

**PRIVATE MEMBERS' MOTION M-103, *SYSTEMIC RACISM
AND RELIGIOUS DISCRIMINATION***



**SUBMISSION TO THE STANDING COMMITTEE ON CANADIAN
HERITAGE**

BY

THE CANADIAN HUMAN RIGHTS COMMISSION

NOVEMBER 20, 2017

I. INTRODUCTION

The Canadian Human Rights Commission (CHRC) commends this Committee's work to contribute to a more inclusive Canada in studying how the government can collect data on hate and develop a whole-of-government approach to reducing or eliminating systemic racism and religious discrimination. The CHRC acknowledges that the Committee has heard lived experiences and stories about racism and religious discrimination, including barriers in reporting incidents of hate and the lack of existing legal protections. This submission is the CHRC's contribution to this important discussion.

The CHRC shares many of the concerns expressed before the Committee regarding the rise of hate and intolerance towards racialized and religious groups in Canada, including towards members of Muslim and Jewish communities. The CHRC has taken a strong public stance in denouncing hate motivated incidents and hateful public discourse and will continue to do so.

The CHRC is Canada's national human rights institution established by Parliament through the *Canadian Human Rights Act* (CHRA) in 1977. The CHRA is a human rights statute deemed to be quasi-constitutional in Canada, which gives it primacy as a fundamental part of the country's human rights framework. The CHRC is also Canada's accredited National Human Rights Institution, recognized internationally by the United Nations. The CHRC has a broad mandate to promote and protect human rights, including by receiving complaints on any of the 13 grounds listed in the CHRA, including the grounds of race, colour, national or ethnic origin and religion. The CHRC also conducts compliance audits under the *Employment Equity Act* (EEA) to help achieve equality in the workplace and correct the historic employment disadvantages experienced by four designated groups: women, Aboriginal peoples, persons with disabilities and members of visible minorities. We note that the terms "visible minority" and "Aboriginal" are increasingly outdated, and we use them here only to reflect their official usage in Canadian legislation, and in Statistics Canada survey data. Where other terms (such as Indigenous or racialized) can be used, we support this.

To contribute to this study, the CHRC will provide the Committee with recommendations and information it has gathered and reported on under the CHRA, the EEA, and as part of our series of Equality Rights Data Reports. We have also included excerpts from our past roundtables with Indigenous women, our recent submission to the United Nations Committee on the Elimination of Racial Discrimination¹ and from our upcoming submission to Canada's Universal Periodic Review. In addition, we refer to data and observations from other international and domestic reports. We hope that this can supplement the many contributions of other witnesses that the Committee has already heard.

¹ See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fFN%2fCAN%2f28040&Lang=en.

II. SYSTEMIC RACISM AND DISCRIMINATION IN CANADA

Systemic racism and discrimination form significant barriers to equality in Canada. The data we present in this submission clearly shows that Indigenous and racialized persons in Canada continue to experience these and other barriers to equality.

Public reporting and access to reliable, up-to-date data on key human rights indicators can help identify and remove systemic barriers to substantive equality and ensure better access to justice for individuals and groups in vulnerable circumstances.

Statistics such as the ones we submit below are helpful, but better data is needed to understand how discriminatory barriers may uniquely affect specific populations, such as Muslim women, or Indigenous LGBTQ2I persons. The Government's current commitment to GBA+ analysis is laudable to reveal impacts on women, but this analysis is not sufficient. Without a rigorous human rights lens, gaps in progress will remain, and may even exacerbate systemic inequities based on race. To prevent this, Canada should fully integrate race-based considerations, in both the development and the evaluation of all laws, policies, and programs to ensure substantive equality in Canada.

Canada is not the only country facing challenges in removing barriers to equality for racialized groups. In response to these many challenges, the Office of the United Nations High Commissioner for Human Rights has developed a practical guide to assist countries in developing national action plans against racial discrimination using a human rights based approach².

The CHRC urges the Government of Canada to take immediate steps to put in place a modern National Action Plan. Any new action plan should:

- include extensive and ongoing consultations with stakeholder groups;
- include commitments to meet international and domestic human rights obligations;
- require consideration of and responses to intersectionality issues to ensure that issues facing people and specific populations in the most vulnerable circumstances are addressed;
- require concrete progress towards specific goals on a timeline;
- include steps to identify and remove systemic barriers to substantive equality and access to justice;
- require disaggregated data collection in order to collect, analyze and report publicly on key human rights indicators on a consistent basis to identify barriers and vulnerabilities, and to ensure progress on these is measured and reported on over time; and
- require that this data be collected, analyzed, and made public in a transparent and accessible way.

² UN Office of the High Commissioner for Human Rights, *Developing national action plans against racial discrimination: A practical guide*, ST/HR/PUB/13/3, 2014, available at www.ohchr.org/Documents/Publications/HR-PUB-13-03.pdf.

