

Human Rights Complaint concerning the Canada Research Chairs Program

This is the full text of the complaint filed against Industry Canada to the Canadian Human Rights Commission, February 13th, 2003

Date: February 13, 2003

To: Chief Commissioner and Director of Investigations
Canadian Human Rights Commission
344 Slater St.,
Ottawa, ON
K1A 1E1

From: Rosemary Morgan, Legal Counsel, Canadian Association of University Teachers

Re: Request for a Special inquiry, or s. 5 complaint against Industry Canada, re the "Canada Research Chairs" Program

The individuals listed below jointly request that the Commission conduct a Special Inquiry (e.g., like the Innu Inquiry) into the allegations set out below. Given the potential for extended litigation in the event of a s. 5 complaint, we do believe that a special inquiry would serve several interests including time, cost and the complexity of a systemic discrimination complaint investigation.

In the alternative to a special inquiry, the individuals herein request that a s. 5 complaint under the Canadian Human Rights Act (CHRA) be filed as follows, against Industry Canada:

The complainants: (see Appendix A for background on the complainants)

Names and addresses of complainants (alphabetical order):

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Section 40 (4):

In the event that the Commission prefers to accept the filing of complaints over a Special Inquiry, the complainants request that the Commission exercise its jurisdiction to deal with the several complaints together pursuant to s. 40 (4) of the CHRA.

THE ALLEGATIONS/COMPLAINTS:

The above individuals allege that:

Industry Canada's Canada Research Chairs (CRC) program is discriminating contrary to s. 5 of the CHRA against individuals (academics) who are members of the protected groups set out in s. 3 of the CHRA, in particular: sex, age, race, sexual orientation, colour, persons with disabilities, national, ethnic origin, and family status.

JURISDICTION:

Canada Research Chairs program (of Industry Canada) - a federally-regulated service

The CRC program is a federal initiative of Industry Canada. The program, the control and distribution of federal funding for this research initiative is subject to the CHRA. The distribution of federal funding through the CRC program therefore

must comply with the obligations of the CHRA. The structure and results of this public service must comply with the CHRA.

This is not a complaint directed at the universities, as universities are not directly subject to the Canadian Human Rights Act (CHRA).

Section 5

The Canadian Human Rights Act (s. 5) prohibits discrimination in the provision of a service to the public (Industry Canada is providing the CRC as a service to the public, i.e. universities and faculty).

BACKGROUND AND REASONABLE GROUNDS:

In the year 2000, the federal government launched the \$900-million five-year CRC program. The program is described in the attached material from the CRC website. (Appendix B).

The program is structured in a discriminatory manner as set out below:

Summary

All grounds of discrimination:

The CRC program does not require that the recipient universities comply with the Employment Equity Act (EEA) even though the recipient universities are receiving significant funding from the CRC (federal program). In fact, there is no requirement that the recipient universities design and comply with a selection and appointment process that ensures that there will be equitable treatment to the historically disadvantaged groups protected under the CHRA, or the designated groups under the EEA. As a consequence, there is evidence in the (non-standard) selection and appointment processes developed at the different universities which are recipients of CRC's, that in the absence of an obligation to ensure an equitable process, there is no reason to do so.

While this may excuse the universities from compliance (at least with the CHRA or the EEA, it can not excuse Industry Canada from failing to provide a service to the public which is non-discriminatory. As a consequence of their failure to implement obligations on recipient universities, the program allows for discrimination contrary to s. 5 of the CHRA.

The fact that the CRC program does not itself retain statistics, nor require recipient universities to retain statistics, on the appointments of Chairs by any of the historically disadvantaged groups identified in s. 3 of the CHRA (except gender), is evidence of a failure to implement a policy which will enable monitoring of the effectiveness of the program to comply with the CHRA. While

there are apparently no data kept on the CRC appointments for other equity groups by CRC/Industry Canada, it is reasonable to believe that they are equally under-represented given the lack of any requirement by Industry Canada that the universities ensure equitable distribution / representation. In light of the evidence available from Statistics Canada, that aboriginal peoples are already under-represented in faculty positions in Canadian universities, it is probable in the absence of any equity requirements in the CRC program that this pattern is repeated in the CRC appointments.

