

Universal Periodic Review 2023: BARBRA SCHLIFER COMMEMORATIVE CLINIC STAKEHOLDER REPORT

Located in downtown Toronto, the Barbra Schlifer Commemorative Clinic counters gender-based violence through a unique and innovative range of wrap-around support services and advocacy and policy initiatives. We play an active role in survivor's lives when they most need assistance, offering trauma-informed counselling, interpretation in more than 170 languages, and legal services in immigration, family, and criminal law.

Since its founding in 1985, the Clinic has become an indispensable part of the community. The Barbra Schlifer Clinic assists more than 10,000 people each year: nearly 100,000 since our doors opened. We work with some of the country's most disenfranchised and marginalized women. Yet ours is not a "top-down" model. The Clinic takes a collaborative approach to foster survivors' safety and equality by nurturing self-reliance and practical skills. And we respect gender diversity: the Clinic uses "women" as an umbrella term, recognizing the importance of self-identification, the disenfranchisement of trans people, and the complexity of compounded identities.

In addition to its outreach work, the Barbra Schlifer Clinic tackles a roster of policy initiatives; these are central to our mission of combatting gender-based violence. We provide expert advice to government bodies and community organizations. We also conduct our own research on—among other issues—migrant's rights and sexual violence in the community and workplace.

Human rights are a key aspect of our policy work. We have special consultive status at the UN, and have made submissions to the United Nations Working Group on Violence Against Women, The United Nation Working Group on People of African Descent, and Status of Women Canada.

We thank the UN for the opportunity to participate in the UPR process. The following recommendations reflect the voices of survivors. We hope they will serve as a reminder to Canada of its human rights obligations—especially those related to gender-based violence.

a. GENDER-BASED VIOLENCE

Cycle Three, Recommendation 142.190: Strengthen measures to protect victims of violence against women and girls, particularly among minority communities, including through ensuring access to quality multisectoral responses for survivors covering safety, shelter, health, justice and other essential services.

Canada received several recommendations related to gender-based violence in the last cycle. The collective message was clear: domestic violence and sexual assault remained serious problems, and the country required a comprehensive federal strategy to combat all forms of gender-based violence.

Cycle Three, Recommendation 142.194: *Convert the federal strategy on gender-based violence into a national action plan.*

i) National Action Plan to End Gender-Based Violence

The federal government is to be commended for its recent announcement of the National Action Plan to End Gender-Based Violence. The project employs an intersectional and collaborative approach, recognizing the necessity of providing income and housing support to address homelessness and poverty and increasing accessibility of services in rural and remote areas.¹ However, the Plan falls short in many respects. Rather than mandatory measures, the Plan offers recommendations and suggestions.² Further, the Plan insufficiently tackles the inherently systemic nature of gender-based violence, and inadequately incorporates a framework for assessment and external oversight.³ Canada requires a truly national strategy that creates continuity between provinces, is accountable, and tackles the root causes of violence.

We call on the government to substantively implement the 88 recommendations of the Coroner’s Inquest resulting from the 2015 murders of Carol Culleton, Anastasia Kuzyk, and Nathalie Warmerdam. All three were killed by the same man on the same day, despite clear evidence that he posed a serious risk. Those facing gender-based violence in rural communities deserve equal access to necessary support services; law and policymakers must take the steps needed to ensure this tragedy doesn’t happen again—and urgently.⁴

¹ Women and Gender Equity Canada, *National Action Plan to End Gender-Based Violence Backgrounder* (9 November 2022). Online: <https://www.canada.ca/en/women-gender-equality/news/2022/11/national-action-plan-to-end-gender-based-violence-backgrounder.html>

² Women’s Shelters Canada, *Joint Statement on the Release of the National Action Plan to End Gender-Based Violence* (November 2022). Online: <https://endvaw.wpenginepowered.com/wp-content/uploads/2022/11/Final-Joint-Statement-on-NAP.pdf>

