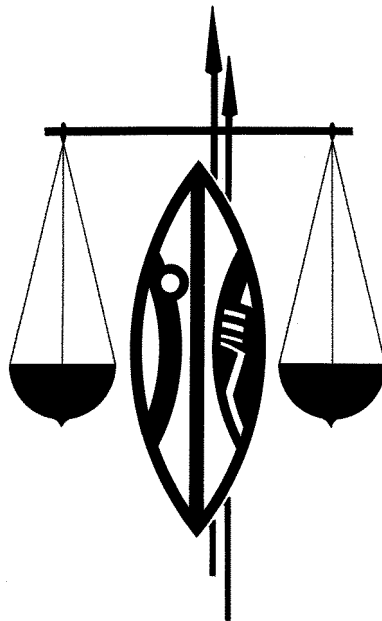


AFRICAN CANADIAN LEGAL CLINIC



**2001
ANNUAL REPORT**

LEGAL REPORT

K.V. v. T.E. (Race and Custody and Access)

The African Canadian Legal Clinic, The Association of Black Social Workers and the Jamaican Canadian Association intervened before the Supreme Court of Canada in the case of *KV v. T.E.* The case was a custody dispute in which the issue of the relevance of race in the life of a child of mixed African American and European Canadian parentage was raised. The case involved the mother who was from Vancouver and a prominent, former NBA player who is married with twins. He and his wife were awarded custody by the B.C. Court of Appeal. One of the grounds mentioned for reversing the trial judge's decision was the race of the child and his father. Counsel had not raised the issue of race at the trial in any meaningful fashion.

The ACLC and its coalition partners took the position that the social construct of race has a profound impact on biracial children. We submitted that given that children need to develop tools to deal with racism and need to develop a positive racial identity, race should be an important or major factor to be given considerable weight. We did not take a position on the facts of the case but urged the Supreme Court of Canada to develop guidance for lower courts and to take judicial notice of the impact of racialization on child development. We urged the Court to call on lower courts to hear evidence of parenting plans regarding the awareness, analysis and actions to be taken by each parent to meet the child's needs. In this regard, we relied on an assessment model developed by members of the Association of Black Social Workers. The Supreme Court of Canada granted custody of the four year old boy to his Caucasian mother and awarded the African American father four weeks access plus half time at holidays and birthdays and some additional access, on notice, in the child's home city.

The Supreme Court of Canada found that race could be a factor in custody proceedings and that it could impact on the best interests of the child. The Court explicitly linked race to the child's "culture, identity and emotional well-being". The Court stated that the significance of race would depend on the case at hand and the evidence. The court held that race was not determinative. The Court commented that it was inappropriate for lawyers not to raise an issue that might impact on a child's best interests because they fear it is "politically incorrect". The Court held that evidence regarding race is relevant and, if tendered, must be "carefully considered" by the trial judge. The Court left the issue open to lawyers and judges in upcoming trials, to deal with in a more comprehensive manner. The Court did not discuss the access order in detail or determine whether the minimal amount of access granted would suffice to meet the needs of the racialized child. Instead, the Court made its decision on the narrow, technical grounds that there had been no material (overt) error on the part of the trial judge and that appellate courts cannot lightly overturn trial decisions.

Kearney v. The Shelter Corporation et al

(The Rights of African Canadian Tenants)

The ACLC and the Jamaican Canadian Association intervened in the fall of 2000 before the Divisional Court in a case involving the rights of tenants. This case involved the use of income criteria by landlords as a means of screening out prospective tenants. The Centre For Equality Rights in Accommodation was active in preparing this case and in obtaining research on who is affected by the use of income criteria. This evidence was presented to the Ontario Human Rights Commission Board of Inquiry, which found that the use of income criteria was discriminatory whether used alone or in conjunction with other selection criteria. The Board based its decision on various intersecting grounds of discrimination, including race and place of origin for one complaint. The ACLC and the JCA intervened on the appeal and argued that the use of income criteria disproportionately and negatively impacted on persons of African Descent, living in Ontario, effectively excluding them from certain buildings. The Divisional Court found that the use of income criteria in isolation was discriminatory and that the individual complainants had been discriminated against (they did not address the grounds of race or place of origin). However, the Court left open the possibility of using income criteria, as long as they are used together with other measures for determining credit risk, as permitted by recent amendments to the *Tenant Protection Act* and the *Human Rights Code*.

