SOMETHING IN THE AIR: AN INTERSECTIONAL INVESTIGATION OF ENVIRONMENTAL RACISM IN CANADA

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In August, the United Nations passed a resolution that codifies "access to a clean, healthy and sustainable environment" as a universal human right; however, research continually shows that harmful environmental industries and sites are frequently located in or near marginalized and specifically racialized communities in Canada (UN News, 2022). Although access to a healthy environment is now a universal right, some groups experience unique challenges in actualizing this right. This inequality can be understood as environmental racism. A formal definition of environmental racism is as follows: "Environmental racism refers to environmental policy, practice, or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups, or communities based on race or colour" (Bullard, 2003). Some scholars and activists have expanded the definition to include other forms of discriminatory land misuse such as "a lack of playgrounds, trees, walking paths and hiking trails and access to clean water for drinking and food preparation, or soil for sustainable agriculture [in marginalized or racialized communities]" (George, 2022).

The terminology of "environmental racism" and "environmental (in)justice" is also relatively new to public discourse, but predate the more direct phrase of environmental racism. These concepts were first named in the late 1970s when researchers compiled reports in response to a Black community's resistance to the municipal government of Houston placing a solid-waste facility in their community (Borunda, 2021). Dr. Robert Bullard, a sociologist sometimes referred to as the "Father of Environmental Justice," was the first researcher to provide formal, systematic evidence that "environmentally harmful infrastructure [is] more likely to show up in places where minority populations live" (Borunda, 2021). It is important to note that these patterns existed in North America before the 1970s. For example, colonization brought with it environmental racism by disrupting long-standing Indigenous practices of environmental stewardship (Whyte, 2020).

Environmental racism is a more closely fitting definition than environmental injustice because it attends to the realities of injustice experienced by Indigenous and racialized communities. It is also important to note that the experience of environmental racism is not homogenous across all marginalized communities. For Indigenous communities, present-day environmental racism cannot be separated from the history of colonial domination and the Canadian claim of ownership over Indigenous peoples and lands. Enslavement was also a founding principle in the creation of the Canadian nation and the lived consequences of this history are evidenced by the continual marginalization of many Black communities in Canada in both urban and rural contexts (Waldron, 2018). The idea of seeking or enacting environmental justice is a frame for advocacy and activism that aims to address the inequalities exposed by environmental racism.

The multiple avenues through which environmental racism could be addressed will be explored in this paper. This paper will argue that the strategy with the greatest potential for meaningful progress is encoding the right to a healthy environment in the Canadian Charter of Rights and Freedoms; however, the strategy with the greatest promise of immediate action in addressing environmental racism is the passing of Bill S-5. The paper will first utilize case studies to expose the manifestation of environmental racism in Canada in both urban and rural contexts, across various geographic regions and provinces to argue for the necessity of a federal-level approach to addressing this issue. Then the paper will analyze various policy approaches to addressing environmental racism, clarifying why

previous attempts to pass legislation have been unsuccessful, and identifying the most promising approaches both for the present and future. It is also acknowledged that legislative reforms and progress do not happen without pressures exerted from outside agents and organizations. Therefore, grassroots activism will always be important in advancing meaningful progress on human rights issues and has been and continues to be integral in the fight to address environmental racism in Canada.

Environmental Racism from Coast to Coast in Canada

Environmental racisim is a national issue

This section will address the specific experiences of environmental racism in three Canadian communities: Aamjiwnaang First Nation, Lincolnville, and Wet'suwet'en Nation. It is worthwhile to stress that these three communities are a small sample of the mani- festations of environmental racism operating in Canada. Nonetheless, highlighting specific examples can make the concept real for individuals without lived experi- ence of environmental racism. For generations, Indig- enous and Black communities in Canada have recog- nized the disparities that disproportionately affect their communities (George, 2021; ENRICH Project, 2014). Like many other structural inequalities, environmental racism is generally invisible to White communities that do not suffer its repercussions. The following exam- ples show that environmental racism is experienced in communities across the country in both urban and rural settings and is enabled through government policy that prioritizes the growth of the economy and industries above the collective health of racialized communities.

