

**Name:** Lawyer's Human Rights Watch (LRWC)

**Country:** Canada

**Date of submission:** 16/06/2012

**Questionnaire on the use of legislation, including criminal legislation, to regulate the activities and work of human rights defenders**

It would be greatly appreciated if responses were brief. They may be submitted in bullet points if preferred. For non-governmental organizations, should they wish, their identity will remain confidential (only the country where they operate will be disclosed).

Furthermore, they need only answer questions which are relevant to them, and may share information about defenders other than themselves.

1. a) Please indicate if your country has a specific legal framework, laws or regulations that aim to facilitate or protect the activities and work of human rights defenders. Please cite the names of any such laws or regulations in full.

- Canada has no laws that specifically facilitate or protect the activities and work of human rights defenders.

b) Please indicate how these laws and regulations are in line with international human rights standards, including, but not limited to, the Declaration on Human Rights Defenders.

- Not applicable

c) Please also indicate what legal or administrative safeguards are put in place to prevent baseless legal action against and/or prosecution of human rights defenders for undertaking their legitimate work.

- There are no such safeguards that apply to all of Canada to protect human rights defenders from baseless civil suits and malicious prosecutions. SLAPPs (Strategic Lawsuits against Public Participation) are used, principally by wealthy corporations, to intimidate, stop or restrict human rights defenders from continuing legitimate activities in furtherance of their causes. SLAPPs, poorly founded and well funded, are mounted to curtail the defendant's advocacy through threats of legal action and court costs. Only the province of Quebec has enacted a law limiting SLAPPs. The Anti-SLAPP Panel appointed in 2008 in the province of Ontario proposed changes to existing legislation to "encourage freedom of expression on matters of public interest, and discourage use of the courts in ways that limit that freedom."

2. a) Please describe the measures taken, if any, to ensure that your country's national security-related laws (including laws on public order, public safety, respect for morals and counter-terrorism laws) are not used to unduly restrict the scope of activities of human rights defenders.

- There are no measures to ensure that security-related laws are not used to restrict the work of human rights defenders. The federal government appears to be moving towards greater surveillance and monitoring of human rights defenders including public servants, individuals and civil society organizations. (see answer to # 8)

b) Please also indicate in particular how these national security-related laws respect the human right to freedom of expression and opinion.

- National security-related laws appear to threaten freedoms of expression and opinion, particularly of government critics. The Federal Government is attempting to reintroduce legislation in the *Criminal Code of Canada* to provide again for preventative arrests and investigative hearings. Provisions allowing preventative arrests and investigative hearings were introduced in response to the September 2001 Trade Towers collapse. The measures, which came into force 18 December 2001 and expired 7 March 2007, were never used and no need has ever been demonstrated.
- Sedition is still a crime (Criminal Code of Canada, R.S.C. c. 46, sections 59 to 61). The Supreme Court of Canada ruled in *Boucher v. The King* [1951] S.C.R. 265 at 285-86) that the crime of seditious libel was founded in legal and social beliefs no longer held.

3. a) Please describe the measures taken, if any, to ensure that provisions of the criminal code, or other national laws, are not ambiguous or too broad to allow their arbitrary use, thereby restricting the activities of human rights defenders.

- There are not such measures. Recent comments by government officials accusing civil society organizations involved in environmental advocacy, of money laundering and extremism indicate a move towards criminalizing dissent.

b) Please indicate what legal or administrative safeguards are in place in order to ensure that human rights defenders are not discriminated against in the administration of justice, be it through the handing down of disproportionate sentences, the unreasonable prolongation of criminal or other trials, or any other means.

- There are no safeguards in place to ensure specifically that human rights defenders are not discriminated against in the administration of justice.

4. a) Please indicate if your country has specific laws or administrative rules governing the registration, functioning and funding of non-governmental organisations. Please cite the names of any such laws or regulations in full.