R v. Mankwe (Jury Challenge for Cause for Racial Bias)

The ACLC and the Minority Advocacy and Rights Council (MARC) were granted Intervener status by the Supreme Court of Canada in *R. v. Mankwe*. This appeal from Quebec involved the right of an African Canadian accused to challenge prospective jurors for cause on the basis of racial bias. Mr. Mankwe, who is an African Canadian, was charged with sexual assault and unlawful confinement in Montréal. The victim was also African Canadian. At the time of jury selection in September 1997, Mr. Mankwe sought to challenge prospective jurors for cause, pursuant to s. 638(1)(b) of the *Criminal Code*, on the basis of racial prejudice and sought to ask questions to the prospective jurors about their perceptions of African Canadians and crime. The trial judge refused to allow any of the questions to be asked. While accepting that racial prejudice was found in all Canadian provinces, the trial judge determined that there was no evidence to conclude that there was a realistic potential for juror partiality. Mr. Mankwe was eventually convicted of sexual assault and unlawful confinement. The Quebec Court of Appeal dismissed Mr. Mankwe's appeal on the grounds that there was no evidence of racial prejudice to displace the presumption of juror partiality; that a judge could not take judicial notice of the notoriousness of racial prejudice in Montreal; and that the accused and the victim were both African Canadian.

At the appeal before the Supreme Court of Canada, the Quebec Attorney General conceded that the trial judge could have taken judicial notice of the existence of a realistic possibility of racial partiality in Montréal. The ACLC and MARC considered that the concession far too narrow, and left many important issues outstanding, and filed a factum. We focussed on the need for judicial notice of racism and the inability of jurors to set aside racial bias as a national phenomenon, resulting in a national, presumptive right to challenge for cause for African Canadian and other racialized accused. We relied on section 15 of the *Charter* as the cornerstone for ensuring that the fair trial right was available in a substantively equitable fashion to African Canadian and racialized accused. The Court allowed the appeal and sent the case back for a new trial based on the Crown's concession on the jury challenge issue.

Pieters v. Toronto Board of Education
(Health & Safety Workplace Race Based Reprisal & The Right to a Forum of Choice)

The ACLC represented Mr. Pieters in his judicial review application at the Ontario Superior Court of Justice (Divisional Court). At issue was whether or not an African Canadian man who makes a complaint of reprisals under the *Ontario Health and Safety Act*, part of which involved racial harassment, could choose to have his matter heard before the Ontario Labour Relations Board (OLRB). The OLRB declined to hear Mr. Pieters complaint of reprisal. It found the matter to be primarily one involving racial discrimination and thus felt that the Human Rights Commission (HRC) should deal with it. At the judicial review application before the Divisional Court, the ACLC argued that the absolute devolution of the matter by the OLRB was in excess of its jurisdiction or alternatively, patently unreasonable. The ACLC also invoked section 15 *Charter* arguments regarding the effective exclusion of racialized persons from addressing matters before the OLRB as it is probable that at least one facet of their reprisals will be race-based. The Divisional Court dismissed the judicial review. It found that the decision of the OLRB was not patently unreasonable and further was not discriminatory because women who faced gender-based harassment were also sent to the HRC. The ACLC filed for leave to appeal at the Court of Appeal. Leave was dismissed and no reasons were provided.

Golden v. R.
(Police Strip Search Powers)

In February of 2001, the ACLC appeared before the Supreme Court of Canada to argue for the rights of African Canadians facing strip searches at the hands of police. This case involved an African Canadian who was subjected to an intrusive body cavity search in a Subway sandwich shop, in the stairwell and in the open area of the shop. Although the shop was locked and the police claim that any view of the search was blocked, the shop had a glass window front and thus Mr. Golden would not know if passers by could see him. The ACLC argued that searches must be conducted in a manner which respects the equality and dignity of African Canadians and which takes into account the perspective of the reasonable African Canadian, aware of the history of racism and police violence towards African Canadian males in Canadian society. The ACLC argued that given this context, strip searches should not be carried out in public places, but rather, at the police station and that warrants should be utilized. We are awaiting a decision from the Supreme Court of Canada.

***Taylor v. Attorney General
(Judicial Accountability)***

The ACLC was co-counsel with Mr. Peter Rosenthal in the two court proceedings relating to Mr. Taylor's ejection from the courtroom during the Dudley Laws trial in 1993 for wearing a *kufi* (a small Muslim headcovering). Mr. Taylor is an African Canadian Muslim who has served as an Imam. The judge was heard to state "Muslims do not wear hats". Even after Mr. Taylor provided an affidavit explaining how the wearing of his *kufi* was part of his religious practice and conviction, the judge continued to deny his admission into the courtroom. The judge established a dress protocol prohibiting all male headcoverings except those which were "obvious and easily recognizable" as from "a well established and recognizable race, culture, national or religious community..." and excluded Mr. Taylor from attending throughout the four month trial.

In one proceeding, Mr. Taylor attempted to file a complaint about the judge's discriminatory behavior to the Canadian Human Rights Commission. However, the Commission refused to take the complaint on the basis that judges are immune from human rights complaints. The Federal Court denied his application for judicial review for the same reason. Leave to appeal the Federal Court of Appeal's decision to the Supreme Court of Canada was refused in October 2000.

