



# CENTREPIECE

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## International Human Rights and Violence Against Women

by Samantha Chrysanthou

*Samantha Chrysanthou is a young lawyer practicing family law in Calgary. She wrote this paper while studying law at the University of Calgary. She was a summer research assistant at ACLRC. Editor's Note: Due to its length, this article will be printed in two parts. Part two will be produced in Vol. 10 No. 3.*

### Feature Article

#### PART ONE

##### Introduction

In international law, states are responsible to their citizens for violations of human rights. The system of human rights law within the international framework is designed to meet the challenge of protecting such human rights as dignity, life and self-development. However, what and even who is valued under the rubric of 'human rights' is not universally equal as revealed when even the most rudimentary investigation of human rights law is initiated. Scratching at the glossy veneer reveals bias, inequality and omission. International law in general, including human rights law, is a patriarchal structure. Women's voices are silent or silenced. The absence of real and meaningful participation by women in the construction of the international system of norms and rules has resulted in the devaluation of women's experiences and concerns. It has also reinforced the subjugation of women within domestic law by not providing an alternate mechanism to enforce women's rights or, at the least, a guideline for states to follow in meeting their obligations to respect all citizens' rights.

For example, although domestic violence against women is universal, rampant and poorly controlled or even completely ignored, violence as an issue of torture has been largely ignored by the international community. Below, I examine the forces behind the lack of state attention to issues of violence against women within a domestic

setting using an international lens. The human rights approach to enforcing state responsibility will be critiqued and possible solutions to further the goal of incorporating women's voices will be discussed.

##### Domestic Violence

When she was 15, Ms G's parents traded her to a neighbour as a wife, in exchange for his assistance in paying off the mortgage on their farm. Her husband routinely raped and beat her, resulting in injuries which required hospitalization. Ms G went to the police twice for protection, but was told they could do nothing because the problem was personal. When she was 20, she ran away with her two children, but her parents and husband found her, and her mother held her down while her husband beat her with a stick. He took the children, whom she has not seen since. Ms G fled to the USA and applied for asylum. An immigration judge told Ms G's attorney in 2000 that he intended to order her to be deported back to El Salvador. (Broken Bodies, Shattered Minds: Torture and Ill-Treatment of Women" (8 March 2001) Amnesty International Report" AI Index: ACT40/001/2001, online: Amnesty International" <[www.amnesty-usa.org/stoptorture/women/](http://www.amnesty-usa.org/stoptorture/women/)> (date accessed: 3 December 2001) [hereinafter "Broken Bodies"].

Violence against women by intimate partners is a reality consistent across cultures, race and state borders. The fact that a great deal of the violence occurs behind closed doors in a private dwelling makes the violence easier for society to ignore. As well, the argument that the state should not intervene in relationships between private individuals has been used to justify lack of state recognition of a problem.

Terminology reflects the patriarchy inherent in the attitudes of society. Before 1970, there was no name for violence against women by intimate partners (Canada, The National Clearinghouse on Family Violence, Health Canada, *Two Steps Forward... One Step Back: An Overview of Canadian Initiatives and Resources to End Woman Abuse 1989-1997* (Ottawa: Minister of Public Works and Government Services Canada, 1999) at 6 (Prepared by D. Denham and J. Gillespie). Violence against women has been termed wife beating, wife battering, woman abuse, family

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## Staff and Volunteers

We have been busy these past few months. We had two excellent summer law students, **Shaun Ramdin** and **Deb Johnson**. We are continuing to work on our joint CLERC family law for youth project and our joint project with the Canadian Institute of Resources Law on human rights and resource development.

We are fortunate to be working with excellent volunteers for the last few months—including **Susan Blackman, Vanessa Griffith, Tam Nguyen, Shamshur Kothari, Mona Motamedi, Cynthia Kwong, Cecilia Wong, Salma Hussain, Sine MacDonald, Linnaea Spence, Alana Thibault, Tara Wells, Christine Plante, Tekisha Rayne, Augustine Lucano** and others. We have two masters of education students with us for a few weeks: **Martha Graham** and **Stacey Stewart**. A new semester recently started and we have had many inquiries, so I am sure there will be even more volunteers to thank next newsletter! Thanks!!