Recommendation 1: That Canada develop and introduce a modern National Action Plan Against Racism, using international best practices as a model, and report publicly on progress against it.

Recommendation 2: That Canada implement a mandatory disaggregated data collection policy.

a. Visible Minority Populations³

Statistics Canada data shows that members of visible minorities:

- are more likely to have a Bachelor's degree, or a university certificate or diploma above bachelor level, but they are less likely to be employed regardless of their highest educational achievement;
- have a lower average employment income, especially among Arab women;
- are more likely to be in low-income status, with more than one quarter reporting difficulty or great difficulty to make ends meet;
- are more likely to live in subsidized housing; and
- are more likely to have unmet health care needs.

Among members of visible minorities who reported being discriminated against in the past five years, more than 30% report being discriminated against due to their ethnicity or culture or because of their race or skin colour, and more than 20% report being discriminated against in banks, stores, restaurants or in the work environment.

Specifically, African Canadians experience disproportionately high levels of unemployment and poverty, as well as disparities in accessing education, health and housing. Their communities face environmental racism whereby landfills, waste dumps and other environmentally hazardous activities are disproportionately situated near neighbourhoods of people of African descent, creating serious health risks⁴.

Finally, approximately 25% of members of visible minorities report having not very much or no confidence in the criminal courts. This last statistic can have significant impact on their access to justice.

b. Indigenous Peoples

Statistics Canada data shows that compared to non-Aboriginal people, Aboriginal people living in Canada:

- have lower median after-tax income;

³ This information is from the Report on Equality Rights of Visible Minorities, which will be released by the CHRC later this year. It uses methodologies outlined in the CHRC's Framework For Documenting Equality Rights available at http://publications.gc.ca/site/archive-archived.html?url=http://publications.gc.ca/collections/collection_2011/ccdp-chrc/HR21-78-2010-eng.pdf. This and the CHRC's other Equality Rights Data Reports compile data from a number of national surveys results available from Statistics Canada, including: the 2011, 2013 and 2014 General Social Surveys; the 2011 National Household Survey; the 2011 Survey on Labour and Income Dynamics; the 2013 and 2014 Canadian Community Health Survey; and the 2013 National Graduates Survey. The term "visible minority" is used in this report as it reflects the language used at the time by Statistics Canada and the *Employment Equity Act*.

⁴ The UN Working Group of Experts on People of African Descent, on the conclusion of its official visit to Canada, Oct. 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20732&LangID=E>.

- are more likely to experience unemployment;
- are more likely to collect employment insurance and social assistance;
- are more likely to live in housing in need of major repairs;
- are more likely to experience physical, emotional or sexual abuse;
- are more likely to be victims of violent crimes; and
- are more likely to be incarcerated and less likely to be granted parole⁵.

Many Indigenous communities continue to live without equitable access to quality health, education and other social services⁶, and without access to safe drinking water and adequate housing⁷. In addition, Indigenous peoples often face difficulties in accessing justice on a basis equal with others in Canada. These difficulties hold particularly true for Indigenous women. For instance, throughout 2013 and 2014, the CHRC held a series of roundtable meetings across the country with Indigenous women, representative Indigenous women’s associations, and other organizations that provide services to First Nations, Métis and Inuit women in order to discuss issues of access to justice generally, and access to human rights justice specifically⁸. A total of 21 barriers to access to justice were identified through the roundtable process, including strategies to reduce or remove some of these barriers.

Indigenous women in Canada also experience systemic discrimination and bear a disproportionate burden of violence, and are murdered or go missing at a shocking and disproportionately high rate⁹.

The root causes of this discrimination and violence are varied, complex, and intersectional. Indigenous peoples in Canada have experienced historical disadvantage, including systemic discrimination and racism. The legacy of the residential school system looms large over many aspects of Indigenous lives.

In addition, a number of complaints have been filed at the CHRC by Indigenous peoples alleging systemic discrimination in a wide range of services provided by the federal government, including child welfare, policing, housing, and education for Indigenous persons with disabilities.

Recommendation 3: That Canada develop a concrete and specific strategy to implement the Truth and Reconciliation Commission’s 94 Calls to Action, including

⁵ Canadian Human Rights Commission, *Report on Equality Rights of Aboriginal People*, 2013, retrieved on November 16, 2017 at www.chrc-ccdp.gc.ca/sites/default/files/equality_aboriginal_report.pdf. The term “Aboriginal” is used in this report as it reflects the language used at the time by Statistics Canada and the *Employment Equity Act*.

⁶ *June 2011 Status Report of the Auditor General of Canada*, “Chapter 4 – Programs for First Nations on Reserve”, available at www.oag-bvg.gc.ca/internet/English/parl_oag_201106_04_e_35372.html.