Mr. Taylor also filed a complaint about the judge's behavior to the Canadian Judicial Council. The Council refused to take action and closed the file. After persistent requests by Mr. Taylor the Council reconsidered but again closed the file with an "expression of disapproval" of the judge's comments. A judicial review application of this decision was filed in the Federal Court Trial Division and heard in May 2001. Mr. Taylor argued that given the serious discriminatory treatment by the trial judge and the right to equality under the *Charter*, the Judicial Council was required to more seriously investigate the possibility of recommending the removal of the judge. The decision is pending.

***Francis v. Minister of Citizenship & Immigration
(Charter Rights of African Canadian Children in the Deportation Context)***

There were further developments in the case of *Francis v. M.C.I.* in 2000. In 1999, the ACLC and its coalition partners the Congress of Black Women of Canada and the National Action Committee on the Status of Women, the Women's Legal Education and Action Fund, the Coalition of Visible Minority Women and the Metro Toronto Chinese and Southeast Asian Legal Clinic intervened at the Ontario Court of Appeal in this case. At issue was the *parens patriae* jurisdiction of the Court to address the *Charter* and other rights of children of potential deportees. The Court of Appeal held that the *Baker* case adequately dealt with the best interests of the child and that the immigration system was suited to address the issues. The children sought and were granted leave to appeal to the Supreme Court of Canada on several grounds, including the ground that the *Baker* case was not a *Charter* case. The ACLC and coalition partners prepared an application for leave to intervene in support of the interests of racialized children who are affected by the deportation of their parents. However, the case was dismissed for mootness, on a motion brought by of the Department of Justice, after the government approved Ms. Francis and her son for landing.

LAW REFORM & ADVOCACY

Immigration and Refugee (Bill C-31 and Bill C-11)

The ACLC worked very closely with the Coalition for a Just Immigration and Refugee Policy to raise awareness about and to challenge the exclusionary mechanisms proposed by the new Immigration Bill C-31 and later Bill C-11, especially with respect to the Bill's discriminatory practices towards African Canadians. Parliament was dissolved before C-31 was passed but C-11 was introduced in place. In addition to the ACLC's participation in the Coalition, the ACLC advocated for fundamental change in the immigration process through written briefs and deputations, communicating with the Standing Committee on Citizenship and Immigration and through public education. The ACLC participated in drafting the Coalition's brief to the Standing Committee and also submitted its own brief focussing on the issues that affect the African Canadian community, to raise awareness about and to challenge the exclusionary mechanisms proposed by the new Immigration Bills. The ACLC has been particularly concerned about the Bills' discriminatory practices towards African Canadians including children's rights, changes to permanent residency status and deportation of permanent residents.

Working in partnership with organizations and communities who share our concerns, the ACLC continues to lobby for changes to Bill C-11. The Bill, which is about to receive a third reading in the Senate, gives the government greater powers to deport people who are accused of breaking the law while limiting their right to appeal (among a number of other stringent measures that will affect African Canadians). In addition to appearing before the Standing Committee on Immigration in the Spring of 2001, the ACLC has participated in several press conferences and public education forums to call attention to aspects of Bill C-11 that will adversely affect racialized communities in general and African Canadians in particular.

Policing

The area of policing continues to be a focus of concern for the ACLC. The ACLC participates in the Committee to Stop Targeted Policing and commented on the recent document by the Committee entitled, Who's The Target? The targeting of Black children in school, and the increasing intervention of the police in school disputes involving Black students, is a growing area of concern for the ACLC and the African Canadian community. The ACLC has had one meeting with Toronto School Board officials to plan a community conference to discuss the *Safe Schools Act* and the role of the police in implementing this new law.

The ACLC continued to support the mandate and the work of the Special Investigative Unit (SIU). ACLC staff attended a meeting to hear about and respond to the SIU's plans for expansion. During that meeting, the ACLC emphasized the importance of the SIU maintaining its full mandate to conduct criminal investigations, and encouraged the SIU to make itself more accessible to the community and undertake anti-racism training for staff.

Employment Standards Act

In the summer of 2000, the government of Ontario proposed significant changes to the *Employment Standards Act* eroding the rights of thousands of workers in the Province. The ACLC appeared before the Ministry of Labour's Employment Standards Act Project Team to discuss how the changes will negatively impact on African Canadian workers and their families. The ACLC continues to work with anti-poverty groups to bring attention to these pressing employment and social justice issues.