Linda McKay-Panos

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### Nominations Wanted for ACLRC's Civil Liberties Award Deadline November 19!

Do you know an Albertan who has demonstrated outstanding leadership in promoting civil liberties and human rights through legal research, education or advocacy?

Please provide us with a letter, email or fax in which you provide details about why your chosen person should receive our Civil Liberties Award. The letter must be received by November 19, 2004. The award will be given at a special ceremony on December 1st at the University of Calgary.

#### Centrepiece

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### ACLRC's Hopes and Dreams Video Wins Award

Congratulations to all involved in making *Hopes and Dreams: Stories from Young Refugees* for winning an AMTEC Award of Merit in the post secondary category on May 27, 2004

The Alberta Civil Liberties Research Centre appreciates the contributions of volunteers and donors, and the support of agencies that provide grants to the Centre, including:

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violence and domestic violence. The shifting terms reveal the incorporation of varying perspectives and voices although sometimes more gender-neutral language is preferred in an attempt to be 'inclusive' (Denham and Gillespie). While there is an advantage to not isolating some groups from the debate by not imputing guilt where it does not belong, the compromise that results is that the true issue, that men are overwhelmingly the abusers, becomes obscured and minimized. The term "violence against women" will be used in this paper. It has been defined by Health Canada as:

The misuse of power by a husband, ex-husband, intimate partner or ex-partner (male or female) against a woman, resulting in a loss of dignity, control and safety, as well as a feeling of powerlessness and entrapment experienced by the woman who is the direct victim of ongoing or repeated physical, psychological, economic, sexual, verbal, and/or spiritual abuse. (Denham and Gillespie).

This definition is fairly comprehensive in that it recognizes that violence against women is far more than just physical abuse. The definition also goes on to include forcing women to witness violence against their children, relatives, pets or cherished possessions as violence within the definition. The definition also states that violence against women is closely linked to the social, economic, political structures, social values and policies that create and then perpetuate inequality against women (Denham and Gillespie).

Violence against women occurs in Canada and across the world. A series of studies of 24 countries on four continents revealed that 20 to 50 percent of women were abused by their partners at some point in their lives (C. Grossman, "Domestic Violence in International Law and the Inter-American System" in *Bringing International Human Rights Law Home: Judicial Colloquium on the Domestic Application of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child* (New York: UN, 2000) 50 at 50 [hereinafter "Domestic Violence in International Law"]). This violence is caused by traditional attitudes regarding the roles of men and women in society and is exacerbated by a lack of economic independence:

When women are...terrorized by violence in the home, unequal power relations be-

tween men and women are both manifested and enforced. Violence against women is compounded by discrimination on grounds of race, ethnicity, sexual orientation, social status, class and age. Such multiple discrimination further restricts women's choices, increases their vulnerability to violence and makes it even harder for them to gain redress (Broken Bodies).

Statistics Canada has reported that three in ten women currently or previously married or in a common law relationship in Canada have experienced at least one incident of physical or sexual violence at the hands of a marital partner (Canada, Canadian Centre for Justice Statistics, *Wife Assault: The Findings of a National Survey* (Ottawa: Statistics Canada; 1994). Some states create programs and women shelters in attempts to minimize the effects of the violence. These measures, while necessary, are short term and serve only as a band-aid over a much larger wound. In addition, the underlying causes and reasons generating violence are not addressed. A further complication is the lack of detailed and comprehensive statistical data concerning wife-murder, battery and rape and state response to these crimes. Without assurances of state protection, it is dangerous for women to report violence:

Abused women are reluctant to seek police help for a variety of reasons. According to the UK's British Crime Survey, most women only report domestic violence after repeated assaults and most abused women conceal their injuries for fear of further infuriating the abuser, out of shame or because they believe themselves somehow at fault. Canadian government statistics indicate that more than 75 per cent of women seriously assaulted by their husbands did not report the incident to police (Broken Bodies).