Aamjiwnaang First Nation – Sarnia, Ontario

Aamjiwnaang First Nation is a community near Sarnia, Ontario's infamous Chemical Valley. Forty percent of Canada's chemical industry is found in the 62 industrial facilities surrounding the First Nations community (Ecojustice, 2007). The World Health Organization found that Sarnia, the city just a few kilometres from Aamjiwnaang First Nation, has the worst air quality in all of Ontario (Collins, 2015). Results from a 2010 study analyzing medical data from 2007 found that about 40 percent of the band members in the community required an inhaler, and about 22 percent of children in the community had asthma (Dhillon & Young). The rate of asthma in children in neighbouring Lambton County, which includes the neighbouring city of Sarnia, is 8.2 percent (Waldron, 2018). It's not just the air that is polluted in Chemical Valley; the nearby St. Clair River, a source of drinking water for the community, experiences an average of 100 chemical spills a year from nearby plants (Dhillon & Young, 2010). Residents have reflected on large numbers of miscarriages and stillbirths in the community, chemotherapy and dialysis, and parents have expressed concern about allowing their children to go outside and play considering the poor air quality (O'Toole, Kestler-D'Amours, 2021). One such resident remembers playing outside on "foggy" days as a child in the 1990s, unaware the fog was actually chemical coolant (O'Toole, Kestler-D'Amours, 2021). Members of the Aamjiwnaang community have worked with the non-profit Ecojustice for more than a decade to advocate for the community, and this particular example will be further explored moving into the solutions-focused portion of the paper.

Lincolnville- Nova Scotia

The multiple landfill sites located just outside Lincolnville, an African Nova Scotian rural community, is another example of environmental racism. This becomes apparent when examining the differences in government handling of the Lincolnville landfill and a comparable landfill near the white, lower-income community of Upper Sackville (Waldron, 2018). Unlike Lincolnville, Upper Sackville was monetarily compensated by the Nova Scotian parliament in 2015, and the Upper Sackville site was retroactively lined to avoid toxic water runoff from the site (Waldron, 2018). As of 2018, Lincolnville was still dealing with a degraded liner and was awaiting compensation; there is no evidence that the provincial government has made any progress in the ensuing years (Waldron 2018). Because the socioeconomic character of Lincolnville and Upper Sackville are comparable, it is justifiable to challenge why the provincial government handled the landfull issue more responsibly and expediently when responding to the concerns of a predominantly White community. The vastly different handlings of two extremely similar experiences supports the assertion that this is a clear example of environmental racism.

Wet'suwet'en Nation - unceded territory in British Columbia

The violent government response to the protests of the Wet'suwet'en Nation is another example of environmental racism. Pipelines threaten the environmental health of the land on which they are constructed. The RCMP has undertaken three large-scale raids from 2019 to 2021 to forcibly evict protesters from camps set up to block pipeline progress. The raids have also denied Wet'suwet'en people access to their lands (Gidimt'en land defenders, 2022). In 1997 the Supreme Court of Canada recognized that Wet'suwet'en and Gitxsan hereditary chiefs are the rightful titleholders of their unceded territory in British Columbia, but the case was sent back to trial after the ruling and remains unresolved (Kestler-D'Amours, 2020). If the case had been settled, the government would have needed to consult hereditary chiefs before accepting the pipeline proposal.

The Canadian government has signed on to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and BC has begun work to put the provincial laws in line with the UNDRIP articles (Kestler-D'Amours, 2020). Article 19 of UNDRIP states that:

> States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (United Nations, 2007).

Despite this clear duty to consult outlined in the Declaration, the BC provincial government has stated that this stipulation will not apply retroactively in the case of the Coastal GasLink pipeline project (Kestler-D'Amours, 2020). Even though Canada has signed on to the UNDRIP, the provincial government has made it clear in this case that economic growth and profit is a higher priority than respecting the rights of Indigenous peoples, and protecting the environmental integrity of this unceded territory. Time and time again industrial development is valued above human and community health in instances of environmental racism.

