and at times almost vicious". As an enthusiastic lawn tennis fan and an avid spectator of the sport, I do not hear such descriptions of White women tennis players. These examples further amplify the argument that there is no single policy, program, action or individual that can conclusively be labelled racist. Rather, exploring categories of differences and the ways in which people are excluded based on their "race, class, gender and ethnicity incorporate processes of racialization and are intertwined in producing racist discourses and outcomes" (Anthias & Yuval-Davis, 1992, p. 2-3). Ethnicity and racism are insufficient categories for analyses; therefore, "an adequate analysis has to consider processes of exclusion and subordination in intersection with those of the other major divisions of class and gender as well as processes of state and nation" (Anthias & Yuval-Davis, 1992, p. 2-3). Racism is not always conscious but it is expressed and experienced as differences. Differences are seen as negative attributes and characteristics and may include images which are deemed unacceptable to White sensibilities, often representing inferior,

demonic and uncivilized characters. Images and discourses of Black women's sexual promiscuity, Chinese women's eroticism and Mexicans' lack of civility are examples of racist presumptions. Therefore, racist practices are not necessarily intentional but are embedded in the structural underpinnings of government, educational and social institutions. Furthermore, these stereotypes are barriers that create or exacerbate exclusion and are often organized around racialization and, to some extent, ethnicity.

Racialized people and "ethnic" groups can have beliefs of superiority over others and some may say these beliefs are racist; however, having a particular belief or feeling is insufficient to influence social structures. Racism is embedded in our social structures and institutions and speaks to the differing ranges and extent of power relations between and among different people. Racism is present at the individual and systemic level; this distinction is important because some groups and individuals benefit from racist state policies and practices (e.g. education). Racism has "the ability to impose...beliefs or world-views as hegemonic, and as a basis for denial of rights or equality (Anthias & Yuval-Davis, 1992, p. 16). While some groups of racialized people may feel a sense of superiority to others, they do not have the social, economic or political power to significantly influence changes. Therefore, we cannot reasonably suggest that this form of racism is the same as that which is used by politically dominant groups to exercise control over marginalized groups. These expression or feelings of superiority can best be expressed as inter-group intolerance rather than racial discrimination or racial domination.

A further note about racism is required here. While there is often an attempt to distinguish between ideology and practice, racism is not restricted to only colour discrimination such as White Canadians subordinating Aboriginal Canadians. The victimization of racialized people by Whites as perpetrators is another limited view of racism creating a homogeneous perspective while excluding experiences of gender, age, class and ethnicity of Jews, Italians, Romas, Irish and refugees, for instance (Anthias & Yuval-Davis, 1992; Miles & Malcolm, 2003). Furthermore, discussions about racism seem fixed to colonization with the express contention that the larger, visible, problematic presence of the English, French, Dutch and Spanish (Whites) in the Caribbean, India and Africa is the extent of racism. More alarming is the suggestion that the traditional and historical death of visible colonization (e.g. slavery) has meant the death of racism (Anthias & Yuval-Davis, 1992, p. 10-11). Racism continues to expand and flourish and is opaquely entrenched within Holland, Dutch, United States, Britain and Portugal, which are all countries that still have colonies. Another example of the global political nature of racism pertaining to independent nations ranging from South African to Iran is evident. None of the Western or European countries invaded South Africa that was kept hostage under the brutal regime of the Apartheid government; yet Grenada, Mozambique, and Iraq for example have all been invaded by European colonialists and Western imperialists claiming to create democracy and implement a social justice agenda. Iran and North Korea are threatened almost daily with economic sanctions for what has been defined by the G-8 as undemocratic social orders. Based on historical evidence, it seems that the colonial masters

only invade other regions that are dominated or governed by racialized people. Along these lines, James (2006) warns that:

> Logically, if racism is to be addressed, and certainly eliminated, then there must be an acknowledgement of race, not merely as a social and political construct - which it is – but as an identifier that is employed in individuals' interactions, and which in turn influences individuals' position and achievements in society. Therefore, race has real consequences especially for racial minorities, and getting to understand these consequences requires information, in other words data. (p.6)

Public officials and politicians continually assert that racism has ceased to exist or at least has become less intense over time. What has actually transpired is the emergence of a new, yet institutionalized form of racism. The scholarship around new racism (Henry & Tator, 2005; Razack, 1994) describes a racism that is manifested in terms of cultural incompatibility rather than cultural superiority. These discussions, for example, suggest that certain groups of people do not respect their children and women and hence are not welcomed in the West where children are revered and cared for and women are considered equal to men. Furthermore, Tator & Henry (2006) describes "democratic racism" as another insidious form of racism, in which racial discrimination coexists in social institutions of power, allowing these institutions to extol the virtues of social justice while simultaneously upholding organizational norms and values that circulate negative beliefs

about racialized people. Racial profiling is an example of democratic racism and in a comprehensive study, Tator & Henry (2006) exposed many cases of racial profiling in Toronto. The authors commented that the Toronto Star series on race and crime and the responses from the White public authorities offer critical insights into the ways in which racialized discourse is used to deny and deflect attention away from the general issue of racism in policing, and more specifically, the highly contested issue of the racial profiling of African Canadians. Racial profiling is also a form of racism which ensuresthat racialized people do not receive equity and justice in the larger society. Racial profiling:

> Is a manifestation of "democratic racism" in which racialized bias and discrimination "cloaks its presence" in liberal principles. Democratic racism is an ideology in which two conflicting sets of values are made congruent to each other. The consequence of this tension ensures that commitments to justice, fairness, and equality conflict but coexist with values and behaviours that include negative feelings about people of colour, and differential treatment of them. (Henry & Tator, 2005, cited by Tator & Henry, 2006, p.7-8)

Democratic racism is evident in many Canadian social institutions but is not easily detected or combated as it is buried under the polite, liberal Canadian facade. Tator & Henry (2006) have aptly demonstrated the importance of exploring and challenging these racist structures and beliefs.

The traditional colonial empires have collapsed but there remains a visible and direct presence in the Global South and North America. For example, Aboriginal people continue to exist in apartheid-like conditions in Canada, Australia and the United Sates. Jim Crow laws and apartheid have been abolished in the United States and South Africa, but given the premise of democratic racism, racial inequity and personal and institutional biases continue to thrive around the world. There are those who argue that the world will attain a state of "colour-blindness and racial pluralism"; however (Winant, 2000, p. 171), such a shift toward "colour blindness" and the entrenchment of modern multiculturalism simply institutionalizes a more covert form of racism that supports White supremacist policies (including government supported policies).

Critical Race Theory

Critical race theory (CRT) is an emerging area of scholarship that has its foundation in, and continues to be often aligned with, critical legal studies but it is also indebted to Continental African social and political philosophy. CRT critiques and explains how social power and domination operates institutionally to exclude gendered and racialized people. Much of its tradition is derived from the American civil rights movement and social activists such as W.E.B. Du Bois, Malcolm X, Dr. Martin Luther King Jr. and Cesar Chavez. The inaugural CRT workshop was held in 1986 and the methodology continues to expand with splinter groups focusing on Asian, Latino-American and feminist perspectives.

Critical race theory examines the pragmatics of the legal system and argues that laws are created, applied and maintained to support White supremacy and the social subordination of racialized people. Scholars of CRT draw from a wide range of "ethnic" and racialized literature based, that is literature written by and about racialized people, in legal studies, sociology, history, social science, humanities and education (Ladson-Billings, 2005; Schnieder, 2003). The founding father of CRT Derrick Bell, a human rights litigator, began to challenge the legal system in the early 1960s for what he perceived as its inherent bias, racist procedures and assumed neutrality. Bell questioned the basic assumptions that underpin American jurisprudence, specifically in regard to racialized Americans (Schnieder, 2003). Many scholars, primarily of racialized backgrounds continue to challenge the legal system and other social institutions using CRT as a foundation.

Critical race theorists are predominantly racialized scholars located in law academy, who occupy a radical left of centre political ideology and are generally dissatisfied with the mainstream discourse around race and the legal system. They examine how laws are created, applied and maintained to support White supremacy and the corollary social subordination of racialized people. CRT is an exciting development in critical legal studies - theorists challenge not only the silence of Critical Legal Studies, but also the silence of liberal and conservative scholars and practitioners in the legal academy with regard to racialized people (West, 1995). West further notes that critical race theory:

> Is an intellectual movement that is both particular to our postmodern (and conservative) times and part of a long tradition of human resistance and liberation. The movement highlights a creative – and tension-ridden – fusion of theoretical self-reflection, formal innovation, radical politics, existential evaluation, reconstructive experimentation, and vocational anguish. (p. xi)

The academic expansion of CRT facilitated the emergence of theorists who centralize and interrogate the notion of racist practices, including Frantz Fanon, Paul Gilmore, Kwame Nkrumah, Edward Said, Homi Bhabha, Gayatri Spivak, Trinh. T. Minh-ha, Richard Delgado, Frances Henry, Carol Tator, and Eric Foner, for example. These academics continue to revolutionize and energize the discussion around power, knowledge and social exclusion, and, more specifically, the genealogy of race and Whiteness. They discuss and question power and its uses; research and ways of knowing; colour-blind laws; gender construction; text and its meaning; sexuality; race biases and contradictions; and structural dismantlement.

Theorists espouse various perceptions, arguments and emphases but they are united on three main objectives: 1) to understand how White supremacy is created and maintained at the expense of racialized people; 2) to explore the link between assumed neutrality in the social structure and professional ideals; and 3) to understand and dislocate the gaps between how laws are implemented and the power imbalance of racialized people within

the justice system (Delgado & Stefancic, 2007; Freeman, 1995; Schnieder, 2003). From this basis, the following lists the central tenets from CRT that guide my project:

1. Racism is a common occurrence in society and as such, racist practices in schools, businesses, government and society at large are the standard way of operating and conducting business. Government and liberal minded proponents may argue for changes in the social and political system but in reality they are not adequately invested or motivated to lobotomize racism because Whites benefit materially and physically from the racist structure (Schnieder, 2003.)

2. Race is a social construct and can be "defined as a concept that signifies and symbolizes socio-political conflicts and interests in reference to different types of human bodies. Although the concept of race appeals to biologically based human characteristics (phenotypes), selection of these particular human features for purposes of racial signification is always and necessarily a social and historical process" (Winant, 2000, p.172). Furthermore, there is no biological basis by which to differentiate human groups and the characteristics which are used as a means to differentiate human groups reveal themselves as imprecise and arbitrary (Dei, 1996; Dei, et. al. 2004). The social categorization of Red, Yellow, Black and White is non-scientific (Lopez, 1995).

3. At different times in history, different racialized groups have fallen in or out of favour with the status quo. In Canada, Japanese Canadians were seen as traitors during WWII; they were stripped of their belongings and thrown into camps; Chinese Canadians were restricted from entering Canada with a government imposed head tax in 1885 after they had finished building Canada's national railway; East Indian women were forbidden from marrying White Canadian men, and Filipino women were accepted as domestic workers after Black Caribbean women fell out of favour as nannies (George, 2006).

4. Each racialized group has its particular historical legacy that must be contextualized according to the group's individuality and the intersectionality of social location such as gender, sexuality, religion and class. Discussions about race cannot be undertaken from a distance and experiential voices are not only acceptable but recommended and encouraged (Schnieder, 2003).

5. The voices of racialized writers, practitioners and thinkers are an essential element in the movement given their direct experience with racism, which is a missing element in the works of White theorists. These voices often take the form of storytelling which narrates the specific discourse of racialized people's normal existence with racism. These counterstories mitigate the stories told from a White

perspective and challenge the assumed validity of Eurocentric stories about racialized people (Delgado & Stefancic, 2007).

6. Racism is endemic in society; it is difficult to address primarily because of the colour blind, individualistic and one-dimensional approach that governments implement via policy to deal with racist concerns. In the Canadian Human Rights complaints process, if a case against a White co-worker is substantiated and the Commission remedies the situation by recommending that the respondent takes sensitivity training, this response speaks only to the individual experience of the single complainant rather than the systemic nature of race discrimination.

Conclusion

Critical race theory has been used in a variety of studies of racism in institutional settings. Derrick Bell (1995a, 1995b), for example, challenges the racist constitutional contradictions in the United States while Kimberly Crenshaw (1995); Razack, (1994) and Tator & Henry deconstruct the sexist and racist injustices in the US and Canadian judicial system and systemic racism in Canada. They argue against using a common entry point to address constitutional and judicial concerns of racialized and gendered persons given the significant differences between the experience and political perspectives of those who implement the law and those who are regulated by the law. Similar to the works of other CRT theorists (Delgado, 1995; Ladson-Billings, 1998, 2005; Lopez, 1995; Delgado &

Stefancic, 2007), the premise of this project is that racism exists and must be obliterated through structural dismantling. Fanon (1968) maintains that decolonization, for example, can only be successful if the "whole social structure changed from the bottom up. The extraordinary importance of this change is that it is willed, 'called for' and demanded" (p.35, Smith, 1976 translation). Freire's (1988) classic *conscientization* contends that critically conscious individuals understand the urgency and need for system changes, and these changes ultimately work towards transformation which can *only* be achieved when the fundamental social structure is significantly altered.

In sum, using a CRT perspective, the principles outlined below undergirded the investigations disseminated in this study:

1. Identify and discuss the insidiousness of racism and how it disadvantages racialized people continuously.
2. Challenge the discourse of colour-blind laws, policies and practices and expose how it marginalizes racialized people.
3. Advance the right of racialized people to provide their own narratives in the form of counter stories to those offered by Whites and accepted as the valid social norms.
4. Explore and challenge human rights laws and liberal notions that propose to eradicate human rights disadvantages yet fail to institute policies and practices to ensure the obliteration of racialized people's social and political marginalization;

5. Challenge and propose improvements for perceived race-neutral policies that ensure the acceptance of Eurocentric norms and values (Ladson-Billings, 1998; Delgado & Stefancic, 2007).

Critical race theory offers an exciting opportunity for me to contribute to the understanding of the intersections among race, racism and power in employment discrimination and the reproduction of discrimination in the Canadian Human Right Tribunal's process. Using that foundation, I question the Canadian quasi judicial system and how racist policies help to continually marginalize racialized people.

Chapter 4 – Literature Review

Today's major concerns are: first, economic and social inequality and injustice between the affluent and developing countries and within countries. Secondly, the anxiety whether human wisdom will prevail over what can only be called a death wish in which the desire to dominate expresses itself in countless ways…(Indira Ghandi)

Introduction

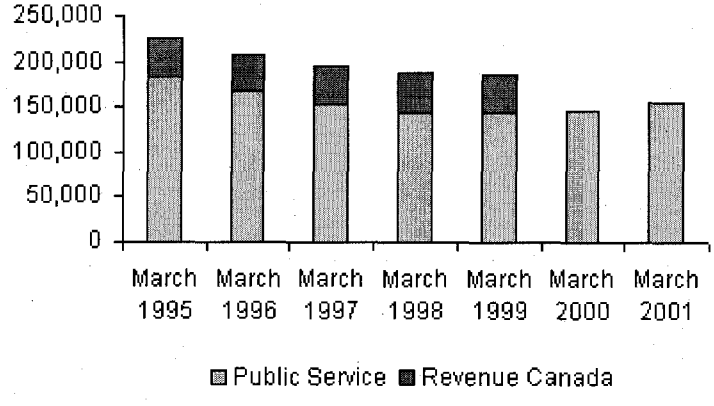
Racism remains prominent in our society and particularly in the labour market. Although it appears that people on the margins have gained inclusion, women and racialized people remain severely disadvantaged in the labour market. This chapter discusses the literature addressing employment discrimination specific to women and racialized people. A detailed description of the employment situation in Canada by race and gender, along with an explanation of the widening employment gaps, is discussed. Employment in the federal public service (FPS) sector is reviewed, again with an emphasis on the gender and racialization of employment.

Employment in the Federal Public Service

With the intensification of competition in the labour market and the burgeoning numbers of qualified racialized people seeking employment, Canadians may witness an increase in racial tensions and employment discrimination. Tensions in the structure are

already evident in the general Canadian market place and the federal public service in particular, where competition in the workforce fuels anxieties and reliance on practices that maintain the status quo. This competition reflects, in part, the emphasis on federal government workforce reduction. Beginning in the 1990's, the government reduced its public service workforce while at the same time placing its focus on efficiency (Gow & Simard, 1999). Figure 4.1 shows that between 1995 and 2001, the Federal Public Service decreased by 70,259 (31.1 %) from 225,619 to 155,360 (Canadian Public Service Agency, 2005).

Figure 4.1 - Total Number of Employees in the Federal Public Service 1995 - 2001



Source: Canadian Public Service Agency, (2005).

Successive governments have attempted to increase efficiency and responsiveness in the bureaucracy while reducing the size of government in Canada. This reduction has manifested in deep cuts, privatization of Crown corporations, deregulation and an increase in contract or term positions in the government and government regulated public sector (Table 4.1). These reductions affect the employment chances of racialized people in particular. Burk & Shields (2000) argue that inequality is embedded in the new Canadian labour market; the authors identify less educated people, women and single mothers as disadvantaged populations, who, as discussed earlier, are generally employed in low paying, part-time and temporary work. There was no mention of racialized women or men in their discussion. However, Vosko (2000) has notably documented the position of racialized groups in the Canadian labour market. Vosko (2000) popularized the concept of precarious labour to characterize the positions of women and racialized groups in the labour market and has completed several comprehensive studies documenting precarious labour in Canadian society. Government sources, however, note that racialized and female employees have recently been making progress with regard to equitable representation in the FPS. These sources, however, overlook the fact that the majority of people hired into the FPS are not permanent: they are termed or contract in nature (Table 4.3). Members of the designated groups are hired most often in these two categories. Similar to women, racialized people's recent progress in the FPS is mostly symbolic. Women, for example, "still hold a significant share of the administrative support positions, that is, 83.6 % as at [sic] March 31, 2001" (Public Service Commission, 2005). These groups occupy mostly

clerical and non-decision making positions and clearly have not advanced significantly in the FPS.

Over the past several years, most term employees – now comprising almost 8 out of every 10 employees - were members of the four designated groups, Aboriginal peoples, "visible minorities", women and people with disabilities (Public Service Commission, 2000). Clearly, racialized people are more likely to be hired in determinate (temporary) positions given the emphasis on short-term hiring. These short term positions further exacerbate the extent of employment discrimination that members of certain groups experience because their careers are marked by a series of short term contracts, which designates these employees not only as inexperienced but also furthers the perception that these employees do not have the ability to obtain long term employment. As a result, they are indiscriminately and increasingly screened out of hiring processes.

Table 4.1: Public service hiring by employment category

Employment Status	**1998-1999**		**1999-2000**		**2000-2001**	
	Number	**Percentage**	**Number**	**Percentage**	**Number**	**Percentage**
Total	35,562		29,509		39,040	
Indeterminate (long term) Appointments	2,269	6.4	2,874	9.8	3,856	9.9
Casual (90 days or less)	17,519	49.3	13,020	44.1	18,916	48.4
Termed (3-6 months term, renewable)	15,774	44.3	13,615	46.1	16,268	41.7

Source: Public Service Commission, Annual Reports: 1999-2000, 2000-01.

The hiring and retention of employees also continues to be a source of tension in light of the radical budget reductions and the increased emphasis on efficiency by both the federal Conservative and Liberal governments. These deep cuts reflect government commitment to satisfy the increasing shift in government policies towards the continued implementation of a neo-liberal agenda. This agenda has caused an impending short and long-term crisis in hiring and retaining qualified employees. For example, Table 4.1 reflects the growing trend in term and contract hiring. In 1998-1999, 1999-2000 and 2000-2001, more casual (49,455) and termed (45, 657) employees were hired than indeterminate ones (8,999). Each year, fewer than 10% of the total number of people hired occupied a full-time permanent position; conversely, between 44% and 49% of people were either casual or termed employees. The government has clearly signalled its intent to reduce and, subsequently, retain the federal public service to a bare minimum. This policy has had a significant impact on hiring, retaining and promoting within the public sector as a whole and disproportionately on racialized people, a fact that is discussed in the next section relating to employment discrimination.

Employment Discrimination

A wide literature base exists which addresses various types of discrimination in employment including sex (Armstrong & Armstrong, 1990; Bakan & Kobayashi, 2000; Chouinard & Crooks, 2005; England & Glad, 2002; Leck, 2002; Townson, 2000),

disability, (England, 2003), race, (Calliste, 1995, 2000; Das Gupta, 1996; Galabuzi, 2006; Glasser, Flint, & Tan, 2000; Morton, 2000) and age (Marshall & Marshall, 2003; Marshall & Mueller, 2002; Kunz, 2003). Employment discrimination exacerbates the disadvantages that marginalized individuals and groups experience through direct or indirect policies, procedures, norms and values that fail to acknowledge and implement corrective actions to minimize discrimination in the workplace. Employment discrimination can be manifested in many ways, including:

> Where a worker is treated different (typically worse) than others in the workforce due to their race, gender (sex), national origin, religion, age, or disability. It can take the form of an adverse action that affects an employee economically like, failure to promote, demotion, suspension, termination, or loss of benefits. Employment discrimination can also take the form of a hostile work environment (workplace harassment), like verbal or physical harassment, or it can occur when an employer fails to reasonably accommodate a qualified employee with a disability. (Anon, 2007)

This standard definition of employment discrimination does not fully encapsulate the extent to which racialized people are disadvantaged in the workplace. This is not to suggest that women, Aboriginal peoples or people with disabilities, for example, are not severely affected by employment discrimination. My argument is that employment discrimination

based on race is experienced and manifested differently and, therefore, requires a different discussion and corrective measures. Specifically, racialized employment discrimination is manifested through the following criteria: an inability to secure employment complementing education and skill level; lower salary ranges for similar work; subjection through stereotyping; low expectations concerning job type and position; inability to gain access to managerial and decision-making positions; lack of promotion; hostile working environment. This list is not meant to suggest that all racialized people experience employment discrimination or that when they do, the experience is the same. This argument is addressed later in the discussion.

Racialization of Employment in the Federal Public Service

In 1999 the Task Force on the Participation of "Visible Minorities" in the FPS exposed various areas of inconsistencies with employment discrimination in the FPS. The task force noted that the issues of systemic discrimination that judge Abella uncovered in 1984 were similar to the issues in the 1990's; change was slow and little had shifted systemically to improve the employment chances of racialized in the FPS (Treasury Board of Canada Secretariat, 2000). More than ten years after the Abella Report, the designated group "visible minorities" remains underrepresented as federal employees. However, in spite of the reduced public sector work force, racialized employees have slowly but steadily increased in the FPS. In 1988 they amounted to 3% of this sector; in 1994 there were 165,

976 Canadians employed in the federal public service; of that total, 8,566 or 3.8% were members of a racialized group (Public Service Human Resources Management Agency of Canada, 2005). Between 1994 and 2004 the number and percent of "visible minorities" hired into the FPS increased marginally, yet steadily from 3.8% to 8.1% with the largest increase being .8% in 2002. There is cause for hope because of the small gains over this 10 year period, but there is still room for improvement. The 8.1% representation of "visible minorities" in the FPS fell below the workforce availability of 10.4%. Therefore, more "visible minorities" are available to work than are being hired in the FPS. On a positive note, 7.6% of "visible minorities" were hired as indeterminate (indefinite or long-term) employees, an increase of .5% from the previous year. Overall, 87% of "visible minorities" in the FPS are indeterminate employees (Table 4.2, Table 4.3). However, employees who are hired for less than three months are not regulated under the EEA so those individuals are not accounted for in these statistics.

Table 4.2: Employment Equity - Distribution of designated groups in the federal Public Service 2000-2001

Designated Group	Percentage of people	Percentage of Term* Population (more than 3 months)
Women	52.1	61
Aboriginal	3.6	4.3
Persons with disabilities	5.1	3.5
Visible Minorities	**6.1**	**7.7**

Source: Joint Public Service Alliance of Canada and Treasury Board Secretariat Term Employment Study (2002).

*non-permanent employment [i.e. casual and term]

Table 4.3: Representation of Designated Groups in the Federal Public Service

PSSRA I-I Indeterminate, Terms of Three Months or More, and Seasonal Employees

Public Service Representation	All Employees	Number and Percentage of Women		Number and Percentage of Aboriginal Peoples		Number and Percentage of Persons with Disabilities		Number and Percentage of Per in a Visible Mino Group	
As at March 31, 2004	165,976	88,175	**53.1**	6,723	4.1	9,452	5.7	13,001	**7.8**
As at March 31, 2003	163,314	86,162	**52.8**	6,426	3.9	9,155	5.6	12,058	**7.4**
As at March 31, 2002	157,510	82,663	**52.5**	5,980	3.8	8,331	5.3	10,772	**6.8**
As at March 31, 2001	149,339	77,785	**52.1**	5,316	3.6	7,621	5.1	9,143	**6.1**
As at March 31, 2000* (Revenue Canada excluded)	141,253	72,549	**51.4**	4,639	3.3	6,687	4.7	7,764	**5.5**
As at March 31, 1999 (Revenue Canada included)	178,340	91,856	**51.5**	5,124	2.9	8,137	4.6	10,557	**5.9**
As at March 31, 1998	179,831	90,801	**50.5**	4,770	2.7	6,943	3.9	9,260	**5.1**

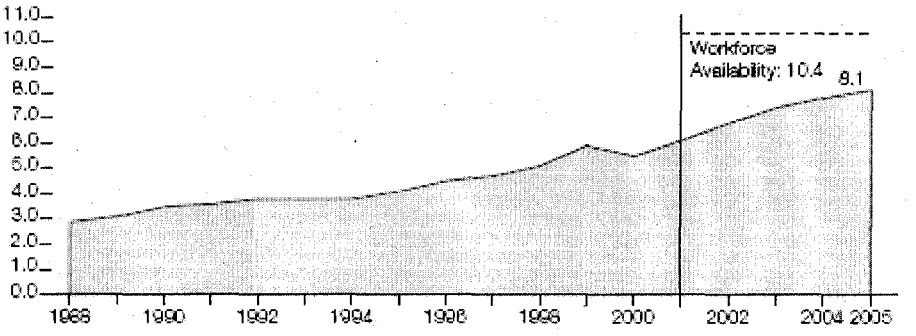
As at March 31, 1997	186,378	92,281	**49.5**	4,551	2.4	6,227	3.3	8,690	**4.7**
As at March 31, 1996	201,009	96,794	**48.2**	4,665	2.3	6,291	3.1	8,981	**4.5**
As at March 31, 1995	217,784	103,191	**47.4**	4,783	2.2	6,935	3.2	8,914	**4.1**
As at March 31, 1994	224,640	105,621	**47.0**	4,492	2.0	6,623	2.9	8,566	**3.8**
Workforce Availability 2001 Census and PALS			**52.2**		2.5		3.6		**10.4**

Source: Human Resources and Social Development Canada. (2005).

Racialized people are being hired into the FPS in increasing numbers, but they continue to be affected by occupational segregation. Although "visible minorities" accounted for 7.8% (13,001) of the FPS workforce in 2004, (Figure 4.2) only 1.6% (208) of persons from this group held executive position. However, 41.4% (5,386) and 22.6% (2,942) respectively, a combined 64% (8,328) were in the traditional job categories of Administration and Foreign Services and Administrative and Support. The promotion rate for "visible minorities" in the executive job category increased by 1.2% to 6.0%, which is up from 4.8% the previous year. A total of 8.1% of "visible minorities" received promotion. The area of earnings is hopeful for racialized employees in the FPS - 54% earn approximately $50,000 a year, the same proportion as other federally employed Canadians. There is no indication of the representation or breakdown between and among different racialized groups or by gender for earnings, promotion, or position held. Therefore, while these data appear encouraging, they do not specifically shed light on any problematic areas that need to be addressed.

Notwithstanding the progress that is being made with respect to equity in employment in the FPS, a commitment was made in 2001 to engage more vigorously in hiring "visible minorities," strengthen accountability measures, impose non-compliance consequences on delinquent agencies, and become more aggressive in recruiting and promoting "visible minorities" (Public Service Human Resources Management Agency of Canada, 2005). The statistical representation indicates small but continuous gains.

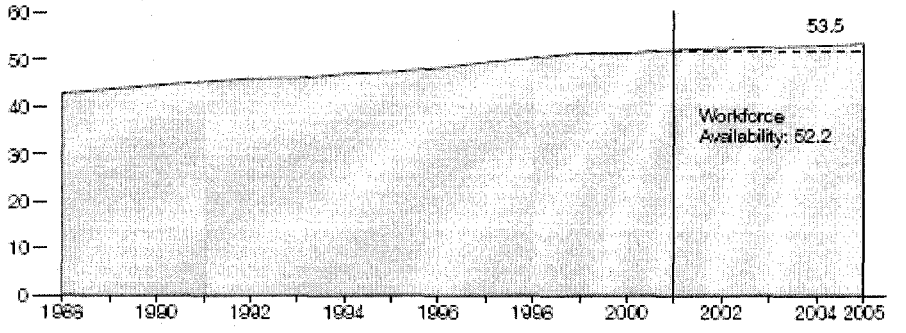
Figure 4.2 Percent of Federal Public Service Workforce who are Racialized, 1988-2005



Source: Canada Public Service Agency. (2006). Employment equity in the federal public service 2005-06 - annual report to parliament

Federal Employment Equity measures have also created a number of positive opportunities for women. Their representation in the federal employment sector steadily increased between 1988 and 2005, reaching a level of 53.5% of all employees in the public service in 2005, which is 1.3% more than their workforce availability of 52.2% (Figure 4.3). This numerical representation, seemingly positive, is mere symbolism as women continue to be disadvantaged in holding managerial positions within the FPS and in Canadian society as a whole.

Figure 4.3: Federal Public Service Workforce who are Women, 1988-2005



Source: Canada Public Service Agency. (2006). Employment equity in the federal public service 2005-06 - annual report to parliament.

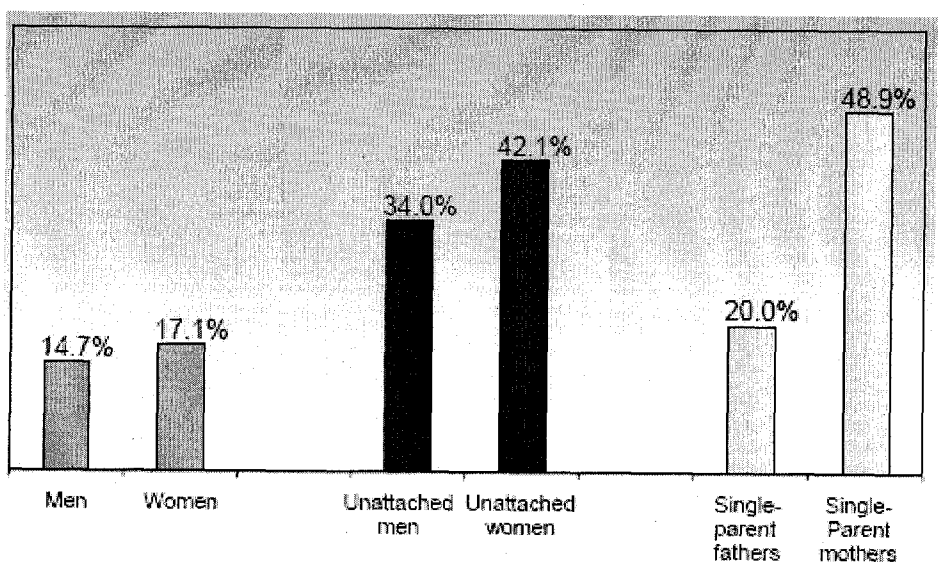
Employment Discrimination in Canada by Race

Intersection of Race and Gender

It is well established that women are relegated to the lower rungs of the labour market and are generally poorer than men (Evans & Wekerle, 1997; Townson, 1999; 2000). In 2003, the poverty rates for women and men were 17.2% and 41.1% respectively. Unattached women (41.1%) and single parent mothers (48.9%) are among the poorest of family groupings (Figure 4.4). Evans & Wekerle, (1997) among others, offer a critique that suggests capitalism and patriarchy are responsible for the disproportionate levels of

employment discrimination that women face. This is partially correct; however, some critics have failed to address race and class based factors in employment discrimination. Racialized men and women, for example, are left unaccounted for in this analysis. Evans (2002); Fields, Goodman & Blum (2005); Leck (2002) note racialized women and men face employment discrimination based on racist and sexist attitudes and stereotypes; managers and employers use these stereotypes to justify using unfair labour practices when dealing with certain groups of people.