Criminal Liabilities White Paper and other Law Enforcement Initiatives

The ACLC responded to a white paper circulated by the Department of Justice to exempt police officers from criminal liability in the course of their duties. The ACLC submitted a brief on the impact that this proposal would have on African Canadians and other racialized groups given that the police are rarely held accountable for their actions. Given the tragic events of September 11th in the United States, and Canada's subsequent move towards heightened security, we expect that African Canadians will become even more targeted by law enforcement agencies who have been given greater powers to fight "terrorism". For example, the government of Ontario will form an elite police unit to "hunt illegal immigrants and see that they are deported." The conservative government has further endorsed the use of "ethnic profiling" to make Canada "safe."

At the federal level, the government recently introduced the *Anti-Terrorism Act* which will also adversely affect African Canadians and other racialized groups. The Act proposes such measures as: fast-tracking permanent resident cards for new immigrants; increased detention capacity; and hiring up to one hundred new staff to enforce upgraded security ports of entry. Considering that African Canadians are already racially profiled and targeted by customs officers at Canada's ports of entry, we anticipate that these new laws will worsen the situation. Consequently, the ACLC will closely monitor the effects these laws in the coming months to track the impacts that they are likely to have on African Canadians and to ensure that, as an organization, we continue to respond.

"Mega Tribunal"

The ACLC made a written submission to the Ontario Ministry of Labour in response to the government's proposal to amalgamate six employment related tribunals, including the Ontario Labour Relations Board, the Workplace Safety and Insurance Appeals Tribunal and the Ontario Human Rights Board of inquiry into one entity: The Unified Workplace Tribunal. The ACLC was concerned about the expertise of such a tribunal and its need to address and interpret numerous pieces of legislation. Further, given the tendency of tribunals to avoid dealing with race related complaints, the ACLC was very concerned with the recommendation that the Unified Workplace Tribunal be given discretion to "screen out" matters—a discretion which does not exist for all of the existing bodies in question. The Ministry of Labour has since abandoned its plan to create a Unified Workplace Tribunal.

COMMUNITY DEVELOPMENT & PUBLIC LEGAL EDUCATION

Community Development (CD) and Public Legal Education (PLE) continue to play an important and integral role in the overall services provided by the ACLC to the African Canadian community. Over the past year the ACLC was significantly involved in the organizing and public outreach process leading up to the World Conference Against Racism (WCAR) at both the national, regional and international levels. This section of the Annual Report will highlight some of the major activities the ACLC was involved in for WCAR. ACLC staff members were involved in numerous workshops and presentations related to and in preparation for the WCAR in addition to holding regular public legal education and community development initiatives.

Navigation Manuals

Since its inception, the ACLC has been mindful of the need to provide frontline staff at community based social service agencies with the tools and skills necessary to advocate for their clients in a legal setting. In order to achieve this task, the ACLC developed the Navigation Manuals, which is a series of quick-reference guides in key areas of law that impact significantly on the African Canadian community. Three manuals were developed on the following topics: Human Rights, Criminal Law, Refugee Identification Documents and Immigration Limbo.

These three manuals are designed to provide frontline staff with basic knowledge of the law in a given area of law. The manuals set out key points and information that will assist agency staff to become better advocates for their clients and to become better-acquainted and knowledgeable in specific areas of law. Frontline workers also gain a better understanding of the administrative procedures and structures of a given legal process, tribunal or court system. Training workshops for agency workers and the community accompany each manual. To date this initiative has been very successful and well received. The main objective of these manuals is to help social service agencies effectively navigate African Canadians through the legal system. The ACLC will continue to develop additional manuals for the Navigation Series in new and emerging areas of law regarding legal problems that impact African Canadians in Ontario.

Somali ID Phase II (The Aden case)

In an attempt to resolve a class action law suit in the *Aden* case, filed on behalf of the Somali community, a settlement was reached in January, 2000. The *Aden* case dealt with the discriminatory requirement that Somali refugees without "valid" identity documents wait five (5) years before they can apply for landed status. This settlement builds on and further validates the *Said* decision of May 9, 1997, an ACLC test case, which recognized statutory declarations as valid identity documents. The *Aden* decision allows Somali refugees without "valid" identity documents an opportunity to file for landed status until June 2002. This provides an opportunity for many Somali refugees to become permanent residents and gain some degree of stability as a new immigrant community.

To inform the Somali community and legal professionals about the *Aden* decision the ACLC hosted a

consultation with Somali social providers and representatives from legal clinics in the Toronto area that have a large Somali clientele. The main objectives of the consultation was to inform these key service providers about the new filing deadline and to strategize as to how the community and the clinic system can work together to assist the Somali community to prepare the necessary documentation to process their landed applications. This meeting resulted in the adoption of an integrated approach to implementing the *Aden* decision. Legal Clinics across Toronto agreed to work with the respective Somali service agency and other agencies serving the Somali community in their geographical area to hold public education meetings. Clinics also agreed to work with the community to spread the word about the *Aden* decision and to assist, if possible, with preparing new applications, for landed status before the deadline of June, 2002.