Intersectionality and environmental racism

Environmental integrity is a social determinants of health, like healthcare, education, and foodsystems, and in all of these areas racial disparities are observed; government shortcomings in these areas disproportionately affects Black and Indigenous communities in Canada (Waldron, 2020, p. 8). The effects of environmental racism are also compounded by structural discrimination faced by Indigenous and racialized communities disproportionately affected by uneven employment opportunities, income insecurity, labour market structure, and land depreciation (Waldron, 2018).

Human Rights Legislation and Human Rights Systems

Canada falls behind many countries when it comes to encoding the right to a healthy environment into the country's environmental laws. It has already been determined in the Canadian court system that s.35 of the Constitution, which protects Indigenous religious and treaty rights, could be threatened by environmental degradation (Collins, 2015). Although this establishes environmental rights relating to Indigeneity, the protections afforded by s.35 are not wide enough to protect all racialized communities and groups.

According to a report by Ecojustice, "more than 110 countries have recognized their citizens' right to a healthy environment" (Ecojustice, n.d., 3). Evidence has shown that constitutional environmental rights catalyze more progressive environmental laws and progress on environmental issues. Data shows that countries with environmentally-conscious constitutions "have smaller ecological footprints and have reduced air pollution up to ten times faster than nations without environmental provisions in their constitutions" (Boyd & Macfarlane, 2015). In countries like Norway, Portugal, and the Philippines, constitutional rights to a healthy environment are bringing these countries closer to carbon neutrality, helping to clean up polluted waterways, and forcing industrial projects to be considered in terms of their possible health consequences (Ecojustice, n.d.).

Increasing numbers of court cases are being filed and heard in countries which codify the right to a healthy environment within their constitution (Boyd, 2020). One such example worth highlighting is that of the Colombian Supreme Court in Generaciones Futuras v. Minambiente. The Court found "violations of the constitutional right to a healthy environment, the right to life, and the right to water as well as the rights of future generations" (Boyd, 2020). Orders were then

issued to three levels of government in order to rectify the issue (Boyd, 2020). Because constitutional law takes precedence over other legal statutes or political motivations, these cases allow citizens and activists to enact widespread change in environmental policy.

Environmental rights in the charter

Scholars and activists have argued one of two things about environmental rights and the Canadian constitution: either that the right to a healthy environment is implicitly encoded in one or more sections of the Charter of Rights and Freedoms, or that the right to a healthy environment should be explicitly added to the Charter. Those that argue that the right to a healthy environment is included in the Charter but not articulated as such often cite s.7 or s.15 of the Charter (Boyd & Macfarlane, 2014; Chalifour, 2015; Collins, 2015). Section 7 of the Charter states, "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice" (Department of Justice Canada, 2022). Most arguments made about the inherent principle of the right to environmental health in the charter reference this section; s.7 serves to protect people from exposure to harm or a threat to their well-being and could therefore be used in court to oppose laws that would lead to levels of pollution that interfere with public health (Chalifour, 2015). Section 15 has less jurisprudence connecting it to cases of environmental justice, but its language offers unique opportunities to address the communities most negatively impacted by the lived consequences of environmental racism:

> 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability (Department of Justice Canada, 2022).

If an individual or community can prove that their disproportionate exposure to environmental hazards is discriminatory and that the discrimination is linked to their racialized status, then the substantive equality promoted in the Charter would be henceforth linked to environmental justice issues (Chalifour, 2015).

As long as Canadian law does not provide direct opportunities to bring cases of environmental racism to trial plantiffs will face an uphill battle in having their concerns meaningfully addressed. The avenue for appeals with the Supreme Court if the right to a healthy environment was explicitly encoded in the Charter of Rights and Freedoms would provide another set of checks and balances in response to unfavourable results in lower court systems.