- **Registration:** Not-for-profit organizations may register as societies under federal, provincial laws (10 provinces) or territorial (3 territories) laws. The federal law is the *Canada Not-for-profit Corporations Act* (S.C. 2009, c. 23) and the Canada Not-for-profit Corporations Regulations (SOR/2011-223). All 10 provinces and 3 territories also have laws allowing the registration of not-for-profit organizations as societies. For example, the British Columbia *Society Act*, [RSBC 1996] CHAPTER 433 and Society Act Regulations, B.C. reg. 4/78.
- Generally, these laws require the organization applying for registration to register a statement of purpose (constitution) and adopt by-laws that set rules for the membership and governance of the society. The registered society is obliged to hold an annual general meeting to elect directors and officers, to file annual reports confirming the annual general meeting and the election of directors and provide public access to their annual reports and financial statements. Registered societies are eligible to apply to the Canada Revenue Agency (CRA) for charitable tax status and thereafter to issue tax receipts for donations for charitable work. Charitable work is narrowly defined as work that provides a tangible public benefit and relieves poverty, advances education or advances religion. Some societies with charitable tax status (charities) must file an annual Information Return with the CRA.

b) Please explain how these legal or administrative provisions comply with your country's international human rights obligations regarding the right to freedom of association.

- Although these provisions do not overtly offend any human rights obligations they do not protect individuals or organizations engaged in human rights advocacy from interference and harassment.

5. a) Are there criminal or other legal or administrative sanctions for human rights defenders who undertake activities on an individual basis or while the association they are members of is unregistered?

- There are no such measures.

b) If such a legal framework exists, does it restrict the type of activities that human rights defenders can undertake? If yes, please provide further details.

- Not applicable

6. Please indicate the measures taken, if any, to ensure that internal security and official secret-related laws are not used to deny freedom of information to human rights defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards.

- There are no measures specific to human rights defenders to avoid denial of freedom of information on the basis of internal security and official secrets-related laws or to prevent prosecutions.

7. a) Please indicate the measures taken, if any, to avoid the use of defamation, slander or blasphemy laws to unduly restrict the right to freedom of opinion and expression of human rights defenders.

- There are no measures taken specific to human rights defenders to avoid defamation or blasphemy being used to muzzle them. See answer to question # 2(a)

b) How is it ensured that such laws, as well as laws on printing, publication and censorship, comply with international human rights standards and do not target human rights defenders carrying out their legitimate work?

- There is no process to ensure that such laws comply with international standards. Canadian courts have not relied on international standards to restrict or qualify the application of publication and censorship laws to human rights defenders.

8. Please indicate if any other type of legislation is used to regulate the activities of human rights defenders in your country and how the application of the legislation mentioned affects the activities of human rights defenders. Please cite the names of any such legislation in full.

- **Surveillance of human rights defender Dr. Cindy Blackstock**

The federal government has conducted extensive surveillance of Dr. Cindy Blackstock, well known and respected defender of the rights of indigenous children in Canada. Cindy Blackstock, Ph.D., member of the Gitksan Nation, Executive Director of the First Nations Child and Family Caring Society (Caring Society) and Associate Professor at the University of Alberta, has worked in the field of child and family services for over 20 years and is author of over 50 publications. Her key work involves promoting equitable and culturally based interventions for disadvantaged aboriginal children. In 2007, the Caring Society and the Assembly of First Nations launched a complaint with the Canadian Human Rights Commission based on the fact that federal funding of services for Aboriginal children living on reserves is significantly lower than provincial funding for the same services for off-reserve children and is therefore discriminatory and contrary to the Canadian Human Rights Act.

Dr. Blackstock learned that the federal government had conducting surveillance/monitoring of her for the purpose of to finding "other motives" for the case brought by the Caring Society. In response to 3 Access to Information requests and 6 Privacy Requests from Aboriginal Affairs and Northern Development Canada (AANDC) and the Department of Justice, she received thousands of pages recording surveillance of her indicating 474 contacts who sent or received documents regarding surveillance of her. The documents revealed 189 individuals

sending or receiving documents, the vast majority of whom were senior government officials with a large representation of legal counsel representing the Attorney General in the Caring Society's case as well as legal personnel (including lawyers) internal to the Department of Indian and Northern Affairs Canada (INAC) and communications people from AANDC and the Department of Justice.

Copies of Dr. Blackstock's Indian Registry appear 9 times in the documents. Most of these include very personal information on her family (parents, grandparents and siblings), such as dates of birth, full names, registry numbers, etc..

