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28 June 2017

Mr Gerry McInally  
Committee Secretary  
Senate Select Committee on Strengthening Multiculturalism  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [multiculturalism.sen@aph.gov.au](mailto:multiculturalism.sen@aph.gov.au).

Dear Mr McInally

**Supplementary Submission as to *Ways of protecting and strengthening Australia's multiculturalism and social inclusion***

Australian Lawyers for Human Rights (ALHR) thanks the Senate Select Committee for the opportunity to speak with the Committee on 27 June 2017 and submits this Supplementary Submission to clarify our position on some of the matters discussed in the context of the desirability or usefulness of a potential Multiculturalism Act.

1. We agree that legislation is the highest degree of symbolic support that a government can give, and to that extent it is appropriate to have a Multiculturalism Act rather than a stated policy or other instrument. By legislating, government makes a public declaration that there are values which society wishes to sustain.
2. However at the same time an Act falls into disrepute if it is not sustained through being enforced. If a Multiculturalism Act does not provide for the establishment of government bodies and/or for enforceable behaviour, its symbolic importance becomes tarnished.
3. In our view, if a Multiculturalism Act is not adopted in conjunction with a Human Rights Act or Bill of Rights it has the potential to:
  - become divisive, rather than bringing people together; and
  - enshrine existing cultural inequalities, both between cultures and within cultures.

The fact that there are diverse cultures within Australia does not mean that they all are internally homogeneous nor that they are all equally beneficial. The value of any culture must be assessed by external criteria, and we submit that human rights provide that external framework.

4. The fact that Canadian ethnic groups feel 'respected, included and empowered' as Professor Mansouri has said should, we suggest, be seen against the fact that Canada has not only a Multiculturalism Act but also an (earlier) Charter of Human Rights, a Human Rights Act, a Human Rights Tribunal and a strong Human Rights Commission. **It is also important to note that the Canadian Multiculturalism Act strongly references human rights provisions and standards and is clearly meant to be informed by them (see attached marked up copy).**
5. Neither Australian values nor human rights are protected by the free market. They have to be supported by government. We assume that a Multiculturalism Act would aim to encourage and

maintain social cohesion and equal treatment for all Australian residents irrespective of cultural or ethnic background, and of fostering an accepting culture which encourages indigenous people, new arrivals and Australian-born descendants of immigrants to feel themselves to be genuine and valued members of Australian society (the 'positive aims'). It cannot meet these aims if any section of people within Australian society feels that they do not receive social and legal justice, that they are systemically discriminated against, or systemically vilified. The positive aims of a Multiculturalism Act cannot be met if any section of Australian society is regularly vilified and denigrated publicly by the media or by political leaders. A Multiculturalism Act cannot by itself prevent these occurrences. Only by enshrining a human rights framework in our federal legislation can these exclusionary practices be halted.

6. Incidentally, while we support the retention of Section 18C of the *Racial Vilification Act*, we acknowledge that its drafting could be improved as currently it focuses more on occurrences of direct face to face vilification, as opposed to the harms that more general vilification of a group can and does cause. A human rights framework in our federal legislation would better be able to take account of the different ways in which racial vilification can cause harm.
7. A Multiculturalism Act is unlikely of itself to be able to manage competing cultural rights. It needs the addition of a human rights framework to achieve this.
  - 7.1 Let us take for example the human right of 'freedom of religion' which is short for "freedom of thought, conscience, religion or belief." That right includes – both as a matter of logic and as understood in European human rights law - freedom to choose between different beliefs or to choose to hold no belief.
  - 7.2 Logically, to have 'freedom to have something' you must also be free to NOT have that thing. If 'freedom of religion' meant only freedom to choose between religions, then it would not really be a freedom. It would be enforced religion.
  - 7.3 Freedom of religion as a human right therefore also includes the right to leave one's religion, which would no doubt be a value or right accepted by most Australians (given that the 2016 Australian census results which have just come out show that 29.6% of census participants regard themselves as having 'no religion').
  - 7.4 But this right is contrary to the tenets of some religions, many of which severely sanction or penalise criticism of, or attempts to leave, a religion. Such sanctions and penalties are therefore fundamental to some cultures.
  - 7.5 How can a Multiculturalism Act work in practice without being able to address such issues through an appeal to the competing human rights involved? How can it give an inclusive message of "Australian values" to migrants without clarifying what values and rights are involved – in this example, that they have freedom of choice in relation to religion?
  - 7.6 Professor George Williams recently mentioned<sup>1</sup> that approximately 60% of Australians think we already have a bill of rights. We believe that this demonstrates that the values reflected in the *Universal Declaration of Human Rights* would generally be accepted as a good reflection of 'Australian values' and that there is no reason not to include a human rights framework in a Multiculturalism Act.
8. We stress that if "principles of multiculturalism" are enshrined in legislation at federal level:
  - Specific reference to respecting, protecting and promoting international human rights need to be included in the principles for the legislation to work in a meaningful way.
  - The principles of multiculturalism must be consistent with Australia's international human rights obligations.
  - The principles should recognise Aboriginal peoples and Torres Strait Islander peoples as the first Australians.
  - The principles should include fair and equitable access to government services and programs by all Australians, regardless of their background, in addition to targeted services and programs for people with specific needs.