This in turn leaves a vacuum in the place where evidence to reveal the systemic nature of violence against women would exist. Inadequate documentation is partly caused by a lack of coordination between human rights groups and women's rights groups to organize around the issue and galvanize state action (D. Thomas and M. Beasley, "Domestic Violence as a Human Rights Issue" (1993) 15 Hum. Rts. Q. 1, online: LegalTrac.)

The effects of this abuse on women are profound. Verbal and psychological abuse is almost always concomitant with physical abuse. The result is to

deprive women of "the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms, such as the right to life, the right to physical integrity, and the right to health" as well as undermine their ability to participate in economic and political life (Domestic Violence in International Law at 51).

### **Violence, Rights and State Responsibility**

If violence against women is pervasive across countries, what has the international community done in response? To answer this question, it is valuable to understand the theoretical underpinnings of international law. The gendered lens through which we view international law colours our ability to critique these same structures; thus, it is necessary to be self-conscious of the fact that our world-view has been socially constructed and privileges the interests of those who have control.

International law is founded on the principle of state sovereignty. This means that a state is the autonomous actor in the international arena. Individuals have virtually no international personality and thus little direct influence. However, with the power to act in the international sphere also comes responsibilities. Human rights law has evolved as one mechanism to enforce state responsibilities to its citizens. But state responsibility only engages when the reason for the state's failure to take action to redress a wrong is demonstrated to be on discriminatory grounds prohibited in international law. States are not held responsible for isolated acts of violence between individuals (Thomas and Beasley). In order for violence against women to engage state responsibility, patterns of discrimination by the state must be exposed.

Human rights law in the international arena is also based on a certain world-view: Western political theory organizes society according to the concepts of individual autonomy and freedom. Human rights conceptualizes a method of insulating the individual

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actor from intrusive state powers. Thus, the state and the individual are dichotomized into opposing spheres, and the only ground where the two spheres meet is the public realm.

Some of the questions that need to be addressed when unpacking this framework are: What exactly are the assumptions made behind the current understanding of international law and human rights law in particular? How do these assumptions serve? Whose voice is not heard, and what is the impact of this silence? What steps should be taken to correct omission and exclusion?

### Implications of the Structure of International Human Rights Law

Human rights are typically divided into three categories or 'generations' (H. Charlesworth, "What Are 'Women's International Human Rights?'" in R. Cook, ed., *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press, 1994: USA) 58 [hereinafter *Human Rights of Women*]). The first generation is civil and political rights against which other rights may be compared in terms of importance. Using civil and political rights as the yardstick to measure other desirable rights is culturally elitist and unreflective of many women's experiences. The second generation of rights are economic, social and cultural rights, and group or peoples' rights are usually relegated to third place. Dividing human rights into generations causes controversy because it implies a hierarchy with political rights reigning at the top of the pyramid (Human Rights of Women). It is also essentialist because it prioritizes rights according to Western liberal theories of individual autonomy and freedom. And finally, the perspectives reflected in the hierarchy are male-centric around concerns with violations of male rights within the public sphere.

The fact that on its face human rights law looks gender-neutral reflects the power of international law in that the appearance of correctness is a powerful motivator in international law. In the absence of a universal police force, moral persuasion is one of the tools used to modify state behaviour. Morality is found in certain peremptory norms that guide states' behaviours. This idea of state obligation is found in the doctrine of *jus cogens*, which is codified in Article 53 of

the Vienna Convention:

[A] peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character (*Vienna Convention on the Law of Treaties*, (1969) 1155 U.N.T.S. 331 [hereinafter *Vienna Convention*]).

States have a strong obligation under international law to abide by the dictates of international peremptory norms.