Figure 4.4: Poverty Rate for Women and Men, 2003



Source: National Council of Welfare, July 2006.

Undeniably, racialized women experience extraordinary employment and social marginalization (Calliste, 2000; Das Gupta, 1996) over and above White women. As a

gendered group without racism taken into account, women are generally employed as part-time and contract workers (Dickerson, 2002; Fortin & Huberman, 2002, Townson, 2003), and the same holds true for their employment in the Federal Public Service. Racialized men also experience employment discrimination. These institutionalized forms of discrimination are embedded in our social structures and are manifested through various forms of racism.

Racism is systemically embedded in our society and affects all aspects of our existence. Ng (1988) argues that racism and sexism are "*systems* of oppression and inequality based on the ideology of the superiority of one gender and/or race over others" (p.13). This assessment concurs with the suggestion that immigrant women, especially racialized women, and those who do not speak English or French are often found in "occupational categories characterized by low salaries, part-time, term or temporary employment, low levels of unionization and few employee benefits such as pension coverage, dental insurance and extended health coverage" (Ng, 1988, p.62). In the same year, The Coalition of Visible Minority Women (CVMW) suggested that "systemic racism, a process of 'deskilling' or 'deprofessionalizing' occurs in the workplace..." (1988). The Coalition proposed that discrimination based on race and gender must be addressed with a specific policy focus rather than the traditional gender based analysis. There is little evidence that much has changed over the past two decades. For example, Chouinard & Crooks (2005), Dickerson (2002), Fortin & Huberman, (2002) and Townson (2000) discuss women's employment discrimination with minor mention of racialized women and no mention of racialized men's concerns.

Gender-based analysis (GBA) renders racialized women and men practically invisible or completely invisible, respectively, and forces them to seek support outside of the work environment when they experience racial discrimination. Gender oriented policy fails to highlight issues and concerns of race because of its exclusive focus on gender. Status of Women Canada suggests, "addressing this equality gap requires a dual approach: developing policies, programs and legislation that are women-specific as well as ensuring that legislation, programs and policies which are not specifically targeted for women do not inadvertently maintain or exacerbate any equality gap"; furthermore, all GBA needs to take into account the implications of certain policies and programs on diverse women and men (Standing Committee on the Status of Women, 2005, p.13). This political rhetoric fails to include race and other social identity markers for women and men. Canadian policy makers fail to "recognize the compounded discrimination against racialized women and analyze their claim using the employment of 'white' women as a historical base; as a consequence, the employment experiences of 'white' women obscured the distinct discrimination that racialized women experienced" (Crenshaw, 2000, p.215). Furthermore, policy and programs designed to identify and circumvent employment discrimination against racialized men specifically are non-existent.

The racialization of employment

In a world where gendered and racialized bodies are devalued in the global and free market economy, their contributions are largely unrecognized due to their perceived low-skill, incompetence and unimportance to society. Racialized peoples in low-paying jobs

suffer economic and social discrimination that maintains the power base and domestic space of the politically dominant culture (Galabuzi, 2006; Glasser, Flint, Tan, 2000; Morton, 2000). In other words, politically dominant groups, governments and corporations could not accumulate a huge capital base and wealth without exploiting workers by paying them less than what their skill and experience dictate. The result is that racialized people cannot earn sufficient income to maintain an adequate quality of life. Dionne Brand (1984) argues that racism "is an historical determinant in our lives. For us, the relevance of any socio-political theory and of feminist theory especially, depends on its understanding of the role of slavery, of colonialism, and of their attendant racist culture in the development of capitalism" (p.28).

Some scholars fail to account for institutionalized racism and the discrimination of domestic workers, personal service workers and factory workers for example in similar and different ways (Sokoloff, 1992). Beck, Reitz & Weiner (2002) concur with Brand (1984) that systemic racial discrimination is evident in Canadian employment settings where racialized people experience the "glass ceiling" effect through non-promotion to upper level management positions. In 1984, the Canadian government concluded that structural barriers are manifested in the paid work environment where racialized people experience discrimination through "exclusionary measures, including lack of promotion, word of mouth recruiting and selecting, requesting 'Canadian Experience,' and using only [sic] white mainstream testing procedures and interviewing techniques" (Government of Canada, 1984, p.33). Systemic discrimination is subtle, elusive and a challenge to identify

and prove. However, the percentage of Canadians who believe they have experienced employment discrimination is high. Statistics Canada (2003c) notes that "visible minorities":

> who had experienced discrimination or unfair treatment were most likely to say that this had occurred because of their race or skin colour. More than 7 in 10 visible "visible minorities" (71%) who reported sometimes or often experiencing discrimination or unfair treatment gave race or skin colour as the reason, either alone or in combination with other reasons. (p.24)

At the same time 43% of non-"visible minorities" who identify having experiences of discrimination most often sighted language or accent alone or in conjunction with other responses as the basis for the perceived discrimination. These statistical representations are based on individual perception and experience; however, they should not be dismissed but rather reviewed in combination with other research. Of note, survey results show that support for employment equity programs decreased from 44% in 1985 to 28% in 2004, a substantial reduction of 16% (Beck, Reitz & Weiner, 2002). In line with the reduction of the general population support for EE programs, 16 % of respondents in the Ethnic Diversity Survey (Statistics Canada, 2003c) reported experiencing some form of pre-employment and post-employment discrimination. Canadians were more likely to perceive that:

> Discrimination or unfair treatment was experienced at work or when applying for a job or promotion. Overall, 880,000 people, or 56% of those who had sometimes or often experienced discrimination or unfair treatment because of their ethno-cultural characteristics in the past five years, said that they had experienced such treatment at work or when applying for work. (Statistics Canada, 2003c, p.24)

However, Canadians do have cause to hope given that there has been some movement in a positive direction in employment for "visible minorities," as this population continues to make gains in employment settings in regard to hiring and promotion. Arguably, some racialized Canadians in the workforce are immigrants. However, their skill and educational level should not erroneously be taken as being inferior to those of Canadian born individuals. In fact, immigrants are recruited to Canada based on their education level, skill and ability to invest in the Canadian economy. Therefore, the average Canadian immigrant is more skilled and more educated than the average person born and raised in Canada (Antecol, Cobb-Clark & Treje, 2004; Henry & Ginzberg, 1985; Li, 2001). The popular anti-immigrant sentiments that immigrants are uneducated, unskilled and are purely economic migrants has little basis. For example, immigrants from the global South or ones from less politically dominant regions are assumed to have little or no economic resources, and there is some suggestion that their sole purpose for immigrating to Canada is to earn money and escape from poverty in their homeland. These immigrants are expected to work in any employment area and sector in which work is available, regardless of the working conditions, wages or lack of benefits. That is, Canadian policies seem to suggest

that immigrants should feel grateful that they are offered entry into Canada regardless of the types of jobs they are forced into (Daenzer, 1993). Therefore, newer immigrants and particularly racialized immigrants are expected to fill the gaps in employment areas in which other Canadians refuse to work.

Exclusionary practices remain and continue to ensure that some groups of racialized people are barred from accessing employment opportunities that would almost assuredly enhance their political positioning and their access to decision-making positions in Canada. Currently, two of the more familiar reasons offered by decision-makers to explain the high rates of unemployment and underemployment among racialized persons is their lack of human capital and Canadian experience (Smith, 2005; Statistics Canada, 2003c). These excuses implicitly suggest that racialized people are new immigrants or people who are uneducated and unskilled when compared to non-racialized Canadians. In the next section, I discuss some of these assumptions and erroneous beliefs that are structurally and personally embedded in our Canadian norms and values and which ultimately act as barriers that exclude some groups of racialized people regardless of their citizenship status or family history in Canada.

Racialized people and the lucite ceiling

Lucite is "a transparent or translucent plastic; any of a class of methyl methacrylate ester polymers" (Dictionary.com), it is characteristically almost impenetrable. Henriques (1991) uses the analogy of lucite ceiling in reference to the exclusion that racialized people

experienced as employees on Wall Street, and in similar fashion to the glass ceiling often used to describe the employment exclusion of women. Evidence suggests that there have been some improvements in the labour market specific to women's and racialized people's entry and promotion to certain job categories. More racialized people are in managerial and decision-making positions than ever before; however, there remain serious gaps in access to such positions by racialized people (Galabuzi, 2006; Leck, 2002; Maume, 1999; Thomas & Wetlaufer, 1997). Racialized people continue to outperform non-racialized people in the proportion who have completed postsecondary and advanced education relative to their representation in Canada. According to Galabuzi (2006, pp. 158-160), "racialized groups members make up a higher proportion of those with some university education (17.4%); bachelor's degrees (19.5%); degrees in medicine, dentistry, and veterinary science (23.3%); master's degrees (20.1%) and PhDs (22.5%) than their proportion in the population (13.4%)". The level of postsecondary education is a strong determinant of labour market access and it increases the possibilities of people finding jobs that offer upward mobility. The department of Canadian Heritage (2004) reports racialized Canadian-born males still earn, on average, 9% less than White males with the same qualifications, skills and experience. Quite clearly, having a higher education level has not translated into the expected labour market gains for racialized people. Racialization and the otherness of some groups ensure a negative reaction in the labour market with often devastating and discriminatory consequences. In spite of the high education levels of racialized groups, they remain well below non-racialized groups with respect to income

levels, job categories and decision-making positions (Li, 2001, Reitz, 2001). What are the consequences of these systemic imbalances?

Unquestionably, exclusion is layered and grounded in the norms and values of the politically dominant, gendered group. What are the factors that limit racialized groups' mobility in certain employment sectors? People in decision-making positions contribute to these barriers. Managers generally reflect or emphasize with White cultural values and characteristics (Tomkiewicz, Brenner & Adeqemi-Bello, 1998); therefore, Thomas & Wetlaufer (1997, p.120) suggest that White managers:

> by virtue of their authority and leadership, they are as much responsible for the culture, policies, and performance of their organizations as their White peers. Most White Americans [and arguably Whites in general], consider competent, intelligent racialized people unique from people in their subgroups; so these individuals work harder than their White counterparts or find alternative strategies to gain the acceptance of Whites.

In my own experience, overwhelmingly people of European descent appear surprised when I identify myself as a doctoral student and university lecturer. Many others comment on how bright and articulate I am. I have always felt the need to outperform my White peers in order to be seen as equally academically and professionally competent as White colleagues. Two participants in Thomas & Wetlaufer's (1997) study explain their experience and perception of how racism affects racialized people:

> In the eyes of white management, the person of color doesn't look quite right, or has too much hair on his face, or is too dark skinned -- somehow he or she just doesn't have the right image. And nothing the person of color can do will change that image. That's how white supremacy functions, and it's built into all our corporations.
>
> Yes, but it's an attitude that is so unconscious to most people. Senior management takes white people's careers and massages them; it sends white people around to get other experiences, but it doesn't do the same for people of color. They're not even aware of the double standard; it's just the way they're used to doing things. I think racism is the elephant in the middle of the room. (Thomas & Wetlaufer's, 1997, p.122)

Managers' perceptions and their assistance to White employees are two barriers that racialized people encounter. Smith (2005), in a study about corporate promotional practices, suggests that the promotion process is similar for both White women and White men in terms of job experience and expectations. However, racialized people specifically candidates of Aboriginal, Black and Latin American descent needed particular job related experiences before they were considered for promotion into management positions. Thomas (2001, p. 101) notes:

> White and minority executives do not progress up the corporate ladder in the same way. Early in their careers, high-potential whites enter a fast track, arriving in

> middle management well before their peers. Promising professionals of color, on the other hand, break through much later, usually after their arrival in middle management.

In Canada, the lack of mobility and promotion is clearly evident in all aspects of employment. Galabuzi (2001, 2006) and Bakan and Kobayashi (2000), offer scathing reviews of Canada's employment inequities along racial and gendered lines. Galabuzi (2006) argues:

> along with the prevalent segmentation of racialized women workers into health and social service sectors and the commercial service sector, racialized women are increasingly to be found in the precarious environment of home work – casual, piece-meal, part-time, contract work, often acquired through employment agencies that pay exploitative wages on contracts that clearly disempower them. (p.129)

In the health care sector and specifically, the nursing profession, Black and Filipino nurses are heavily concentrated in the lower end of the profession (Calliste, 2000; Hagey, et al., 2001; Doris Marshal Institute et al., 1994). These areas include chronic and acute care units that are associated with high stress levels and a reduced requirement for technical skills. Racialized nurses are least represented in units that need advanced practice, have high status positions (e.g. neurology), opportunities for employment mobility and exposure to technology (Calliste, 2000; Hagey, et al., 2001). Furthermore, Calliste (2000) notes that the OHRC concludes that racialized nurses accounted for 85% of the nurses in acute and

chronic care units while only 45% are in the intensive care unit. These statistics indicate the deskilling of the women, who are being directed into ghettoized nursing positions. These practices mirror those in the 1950s and 1960s when Caribbean nurses were recruited specifically for their high skill level, yet they were placed in areas of work that were not complementary with those skills and inferior to their education and training (Calliste, 1991). The nursing profession is only one area of employment where racialized people experience discrimination in spite of their education, skill and experience. According to Dalton and Daily (1998), Li (2001) and Reitz (2001), qualified immigrants, many of whom are racialized people, are unemployed or underemployed in the service sector and other professions.

In 2005 the Canadian Race Relations and the Centre for Social Justice reported that racialized and immigrant people continue to experience a double digit wage gap when compared to other Canadians. Statistics Canada reported in 2003 that 1 in 5 "visible minorities" perceived experiencing racial discrimination in the employment setting and while seeking employment. Similarly, the agency reported in 2004 that Black men, Canadian born and immigrants, experienced a 24% wage gap when compared to the general Canadian population.

Catalyst Canada and Diversity Institute in Management and Technology (2007) conducted the largest survey (17,000) of private and public corporate Canada focusing on racialized managers, professionals and executives. "Visible minorities" were less likely to experience career satisfaction and had a belief that the talent identification process was

unfair and that they had less career development opportunities than Whites. However, they were more likely than White counterparts to perceive workplace barriers and they felt that they were held to a higher level of performance on the job. Further, "visible minorities" felt subtle biases that detracted from their work and made them felt less included. Indeed, racialized employees were acutely aware of the lack of role models and the absence of high profile assignments. A reprieve from racism in employment is not evident. According to the Senate Committee on Human Rights (2007), among all applicants, "visible minorities" were the most educated with a Bachelor's degree or higher, submitted on average eight applications per applicant and applied for work two times their workforce availability; even so, they decreased in number in the FPS from 9.6 % in 2005-2006 to 8.7 % in 2006-2007. These statistics are daunting especially given that only 1 in 10 "visible minorities" are hired in the FPS at last count (Donaldson, 2005). In a year where the FPS recruitment increased and where all other designated group met or exceeded their workforce availability in the FPS, "visible minorities" were once again excluded (Canada Public Service Agency, 2008). These conditions must be attended to promptly; changes are required to immediately alter the status quo that has steadfastly remained unshaken for hundreds of years.

In 2005, Human Resources and Skill Development Canada unveiled its Racism-Free Workplace Strategy. The program recognizes and acknowledges the pervasiveness of employment discrimination among Aboriginal peoples and "visible minorities" and the increase in incidents of racism more recently. One of the major premises of the strategy is to promote the removal of employment related barriers to "visible minorities" and

Aboriginal peoples by offering programs aim at hiring, promoting and retaining member in these groups. The federal government pledge $56 million to promote and implement the *Action Plan Against Racism: A Canada For All*, an integral part of the Strategy. Based on the statistics provided in this section, these programs and strategy do not appear to be effective in helping to combat systemic discrimination in employment in the FPS; however, there is hope yet. It has been only a few years since the proposal of these programs.

Conclusion

Employment discrimination continues to be a problem in Canada in spite of government legislation such as the EEA and the CHRC, which intended to reduce systemic employment discrimination. Policy makers and decision makers in both the federal public service (FPS) and the wider Canadian labour market continue to impact the lives of women, "visible minorities," and other disadvantaged groups through a general failure to implement, evaluate and change racist and sexist policies and programs. Women and "visible minorities" continue to advance numerically in the FPS; however, their increased numbers is a result of changes in the labour market, such as men retiring, rather than from strong implementation of anti-discriminatory policies and programs.

The CHRT offers some reprieve from employment discrimination through its redress mechanism of a quasi-judicial process similar to court proceedings. This process is enacted in rare cases and only after the CHRC refers these rare employment discrimination cases to the Tribunal. In the next chapter, I discuss the methodology used to investigate

how discrimination is reproduced at the Tribunal and an outline of the research design, sampling procedures and analytical tools are also provided.

Chapter 5 – Methodology

First, I must confess that over the past few years I have been gravely disappointed with the white moderate. I have almost reached the regrettable conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Counciler or the Ku Klux Klanner, but the white moderate, who is more devoted to "order" than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice; who constantly says: "I agree with you in the goal you seek, but I cannot agree with your methods of direct action"; who paternalistically believes he can set the timetable for another man's freedom; who lives by a mythical concept of time and who constantly advises the Negro to wait for a "more convenient season." Shallow understanding from people of good will is more frustrating than absolute misunderstanding from people of ill will. Lukewarm acceptance is much more bewildering than outright rejection. (King, 1963)

Introduction

As shown in this section, examinations of institutional racism have used questionnaires, interviews, and observational methods with much success. A particularly useful approach utilized to examine institutional racism has been critical discourse analysis (Blommaert, 2005; Fairclough, 1995; Wetherell & Potter, 1992). In this section, a brief discussion regarding the kinds of knowledge obtained with the different methods is provided, then an elaboration on the nature and use of critical discourse analysis.

Following this is a description of how critical discourse analysis will be used to address the research question. The chapter closes with a discussion of the strengths and limitations of using this method to examine the problematic I identify and explain how I will address the limitations identified.

Examinations of Institutional Racism

Many methods have been used to study institutional racism, the majority of which uses primarily qualitative methods. Among those within the qualitative and CDA paradigm, a variety of innovative studies have enriched our knowledge of racism and its effects. Blommaert (2001), through interviews, uses discourse analysis, for example, as a method to discuss the experiences of African asylum seekers in Belgium who are asked to recreate and document their stories in order to gain entry into the country. Language and history are highlighted as "process[es] of (re)structuring talk into institutionally sanctioned texts that involves a dynamic of contextualization that is based on power asymmetries" (p. 415). Conversely, using primary and secondary sources, Augoustinos, Tuffin & Every (2005), use CDA to explain how "new racism" affects the now defunct affirmative action agenda in the US where many White Americans opposed affirmative action policies and even voted to repeal the legislation in some states. Similarly, the predominantly White majority in Australia opposed affirmative action in education for Indigenous peoples and blamed economic deprivation on the "moral shortcomings of minority group members" (p. 317) rather than social inequities. Along different lines, Sudbury (2002) uses feminist anti-racist analysis to discuss the criminalization of racialized bodies and the feminization and

racialization of poverty. Sudbury argues that institutional racism has influenced an increase in women's incarceration to epidemic proportions. Alternatively, Baines (2002) applies anti-oppressive analysis to respondents', interviews to suggest that institutional racism drives the organizational culture of some social service agencies in Toronto. Baines suggests that poor Black and Asian service users are routinely referred to agencies serving poor people, and they are subsequently denied much needed follow-up referrals based on assumptions and stereotypes about their service needs and which social category or demographics they fit into. Similarly, through feminist anti-oppressive lens, Prevatt Goldstein (2002) discusses the racist organizational policies of White-led organizations that hire Black service workers to focus on the needs of Black service users. The studies discussed are only a few that provide an analysis of racism through the author's lens and interpretation of what constitute institutional racism. A mixed method approach is used in this research in its discussion of institutional racism.

A mixed *method* study is identified by qualitative and/or quantitative data analysis. This research uses a mixed method approach: a) descriptive – quantitative and b) Critical Discourse (CD) – qualitative. The descriptive analysis generates descriptive data on race claims processed by the commission through an examination of the files between 1995 and 2005 and, in turn, CD is used to deconstruct the inherent power in the proceedings of the Tribunal, the use of language in published reports and the rationale the adjudicators offer for making decisions about complaint cases. Qualitative researchers see their work as subjective because research involves observing and interpreting meanings through the use

of interviews, field observation, self reflection, and analysis of visual arts, objects, artifacts and documents to explain social phenomena (Babbie, 1998; Denzin & Lincoln, 1998; Mason, 2005).

In this study I focus on the fundamental issue of exclusion within equity and in pursuing this inquiry, I attempt "to resolve research questions that are more broadly defined, are multifaceted, and have more diverse consequences for large groups of people" (Majchrazk, 1984, p.13). Supporting this premise of discourse analysis from a critical race perspective, this project examines how the Human Rights Tribunal hearing process continues to reproduce racial discrimination in the federal government and federally regulated industries. The Tribunal is a quasi judicial body designed to determine and identify discriminatory employment practices and provide corrective measures when findings indicate discrimination has occurred. However, the Tribunal assumes a position of neutrality in its role as a human rights and social justice agency (Canadian Human Rights Tribunal, 2006). Assuming a position of neutrality in a human rights context is clearly a contradiction and requires further investigation.

Critical Discourse Analysis - Qualitative

I use critical discourse to investigate cases resolved by the CHRT over a 10 year period (1995-2005). Critical discourse analysis is an approach contained within discourse analysis. Discourse, Blommaert (2005, p.3) explains, "comprises all forms of meaningful semiotic human activity seen in connection with social, cultural, and historical patterns and

developments of use. What counts is the way in which such semiotic instruments are actually deployed and how they start to become meaningful against the wider background" (p.3). Discourse analysis offers an examination of language use in society. It investigates and interprets texts, language and voice, for example, to identify and expose hidden meanings, motivations, and power inherent in what is written, verbalized, punctuated or presented (Chouliaraki & Fairclough, 1999; Gee, 2005; Meyer & Wodak, 2001; Titscher, Meyer, Wodak & Vetter, 2000; O'Halloran, 2003). Discourse analysis as a methodology includes linguistic approaches, social psychology, sociology and cultural studies, conversational analysis and critical discourse analysis (Gumperz, Aulakh & Kaltman,1982; Blommaert, 2005; Fairclough, 1989; 1995; Georgakopoulou & Goutsos, 2004; Gumperz, 1982; Sunderland, 2004; Taylor, Wetherell, & Yates, 2001). However, the nature of discourse analysis offers flexibility for the researcher to engage in multiple methodologies and investigate multiple areas (Chouliaraki & Fairclough, 1999). That is, discourses are restricted by genres (e.g. legal, political, etc.) but they can also be mixed by using a combination of different discourses within different genres (Chouliaraki & Fairclough, 1999).

Critical discourse analysis is the most visible and used type of discourse analysis in political and policy studies, particularly in research that investigates ideology, racism and institutional discourse. Its focus and meaning is shaped by a network of scholars among whom the most prominent are: Michael Billig; Teun van Dijk; Paul Chilton; Norman Fairclough; Margaret Wetherell and Ruth Wodak. CDA is used to interpret and

deconstruct a problem or text using an explicitly politicized approach in which a deconstruction of the effects of power is prominent (e.g., Fairclough, 1989). While not providing causal explanations, it helps us to understand the conditions behind the problems (Blommaert, 2005). These conditions behind the problems that people face are often detrimental to their social wellbeing.

CDA states that discourse is socially constituted as well as socially conditioned. Furthermore, discourse is an instrument of power that is of increasing importance in contemporary societies. The way this instrument of power works is often hard to understand, and CDA aims to make it more visible and transparent (Blommaert, 2005). In that sense, CDA sees its own contributions as ever more crucial to an understanding of contemporary social reality, because of the growing importance in the social order of discursive work and of discourse in relation to other practices (Blommaert, 2005, p. 25). CDA then is a useful methodology by which to investigate the mechanisms of institutional racism.

Appropriateness of Critical Discourse Analysis for this Research

This investigation uses critical discourse analysis as a method and critical race perspective to shape its conceptual framework. Considering that critical discourse analysis (CDA) focuses on the enactment of power through institutional discourse and institutional practice, my choice of methods to examine the processes of the Tribunal is appropriate and integrated. CDA calls attention to how personal ideology is manifested through the official

structures. Personal ideology, I argue, influences how gatekeepers (e.g. adjudicators) operate to uphold the status quo in state apparatuses, regardless of race. Most adjudicators have legal backgrounds as lawyers and judges. Lawyers and judges have personal and professional ideologies that govern their profession and influence their notions of what constitutes acceptable evidence, for example. These officers of the court use personal and professional ideologies in upholding the law and administering justice; this connection cannot be isolated from the Tribunal's hearing process. This analysis also demonstrates how these gatekeepers use personal and professional ideologies to uphold the status quo in the adjudication process. These operations of power manifested through institutional practices and institutional discourse will be examined through the Tribunal reports that have been produced over the course of ten years. This period, I believe, constitutes a reasonable amount of time to determine how the Tribunal adjudication process works in relation to complaints filed by "visible minorities," the lens through which the members adjudicate cases, and if social justice has been served over time.

Tribunal and Commission Reports: The sources analysed

The primary sources of data for this research are published reports of complaint cases adjudicated by the CHRT on which decisions have been reached. These are found in the published reports from the Tribunal. After the Tribunal hearings are completed, the adjudicators convene to review the evidence provided during the hearings. A substantial report is produced and published outlining a summary of the complaint cases, including the basis and grounds of complaints; actions, behaviours and attitudes of respondents; rebuttal

from the respondents; explanations; and witnesses called to represent both sides. The report names legal representatives involved in the hearings, including those representing the Commission, complainants and respondents. A large portion of each report documents the information as it was presented in the hearing. This portion includes but is not limited to: place of employment, managers or administrators and their roles in scheduling, hiring, promotion and firing, years employed, education, skill and training, position in the organization, hiring process and practices, performance appraisals, work schedule, history of discriminatory experiences in the workplace, attempts to address issues of discrimination (if any), and witness accounts and testimonies. Another section of the report contains the adjudicator's impressions and interpretation of the information presented during the hearings. This section also includes the adjudicator's understanding of the application of the rules of evidence, the use of case law to substantiate or refute the complaint cases, the adjudicator's decision on the case, and the rationale and conclusion for the overall case.

The other sources of data are various annual reports published by the CHRC. These reports show numerical distribution and breakdown of complaint cases that were signed (filed) and the process by which they were resolved or decisions were reached. The reports provide strictly numerical data on the number of cases that were filed, dismissed, sent to dispute or alternative resolution, mediation or the Tribunal for the year. There is no indication of how cases were actually resolved after they were referred to these areas. The reports also provide a breakdown of how many complaint cases were filed based on various types of employment discrimination specific to gender, race/colour and ethnicity.

Primary Exploration

The aim of this research is to explore and document the paradox of exclusion within equity in the mechanisms of the CHRT adjudication process.

In pursuit of substantiating the premise of this investigation, I pose the following secondary questions:

How did the characteristics of the complaint cases, including place educated, gender, complainants' workplace (government or private sector) interact with outcome of the complaint?

What were the central institutional practices adopted by the adjudicators through which racism was reproduced?

What were the institutional discourses through which racism was reproduced?

Sampling

I utilized purposeful sampling (Creswell, 2003) to select Canadian Human Rights Tribunal published reports. The federal government documents these hearings in summary reports, similar to a court of law. The hearings are less formal than court proceedings; however, the Tribunal provides edited reports of individual complaints detailing a summary of each case, the particulars specific to the allegations of discrimination, expert witness testimony, the use of case law, the decision of the adjudicator and remedial orders. These

reports are available to the public through online databases at Canadian Human Rights Tribunal at URL http://www.chrt-tcdp.gc.ca/index_e.asp.

There were a total of 351 decisions made by the Tribunal between 1995 and 2005 (see Table 5.1). This number does not mean that there were 351 unique cases; rather some cases have multiple decisions. Of the 351 decisions, 49 were discrimination based on the grounds of race and/or colour, 10 of the 49 fell outside of the selection criteria of employment. Nine cases were race and/or colour based but were non-racialized, filed by Aboriginal people, Jewish people, community groups or organizations and, therefore, were outside of the selection criteria. A total of 30 decisions were selected based on the inclusion criteria of employment discrimination, race and/or colour, excluding Aboriginals, and filed by or on behalf of an individual. Again these 30 decisions do not necessarily mean 30 individual cases; rather, some of the cases had multiple decisions. For example, a decision may involve an adjudicator making a ruling on whether or not to admit evidence presented by the complainant or respondent or to hear the testimony of an expert witness. After every ruling, the adjudicator who presided over the process published a report with the decision. Of these 30, I grouped all decisions relating to the same case together as one. Each grouping of these cases was seen as an individual case, and this organizational structure resulted in at total of 16 unique cases which constitute the sample population for the analysis. The unit of analysis is, therefore, a case rather than a decision.

Seven inclusion criteria were used to select the reports included in the sample:

1. Grounds for the claim were employment discrimination based on race and/or colour.
2. Race referred to people who are not White or people who are of a racialized status.
3. Complaints were filed and referred by the CHRC to the Canadian Human Rights Tribunal before 2005.
4. The cases were resolved between 1995 and 2005. The sample is taken from complaint cases that received decisions from the Tribunal between 1995 and 2005. In 1995 the EEA was amended and revised EE programs were implemented; 2005 marked the 10^{th} anniversary of such changes and revisions.
5. Complaints addressed issues of an individual and are preferably filled out by them (in one case by an agency, complaints were filled out on behalf of an individual).
6. Cases with decisions involving Aboriginal peoples were not examined given their unique circumstance of historical and contemporary discrimination against indigenous peoples in the Americas.
7. Complaint cases selected originated from an employee of a federal agency or a federally regulated agency. These agencies are mandated by the federal government's Employment Equity Act and are responsible for implementing Employment Equity policies and programs according to the Employment Equity legislation.

Table 5.1 – Sampling Explained

Case Description	Total number	Rationale for (non)-selection
Total number of cases that received decisions (individual and group complaints)	**351**	All reviewed based on the selection time period
Total number of cases based race and/or colour discrimination	**49**	Included based on selection criteria
Of the 49 cases, total number of cases not based on employment, racialized or minority status	**10**	Eliminated based on selection criteria
Total number of cases based on race/colour file by groups	**3**	Eliminated based on selection criteria
Total number of case file by a group or individual base on race (non racialized or minority status)	**2**	Eliminated based on selection criteria
Total number of cases filed by Aboriginal	**4**	Eliminated based on selection criteria.
Total number of cases related to employment discrimination AND colour/race BUT NOT Aboriginal AND filed by an individual or on behalf of an individual	**30**	Included based on selection criteria.

These 16 reports were analysed for complainant and case demographics in a descriptive analysis. Complainant demographics included: place of birth, gender, age (if available), education, location of education (Canada or other country), skill level, job qualification, cultural, "ethnic" background, years employed, type of employment, work history and agency employed (government or private). Case demographics included the

reasons for the complaints, appearance of discrimination in the workplace (e.g. lack of promotion, lack of access to training, unfair performance appraisals), total number of days required to complete the hearing, representation (lawyer, self, commission) for both complainant and respondent and resolution of case (completely dismissed, completely sustained, major claimed dismissed or sustained). The annual reports of the Commission were analyzed for descriptive information, including the number of: cases filed per year, "visible minorities" who filed complaints, cases that were resolved, and cases sent to dispute resolution or the Tribunal. Attention was given to the changes in the number of cases that are resolved and dismissed over the 10 year span.

Choosing six of the sixteen cases for in depth analysis

Of the 16 combined cases, six were chosen purposefully (Creswell, 2003) to be analyzed in depth using the principles of CDA. Choosing the six cases from the 16 in the total population, I included a variety of complainants and also a diversity of adjudicators; the aim being to examine a variety of practices to verify the possibility of racism rather than determine the frequency of these practices. A total of five adjudicators presided over these six cases; I tried to choose a representative sample of cases that were resolved between 1995 and 2005. More men filed complaint cases in the overall sample than women. To reflect this reality, I chose four cases filed by men and two filed by women. Four of the cases were heard by two adjudicators (a man and a woman) in four different proceedings. One case was adjudicated by three persons; this case seemed unique so I choose that case to investigate any possible differences with decisions. The final case

was adjudicated by one male adjudicator. The six cases that decision were rendered in, 1995 (1), 2001 (1), 2002 (1), 2003 (2) and 2005 (2), represented a good cross section of the time period studied and available decisions. Choosing the six cases offered an opportunity to expose racist and discriminatory institutional practices and discourse.