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<sup>1</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade Hearing on 'Status of freedom of religion or belief,' Hansard, 6 June 2017.

If you would like to discuss any aspect of this supplementary submission, please email me at: [president@alhr.org.au](mailto:president@alhr.org.au) or Dr Tamsin Clarke at [freedoms@alhr.org.au](mailto:freedoms@alhr.org.au).

Yours faithfully

A handwritten signature in black ink, appearing to be 'B. Coyne', with a long, sweeping underline.

Benedict Coyne  
President  
Australian Lawyers for Human Rights

A handwritten signature in black ink, appearing to be 'T. Clarke', written in a cursive style.

Dr Tamsin Clarke  
'Freedoms' Chair  
Australian Lawyers for Human Rights

# Canadian Multiculturalism Act

R.S.C., 1985, c. 24 (4th Supp.)

An Act for the preservation and enhancement of multiculturalism in Canada

[1988, c. 31, assented to 21st July, 1988]

## Preamble

WHEREAS the Constitution of Canada provides that every individual is equal before and under the law and has the right to the equal protection and benefit of the law without discrimination and that everyone has the freedom of conscience, religion, thought, belief, opinion, expression, peaceful assembly and association and guarantees those rights and freedoms equally to male and female persons;

AND WHEREAS the Constitution of Canada recognizes the importance of preserving and enhancing the multicultural heritage of Canadians;

AND WHEREAS the Constitution of Canada recognizes rights of the aboriginal peoples of Canada;

AND WHEREAS the Constitution of Canada and the *Official Languages Act* provide that English and French are the official languages of Canada and neither abrogates nor derogates from any rights or privileges acquired or enjoyed with respect to any other language;

AND WHEREAS the *Citizenship Act* provides that all Canadians, whether by birth or by choice, enjoy equal status, are entitled to the same rights, powers and privileges and are subject to the same obligations, duties and liabilities;

AND WHEREAS the *Canadian Human Rights Act* provides that every individual should have an equal opportunity with other individuals to make the life that the individual is able and wishes to have, consistent with the duties and obligations of that individual as a member of society, and, in order to secure that opportunity, establishes the Canadian Human Rights Commission to redress any proscribed discrimination, including discrimination on the basis of race, national or ethnic origin or colour;

AND WHEREAS Canada is a party to the *International Convention on the Elimination of All Forms of Racial Discrimination*, which Convention recognizes that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination, and to the *International Covenant on Civil and Political Rights*, which Covenant provides that persons belonging to ethnic, religious or linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practise their own religion or to use their own language;

AND WHEREAS the Government of Canada recognizes the diversity of Canadians as regards race, national or ethnic origin, colour and religion as a fundamental characteristic of Canadian society and is committed to a policy of multiculturalism designed to preserve and enhance the multicultural heritage of Canadians while working to achieve the equality of all Canadians in the economic, social, cultural and political life of Canada;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

## Short Title

### Short title

1 This Act may be cited as the *Canadian Multiculturalism Act*.

## Interpretation

### Definitions

2 In this Act,

*federal institution* means any of the following institutions of the Government of Canada:

- (a) a department, board, commission or council, or other body or office, established to perform a governmental function by or pursuant to an Act of Parliament or by or under the authority of the Governor in Council, and
- (b) a departmental corporation or Crown corporation as defined in section 2 of the [Financial Administration Act](#),

but does not include

- (c) any institution of the Legislative Assembly or government of Yukon, the Northwest Territories or Nunavut, as the case may be, or
- (d) any Indian band, band council or other body established to perform a governmental function in relation to an Indian band or other group of aboriginal people; (*institutions fédérales*)

**Minister** means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of this Act. (*ministre*)

R.S., 1985, c. 24 (4th Supp.), s. 2;  
 1993, c. 28, s. 78;  
 2002, c. 7, s. 129;  
 2014, c. 2, s. 38.

# Multiculturalism Policy of Canada

## Multiculturalism policy

**3 (1)** It is hereby declared to be the policy of the Government of Canada to

- (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.