Norms are codified in international treaties and documents. For example, one of the most important sources of international moral standards is the Universal Declaration of Human Rights which states that all rights enunciated within the document belong "to all human beings" regardless of sex (Universal Declaration of Human Rights, 10 December 1948, G.A. Res. 217A (III), U.N. Doc. A/810, at 71, online: <[www.un.org/Overview/rights.html](http://www.un.org/Overview/rights.html)> (date accessed: 3 December 2001) See the Preamble and article 2). Some of the norms found in the Declaration include the right to life, liberty and security of the person. Article 5 states that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment." Other important sources of norms are found in international covenants such as the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights, and the Convention Against Torture (19 December 1966, 999 U.N.T.S. 171; 16 December 1966, G.A. Res. 2200A (XXI), online: <[www.unhchr.ch/html/menu3/b/a\\_cesscr.htm](http://www.unhchr.ch/html/menu3/b/a_cesscr.htm)>; 10 December 1984, G.A. Res. 39/46, online: <[www.unhchr.ch/html/menu3/b/h\\_cat39.htm](http://www.unhchr.ch/html/menu3/b/h_cat39.htm)> (date accessed: 3 December 2001). For example, the ICCPR in article 7 requires states to ensure freedom from torture or ill-treatment, and the UN Human Rights Committee, the body that oversees the ICCPR, has stated:

it is the duty of the State Party to afford everyone protection through legislative and other measures as may be necessary against acts prohibited in Article 7 [torture and ill-treatment], whether inflicted by people acting in their official capacity, outside of their official capacity or [in a private capacity] ... (Broken Bodies).

For women, the Convention on the

Elimination of All Forms of Discrimination Against Women (CEDAW) (18 December 1979, G.A. Res. 34/180, online: <[www.unhchr.ch/html/menu3/b/1cedaw.htm](http://www.unhchr.ch/html/menu3/b/1cedaw.htm)> (date accessed: 3 December 2001)) specifically attempts to address women's inequalities. CEDAW has been described as the international bill of rights for women (Domestic Violence in International Law), and it is indeed of great importance to the protection of women's rights. CEDAW does not specifically address violence against women, but the Committee on the Elimination of Discrimination against Women has included gender-based violence as part of the definition of discrimination in article 1 (Domestic Violence in International Law, at 52). This means that a state can violate CEDAW whether violence is mentioned in a particular provision of the convention or not. This is a significant step because it recognizes that violence impairs all of a woman's rights.

CEDAW is also proactive in that states are required to take steps to eliminate discrimination within their borders. States are required to use due diligence to counteract violations of women's human rights by any person, organization, or enterprise (CEDAW article 2(e)). This clearly extends state responsibility beyond public acts of the state to incorporate violence that occurs against women in the private realm.

This survey of international human rights law suggests that women's voices have been considered in the creation of peremptory norms. It is obvious that some progress has been made since the beginnings of human rights law in that now some of women's concerns have been placed on the international agenda. However, the pragmatic question of what effects these changes have had must be asked: are women still precluded from *de facto* equality by the way these international norms are manifested within domestic law?

To some extent, these efforts are mere window-dressing. First, the whole idea current legal terminology and concepts such as 'rights' in order for the critique to be heard at all. A caveat to this is that care must be taken to avoid losing sight

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of the goal of ending violence against women due to strong assimilationist forces within the dominant perspective.

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of a 'peremptory' norm is difficult to reconcile with the idea of state sovereignty in international law: if states are sovereign, then they cannot be bound by any custom or principle without consent. This contradiction may restrict the usefulness of *jus cogens* as a method of enforcing state responsibility to end violence against women. However, examining closely the definition of *jus cogens* within the Vienna Convention reveals a compromise. The Convention states that "a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole..." (*Vienna Convention*). While peremptory norms are binding on states, states are the authority that determine what those norms will be. Thus a state does have a voice in consenting to these norms (H. Charlesworth and C. Chinkin, "The Gender of Jus Cogens" (1993) 15 Hum. Rts. Q. 1, online: LegalTrac).