³ *Ibid.*

⁴ Luke’s Place, *Culleton, Kuzyk & Warmerdam Inquest Advocacy Toolkit* (25 October 2022). Online: <https://lukesplace.ca/culleton-kuzyk-warmerdam-ckw-inquest-advocacy-toolkit/>

Cycle Three, Recommendation 142.156: *Continue to take all measures necessary to combat poverty more effectively while paying particular attention to groups and individuals that are more vulnerable to poverty, such as indigenous peoples, persons with disabilities, single mothers and minority groups.*

ii) The “Shadow Pandemic”

The Barbra Schlifer Clinic found itself on the front lines of the devastating rise in gender-based violence during the COVID-19 lockdown—what has been termed the “shadow pandemic.”⁵ Our research demonstrates that the disrupted social patterns of the pandemic (isolation, gaps in support services, and wage insecurity) resulted in increased gender-based violence with a simultaneous slump in social supports for survivors.⁶ While lockdown conditions have largely ceased, conditions have not entirely returned to “normal.” Canada must commit to fully investigating, assessing, and correcting the ways in which the country’s crisis response contributed to the increase in gender-based violence over the past three years.

iii) #AndMeToo

The Clinic applauds the rise of #MeToo, through which thousands of survivors have spoken out about sexual violence—but we also recognize the marginalized voices excluded from this conversation.⁷ Through our community work and through the Clinic’s project, #AndMeToo, we offer affirmation and support to individuals with complex socio-economic needs whose experiences of sexual assault and harassment have been omitted from the mainstream #MeToo movement.⁸ For those with precarious immigration status or employment, speaking out on workplace experiences of sexualized violence or economic coercion can be difficult—if not impossible. **We call on Canada to recognize the prevalence of sexual assault and coercion for these individuals. We acclaim recent changes—including the federal government’s ratification of Convention 190 (the Violence and Harassment Convention) of the International Labour**

⁵ United Nations: UN Women, *The Shadow Pandemic: Violence Against Women during Covid-19* (May 2020). Online: <https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19>

⁶ Barbra Schlifer Commemorative Clinic, *UN Submission re: COVID-19 and Violence Against Women* (July 2020). Online: <https://www.ohchr.org/sites/default/files/2022-01/canada-2-barbra-schliefer.pdf>

⁷ Frederica Giannelli, “#MeToo movement needs to be more inclusive—USask Study” *University of Saskatchewan: News* (19 August 2020). Online: <https://news.usask.ca/articles/research/2020/metoo-movement-needs-to-be-more-inclusiveusask-study.php>

⁸ Barbra Schlifer Commemorative Clinic, *AndMeToo*. Online: <https://www.schliferclinic.com/andmetoo/>

Organization—and appeal for further substantive support *and* legislative and legal amendments.⁹

b. CRIMINALIZATION OF WOMEN

Cycle Three, Recommendation 142.190: *Strengthen measures to protect victims of violence against women and girls, particularly among minority communities, including through ensuring access to quality multisectoral responses for survivors covering safety, shelter, health, justice and other essential services.*

Cycle Three, Recommendation 142.112: *Increase funding for civil legal aid in order to ensure that women have access to adequate legal aid in all jurisdictions, in particular women victims of violence.*

In the last cycle, Canada received numerous salient recommendations related to support for survivors of gender-based violence in the legal and law enforcement process.

i) Penalizing Survivors of Gender-Based Violence

A disproportionate number of survivors of gender-based violence (particularly intimate partner violence and sexual violence) subsequently face criminal charges.¹⁰ According to the Special Rapporteur on Violence Against Women, Canada must address the “specific victimization of women who request State protection against violence.”¹¹

Our work supporting survivors of gender-based violence demonstrate that these criminal charges can arise in a variety of situations. First, women embroiled in Canada’s family law system are frequently forced to maintain contact with their abusers pursuant to custody orders. When they refuse to comply—fearing for their safety or the safety of their children—they can