Private Members Bills: Bills C-230 and C-438

Bills C-230 and C-438 were proposed by private members in the House of Commons to address environmental justice issues. Bill C-230 directly targeted environmental racism and proposed developing a national strategy to "assess, prevent, and address environmental racism and to advance environmental justice" (House of Commons of Canada, 2021). Bill C-438 was relatively broader in scope and was created to enact an Environmental Bill of Rights, which would recognize the right to a healthy environment and would amend the Canadian Bill of Rights and other pertinent legislation to include ecological considerations (House of Commons of Canada, 2019). Unfortunately, neither of these bills targeted the Constitution or Charter, and neither was passed (Bill C-230 (Historical), n.d.; Bill C-438 (Historical), n.d.). Without rights to a healthy environment encoded in constitutional law, it will be challenging to pass comprehensive legislation that properly addresses environmental justice issues.

Senate Bill: Bill S-5

Bill S-5 is the most promising piece of ecologically grounded legislation currently being considered in the House of Commons. This piece of federal legislation, if passed by the Senate and House of Commons would enshrine environmental rights in Canadian law and set a precedent for further legislative protections. The bill was proposed and first passed in the Senate and aims to amend the Canadian Environmental Protection Act, 1999, to recognize the right of Canadian citizens to a healthy environment (Senate of Canada, 2022). The Standing Committee on Environment and Sustainable Development met on December 13 for the seventh time regarding Bill S-5. A report will be

drafted on the bill and presented to the House of Commons for a third reading (LEGISinfo, n.d.). Since the bill has already passed in the Senate, if it passes in the House of Commons, then it will become the first law in Canada that directly affirms the right to a healthy environment for all citizens. Environmental injustice can then be addressed in the court system without relying on a favourable interpretation of the environmental rights that arguably exist implicitly in the Charter.

Federal Housing Advocate - Canadian Human Rights Commission

Another emerging avenue for addressing environmental racism exists outside of the court system and instead would tackle the issue from within the Canadian human rights system. The Federal Housing Advocate is a new position through the Canadian human rights commission. Marie-Josée Houle was appointed to the role in February of 2022 (Canadian Human Rights Commission, 2022a). Although the position was created to address the housing crisis, part of the role of the Advocate is to "make recommendations to improve Canada's housing laws, policies and programs, and hold governments to account on their human rights obligations" (Canadian Human Rights Commission, 2022a). People experiencing homelessness are the highest priority under the National Housing Strategy Act; the Act affirms the right to adequate housing is a fundamental human right in Canada. However, adequate housing means all people "are equally entitled to live in dignity in a safe and secure home, and that everyone should be able to access housing that meets their needs without discrimination or harassment" (Canadian Human Rights Commission, 2022b). Communities situated next to polluted water sources or landfills filled with toxic waste do not have the fundamental right to safe housing met and thus could seek the assistance of the Federal Housing Advocate.

Intersectionality praxis through grassroots coalitions

Coalitions

The effects of grassroots organizations can be amplified through coalition building; by combining resources andtargetingtheintersectionspointsofinterrelated concerns, organizations can extend their reach, resulting in increased visibility and power to institute change.

Aamjiwnaang First Nation and Ecojustice

The court case that was put before the Ontario Court of Justice by members of Aamjiwnaang First Nation drew its arguments on s.7 and s.15 of the Charter, arguing that the disproportionate levels of pollution in the community violate the Charter rights of those in the community (Chalifour, 2015). Ada Lockridge and Ron Plain, two members of the Aamjiwnaang community, were represented by lawyers from Ecojustice in the 2011 Lockridge and Plain v. Director, Ministry of the Environment et al. case. The Ecojustice counsel advised Ada and Ron in the years following their initial filing to withdraw the lawsuit as the Ontario government was starting to address some of the issues highlighted in the case. Still, Ecojustice continues to work with the Aamjiwnaang community to further environmental causes (Defending the rights of Chemical Valley residents, n.d.).