## Federal institutions

**(2)** It is further declared to be the policy of the Government of Canada that all federal institutions shall

- (a) ensure that Canadians of all origins have an equal opportunity to obtain employment and advancement in those institutions;

- (b) promote policies, programs and practices that enhance the ability of individuals and communities of all origins to contribute to the continuing evolution of Canada;
- (c) promote policies, programs and practices that enhance the understanding of and respect for the diversity of the members of Canadian society;
- (d) collect statistical data in order to enable the development of policies, programs and practices that are sensitive and responsive to the multicultural reality of Canada;
- (e) make use, as appropriate, of the language skills and cultural understanding of individuals of all origins; and
- (f) generally, carry on their activities in a manner that is sensitive and responsive to the multicultural reality of Canada.

## **Implementation of the Multiculturalism Policy of Canada**

### **General responsibility for coordination**

- 4 The Minister, in consultation with other ministers of the Crown, shall encourage and promote a coordinated approach to the implementation of the multiculturalism policy of Canada and may provide advice and assistance in the development and implementation of programs and practices in support of the policy.

### **Specific mandate**

- 5 (1) The Minister shall take such measures as the Minister considers appropriate to implement the multiculturalism policy of Canada and, without limiting the generality of the foregoing, may
- (a) encourage and assist individuals, organizations and institutions to project the multicultural reality of Canada in their activities in Canada and abroad;
  - (b) undertake and assist research relating to Canadian multiculturalism and foster scholarship in the field;
  - (c) encourage and promote exchanges and cooperation among the diverse communities of Canada;
  - (d) encourage and assist the business community, labour organizations, voluntary and other private organizations, as well as public institutions, in ensuring full participation in Canadian society, including the social and economic aspects, of individuals of all origins and their communities, and in promoting respect and appreciation for the multicultural reality of Canada;
  - (e) encourage the preservation, enhancement, sharing and evolving expression of the multicultural heritage of Canada;
  - (f) facilitate the acquisition, retention and use of all languages that contribute to the multicultural heritage of Canada;
  - (g) assist ethno-cultural minority communities to conduct activities with a view to overcoming any discriminatory barrier and, in particular, discrimination based on race or national or ethnic origin;
  - (h) provide support to individuals, groups or organizations for the purpose of preserving, enhancing and promoting multiculturalism in Canada; and
  - (i) undertake such other projects or programs in respect of multiculturalism, not by law assigned to any other federal institution, as are designed to promote the multiculturalism policy of Canada.

### **Provincial agreements**

- (2) The Minister may enter into an agreement or arrangement with any province respecting the implementation of the multiculturalism policy of Canada.

### **International agreements**

- (3) The Minister may, with the approval of the Governor in Council, enter into an agreement or arrangement with the government of any foreign state in order to foster the multicultural character of Canada.

### **Responsibilities of other Ministers**

- 6 (1)** The ministers of the Crown, other than the Minister, shall, in the execution of their respective mandates, take such measures as they consider appropriate to implement the multiculturalism policy of Canada.

#### **Provincial agreements**

- (2) A minister of the Crown, other than the Minister, may enter into an agreement or arrangement with any province respecting the implementation of the multiculturalism policy of Canada.

#### **Canadian multiculturalism advisory committee**

- 7 (1)** The Minister may establish an advisory committee to advise and assist the Minister on the implementation of this Act and any other matter relating to multiculturalism and, in consultation with such organizations representing multicultural interests as the Minister deems appropriate, may appoint the members and designate the chairman and other officers of the committee.

#### **Remuneration and expenses**

- (2) Each member of the advisory committee shall be paid such remuneration for the member's services as may be fixed by the Minister and is entitled to be paid the reasonable travel and living expenses incurred by the member while absent from the member's ordinary place of residence in connection with the work of the committee.

#### **Annual report**

- (3) The chairman of the advisory committee shall, within four months after the end of each fiscal year, submit to the Minister a report on the activities of the committee for that year and on any other matter relating to the implementation of the multiculturalism policy of Canada that the chairman considers appropriate.

## **General**

#### **Annual report**

- 8** The Minister shall cause to be laid before each House of Parliament, not later than the fifth sitting day of that House after January 31 next following the end of each fiscal year, a report on the operation of this Act for that fiscal year.

#### **Permanent review by a Parliamentary committee**

- 9** The operation of this Act and any report made pursuant to section 8 shall be reviewed on a permanent basis by such committee of the House, of the Senate or of both Houses of Parliament as may be designated or established for the purpose.

Last modified: 16 June 2017