Example of CRC program and results in a Canadian university

University of Saskatchewan

Results: a total eleven appointments to date, one is female. Source:
<http://www.usask.ca/crc/profiles>

The 2001-2002 Collective Agreement between the U of S and the USFA has a Memorandum of Agreement on the Canada Research Chairs Program. It outlines the terms and conditions of employment of the Chairs.

However, how the process actually works is problematic. Apparently chairs of/and Theme Committees have attempted to act as search committees contrary to Article 13 outlined in the Memorandum of Agreement. The results evidence the problem.

(This suggests that the failure of the CRC program to require recipient universities to comply with specific equity obligations results in a blatant disregard for such obligations, even where local unions have attempted to enforce the obligations through non-legislative measures.)

Gender based discrimination:

Industry Canada has failed to ensure (contrary to the federal government's 1995 Gender-Based Analysis commitment that all future programs would be reviewed and constructed to guarantee gender equality) that the structure of the CRC's is free of gender and other prohibited grounds of discrimination. The failure to ensure a gender-bias free and discrimination free structure is evidenced in the process as well as in the results. (The structural barriers to equity are discussed below under the heading "Elaboration..."). There is persistent evidence of gender discrimination in the appointment of women to Research Chairs: only 15% of the Chairs in 2001 went to women (see graph in Appendix C from CRC website). In contrast, the gender representation of women in academe is significantly larger. (See the attached table in Appendix D provided by Statistics Canada, 2000).

Significance of this allegation:

The CRC program has a powerful impact on Canadian society because:

It reinforces powerful trends already evident in the Canadian university system that give priority to research areas that bring in big research money - these areas are still patriarchally dominated, and so those disciplines where disadvantaged groups have been making some inroads find themselves without much institutional support because their research areas are not "glamorous" when it comes to attracting the big federal monies. Both external and internal university resources are being diverted to attract these big federal monies. Those who already have power are taking them over.

University research is a fundamental policy source for the Canadian government, including international initiatives, and therefore is fundamental to Canadian society. As such, the failure to ensure that the interests and needs of the diverse Canadian mosaic are reflected in research and research policy will more likely than not result in further marginalization of Canadian minorities. The failure of the CRC program to require that the Chairs are selected and appointed in a manner which gives voice to diversity and expands knowledge and policy beyond the existing power elite and interests of a patriarchal international (globalization) policy, precludes equitable treatment of minority interests and issues and allows the recipient universities to maintain the status quo of disadvantage.

Elaboration on how the program discriminates against members of the protected groups:

1. The division of the program into Tier I (for full professors) and Tier II (for other ranks), when the Tier I positions are longer-term and better-paying, has an adverse impact on women and other protected groups. As these groups are less well represented at the full professor level (e.g. only 14% for women) than at the lower ranks, they are structurally excluded from equal access to Tier I appointments.
2. The lack of enforcement of a discrimination free (and gender-bias free) criteria with respect to Tier II, such that many full professors have been appointed to Tier II positions (supposed to be for ranks other than full professor) is further evidence of discrimination. This omission disadvantages women and individuals in the other protected groups for the same reason: that the proportion of women, and other groups, who are full professors is not nearly as great as the proportion of white able-bodied men who are full professors. The existence of Tier II does not compensate for the structural bias against women in Tier I.
3. The lack of a criterion which prevents the inequitable allotment of chairs to faculties which historically and currently have a higher percentage of women, i.e., humanities and social sciences v. engineering and science. The allotment of only 20% of the CRC positions to faculty in the humanities and social sciences (where the proportion of women faculty tends to be higher than in the NSERC (National

Sciences and Engineering Research Council of Canada) and CIHR (Canadian Institute of Health Research) disciplines) illustrates the point. This disadvantage to women in particular is more evident on examination of the fact that 53% of all faculty in Canadian universities is in the humanities and social science disciplines, where the majority of women are appointed.