The ACLC has undertaken the lead in obtaining a duty counsel who will be placed at two (2) Somali agencies on a part-time basis to provide advice, information and assistance with the *Aden* decision. To date, we understand that this integrated approach is working well and Citizenship and Immigration Canada is honoring their word and is processing the applications for permanent landed status of the Somali community based on the *Aden* decision.

The "Safe Schools" Act and Education Advocacy

As anticipated, the provincial conservative government's *Safe Schools Act*, part of which was passed in 2000, and the section dealing with suspensions and expulsions which was passed in 2001 has seen a sharp increase in the ACLC's legal advocacy in the area of education. The *Act* gives principals and teachers discretionary powers to suspend or expel students. This regressive piece of legislation which is an offshoot of the Zero Tolerance policies and Codes of Conduct that pre-dated the *Safe Schools Act*, has resulted in the aggressive handling of student disciplinary matters. Prior to and after the introduction of the *Act*, the ACLC used several public education forums to express its concern that the "*Safe Schools*" *Act* would disproportionately target racialized students, especially African Canadians, who are already criminalized within the school system.

This new approach to discipline has contributed to an excessive number of suspensions and expulsions of African Canadian students. The ACLC continues to work closely with the Ontario Parents of Black Children (OPBC) to strategize around the increasing number of complaints from African Canadian parents about the treatment of their child within the school system. This heavy-handed approach to the discipline of children has required more intensive advocacy from the ACLC. This advocacy is primarily designed to get African Canadian students back into schools, to challenge unjustifiable suspensions and expulsions, and to ensure that students receive academic support when they have been suspended. This intense advocacy has also involved attempts to intervene in expulsion hearings, advocacy meetings with senior school Board officials and meetings with the African Canadian community representatives and Marguerite Jackson, Director of the Toronto District School Board.

In November 2000, clinic staff met with Toronto District School Board (TDSB) officials to begin to plan for a series of community forums to educate parents and students about the *Act*. Education advocacy will remain a top priority on the advocacy agenda of the ACLC. The ACLC is in the process of identifying a test case to challenge the new *Safe Schools Act*, Board Policies and Codes of Conduct.

Youth Human Rights Mentorship Program

In April 2001, the ACLC launched the Youth Human Rights Mentorship Program. The program was initiated to address the lack of opportunity that youth of colour and aboriginal youth have to engage in civil society and decision-making processes that have significant impact on young people, or to take advantage of leadership-building initiatives. The program's aims were to empower youth, foster personal growth, and raise political consciousness. Thirty-five young people from youth from across the country were selected to participate in the program. They represented each racialized community as well as other equality seeking groups such as youth in care, immigrant youth, youth with disabilities, gay and lesbian youth and other historically disadvantaged and marginalized groups.

Participants were matched with organizations based on their interests and proximity to the young person's place of residence. Participating mentoring organizations were chosen based on their areas of focus around specific aspects of human rights issues. As part of their mentorship placement youth took part in activities such as: research for the mentor organization, job shadowing, observation and participation in committee meetings, collaborative project development, project and event organizing, workshop presentations and facilitation. A Youth Advisory Committee was also established to act as consultants to the program to ensure that the initiatives undertaken were youth focused, youth driven and reflected youth concerns and issues. The committee is comprised of older youth who are engaged in human rights and youth advocacy work.

On June 9th, as part of the Mentorship Program, the ACLC hosted a conference entitled *Youth and Human Rights: Shifting the Boundaries*. The conference workshops gave participants an opportunity to dialogue with other youth, community workers, lawyers and community activists on a wide range of human rights issues. The conference also provided the youth with an understanding of the various tools and skills required when working in the area of human rights and the link between local and international human rights. Another key aspect of the day was to guide attendees in a strategizing session for increasing youth involvement in the UN WCAR process. This included talking about the preparations for the Youth Summit, getting to the World Conference, the accreditation process, fundraising initiatives, development of a process for drafting a Canadian Youth Declaration.

Five youth from the Mentorship Program attended the Youth Summit in Durban, South Africa held on August 26th - 27th, 2001 networked with the 750 young people from across the globe to discuss issues of mutual concern and assisted in drafting an official Youth Declaration and Programme of Action which was presented to the United Nations. Mentorship program participants have committed to playing an integral role in forwarding the goals outlined in Durban by Canadian youth who attended the NGO Forum and UN WCAR. To date these young people have been instrumental in setting up a conference call with Canadian youth and the Minister Dr. Hedy Fry in order to secure a commitment by the Minister to support follow-up youth initiatives post-Durban as well as putting forward a concrete youth plan of action and to determine the Canadian government's commitment to supporting and implementing youth driven activities.