Second, when considering the impact of grammatical changes to the text of treaties, altering the gender of a pronoun does not go a long way to ensuring that women are treated with respect and equality in their own homes on a daily basis. Conventions such as CEDAW have lofty goals and idealistic declarations of equality but these must interact with the principle of state sovereignty. Although CEDAW obligates states to address violations of women's human rights by private agents, in reality, reservations to the Convention have stripped the force from

these provisions. Moral persuasion only works when many states adhere to the moral stance: if all states ignore violence against women as a human rights issue, then the Convention is merely an empty ideal.

In practice then, the desire to end the violence becomes diluted, obfuscated or misdirected. The commitment to human rights is skewed by the time it is incorporated into domestic law. This is not an acceptable response to the issue. If violence against women is endemic across societies, then it can no longer be dismissed as private and beyond the scope of state responsibility (Thomas and Beasley). Violence against women has its roots in the political, economic

and social structures of a state. The implication of this is that until pressure is brought to bear on domestic law, international human rights as a protector of women in particular will fail to be of much use.

However, rejecting the human rights framework completely may also be unproductive. Many scholars have questioned the very idea of a rights-based approach being able to further feminist interests (C. Smart, "Feminism and the Power of Law" in H. Barnett, ed., "Sourcebook on Feminist Jurisprudence (Great Britain: Cavendish Publishing Limited, 1997) 81), but there is value in working within existing structures. First, to effect change, all parties must dialogue in a commonly understood language. To change law, it may be desirable to use current legal terminology and concepts such as "rights" in order for the critique to be heard at all. A caveat to this is that care must be taken to avoid losing sight. Also, as Christine Littleton points out, even when the attempt fails, the process of attack serves to expose the hypocrisy inherent in the supposedly equal system C. Littleton, "In Search of a Feminist Jurisprudence" in *Sourcebook on Feminist Jurisprudence*, at 63. Thus, it is pragmatic for feminist analysis to massage the human rights system itself to expose the underlying inequalities and discrimination permitted by the state that fosters violence against women. The first step in this process of addressing the systemic nature of violence against women is to examine the public/private divide in societies.

#### **The Public/Private Divide**

The home... is the place with which individuals can most readily identify and it easily lends itself to the symbolic expression of personal identity. It offers both physical and psychological shelter and comfort. It is the place where the self can be expressed outside of social roles and where the individual can exert autonomy away from the coercive gaze of the employer and the state (P. Saunders, *A Nation of Home Owners* quoted in K. Kumar, "Home: The Promise and Predicament of Private Life at the End of the Twentieth Century" in J. Weintraub and K. Kumar, eds., "Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy (United States: University of Chicago Press, 1997) 204 at 207).

International law and hence international human rights law is carried out in the

public sphere. Patriarchy is reinforced by segregating citizens within a society into separate and distinct roles based on their gender. Part of this process involves glorifying the private sphere as a place of refuge, as demonstrated in the above quote, but studies have shown the reality of home life for many women. Sylvia Walby finds the enforcement of patriarchy within six structures, one of which is male violence:

Male violence constitutes a further structure, despite its apparently individualistic and diverse form. It is behaviour routinely experienced by women from men, with standard effects upon the actions of most women (S. Walby, "Theorising Patriarchy" in *Sourcebook on Feminist Jurisprudence*.)

Male violence is not supported by biological research as inevitable; it is a socially permissible way of behaving. Patriarchy is reinforced by the claim that women's natural and biological role is to provide for children within the protected private sphere. Thus, socially constructed gender roles are a reflection and enforcement of patriarchy. The complete picture then begins to take form. Women are relegated to the private realm, and the political system is constructed in such a way to minimize state intervention into the private realm. Women are doubly impacted: their voice is taken away by exclusion from the public and political sphere and their rights unprotected by a non-interventionist political structure.