Data collection – methods and process

Once it was determined that previously collected government data would be used for the research, I set about to locate the data. I browsed the federal public service website, CHRC website and the EE website, reviewing publications and reports published between 1995 and 2005 and noting cases of apparent racial discrimination. I later contacted employment equity branches in Kingston, Toronto and Ottawa to gather information about complaint cases originating under the edicts of EE that had been forwarded to the Tribunal for resolution. These officers were unaware of the statistical information or any such data that were available. The Director of the Employment Equity Compliance Division, Canadian Human Rights Commission referred me to the CHRC research and publication office, and I spoke directly with the chief researcher and inquired about the possibility of requesting and receiving complaints cases filed with the office. The researcher indicated that the files at the Commission were confidential and no part of such files would be released to the public. I inquired about submitting a proposal for a special run to locate specific cases of employment discrimination based on race and/or colour and this suggestion was rejected. Realizing that the information was not likely forthcoming from the Commission, I decided to review the information published on the CHRT website. I

reviewed annual reports; decisions and rulings by year, complainant, grounds of discrimination (race and/or colour) and topic. I reviewed all cases individually by year to cross reference the cases that have been settled or closed. Once the files were downloaded and reviewed, it became clear that the reports were a rich source of data containing personal information including complainants' and respondents' names, race, places of employment and other detailed information. The information that I had requested from the Commission was present in the Tribunal's public reports. I determined that information from the Commission was not necessary as the focus of the investigation was the Tribunal process and the published reports provided sufficient depth in the data to enable the proposed review of the process.

The individual reports of complaint cases were downloaded from the CHRT website and saved as Word documents. The reports for each of the combined 16 complaint cases were placed in one folder called CHRT complaint cases. Each report was saved in a Word document with file name corresponding to the last name of the complainant and the respondent along with a number denoting the number of decisions associated with the one complaint case. The reports were printed and grouped together according to number of individual reports per complaint. Some complaint cases have several rulings, as many as six in one case; therefore, as explained earlier in the sampling discussion, all cases having the case complaint and corresponding respondent were grouped together and categorized as one case. The cases were then randomly labelled 1 – 16 and located on a chart according to the respective number for each case (i.e. no. 1 was labelled 1 on the chart). The pages of the

printed reports were checked individually to ensure that all pages were present. In two instances, the reports were missing printed pages so they were reprinted to maintain the integrity of the reports. The name on the front cover of each report was highlighted along with the date of the ruling or publication to minimize errors in reviewing one report twice or reviewing reports that fell outside of the date criterion.

Data Analysis

The analysis for this project - presented and discussed in detail in chapters six, seven and eight - is guided by a document review and a descriptive analytical framework. The methods for chapters six and seven will be discussed first, followed by a discussion of CDA in chapter eight. In chapter six, I conducted a document review of the Commission's annual reports to Parliament which were published between 1996 and 2006. The review included a close inspection of the number of complaint cases that were filed and how they were resolved. Specific attention was paid to the filtration process that complaints cases go through before a resolution can be found. Special attention was focused on employment based claims and race based claims, the numbers that were filed; how many were resolved in number and percent; and the nature of the resolution (e.g. dismissed, sent to mediation, alternative dispute resolution, etc...). Tables and charts are used to display the results from the document review. Chapter seven is explained using descriptive statistics of the specifics of the complainants and the respondents. I described the demographic of the complainants and the complaint cases. Tables and charts are used to display the results of numbers of cases that were filed, sustained or dismissed; legal representatives involved in

individual cases; years complainants worked for their agencies; and the type of discrimination that they sustained.

Chapter eight used a modified broad framework proposed by van Dijk (1992, 2001) in which CDA aims to discover *the role of discourse in the (re)production and challenge of dominance* (p. 250). Here the term "dominance" is used in a broad sense and encompasses more than the narrow view where one group directly and purposefully dominates another through force or coercion. Rather, for van Dijk (1992), dominance is enacted in the way elites, groups or institutions use social power to create inequity in society for various groups, including women, racialized people and immigrants. Discourse enables the reproduction of dominance through institutional mechanisms which support, legitimate, deny, mitigate or conceal such power. In the steps below proposed by van Dijk (1992), the analysis of the data seeks to determine how aspects of text and verbal interactions contribute to the reproduction of dominance through the use of social power (pp. 250-251). To develop themes emerging from these reports, I modified van Dijk's framework to include the examination of these particular processes and aspects:

1. *Access:* includes situations where elite groups have access to decision making bodies and how such access is manifested institutionally. That is, certain groups have active and controlled access to institutions. In these institutions, the ability to make decisions on behalf of society and to influence situations and aspects of society is ever present. Adjudicators are able to influence society through the

Tribunal because their findings and decisions are made accessible to the general public.

2. *Control of Tools*: involves having special access that is restricted or limited to specific groups or individuals based on their membership in a social category. For example, the Tribunal adjudicators have access to legal tools which is purely based on their status as adjudicators. This is especially so given that almost all adjudicators are judges or lawyers. This quasi judicial system supports legal control and offers a power base for these individuals to control the tools by which social justice can be obtained.
3. *Communicative Events*: addresses the individual control over the environment. The Tribunal controls and regulates the schedule and locations of the hearings and facilitates changes as it deems fit; excludes or includes witnesses; sanctions the order of speakers, presentation, acceptable words, and behaviour. Patterns of exclusion are also evident within the discourse and interactions between the Tribunal and the complainants; for example, complainants may not be able to exercise their right to speak given that the Tribunal controls the environment, and the Tribunal may act to ignore or silence them and, therefore, exclude complainants. Using the rule of law, complainants may have their power restricted or limited by adjudicators, respondents or other processes; and they may be criticized for wanting to address their concerns despite the fact that they may be given only a narrow scope through which to address these.

4. *Participants' roles and positions*: these are related and connected to social identities – such as the position of adjudicator or neo-liberal - that provide agents with power as evidenced through institutional practices and discourse. Adjudicators are appointed by the ruling federal government. They conduct their work for the Tribunal and speak in their roles as government appointees. These positions are primarily filled by White men from the legal professions, who mainly have conservative or neo-liberal ideological positions. These social identities influence adjudicators' perspectives and the positions from which they speak.
5. *Argumentation - Text and schemata*: are the arguments put forth by the people who have the power to influence discourse. Adjudicators and respondents may offer opinions and perspectives about the complainants as individuals and of their cases. Complainants may be described negatively and their facts or evidences may be seen as inconsistent, inconsequential, unreasonable and not credible. As a result, adjudicators may suggest that complainants' arguments are irrational, biased and are seen as attacks against the respondents. Under such circumstances, the suggestion that Canada no longer has racist practices and beliefs coupled with the idea that all Canadians are treated equally and fairly is a natural conclusion.

I created demographic description grounded by the primary and secondary questions that guided the analysis (Appendix B). This approach designated which groups of text would be grouped together under specific headings. To ensure that the analytical process was transparent, dependable and credible (Creswell, 2003), I checked that there

was congruence among individual and specific groups of codes and themes; reviewed the data purposefully to identify sections of text that were unique and did not fit with any codes; and developed codes and descriptions that supported my research questions and premise. I also remained mindful of my personal positioning and perspective regarding racism in general and specifically in employment and how these perspectives were influencing the way that I looked at the data (Creswell, 2003; Rubin & Babbie, 2001). To ensure the strength of the research validity, I used "rich, thick descriptions to convey the findings" (Creswell, 2003, p.196) in order to help readers draw parallels to similar situations in their own lived experiences; further, I make clear my position in the research as a stakeholder, particularly as a member of a racialized group.

Identifying emerging themes from data

I began to identify codes in the data using version two of NVIVO. I fully coded one transcript and abandoned the process. I received five one hour sessions of training and I read the tutorial attempting to learn the program sufficiently to use it to analyze the data. Even though I learned to use the program, the extent of time needed to code the one case aggravated my vision impairment which ultimately influenced my decision to use a different method to code the data. I, therefore, resorted to coding the data manually by making notations in the margin of the transcripts to be analyzed in depth. Using a modified version of Creswell's (2003) suggested six steps for preparing qualitative data analysis, I proceeded as follows:

a) I organized and prepared the data for analysis by printing, separating and highlighting all 16 reports.

b) I reviewed all 16 cases generally to get a sense of what the stories were in the reports and to determine how best to begin coding. I made notes of my impressions while I read the reports and began to ponder how to use specific sections of the data. The individual reports ranged in page length from 26 to 244 totalling 1, 442 pages. I made a decision to use only six of the reports. This is a reasonable sample for a doctoral dissertation of this nature.

c) The six cases chosen for in depth analysis were reviewed a third time. While reviewing them, I made a list of topics or categories that seemed evident in the data. From this list, I developed a codebook to review the data again. Using the codebook as a guide, I placed the topic beside appropriate chunks or sections of reports as a way of organizing the data. Each of these sections or "chunks" was labelled with a meaningful term according the guided CDA framework presented earlier.

d) I placed these sections or "chunks" into one of two overarching categories: practice and discourse. I determined broad themes and sub-themes using the code book as a guide. Initially, 28 major themes were isolated, most having sub-themes. I then grouped these themes under one of the two categories according to the research questions. These 28 themes were collapsed into 18 themes with sub-themes and these were later collapsed into the nine themes under the two

categories. I used these categories (institutional practice and institutional discourse) as the major headings to organize the research findings. These were used to provide descriptions access, control of tools, communicative events, participants' roles and positions and argumentation.

e) Each theme was advanced by way of narrative excerpts (direct quotation) taken from the data showing multiple perspectives from different reports.

f) In this final step, I provided personal interpretation of the data and through that process, advanced theory building by creating terminology to name and identify the reproduction of institutional racism. Through these, I also created a model to identify the process by which institutionalized racism is reproduced through discourse and practice. The sensitizing categories that I began the research with were: Institutional Practice and Institutional Discourse. These are discussed in the next sections.

Institutional practices

The practices embedded in the institutions are linked with the practices of the Tribunal (an institution itself) and these practices were examined keeping in mind the requests made by the decision makers and persons in positions of power. These practices were identified and analyzed in relation to requests for proof of evidence, use of historical cases and rulings to help them reach resolutions in current cases; legal technicalities and behaviour according to the rule of law; the assessment of testimonies of expert witness,

complainants and respondents and acceptance or rejection of evidence. Therefore, the actions and behaviours of decision makers such as the kind of information they accepted or excluded (e.g. documentation evidence); and the use of technical language (e.g. legal genres) were examined. Both the complainant and the respondents called their respective witnesses; attention was given to the weight that was afforded witnesses' testimony and of equal importance, was the witness' professional designations, positions and the adjudicators' acceptance or rejection of their testimonies. The adjudicators' interpretation of evidence presented by both the complainants and the respondents is called into question as well.

Case law was used prominently to aid the resolution of complaint cases. Cases resolved at any level of the judiciary, the Commission, the Tribunal, up to and including the Supreme Court of Canada, were used as guidelines to help complainants and respondents position their arguments and further their cases. The links with historical court rulings were emphasized including access to social power, genres and meanings that are used to interpret the cases which were being reviewed.

Attention was given to how social and technical language was used to help convey information, experience and meanings as universal truths and institutional practices. Institutional practices such as the quasi judicial process at the Tribunal are conducted in what is assumed to be a "standard" way; however, given the nuances embedded in cultural meanings and language construction, "standard" is not static or universal. Fairclough (1989) argues people are motivated to behave in certain ways in institutions:

> Institutional practices which people draw upon without thinking often embody assumptions which directly or indirectly legitimize existing power relations. Practices which appear to be universal and commonsensical can often be shown to originate in the dominant class or the dominant bloc, and to have become *naturalized.* (p. 33)

The investigation focused on reports of hearing decisions made by the Tribunal's adjudicators. These hearings are conducted similar to court proceedings and reports are written outlining the specifics of the case including evidence, witnesses called and the use of case law to substantiate or refute claims in the cases. Fairclough (1989) notes, "language is centrally involved in power, and struggles for power" (p.17). The Tribunal's process is an important site to study institutional power with respect to roles and the ability to influence society; practices used during hearings; and the nuances of formal, authoritative English language and written text. The texts analysed were the reports by the Tribunal adjudicators and presentation by complainants, general and expert witnesses, respondents and the Tribunal representatives. In all of the complaint cases, the respondent, complainant or adjudicator cited past cases that dealt with similar issues. These procedures influence the outcome of current cases. Particular attention was given to the use of case law, and how case law specifically influenced the outcome of the cases under investigation. Institutional practices can seem benign or "invisible" but are equally important as institutional discourse in the Tribunal hearing process.

Institutional Discourses

Institutional discourse is a significant factor and contributes immensely to exclusion and discrimination against those that are othered (Blommaert, 2005; Fairclough, 1995). Seeking to discover and expose the power that drives institutional discourse, I examined the lens through which adjudicators examined each case, and specifically, I explored the Tribunal's failure to recognize racist practices in the workplace (e.g. lack of promotion, failure to hire, etc.); the adjudicators' claims of objectivity; and their failure to link workplace racism and harassment with the complainants' work performance (and their performance evaluations). As a result of institutional discourse, which ultimately normalizes racism, blames the complainant, negatively views equity-related employment policies and claims a neutral stance, institutional racism is reproduced.

To analyze the process of exclusion, I identified the difference in social context for the complainants, the respondents and the tribunal representatives; therefore, the interactions and the information presented is contextualized to show how different people's histories can affect social and political context and, ultimately, contemporary social positioning. In this sense, the power relations were examined in each case, including an analysis and discussion of the asymmetries and discourse of how racialized bodies are treated in the Tribunal adjudication process. The participants and their roles in the text were identified as being in power or marginal positions. A discussion of access to decision-making positions and structural power is provided and includes attention to arguments made in support or opposition to the affirmation of institutional norms and values and

descriptions and categorizations of participants. The influence of contextuality (Gee, 2005) and how it manifests in communication between and among the participants at the Tribunal was examined. That is, the differences in attributed meanings, assumptions and interpretations were analyzed. The identifiable meaning of words that are historically, socially and politically different among complainants, respondents, and Tribunal's representatives were noted in the analysis.

Particular attention was given to how the adjudicators approached the resolution of the complaints; the language that was used to describe the particulars of the complaints; and how the complainants were represented in text in the published reports and commentaries (e.g. description of personal characteristics and relationships with colleagues). Specifically, I explored how race based discrimination continued to be reproduced at the Tribunal by reviewing the discourse of language the adjudicators and respondents used to describe the complainants, the normalization of racist behaviour that occurred in both the workplace and the Tribunal; and the arguments adjudicators used to rationalize their decisions. Implied meanings were analyzed to determine the cultural and social values, norms and expectations of complainants.

The text produced and published by adjudicators is indicative of institutional power relations, and these are often direct manifestations of norms and values that are presumed to be universal. The themes and content of the discourse are similarly important as the manifestation of power lies within such enclaves of institutions. These institutional power relations undoubtedly manifest in the Tribunal proceedings. Gumperz (1982) identified

some of the challenges with interpreting spoken language and written text from different cultural perspectives in criminal investigations and court proceedings:

> Power and inequality have long histories of becoming; so have the linguistic repertoires of people; so too have social structures and systems such as capitalism and its many transformations. We need to take history seriously, for part of the critical punch of what we do may ultimately lie in our capacity to show that what looks new is not new at all but, the outcome of a particular process which is systemic, not accidental (Blommaert, 2005, p.37).

Some of the examples discussed earlier demonstrate the complexity of the modern working environment, in particular intergroup communication; for example, industrial work environments have become somewhat of a challenge given the number of multiethnic and multiracial employees (Jupp, Roberts & Cook-Gumperz, 1982). The work environment and population under investigation in this research are aligned with the proposed description of multiethnic and multiracial worldviews; the challenges and complexities mentioned became apparent as the study proceeded. Similarly, Gumperz, Aulakh & Kaltman (1982), in their study of English language usage, show that there is a marked difference in English language style between British South Asians and European British. Although the South Asian groups knew English well and used it comfortably in their daily lives, their style of language was commonly referred to as Indian English. While there were surface similarities with Western English, the authors found cultural differences with styles and syntax for example. Similarly Leggatt (2003, p.116) describes the personal conflict

with her dual identity as a Native writer and a post-colonial academic: "the surface similarities between the two arguments hide differences that spring from differences in language, culture, and ways of looking at the world. This is another perspective from an individual who clearly identifies language and culture as important factors in communication.

As if in agreement with Leggatt (2003), Razack (1998) explores cross cultural communication and racist judicial discourse in her book *Looking White people in the eye* and expose how racism is transmitted in everyday practices and discourse in Canadian educational institutions and judicial process. Razack suggests working effectively with racialized people cannot be achieved through cultural sensitivity but rather an understanding of the socially sanctioned dynamics between the dominant and non-dominant populations that ensures the maintenance of power for the dominant group. Racist discourse involves more than language, it also includes social conditions at an institutional level. Fairclough concurs that:

> Discourse, then, involves social conditions, which can be specified as *social conditions of production and social conditions of interpretation.* These social conditions, moreover, relate to three different 'levels' of social organization: the level of the social situation, or the immediate social environment in which the discourse occurs; the level of the social institution which constitutes a wider matrix for the discourse; and the level of society as a whole. (1989, p.25)

These social conditions which aided in the production of institutional racism were examined. The adjudicators' failure to recognize the existence and exercising of everyday racism in the workplace was interrogated specific to the way that they interpreted complaint cases and misrepresented the persona of many complainants. Language and text are important communicative attributes of social existence that influence how individuals are responded to and similarly how they respond to others. Language and text is not neutral, and this recognition becomes more crucial in the legal system as in the case with the Tribunal hearing process.

Research Ethics

The university Research Ethics Board was contacted to determine if an ethics review of the research was needed. Research about individuals, documents, third party interview that is publicly available does not require an ethics review. Confidentiality is not a concern in this research project because Tribunal hearings are open to the public, and the reports are available in the public arena. The transcripts contain particulars of the referred cases in detail. The name, race, gender, employer, job title, nature of complaint and instances of discrimination and other information are published on the Tribunal's websites. Any data retrieved from the Canadian Human Rights Commission is private and only non-identifying statistical information is given such as grounds for complaints, time taken to resolve and mode of resolution. Therefore, all the data in this research project is a matter of public record which eliminates issues of confidentiality. There are, however, ethical duties of the researcher not to re-victimize the people involved, and this research has been

conducted in accordance with ethically and scholarly guidelines. I assumed the responsibility to:

- produce "good quality research",
- make ethical generalizations where appropriate,
- refrain from making false generalizations,
- ensure that the findings address the research question and
- frame generalizations in a way that encourages and stimulates debate about the reproduction of discrimination in the Tribunal (Mason, 2005, p. 202).

While the names and other personal information of the complainants and respondents are a matter of public record, only first or last names, department, pseudonyms or descriptive characteristics are used when discussing the cases. For example, at no time is the first and last name of the complainant or respondent included. This is an attempt to limit how others may use the published research and to minimize harm to the complainants or respondents. Finally, I ensured that I interpreted the stories as they were reproduced in the Tribunal's report. Qwul'sih'yah'maht & Thomas (2005) note honouring the storytelling of their participants was the most important aspect of ethical research for them. As researchers they needed to ensure that they retold the stories in the way that the elders relayed them and intended them to be told. Like Qwul'sih'yah'maht & Thomas, (2005), I strongly believe that the stories told by the complainants and documented in the pages of the Tribunal summary reports must be honoured in the way they were told, and their intended meanings kept intact. There is no question that the complainants believed and felt that they experienced racism. So too I operate from the premise that racism is a part of their

everyday existence. Some of the quotations and excerpts of summaries presented in this research may appear unbelievable; however, the stories in the research were presented as they were documented, an important ethical consideration.

Limitations and Contributions of the Research

This research is limited by the specificity of the Tribunal hearings. The published reports and documentation published by the Canadian Human Rights Commission are the sources of data, conducting participant observation by attending adjudication hearings and/or conducting interviews with selected informants would have provided a different perspective and rich sources of data. Using the data from the published reports is limited given that they lack a first voice account, that is complainants' telling of their own stories were not present. To contend with this limitation, I reviewed complaints filed with the CHRC for the same time period under investigation, 1995 – 2005. I specifically note, comment on and compare the number of cases filed for each year, and how they were resolved at the CHRC.

The focus of the review and comparison were specific to race and/or colour; however; the selection of the sample population excludes several groups of people including Aboriginals peoples, sexual minorities and disabled people. I clearly recognize that Aboriginal people are a racialized population who are severely disadvantaged in various contexts of Canadian life. However, addressing the concerns of Aboriginal people in this research would compromise its focus and undermine the need to conduct research

which investigates specific concerns of Aboriginal peoples. The research investigates race (racialized) and excludes other overlapping or multiple designations. I understand that there is a need to recognize intersectionality, because a racialized person does not occupy a solitary space: she could be disabled, an immigrant or observe a religion that is not considered mainstream. The one-dimensional approach in reviewing race and/or colour but not gender, disability or sexuality, for example, limits a deeper level of analysis that can account for different social histories. The findings of this analysis are, therefore, pertaining only to the racialized groups included in the study. The focus on race is not intended to silence the investigation of multiple layers of exclusion, but such breadth of analysis is beyond the scope of this research. There is no suggestion that other groups are not similarly disadvantaged; however, staying true to the research premise of racial discrimination dictates the research lens.

Qualitative research is frowned upon for its lack of objectivity and inconsistencies with data and its presentation (Denzin & Lincoln, 1998). The data interpretation will be based on my perspective and social location, and these varying perspectives can reflect important and serious inconsistencies (Babbie, 1998). Alternatively, published statistics often raise more questions than they answer and reflect similar personal biases. For example, the CHRC data suggest that a certain percentage of "visible minorities" file complaints against their employers; however, unless the data are broken down to reflect race and ethnicity, for example, this data invoke more questions than answers and the categories under which this data are presented reflect biases and preferences. The

statistical information provided by the different government agencies is beyond my control; however, I noted that the data are limited by the agency that produces it and from the lens through which they reviewed the data. For example, the data for "visible minorities" are often reported together, but sometimes it is separated by gender. There is no further breakdown to highlight the possible differences among racialized groups. Similarly, the data for women in some instances look strong; however, when separated by race, there is significant difference in the mobility of White women when compared to racialized women. Furthermore, the data for women show differences in employment status when the area of employment is revealed. However, there is also concern over whether any data can be totally separated from the context of its collection. Hodder (1998) cautions that interpretation of pre-recorded data must be done with attention and the understanding that, "different kinds of texts must be understood in the context of their condition of production and reading" (p.111). Dealing with this limitation involved developing themes and sub-themes that relate specifically to the content and setting of the reports while acknowledging the context of the complaints hearing and the adjudication process.

From an analytical position, critics argue that critical discourse analysis is one dimensional or is presented from one perspective, namely that of the participants; that there is no acknowledgement that the text can be read or interpreted from another perspective; that the analysis assumes that individuals are either oppressors from a dominant group or subjugated without resistance and that there is no acknowledgement of the social context of the text's production. Critical discourse analysis is also criticized for biased selectivity, lack

of representation, "partiality, prejudice and voice" (Blommaert, 2005, p.31) and for biased political positioning. Critics argue that proponents of CDA superimpose their political beliefs into the text and make generalities based on assumptions, feelings and limited textual investigation (Schegloff, 1999 cited by Blommaert, 2005).

More crucially, Blommaert (2005) further argues that the majority of people in the world live in substandard and discouraging circumstances, such as poverty and isolation, yet critical discourse analysts continually produce research that focuses on the circumstances of people in the global North and assume a universal validity of experiences. Clearly, any argument or theory that espouses eradication and shifting of power relations must consider historical and contextual factors. Racialized women and men who initiated complaints against their employers based on racial discrimination are intimately connected to the historical power relations as colonized and subjugated others regardless of the geographical location of their birth. In this research, historical dominance of racialized people is a salient factor in the analysis but the context of the analysis is recognized as limited temporally (1995 to 2005) and nationally (Canada).

Conclusion

This chapter began with a discussion of institutional racism and the methods used to explore the subject. Along side the discussion of institutional discourse and practice, CDA and it premises was explained including the positioning of gatekeepers and the techniques they employ to uphold the status quo using language, text and universal truth and

expectations. The chapter discussed various aspects of the research design and provided a foundation for the specifics of the research methods and analysis. This chapter discussed the rationale for the research methods; explained CDA and its appropriateness for this research; the framework that guided the research, the two major categories used to organize the analysis and ended with an explanation of the research analysis itself. Document review can also be used to identify and explore institutional racism, discourse and practice, the focus of the upcoming chapter reviewing the CHRC filtration process for complaint cases.

The unedited reports of complaints, process and hearing are unlikely to produce an accurate reflection of the entire complaint. Some individuals are unaware of how to effectively navigate the political system and this personal limitation may affect the hearing proceedings and findings. Many other peculiarities and inconsistencies exist within the documentation and hearing process. For example, the complainants' feelings, perspective or rationale are not documented because complaints and resolution hearings are sterile and follow an evidentiary-based process. These challenges are ever present especially in the case of critical discourse analysis.

Chapter 6 – Canadian Human Rights Complaints and Filtration Process

...Traditional model does not adequately address the complexity of discrimination against women and minorities. It does not, by itself, provide efficient tools for dealing with the systemic discrimination that results from built-in barriers to equal opportunity. In the context of changing realities, discrimination must now be measured by its results. It must now be seen to include practices or attitudes that – regardless of intent – have the actual effect of limiting an individual's or group's right to opportunities that are generally available in our society, when this limitation is imposed by external barriers that artificially inhibit growth. (Abella, 1984, p. 8-9)

Introduction

In this section, an overview of the complaint elimination process of the Canadian Human Right Commission (CHRC) is offered. This includes: complaint cases filed with the Commission, cases resolved, dismissed or referred to the Canadian Human Rights Tribunal (CHRT, the Tribunal) and the rationale for dismissal or referral. The document analysis in this chapter offers an opportunity to detect the filtration process in the CHRC and to examine more closely the effectiveness of the tribunal.

Canadian Human Rights Act - Complaint Process

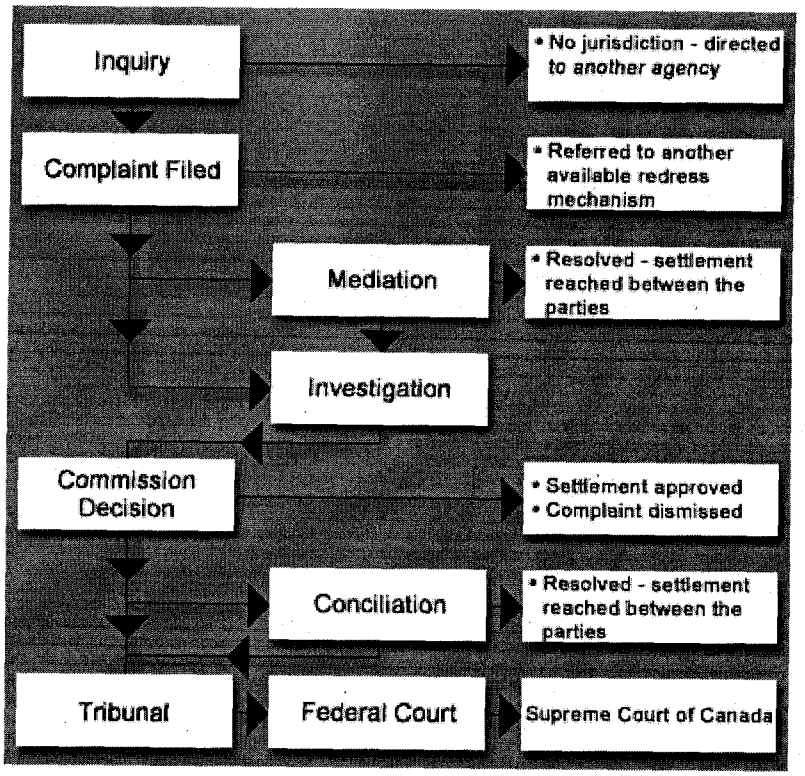
Sections of the Canadian Charter of Rights and Freedoms and the CHRA encourage employers to voluntarily implement employment equity programs in the workplace. However, the vast majority of organizations implemented Employment Equity programs only after they were mandated to do so by the federal Employment Equity Act (Agocs, 2002; Leck & Saunders, 1996). The Commission has provisions allowing it to initiate a complaint process when institutional discrimination is evident. However, this rarely occurs given the Commission's lack of resources which continues to be depleted (Hucker, 1997). Individuals who believe that their employment related rights have been violated on the grounds set out by the Canadian Human Rights Act (CHRA) can bring complaints to the Canadian Human Rights Commission (CHRC) in their jurisdiction. Individuals who initiate a Human Rights complaint process do so without employer support and assistance and are, therefore, left without protection during and after the complaint process though they may have the support of their union if one is present in the workplace. If a union is present in the workplace, the individual is required to follow the union guidelines by filing a grievance with the employer. With the support of the union, sometimes the concerns are resolved at the union-agency stage. If a union is not present, or the complaint cannot be heard or resolved with the support of the union, the individual files as complaint with the CHRC. If the Commission finds merit in the complaint, it is first dealt with through mediation and conciliation. Most complaints finish at this point. In extremely rare cases it is referred to the Human Rights Tribunal (Tribunal). In spite of reduced resources, a change

in the complaints process since 2002, discussed below, shows a reduction in the complaint cases backlog: 1) there is an improved rate in resolving cases that are initiated before they are filed and 2) cases that are filed are dealt with and resolved in a shorter period of time.

Canadian Human Rights Commission Complaint Cases

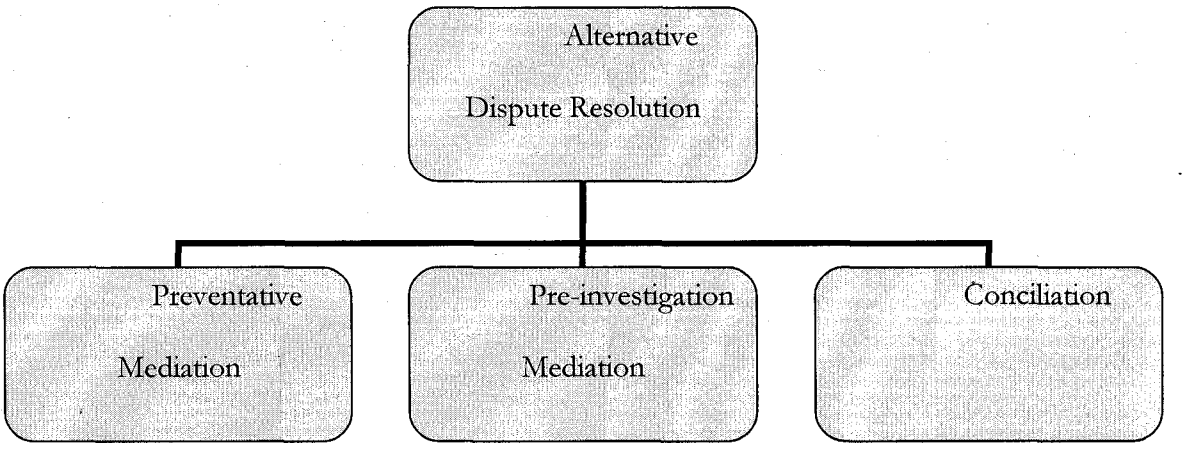
Beginning in 2002, the CHRC introduced a new complaints process and that strongly encourages conciliation and mediation processes to resolve complaint cases before they are formally investigated. Figures 6.1, 6.2 and 6.3 show the possible filtration process a complaint case may take; complaint cases are handled within the Dispute Resolution Branch, which is a central location created to handle all complaints initially before they are investigated or referred to other agencies or resolution mechanisms. All charts and statistical data are taken from the Canadian Human Rights Commission Annual Reports to Parliament, published by the Ministry of Public Works and Government Services, 1996 - 2006. For clarity, and where necessary, charts and data will be cited as CHRC according to publication year; however, the full citation will be noted in the reference section.