⁹ Employment and Social Development Canada, *Minister O’Regan ratifies C190, the first-ever treaty on ending violence and harassment in the world of work* (30 January 2023). Online: <https://www.canada.ca/en/employment-social-development/news/2023/01/minister-oregan-ratifies-c190-the-first-ever-global-treaty-on-ending-violence-and-harassment-in-the-world-of-work.html>

¹⁰ Barbra Schlifer Commemorative Clinic, *Criminalization of Women*. Online: <https://www.schliferclinic.com/criminalization-of-women/>

¹¹ United Nations: Human Rights Council, *Special Rapporteur on violence against women and girls, its causes and consequences*, “Report: Visit to Canada” (19 November 2019). Online: <https://www.ohchr.org/en/documents/country-reports/ahrc4142add1-visit-canada-report-special-rapporteur-violence-against-at-25>.

be subject to criminal charges. Second, survivors are sometimes charged with obstruction of justice or mischief when law enforcement doubts their claims of sexual assault. This is particularly worrisome, as sexual assault in Canada is profoundly under-reported and under-prosecuted. Similarly, survivors often face civil charges (such as slander) from their abusers if they report sexual assault. Finally, victims of forced marriage and human trafficking frequently experience scrutiny from law enforcement upon their arrival in Canada.¹²

Patterns of criminalization for survivors of gender-based violence can have long-term and devastating effects. Individuals who are charged after facing gender-based violence are disproportionately likely to attract subsequent charges, lose custody of their children, and suffer from decreased police protection.¹³ **We request increased supports for survivors of gender-based violence—including pro bono legal advice/representation. We also call for change within the Canadian criminal justice system to combat the procedural difficulties and prejudicial treatment faced by survivors of gender-based violence. Finally, we appeal for the abolition of mandatory charging policies in instances of suspected domestic violence, which have resulted in increased criminalization of survivors of domestic and intimate partner violence.**¹⁴

ii) Misogyny and the RCMP

The Canadian government cannot correct its inhumane treatment of survivors of gender-based violence unless it addresses misogyny within law enforcement institutions. Recent reports indicate a culture of pervasive misogyny, homophobia, and racism within Canada’s preeminent law enforcement body—the Royal Canadian Mounted Police (RCMP).¹⁵ The RCMP has violated the human rights of the women it employs *and* the Canadians it is intended to protect (especially indigenous women) through widespread harassment and gender-based violence.¹⁶ **We call for systematic change within law enforcement, and especially the RCMP, to combat patterns of gender prejudice and misogyny. Survivors of gender-based violence will be barred from just and equitable treatment if law enforcement bodies are permitted to perpetrate and perpetuate violence.**

¹² *Supra* note 10.

¹³ *Ibid.*

¹⁴ Pamela Cross (Luke’s Place), *Why do police sometimes charge an abuser even though the woman not want them to?* (29 October 2019). Online: <https://lukesplace.ca/why-do-the-police-sometimes-charge-abusers-even-though-the-woman-does-not-want-them-to/>

¹⁵ The honorable Michel Bastarache, *Broken Dreams, Broken Lives: The Devastating Effects of Sexual Harassment on Women in the RCMP* (11 November 2020). Online: <https://www.rcmp-grc.gc.ca/wam/media/4773/original/8032a32ad5dd014db5b135ce3753934d.pdf>

¹⁶ <https://fafia-afai.org/en/a-report-on-the-toxic-culture-of-misogyny-racism-and-violence-in-the-rcmp/at-1>.