September 30, 2001 marked the end of the first phase of the Mentorship Program. The program is now in its second phase, which will allow both mentors and youth to evaluate the Program's strengths and weaknesses by offering their suggestions and recommendations. The youth involved

in the program are also expected to organize workshops and information sessions for their peers, share what they have learned to empower and mobilize other youth, and get involved in post-Durban and human rights and anti-racism activities.

Connecting Communities with Counsel

The ACLC is an active member of the Steering Committee for the Connecting Communities With Council (CCWC) pro bono initiative project. The CCWC – a Law Society of Upper Canada, Equity Initiatives Department and community project - aims to provide pro bono legal services to marginalized and racialized communities. Since launching its service, the CCWC has circulated several ads in the Ontario Report to attract lawyers. Training for lawyers in the areas of critical race theory and poverty law occurred in January 2001, the planning for which the ACLC played a pivotal role by providing materials, and producing guidelines for training.

The “Ornstein” Group

Since the publication of the Ornstein report in 2001, the ACLC has been working with Ontario Council of Agencies Serving Immigrants and a number of other groups to raise awareness about the issues raised in the report, and to pressure the municipal government to take action. The report found that immigrant and refugee communities, particularly Africans and Afghanis, face undue hardships in employment and other areas that affect the quality of life. Much of this is due to persistent racism and racial discrimination in Toronto. In July, the ACLC participated in a press conference to discuss the report and to call attention to the problems. The ACLC, OCASI, and its other partners held community meetings to further disseminate information about the report, to talk about raising critical questions with councillors and to take the issue to the final council meeting of 2000. The ACLC continues to work in collaboration with the partners to put the Ornstein report on the municipal election agenda.

African Canadian Preparatory Conference for the World Conference Against Racism: Eliminating Racism: Linking Local and Global Strategies for Change.”

The ACLC planned and held two (2) Preparatory Conferences on the World Conference Against Racism (WCAR) for the African Canadian community. Both Preparatory Conferences were attended by over two hundred African Canadian NGO representatives from across Canada plus government officials and UN representatives.

At the first Preparatory Conference a series of eight community consultation groups were held in the following issue areas: criminal justice and policing, race and education, environmental racism, labour and employment, African Canadian families and children, immigration and refugee issues, combating hate in the digital age, and gendered racism. Recommendations arose from each of these roundtable consultation groups, and these recommendations have helped to guide the ACLC’s work in each area. The Conference brought together community members and created renewed excitement and interest in anti-racist work, and was the genesis for a Working Group that will carry out the Conference recommendations.

The Conference was a great success in many ways. First, African Canadian non-governmental community organizations were significantly involved in a national effort to combat racism globally. Second, the African Canadian community was able to inform the government of the unique experiences of African Canadians and increase its understanding of anti-Black racism within the Canadian context. This exchange of ideas has offered the government insight into, and unique perspectives on how to improve Canada's human rights protections.

ACLC's Second African Canadian Community Preparatory Conference

On July 27 and 28, 2001, the African Canadian Legal Clinic (ACLC) hosted the Second African Canadian Community Preparatory Conference for WCAR. This conference was attended by over two hundred and fifty people from across Canada, the United States, and from Latin America and the Caribbean. The purposes of the conference were as follows:

- To inform African Canadians about the WCAR and to prepare the community to participate in the process;
- To develop a Pan-Canadian strategy on reparations;
- To build capacity and link the policy interests and goals of African peoples in the Americas; and
- To engage in broad-based educational outreach on a range of issues.

The Preparatory Conference occurred within the framework of the five themes of WCAR to address various forms of anti-Black racism in Canada. In so doing, conference organizers collaborated with African descendant peoples and allies from other racialized communities who share similar concerns. The list of speakers included: Dr. Esmeralda Thornhill, Chair, Black Studies, Dalhousie University in Halifax, Nova Scotia; Mr. David Commissiong, Director, Commission of Pan-African Affairs, in Barbados; Tim Hector, Caribbean Liberation Movement; and Dr. Velma Lapointe, Howard University. The topics for discussion included: International Human Rights Mechanisms; Land Loss: the Displacement of Africans in the Americas; Death Penalty and the Criminal Justice Industry; and Corporate Globalization: The New Colonization.

The second day of the conference focused solely on the legal, political and social considerations of reparations for African Canadians within the context of a global reparations movement for Africans and African descendant peoples. These panels drew on the expertise of lawyers, academics and activists. For example, Dr. Audrey Kobiyashi, Queens University, discussed the challenges that faced the Japanese Canadian community in their struggle to be compensated for internment during World War II; Ms. Avvy Go shared the experiences of the fight by Chinese Canadians to settle claims related to head tax levelled against that community; and Dr. Sheldon Taylor provided an historical and contextual overview of the importance of pushing for reparations that are justly due to Africans and African descendant peoples.