Figure 6.1 – CHRC Complaint Case Filtration Process



Source: CHRC Annual Report (2001).

Figure 6.2 – Alternative Dispute Resolution



When an inquiry is made at the Commission, specialist determines if the commission has jurisdiction to hear the case; for example, if the complainant works in a unionized environment, the employee is expected to initiate and resolve the dispute complaint through the union process. If resolution is not attained, or they are not in a unionized workplace, the employee is able to initiate a complaint process with the Commission. If the Commission has no jurisdiction in that area, the individual is redirected to the appropriate agency. For example, if a foster parent has a complaint against a child welfare agency, the individual would be referred to the Child and Family Review board. In cases where the Commission has jurisdiction, the complaint may be filed or referred to another agency where he or she can engage in redress mechanisms through mediation. If the dispute is not resolved through mediation, an investigation ensues. After the investigation, the Commission either dismisses the complaint or orders a settlement. The

complainant and the respondent may choose to enter into a conciliation process in order to reach an amicable settlement to resolve the complaint. In rare cases when the Commission is unable to reach a decision, the case is referred to the Tribunal. If the case remains unresolved after the Tribunal level, the complainant may initiate a process at the Federal Court level and finally the Supreme Court of Canada may be asked to hear the complaint and provide a decision (Figure 6.1).

A review of Figure 6.3 shows a more detailed outline of the complaints process includes:

1) Preliminary Assessment: At this stage, the Commission identifies the best way to resolve the situation without invoking a formal process; discusses with the parties the pertinent issue raised; and explains the next steps and the potential process the complaint could take. When the "complaint is received, an experienced human rights specialist helps the parties to narrow the facts in dispute and establishes realistic expectations...This could lead to a settlement, or to a withdrawal of a complaint, or to an agreement to enter into mediation" (CHRC, 2001, p.6).

2) Alternative Dispute Resolution:

a) In the p*reventative mediation* stage the Commission coordinates meetings between the parties involved in the complaint and if agreeable, they engage in a voluntary process that is intended to resolve the dispute and thereby the complaint does not have to be filed.

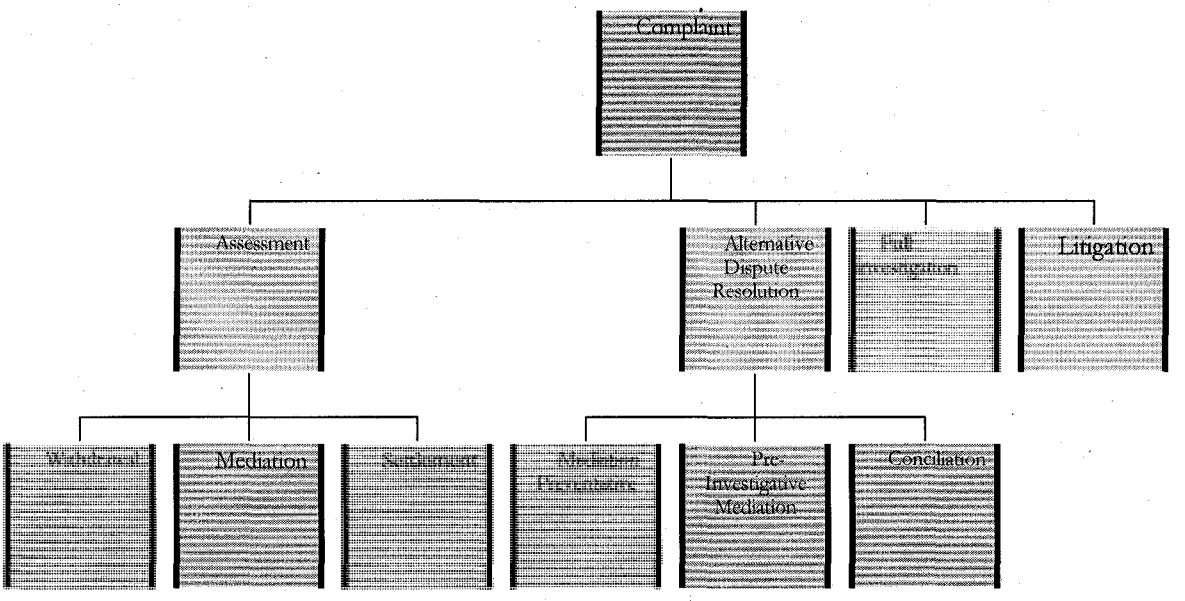
b) *Pre-investigation mediation* is engaged in voluntarily among the parties after the claim has been filed but before investigation begins. Commission mediators encourage the inclusion of "public interest remedies such as changes to policies and training for managers and staff" (CHRC, 2006, p :9).

c) *Conciliation* is a mandatory process initiated by the Commission and can involve direct referral to the Tribunal, investigation, assessment of the merits of the case and possible settlement options.

3. A full *investigation* of the complaint is conducted by a multidisciplinary team including policy specialists, legal experts and senior level committee members. Possible outcomes of an investigation include referral to dispute resolution mechanism; dismissal due to a lack of evidence; and discontinuation due to time limitations. A full explanation of such outcomes is discussed in the Human Right Complaint Filtration Process which directly follows this section.

4. *Litigation* occurs at the pre-tribunal level where the Commission often provides support to parties involved and pursues high impact cases such as pay equity (CHRC, 2001).

Figure 6.3 – Outline of Possible Complaint Process



Human Rights Complaint Filtration Process

The CHRC has a clear filtration process but the question remains: Is the process designed to work favourably for possible complainants or complaints that are formally signed? Formally signed complaints are those which the Commission accepts based on its assessment that discrimination has occurred. These complaints are entered into the system and referred to an investigation team. Critics have noted numerous flaws in the Commission's complaint process; for example, individuals are responsible for bringing their cases to the Commission; complainants do not receive support in the workplace while

going through the complaint process; there is a statute of limitation that prevents complainants from filing their cases after a certain time has elapsed; the Commission has a narrow view of what constitutes discrimination, which makes it easy to disallow cases and also facilitates the Commission's continued insistence that systemic discrimination does not exist. As explained earlier, individuals are solely responsible for bringing their complaint to the appropriate institution, and in many instances these cases fail to reach any resolution. The data recorded and published by the Commission in its Annual Report from 1996 to 2006, which are reviewed below, do not contradict the arguments that the complaints process is grievously flawed and as a result, the Commission is complicit in its perpetuation of discrimination against those that are already marginalized.

The CHRC has consistently reported that people with disabilities account for the highest number of claims and the second highest numbers of claims are made by people based on race, colour and "ethnic" or national origin (previously defined in the glossary). In 1999, the Commission began to separate claims based on colour from those filed based on race (Table 6.2). Table 6.1 shows that in 1998, for example, a total of 355 individuals filed complaints alleging discrimination based on race, colour and national or "ethnic" origin, respectively - (190, race/colour and 144 national and "ethnic" origin). The Commission resolved 26 of the 334 cases through early resolution (9) or during investigation or during the conciliation mechanisms (17); a total number of 56 cases were dismissed based on lack of evidence. Nineteen (19) cases had no further proceedings and the largest number of cases, (162) were discontinued. A total of 237, (56 dismissed; 19 no

further proceedings; and 162 discontinued), more than 67% of complaint cases, were discarded before the complainants had the opportunity to tell their stories and seek redress.

The cases were not heard for a number of reasons including being filed more than one year after the alleged incident, not having sufficient evidence, the Commission's inability to categorize the complaint under a prohibited ground of discrimination and complainants withdrew or abandoned their cases. The 67% cannot account for the full magnitude of the situation given that many people do not fully comprehend how to engage the complaint process, so their concerns and experiences are never brought forward; furthermore, some individuals have an inability to articulate their situation sufficiently to satisfy the Commission's understanding of what would constitute a viable complaint. These potential claims are filtered out at the initial stages of the inquiry. More significantly, when the complaint cases pass the initial stages, the majority are discarded, dismissed or not heard every year. In 1999 the Commission did not emphasize mediation, referral to the Tribunal or alternative redress mechanism as evident by the low number of complaint cases referred when compared to later years.

Table 6.1 - Complaint by grounds for discrimination and resolution, 1998

Item	Race/Colour		National/Ethnic Origin		Total	
Number and percent	%	#	%	#	%	#
Complaint by grounds	0.57	190	0.43	144	100	334
Early Resolution	0.01	4	0.01	5	0.02	9
Settled during investigation or conciliation	0.04	13	0.01	4	0.05	17

Refer to alternative redress mechanism	0.11	37	0.08	28	0.19	65
Referral to a tribunal	0	0	0.002	1	0.002	1
Not dealt with (1)	0.002	1	0.01	4	0.01	5
Dismissed for lack of evidence	0.1	34	0.06	22	0.17	56
No further proceedings (2)	0.04	14	0.01	5	0.05	19
Discontinued (3)	0.26	87	0.22	75	0.49	162

(1) Cases that the Commission decided not to pursue because they were filed more than one year after the alleged act of discrimination, or were, technically, without purpose.

(2) Cases in which the complainants withdrew or abandoned their complaints, the matters were outside the Commission's jurisdiction, or the complaints did not warrant referral to a tribunal.

(3) Cases that were closed prior to investigation because the complainants did not wish to pursue them or because a link could not be established between the alleged act and a prohibited ground of discrimination.

Source: CHRC Annual Report. (1999). Ministry of Public Works and Government Services. Canada.

Table 6.2: Complaint cases by grounds for discrimination, 1995-2005

Year	Race/colour	Race	Colour	Ethnic/National Origin	Total
1995	179	-	-	127	**306**
1996	235	-	-	174	**409**
1997	207	-	-	189	**396**
1998	190	-	-	144	**334**
1999	-	144	114	250	**508**
2000	-	118	44	132	**294**
2001	-	156	47	218	**421**
2002	-	71	30	94	**195**
2003	-	146	59	141	**346**
2004	-	25	26	109	**160**
2005	-	74	14	73	**161**

Source: CHRC Annual Reports. (1995 – 2005).

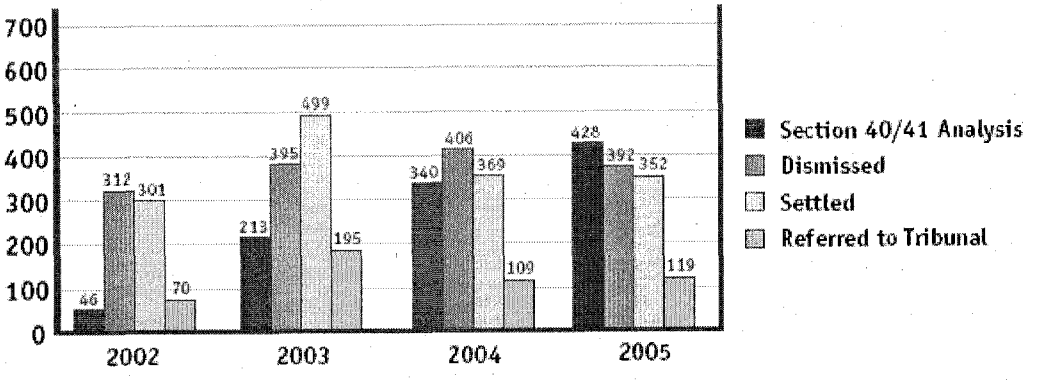
The statistical data provides some evidence to suggest the situation is changing. This conclusion is reached by reviewing the data for two time periods: 1999 – 2001 and 2002 – 2005 (Table 6.4). In 1999 and 2002, 2,083 and 1,561 complaints were filed respectively; between 2002 and 2005 the number of claims that were settled through alternative dispute mechanisms appeared considerably fewer than 1998, for example. In

fact, the Commission noted not applicable (N/A) in this category for 1999 to 2005 without explanation. At the same time, claims referred to the tribunal for resolution increased from a low of 9 in 1997 to 2 notable highpoints: 195 in 2003 and 119 in 2005 (Table 6.4). This change appears to be related to the 2002 streamlining of the complaint process. In addition, between 2002 and 2005:

- allegations based on employment related discrimination increased steadily from 65% (666 claims) to 75% (821 claims);
- between 9% - 16% of cases were related to employment harassment and;
- in 2003, 1,048 cases filed were based on employment harassment.

However, in 2005, similar to other years, the total number of cases dismissed or not dealt with exceeded the number settled or referred to the Tribunal (Table 6.4, 6.5; Figure 6.4). This data raise questions about the effectiveness of the commission overall and specifically the Commission's new Dispute Resolution programs. One of the Commission's more consistent responses to discrimination has been to increase the referral of complaint cases to the Canadian Human Rights Tribunal. Between 1995 and 1999, the highest number of cases referred to the Tribunal was 49; between 2002 and 2005, the numbers increased and referrals to the Tribunal consistently exceeded 100 (Table 6.3, Figure 6.4). The increased number of referrals to the Tribunal seems positive in light of the Commission's proposed commitment to advance the resolution of claims filed.

Figure 6.4– Methods of Final Decisions 2002 – 2005



Source: CHRC Annual Report (2006).

Table 6.3 – Cases Filed and Decision Given, 1995-2005

Period 1 1995 to 1998	Number of cases signed with the CHRC	Number of cases - no outcome*	Number of cases referred to the CHRT	Number of cases settled	Number of cases referred to alternative dispute mechanism
1995/96	1,798	1,342	49	460	298
1996/97	1,824	1,171	9	662	222
1997/98	1,591	1,082	27	429	285
1998/99	2,083	1,546	41	612	296
Period 2 1999 to 2001					

1999/00	1,374	1,109	52	213	n/a
2000/01	1,405	996	123	286	n/a
2001/02	1,561	1,203	70	273	n/a
Period 3					
2002 to 2005					
2002/03	1,320	608	195	499	n/a
2003/04	1,224	746	109	369	n/a
2004/05	1,291	820	119	352	n/a

Source: Adapted from CHRC Annual Report 1996 – 2006, Ministry of Public Works and Government Services. *- dismissed, discontinued, no further proceedings, not dealt with.

*Table 6.4: Type of Allegations Cited in New Complaints, 1999 to 2001**

	1999		2000		2001	
	No.	**%**	**No.**	**%**	**No.**	**%**
Employment related (Sections 7, 8, 10)	1,230	62	894	65	1,003	58
Harassment employment (Section 14)	348	18	252	18	355	20
Pay equity (Section 11)	9	1	13	1	30	2
Retaliation (Section 14.1)	-	-	10	1	10	1
Subtotal	**1,623**	**81**	**1,169**	**88**	**1,398**	**81**
Overall Total (includes other allegations not shown in chart)	**1,979**	**100**	**1,393**	**100**	**1,740**	**100**

Source: Adapted from CHRC Annual Report. (2005). Ministry of Public Works and Government Services, p. 20-21. * Data representing allegations prior to 1999 is not available in the Canadian Human Rights Commission's Annual Reports.

*Table 6.5 - Type of Allegations Cited in New Complaints 2002 - 2005**

	2002		2003		2004		2005	
	#	%	#	%	#	%	#	%
Employment-related (sections 7, 8, 10)	666	65	1,048	66	834	67	821**	75
Harassment – employment (section 14)	164	16	249	16	175	14	95	9
Pay equity (section 11)	7	0.5	7	—	—	—	2	—
Retaliation (section 14.1)	15	2	33	2	22	2	12	1
Subtotal	**852**	**83.5**	**1,337**	**84**	**1031**	**83**	**930**	**85**
Overall Total (includes other allegations not shown in chart)	**1,914**	**100**	**2,766**	**100**	**2,525**	**100**	**1,091**	**100**

Source: Adapted from CHRC Annual Report. (2006). Ministry of Public Works and Government Services, p. 12-13.

Total number of allegations cited exceeds the total number of complaints signed because some complaints dealt with more than one allegation. ** The Commission accepted a group of 594 related complaints which are counted as one.

Summary and Analysis

The tables and figures suggest a process is in place that is unsupportive and unfavourable to the complainants. Signed (submitted) complaints based on race/colour and national/ethnic origin showed large numbers in the years before the changes designed to reduce the case backlog were made at the Commission. The highest numbers of signed cases were recorded in 1995 (508), 1996 (409), 2001 (421) and 2003 (346). A pattern emerges where the number of signed cases steadily decreased between 1995 and 2005. The numbers of "visible minorities" who filed complaints continue to decrease even with a steady increase in the number of racialized employees in the federal public service. The FPS noted that between 2000 and 2004 there was an increase in the number of racialized employee as follows: 7,764 (5.5%), 9.143 (6.1%), 10,772 (6.8%), 12,058 (7.4%) and 13,001(7.8%) respectively. Based on the data, it is difficult to tell if these reductions are due to better policies and programs. Given that such large numbers of cases are dismissed, could the reduction in filing complaint cases be related to fear of retaliation or frustration that their stories will be dismissed and their attempts to seek redress will be fruitless. In 2002, and with the implementation of the new complaint procedures, 195 complaints were signed: in 2004 (160) and 2005 (161); in those three years, the number of signed cases was less than half the number in previous years. This reduction in the total number of cases that were signed included individuals alleging discrimination based on race/colour, ethnic or national origin. While these reductions were evident, the Commission resolved fewer complaint cases, and at the same time continued to dismiss significant numbers so that the

largest number of cases had no outcome or resolution. This means that while "visible minorities" were being invited to file complaint cases based on discrimination, they were simultaneously being discouraged systemically by the structural components embedded in the commission. Based on the descriptive statistics, we can conclude that overall, fewer individuals filed complaints between 1995 and 2005, more were dismissed and fewer were processed to resolution.

Of the cases that were dismissed no further actions were taken from the Commission. While the allegations, according to the Commission, could not be substantiated because of technicalities regarding evidence, for example, the problems that motivated the individuals to file their complaints initially likely remained in the workplace. The Commission could take an active role in helping to address these discriminatory race based complaints. In the years immediately following the reforms made to the Commission, an increased number of cases were referred to the Tribunal. However, being referred to the Tribunal does not necessarily mean a resolution in favour of the complainants. The practices at the Tribunal are similar to those of the Commission; therefore, some of the cases analyzed in depth were dismissed at the Tribunal level after referral from the Commission. This analysis will offer a better understanding of what a dismissal at the Commission means and will identify possible ways in which complainants are disadvantaged by a system where all the decision-making power rests with the architects of the system that is meant to protect people who have experienced injustice.

Conclusion

Changes in 2002 to the process of handling complaints appear to have increased the number of cases resolved (settled), but also the percentage not dealt with. The majority of the cases filed with the CHRC between 1995 and 2005 were dismissed or not heard for various reasons (e.g. not within the Commission's jurisdiction, time in which to file a complaint had elapsed, claim was frivolous). There are numerous complaints that cannot be substantiated based on the Commission's evidentiary requirements and are, therefore, never heard. The data raises serious questions about the Commission's complaint filtration system and points to defective institutional practices and processes. What is more problematic is that the Commission is designed to alleviate and reduce discrimination and yet from the document analysis, the process appears flawed to the point where people do not receive acknowledgement and compensation through the very institution from which they seek justice. Clearly, Employment Equity concerns cannot adequately be addressed under such a system, and this brings into question the ability of the Tribunal to offer an equitable process that would enable racialized women and men to obtain justice.

The question is particularly pertinent given that the Commission has increasingly referred complaint cases of unique stature to the Tribunal for resolution; that is, cases that are more complex and beyond the expertise of the Commission. The Tribunal and the Commission operate with parallel institutional practices, values and norms. Given these similarities, and knowing that the documentation reveals that the Commission discards the majority of complaint cases before they are heard, two questions remain: Can the Tribunal

process transcend the perceived inability of the organization to adequately fulfill its social justice objective for racialized men and women? And if the governing philosophies that the Tribunal uses to process complaint cases are not based on an anti-racist or social justice model, how is it possible to eliminate or reduce the racist practices that invariably influence the outcome of the referred cases? These questions are explored in the next chapter.

Chapter 7 – Context and Demographics

One, two, three
Eight feet long,
Two strides across, the rest is dark
Life hangs over me like a question mark.

One, two, three
Maybe another week,
Or next month may still find me here,
But death, I feel, is very near.

I could have been twenty-three next July;
I gambled on what mattered most,
The dice were cast. I lost. (Hanna Senesh)

Introduction

This chapter discusses the demographics of the complainants cases filed with the CHRT. The data show various racialized groups, both women and men, as complainants. A description of the complainants is provided including their place of birth, education, job title and the work industry following which a description of the complaint cases is offered. This included, the grounds on which the complaint was filed, the type of institution they worked in (e.g. government or financial) and the nature of the allegations which included name calling and harassment.

Description of Complainants

Four of the 16 reports did not identify a place of birth for complainants. The 12 complainants for whom place of birth is known came from Congo (1), Haiti (2), India (3), Pakistan (1), Sri Lanka (1) Trinidad and Tobago (2), Zaire (1), and Zimbabwe (1). Five of

the complainants were women and 11 were men. Age was reported in only two cases (Table 7.1 – Appendix C). The majority of the complainants were formally educated and most had post secondary education at a university, college, technical school, or job-related certification. The highest level of education achieved by the complainants was: PhD (3), BA/BSC (6), College Diploma (1), specialized training as mechanic (1) and specialized training as engineer (1). Data was not available on the education of 4 complainants. However, of the complainants that provided education, several received their education from a number of places around the world; some were educated both in and outside of Canada. Among the 10 complainants where this information was provided, they were educated in: Canada only (1), USA only (1), Africa only (country not listed) (1), UK only (1), Belgium and Canada (1), India and Canada (3), India, West Germany and Canada (1) and the United States and Canada (1). This shows that 7 of the 10 for whom highest level of education achieved is reported obtained at least some of that education in Canada (Table 7.2 – in Appendix C).

Information about the job position complainants either worked in or applied for was provided for 14 (88%) complainants. They worked as scientists and biologists (3), aircraft mechanic and draft person(2), ferry boat engineer (1) ship steward (1), broadcasting (1), nurse (2), call centre agent (2), language specialist (1), police trainee (1), airline station attendant (1) data entry and parcel sorter (1). Complainants (n=14) worked for their respective companies or departments for between 3 months and 26 years. Two complainants applied for jobs and were not hired; therefore, data is not available for them.

Four of the complainants worked for the employer who was a respondent less than 2 years (0-14 months), 3 had work experience with the organization between 3 and 5 years, 6 between 6 and 10 years, 1 between 11 and 20 years and 1 worked for the department over 21 years (Table 7.2 – Appendix C). The mean years employed was 7.3, and the mode was 1 year.

Demographic Description of the Cases

All 16 of the cases were filed with race as grounds for the complaint. In addition in terms of grounds for a complaint, 6 of 16 used ethnicity as, 4 (25%) of 16 use colour, and one each used disability, religion, sex or family status. All but one case was filed with multiple grounds, including race and colour (5, 31%); race, colour and ethnicity (5, 31%); race, ethnicity and disability (1); race, colour, ethnicity and religion (1); race, colour, ethnicity and sex (1); ethnicity and sex (1); and race, ethnicity and family status (1), see Table 7.3 - Appendix D. In two cases, individuals were named as the respondents (people accused of discrimination): two men, including one racialized man. In the other 14 cases respondents were various government agencies or private businesses that received government contracts. The majority (9, 56%) of respondents were federal government agencies including penitentiaries, hospitals, Human Resources Development Canada, National Health and Welfare Canada, Canadian Broadcasting Corporation, and the Royal Canadian Mounted Police. The private businesses were Air Canada, Canadian Airlines, Canada Post, Royal Bank of Canada, Farm Credit and Bay Ferries (Table 7.4 – Appendix D).

The nature of the allegations of discrimination was identified in each report. Some complainants listed numerous allegations and all listed at least two. All complainants (16) identified harassment based on name calling, use of racial epithets, stereotyping, racial graffiti and over monitoring; 12 (75%) complainants identified unfair hiring, promotion or contract extension processes; 10 (63%) identified differential treatment as the basis of discrimination; 8 identified denial of promotion; 7 (44%) named unfair performance appraisal practices; 6 (38%) chose refusal to extend contract/fired; 6 (38%) chose unfair distribution of work; 4 (25%) named unfair access to training opportunities; and 3 (19%) chose other bases of discrimination, including different or no pay for overtime, no access to computer or internal message system, and constructive dismissal (Table 7.5).

Table 7.1 - Distribution of Cases by Allegations of Discrimination

Allegation of Discrimination	No. of Cases	%
Differential Treatment	10	63
Denial of Promotion	8	50
Refusal to Hire or Rehire	3	19
Unfair Process for Hiring, Promotion or Contract Extension	12	75
Refusal to Extend Contract, Fired	6	38
Unfair Performance Appraisal/Evaluation	7	44
Unfair Access to Training Opportunities	4	25
Unfair Distribution of Work Type, Work Area, Shifts, etc.	6	38
Harassment (racial epithets, derogatory terms, name-calling, graffiti, stereotyping, over-monitored, etc	16	100
Other:		
-different or no pay for overtime	3	19
-no access to computer or internal message system		
-coached to leave the job		
Total	75	

Females generally appeared to have played minor roles as direct or complicit offenders. In the cases where women were named as having contributed significantly to workplace harassment, they held decision-making positions. Men were, therefore, named as the predominant harassers, accounting for 62.5% of persons in this study being responsible for the harassment, and women the remaining 37.5% (Table 7.6 – Appendix D).

At least 1 lawyer represented most respondents and in 5 cases the respondents had 2 legal representatives. One respondent dismissed his lawyer and did not attend the hearing. Due to his lack of representation and his absence, the case against him was partially sustained. All other respondents were present at the hearings. Two complainants represented themselves; they neither had their own legal representative nor the Commission's legal counsel. However, in 56.3% of the cases, the Commission was named as a co-complainant and therefore showed a legal counsel on record[1]. In 1case, the complainant was represented by counsel supplied by a community organization as the Commission had withdrew itself from the case after reaching an undisclosed resolution with the agency. Twenty-five percent (25%) of complainants hired their own legal counsel as there was no representation from the Commission. There is no explanation as to why the

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[1] In one case that lasted 52 days, the Commission was present for one day of the hearing.

Commission did not provide counsel in these cases. All 16 complainants were present at the hearings and testified on their own behalf. Three (3) cases took 1-5 days, 6 cases took 6-10 days, 2 cases took 11-21 days, and 4 cases took more than 21 days to be resolved (Table 7.6 and 7.7 – Appendix D). The range is 3 -51 days; the mode is 6 or 7 days (bimodal, 3 each), and the mean is 13.4 days.

All 16 cases reached a resolution: 10 (62.5%) were fully dismissed, and the remaining third had at least some claims sustained: major claims dismissed and minor claims sustained (2), major claims sustained and minor claims dismissed (2), and all claims fully sustained (2). Among the 6 (38%) cases where there was some finding in favour of the complainant, a variety of remedies were awarded. In the 2 that were fully sustained, the adjudicator recommended immediate job reinstatement, monetary compensation for pain, and other financial reimbursement. In the 2 cases where the major claims were dismissed, the complainants were awarded money for pain, and 1 received an apology, and the respondent was ordered to take sensitivity training at his own expense. Both of the latter complainants were denied job reinstatement or compensation for lost wages. In the 2 cases where the major complaints were sustained, the complainants were awarded money for lost wages, 1 was offered a letter of apology, and 1 was offered verbal and written references (Table 7.8 and 7.9 – Appendix D).

Summary

The demographics for the complainants indicate variations on all levels including gender, place of birth and education. Four transcripts did not list a place of birth for the complainants, but all of the other 12 (75%) were born in non-traditional source countries where Canada previously had racist immigration policies that effectively blocked the flow of immigrants from those regions around the world. Two of the complainants did not identify a place of birth 2 did not identify their education levels. However, similar to Galabuzi's (2006) findings, the majority of complainants had post secondary education ranging from university degrees (including post-graduate) to specialized training as mechanics and engineers. Furthermore, most of these complainants had more than one type of degree or training so that they potentially had more than one choice of a career path. In addition, some had the highest level of education and training attainable in their field (e.g. first class mechanic or PhD). The complainants had attained at least some education both from other countries and in Canada. The data show the pattern that is well established in Canada, suggesting that racialized people are not only highly skilled and highly educated, but also that these groups continue to work towards self improvement while they focus on their careers.

The majority of the complainants were men: five from the South Asian Canadian communities and 6 from the African Canadian communities. Three of the 5 South Asian Canadians worked the longest for an employer and were employed with the federal government in various departments. One worked for an airline company for 26 years, and

eventually left his job because of the discrimination he experienced. Airline companies figured prominently in the data; 3 of the men worked within that industry. One of the 5 African Canadian men held a permanent full-time job with an airline company; 1 had over 6 years experience with another company but was not rehired when the company changed ownership; 2 had temporary contract jobs lasting for several years in one case. Interestingly, of all the complainants, both groups of men had the longest employment history in their respective agencies, yet 3 (2 South Asian- and 1 African-Canadian) were released from their assignment when the company changed ownership or their jobs were deemed completed or redundant. Of the 5 women, 3 were African Canadians: two of which were in the nursing profession, which was discussed earlier as having extreme racist practices, especially in relation to promotion and full-time work. Based on the data, these racist practices have not changed. This finding aligns with the literature review in the previous chapter, which suggests that individuals from South Asian- and African Canadian backgrounds experience severe labour market segmentation and discrimination regardless of their education and skill. These populations are able to find work in the agencies; however, the lack of permanent jobs or contract jobs in various departments is also similar to the literature, which states that many "visible minorities" and women are employed in short-term and contract positions and, in turn, these limited term appointments reduce their opportunities for career advancement.

All the complainants felt that they had suffered labour related discrimination at the hands of their employers or their representatives, colleagues and service users.

Complainants reported that employers specifically refused to offer promotion, appropriate training opportunities to enable career advancement and fair distribution of work responsibilities. More directly, employers refused to address other racist and discriminatory activities, such as colleagues or service user name-calling, using racial epithets and making derogatory comments.

This section has provided detailed descriptions of the demographics and contexts for the cases that were heard at the Tribunal. The next chapter offers insight into what transpires in the hearings and identifies the process through which the Tribunal, through adherence to institutional practices in the legal system and adoption of discourses that dismiss racism, reproduces experiences of racism.

Chapter 8 - The Paradox of Exclusion within Equity

My conclusion that this complaint must be dismissed should in no way be taken as a condonation of this conduct... This conduct, particularly as it relates to CSC employees, is both unprofessional and unacceptable, and has no place in a workplace...abuse from inmates is an unfortunate incident of working in the penal system. Although the use of racially derogatory language by inmates should be actively discouraged, it may never be completely eliminated...even though [Ms Baptiste] herself was largely unaware of it, the evidence regarding the regular use of racially derogatory epithets by CSC staff in this case is very disturbing. While a federal penitentiary is undoubtedly a rough work environment, these nurses are well-educated, professional people. They should know better. [Baptiste Case]

Anyting wah deh ah daak, mus cum to light (Jamaican Proverb)

Introduction

This chapter offers a detailed analysis of institutional practices and institutional discourses and explores the foundation of the mechanisms that reproduce racism. The concept of equity, which suggests that different treatment is not necessarily in conflict with equity, is not understood by many employers and people in decision-making positions (Galabuzzi, 2006); this resulted in the government implementing legislation to control

behaviours in the workplace. This research has demonstrated that the policy intended to generate equity has not served the public interest well and more specifically racialized people in federally regulated and federal employment settings. The shortcomings of the policy are most evident in the Tribunal adjudication process explored and documented in this chapter.

The following is a brief summary of the six cases which were analyzed in detail. Each case is unique and demonstrates the nuances and complexities endemic to the Tribunal hearings.

1. Ms. Des Rosiers (Adjudicator Hadjis) worked at the Canadian Broadcasting Corporation (CBC) from December 1996 to April 1998. She was initially hired as a trainee under a grant from the federal government's Department of Heritage but moved up to researcher-producer and on-camera reporter. Under this program, trainee's salaries were fully paid for three months and subsidized thereafter for a period if the agency decided to employ the trainee past the initial period. Ms. Des Rosiers' complaint outlined her experiences of harassment from her supervisor, Mr. Barbe in particular, and other employees at the CBC. Her contract was not renewed after she filed a formal complaint against Mr. Barbe. Ms. Des Rosiers filed a complaint with the CHRC indicating that she was harassed on the job because of her race, sex and "ethnic" origin. The respondent did not have legal representation in the hearing and he did not appear on his own behalf, but indicated that he had filed for bankruptcy. The Commission had previously settled the case with the

employer CBC, the details of which was not made public. The commission did not appear in the hearing and no explanation was offered in the report. It would appear that the Commission felt that the case had been settled sufficiently for their purposes.