Cycle Three, Recommendation 142.39: *Further intensify its efforts for the elimination of structural inequality and intersectional discrimination faced by vulnerable groups.*

iii) Protection of Communities and Exploited Persons Act

At the Barbra Schlifer Clinic, our work in the community has made it clear that sex workers continue to be subject to over-policing. We have seen first-hand the damage wrought by law enforcement and criminal justice bodies that fail to account for trauma, abusive relationships, and substance abuse when leveling regulatory offences related to sex work. We thus echo community justice organizations in advocating for the repeal of the Protection of Communities and Exploited Persons Act (PCEPA).¹⁷ In continuing to criminalize aspects of sex work, the PCEPA creates a culture of unsafety for sex workers and puts them at risk of discrimination and police violence.¹⁸

c. REFUGEE and MIGRANT RIGHTS ISSUES

Cycle Three, Recommendation 142.271: *Continue to improve the condition of refugees and asylum seekers in accordance with Canada's international human rights obligations.*

In the last UPR cycle, Canada received numerous recommendations related to its treatment of migrants and refugees. Collectively considered, the message was unequivocal: Canada must do more to protect the human rights of migrants within its borders.

Cycle Three, Recommendation 142.137: *Take the necessary steps to combat discriminatory labour market practices against women and migrant workers.*

i) The Migrant Women's Rights Project

¹⁷ Action Canada for Sexual Health & Rights, *End the Criminalization of Sex Work!* (30 September 2019). Online: <https://www.actioncanadashr.org/news/2019-09-30-end-criminalization-sex-work>

¹⁸ Kate Shannon and Chris Bruckert, *The Protection of Communities and Exploited Persons Act (PCEPA): Findings from the Gender, Work, and Health* (2021). Online: [Studyhttps://www.ourcommons.ca/Content/Committee/441/JUST/Brief/BR11576509/br-external/Jointly1-e.pdf](https://www.ourcommons.ca/Content/Committee/441/JUST/Brief/BR11576509/br-external/Jointly1-e.pdf)

Through our advocacy project, Migrant Women’s Rights, the Clinic assists individuals experiencing some combination of labour migration, trafficking, and gender-based violence.¹⁹ Our findings are based on outreach: a consortium of service providers and researchers have collaborated with migrants over the past five years (2016-2021).²⁰

Emigrants to Canada describe immigration as a process profoundly constrained by gender prejudices. Women’s migration is often fueled by the lack of opportunities in their home countries.²¹ This discrimination is not necessarily corrected in Canada: immigration criteria and processes prioritize male professionals, lived experience and earning patterns. This means female migration is precariously dependent on male relatives. (Indeed, women are often designated, both legally and socially, as the “dependents” of the principal male applicant.)²² As economic and political unrest grows globally, our collaborators emphasized that migrants are increasingly forced into coercive and risky forms of immigration.

To quash these damaging patterns, Canada must recognize and nurture the agency of migrants. Resituating the meaning of “trafficking” is a necessary first step. Currently, Canada’s federal government uses trafficking as a gatekeeping measure: individuals must show that they were trafficked to access a range of supports and remedies, including resident status and emergency housing.²³ But “trafficking” is an amorphous term that does not reflect survivor’s lived experiences. **We call on the Canadian government to protect migrants by recognizing the ranges of economic and sexual coercion they experience due to their gendered and racialized identities.**

Cycle Three, Recommendation 142.188: Reinforce the existing mechanisms to prevent violence against women and girls as well as human trafficking, particularly for vulnerable populations.

Cycle Three, Recommendation 142.111 Take effective measures to avoid the continuation of racial profiling by the police, security agencies and border agents of indigenous peoples, Muslims, Afro-Canadians and other minority ethnic groups.

ii) Forced Marriage

¹⁹ Barbra Schlifer Commemorative Clinic, *Migrant Women’s Rights Project* (2019). Online: <https://www.schliferclinic.com/migrant-womens-rights-project/>

²⁰ Fay Faraday (Barbra Schlifer Commemorative Clinic), *Migrant Women’s Rights Project, Discussion Paper #1* (January 2019). Online: <https://www.schliferclinic.com/wp-content/uploads/2022/02/FARADAY-Migrant-Womens-Rights-Project-Discussion-Paper-1-January-2019.pdf> at 1.

²¹ *Ibid* at 12.

²² *Ibid* at 13.

²³ *Ibid* at 19.