The restriction of women to the private sphere within a state is a practice consistent across state boundaries. This emphasizes the universal subjugation of women resulting from the public/private dichotomy (K. O'Donovan, "Sexual Divisions in Law" in *Sourcebook on Feminist Jurisprudence*). The value placed on some human rights over others reflects the public/private divide and the patriarchal nature of human rights. This is illustrated by the value accorded civil and political rights as the most important rights deserving protection by the state. Notwithstanding the fact that it is difficult to exercise your right to vote when you have not

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been able to meet your dietary needs for the day, placing civil and political rights at the top of the rights pyramid is a reflection of male interests and male experience. The impact on women is magnified because international law is concerned almost exclusively with the acts of the state in the public realm. The gendered public/private dichotomy is thus implemented on a grand scale at the international level.

Thus, what is termed a violation of *jus cogens* by the act of a state also serves as an example of patriarchy, because "although race discrimination consistently appears in *jus cogens* inventories, discrimination on the basis of sex does not...yet sex discrimination is an even more widespread injustice, affecting the lives of more than half the world's population"(Charlesworth and Chinkin). This lack of attention on issues of concern to women is especially marked when violence against women is examined. As one article puts it, "[s]tates dismiss blatant and frequent crimes, including murder, rape, and physical abuse of women in the home, as private, family matters, upon which they routinely take no action" (Thomas and Beasley) Thus, the construction of the public/private divide in international law has significantly affected women's ability to respond to violence as well as legitimize by silencing this violence.

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Hype, Racial Profiling, and Good Science", July 2003 Canadian Journal of Criminology and Criminal Justice 391.

However, as noted by the Ontario Human Rights Commission ("OHRC"), racial profiling is a form of racial stereotyping (at 9). We know that racial stereotyping and discrimination exist in Canadian society. Thus, it is bound to exist in our institutions, such as law enforcement agencies, educational institutions, the criminal justice system, etc., which are all microcosms of our broader society (OHRC at 9). Racial profiling is not just about police or customs officers making and acting on decisions about people because of their race; it is widespread in Canadian society. It exists on many levels: from the blatant, to the systemic, to the very subtle. So, while we

may not have good scientific evidence about racial profiling, we have clear anecdotal evidence, which is being acted upon across the country by our officials.

What are the effects of racial profiling? The OHRC (at 17 to 64) indicates that there are many effects. These include: significant impacts on children and youth, which could compromise their and our future; development of significant mistrust of our institutions (e.g., fear of the police); alienation and a diminished sense of citizenship; stress in minority communities; changes in behaviour (e.g., not driving an expensive car so as to avoid negative stereotyping that you are a drug dealer); impact on human dignity, self-esteem and self-worth; physical effects (e.g., being subjected to a body search); and economic effects (e.g., people avoiding businesses where they are profiled). The OHRC commits a separate portion of the report to the particular impact of racial profiling on the Aboriginal community in order to reflect the significant differences in profiling experienced by that community.

Another possible effect of racial profiling is the false sense of security it brings. Kent Roach, a professor at the University of Toronto who specializes in Canadian constitutional law, recently said: "[Racial profiling] is an inefficient way of targeting terrorism, in addition to it being discriminatory. It encourages people to stigmatize and stereotype people as criminal simply because of their color, where they were born, and how they worship." (Jason Gondziola, Alternatives, "Racial Profiling 101" February 1, 2003 <http://www.alternatives.ca/article306.html>)

The OHRC proposes a number of actions to be taken in order to address racial profiling (see 67 to 73). These are aimed at: police services; members of the criminal justice system; all levels of the education system; the Canada Customs and Revenue Agency; private security companies; malls, stores, restaurants, bars, theatres and casinos; taxi companies and airline and airport security.

It is clear that many Canadians believe that racism exists in Canada. It is being taken very seriously by our officials. Ms. Davies' bill will probably not be passed as it is a Private Member's Bill, but it indicates the growing concern that many Canadians share about racial profiling and its impact on all of us.