2. Mr. Morin (Adjudicator Hadjis) worked with the Royal Canadian Mounted Police (RCMP) force as a police trainee for approximately one year between November 1996 and 1997. His complaint included issues of harassment and discrimination on the basis of his colour and race during his field training. Specifically, he believed that he was treated differently with regard to the standard expected and type of training provided. He was called names that he considered derogatory and believed that his training was scrutinized differently as compared to other trainees. The complainant noted that it became challenging for him to perform adequately because of fear and anxiety about making errors and compounding the number of recorded deficiencies. He failed his initial training, and it was extended twice with two different trainers; however, he was advised to resign before completion of the third training extension, because his trainer and supervisors doubted that he would pass the third and final training exercises.

3. Ms. Baptiste (Adjudicator Mactavish) worked at a penitentiary under the jurisdiction of Correctional Services of Canada. Ms. Baptiste identified that she was subject to differential treatment based on her race. Specifically, the complainant described what she believed to be unfair treatment in the appraisal of her performance and that she was subsequently denied promotional opportunities

because of her race/colour. Ms. Batiste and her colleagues testified that she was called racially derogatory names by both inmates and her co-workers, in and out of her presence. This complaint case is noteworthy because it is riddled with contradictions and disagreements about the occurrences of activities and the role of different individuals in these activities, including the complainant's direct supervisors.

4. Mr. Premakumar (Adjudicator: Mactavish) internally applied for a job with Canadian Airlines. He believed that his years of experience and his skills as an employee with the airline were sufficient to secure him a position with the airline. He stated that he was discriminated against in the hiring process and subsequently not hired because of his race, colour and national or "ethnic" origin. The complainant stated that he believed inconsistencies occurred in how his application was handled from how other applications were handled.

5. Mr. Chander and Mr. Joshi (Adjudicators: Ellis, Ramcharan and Norton) worked with various government agencies for many years, and in the Department of National Health and Welfare (currently called Health Canada) for approximately 12 months where they filed their complaint against the department. They both believed that the employer discriminated against them because of their colour, race, and "ethnic" or national origin. Mr. Joshi also believed that he was discriminated against on the basis of his religion. They cited differential treatment in promotional practices and contradictory appraisals as examples to support their allegations. They were not promoted to higher levels in the department and after their contracts

expired they were not rehired. In this case, Norton had a dissenting vote and the other two adjudicators had a "majority decision." The respondents did not provide a rebuttal to this complaint indicating that they believed there was no case to respond to. The respondents had legal representation in the hearing but did not initiate a defence. This suggests that the advice they received from their legal counsel was not to engage in a rebuttal to the charges made. Although Mr Joshi and Mr Chander filed a single complaint, I separated their case into two cases because the specifics were different in each, and the Tribunal dealt with each case in two separate and distinct ways. Each claim was different, and each had separate lawyers and the decision and remedy was slightly different.

6. Mr. Brooks (Adjudicator Groarke) was employed with the Department of Fisheries and Oceans for almost 8 years. He left the agency and later filed a complaint on the basis of unfair treatment. He said he was not given a permanent job based on his position on a list approved by the agency and union policy at least two times. He later applied for a permanent job through an internal competition and was not hired at this time either. The complainant called Dr. Frances Henry as a material witness to substantiate the presence of systemic racism as documented in the complaint. The events leading up to the complaint had occurred 16 years before, so much of the documentation and records had been destroyed and many of the people who played key roles in the events did not testify at the hearing. Based on the evidence presented, the adjudicator interpreted the case only from one perspective, that being

Mr Brooks' loss of income for not being hired permanently when he should have been.

Institutional Practices: Mechanisms of Power

The critical discourse analysis undertaken, as described in Chapter 5, was organized around the categories of institutional discourses and institutional practices. The EE policy and programs and the CHRC have been critiqued, evaluated and amended since their inception. In the analysis that follows, I draw on the six cases selected for detailed analysis to demonstrate the mechanisms within these two categories notwithstanding these reviews, continue to reproduce racism, a specific form of exclusion. The Tribunal is governed by rules and guidelines according to its quasi judicial role to hear cases and make decisions about whether civil liberties have been violated under the Canadian Human Rights Code. These rules and guidelines are also mechanisms of power that determine how power is maintained by certain groups and individuals. These mechanisms of power are heavily influenced by practices in the legal system and include the evidentiary requirements to refute or substantiate a case and how the testimony of witnesses is assessed. These practices are the basic foundation of the Tribunal adjudication process, and I will demonstrate how their use reproduces racism, by which I mean that they introduce a systematic bias against "visible minorities" who bring the cases before the Tribunal.

Institutional practices are mechanisms of power; these mechanisms rely on "common" or "normal" operations. , These mechanisms and operations create a climate

that enables racist policies, practices and behaviours to flourish in the workplace despite continued calls from racialized people and human rights advocates to stem the flow of career casualties. To demonstrate how the Tribunal exercises institutional power through these mechanisms, I identify and discuss two types of mechanisms: evidentiary requirements and assessment of testimony of witnesses.

Evidentiary requirements to refute or substantiate a case

Evidence is one among the many tools and mechanisms of power used to substantiate or refute complaint cases at the Tribunal. Similar to a court of law, evidence is crucial in the Tribunal hearings. Based on the reports examined, numerous types of evidence including electronic mail, performance appraisals, memorandums, job postings, public reports, investigative reports, and interview notes were utilized by both the complainants and the respondents. These documents were challenged during cross-examination by each side. Some documentation, however, established dates and the sequence of events irrefutably. One such piece of documentation was exposed in the Brooks case. Among applicants who were screened in a hiring process, one had submitted her application past the deadline, but was still screened for an interview while another applicant, who had also submitted his application late, was excluded. Adjudicator Groarke noted:

> The application form from Ms. Boggs is dated Dec. 8th, 1992, six months after the close of the competition. Mr. Savoury stated that he found Ms. Boggs' application

> on his desk one or two days after the screening closed. He asked the staffing officer if her application should be processed and was told to screen her into the competition. He neglected to say that Ms. Boggs was working for him at the time. There was no record of any of this on the screening sheets and I do not believe that she was ever screened. I find as a fact that she entered the competition late. It is clear that Ms. Boggs should have been screened out, like Mr. Aubut, who simply missed the post. [Brooks case]

Mr. Brooks felt that there had been screening irregularities in some of the job competitions in his workplace and that these practices were racist and unfair for some employees. These suspicions were confirmed when the documentation of the screening process was made public.

In other cases the exclusive reliance in factual evidence may make proving a claim impossible. While documentation can support some claims, in others the lack of documentation left the complainant without any opportunity for a plausible rebuttal. An example of this is the Premakumar case, in which Mr. Premakumar explained that he had repeatedly applied for a permanent position with Canadian Airlines where he had worked temporarily. His numerous applications did not yield an interview. The airline had a mass hiring, and he again applied but was not called for an interview. He persisted and received an interview after he called the human resources department. He argued that he was offered an interview as a formality, but there was no intention to hire him. It is unlikely that any documentation, or factual evidence, could be provided to support this argument,

because most people would not write about such intentions in an email or memorandum or even verbalize them to other colleagues.

The poor quality of documentation from the hiring interviews, which could be established according to evidentiary rules, appeared to work in Mr. Premakumar's favour. An excerpt from the adjudicator's report shows her assessment of the documentation from the hiring interviews as a source of evidence:

> Mr. Chiappetta testified with respect to his note-taking and initially suggested that although he did not take down answers word for word, he would record anything that was said by a candidate. A review of the record suggests that this is very unlikely. Mr. Chiappetta and Ms. Demeda agreed that interviews lasted somewhere between 20 and 30 minutes. There were 12 main questions for each candidate. In Mr. Premakumar's case, Mr. Chiappetta's record of the answers consists of as few as two words per question. There are no answers recorded for three questions. Although it was suggested that this is reflective of how poor Mr. Premakumar's interview must have been, the quality of the record kept by Mr. Chiappetta with respect to Mr. Premakumar's interview is not materially different from the quality of his notes of interviews with other, successful, candidates. Not only is it hard to imagine how interviews involving two word answers could take between 20 and 30 minutes, a review of the answers themselves suggests that Mr. Chiappetta's subsequent description of his notes as representing "Something of what happened" is more accurate. [Premakumar case]

Based on the evidence presented, the adjudicator surmised that the notes from the interviewing process did not provide credible evidence on behalf of the respondent. The complainant was therefore able to use the notes to expose interviewing irregularities and inconsistencies, and the airline was unable to provide any viable rebuttal. This use of evidence further highlights how the Tribunal hearing process contributes to the re-victimization of the complainants. Specifically, the adjudicator relied heavily on the notes that the respondents took during the interview process that they conducted. The respondents could easily have destroyed or altered the documentation before it was submitted in the Tribunal hearing. To place such heavy emphasis on information that is created, stored and distributed by the respondents clearly leaves the complainants at a disadvantage. This use of evidence also speaks to the importance of documentation in the complaint's process and yet, it appears that many of the complainants were unaware of how important documentation would be to support their claims of racism.

Some complainants were caught in a web of documentation that negatively impacted on their cases. Ms. Greye the supervisor in the Baptiste case testified that a memorandum was written to the complainant that indicated that Ms. Greye would not support her application to attend a work-related conference. Ms. Greye stated that communicating with Ms. Baptiste in writing was a practice that she had adopted because of the controversies over whether Ms. Baptiste had received information from Ms. Greye.

The importance of having a paper trail is evident in the cases discussed above and in the chapter illustrating the filtering of cases. It is clear that having the knowledge and

understanding of how to initiate this kind of institutional practice can influence the Tribunal ruling. That so many cases are never heard because the complainants cannot meet the evidentiary requirements is clearly a systemic barrier to addressing issues of racism in the workplace. The supervisor in the Baptiste case testified that communication with the complainant was in writing. While this might have been true in some instances, the adjudicator noted that while the complainant did attend the conference, there was no written record of the approval given for her to attend. This information came to light after the adjudicator reviewed the complainant's performance appraisal, not through questioning of the supervisor. Evidence is used to support and challenge testimonies; it can be supportive or damaging. Regardless of the type of evidence, it plays a powerful role in the adjudication process, quite similar to the roles of witnesses.

Assessing the Testimony of Witnesses (Expert, Complainant, Respondent)

Expert witnesses

There were many witnesses in the six cases analyzed in depth; however, only the Brooks and Morin cases called an expert witness. Dr. Henry, a sociologist who studies systemic racism, was the expert witness for the complainants in both of these cases. Dr. Girard, a psychologist, also testified in the Morin case but on behalf of the respondent, the RCMP. Being an expert witness places the individual in a position where he or she has the opportunity to provide information that may influence the outcome of the inquiry, but only if the evidence is ruled to be admissible. In determining the admissibility of

expert witness testimony, the Tribunal used case law established by the Supreme Court of Canada in R. v. Mohan, 1994. This is the usual test to establish admissibility of expert testimony. The case involved a paediatrician who was charged with sexually assaulting four teenage girls under his care. The testimony of the expert witness, Dr. Hill, was ruled inadmissible in this case based on four criteria: relevance, necessity of evidence, absence of exclusionary rule and expert qualification. The following is an excerpt of the discussion and ruling of the Supreme Court of Canada regarding expert witnesses:

> Expert Evidence: Admission of expert evidence depends on the application of the following criteria: (a) relevance; (b) necessity in assisting the trier of fact; (c) the absence of any exclusionary rule; and (d) a properly qualified expert. Relevance is a threshold requirement to be decided by the judge as a question of law. Logically relevant evidence may be excluded if its probative value is overborne by its prejudicial effect, if the time required is not commensurate with its value or if it can influence the trier of fact out of proportion to its reliability. The reliability versus effect factor has special significance in assessing the admissibility of expert evidence. Expert evidence should not be admitted where there is a danger that it will be misused or will distort the fact-finding process, or will confuse the jury.
>
> Expert evidence, to be necessary, must likely be outside the experience and knowledge of a judge or jury and must be assessed in light of its potential to distort the fact-finding process. Necessity should not be judged by too strict a standard. The possibility that evidence will overwhelm the jury and distract them from their

> task can often be offset by proper instructions. Experts, however, must not be permitted to usurp the functions of the trier of fact causing a trial to degenerate to a contest of experts.
>
> Expert evidence can be excluded if it falls afoul of an exclusionary rule of evidence separate and apart from the opinion rule itself. The evidence must be given by a witness who is shown to have acquired special or peculiar knowledge through study or experience in respect of the matters on which he or she undertakes to testify.
>
> In summary, expert evidence which advances a novel scientific theory or technique is subjected to special scrutiny to determine whether it meets a basic threshold of reliability and whether it is essential in the sense that the trier of fact will be unable to come to a satisfactory conclusion without the assistance of the expert. The closer the evidence approaches an opinion on an ultimate issue, the stricter the application of this principle. (Supreme Court of Canada, 1994)

The above excerpt guides adjudicators in their selection and acceptance of expert witnesses and is quite clearly an example of how power operates at the Tribunal. The adjudicator used this mechanism of power to define how the evidence would be interpreted and therefore accepted or rejected in the Brooks and Morin cases. Dr. Henry's report and her contribution as an expert witness was ruled inadmissible for the four reasons cited previously, but only two will be discussed here: relevance and necessity. On the issue of relevance, the adjudicator noted that the report did not establish that race was a factor in the

complainant not getting a job or being given a long-term contract, because the claim lacked statistical or expert analysis – Dr. Henry's expertise in race analysis was not seen to fit these criteria by the adjudicator who had the privilege based on his social status and position of power to accept or reject information in the hearing. In terms of credibility, the adjudicator argued that the report had no credibility on several grounds, according to the established practice and principle governing the use of expert witnesses.

Dr. Henry's testimony in both cases focused on the discourse of Whiteness and specifically how, in the Western world including Canada, life is viewed from a primarily European perspective. Dr. Henry posed two questions in her report for the Brooks case: 1) is it possible that race played a role in the 13th position placement of the complainant in the eligibility list for the hiring competition, or was the hiring committee incompetent and/or showed favouritism to some candidates? And 2) is it possible that the agency committed a racist act by refusing to offer the complainant a long-term contract even after he met the requirements several times?

Dr. Henry's report and her contribution as an expert witness were ruled inadmissible by the adjudicator, who highlighted relevance and necessity in the decision. With regard to relevance, the adjudicator ruled that Dr. Henry's report did not establish that race was a factor in whether the complainant got a job or a long-term contract because the report lacked "statistical or scholarly analysis" that "would shed light on the precise circumstances before me." Dr. Henry's expertise in race analysis, a structural analysis of social processes, was judged by the adjudicator to be irrelevant to an

understanding of the hiring processes under scrutiny, and her testimony rejected. The adjudicator argued that Dr. Henry provided only statements of opinions; her suggestion that the investigator from the PSC was "blind to the possibility of racism" seemed to anger the adjudicator who rebuked the argument, saying that it suggested that the PSC investigator "harboured racial views." Furthermore, he used negative descriptions of the facts (in the report), offered an opinion on the report's content, and discredited the claim of racial harassment and discrimination through the use of superstructures. For example, he suggested that the possibility of racism is collateral, that is, that possible blindness to racism is secondary in this case and therefore does not require investigation. This idea of "collateral" is problematic.

The adjudicator dismissed the idea that the entire hiring process and investigation conducted prior to the Tribunal hearing could possibly have been tainted by racism. This is an example of how powerful adjudicators are as decision-makers, because they have the authority and opportunity to completely control what occurs in the hearing process, including the acceptance and rejection of witness' testimonies. The absolute authority of the adjudicator to define the relevance of information and witness testimony shows that the operations of power are steadfastly aligned with the perspectives, understanding and knowledge of adjudicators. The denial of the possibility of racism in a case about race seems to indicate that no evidence or expert opinion would suffice to enable a resolution in favour of the complainants. This case is yet another demonstration of the disconnection

between the federal human rights legislation and the practice that is conducted in the Tribunal hearings, a supposed place of justice.

On the issue of necessity, adjudicator Groarke cautioned that the Tribunal need not "be too scrupulous" in applying the standards of necessity. Rather, he relied on the logic of the evidence as opposed to prohibitive evidence. He further noted that the Tribunal is an "expert tribunal," well versed in the issues of discrimination and does not necessarily need expert testimonies and opinions. What exactly would the adjudicator mean by stating this comment? Here the adjudicator appears to offer a contradiction explaining the parameters of expert evidence as noted earlier. To name the Tribunal as an "expert" is to suggest that this body has all the tools necessary to enable it to reach fair resolutions in complaint cases. Adjudicators see themselves as "experts" in matters of discrimination, yet, continually fail to recognize discrimination in complaint cases. The adjudicators believe that they are self sufficient and do not require the assistance of others to reach a conclusion. The type of tools and specifically the cultural and political lens through which adjudicators experience and review the evidence is racially biased and skewed. Therefore, we cannot realistically expect them to see racist practices without substantial reformation in the way in which the hearings are conducted. To solidify and summarize the rejection of Dr. Henry's evidence, he stated that her report was "prejudicial." Specifically, Adjudicator Groarke dismissed the idea that the entire hiring process and investigation conducted prior to the Tribunal hearing could possibly have been tainted by racism. He continued to scathingly rebuke much of the content of Dr.

Henry's report by rejecting the relevance of her analysis of systemic racism in a case where three young Black girls were stripped searched by a police officer in a school office, in the presence of each other, in an effort to retrieve $10 that was stolen. After considering Dr. Henry's report, he concluded:

> The report provides little however in the way of statistical or scholarly information that would shed light on the precise circumstances before me. The real thrust of her argument is simply that this failure of perception is the principal contributing factor in the case before me. The difficulty with such an approach is that it blankets anyone who rejects the complainant's assertions with accusations of racism. These accusations naturally come with the *imprimatur* of an expert. This merely puts the Respondent on the defensive and upsets the equilibrium that provides the basis of any fair hearing. As a practical matter, it is impossible to assert such propositions without offering an opinion on the credibility of the witnesses to be called by the other side. This is not the proper subject of opinion evidence. [Brooks case]

The adjudicator uses the mechanisms of power to exercise social and positional power to deny that racist employment practices exist and, in turn, destructively attacks Dr. Henry's critique, questioning and observation of the DFO employment practices. Furthermore, the discourse of cultural superiority is evident in the language he uses in that he clearly vilifies Dr. Henry and infers that her skills and analysis are inferior and therefore fall outside of parameters for proper evidence. Unknowingly, Groarke mimics the behaviour described in Henry's report because he enacts racist principles in his refusal to acknowledge racism. The

notion of fairness and equilibrium enters the discussion when Groarke suggests that Dr. Henry's testimony threatens to dislocate the equilibrium in the hearing process.

There is a lack of balance in the cases given the emphasis on structural presentation. The idea of scholarly competency, credibility, legitimacy and the possibility of racism entered Groarke's opinion when he argued that Dr. Henry's report was devoid of "statistical and scholarly information." More importantly, the suggestion that such strong opinions could be objective is a mere fallacy. This idea of fairness falsely frames the adjudication process in a way that promotes and encourages adjudicators' attacks on complainants and their supporters by shrouding adjudicators' opinions in so called objectivity. It is clear that objectivity in the adjudication process is a falsehood that allows adjudicators to negate the connections between complainants' experiences in the workplace, performance and job evaluation.

In the Morin case, this test of expert witness was used. Adjudicator Hadjis rejected both Drs. Girard's and Henry's immediate testimony during the hearing indicating that they did not hear all testimonies and were, therefore, not privy to all information and were unable to offer evidence to contribute to the case. However, Dr. Girard's documentation outside of the case was deemed relevant. He accepted the psychometric assessment of the complainant - Morin - that Dr. Girard performed when Mr. Morin applied for employment after he was dismissed from the RCMP. Hadjis did not critique the professional affiliation, credentials or scholarly worth of the psychologist even after he rejected parts of her testimony. However, there is a striking difference in how the testimony of Dr. Girard and

Dr. Henry was received. Dr. Henry was constructed as biased towards the position of the complainant for whom she was providing the report to the Tribunal. Dr. Girard was constructed as "neutral," lacking connection or interest to the individual who she interviewed and subsequently assessed. She was introduced as:

> Dr... Girard, PhD, an industrial psychologist and a member of Quebec's professional association of certified human resources and industrial relations consultants. Her mandate...was to determine whether an applicant suffered from any mental or behavioural disorder (psychopathology) and to provide a general overview of the applicant's personality traits. Prior to preparing her assessment of the Complainant, she had not been given any information relating to.his first interview or the panel's findings, and was therefore unaware of its decision to consider the Complainant's candidacy for the auxiliary police officer position only. [Morin case]

Here we see the difference in how the two expert witnesses are treated according to beliefs about what constitutes knowledge, and therefore relevance and necessity for the Tribunal. Dr. Henry was rebuked and her testimony rejected but Dr. Girard's was partially accepted. Dr. Henry, a White woman academic with longstanding interests and an impressive publication record on issues of racial discrimination was unable to penetrate the operations of power with the adjudicator even with skin colour privilege and class status as a professor. Her approach to the creation of knowledge is deconstructionist and postmodernist rather than positivist and modern and, therefore, is

based upon a belief that objectivity and truth must be determined via context and not ideologies. Her work was described as "general observations" but refers to other information presented in the case "as facts," this distinction clearly suggests an illegitimacy of Henry's arguments when compared to others presented. Dr. Girard was introduced as a having a PhD, membership in a professional association and regulatory body. Dr. Henry's credentials and professional affiliations were not introduced but the adjudicator noted that she is known to the Tribunal because of her other contact as expert witness in other cases. The respondents and anyone else in the hearing would need to research Dr. Henry's credentials while Dr. Girard's were made readily available.

The transcripts reviewed in this research reveal that the test of credibility for professional witnesses is subjective and value based, not unlike many other aspects of these hearings. A credible expert witness' testimony must comply with the adjudicators' ideas of what constitutes knowledge. The adjudicator did not question the validity of psychological tests developed in the United States, which is a perspective that conflicts with a social justice or human rights agenda. Testing for relevance and necessity is important with respect to expert witnesses but the test of credibility of complainants and respondents takes a decidedly different shape and exposes further how mechanisms of power operate in the Tribunal hearing process.

Complainant and Respondent Witnesses

Being deemed "credible" in the hearing proved to be one of the most significant aspects to the case for many complainants, as well as for other witnesses. Adjudicators took great pains to clearly explain the reasons for their opinions as to why witnesses were deemed credible or not. Criteria that they considered included having a "forthright" manner, and being consistent in their testimony (Chander and Mr. Joshi, Premakumar Case). The adjudicators interpreted the way that witnesses spoke and the manner in which the speech was delivered and labelled it credible according to their idea of what constitutes credibility. These interpretations also align with norms and values in Western culture, which suggest that an individual who communicates by making direct eye contact, speaks directly, smoothly and without hesitation is truthful and credible. The language that is used - that is, the choice of words and the order in which they are spoken - also lends credibility to an individual. Ms. Des Rosiers was found to be a credible witness and so was Mr. Premakumar. The adjudicators commented on the specific way that Ms. Des Rosiers and Mr. Premakumar conducted themselves during their testimony and during cross-examination. Below two excerpts show the discourse of authoritative language, and how it is used to praise the complainants. With regard to Ms Des Rosier, her credibility was so firmly established that even discrepancies in dates were accepted, as we can see in adjudicator Hadjis' comments:

> I note that in her testimony, the dates to which Ms. Des Rosiers attributed a handful of events differed from those set out in the written complaint that was

> prepared... I do not perceive these discrepancies as a weakness in her testimony. To the contrary, they serve to demonstrate that instead of blindly restating what was written on the complaint form, Ms. Des Rosiers testified on the basis of her actual memory of the incidents. That she may have occasionally misstated, during her testimony, the month or year of a particular event, is not of any real significance. [Des Rosiers case]

With regard to Mr. Premakumar, adjudicator Mactavish said:

> Although it appears that Mr. Premakumar stretched the truth somewhat in subsequent job applications as it related to the level he had attained of in his CGA certification, nevertheless, on balance, I found [Mr. Premakumar] to be a credible witness...testified at some length with respect to his interview. His testimony was delivered in a forthright manner, it was consistent and unwavering, and it was largely unshaken on cross-examination. [Premakumar case]

The use of formal, authoritative language by the complainants' influences the adjudicator's interpretation of the testimony and evidence as shown by the adjudicator's evaluation of the testimony as "unwavering" and "largely unshaken on cross-examination.". According to Western values, not wavering, changing stories, or breaking down emotionally is characteristically seen as displaying personal strength, particularly for men. Familiarity with a particular environment causes the performance of confidence but fear causes lack of

confidence which can manifest as uncertainty in speech. The adjudicators failed to recognize the context and possible affects of these differing situations on complainants.

In the Baptiste case, the adjudicator devoted several pages of discussion to the credibility of the evidence that the complainant presented. Throughout the hearing, many respondents, mostly the complainant's supervisors, contradicted the complainant's testimony. For example, they noted that the complainant had either been notified verbally or in writing about specific decisions and information. The complainant denied receiving the majority of this information. However, she also denied receiving written information from the Commission. The adjudicator did not question why so many documents or verbal information was missing or not received. Rather the complainant was deemed not credible. To introduce the complainant's lack of credibility, she used words to emphasize the numbers of respondents who disagreed with the complainants such as "several witnesses" and "numerous documents." To create an aura of legitimacy, she used words such as "testified" and "under oath." These are examples of how language can be used to maintain power, reject ideas and construct individuals. The complainant was therefore seen as not credible. These operations of power help to limit the adjudicators' own understanding of what actions and behaviour constitute racism. In the Baptiste case, the adjudicator ruled that the contradictions between her evidence and the respondents' were too numerous to be coincidental. She believed that the inconsistencies in the complainant's recollection and perspective were problematic and subsequently noted:

> ....numerous documents were put into evidence through various witnesses, purportedly recording many different discussions that the authors of the documents say that they had with [Ms.] Baptiste, or incidents they say happened involving Ms. Baptiste...[who] testified that many of these discussions and incidents never happened...the authors of most of the documents testified under oath that the notes accurately reflected the discussions that they had with [Ms.] Baptiste at or around the date of the documents in question. In some cases, the events described in the documents were corroborated by more than one witness...to accept [Ms.] Baptiste's testimony would require me to find that all of these witnesses lied on the witness stand, that these incidents never happened, and that the documents purporting to record the incidents were fabrications. On the evidence before me, I am not prepared to make that finding. As a result of these concerns, unless otherwise noted, where the testimony of [Ms.] Baptiste conflicts with that of other witnesses, I prefer the testimony of the other witnesses. [Baptiste case]

These comments clearly illustrate how the mechanisms of power operate in the Tribunal hearing. Adjudicators, through the power of decision-making and social influence, determine the shape of the hearing based on evidence and credibility. The adjudicator suggested that the complainant could not be trusted to provide accurate information and, therefore, credible evidence. According to the adjudicator, and based on legal principles, the evidence overwhelmingly suggested that one person's word could not be accepted over

many others who were making consistent arguments that were in complete opposition to the complainant's.

Ms. Baptiste, an African Canadian woman, worked in a hostile and poisonous work environment, and had little or no support from a predominantly White group of colleagues and supervisors. Black women are generally stereotyped as hostile, defensive and abrupt; however, because the tone of voice is often strong and commanding and communication is direct, this linguistic set of norms in the African Canadian community is misunderstood for impoliteness according to a White Western value system. Communication is expected to take a specific tone and approach to be considered polite. For example, using the word "wondering" when asking a question or prefacing a suggestion with "have you considered" is common place in social work. If individuals do not conform to these norms and expectations of communication, they are likely to be constructed negatively. After years of racial abuse, complainants may also adopt a defensive stance to protect themselves, and this defensive posture can be interpreted as rudeness and translate into a lack of credibility. Ms. Baptiste had minimal positional and social power in her work environment and that transcended in to the hearing process. Given the adjudicator' position, Ms. Baptiste's opportunity to adequately defend herself or explain her points were minimized because of the excluded evidence and her perceived lack of credibility as a witness. Under such circumstances, how would it be possible for the complainant to have a fair hearing? It would be near impossible for this complainant to receive a fair hearing given the

perspective of the adjudicator and the obvious lack of understanding of the workings of covert racism.

In cases where a witness was deemed credible, minor contradictions were inconsequential and appeared to have increased the complainant's credibility. This credibility or lack of it also extended to colleagues who acted as witnesses. This discussion included the respondent's conduct, associated meanings, the complainant response to the harassment and the effects of such conduct on the complainant in the workplace. Conversely, when a witness (especially the complainant) was assessed as not credible, this did not bode well for the case or the specific aspect of the case relating to the testimony.

The test of credibility, relevance and necessity used in the reports shaped the argumentation that the adjudicators made when reviewing the information that was presented. These are tools which enable the mechanisms of power to flourish. Repeatedly adjudicators addressed the forthrightness, consistency, and balance in the complainants' testimonies. If complainants or witnesses used words or constructed their sentences in ways that did not fit with the adjudicators' liking, understanding or experience, the complainants were made to appear illegitimate in their claims. Similarly, as critical race theory suggests, the analysis around credibility is dominated by the architects of the judicial systems which are based on legal genre that uses language, measurements and benchmarks to determine truth and justice. The adjudicators' assessment of credibility is devoid of even a basic understanding of how structural

practices, such as those in the quasi judicial process of the Tribunal, shape systemic racism. There is no acknowledgement of the trauma of racial violence, particularly in cases where complainants have been racially harassed or discriminated against persistently and over time. However, more credibility was given to complainants who were formally educated and worked in professional positions while those who were skilled trade persons received less credibility over all. Only one of the five African Canadian males had a university degree so four were employed in the skilled trade industry; none of their cases were deemed credible - they were all dismissed. Gender did not seem to emerge as an issue of credibility as two of the three women's complaint cases were partially dismissed and two were completely dismissed. Clearly, the interactions of education, work industry, racial group and gender (for men) influenced the outcome of the complaint cases. What is also clear is the racist process by which the mechanisms of power determine the outcome of the complaint cases for all racialized people.

Summary

This section presented the institutional practices through which the status quo is maintained in the tribunal adjudication process. Evidentiary requirements and assessment of testimony of witnesses are both mechanisms of power that are manifested within the structure of the Tribunal and ensure the continued marginalization of "visible minorities" when they try to seek redress for employment related discrimination. These mechanisms are embedded in the Tribunal adjudication process and as demonstrated, can negatively impact the probability that complainants will receive a favourable ruling.

Institutional practices are not isolated entities; they are strongly linked with dominant institutional discourses which provide the background to situate, interpret and position attitudes, behaviours, and interpretations of the adjudicators. The next section analyzes the constitutive elements of the institutional discourses that create a practice of exclusion in the tribunal hearings.

Institutional Discourses: Power Legitimizing Elements

Six central power legitimizing elements in the institutional discourse emerged from the analysis of the adjudicator's reports. These legitimizing elements contribute to the paradox and the reproduction of exclusion within a structure created to promote greater equity. These elements were defined as: the: (1) claiming neutrality and objectivity; (2) affirming organizational norms, values and expectations; (3) accepting negative descriptions and categorizations of complainants; (4) constructing a guilty complainant; (5) normalizing racism; and (6) failing to recognize the possibility of everyday racist practices in the workplace. Each of these legitimizing elements are illustrated in this section.

Claiming Neutrality and Objectivity

Much power is bestowed upon the adjudicators in the Tribunal hearing process. They listen to the information presented and determine what they will accept. The Tribunal directs that adjudicators adopt a neutral stance; that they are merely vehicles to facilitate the mechanics of the hearings; that opinion, feelings, and perception do not play a role in the

hearing process; and that they have no influence on the decision rendered at the end of a hearing. The Tribunal states (2002) "since the CHRT functions like a court it must remain impartial. It cannot take sides in discrimination cases or make any decision without a formal investigation and referral by the CHRC." This stance of neutrality must be interrogated. What could the Tribunal mean by impartial? Is there a suggestion that the adjudicators are capable of isolating their life experiences, opinions, careers, professional training, and education when they hear a case? Or is there a suggestion that the adjudicators are keenly aware of their feelings and reactions to information at all time? And if that is the case, does it means that adjudicators have strong self-awareness and consciousness that help them to overcome prejudices in the hearing process?