Canada’s deficiencies respecting migrants’ rights include an ineffectual approach to forced marriages. The federal government’s *Zero Tolerance for Barbaric Cultural Practices Act* (2015) criminalizes participating in or otherwise supporting forced marriages. Our work in the community demonstrates that the law is patronizing and counterproductive. In practice, the *Act* normalizes cultural discrimination and over-policing of certain racialized communities.²⁴ Because the *Act* can result in deportations (or other criminal sanctions), those who have experienced coercive violence or forced marriages may be less likely to seek assistance from law enforcement.²⁵ The lack of relevant case law illustrates how survivors can be truly “lost in the system.” **We appeal to the government to respect the agency and wisdom of survivors in pursuing an intersectional and holistic education policy to prevent forced marriages.**

iii) Safe Third Country Agreement

The results of our policy and outreach work are unequivocal: Canada cannot meaningfully improve its support of migrants—especially those in positions of legal and social precarity—unless it abandons its “Safe Third Country Agreement” (STCA) with the United States. Under the STCA, refugee claimants who arrive in Canada from the U.S. through certain borders are ineligible to apply for refugee status and are not permitted to stay in Canada.²⁶ This is troubling, as the U.S. has a problematic track record in assessing asylum claims based on gender-based violence.²⁷ In October 2022, Canada’s Supreme Court heard *Canadian Council for Refugees, et al. v. Minister of Citizenship and Immigration, et al.*, which is a constitutional challenge to Canada’s ratification of the STCA.²⁸ The Court’s decision is pending. **We strongly encourage the federal government to honour its human rights obligations by considering the gendered implications of the STCA regime.**

²⁴ Deepa Mattoo and Sydele Merrigan, “‘Barbaric’ Cultural Practices: Culturalizing Violence and the Failure to Protect Women in Canada,” *International Journal of Child, Youth and Family Studies* (2021) 12(1): 124 at 125. (Note: Deepa Mattoo is the Executive Director of the Barbra Schlifer Commemorative Clinic.)

²⁵ Barbra Schlifer Commemorative Clinic, *The Wrong Way to Tackle Forced Marriages* (9 June 2015). Online: <https://www.schliferclinic.com/toronto-star-article-the-wrong-way-to-tackle-forced-marriages/>

²⁶ Immigration, Refugees and Citizenship Canada, *Canada-U.S. Safe Third Country Agreement* (18 December 2022). Online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement.html>

²⁷ LEAF Canada, *Rights groups to argue in Supreme Court case that survivors of gender-based violence and their equality rights claims cannot be ignored by the courts* (6 October 2022). Online: <https://www.leaf.ca/news/rights-groups-to-argue-in-supreme-court-case-that-survivors-of-gender-based-violence-and-their-equality-rights-claims-cannot-be-ignored-by-the-courts-%EF%BF%BC/>

²⁸ *Ibid.*

d. A MEANS OF RATIFYING CANADA'S GENDER-RELATED OBLIGATIONS

142.36: Strengthen the coordination on human rights implementation across levels of government in order to ensure better implementation domestically.

In the last cycle, numerous member states recommended that Canada sign on to related treaties and conventions, including the Optional Protocol to the Convention on the Rights of Persons with Disabilities. Other recommendations were more general (see above).

Our policy research and work in the community make it clear that human rights conventions are a powerful tool to combat gender inequity.

i) CEDAW

We join the chorus calling for Canada to fully implement the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).²⁹ As the Special Rapporteur on violence noted following a 2018 trip to Canada, while Canada was one of the earliest adopters of CEDAW, the Convention's "provisions are not fully incorporated into the national legal system."³⁰ This renders Canada's commitment hollow.

ii) Belém do Pará Convention

We also urge Canada to sign on to the Belém do Pará Convention—as the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women is known. The Belém do Pará Convention came into force in 1995; and 32 (of the 35) Organization of American States have ratified the Convention to date. Canada is thus an outlier.³¹ At the 2018 Summit of the Americas, Prime Minister Justin Trudeau announced that Canada was

²⁹ Women's International League for Peace & Freedom, *Canada: CEDAW committee recommends stronger regulation of corporations and measures for women victims' access to justice* (1 December 2016). Online: <https://www.wilpf.org/canada-cedaw-committee-recommends-stronger-regulation-of-corporations-and-measures-for-women-victims-access-to-justice/>

³⁰ *Supra* note 11 at 4.