4. The CRC's failure to impose guidelines upon the recipient universities for transparency in the selection and appointment process prevents Industry Canada from meeting its obligations to ensure that the program is free of gender and equity bias. For example, it prevents them (and the public) from scrutinizing and assessing the selection criteria used by the recipient universities. Consequently, Industry Canada is incapable of ensuring that the recipient universities are complying with equality rights provisions of the Act and the government's own commitment to gender based analysis. For example, the criterion (enforced at some universities) that no one can be appointed to Tier II who is more than 10 years past the date of receipt of their PhD tends to discriminate against women who tend to stay longer at each rank, often because of childbearing and family responsibilities impacting on their careers. Industry Canada has an obligation as the funding department and the "creator" of the CRC, to ensure that the criterion for distribution of this money by its recipient universities is equitable and non-discriminatory. They have not done so.

5. A prejudicial statement is printed in the recent report from a CRC consultation held in June 2002 about "best practices" surrounding the CRC program to the effect that setting targets for women would potentially lower the prestige of the awards. The program already sets targets by province, university, and discipline, so it is not target-setting per se that is at issue, but rather the merit of women's research and/or women researchers. (See Appendix E).

6. The CRC research to date into possible sex-discrimination (preliminary gender-based analysis in Appendix F) within the program has used the concept of a "notional pool" of women researchers across Canada by discipline. This is a very partial description of the situation, for the CRC program is meant to attract meritorious researchers from a world-wide pool. In some disciplines the percentage of women available in countries other than Canada is higher than the percentage available in Canada, yet the CRC research does not address this issue. Its own investigation thus is seriously flawed and tends to under-represent the number of women available for consideration for appointment.

The Preliminary Gender-based Analysis of the CRC program - a report prepared by Nicole Begin-Heick

This report was commissioned by the CRC program last year. It is available from CRC on their website. We submit that the analysis is flawed and ought not be used as a means of rejecting the herein allegations. The analysis by Ms Begin-Heick demonstrates a misapprehension of the concept of systemic discrimination

and perpetuates and/or allows for the perpetuation of gender discrimination as the norm.

Quoting from Glenis Joyce, one of the complainants if this matter proceeds to a s. 5 complaint:

'... (Begin-Heick) has taken and used existing discrimination to justify further discrimination. ... the flavour of the report teems with the "individualistic" paradigm and doesn't put the matter into a historical context. She states in the executive summary that "The number and proportion of female faculty has increased significantly in all discipline groups, since 1980". It has? What of engineering? Chemistry? Physics? Of course her "...proportion of women nominated for Chairs was commensurate with their proportion within the pool from which nominees were selected" reinforces the existing problem. Industry Canada missed a golden opportunity to do affirmative action. The situation of women in academia has been widely known for years. They did not design a program that took this knowledge into account.

On page 5 under "Factors leading to the creation of the program" she decries the "the ever increasing difficulties for universities to attract and retain talented researchers'. We'll 'deplete the talent pool', etc. Yet (and I'm not saying that women be marshalled into a reserve army of labor) that the program could be an opportunity for attracting and retaining designated group members has not seemed to enter into the design nor implementation of the program."

[See Appendix D for data from Statistics Canada on representation of women etc. in academe by discipline rank etc.]

REMEDIES:

The complainants seek the remedies which are appropriate in light of the foregoing as provided for by s. 53 of the CHRA including:

s. 53 (2) (a) That Industry Canada cease the discriminatory practice and take measures, in consultation with the Commission and the complainants, on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in future.

In Conclusion:

We look forward to hearing your response to this request for either a Special Inquiry or the filing of s. 5 complaints as quickly as possible. As stated in the introduction, the CRC program was designed to be a five year program and it is now entering its third year. Quick action is needed to prevent ongoing adverse impact on the protected groups. As well, it is likely that the program will be renewed and or new and similar programs will be introduced/expanded. (Alan

Rock, Minister of Industry, made public comments in November 2002 which reflect this federal government commitment to expand such programs). It is time to require the federal government to take proactive action to prevent perpetuation of historic disadvantage.

You will observe from Appendix A (c.v.'s of the named complainants) that their individual and collective expertise in equity and/or gender issues (inside and outside academe) is extensive. They are a valuable resource to your process and would be very happy to provide assistance as necessary. In particular, they request that they be consulted on the appointment of individuals (experts) to inquire into the systemic discrimination allegations set out herein. We understand that a similar consultation process occurred in the appointment of the Inquiry pertaining to the Innu.

Thank you very much for your time and consideration of this request.

Yours very truly,
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