Despite the Tribunal's claim of neutrality, what is abundantly clear is the lack of neutrality that was evident in the six transcripts reviewed for this research project. For example, adjudicator Mactavish denied placing a value on the destruction of a number of interview notes in the Premakumar case:

> It is common ground that the only notes before the Tribunal with respect to Mr. Premakumar's interview were those taken by Mr. Chiappetta. Mr. Premakumar testified that Ms. Demeda had a paper in front of her, and wrote things down in the course of the interview. According to both Mr. Chiappetta and Ms. Demeda, during this phase of the process, they took turns running interviews. One would ask most of the questions and also record the answers in one interview, and the other would then do the same in the next interview. Ms. Demeda corroborates Mr.

> Premakumar's recollection, however acknowledging that even when Mr. Chiappetta was running an interview, she would have a pad of paper in front of her, and would make the odd note of things that she wanted to follow up on. According to Ms. Demeda, these notes were intended as more of an 'aide memoire' than a record of the interview itself, and did not even record the name of the candidate. Ms. Demeda's notes appear to have been destroyed after the interview. While it would certainly have been preferable to have all of the notes of the interview before the Tribunal, given Ms. Demeda's description of the purpose of the notes, I am not prepared to draw any kind of inference from their destruction. [Premakumar case]

Even in situations where the adjudicator is stating a preference, there is an attempt to suggest neutrality. The adjudicator clearly decided that the destruction of the notes was not relevant in the case and therefore did not infer any negative value from the destruction. The adjudicator used value-laden vocabulary to communicate her meaning: "I am not prepared to draw any kind of inference" makes it clear that the adjudicator has the central power in the hearing and makes decisions accordingly. She then rationalizes the decision to ignore the destruction of the notes by arguing they were irrelevant and used only as "aide memoire," further signalling that the adjudicator recognized, condoned and normalized the racist practices of interview processes. The explanation and rational tried to ensure that a sense of fairness to the respondent existed and the decision showed credibility on her part. This questionable behaviour was evident in several of the complaint cases.

In another situation, adjudicator Groake attempted to explain the Tribunal's objective position when he addressed Mr. Brooks' testimony, in which he explained that he experienced everyday racism in his employment setting. Groarke wrote in response:

> I think there is an important point here for the Complainant. The problem is not that discrimination is difficult to see. The Complainant states that people who are discriminated against have no difficulty seeing it. They confront it at every turn. The problem is that their perceptions are routinely discarded as illegitimate...the Board must view the conduct complained of in an objective manner and not from the subjective viewpoint of the person alleging discrimination whose interpretation of the impugned conduct may well be distorted because of innate personality characteristics, such as a high degree of sensitivity or defensiveness. The word "innate" seems unfortunate. The point in the immediate instance is that a Tribunal should be cautious, in relying on the perceptions of the parties. [Brooks case]

The adjudicator's choice of words "innate" and "unfortunate" implies biological inferiority and further rationalizes that the complainant is not responsible for his inferiority, particularly because he cannot help these deficient, naturalistic characteristics. The adjudicator appears to be arguing that the Tribunal should be cautious about relying on the perceptions of complainants, because they may have personality characteristics that distort their perceptions. The discussion of a subjective view point cannot be limited to the complainant (victim); it must be extended to the respondent (perpetrators) and the Tribunal adjudicators. While the adjudicators considered the subjectivity of the complainants'

stories, they continued to align themselves with the norms and values of White Western society and the culture of the legal system as evidenced by the way that they heard and assessed the evidence in these cases, which, in turn, influenced the final decision and rationale made in each case. At the same time, they used cultural codes, that is, language and text that is culturally specific and coded according to their perspective and understanding of evidence, fairness and justice.

Proving racist discourse continues to be elusive and adjudicators with little or no understanding or direct knowledge of racism often use the idea of objectivity to gloss over their lack of knowledge when hearing and summarizing cases. The claim of objectivity by the Tribunal seems to appease respondents and satisfy the status quo but offers little or no assurance to complainants that they will be treated equitably. The adjudicator in the next example used her "objective" lens and chose to believe the information presented by Ms. Baptiste's supervisor rather than Ms. Baptiste's testimony. This perspective was a common occurrence throughout the entire report except for a few occasions where the adjudicator took Ms. Baptiste's side. The complainant recalled that a colleague said to her:

> ..."I'm salt and you're pepper". Ms. Baptiste states that she complained to Ms. Greye [her supervisor] about the comment [who] said that she would let the two of them "work it out". Ms. Greye has no recollection of Ms. Baptiste ever speaking to her about this, observing that she would likely have remembered given the unusual nature of the comment in issue...I am not prepared to conclude, however, that Ms. Baptiste brought the matter to [Ms.] Greye's attention. I agree...one would likely

> recall a complaint of this nature. Ms. Greye has no such recollection. In this regard, I prefer the testimony of Ms. Greye… [Baptiste case]

Ms. Greye had previously referred to Ms. Baptiste as a "Black bitch" at least twice and denied it until others testified that she had used this language. Ms. Greye also suggested that she documented all conversations with the complainant, yet her testimony was found to be lacking in this regard at least once. In taking Ms. Greye's side, the adjudicator assumed that she was being honest and that if she recalled the incident she would admit to it. The adjudicator used her central power to give legitimacy to Ms. Greye even though she was found to have perjured herself, displayed faulty memory and gave incomplete evidence. The adjudicator also transferred central power to Ms. Greye when she accepted Ms. Greye's testimony and rejected Ms. Baptiste's. The adjudicator failed to display the supposed "objective" and "neutral" position in this summary but what is more disturbing is that she completely disregarded Ms. Greye's abusive behaviour towards Ms. Baptiste. From the adjudicator's interpretation of the information, the revictimization of Ms. Baptiste was complete: Ms. Greye, her supervisor, a person in position of power, was an active participant in her degradation and also and failed to challenge racist attitudes and behaviour projected in the workplace; the adjudicator, using controlling elements of legitimizing power, subsequently contributed to this complainant's revictimization when she made the ruling.

Similarly, the adjudicator misinterpreted two salient points in the Morin case, in which it was argued that the respondent was indirectly or systemically racist when at least

five senior employees suggested that the complainant was not suited to a career within the RCMP. They coached him to resign before his training was complete, explaining that he could not be successful in the required training. The adjudicator wrote:

> … It was clear that he continued to have difficulties in his training and they felt it appropriate to propose that he consider a career other than police work. Cst. Carr believed it to be in the best interest of a trainee to be open and frank with him…both of the more senior members tried to convince him to consider resigning and take up another profession…He could not understand why he was given an extension [to train] if they were so certain that he would not pass. How could they claim that he was starting anew, when they had already prejudged him? [Morin case]

Again the adjudicator takes the side of the respondents who propose to know what is best for Mr. Morin. Here the assumption is that the complainant's sensibilities regarding his career aspirations were underdeveloped, and senior members of the RCMP needed to dictate to him how to think and behave. Using authoritative language, the adjudicator discredited the complainant while supporting the respondent, clearly displaying a complete lack of neutrality. The adjudicator said, "they felt it appropriate" and "both of the more senior members tried to convince him," and "best interest of the trainee," which are all phrases that cast Mr. Morin in a childlike and subordinate position. The adjudicator colluded with the RCMP by using the same words, saturated with paternalism, to describe the complainant. In spite of all the experiences of racism, Mr. Morin continued to make

valiant attempts to become an RCMP officer by trying to complete his training. When the officers realized that he refused to give up, they forced him to withdraw from the program by explaining that he was unlikely to pass on his third attempt to become a RCMP officer. They were deceptive and untruthful by telling Mr. Morin that his dismissal/withdrawal and the circumstances surrounding this action would not be documented on his training record. Yet, the RCMP used the information about Mr. Morin's training and forced resignation against him in the hearing and suggested that he was dishonest for not disclosing these issues with potential employers. These actions make Mr. Morin's assertion that his opportunity to train three times had been tainted by prejudice seem plausible. While he received two extensions to complete the training program, it is clear from the data that no one wanted or expected him to succeed. He was, therefore, scrutinized more closely than other trainees and shamed and demoralized daily by senior officers. The institutional discourses of proposed objectivity and neutrality are central elements of how institutional racism is manifested in the work place. The adjudicators' clearly prejudicial stand in the complaint cases cited led them to rule against the complainants. A critical race lens would have allowed adjudicators to recognize racism in its every day practice and would have resulted in more rulings favouring complainants.

Affirming Organizational Norms/Values and Expectations

Norms and values in organizations can be the catalysts that create tension among employees. Employees who have social access to the dominant ways of communicating and behaving have more social power, often because of the role they occupy that influences

the direction that society takes. Many employees, including some of the complainants in this research, are in conflict with norms and values fundamentally based on European ways of being. Fidelity to these norms and values is used as criterion to help employers recruit and hire candidates with the right organizational fit and screen others out of a competition based on experience and "soft skills." The hiring committee in Mr. Premakumar's case noted that the interview was partially designed to assess candidates "soft skills":

> According to Ms. Demeda, the interview was designed to assess whether candidates had the 'soft skills' necessary to allow them to do the job. She described 'soft skills' as: " ... skills that you can't train somebody on. It's the willingness to work, being able to co-operate and work as part of a team, being motivated, enthusiastic, having a good work ethic." Ms. Demeda assessed the candidate's 'soft skills' by the way the candidate answered questions, the way in which the candidate spoke about his or her current position, their attitude and whether they demonstrated that they were able to work as part of a team. Mr. Chiappetta testified that he was looking for leadership, explaining that "... if people are motivated to move up in the company, leadership skills would help them in achieving that". He was also looking for candidates with good communication skills, who had the ability to work under time constraints. In assessing the candidate's suitability for the position, Mr. Chiappetta would consider factors such as the way the person spoke when answering questions, as well as the individual's body language. [Premakumar case]

In reaching a resolution, the adjudicator did not comment on the airline's seeking employees with skills that they "can't train somebody on" and who could be "part of a team" with "good communication." The search for such candidates effectively disqualifies many racialized people who are seen as non-team members that have poor communication styles. The search for team-like qualities is yet another discourse used in institutions to select people who look and sound similar to each other in the work environment and reject those who are dissimilar. With the presence of these central legitimizing elements of power, racialized people are unlikely to progress in the workplace. The complainant is originally from Sri Lanka and worked extensively in that country in various professional capacities. However, he had Canadian experience in the airline industry and specifically for the airline at which he was seeking employment. He is from a country with cultural norms that are different from Canada's and a style of personal communication that differs with respect to word choice and sentence formation. The search for "soft skills" is subjective and provides an opportunity for candidate to be screened out of job competition even when they have met the requirements of the job expectations and qualifications. The subjectivity of employers identifying soft skills as a requirement in a job interview is relevant. The interviewers likely gravitate towards candidates having soft skills similar to their own, while dismissing others, as was the case with Mr. Premakumar. This seeking of soft skills also points to an organizational culture where employees and administrators are more at ease with European norms and values and this serves as a barrier for many racialized people to accessing employment and promotional opportunities. Furthermore, the corporate and institutional language (e.g. soft skills) generally excludes racialized people as they are

often described as lacking in professional decorum consistent with European-based professional expectations.

Organizational norms and values are manifested in various ways institutionally. Law enforcement institutions such as the RCMP are notorious for having special codes of conduct to maintain norms and values. Mr. Morin encountered such norms and values and objected to some of these. His objection placed him in a vulnerable situation with his colleagues. Mr. Morin was nicknamed "OBO" (or best offer) after he misunderstood this acronym in a newspaper advertisement. He seemed to have been embarrassed about the mistake and good-naturedly, albeit temporarily, accepted the nickname. He attempted to have colleagues not address him by the nickname, but this requested created a challenging situation. The adjudicator recognized these norms, values and expectations of members of the force, including trainees, when he wrote:

> In this regard, I note that the Complainant was not the only person in the RCMP to have a nickname. Cpl. Cousins testified that one person who developed lice while at Depot was called "Bugs" for years thereafter. Cst. McDonald recalled that another recruit who apparently had misunderstood the meaning of the abbreviation "L.N.U." in relation to a suspect ("last name unknown"), ended up being called by this phrase thereafter. Cst. Anthony Akow testified that he was known as "Silent H" because he pronounced his first name "Antony". Cst. Haney testified that he was known as "Dumbo", in reference to the shape of his ears, and "Weenie Boy" because he liked to eat hot dogs. [Morin case]

Here the adjudicator suggests that the RCMP has increasingly disapproved of the use of nicknames, which means that fewer people are being nicknamed or referred to in any way other than their names. The adjudicator needed to legitimize his decision to affirm the organizational norms of the RCMP; in doing so, he noted that the complainant was seen "smiling" on a videotape in which someone called him OBO and that he "never objected to the use of the term and that had he done so, the trainer would have ceased using it immediately." The adjudicator disregarded the evidence the complainant offered in which he said he felt restricted and "afraid" of being labelled a complainer if he continued to advocate on his behalf. Policing agencies are given power to sanction and control many aspects and elements in society. The culture is authoritarian and leadership is top down. Those on the lowest rung have less power and are seen as inferior to those of the upper echelons. The adjudicator suggested that the complainant was "not the only one" who had being called by a nick name and rationalized the argument by naming the others in the detachment who had nicknames. The organizational culture is not accepting of differences and this leaves little room for individuals who fail to assimilate quickly and adequately. People in different cultures and subcultures communicate differently. If the complainant's style of communication was different from that established in the workplace, it is highly improbable that he could successfully change or integrate his style to accommodate the workplace norms in a short time. It is not coincidental that within the same time period, two Black men and one White woman were the only individuals who failed to meet the requirements to be hired into the agency. The connection between this

federal agency and the Tribunal is evident in how similarly they interpret information and by the way they use central power in their everyday operations.

In all of the complaint cases, adjudicators affirmed organizational norms and values by deciding to privilege the arguments of the respondents. For example, adjudicators only documented certain aspects of the cases and offered little critique of the information presented. Some of the more negative comments that were uncontested by the adjudicators involved descriptions of complainants as having inferior "communication skills," experiencing "interpersonal problems," and having poor "problem solving" abilities and "report writing" skills. Adjudicators did not challenge the institutional discourses that stereotyped complainants who were not born in Canada or whose first language was not English. When their first language was French, for instance, and they worked in an English environment, their writing and communication skills were often critiqued, again suggesting that only White English speaking people have adequate skills in these areas.

Accepting Negative Descriptions/Categorization of Complaint

Respondents provided information about complainants that described their work, behaviour or attitude in the workplace negatively. Adjudicators recorded these descriptions in the report and often used those descriptions and categorization in their summary of the cases. Some complainants noted that the references that managers and supervisors offered on their behalf were not always helpful or supportive. For example, Mr. Brooks' supervisor Mr. West offered mixed information in a reference letter. He wrote:

> Mr. Brooks was a hard worker. There was a "small problem up north", however, which was described as "drinking". This apparently led to an accusation that Mr. Brooks had urinated in someone's sink. Mr. Smith was understanding. He said that these kinds of things happen on extended voyages and made a small deduction for the reference. This did not affect Mr. Brook's rating, Very Good, which was the highest that was available. [Brooks case]

The complainant was accused of inappropriate and unprofessional conduct. Based on the information in the adjudicator's report, there was no conclusive evidence to suggest the behaviour had occurred. Yet, this information was taken into consideration when the complainant applied for a promotion. The adjudicator suggested that only a small deduction was applied to the complainant's rating, which ultimately did not affect his assessment. The covertness of the supervisor's reference letter and the adjudicator's note that the board understood the complainant's behaviour given the circumstances of the long voyage is interesting. The documentation suggests that the reference letter was not questioned by the adjudicator and the adjudicator made no mention that the complainant objected to the accusations.

Often colleagues and administrators described the complainants in uncomplimentary ways, suggesting that they were incompetent, had poor work habits, poor attitudes in the workplace, and were hypersensitive, cold, uncooperative, tyrannical, and non-team-players, just to name a few of the negative descriptions. Complainants' attitudes, abilities, competencies, and behaviour were attacked and pathologized. The adjudicators

did not question or challenge these characterizations of complainants. Adjudicator Mactavish, for example, mentioned a number of times in her report the level of dislike colleagues felt for Ms. Baptiste. There was no interrogation as to why such hatred was manifested toward the complainant but the adjudicator herself appeared to dislike Ms. Baptiste as well. She wrote:

> It was abundantly apparent that [the complainant] was not popular with her co-workers, many of whom found her to be rude or aloof. Several expressed concerns about her nursing skills, and many felt that she was not a 'team player', and was unwilling to help out her colleagues. Even [names omitted] the two nurses who testified in support of Ms. Baptiste were lukewarm, at best, in their endorsement of her as a team player. [Baptiste case]

She followed this comment with her own opinion by demonstrating an understanding, based on what she experienced in the hearing, for the hatred, loathing and hostility of the complainant:

> It is clear [Ms.] Baptiste was actively disliked by many of her co-workers and supervisors. Four weeks of hearings disclosed many reasons for this antipathy that have absolutely nothing to do with the colour of Ms. Baptiste's skin. [Baptiste case]

The adjudicator's acceptance of the negative characterization of Ms. Baptiste is obvious. While it appears that she is summarizing the information presented by the complainant's colleagues, she also clearly accepts this characterization. Two colleagues supported Ms.

Baptiste by testifying about their observations of occurrences in the workplace, including interactions between Ms. Baptiste and others. Rather than seeing this testimony as a positive representation of Ms. Baptiste, the adjudicator shifted the information to put a negative light on it by noting that the two women who supported her were less than enthusiastic. Clearly, the adjudicator gave little or no thought to the possibility that the women feared reprisal upon their return to work. Here we see that even in situations where complainants are supported, the adjudicators may devise ways to reduce the support the complainant feels by tainting the information and spinning it to show negativity. When complainants are viewed or characterized in negative ways, and adjudicators accept the characterizations, this paves the way for adjudicators to seal the fate of complainants with negative decisions.

Constructing a Guilty Complainant

A review of the reports shows that adjudicators often blame the complainants for having negative attitudes or being incompetent. Assuming the position of constructing guilt enables the adjudicators to justify coming to a decision against the complainants. After hearing the testimonies in one case, adjudicator Groarke provided what amounts to a highly inflammatory and offensive characterization of the complainant. After summarizing a number of witnesses' testimony that glowingly characterized Mr. Brooks' collegiality and ability to work well with others, the adjudicator wrote:

> There was a darker side, however. Mr. Brooks had conflicts with his supervisors. He liked things his own way. There was an incident, for example, with respect to the stripping and polishing of floors [name of a boat]. There were problems much later, at the library. He resented his subordinate position and had difficulty accepting the normal lines of authority. [Brooks case]

The adjudicator suggested Mr. Brooks had a "darker side," which is an extremely negative assessment of Mr. Brooks' personality, and this assessment was linked to Mr. Brooks' behaviour and attitude towards supervisors. This assessment is also a coded way of suggesting that Mr. Brooks had an "attitude problem," which is a common way of stereotyping people of African descent. Also noted were three separate mentions of vague incidents, the "floors," "problems much later" and failure to accept his "subordinate position." The adjudicator is clearly exercising his power to legitimize elements of the case. What could be the purpose of this statement be and how could this perception influence the adjudicator's ability to hear the case in a fair way? Once the adjudicator takes the position that the complainant is "subordinate," he conditions the entire proceedings to characterize the information in a racist way. The adjudicator blamed Mr. Brooks for feeling frustrated with the racist work environment and for trying to advocate on his behalf by saying that he was resentful of his "subordinate position" and refused to accept "normal lines of authority," meaning his inferior position in the agency. The adjudicator is arguing and justifying why Mr. Brooks was discriminated against in the work place and noting that the complainant is a subordinate to others in the work place. This positioning of Mr. Brooks is

reminiscent of the stereotype that suggests Black people are can only occupy the lowest place in the employment sector as cooks, dish washers, nannies and cleaners. Moreover, the adjudicator's belief is not distant from the thinking during the slave trade and the Jim Crow era where Blacks were outwardly seen as inferior to Whites and expected to know their places in the wider society. Closer to home here in Canada, the Nova Scotian government destroyed Africville, an African Canadian community without the residents' input or consent. These are the discourses that remain alive yet embedded and concealed in contemporary institutions, including institutions such as the RCMP, federal government and the Tribunal.

Adjudicators have central power and the means through which to influence outcome of events at the Tribunal. What is more frightening is that an adjudicator thought it was appropriate to not only describe the complainant as occupying a "subordinate position," meaning he had an inferior position in the agency, but to also suggest that the complainant had "difficulty accepting the normal lines of authority." This point is important in understanding how institutional racism operates and how insidious it can be. The adjudicator is admonishing Mr. Brooks for challenging racist practices in the agency rather than chastising the agency's management for its racist policies and union for being complicit in condoning and practicing racist behaviour. Groarke is insinuating that Mr. Brooks did not know his place in the "normal" chain of command and if he did, he resisted the lower rung position that he was in, which, in turn, created the conflicts with

supervisors. This description is highly problematic, yet not surprising given the social belief that constructs some groups of racialized people as inferior and subordinates.

Another adjudicator's entrenchment within racist discourses is evident when she described Ms. Baptiste's experience and actions in her workplace:

> Ms. Baptiste's early days at CSC were not problem free, however. During her first year at [institution name], Ms. Baptiste filed a harassment complaint against a Correctional Officer, complaining about two log entries written by the Officer in relation to Ms. Baptiste's dealings with inmates. According to the investigation report prepared with respect to Ms. Baptiste's complaint, Ms. Baptiste did not feel that there was a personal vendetta between herself and the Correctional Officer, but that the Officer had been caught up in a racially-motivated plot "orchestrated by security", and fed by another nurse. Ms. Baptiste's complaint was investigated, and was not substantiated. No evidence of a plot against [Ms.] Baptiste was uncovered. The investigation disclosed that [Ms.] Baptiste was widely perceived to be abrupt and rude with inmates, and identified concerns with respect to Ms. Baptiste's interpersonal relations with other staff members. While the Correctional Officer displayed questionable judgment in the wording of the log entries, there was no specific policy governing the way in which such entries were to be recorded. Although not the subject of Ms. Baptiste's complaint, one nurse was found to have made a negative comment about Ms. Baptiste's conduct behind her back, in

violation of the CSC harassment policy, although there is no suggestion that the comment was racially motivated. [Baptiste case]

The adjudicator cast a negative light on the complainant by suggesting that her first year at the agency was "not problem free" as if to suggest that the challenges and racist behaviour the complainant experienced resulted from her own deficiencies. The complainant filed a grievance against individuals in her work place indicating that there had been a racially motivated plot against her, orchestrated by the security personnel and supported by another nurse in her area. Specifically, she challenged log entries written by an officer about her interactions with a prisoner. The adjudicator described the action as "complaining," suggesting that it was unnecessary. The adjudicator noted "no evidence of a plot" was found and immediately in the sentence following states that the complainant was "widely perceived to be rude" and some people had concerns about her "interpersonal relations with others…" The placement of the two sentences is important and shows how the adjudicator uses linguistic violence to reject the complainant's concerns and blame her for other people's behaviour while legitimizing the respondents' behaviour and absolving them of the responsibility for racist and discrimination practices.

Ms. Baptiste's complaint resulted in a conclusion showing that she had been a victim of racial harassment and discrimination. In reference to the complaint case, the adjudicator acknowledgement that the officer displayed "questionable judgment"; however, in the same paragraph she argued that the agency did not have a protocol specifying how log entries were to be made and therefore completely nullified her acknowledgement of

inappropriate treatment of Ms. Baptiste. Adjudicator Mactavish also failed to consider that at least one employee was in "violation of CSC [the workplace] harassment policy" for gossiping about Ms. Baptiste. None of these events were considered in hearing the complaint and coming to a resolution. Further, she justified the behaviour of the officer, prisoners and colleague because of the complainant's perceived rude and abrupt manner and poor interpersonal skills. There were no words of support for the complainant from this adjudicator throughout the report. In minor situations where this complainant is given the benefit of the doubt, they are offered grudgingly. Adjudicator Mactavish was unable to see the case as racially motivated and therefore was incapable of ruling in support of the claimant. This inability to experience the evidence from a non-linear, multi-focused lens definitely limits the way cases are heard and their outcomes.

The adjudicator's report further suggests that the staff and supervisors believed that the complainant instigated at least some of the attacks by her conduct towards prisoners; that is, she was to be blame for the behaviour of others. This is a common assumption of Black people in particular are often stereotyped as having a "chip on their shoulders" and this "chip" motivates them to behave rudely or suspiciously towards others, which, in turn, causes them to be in conflict with others frequently. This belief is not unusual in situations of racial harassment and abuse but by not challenging this line of argument in the reports, adjudicators create a major challenge for complainants who engage in the process at the Tribunal to seek redress for harassment and discrimination by giving such arguments legitimacy. This also speaks to the process of revictimization of individuals in a system

that is designed to protect them. Another way of normalizing racist behaviour is to blame the victim, many of whom received this treatment from both colleagues and the adjudicators.

Normalizing Racism

The level of racial harassment that can and does occur in work environments varies and can include blatant racism and "ethnic" stereotyping that is directed not only to the service users but to staff delivering the services and administrators. The data in this research shows a pattern of normalizing racist practices and behaviours. Many examples of racist practices in the workplace were introduced as evidence by the complainants. In all of the cases reviewed in detail, the employer and colleagues offered explanations for the racist behaviours and practices. Unfortunately, the adjudicators misunderstood the majority of these explanations and were unable to see the racism embedded in the behaviours and practices. Adjudicators did not take the racist practices into consideration when considering the ruling and the complainants' arguments were therefore disregarded. This suggests an acceptance of racist behaviours and practices, even when they were not condoned, as "normal" or usual within workplaces. The questions must be posed: If managers and supervisors participate in racist actions, who is responsible for ensuring a safe working environment and how can this be attained if those who are entrusted with this responsibility are themselves perpetrators?

Ms. Des Rosiers described an experience she had while working at the CBC:

> The second week of that month [February] had been designated as Black History Week, an event that had been well publicized within the CBC. Posters to celebrate the occasion had been placed throughout the workplace. On the Monday of that week, as she was seated in her office, she noticed Mr. Barbe and several staff members dancing, singing and laughing outside her door. Mr. Barbe was wearing a Rastafarian-style wig on his head with a Jamaican-style hat on top. He had draped a Jamaican flag over his shoulders and had begun prancing around the work area, moving his hands towards his armpits, acting as if he were a monkey. Later on, the wig was placed on a pole to which a tattered T-shirt was attached, and Mr. Barbe and the other employees paraded around with this object in their hands. This activity was repeated every day that week. Ms. Des Rosiers testified that she felt so humiliated that she made arrangements to work outside the office on the Friday, just so she could avoid her colleagues. Just about every member of the staff, even Mr. Barnabé, [the station manager], participated to varying degrees in this activity. Ms. Des Rosiers points out that she was the only member of a visible minority group to be working on the /La vie d'artiste/production team. [Des Rosiers case]

In the Des Rosiers case, the Tribunal recognized the blatant racism and agreed that this behaviour from colleagues was not acceptable. However, the adjudicator made no mention that the CBC was responsible for the conduct of its employees, which absolved the CBC, allowing the racist practices to be characterized as individual and unrelated events .

To the adjudicator, Ms. Des Rosiers seemed like a victim because through the attacks, she remained cordial, cooperative and a team player. This behaviour also aligns with White Western norms and behaviour.

In the Baptiste case, however, the adjudicator dismissed racial behaviour as being normal in a federal prison. She recognized language and behaviours that were evidence of sexism, ageism, discrimination based on ethnicity, and homophobia in the workplace but excused them, because they originated from inmates in the prison. The belief that harassment by prisoners is normal influenced the adjudicator's decision in the Baptiste case. The adjudicator noted:

> A great deal of time was taken up during the hearing with testimony regarding the environment within CSC in general and within [institution name] in particular. It is clear that a federal penitentiary is a difficult workplace, and that federal inmates pose unique challenges for the staff, including the nursing staff. It is also apparent that the nursing staff was frequently exposed to verbal abuse from inmates. This abuse took many forms, and included sexist comments such as "fucking cunt" and "douche bag", directed at the female staff, as well as comments such as "old fucking bitch" specifically directed at one of the older nurses. A male nurse recalls being called homophobic names such as "faggot" and "queer", and other staff recalled this same individual being called derogatory names that related to his Francophone origin. Staff members would often tell inmates that their language was unacceptable, but would not normally file disciplinary complaints unless they felt

> that their safety was in jeopardy. Several nurses testified that verbal abuse was such a regular occurrence that it was simply not realistic to try to deal with each incident through the disciplinary process.
>
> In [Ms] Baptiste's case, much of the abuse directed at her had racial overtones. She was frequently referred to by inmates as "the black bitch," and at least one inmate also referred to her as a "jungle bunny," A number of witnesses testified that [Ms.] Baptiste was often rude with inmates, and that she had a tendency to 'talk down' to them, which would provoke confrontations with and verbal abuse from the inmates. Various examples of such behaviour were cited by the witnesses, many of which were not disputed by Ms. Baptiste. There was also a recognition however going back as far as the 1991 harassment investigation report, that some inmates did not like Ms. Baptiste because she was black, and that some of the negative behaviour that she encountered was as a result of racial prejudice on the part of the inmates. [Ms.] Greye herself testified that it was well known throughout the correctional system that there was often an objectionable racialized attitude on the part of inmates. [Baptiste case]

The adjudicator began by discussing the "environment" in the work place. Here, using her central power, she sets the tone with a few phrases to normalize racism in the prison system. She said the "federal penitentiary is a difficulty workplace," where "inmates pose unique challenges" and argued that "abusive behaviour" was the norm. The adjudicator further normalized racist behaviour by naming the various types of harassment

that people who worked in this prison experienced. The suggestion is that racism is only one act of transgression and should not be focused on. She noted that "staff tell inmates their language was inappropriate" suggesting that the staff actually attempt to curtail the rampant racist and discriminatory behaviour of prisoners but they were overwhelmed by the constant onslaught and felt it useless to continue to challenge the language or deal with it through the agency's anti-harassment policy. The suggestion here is that only criminals and the underclass would behave in this discriminatory manner but educated professionals would not. This analysis is faulty; the data showed that several staff members also used racial epithets in and outside the presence of the complainant.

The adjudicator note that the harassment directed at the complainant, a Black woman, had mainly "racial overtones"; prisoners "did not like" her because she was "black" and that some "negative behaviour was a result of racial prejudice on the part of inmates." Many federal prisons are overcrowded with Aboriginals and African Canadians so how does the adjudicator account for these populations' behaviours toward the Black woman? The adjudicator report fails to mention this aspect of prison life, but I would argue that Black men, for example, are unlikely to call Ms. Baptiste a "Black Bitch." This contextualization by the adjudicator of who can and cannot use racial epithets is an example of how adjudicators, having limited understanding of racism, use their central power to manipulate and change information making it more palatable for themselves, respondents and others in institutions.

The adjudicator normalized the complainant's experience by suggesting that her behaviour also contributed to prisons' response to her. Immediately after she noted that Ms. Baptiste was called "black bitch" and "jungle bunny," she used words to normalize the racist experience. She wrote: "a number of witnesses testified" that the complainant "had a tendency to talk down to them [inmates]" and this condescension would "provoke confrontation with and verbal abuse from inmates." Giving the normalizing an air of legitimacy, the adjudicator used the phrase "a number of" to suggest more than one person had "testified" suggesting this has to be the truth about the complainant's own behaviour toward prisoners. She "was rude with inmates," "had a tendency to 'talk down' to them" which would then "provoke confrontation with and verbal abuse from inmates," The adjudicator contradicts herself; initially, she argued that in penal environment abusive behaviour was the norm which means people are abused regularly and consistently. Here she suggests that Ms. Baptiste's behaviour towards inmates directly resulted in her being discriminated against.