There are 6 explicit and distinct references to AANDC and/or Department of Justice monitoring of Dr. Blackstock's personal Facebook and Twitter accounts.

- **Proposed restrictions:** The 2012 Budget proposes measures to further restrict the ability of charities to engage in education and advocacy about public policy through amendments to: change the definitions of political and charitable activities; require charities to provide more information about political activities and funding from foreign donors; and, suspend charitable for exceeding the allowable limit for political activities or providing inaccurate or incomplete information on the annual information returns.
- **Building Resilience Against Terrorism: Canada's Counterterrorism Strategy:** In February, the Harper administration announced the "Building Resilience Against Terrorism: Canada's Counterterrorism Strategy" which identifies environmental, anti-capitalist and animal rights advocates—along with white supremacists—as examples of issue-based extremism that could constitute a terrorist threat within Canada and to Canadians. This official strategy apparently seeks to vilify lawful participation in public debate and dissemination of information that involves criticism of government and to legitimize increased surveillance of human rights defenders. The plan includes increased surveillance by as many as 24 government agencies. <http://www.carters.ca/pub/alert/ATCLA/ATCLA31.pdf>
- **Human rights defenders targeted:** As of March 2011 Prime Minister Stephen Harper and the Harper administration have targeted over 100 government employees and agencies and non-government organizations with some type of action to restrict or curtail their ability to provide oversight of government programs and policy and/or to engage in human rights advocacy. The list is accessible at <http://xraymagazine.ca/18/4/> and is reproduced below. Further details of the action taken against these individuals, agencies and organizations by the Harper administration are available on the website of Voices/Voix a coalition to support advocacy and dissent in Canada <http://voices-voix.ca/en>.

## *Harper's Chopping Block*

An unofficial list of organizations and government agencies that the Harper government has gutted, "defunded" and otherwise destroyed  
by Judith Szabo and Pearl Eliadis

**Organizations and watchdogs whose staff have been fired, forced out, publicly maligned, or who have resigned in protest:**

- Canada Firearms Program (Chief Supt. Marty Cheliak, fired)
- Canadian Wheat Board (Adrian Measner, fired)
- Canadian Nuclear Safety Commission (Linda Keen, fired)
- Foreign Affairs (Richard Colvin, silenced by prorogation)
- Military Police Complaints Commission (Peter Tinsley, forced out)
- Ombudsman for the Department of National Defence and the Canadian Forces (Yves Coté, resigned)
- Parliamentary Budget Officer (Kevin Page, publicly maligned)
- RCMP Police Complaints Commission (Paul Kennedy, fired)
- Rights & Democracy (Rémy Beauregard, died of heart attack)
- Statistics Canada (Munir Sheikh, resigned in protest)
- Veterans Ombudsman (Col. Pat Stogran, forced out)
- Victims of Crime, Ombudsman (Steve Sullivan, forced out)

**Community organizations, NGOs and research bodies reported to have been cut or "defunded"**

[1]:

- Action travail des femmes
- Afghan Association of Ontario, Canada Toronto
- Alberta Network of Immigrant Women
- Alternatives (Quebec)
- Association féminine d'éducation et d'action sociale (AFEAS)
- Bloor Information and Life Skills Centre[2]
- Brampton Neighbourhood Services (Ontario) [3]
- Canadian Arab Federation
- Canadian Child Care Federation
- Canadian Council for International Cooperation
- Canadian Council on Learning
- Canadian Council on Social Development
- Canadian Heritage Centre for Research and Information on Canada
- Canadian International Development Agency, Office of Democratic Governance[4]
- Canadian Labour Business Centre
- Canada Policy Research Networks
- Canadian Research Institute for the Advancement of Women
- Canada School of Public Service
- Canadian Teachers' Federation International program
- Canadian Volunteerism Initiative