## Video Reviews

by Melissa Luhtanen, Human Rights Educator

**When Love is Gay**, NFB, 48:47 min, 1995

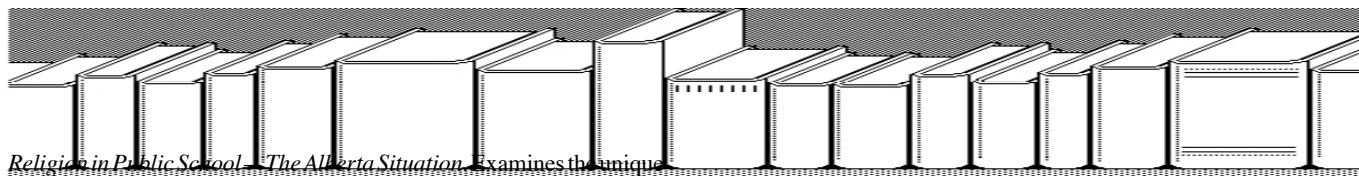
This documentary video takes an in-depth look at gay men and relationships. It explores all types of relationships from long-standing to brief encounters. The men in the video talk about their life experiences, gay culture, feelings of acceptance, homophobia and sensuality. This film contains explicit sexual scenes but is an excellent examination of the truth about gay male relationships.

**School's Out! Confronting Homophobia in High Schools**, NFB, 24:32 min, 1997

Writer and activist Jane Rule contributes to this informative video on confronting homophobia in high schools. Members of "Teens Educating and Confronting Homophobia" (TEACH) discuss the issues and arguments that arise when talking about homophobia and heterosexism in the classroom. This video is a great one to start a discussion on sexuality, sexual orientation, homophobia and heterosexism in high schools and colleges.

*These videos can be borrowed from the Research Centre, or to order your own copy, call the National Film Board, at 1-800-267-7710.*

# Research Centre Publications



*Religion in Public School—The Alberta Situation.* Examines the unique situation in Alberta regarding constitutional protection for prayers in public schools. Looks at this issue in the context of the Charter of Rights guarantee of freedom of religion, which includes freedom from religion. 48 pages. 2004. ISBN# 1-896225-29-2. (\$12 + \$3 s/h)

*Butt Out: Smokers and Anti-Smoking Bylaws in Alberta.* Despite the fact that several municipalities have passed bylaws that restrict or prohibit smoking in public places, a number of persons continue to smoke. Examines the possible challenges to anti-smoking bylaws, the cases that have involved these challenges and whether there may be an argument that smoking is a disability under the Charter. 38 pages. 2004 ISBN #1-896225-33-0. (\$10 + \$3 s/h)

*Annotation of the Human Rights, Citizenship and Multicultural Education Act (2003 Edition).* Contains full text of the Alberta Act, as amended, by-laws, current caselaw and panel decisions. Includes table of concordance, glossary and other resources. 110 pages. 2003. ISBN# 1-896225-27-6 (\$22 + \$3 s/h)

*Hopes and Dreams: Stories from Young Refugees* (video (25 mins. and guidebook 60+ pages) 2002. ISBN #1-896225-38-1. Contact office to receive ordering information.

*Rights and Responsibilities in Canada: Young Offenders.* Basic guide to laws and procedures involving Canada's new Youth Criminal Justice Act. Covers procedures, being questioned by police, search and seizure, rights of arrested persons, bail, first appearance in court, trials and finding a lawyer. 45+ pages. 2003. ISBN#1-896225-32-2 (\$13 + \$3 s/h).

*Privacy Handbook for Canadians: Your Rights and Remedies* by ACLRC and Brian Edy. Two Volumes full of user-friendly information about government and private sector privacy laws that affect all Canadians. 2002. Vol. 1 350 pages, ISBN # 1-896225-34-9. Vol. 2 150+ pages, ISBN # 1-896225-36-5 (Both: \$59 + \$10 s/h).