BLM and environmental groups

The recent partnering of the Black Lives Matter movement with grassroots environmental groups provides a good example of a coalition of groups working together towards improvements in multiple social areas simultaneously. The Black Lives Matter (BLM) organization works to "eradicate white supremacy and build local power to intervene in violence inflicted on Black communities by the state and vigilantes" (Black Lives Matter, n.d.). Black Lives Matter recognizes that marginalized communities experience the most harm in crises, which includes the climate crisis (Black Lives Matter, 2021). The US branch of the movement amplifies the message and supports the work of two grassroots environmental initiatives, RISE St. James and Gulf South for a Green New Deal (GS4GND) (Black Lives Matter, 2021). The predominantly Black community of St. James, Louisiana, is fighting to prevent more industrial plants from locating their business in the community, already nicknamed "Cancer Alley" or "Death Alley." The GS4GND mission is to move southern communities away from extractive economies toward a sustainable future (Black Lives Matter, 2021). The initiative works to centre "labourers, farmers, fisherfolk, tribal nations, and frontline communities" in these efforts (Black Lives Matter, 2021).

The Canadian branch of BLM has not yet de-

veloped or partnered with environmental justice organizations. Dr. Cheryl Teelucksingh, Chair of the Sociology Department of Toronto Metropolitan University, is one of many scholars that has argued that the Canadian environmental justice movement needs to partner with BLM to make meaningful progress in environmental injustice (Teelucksingh, 2020). The claim here is that interests naturally converge between the Black Lives Matter organization and the environmental justice movement in Canada, and that this partnership would provide tools for large-scale activism and a critique and challenge to the centering of Whiteness in environmental activism (Teelucksingh, 2020).

Conclusion

Indigenous communities have been practising environmental justice before colonialization. Unfortunately, there is sometimes a tendency in Canadian society to situate expressions of Indigeneity solely in the pre-colonial past. Such a tendency fails to recognize the continued work of Indigenous communities to preserve Indigenous forms of government and land stewardship, which can be seen as an example of environmental justice activism. The continued Wet'suwet'en protests and checkpoints in the unceded territory in British Columbia are only one example of such work.

Since Ingrid Waldron's book "There's Something in the Water" came out in 2018, some notable progress has been made on issues of environmental racism in Can- ada. Legislation has been proposed on numerous occa- sions to affirm the right to a healthy environment for all Canadians, and Bill C-230 was specifically formulated to address and prevent environmental racism in Can- ada. Although two of these bills did not pass, the pro- posed Bill S-5 is currently under review in the House of Commons. It could soon become the first law in Canada to directly encode environmental rights into Canadian law. Passing this bill would be a massive step, as Can- ada lags behind numerous states in encoding environmental protections for all of its citizens in the country's legislation. The greatest win would be to have the right to a healthy environment recognized in the Canadian Charter of Rights and Freedoms, as that would make the right to a healthy and safe environment a constitutionally protected right. Constitutional law is the strongest and best-protected branch of law in Canada; environmental rights in the Charter would also likely set off a new cascade of laws protecting the environment in Canada.

Grassroots coalitions are another promising means of addressing environmental racism in Canada. Environmental racism intersects with other social justice causes that disproportionately impact Canadian racialized communities (healthcare, public infrastructure, uneven employment opportunities, and education, to name a few). Grassroots organizations, interest groups and communities making meaningful change in many of these areas have and could continue to join forces and share resources to address these concerns collaboratively.

Overall, international jurisprudence supports the argument that encoding the right to a healthy environment into constitutional law would be the most promising way to address environmental racism in Canada. However, as this sort of constitutional reform appears to be many years away from becoming a reality, the current proposal of Bill S-5 remains the most promising existing avenue for reform. If the bill passes through both Senate and the House of Commons it could provide a legal precedent for future, constitutionally-binding rights to a healthy and safe environment. Communities most effected by environmental racism in Canada have employed many unique and creative strategies to ad- dress their concerns but would be further supported in their activism by foundational constitutional recogni- tion of the right to a healthy environment. The current legal progress as well as the potential for strengthening activism through coalition-building suggests that mean- ingful action on the issue of environmental racism is not only possible but likely to come to fruition in Canada.

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