There is no acknowledgement by the adjudicator in this case that the permissive environment at Corrections Canada allowed both prisoners and staff to engage in discriminatory and racially derogatory behaviour without consequences and that this lack of commitment on the government's and senior managers' part to protect persons in the workplace contributed to a poisonous work environment for the complainant. It would appear that some perception of normalcy of racism was operational in the environments where all of the complainants worked and they testified that taking actions to protect

themselves or to seek redress for racism was met with negativity by both colleagues and managers.

The adjudicator dismissed or overlooked many instances where racism was normalized. They used words to legitimize the respondents' actions and failed to identify and acknowledge specific arguments where the respondents used their power in the work place to stigmatize and victimize complainants. A number of these missed opportunities will be discussed here. Often when the complainant tried to address the harassment within the agency, they spoke with a manager or supervisor as their first line of formal defence (e.g. Ms. Des Rosiers and Mr. Morin). A variety of responses were evident from a review of the transcripts. In all cases complainants were not supported, were viewed with suspicion and labelled negatively. This treatment is also evident in the way that the adjudicator interpreted many of the cases. Some complainants in their testimony described a minimization of their experiences where the manager, supervisor, or administrator justified the respondents' behaviour as being harmless and not meaning to be offensive and still others were met with disbelief that such things occurred in the agency. Some complainants' stories were dismissed and others were met with veiled threats of dismissal and sabotage of their work. For example, Mr. Barnabe, a senior manager at CBC, told Ms. Des Rosiers that Mr. Barbe was "just an iconoclast" and threatened her with loss of employment should she report the racist behaviour. Yet the adjudicator could not make a connection with this action and Ms. Des Rosiers' dismissal from the agency.

When the harassment continued, the complainant sought assistance from a member of the human resources department who listened to her story and told her that she would be contacted at a later time. They did not follow-up with her so she contacted the CHRC who referred her back to her human resources department for possible resolution. This is not an uncommon experience, as discussed earlier, with complainants left to their own devices to protect themselves when organizational structures failed them. This particular individual formalized her complaint in a letter to the Human Resources department at the CBC, and she noted that staff began to sabotage her work (e.g. the film crew was diverted away from where she had her appointments to interview guests or agreed upon assignments were taken away from her and given to others).

Mr. Morin's supervisors described him as being "lazy", "slow" and not "hard working." The adjudicator seemed to agree with these assessments:

> The Complainant was particularly upset at the assertions in the Report that he had not applied himself sufficiently and was unwilling to work hard. He claims that… [his trainer] often accused him during the RFT of being lazy and slow...Complainant argues that these statements demonstrated an underlying racial prejudice associated with a negative stereotype of black persons as lazy and lethargic. The communication of these accusations…to supervisors and other RCMP members served to irreversibly taint his reputation at the detachment [Morin case].

The adjudicator used his central power to disregard Mr. Morin's testimony. The phrase, "He claims that… [his trainer] often accused him during the RFT of being lazy and slow" casts suspicion on the complainant and suggests that the information is not correct. Conversely, Hadjis used the strong, defensive term "argues" to describe parts of the complainant's testimony where as the less offensive, softer and more conciliatory term "merely" was used numerous times to describe the respondents' point of view. This complainant said he experienced increased job scrutiny (e.g. three officers documented the same incident so that it appeared that the incident was three individual ones), and his reputation became tainted after he made an informal complaint to a senior officer. After he made the complaint, the senior officer met with the complainant's trainer to discuss the concerns but failed to follow the procedure that requires the complainant to be included in the meeting. The trainer denied the allegations to the senior officer in this meeting. The action did not assist with resolving the situation but rather exacerbated the tensions between the trainer and the complainant. These actions, whether intended of not, stymied an equitable resolution of the complainant's concerns and led to his isolation and discouragement. Predictably, the complainant reported experiencing immediate increased hostility, scrutiny and further unfair treatment from his trainer. His training was further micromanaged and his daily activities were recorded in reports and log books that everyone in the detachment could review. The adjudicator made no mention of this line of testimony in the report, another suggestion that he normalized and dismissed the complainant's experience.

Here again, the adjudicator had opportunity to use his central power in the Tribunal to expose the way racism has been normalized and legitimized through a code of silence. He could have criticized the code of silence in some workplaces and among colleagues in certain professions and hold the RCMP accountable for its actions. Instead, Mr. Morin was vilified and revictimized. Whether or not adjudicator Hadjis acknowledged or agreed that Mr. Morin experienced racism is inconsequential. What is obvious is that the behaviour of trainers and senior officers was normalized. Mr Morin was left with no support in the agency and therefore had little recourse but to seek redress outside of the mechanism of the RCMP. This is the case with many people who are racially discriminated against and unfortunately, the Tribunal fails to legitimate or even recognize their experiences with everyday racism.

Failing to Recognize the Possibility of Everyday Racist Practices in the Workplace

The Tribunal was challenged to identify and acknowledge racism in the cases examined in this research project. When the acts of racism were covert or subtle, and, particularly when there was no use of racially derogatory names to address or describe the complainants, the Tribunal usually failed to sustain the allegations of racism. Even when acts of racism were explicit (e.g. using racial epithet), if the respondent argued that their intensions were not racist, the adjudicator tended to rule in favour of the respondent.

In making this judgement, the adjudicator shows a clear lack of understanding of the trauma that can and does result from racial harassment and at the same time, discredited

Mr. Brooks' experience, for example, by suggesting that his behaviour was unreasonable. Only when the discrimination could be established from written documentation did the adjudicator appear to recognize the possibility of racism. For example, in the Brooks case, the organization explained that it had established a competition board (a hiring committee) comprising three people to ensure fairness in hiring processes. A Black woman was included as a member of this hiring committee to deal with the historical concerns of discrimination of racialized people. In the competition under investigation by the Tribunal, Ms. Lucas, the Black woman, was not invited to participate in the screening for the short list of people to be interviewed; she joined the competition board after the screening had been done, as did the a second member of the committee, Mr. Lucas, who only signed off on the candidates who were screened in. The third member and chair of the competition board was Mr. Savoury, the lone member who screened the candidates for the position and short-listed two people who were both late applicants and unqualified based on the job posting. These two applicants subsequently received the two highest scores among applicants and were offered permanent jobs. The adjudicator summarized this process as follows:

> The last name on the list is "Greenough, _____" and a "Date Rec'd" of June 23 [his] application was late…Mr. Smith would not accept any responsibility for the decision to include Ms. Boggs and Mr. Greenough in the interviews…Mr. Savoury would not accept any responsibility either…Other witnesses side-stepped the issue…Ms. Boggs did not meet the requirements in the Statement of Qualifications.

> She had no experience as a steward on a seagoing vessel. Mr. Savoury tried to argue his way around…this was a rather transparent attempt to stretch the requirements of the position beyond their legal limits. The same issue arises with respect to the second place candidate. Mr. Greenough …did not have experience as a steward on a seagoing vessel…The evidence nevertheless suggests that there were many problems with the competition. [Brooks case]

After this evidence, and the respondent's inability to provide a plausible explanation for the inconsistencies in the competition, aside from suggesting possible favouritism, the adjudicator agreed that the two Black candidates in the competition were racially discriminated against; however, the adjudicator did not rule in their favour. Rather, it was suggested that there was no guarantee that Mr. Brooks would have received a high enough score to win one of the two job openings, because he had not finished third on the list. The adjudicator erroneously assumes that the competition was fair once all candidates had been screened in. There is no understanding and linking of the racism embedded in the hiring process. The adjudicator wrote that one of the competition winner "did not have experience as a steward on a seagoing vessel"; this means that the two completely unqualified candidates received the highest grades, it stands to reason that the distribution of grades was unfair. Therefore, there is no proof of the actual marks Mr. Brooks would have received if the hiring process was conducted fairly. In spite of this acknowledgement of racism, the complainant was not given a job or compensated for lost wages in the competition that was mishandled. The adjudicator refused to rule that the complainant did

not receive a fulltime, permanent job over the course of several years because of racism; rather, it was suggested that others issues were more relevant. For example, the adjudicator suggested that "Mr. Brooks thought he was being treated unfairly and became increasingly bitter about the fact that he did not have permanent employment. This began to take its toll on him." This idea of the phrase "increasingly bitter" is a code for "having an attitude," these comments are seen often in cases where people are trying to advocate on their behalf. The adjudicator continued: "certainly, he felt that his peers thought there was something wrong with him. People were starting to look at him 'strange'. This became part of the problem." The quote also suggests that the stress of self-advocacy, employment discrimination and the deterioration and collapse of relationships in the work place was singularly Mr. Brooks' responsibility. The adjudicator is also stereotyping Mr. Brooks as having mental health issues with the use and placement of the word "strange" and "became part of the problem." Attempting to legitimize racist discourse in institutions by the use and placement of certain words is another way that the adjudicators exercise central power to revictimize complainants. These examples clearly show the process by which Mr. Brooks suffered systemic revictimization and marginalization not only at work but also at the Tribunal. The adjudicator further adds to this revictimization by failing to use central power to legitimize Mr. Brooks' complaint, rather, it legitimized the social codes for dismissing racist behaviour by failing to recognize the discourse of everyday racism.

A further example of failing to recognize racist institutional discourse comes from the Baptiste case. Ms. Baptise applied for a new position (temporary) in her place of work.

Her application along with another seemed to have been misplaced so the deadline was extended. Two other people applied for the job after the deadline extension and ultimately all four applicants were selected to act on a rotational basis in the temporary team leader position. This was summarized by the adjudicator as follows:

> As a result of the extension of the application period, and following discussions between managers and staff, additional applications were received from [Ms.] Plate and [Ms.] Watkins. All four of the applications were reviewed by [Ms.] Cox, and all were offered the opportunity to act as Team Leader. [Ms.] Plate was offered the first opportunity, followed by [Ms.] Watkins, [Ms.] Raketti and then [Ms.] Baptiste. Because of [Ms.] Baptiste's "marginally satisfactory level of performance", Ms. Cox decided to put Ms. Baptiste last on the list, in order to give her time to improve her level of performance. Ms. Cox's notes regarding her decision state: "She cannot be considered for the developmental opportunity until her performance reaches the level of fully satisfactory." According to Ms. Cox, she based her comments with respect to [Ms.] Baptiste on Ms. Baptiste's most recent performance appraisal, as well as her own observations of Ms. Baptiste and discussions she had with the staff. Although Ms. Cox discussed Ms. Baptiste's performance with some of the other managers, she testified that she never had any discussions with [Ms.] Greye regarding [Ms.] Baptiste. [Baptiste case]

The performance appraisals were used to harass the complainant. Specifically, she was placed fourth on the team leader rotation behind one nurse who was new and had not

received a performance appraisal in that particular institution. Further, the administrator noted that the complainant's rotation was conditional based on her ability to become fully satisfactory in her current job, and this was not a requirement stated in the job posting. The statement that "She cannot be considered for the developmental opportunity until her performance reaches the level of fully satisfactory" is curious. The complainant worked in that institution for over 10 years; doing the same job as a penitentiary nurse with minor differences at which time she received a variety of performance appraisals ranging from fully satisfactory to unsatisfactory. After 10 years, it would seem that if the employee is incompetent, as the respondents suggested, the institution would have cause to dismiss her. This, however, was not the case, but Ms. Baptiste suffered immense institutional discursive attacks according to the adjudicator's report. Another racist discourse evident in the institution was the admission of an administrator who held discussions about the complainant's application with her colleagues and other managers, yet suggested that she had no conversations with Ms. Greye, the complainant's direct supervisor. Ms. Greye, as the supervisor, would be the logical person to discuss the applicants with. The adjudicator failed to question this testimony. Ms. Cox clearly violated the basic privacy and confidentiality code of conduct and expectations given to all Canadians. It appears that the adjudicator failed to recognize how racism was enacted in the hiring process and later in the placement of the individuals. This is another indication of how racialized people's histories influence how they are treated socially and institutionally. Racialized people have to continually challenge everyday racist practices; be punished for having a voice; and suffer isolation. Racialized peoples are often targeted for defending themselves, which

creates mental and physical exhaustion that is often framed as "mental problems" or "rudeness".

In another case, two complainants applied for jobs internally at their institution, National Health and Welfare Canada. They were initially discouraged from doing well in their interviews when they heard that one of the selection board members had said that "these two browns will not be in..." The complainants are objectified and referred to by their skin tone, another clear indication of being treated as the exotic colonized other, a tactic used to humiliate and dehumanize them. These individuals were rendered invisible as people because of their skin colour. Their interviews were conducted as scheduled by the four members of the section board. However, there were irregularities as noted by the adjudicators:

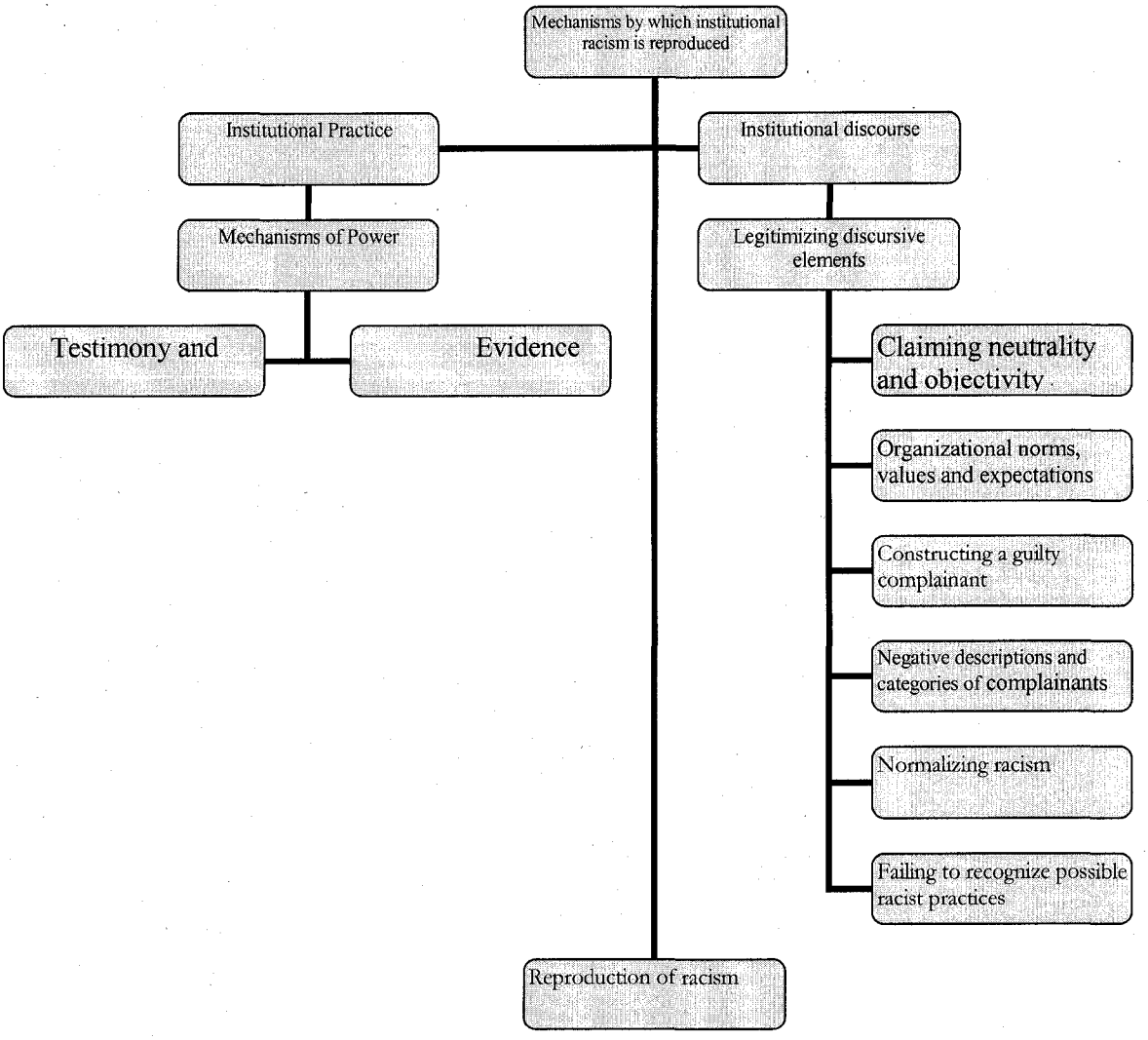
> Dr. Chander observed that the only selection board member taking notes was Dr. Johnson...[he] left the sitting room area to speak on the phone while Dr. Chander was answering a question...Dr. Joshi's interview lasted from approximately 11:00 a.m. until 12:20 p.m. He was escorted to the interview room by Dr. Krupa who was escorting Dr. Chander from his interview. There was no time between the interviews for the four board members to discuss Dr. Chander's interview. Dr. Joshi was asked questions by each member in turn and observed only Dr. Johnson taking notes. During Dr. Joshi's interview, Dr. Johnson was required to take more than one telephone call. In the middle of Dr. Joshi's interview someone was heard fumbling at the door. Dr. Johnson answered the door and let in [first name] Demers

who went to the hotel room bedroom and remained there for the duration of the interview. [Chander and Joshi case]

The complainants in this case were the only two applicants to the jobs posted. They received letters a few days later from Dr. Demers, the person who did not take part in the interview process, stating that no suitable candidates were found for the positions. The implication was that they were unqualified for the position. His conclusion was reached without offering them an open and impartial interview.

Racist practices occurred in the workplace continually. Complainants experienced racial discrimination as trainees, employees and potential employees. These racist discourses are particularly hidden in the hiring and promotional process, but adjudicators were often hard pressed to recognize and name racism in the evidence that complainants provided. This failure is partially due to the Tribunal's claim of objectivity that presents challenges for adjudicators who need to identify their own racism and how it influences their judgements as central power holders (See figure 8.1).

Figure 8.1 – Process by which Institutional Racism is Reproduced



Conclusion

The critical discourse analysis carried out above shows how the institutional practices and institutional discourses of the Human Rights Tribunal, shaped by the traditions of the legal system, can contribute to the paradox of inequality being reproduced

through the structures that have been created to reduce power imbalances and discrimination in Canadian society. The discourses utilized to justify rejecting evidence that was favourable to a complainant were identified and illustrated. The institutional practices of evidentiary requirements and assessment of testimony of witnesses are the primary legal tools that are used to decide cases, preventing many cases form being heard, and leading adjudicators to reach conclusions that do not favour the complainants in other cases. Through mechanisms of power, adjudicators revictimized complainants by ignoring their testimonies and failing to identify racist practices and policies in the institutions from which the respondents came. Institutional discourse by which racism was reproduced included: claiming neutrality and objectivity; affirming organizational norms/values and expectations; accepting negative descriptions/categorizations of complainant; constructing guilty complainant; normalizing racism; and failing to recognize the possibility of everyday racist practices in the workplace. These institutional discourses are also legitimizing elements by which adjudicators used their position power to further marginalize complainants through their use of language. In order to effect changes at the Tribunal, the mechanisms of power and legitimizing elements that reproduces racism must be exposed and challenged; but exposure and challenges need to accompany clear and strong recommendations that are achievable in the short and long term and are equally sustainable. These recommendations are discussed in the next chapter

Chapter 9 – Discussions and Recommendations

> *Relevance and fairness are thus the two key considerations in the independent evidentiary regime of this Tribunal, which is the complete master of its own procedure. Furthermore, even if its relevance is unclear at the moment when an objection based on this ground is raised, evidence may be admitted where the Tribunal is of the opinion that the evidence is potentially relevant. In other words, when in doubt the Tribunal may decide in favour of its admissibility. (Dhanjal case)*

> *Have a bias toward action - let's see something happen now. You can break that big plan into small steps and take the first step right away. (Indira Ghandi)*

Introduction

Racialized Canadians continue to experience discrimination within the workplace in spite of the legislative and program initiatives of the federal government to combat it. Many cases are settled informally, and others are settled through harassment procedures in their place of employment. A further 1,000 complaints or so are brought to the Canadian Human Rights Commission for resolution annually, and the most complex of these cases are referred to the Canadian Human Rights Tribunal. Notwithstanding these government initiatives, many racialized people continue to feel silenced about their experiences of discrimination, and that they are not understood or validated if they do choose to make a complaint using anti-discrimination policies (Freeman, 1995). The analysis in the

preceding chapter has demonstrated that the legislation and programs created and implemented to address employment discrimination have not adequately served their intended purpose for racialized people in the employ of the federal government and federally regulated settings. This chapter discusses the implications of the racist institutional practices and discourses that perpetuate this inequity and makes recommendations for change that will reduce systemic racism.

Racialized Groups and Employment Discrimination

Mechanisms of power and legitimizing discursive elements are the means through which systemic racism is reproduced at the CHRT. Before discussing changes at the CHRT that would reduce systemic racism, it is important to discuss the implications of my analysis for the everyday workplace. While this thesis does not focus on racism in the workplace, the analysis of discrimination cases filed with the CHRC and the CHRT shows ample evidence of various forms of racism and discrimination in the workplace. Adjudicators in their reports offered detailed accounts of the occurrences that motivated the complainants to seek redress. There were numerous allegations of racism in the workplace including differential treatment; denial of promotion; refusal to hire or rehire; unfair processes of hiring, promotion or contract extension; unfair distribution of work; harassment (racial epithets, derogatory terms, stereotyping, name calling, etc.); and unfair performance appraisal or evaluation.

Organizations have control of cultural, political and social tools that reproduce power and through these operations of power, many organizations have anti-harassment and anti-discrimination policies; however, based on the complainants' arguments presented at the tribunal, these policies are not always adhered to and discriminatory behaviour continues to be practiced in relation to hiring, performance appraisal and promotion of racialized women and men. However, the evidence in this research suggests that not all racialized groups experience the complex discriminatory scenarios that are referred to the CHRT for resolution. While the sample was small in this study (16 and decreased to 6 for in dept analysis), all but three of the complaints were filed by Canadians of African or South Asian origin. Based on the complaint cases, there is an indication that certain racialized groups experience racism differently in the labour market. This finding is similar to Anon's (1999) which suggested that all racialized groups do not experience racism the same way.

The treatment specific to use of language and the descriptions of individual complainants suggest that African and South Asian Canadians are seen in some workplaces as inferior, unintelligent, anti-social, incompetent, dishonest and non-team players. The negative descriptions of the complainants resulted in them being blamed for experiencing racism. These are examples of what Essed (1991) calls everyday racism. The data in chapter 7 and 8 suggest that in all cases, the employer and other colleagues were aware of the harassment and in some cases, both managers and colleagues contributed to the harassment. These decision makers used their position to influence how the complainant

would be seen at the Tribunal, and the adjudicators did not disappoint; they used their position power to support those claims.

In some cases, the agency was directed to implement anti-discrimination policy and education before the complainants engaged in the cases under review in this research. In all probability without intending it, adjudicators used their roles and responsibilities as members of the Tribunal to further discriminate against complainants. Complainants' experiences, as described in the adjudicator reports, exemplified what is discussed elsewhere in the literature (Kobayashi 1998; Razack, 1994). The complainants' experiences of racism were ignored or normalized and the adjudicators failed to recognize or acknowledge how everyday racism was enacted in the work place. Legitimizing discursive elements were used to recreate racism at the Tribunal by blaming the complainants for their experiences even when colleagues used racial epithets or stereotypes to address or describe them. Specifically, adjudicators agreed with colleagues, supervisors, administrators and managers, who argued that the complainants were non-team players because they isolated themselves from the others in the workplace and also argued that certain complainants were not hired for employment after job interviews due to their lack of "soft skills." This finding is in keeping with van Dijk's (1993) and Tator & Henry's (2006) analysis showing how elite groups used their institutional power to discredit people's claims of discrimination. More directly, complainants generally had limited access to decision making positions and communicative events and these limitations further contributed to their marginalization.

Institutional discourses embedded in the complaint process allowed adjudicators to use their position of power to continually reject the complainants' experiences while legitimizing the respondents' claims. This enactment of power was demonstrated consistently and in effect blamed complainants for job-related tensions between themselves and others (e.g. prisoners or colleagues) and in most of the complaint cases, the adjudicators agreed. This was demonstrated by the use of negative descriptors of complainants while having few negatives to describe respondents. Respondents suggested that others in the work environment were frustrated with complainants' behaviour and this resulted in other colleagues and managers behaving inappropriately and unfairly toward the complainants. In other situations, respondents micromanaged the complainants' job performance and training by timing how fast they worked, refusing to offer them the same opportunities as others, implementing training programs that were unfair, and using divisive tactics, such as asking two racialized persons to give their opinions on matters that are traditionally conflicting and inflammatory.

All the federal and federally regulated agencies refused to respond to reports of racial discriminatory practices and behaviour. In cases where a response was offered, it was done in such a way to instigate negativity and resistance among staff, which resulted in further alienation, scapegoating and targeting of racialized individuals. The most frequent response to racial harassment saw agencies acting complicity in their pretence that racial harassment does not exist in their respective environments. The more pervasive display of racist discourse, agencies and colleagues expected racialized people to quickly adapt to

Euro Canadian organizational norms and values in the workplace. When complainants appeared reluctant to assimilate or in cases when their racialized social identities were denigrated, they were frequently described as being rude and uncooperative, suggesting that their behaviour was infantile and that they were not team players. Patterson (1997) notes that behaviours like these are survivalist strategies. When complainants responded to organizational pressures and racist systems in a survivalist way, colleagues and senior level managers interpreted their reaction and behaviour as being hypersensitive, which suggests that race-based attitudes permeate the work environment. At times, the complainants were called "reverse racist" themselves. Complainants were devastated by the impact of racial violence, frustrated by the lack of agency response and decision-makers' complicity as well as the continued racial harassment in the workplace. The analysis above demonstrates that mechanisms of power and legitimizing discursive elements are present institutionally and ensure the continued reproduction of racist practice, policy and behaviours by decision makers, colleagues and service users. If implemented properly, the EEA and programs present an effective way to eradicate employment discrimination for members of the designated groups: Aboriginal peoples, disabled people, ""visible minorities"" and women.

Employment Equity

The EEA was implemented by the federal government; its intent was to reduce employment discrimination among the four designated groups. The legislation was expected to reduce racism and it may have achieved this goal but it has also accomplished the opposite in federal and federally regulated workplaces and has aided in the reproduction

of racism in Canadian institutions. There is a structural disconnection between the legislation and the program. There is little political commitment to the Act by the federal government. Consequently, employers, including the federal government, are not fined for EE violations. The EEA allows decision makers to interpret the intent of the policy and choose how or if to proceed with EEPs. Furthermore, there is no place for employees who believe their rights have been violated under the EEA to seek redress except to file a complaint with the CHRC using the CHRA. This means that rather than working within a system where racism and discrimination are acknowledged as everyday practices, a case must be made, using the same evidentiary requirements as in a court of law, that discrimination has occurred. The complainant must work within a system based upon adversarial procedures rather than one that seeks to promote collaboration in achieving greater social justice.

Recommendations

To reduce the impact of the mechanisms of power that reproduce discrimination through the CHRT, the federal government must implement a redress mechanism for people who have been discriminated against under the EEA that is separate from the Human Rights Tribunal. It must be grounded in an acknowledgement that discrimination is a routine occurrence in Canadian workplaces. This Tribunal would adjudicate claims related to EEA and EEP. The federal government must become consistent and committed to the premise of the EEA and, therefore hold federally regulated agencies that do not comply with the FCP. The agencies that do not comply with the EEA and produce annual

EE report outlining their successes with program implementation to recruit, hire and retain "visible minorities" must be penalized by disallowing them to further participate in the FCP (i.e. not receive federal contracts). The current legislation is viable, and the EEP can be successful under the current legislation; however, the program must be adequately monitored and consequences applied to agencies that fail to comply with the legislative expectations.

Government commitment and accountability will send a strong message to organizations wishing to be federal contractors. Since its introduction, the federal government has demonstrated inconsistent and lacklustre leadership in reaching the intent of the EEA. The Federal Public Service (FPS) has consistently failed to comply with the EEA, and other equity programs, and reports annually to the House of Commons that EE targets have not been met (Canadian Public Service Agency, 2008; Treasury Board of Canada Secretariat, 2000). Institutional policies are frequently reviewed with few changes. For example, in 2004, the CHRC published a report discussing the review of recruiting and hiring practices in the FPS. There are many indications that the policy is a strong one and could work for the purpose it was intended. However, senior level managers continue to fail to adhere to the specifics ensuring equitable representation for "visible minorities." Specifically, under section 3.3 (recruitment) and 3.4 (selection), focus group members identified how racism is reproduced through: a lack of effort to adequately recruit members of the designated groups; pre-selection of candidates for jobs; limited scope of postings based on geographical locations; designated groups' status in the agencies are not taken

into consideration and only interviews and written tests are frequently used as assessment methods in selecting candidates rather than the a wider range of tools available to them. Some of these legitimizing discursive elements were evident in the published reports of cases analyzed in this research. Strict targets must be set and adhered to over designated five year periods. Specifically, the FPS needs to

1. Establish an independent, non-partisan, supervisory body, comprising of community groups and stakeholders, to monitor and evaluate the FPS' efforts to meet the legislative intent of the EEA and programs. As a first step, the government implemented the National Council on Visible Minorities which is still in existence; however, this agency requires increased funding to adequately implement an equity-based agenda.
2. Establish a tracking system focusing on all areas of recruitment, selection and promotion. This system would ensure that the public service can identify with more precision areas of concern for "visible minorities" and keep on top of the situation as it changes. In particular, discretionary powers should be monitored to ensure that any adverse effect is captured quickly at all levels of the staffing process (CHRC, 2004).
3. Employment equity as well as policies relating to racial harassment needs to be acted upon, monitored for results and attached to an accountability mechanism. Training of personnel, particularly managers responsible for staffing, is required to

ensure that they are aware of how to use employment equity provisions effectively and fairly (CHRC, 2004).

4. Develop staffing tools and strategies with specific, clear, attainable and measurable goals and benchmarks to help with recruiting, hiring, training and retention of "visible minorities."
5. The document *Employment Systems Review – A Guide for the Federal Public Service* has the necessary guidelines and processes, including recruitment, training and development, retention and identifying barriers and gaps. This tool can be used to reach many of the benchmarks outlined in various scholarly research proposals and government documents.

Redefining the Designated Category of Visible Minority

While we consider the need to change the direction of the EEA and programs, any a discussion of the term "visible minorities" is warranted. The literature and findings suggest that all racialized groups do not experience employment discrimination and racism similarly (Anon, 1997; Calliste, 2000). In this research, Canadians of African and South Asian descent are overwhelming represented as complainants. The federal government responded to the increasing numbers of Canadians who were categorized as 'other' by adapting the term "visible minority" to describe Canadians who were not of European descent. The term is, however, misleading in its suggestion that Canadians who are not of European ancestry are both "visible" and a "minority" and this designation is indicative of the kind of institutional practice that reproduces racism, specifically by "othering"

Canadians of various racialized backgrounds. Further, the term does not account for the differential social and historical contexts of the different racialized groups.

> The "visible minorities" category of Canadians is comprised of highly heterogeneous groups with quite distinct migration and social histories; "visible minorities" include both the Canadian-born and immigrants, and are comprised of both single- and multiple-origin people. The category "visible minority" includes such diverse groups as Caribbean Blacks who arrived in the 1970s, the descendants of 19th century Japanese migrants, and mixed origin people whose ancestry lies partly in Chinese migrations of the late 19th and 20th centuries. (Pendakur, 2005, p.1)

Some groups of racialized Canadians have long histories in Canada. Among these various groups, inter-racial unions have resulted in a multi-racial population, different from parents and grandparents. Prior to 1981 the Canadian racialized population was 300, 000 but this population continues to increase and in 2008, Statistics Canada reported that "visible minorities" in Toronto's four largest metropolitan areas were as follows: Brampton -- 57.0%, Markham -- 65.3%, Mississauga -- 49.0% and Toronto -- 46.9%. It is projected that by 2017, "visible minorities" will account for 1 in 5 of the Canadian population as a result of immigration and birth. All Canadian stakeholders must determine how best to integrate racialized people into the social fabric of society. Placing labels on individuals is not the appropriate response to the changing diversity of the Canadian demographic

Three further problems are evident with the term "visible minority." First, people who identify as mixed-race with one parent of European ancestry tend to have labour market success similar to that of Europeans. These individuals have a different level of access to the labour market than some groups of racialized people, so they too have some social agency and power in an institutional context. However, the opposite is true for racialized people whose mixed-raced ancestries are from multiple racialized groups and particularly groups who are socially and politically disadvantaged (Pendakur, 2005). Second, not all racialized people experience labour market discrimination to the same extent. From the adjudicators' reports, labour market success is also based on stigmatization and stereotyping about different racialized population competencies and abilities to adapt to Euro-Canadian norms and values in the workplace. Individuals within some groups are, therefore, thought to be inferior and innately inept while others do not carry this stigma. Again, this institutional discourse is expressed through linguistic practices in which power brokers offer negative descriptions of those who are othered. The power relations within a social context lie in the "minoritized" aspect of the group which defines people with European ancestry less of a "minority" than those with multiple racialized origins In sum, the term "visible minority" has little relevance or validity in attempting to describe an increasingly large racialized population who are neither small nor minor in relation the general Canadian population.