*Freedom of Expression and all that Jazz* (video). Produced with and marketed by the University of Calgary. Intended for secondary school and up. Provides an overview of laws about freedom of expression and the legal limits placed on it in Canada. Discussion group format. Includes a user's guidebook. 40+ pages. 2001. ISBN #1-896225-30-6. Contact office to receive ordering information.

*Seniors and the Law: A Resource Guide* by Anna Pellatt, LL.M. In a question-answer format, provides an overview of issues facing seniors, including abuse, mental health, personal directives, powers of attorney and consumer protection. Includes a glossary and list of Alberta agencies. 160 pages. 2000. ISBN #1-896225- 28-4. (\$25 + \$5 s/h).

*Harassment and What You Can Do About It.* (video). Intended for ages 12 and up. Provides an overview of laws governing harassment, including racial, sexual and other types, using scenarios and featuring youth. Includes user's guide. 17 mins. 2000. ISBN#1-896225-26-8. (\$22 + \$3 s/h).

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# Racial Profiling: An Issue in Canada?

By Linda McKay-Panos

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*With thanks to Tam Nguyen for her research assistance.*

On February 12, 2004, Libby Davies, NDP Member of Parliament, introduced Private Member's Bill C-476: An Act to Eliminate Racial Profiling. The enactment prohibits racial profiling, in particular by enforcement officers, and it requires the collection of data to determine whether officers have engaged in racial profiling. Why did Ms. Davies introduce such a bill? What is racial profiling? Is it an issue in Canada?

Several other officials have also taken up the cause. In 2003-2004, Senator Mobina Jaffer held hearings across Canada on racial profiling. On February 26, 2004, Senator Jaffer spoke to the Senate about how her husband was detained and questioned based on his appearance. In March, 2004, the Minister of State for Multiculturalism and the Status of Women, Jean Augustine, opened a Conference on Racial Profiling Analysis and Best Practices, organized by the African Canadian Community Coalition on Racial Profiling. Also, in March, 2004, the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diene, tabled a report which recognized that

racism does exist in Canada. Finally, Deputy Prime Minister Anne McLellan, indicated in April, 2004, that a cross-cultural roundtable will be held to address the issue of security. Ethno-cultural and religious communities will be provided with the opportunity to contribute to a discussion on "how to manage security interests in a diverse society."

In 2003, the Ontario Human Rights Commission launched an inquiry into the effects of racial profiling on individuals, families, communities and society as a whole. The final report, *Paying the Price: The Human Cost of Racial Profiling* (2003), reflected the increase in public debate on the issue of racial profiling. This report did not focus on whether racial profiling exists, who does it, who are its targets, whether it is a legitimate activity or what can be done to prevent it. Instead, the report focused on the *impact* of racial profiling.

The Ontario Human Rights Commission defines racial profiling as (at 6):

[A]ny action undertaken for reasons of safety, security or public protection that relies on stereotypes about race, colour, ethnicity, ancestry, religion or place of origin rather than on reasonable suspicion, to single

scrutiny or different treatment.

Whether racial profiling is actually occurring has been debated. For example, in October, 2002, the Toronto Star published a series of articles suggesting that the Toronto police were engaging in racial profiling. In response, the Toronto Police Service commissioned an independent review by a criminal lawyer and a University of Toronto sociology professor, who determined that the conclusion of the articles was completely unjustified. The Toronto Police Service responded by launching a \$2.7 billion lawsuit for libel against the Toronto Star. In a review of the situation, Ron Melchers, in the July 2003 issue of the Canadian Journal of Criminology ("Do the Toronto Police Engage in Racial Profiling?" at 347) concluded that while it is "highly plausible" that there are differences in the treatment of groups according to race, there could be other explanations for this difference. However, he noted that the "possibility of discrimination [could] not be excluded." Lawyer Alan Gold cautioned that anecdotal evidence of racial profiling speaks more to beliefs about it than facts and can actually result in high social costs:"Media

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