The roundtable discussion on reparations included such topics as: A Vision of a Repaired African Peoples; Unjust Enrichment and Other Claims for Reparations and Barriers to Establishing a Claim: Legal Action or Political Strategy. The closing address for this section of the conference was

delivered by Mr. Randall Robinson, author of *The Debt: What America Owes to Blacks* and Director of TransAfrica.

The ACLC is in the process of drafting the final report on the Conference proceedings and will distribute the final draft to the community and conference participants.

ACLC's WCAR Related Activities

In August/September 2001, the UN held the third World Conference Against Racism (WCAR) in Durban, South Africa. This conference was the first UN World Conference of the millennium and a fitting tribute to post-apartheid South Africa. At many levels the ACLC had a leadership role in the organizing and planning of activities at the national, regional and international levels leading up to and the actual World Conference. At the community level the ACLC was instrumental in the establishment of the African Canadian Coalition Against Racism (ACCAR) which had the primary responsibility of organizing the African Canadian community for the World Conference. At the national level the ACLC was a member of the Canadian NGO Steering Committee which disseminated information to Canadian NGOs about WCAR, liaised with the Canadian government on behalf of Canadian NGOs and organized Canadian NGOs prior to and during WCAR. The NGO committee was comprised of representatives from different regions across Canada who represented various racialized communities and issues being addressed at the World Conference. At the international level the ACLC was the Canadian NGO representative on the Americas Coordinating Committee and North American Steering Committee which held the primary responsibility of organizing and coordinating the parallel NGO Forum at the World Conference. A key component to ACLC's involvement in the WCAR process was to ensure that at all levels the voices and issues of Canadian NGOs and in particular African Canadian NGOs were reflected at both the national, regional and international preparations and discussion for the World Conference. This section of the Report will focus on some of the key activities associated with the World Conference Against Racism.

National Consultations

In an attempt to include civil society in its preparations for the World Conference, the Canadian government held regional consultations and a national consultation with stakeholder groups across Canada. The purpose of the consultations was to identify regional and national issues and concerns associated with the five (5) themes of the WCAR. African Canadian NGOs were represented at most of the regional consultations and also at the national consultation. ACLC staff attended the Ontario regional and national consultations and participated in the meetings of the African Canadian caucus. This caucus played a critical role in articulating the African Canadian position on the 5 themes and ensuring that anti-Black racism was recognized as a unique form of racism experienced by African Canadians.

During the National Consultation, the African Canadian caucus was able to meet directly with Minister Hedy Fry to discuss our concerns with respect to the Canadian government's position with respect to an apology for the Trans-Atlantic slave trade and the need for reparations for African and African descendants in light of the fact that Canada benefited from the enslavement of African peoples. On these two critical issues to African Canadians, Minister Fry's position was that the

Canadian government did not support an apology and/or reparations for the Trans-Atlantic Slave Trade. It is also important to note that strong objection was raised by the ACLC to the lack of participation and inclusion of the Indigenous African Canadian community at both the Nova Scotia and National consultations. As the original African Canadian community in Canada, this exclusion was unacceptable when other African Canadians communities were represented and the government made every effort to ensure that other racialized and ethno-cultural groups were included in these initiatives the one exception being the Indigenous African Canadian. An acceptable answer was never provided for the government's failure to be more inclusive of a major sector of the African Canadian community.

Preparatory Process

There were several important regional and international preparatory events for both NGOs and governments prior to the actual World Conference in Durban. The UN held three (3) Preparatory Conferences (Prep Coms) leading up to the World Conference in Durban. The first Prep Com was held in May 2000 at the UN headquarters in Geneva. The ACLC and several other Canadian NGOs were present and had considerable involvement in the development of the initial NGO structure and program for WCAR. The ACLC was elected as the Canadian representative to the Americas Coordinating Committee. This Committee had the responsibility of informing, organizing and outreaching to NGOs in the Americas for WCAR.

The African and African Descendant Caucus was formed at the first Preparatory Conference to bring people of African descent together to strategize on issues of common interest to our respective communities. The Caucus also played a major role lobbying governments and other NGOs for support on reparations and an apology for the Trans-Atlantic slave trade.

At the first Prep Com, the Africa Group (term used for regional grouping of governments) took the lead in developing the 5 themes for the WCAR. It was at this early stage of the WCAR process that all of the countries in Western European Group (which includes Canada, Australia, USA, Israel and New Zealand) strenuously objected to the inclusion of reparations in the 5 themes. African governments and African Descendant NGOs became keenly aware of the struggles that lay ahead with respect to all issues connected to the Trans-Atlantic slave trade.