- Centre de documentation sur l'éducation des adultes et la condition féminine
- Centre for Equality Rights in Accommodation (CERA.)
- Centre for Spanish Speaking Peoples (Toronto)
- Child Care Advocacy Association of Canada
- Childcare Resource and Research Unit, Specialink
- Climate Action Network
- Community Access Program, internet access for communities at libraries, post offices, community centers
- Community Action Resource Centre (CARC)
- Conseil d'intervention pour l'accès des femmes au travail (CIAFT)
- Court Challenges Program (except language rights cases and legacy cases)
- Davenport-Perth Neighbourhood Centre Toronto: (Funding cut by CIC in December 2010).
- Democracy Council[5]
- Department of Foreign Affairs, Democracy Unit[6]
- Elspeth Heyworth Centre for Women Toronto: (Funding cut by CIC in December 2010).
- Environment: Youth International Internship Program
- Eritrean Canadian Community Centre of Metropolitan Toronto (Funding cut by CIC in December 2010)
- Feminists for Just and Equitable Public Policy (FemJEPP) in Nova Scotia
- First Nations Child and Family Caring Society
- First Nations and Inuit Tobacco Control Program
- Forum of Federations
- Global Environmental Monitoring System
- HRD Adult Learning and Literacy programs
- HRD Youth Employment Programs
- Hamilton's Settlement and Integration Services Organization (Ontario) [7]
- Immigrant settlement programs
- Inter-Cultural Neighbourhood Social Services (Peel)[8]
- International Planned Parenthood Federation
- Kairos[9]
- Law Reform Commission of Canada
- Mada Al-Carmel Arab Centre
- Marie Stopes International, a maternal health agency (has received only a promise of "conditional funding IF it avoids any and all connection with abortion).
- MATCH International
- National association of Women and the Law (NAWL)
- Native Women's Association of Canada
- New Brunswick Coalition for Pay Equity
- Northwood Neighbourhood Services (Toronto: (Funding cut by CIC in December 2010).
- Ontario Association of Interval and Transition Houses (OAITH)
- Ontario Association of Transitional Housing (OAITH)

- Ontario Coalition for Better Child Care
- Pride Toronto
- Réseau des Tables régionales de groupes de femmes du Québec
- Riverdale Women's Centre in Toronto
- Sierra Club of BC
- Sisters in Spirit
- Social Sciences and Humanities Research Council of Canada
- South Asian Women's Centre[10]
- Status of Women (mandate also changed to exclude "gender equality and political justice" and to ban all advocacy, policy research and lobbying)
- Tropicana Community Services
- Womanspace Resource Centre (Lethbridge, Alberta)
- Women's Innovative Justice Initiative – Nova Scotia
- Workplace Equity/Employment Equity Program
- York-Weston Community Services Centre Toronto

*Compiled by Judith Szabo and Pearl Eliadis for "Voices", a coalition of organizations and individuals "united in defence of democracy, free speech and transparency in Canada".*

#### **NOTES**

[1] "Defunding" is the term used by Jason Kenney. In many instances, it is about turning down grant applications rather than cutting off funding midstream, but for organizations that rely on renewed program funding to support their work, and have done so for many years, it amounts to the same thing.

[2] Citizenship and Immigration Canada Cut or significantly reduced their principal funding - approximately \$471,000. Source: *Globe and Mail*.

[3] Cut in the last few years by federal government because of alleged mismanagement:

Source <http://www.canadianimmigrant.ca/learn/newsitems/article/7935>

[4] The Office of Democratic Governance, which channelled much of Canada's democracy funding, has been disbanded by CIDA.

[5] A forum for discussion and collaboration among Canadian democracy promotion agencies. It has reportedly disappeared despite stated earlier commitments and interest from both government and NGOs to see it continue and even expand.

[6] Folded into the Francophonie and Commonwealth division.

[7] Cut in the last few years by federal government because of alleged mismanagement:

Source <http://www.canadianimmigrant.ca/learn/newsitems/article/7935>

[8] Cut in the last few years by federal government because of alleged mismanagement:

Source <http://www.canadianimmigrant.ca/learn/newsitems/article/7935>

[9] Including Anglican Church of Canada, Christian Reformed Church in North America, Evangelical Lutheran Church in Canada, Mennonite Central Committee, Presbyterian Church in Canada, United Church of Canada, Religious Society of Friends (Quakers), Canadian Catholic Organization for Development and Peace, Canadian Conference of Catholic Bishops, Canadian Religious Conference, and the Primate's World Relief and Development Fund.

[10] The Centre has lost \$571,000---all of its federal funding---which represents nearly 70 per cent of its overall budget. Source: *Globe and Mail*.