Recommendations

1. The term "visible minority" must be changed to one that more readily reflects the differences in experiences, the growing number of people categorized in this way and their histories in Canada. The definition should consider the historical and contemporary ancestry of the individual in relation to social status. That is, the ethnicity (ies) and race (s) of the individuals need to be accounted for in the definition and should also explicitly include mixed-race identities.
2. Targeted programs and policies need to be implemented for racialized groups who are historically more disadvantaged than others. The one dimensional approach that tries to capture employment discrimination and propose a solution for all racialized groups as a single entity is not feasible. We, therefore, need to provide research data to substantiate the implementation of specific and more focused programs for some groups of racialized people.
3. The designated category must show a clear separation between racialized women and men. The identification and singling out of gender relations is important; racialized women and men have different experiences and are disadvantaged in different ways based on history of colonization, as well as political and social categorizations. These differences must be taken into account with any program or policy change.

4. Further research is required to determine a new vision and categorization of the designated group visible minority.

Racist Discourses in the Human Rights Tribunal Adjudication Process

Two prominent myths that continue to be perpetuated in Canada concern the idea that racism is no longer present in Canada and that all persons regardless of race or gender, for example, have equal opportunity to excel politically and in the labour market. The data in this research have provided a contradictory position, one that requires additional attention in relation to the Tribunal adjudication hearing process.

Adjudicators presiding over Tribunal hearings cannot assume neutrality given the level of documented racist discourse in Canada. Tribunal reports, government statistics and scholarly publications clearly demonstrate the existence of racism as a significant factor in the Canadian landscape. These data and statistics cannot be ignored nor can they be isolated from the FPS, the EEA and the Tribunal. The decision-makers in federal and corporate workplaces are similar to those holding adjudicator positions in the Tribunal. Therefore, the Tribunal case decisions and resolutions will remain locked in the same dysfunctional process until Canadians bring about changes through research, critique and recommendations.

The adjudication process of the Canadian Human Rights Tribunal adheres to institutional discourses and institutional practices that help to reproduce racial discrimination. One of the most insidious of these mechanisms is "victim" blaming, where

the complainant is assigned blame for their experience in the workplace or failing to take action to stop racist behaviours. According to the CHRA, the employer cannot be held liable for racist or offensive behaviour if they are unaware that the problem exists. Claiming ignorance in a court of law cannot be used an excuse; however, the claim of ignorance is used to justify the failure to address discrimination in the workplace, which, in turn, solidifies decision makers' complicity with racist practices. Complainants are expected to take action by complaining formally or informally, confronting the perpetrator and explaining that the behaviour is unwanted and unwelcome. In cases where complainants did not actively and aggressively inform management and the perpetrator of the racist behaviour, they were blamed for failing to engage organizational policy to protect themselves. If complainants initiated an informal complaint process and did not follow up with further complaints or a formal process, adjudicators assessed their actions as a failure to take responsibility for addressing the discriminatory behaviour. Of more concern is the lack of support to help the complainants cope while the cases are being investigated and after the cases have been heard, whether the individual complaint was substantiated or not. No consideration is given for possible repercussions that the complainant might experience once a complaint is filed, and how this might deter them from initiating or pursuing a complaint.

According to Freeman (1995), this legal posturing legitimizes discrimination through the use of antidiscrimination laws (e.g. the CHRA) and offers solutions that act to hide the effects of racism by taking the perspective of the perpetrator and silencing the

victim. Freeman (1995) describes two prominent aspects in the Tribunal hearings: "fault" and "causation." In terms of Freeman's definition of fault, the adjudicators identified complainants' behaviours that they believed violated social norms and which were blameworthy (e.g. Ms. Baptiste "talking down" to inmates) and used that perspective to enable them to rule against the complainant, regardless of the evidence that suggested the contrary. This position also displaces blame so that no one person within the organization is accountable or takes responsibility for the violation of racialized people. The process of normalizing racism and dismissing it as part of an unfortunate past allows the respondents to behave in racially discriminatory ways but maintain that these actions are historical and present day individuals cannot be held responsible for past doings.

Racial harassment is extremely difficult to prove by the Tribunal's standards, even in situations where the evidence seems overwhelming. The Tribunal takes a decidedly narrow and inflexible view of racial harassment, and this leads to a low probability that a ruling will be in support of the complainants. The adjudicators use judicial processes to offer respondents the opportunity to explain why the (seemingly) racist behaviour was necessary. The respondents (perpetrators) then receive an opportunity to defend their behaviour and, therefore, shift the focus from institutional practices to personal behaviour. The Tribunal, like all other legal jurisdictions, takes the respondent's side by asking the complainant to prove the case. There is no recognition or acknowledgement of the pervasiveness of racism in Canada and that it permeates systems and structures such as the Tribunal.

Legitimizing discursive elements provide the foundation allowing defunct criteria to define racial harassment. To be defined as racial harassment, the act has to be persistent and has to occur over time. According to one adjudicator, five or six times over a short period do not constitute harassment (Morin Case). Furthermore, in the adjudication process, harassment is based on what a "reasonable person" would consider racist. The reasonable person is assumed to be a White person and someone who exists outside the experience of racial subjugation, perceived inferiority and the daily grind of living with racism. Racialized people are more likely to perceive racism than non-racialized people or interpret behaviours or practices as racist. Similarly, the two groups differ in their perception of the existence of racism. So the perception of what a reasonable person from each population considers racist behaviour is also likely to be different.

Mechanisms of power facilitate the process by which large numbers of complaints filed by "visible minorities" are dismissed regularly because evidence is deemed as inadmissible. The adjudicators use institutional practice to exclude information that would help to substantiate harassment because the acts are not done consistently and over a long enough period of time. By way of analogy, if a child was beaten six times by a parent over a six week period would that be consistent and long enough to be considered child abuse? Or how many times must a woman be raped before the act is seen as a criminal offence? Similar to the examples of child abuse and sexual assault, racism is violent and must be understood as such. Once racially derogatory and stereotypical terms are used in reference to racialized people, the situation needs to be assessed through a lens that considers racism

as the motivation behind the behaviour. There should not be a consideration of whether the individual wilfully, directly or indirectly behaved in a racist way. The decision should only consider the impact of the action or behaviour under consideration. The question should be whether racist practices and discourse are at play.

In one of the cases analyzed in depth, the adjudicator agreed that the complainant worked in a poisoned environment but suggested that her experiences had nothing to do with the colour of her skin or her race and further noted that the case could not be substantiated given the focus of the complaint - that of racial harassment and discrimination - rather than poisoned work environment. These rulings are made possible given the lens through which the cases are heard.

Tribunal's Distorted Lens and Evidentiary Emphasis

The adjudicators review and hear racial discrimination cases through a distorted lens – one that fails to acknowledge the systemic nature of racism, which includes institutional discourse and institutional practice. Of note are the treatment of evidence, testimony and the use of case law that ensures negative views of complainants and their experiences. As an institutional practice, the Tribunal uses the rule of law to guide its acceptance or rejection of evidence and the testimony of professional and lay witnesses to make its decisions. These mechanisms of power allow the adjudicators to claim neutrality, revictimize the complainants, and enable a lack of accountability in the workplace. For example, Dr. Henry's report and evidence was discarded based on the claim that she had no

jurisdiction over the Tribunal and that she should present less biased evidence with more scientific rigor. The complete lack of understanding of the idea of everyday racism and a resistance to embrace dialogue in the adjudication process is clear in the transcripts. In each of the two cases in which Dr. Henry gave evidence of how systemic racism operates, both adjudicators dismissed the evidence she presented for the same reason: lack of scientific data. In one instance, the adjudicator admonished Dr. Henry for contaminating the hearing process by submitting mere opinion and putting others on the defensive with the proposal that White society is inherently racist. One adjudicator argued that Dr. Henry's evidence implying that the hiring process in a particular case was inherently racist was a "collateral" argument that had nothing to do with the case being heard. Adjudicators are not aware of the deep seated effects of racism and have little understanding of the associated trauma (Delgado, 1995); their interpretation of the cases is related to their lived experience and perspectives. Razack (1998) makes a similar argument that:

> legal rules and conventions suppress the stories of outside groups. The fiction of objectivity, for example, obscures that the key players in the legal system have tended to share a conceptual scheme. Thus, judges who do not see the harm of rape or of racist speech are considered to be simply interpreting what is before them. They are not seen to have norms and values that derive from their social location and that are sustained by such practices as considering individual outside of their social contexts. (p.38)

Lived experience is connected to social location; the significance of the judges' social location is demonstrated in the quasi judicial process at the tribunal continuously with the interpretation of information and the suggestion of neutrality. Concurring with Razack's arguments, Kobayashi (1998) argues that the way in which the law is administered ensures complicity in maintaining the status quo. The way in which adjudicators interpret cases support the notion of neutrality; but Kobayashi (1998) also suggests the notion of impartiality is deeply embedded in the judicial system. She further notes that: "the *protection* of judicial impartiality and independence may be a significant impediment in itself because it tends to normalize a standard of impartiality based on the history or racialization" (p.8). Kobayashi argues that the Honourable Judge Corrine Sparks, an African Canadian woman, brought her lived experience and social location into the judicial process to interpret and influence the outcome of a case where a young African Canadian man was charged with obstruction of justice. Adjudicators at the Tribunal must have social location and experience different from those currently held by the majority of those in power at the Tribunal. As long as the Tribunal uses an evidence-based lens and old case law based on an Euro Canadian perspective to define what constitutes acceptable evidence, a reasonable person, racism and harassment, it remains highly unlikely that the outcome of race-based complaints cases will be significantly different.

In all the cases analyzed in this study the evidentiary process was key to their success. In cases where little or no corroborating evidence existed, the adjudicator was unable to operate outside the judiciary box. Specifically, documentation in either electronic

or printed format was a significant factor. The complainants who did not construct a paper trail or one who did not have guaranteed verbal evidence were unable to provide sufficient evidence to help sustain their cases. The nature and pervasiveness of racism was not considered; therefore, when complainants' submitted evidence based on feelings, name calling, micromanagement, being denied employment or promotional opportunities, and differential treatment, it was extremely difficult for them to prove racial harassment and discrimination. After a prima facie case was established, the burden of proof was shifted to the respondents. Respondents either refused to offer any evidence in their defense or presented well crafted explanations that defamed the complainants' characters. The respondents offered one sided documentation (references, letters or memorandums written to others but having no response from the complainants) and verbal evidence from complainants' supervisors and colleagues (many of whom they still worked with) suggesting that the complainants were uncooperative, non-team players, incompetent, rude to others, not destined for such positions, lacking experience, uncommitted to self-improvement, and unmotivated. The subjugation and inferiorization of "visible minorities" in the adjudication process was evident with blame, normalization of racism and offering negative descriptions of them. Explanations that justified the use of racially derogatory words, racial epithets, racial stereotypes, lack of promotion and hiring, inconsistent performance appraisals and peer isolation were framed either through personal frustration with the complainants' behaviour or lack of organizational fit. For example, when an individual used racially derogatory words in reference to a complainant, the adjudicator noted that the individual was frustrated with the complainant's behaviour, therefore

suggesting that the complainants had instigated the attack based on her attitude in the workplace. This argument results from the mechanisms that reproduce racism – normalizing racism and failing to recognize as an everyday practice. At other times, the respondent noted that the complainants had conflicting personalities and character traits that manifested in their work habits and relationships with colleagues and the public. In the majority of cases where these explanations were offered, the adjudicator used central power to interpret the evidence in a way that supported the case presented by the respondents. When the claim of racism was not blatantly or readily obvious and when, in the adjudicator's mind, the respondent offered a strong case to justify why the differential treatment against the complainants occurred, the respondents usually received favourable rulings, another manifestation of how racism is reproduced institutionally by normalization.

In 2007, the Tribunal recognized the pervasiveness of systemic racism in the FPS in National Capital Alliance v Health Canada. The Tribunal ruled that Dr. Chopra, a scientist in the department, had been passed over for promotion for 30 years because of systemic racism and that "visible minorities" were over represented and bottlenecked in the feeder group. Furthermore, evidence showed that "visible minorities" were disproportionately treated negatively and systemically excluded from management resulting in poor representation in management positions in the agency (1 out of 118 in 1992). Dr. Chopra began his fight to challenge racial discrimination in 1992 at which time the Tribunal ruled against his case by fully dismissing his complaint. Dr. Chopra relaunched his battle with the help of the National Capital Alliance on Race Relations, an organization whose

mandate is to challenge racism and discrimination through political and legal actions. The Financial Administration Act and the Public Service Employment Act were used to challenge the government's racist employment practices. Fifteen years later, the PSC and the Treasury Board agreed through conciliation to implement an EE plan, including short and long-term measures to aggressively reduce systemic employment discrimination in the FPS. One mechanism proposed was a hiring quota that was to place "visible minorities" in management positions over a period of five years. At the end of the five years, "visible minorities" in management would have an 80% proportional representation. Fifteen years is a long time for the federal government to deny and discredit an individual who was attempting to force the government to adhere to its own employment policies. The structure of the hearings, the adjudicators' lack of professional or personal experiences with racism and lack of understanding of the pervasiveness of systemic racism contributed to this lengthy process and likely influenced the dismissal of other complaint cases. There is some hope, however, that adjudicators and the government can learn from rulings that highlight systemic racism, a lesson which will facilitate the alteration of policy.

In a year where the FPS recruitment increased and where all other designated groups met or exceeded their workforce availability in the FPS, "visible minorities" were once again excluded (Canada Public Service Agency, 2008). The data and statistics cannot be ignored nor can they be isolated from the FPS, the EEA and the Tribunal. The decision-makers in federal and corporate workplaces are similar to those holding adjudicator positions in the Tribunal. Therefore, the Tribunal case decision and resolution

will remain locked in the same dysfunctional process until Canadians bring about changes through research, critique and recommendations.

Recommendations

1. Adjudicators should be recommended to the Tribunal jointly by community stakeholders and racialized communities and then appointed by the government. This process would help to ensure a large pool of qualified adjudicators who are approved both by the community and by the government. Moreover, this process would help to reduce the stronghold of government bureaucrats and people in the legal profession.
2. All adjudicators must undergo extensive anti-racist training designed by a non-partisan, independent committee before being authorized to hear any race-based complainant cases. After the initial education, annual training must be undertaken to continue with the development of additional knowledge and skill. This training will help adjudicators to expand their knowledge and understanding of racism and its operation and implementation in society. Both racialized and non-racialized adjudicators must be required to complete the training. It cannot be assumed that all racialized people have a strong understanding of the insidiousness of racist practices and discourse.
3. Each adjudication hearing dealing with issues of race-based discrimination requires at least two adjudicators; at least one must be from a racialized community. Similar to a court of law where, in theory, the case is heard by a jury of the defendants'

peers, so too should the Tribunal's adjudicators be members of the complainants' peers. This would create a better balance in the hearing process and adjudicators would be accountable to each other for their decisions.

4. The total number of Tribunal adjudicators available to hear race-based complaint cases needs to reflect proportional representation of racialized groups. This would offer more choices to enable fair representation for race-based complaints.
5. The understanding of racist practices and racial harassment must be transparent and broad in scope. Therefore, the CHRA needs to provide appropriate and relevant guidelines, accounting for the pervasiveness of racism in order to help adjudicators identify racist practices and discourses in complaint cases. When complainants demonstrate, using eye witness account and documentation, that a racist act has been committed against them, the adjudicators need to have specific guidelines to help them determine if racism was at play (directly or indirectly). This would eliminate the problem of inexperienced adjudicators determining the validity of the complaint based on their personal perspective, which may include a limited view and exhibit a lack of direct experience with everyday and institutional racism. The mechanisms to help determine and reduce systemic racism are adequately presented in the federal document Employment Systems Review and are readily available to adjudicators and government agencies alike.
6. The Tribunal process requires evaluation. Each adjudicator needs to be reviewed by a committee at least once during her or his term. This evaluation could mirror a performance review with specific goals to be accomplished and would focus on

published reports of the adjudicators, including both the cases that were sustained and ones that were not. This review process will help to make adjudicators more accountable to the quasi judicial process and the complainants.

7. A random selection of Tribunal cases that have been resolved also needs to be evaluated once every five years. The evaluation process and structure need to be predetermined to meet the goals and objectives that are focused on examining how adjudicators' actions are determined by the rule of law, institutional norms and values, evidentiary practices, and structural restrictions. This evaluation would begin to help uncover some of the practices that are contradictory to a fair hearing process in race-based complaint cases.
8. The adjudicators need to review the results of the Audited Employment Systems Review of the agency from which the complaint originated in order to help determine the existence of systemic racism. As well, the agency's record of compliance with the EEA and EEP needs to be taken into consideration when making a ruling.
9. The Tribunal needs to undergo an annual review process similar to other agencies in the FPS. This review should include a test for proportional representation of racialized people, a review of recent appointments of adjudicators' including their background and identification of attempts to reduce systemic racial discrimination.
10. There is a need for future research to determine how the Tribunal determines whether to accept or reject expert witnesses in the case of systemic racism in addition to how evidence in general is accepted. In cases where the expert witness

is accepted but the evidence presented is unequivocally rejected and vice versa, there needs to be a clear understanding of the specific rationale for the acceptance or rejection of evidence and/or expert witness. The rationale needs to adhere to a combination of case law and Employment Review Systems guidelines, which was previously developed as a tool to aid the Tribunal in accepting evidence and selecting expert witnesses.

Conclusion

This research explores and documents the paradox of employment discrimination in federally regulated and federal agencies. Specifically, it investigates the mechanisms that aid in the reproduction of racism institutionally. Mechanisms of power associated with institutional practices of the legal system and legitimizing discursive elements that maintain a liberal, individualized understanding of racism were identified as the processes by which discrimination is perpetuated. Examples of racist legal practices include the evidentiary requirements and the criteria used to assess whether the testimony of witnesses should be excluded. Legitimizing discourses included claiming neutrality and objectivity, affirming organizational norms and values, accepting negative characterizations of the complainants, constructing a guilty complainant and normalizing racism.

The findings indicate that some groups of "visible minorities" require additional and/or different employment equity policy directives to help reduce their employment marginalization. When racialized employees' rights are compromised in an equity-based

environment and they challenge the discrimination through the CHRC and subsequently the CHRT, they often have discouraging experiences. Specifically, the Tribunal's adjudication of each complaint claims a neutral stance in its application of the rule of law. This position lacks vision and is insufficient to significantly alter discrimination policy and practice in the employment setting and, further, this claim of neutrality clearly upholds the status quo. The Tribunal's process, presentation, language and text (they way things are verbalized, written, interpreted and understood) must be recognized as systemic barriers that exclude those who are othered. I concur with Bell (1980), Crenshaw (1995) and Razack (1998), who also concluded that racialized groups are at a disadvantage in these hearings, that the foundation and architects of those legal texts are Eurocentric and male dominated.

Appendices

Appendix A – Defining Visible Minorities in Census Data

*Visible Minority Groups (15) / Visible minority, n.i.e.
Includes respondents who reported a write-in response classified as a visible minority such as 'Polynesian', 'Guyanese', 'Mauritian', etc.

**Visible Minority Groups (15) / Multiple visible minorities
Includes respondents who reported more than one visible minority group by checking two or more mark-in circles, e.g. 'Black' and 'South Asian'.

***Visible Minority Groups (15) / All others
Includes respondents who reported 'Yes' to Question 18 (Aboriginal self-reporting) as well as respondents who were not considered to be members of a visible minority group.

Appendix B – Coding Complainants and Case Demographics

Specific Allegations, Remedy, Employment

Type of Employ-ment	Employment Status	Specific Allegation	Ruling/Resolution	Type of Remedy
Full-time	Employed	Differential treatment	Fully dismissed	Letter of apology
Part-time	Unemployed	Denial of promotion	Major claims dismissed	Job reinstatement
Contract		Refusal to hire	Fully sustained	Promotion
Trainee		Unfair hiring, promotional lack of	Major claims sustained	Training/support
Unemployed		contract extension		Money
		Unfair performance appraisal/evaluation		Reference
		Unfair access to training		Sensitivity training
		Unfair work distribution		Reimbursement
		Harassment		Compensation for lost benefits
		Different or no pay for overtime		Awaiting comments from
		No access to computer		
		Coached to leave		

Place of Birth and Education

Case No & Complainant	Birth Place	Sex	Grounds of discrimination	Place Educated	Education Level
1	Zimbabwe	F	Race, Colour	UK	Bsc
2	Zaire	M	Race, Colour, Ethnicity	Continental Africa	Undisclosed
3	Haiti	M	Race ,Colour	Undisclosed closed	College Diploma
4	Haiti	F	Race, Colour, Ethnicity	US	BA market
5	Trinidad and Tobago	M	Race, Colour	Canada	1st C Engineer
6	Trinidad	F	Ethnicity, Sex	UK	Undisclosed
7	Democratic Republic of Congo	M	Race Ethnicity Family Status	Belgium and Canada	Certificate BA
8	India	M	Race, Colour, Religion	India, Canada	BA
9	Undisclosed	F	Race, Ethnicity Disability	Undisclosed	Undisclosed
10	UNK	F	Race, Colour	UK	Bsc
11	Undisclosed	M	Race, Colour	US, Canada	Undisclosed

Case No & Complainant	Birth Place	Sex	Grounds of discrimination	Place Educated	Education Level
12	India	M	Race, Colour, Ethnicity	India and Canada	Bsc Vet, M.Sc, Phd
13	Pakistan	M	Race, Colour, Ethnicity	India, West Germany, Canada	Bsc, Msc, two PhD's
14	Undisclosed	M	Race	Undisclosed	Undisclosed
15	India	M	Race, Colour, Ethnicity	India and Canada	BSC Vet Science, M.Sc, Phd
16	Sri Lanka	M	Race, Colour, Ethnicity, Religion	Sri Lanka	Aviation training and Exp

Employment and Legal Representation

Case No	Years of Employment and type	Job Title	Complainant Representation	Respondent Representation	EE ACT cited
1	3 years Part-time	Nurse Part-time Contract	1 Lawyer	2 Lawyer Corrections Canada	No
2	6 months Contract	Info Services Agent – Call Center	1 Lawyer Commission	2 Lawyer HRDC	No
3	14 months Trainee	Police Trainee	1 Lawyer	1 Lawyer RCMP	Yes
4	4 years Contract	TV broadcaster CBC	1 Lawyer Agency	Dismissed No none	Yes
5	17 years Full time	Engineer on ferry	1 Lawyer	1 Lawyer Bay ferries	Yes
6	9 years Full-time	Data Entry and parcel sorter	1 Lawyer Commission	Self	No
7	N/A	Language Specialist	Self	1 lawyer Farm credit	Yes
8	26 years Full-time	Draftsman	2 Lawyer Commission	2 Lawyer National Health & Welfare Canada	No
9	4 years Full-time	Call centre agent	Self	1 lawyer Royal Bank, TD Canada Trust	No

Case No	Years of Employment and type	Job Title	Complainant Representation	Respondent Representation	EE ACT cited
10	10 years Full-time	Nurse prison	1 Lawyer Commission	1 lawyer Correctional Service Canada	No
11	10 years Full-time	Airline mechanic	1 Lawyer Commission	2 Lawyer Air Canada	No
12	6 years	Biologist	1 Lawyer Commission	1 Lawyer Department of National Health and Welfare	No
13	10 years	Biologist level 2	1 Lawyer Commission	1 Lawyer Department of National Health and Welfare	No
14	8 years Contract	Ship Steward	2 Lawyer	2 Lawyer Department of Fisheries and Oceans	Yes
15	7 years Full time	Scientist/ doctor	1 Lawyer Commission	1 Lawyer Department of National Health and Welfare	Yes
16	N/A	Station Attendant	1 Lawyer Commission	1 Lawyer Air Canada	Yes

Case Ruling

Case No & Complainant	Ruling/Resolution and Total Days to Resolved	EE Act Cited
1	Major claimed sustained 27 days of hearing	No
2	Fully Dismissed 5 days of hearing	No
3	Fully Dismissed 51 days of hearing	Yes
4	Major claim dismissed, minor claim sustained, letter of apology, sensitivity training, money for pain and suffering 3 days of hearing	Yes
5	Fully Dismissed 6 days of hearing	Yes
6	Fully Dismissed 5 days of hearing	No
7	Fully Dismissed 6 days of hearing	Yes
8	Fully Dismissed 25 days of hearing	No
9	Fully Dismissed Days of hearing	No
10	Fully Dismissed 17 days of hearing	No
11	Fully Dismissed 7 days of hearing	No

Case No & Complainant	Ruling/Resolution and Total Days to Resolved	EE Act Cited
12	Fully sustained - money for pain and suffering, lost wages, immediate job reinstatement, 7 days of hearing	No
13	Fully sustained - money for pain and suffering, lost wages, immediate job reinstatement, 7 days of hearing	No
14	Dismissed major claim – win minor – pain and suffering, awaiting suggestion for remedy 20 days of hearing	Yes
15	Fully Dismissed 23 day of hearing	Yes
16	Major claims sustained - money for pain and suffering, lost wages, reinstatement, apology. 6 days of hearing	Yes

Appendix C – Description of Complainants

Table 7.1 - Distribution of Cases by Place of Birth, 1995-2005

Place of Birth	No. of Cases	%
Zimbabwe	1	.06
Haiti	2	.13
Trinidad and Tobago	2	.13
Democratic Republic of Congo	1	.06
India	4	.25
Pakistan	1	.06
Sri Lanka	1	.06
Zaire	1	.06
undisclosed	4	.25
Total	16	100

Table 7.2 Distribution of Cases Job Title, Type of Employment, Employment Period, Education Level and Place Educated

Job Title	Time Employed	Full Time Part-Time Contract	Education Level, Specialized Training	Place Educated	Employment Status at time of complaint filed
Nurse (1)	3 years	Part-time	BSC	UK	**Laid off**
Nurse (2)	10 years	Full-time	BSC	Undisclosed	**Employed**
Information Service Agent (call centre)	6 months	Contract	Undisclosed	Continental Africa *	**Laid off**
Police Officer Trainee	N/A	Trainee	Diploma	Undisclosed	**Terminated**
Television broadcaster	4 years	Contract	BA	USA	**Laid off**

First Engineer	17 years	Full-time**	Specialized Training	Canada	**Employed**
Data Entry and Parcel sorting	9 years	Full-time	Undisclosed	Undisclosed	**Employed**
Language Specialist	Not hired	N/A	BA, 3 Certificates	Belgium, Algeria, Canada	**Searching**
Draftsman (aircraft Technician)	26	Full-time	BA, Training	Undisclosed	**Left work**
Call Centre Agent	4 years	Full-time	Undisclosed	Undisclosed	**Unemployed**
Airline Mechanic	10 years	Full-time	Specialized training	USA, Canada	**Employed**
Biologist (1)	6 years	Contract	PhD	India, Canada	**Laid off**
Biologist (2)	10	Contract	2 PhD	India, Canada, Germany	**Laid off**
Ship					

Steward	8 years	Contract	Undisclosed	Unknown	**Laid off**
Scientist	21 years	Full-time	PhD.	India, Canada	**Employed**
Airline Station Attendant	N/A	N/A	BA, Special Training	Sri Lanka, Canada	**Employed**

Appendix D – Description of Cases

Table 7.3 - Distribution of Cases by Grounds for Complaint

Grounds for Discrimination	Total Period 2001-2005	
	No. of Cases	%
Race	1	6
Race, Colour	5	31
Race, colour, Ethnicity	5	31
Race, Ethnicity, disability	1	6
Race, Colour, Ethnicity, Religion	1	6
Race, Colour, Religion	1	6
Race, Colour, Ethnicity, Sex	1	6
Ethnicity, Sex	1	6
Race, Ethnicity, Family Status	1	6
Total	16	100

Table 7.4 - Distribution of Cases by Type of Agency

Type of Agency – Government or Private	Total Period 1995-2005	
	No. of Cases	%
Government		
Corrections Canada	2	13
Human Resources Development Canada	1	6
Canadian Broadcasting Corporation	1	6
Department of Fisheries and Oceans	1	6
National Health and Welfare Canada	3	2
Royal Canadian Mounted Police	1	6
Total	9	56
Private		
Royal Bank of Canada	1	6
Bay Ferries	1	6
Air Canada	2	3
Canadian Airlines	1	6
Individual (Canada Post)	1	6
Farm Credit	1	6
Total	7	44

Table 7.5 - Distribution of Cases by Allegations of Discrimination

Allegation of Discrimination	Total Period 1999 - 2005	
	No. of cases	%
Differential Treatment	10	63
Denial of Promotion	8	50
Refusal to Hire or Rehire	3	19
Unfair Process for Hiring, Promotion or Contract Extension	12	75
Refusal to Extend Contract, Fired	6	38
Unfair Performance Appraisal/Evaluation	7	44
Unfair Access to Training Opportunities	4	25
Unfair Distribution of Work Type, Work Area, Shifts, etc.	6	38
Harassment (racial epithets, derogatory terms, name-calling, graffiti, stereotyping, over monitored, etc	16	100
Other:		

-different or no pay for overtime -no access to computer or internal message system -coached to leave the job	3	19
Total	75	

Table 7.6 - Distribution of Cases by Sex of Respondent and Complainant

Sex of Respondents and Complainant	No. of cases	%
Respondents	7	44
Males	1	6
Females	8	50
Males and Females		
Total	16	100
Complainants		
Females	5	31
Males	11	69
Total	16	100

Table 7.7 - Distribution of Cases by Duration of Hearing

Duration of Hearing	No. of cases	%
1-5 days	3	19
6-10 days	7	44
11-21 days	2	13
Over 21 days	4	19
Total	16	100

Table 7.8 - Distribution of Cases by Remedy Awarded

Remedy Awarded	No. of cases	%
Letter of Apology	2	13
Job Reinstatement	2	13
Promotion	1	06
Training and Support to Help with Readjustment to Work	1	06
Money for Pain and Suffering	5	31
Money for Lost Wages	4	25
Interest Paid on Lost Wages and Additional Money to Cover Income Tax Liability	4	25
Reference Letter	1	06
Verbal References Scripted	1	06
Organizational or individual Sensitivity Training	2	06
Reimbursement for Legal Expenses	2	13
Reimbursement of Work Expenses	1	06
Compensation for Lost Benefits	1	06
Awaiting comments from Respondents	2	13

Table 7.9 - Distribution of Cases by Resolution

Resolution	No. of cases	%
Completely Dismissed	10	63
Majority (major) of claims Dismissed	2	13
Fully Sustained	2	13
Majority (major) of claims Sustained	2	13
Total	16	100

Table 7.10 – Adjudicator by Compliant Cases, Decision and Year

Adjudicator	Complaint Case	Decision	Year
Janet Ellis, Subhas Ramcharan, Keith C. Norton	Chander and Joshi v. Department of National Health and Welfare	All Claims Sustained Sustained Dissented	1995
Anne Mactavish	Baptiste v. Correctional Services Canada	All Claims Dismissed	2001
Anne Mactavish	Premakumar v. Canadian Airlines.	All major Claims Sustained	2002
Paul Groarke	Brooks v. Department of Fisheries and Oceans	Major claim Dismissed	2003
Athanasios D. Hadjis	Des Rosiers v. Barbe	Major Claim Dismissed	2003
Athanasios D. Hadjis	Morin v. Attorney General of Canada	Dismissed	2005

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