The second and third Prep Coms, which occurred in May and August 2001, respectively, was even more controversial and highly charged when compared to the first Prep Com and the Regional Conferences. The government negotiations were very intense as governments in the Western European Group threatened to pull out and to not attend the World Conference if reparations and the Palestinian issues remained on the Conference agenda. Working groups were established to draft compromise language on these two issues. The African Group, with support from the Group of Latin American and Caribbean governments and the lobbying efforts of the ACLC and other African and African Descendant NGOs were instrumental in keeping the issue of reparations alive.

NGO activities at both the second and third Prep Coms were also as hectic and intense as the government meetings. The NGO process attempted to identify the major themes impacting racialized peoples in all regions of the World. A sampling of some of the NGO caucuses and themes that emerged from the Prep Coms were but not limited to the following: slavery, self-determination, migrant workers, globalization, caste discrimination, foreign occupation, land re-distribution,

colonialism, and poverty. An International Steering Committee (ISC) was formed at the second Prep Com to work with the South African NGO Coalition (SANGOCO) to plan and organize the parallel NGO Forum in Durban. The ACLC was appointed as one of the two NGO representatives from the Americas to the ISC. The ISC worked tirelessly with SANGOCO and the NGO Liaison office to accommodate through plenary sessions, thematic commissions and workshops many of the issues raised by victims of racism.

Americas Regional Conferences

The second phase in the pre-Durban planning process was the Americas Regional Preparatory Conferences. The official government conference, which was held in Santiago, Chile, brought together all the governments and interested NGOs in the Americas. This event was attended by over 3,000 representatives and official delegates from regional governments and the NGO sector. This conference was instrumental in solidifying support from governments in the region with the exception of Canada and the United States for reparations and an apology for African slavery.

An enormous debt of gratitude is owed to the government delegations from Barbados, especially Mr. David Commissiong, who did an excellent job articulating the position and significance of Africans and African Descendants on the issue of reparations. The uncompromising stance of the Barbados government, in the face of strong vocal and procedural resistance by the United States and Canada insured that the issues of the Trans-Atlantic Slave Trade and its impact, economic and otherwise, on African peoples and the need for reparations was included in the official government Declaration and Program of Action for the Americas.

The official NGO Preparatory Conference for the Americas region was held in Quito, Ecuador. Over 1,000 NGO representatives attended this conference. The African Descendants and Indigenous communities had the largest number of representatives present at this conference. At this forum, NGOs drafted an Americas NGO Declaration. This document addressed many issues that the governments did not have the courage to address. Organizations representing marginal and vulnerable racialized communities such as migrant workers, children, women and victims of environmental racism, were able to have their issues recognized and included in the official NGO document. In many respects the NGO document was far more inclusive, progressive and forward looking than the Government Declaration from the governments.

Report on Durban

The NGO forum of the World Conference was attended by over 10,000 delegates representing NGOs from all over the world. Unlike the previous two World Conferences Against Racism, the Canadian NGO community was well represented and participated in all aspects of the Forum. The NGO Forum had a main plenary session everyday, which focused on the following issues: slavery, and colonialism, self-determination, globalization and institutionalized racism. In addition to the plenaries, the NGO Forum was filled with a flurry of simultaneous activity that ranged from thematic commissions to workshops to caucuses to cultural events and organized protests.

Prior to the NGO Forum and government conferences, the youth organized a very successful Youth Summit. The Youth Summit provided young people with an opportunity to come together to discuss how racism affects them and how they can contribute to the fight to eradicate racism. There were

two (2) Declarations and Program of Action produced by the NGO Forum. One document was produced by the youth and reflected the vision of the World's Youth. The second document was produced by all NGOs and reflected the voices of each NGO Caucus present at the World Conference. Political figures, community leaders and dignitaries such as Fidel Castro, Winnie Mandela, Yasser Arafat, Angela Davis, Rigoberto Minchu, Jessie Jackson, Thabo Mbeki, Mary Robinson and Danny Glover attended the WCAR.

The government meeting was much more formal than the NGO Forum, NGO access to the government was very limited. The USA, joined by Israel, walked out in protest very early in the government conference. Contrary to the media reports, the issues of reparations and Palestine did not dominate discussions and negotiations at the government conference. Delegates from the South African government chaired small working groups, which had the task of drafting compromise language, in an attempt to achieve a consensus on these two issues. With assistance and guidance from South Africa, the governments were finally able to reach consensus on a Declaration and Program of Action.

Despite all the obstacles, and negative and distorted media reports, SANGOCO and the government of South Africa deserve to be commended for organizing a successful World Conference. The ACLC was in attendance at all the events leading up and including to the WCAR. The ACLC staff and delegation to WCAR deserves high praise for the countless hours they worked to prepare for and while in Durban. The ACLC was involved at all levels and will continue to be involved in the post-Durban work. In fact, the real work begins now as NGOs in Canada, throughout the Americas and around throughout the world begin to lobby and work with their governments to implement the Durban Program of Action.