³¹ Battered Women's Support Services, *Canada must ratify the Belém do Pará Convention* (28 October 2022). Online: <https://www.bwss.org/canada-must-ratify-the-belem-do-para-convention/>

beginning the review process necessary to signing on to the Convention.³² **We implore the federal government to move quickly to honour its commitment.**

e. INDIGENOUS WOMEN

Cycle Three, Recommendation 143.243: *Strengthen and enlarge its existing programmes and take more and specific measures towards improving the situation of indigenous persons, in particular with regard to the improvement of housing, employment and education opportunities especially after elementary school, and better safeguard women’s and children’s rights, in consultation with civil society.*

Cycle Three, Recommendation 142.154: *Introduce all measures necessary to combat poverty more effectively while paying particular attention to vulnerable groups and individuals.*

In last year’s cycle, a startling 90 of 315 recommendations mention Indigenous issues. Canada accepted the majority of these, and committed to several related voluntary pledges.

One of Canada’s most glaring stumbles in the years following the last UPR has been the government’s astounding slowness to act on the Calls for Justice outlined in the Final Report into Missing and Murdered Indigenous Women and Girls (MMIWG).³³

First Nations peoples—especially Indigenous women—are being incarcerated at an ever-growing rate, and conditions in women’s correctional institutions are deplorable.³⁴ Violence perpetrated against Indigenous women and girls is inseparable from the wider inequalities faced by Indigenous communities in Canada. Intergenerational trauma, long-standing racism and discrimination, and the lack of equal housing, schooling, and healthcare have contributed to patterns of gender-based violence.³⁵ Canada’s track record in the last four years has been startlingly deficient: dozens of communities lack access to drinking water; mercury contamination on reserves remains a serious problem; and Canada has recently appealed a Canadian Human Rights Tribunal decision that ordered the government to pay compensation to

³² Organization of American States, *Committee of Experts celebrates political will of Canada to be part of the Belém do Pará Convention* (2018). Online: <https://www.oas.org/es/mesecvi/docs/CEVI-ComunicadoCanada-2018-EN.pdf>

³³ Canada, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019). Online: <https://www.loc.gov/item/lcwaN0028038/>. <https://www.mmiwg-ffada.ca/final-report/>

³⁴ Public Safety Canada, *Marginalized: The Aboriginal Women’s experience in Federal Corrections* (2012). Online: <https://www.publicsafety.gc.ca/cnt/rsracs/pblctns/mrgnlzd/mrgnlzd-eng.pdf> at 1, 6.

³⁵ Native Women’s Association of Canada, *Action Plan to End the Attack Against Indigenous Women, Girls, and Gender-Diverse People*. Online: <https://nwac.ca/assets-knowledge-centre/NWAC-action-plan-English.pdf>

First Nations children taken from their homes and placed in state care.³⁶ **We call for urgent and substantive solutions to the systemic inequities that disproportionately affect Indigenous survivors of violence.**

f. CONCLUSION

The Barbra Schlifer Commemorative Clinic reminds Canada of its many human rights obligations—particularly its responsibilities to survivors of gender-based violence. We urge timely action tackling the systemic roots of gender inequity and violence. To this end, **we call for the government to ratify relevant human rights conventions; recognize and remedy the pressing needs of migrants, refugees, and Indigenous peoples; and redress the criminalization of survivors of gender-based violence.**

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³⁶ Human Rights Watch, *World Report 2022: Canada* (2022). Online: <https://www.hrw.org/world-report/2023/country-chapters/canada>