⁷ *Fact Sheet – First Nations Housing on-Reserve*, Assembly of First Nations, available at <http://www.afn.ca/uploads/files/housing/factsheet-housing.pdf>.
⁸ The results of these consultations have been published in a report, *Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice for Indigenous Women and Girls*, available at <http://www.chrc-ccdp.gc.ca/eng/content/honouring-strength-our-sisters-increasing-access-human-rights-justice-indigenous-women-and>.

⁹ *Aboriginal Lateral Violence*, Native Women’s Association of Canada, available at <https://www.nwac.ca/wp-content/uploads/2015/05/2011-Aboriginal-Lateral-Violence.pdf>; *Missing and Murdered Indigenous Women in British Columbia*, Inter-American Commission on Human Rights, available at <http://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf>; *Missing and Murdered Aboriginal Women: A National Operational Overview*, Royal Canadian Mounted Police, available at <http://www.rcmp-grc.gc.ca/wam/media/460/original/0cbd8968a049aa0b44d343e76b4a9478.pdf>.

implementation of the United Nations Declaration on the Rights of Indigenous Peoples, in consultation with Indigenous peoples.

Recommendation 4: That Canada develop a concrete and specific strategy to address the child welfare, policing, education, safe drinking water and housing situations on First Nations reserves on an urgent basis.

c. Security, Policing and Incarceration

Across Canada, concerns continue to be raised that racial profiling by police, security agencies, and other authority figures is a daily reality, reducing public trust, and having harmful impacts on Indigenous, Black, Muslim and other communities¹⁰.

Both Indigenous¹¹ and Black¹² men are significantly over-represented in federal prisons; this over-representation is even more pronounced for Indigenous women¹³. In addition, once incarcerated, both Black and Indigenous inmates continue to experience significant discrimination. For instance, both Black¹⁴ and Indigenous¹⁵ offenders are more likely to be classified as maximum security and are over-represented in segregation. More needs to be done to address the root causes of the consistent over-representation of Black and Indigenous individuals in Canadian prisons.

Overall, the CHRC submits that the policies and practices of security, policing, and corrections agencies continue to be of grave concern. The CHRC notes that, while many security organizations have policies to prevent discriminatory practices such as profiling, few can demonstrate that these policies are followed¹⁶. The absence of this information has the potential to impact public trust. The CHRC submits that strong independent and pluralist oversight of policing, security, and corrections in Canada is necessary. This oversight should include regularly published assessments of compliance with human rights legislation.

Recommendation 5: That Canada develop a concrete and holistic strategy to address the over-policing and over-incarceration issues facing Black and Indigenous persons, on an urgent basis.

Recommendation 6: That Canada provide the necessary training and resources to ensure that existing provisions relating to sentencing and alternatives to incarceration

¹⁰ Ontario Human Rights Commission, *Under suspicion: Research and consultation report on racial profiling in Ontario* (2017); Commission des droits de la personne et des droits de la jeunesse du Québec, *Racial Profiling and Systemic Discrimination of Racialized Youth : Report of the Consultation on Racial Profiling and its Consequences, One Year Later : Taking Stock* (June 14, 2012).

¹¹ Annual Report of the Office of the Correctional Investigator 2015-2016, at p.43, available at <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20152016-eng.pdf>.

¹² Annual Report of the Correctional Investigator 2012-2013, at p. 3, available at www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20122013-eng.pdf.

¹³ Annual Report of the Office of the Correctional Investigator 2015-2016, at p.62, available at <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20152016-eng.pdf>.

¹⁴ A Case Study of Diversity in Corrections: *The Black Inmate Experience in Federal Penitentiaries*, available at <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx#toc1>.

¹⁵ Annual Report of the Office of the Correctional Investigator 2015-2016, at p.43, available at <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20152016-eng.pdf>.

¹⁶ Canadian Human Rights Commission, *Human Rights Accountability in National Security Practices: A Special Report to Parliament*, Nov. 2011, available at <http://www.chrc-ccdp.gc.ca/sites/default/files/chrc-specialreport-28112011.pdf>.

for Indigenous peoples are more fully understood and more consistently applied.

Recommendation 7: That Canada ensure security organizations are subject to appropriate independent oversight, and that oversight bodies reflect the principle of pluralism in their membership, by including members of racialized communities, Indigenous peoples, persons with disabilities and LGBTQ2I individuals.

Recommendation 8: That Canada require all security organizations to collect and analyze human rights-based data in relation to their activities, including complaints based data such as allegations of systemic racism, and to account publicly for their performance.

d. Intersectionality

As mentioned in section two of this submission, the Government of Canada should take into account the importance of considering intersectionality, which refers to the fact that some Canadians may experience multiple and intersecting forms of discrimination. For example, a racialized woman with a disability may experience discrimination in a manner that is different from the way a racialized man does or from a woman with a disability who is not racialized. Similarly, LGBTQ2I individuals who are members of racialized groups may experience compounded discrimination that would only be understood by considering the effects of both grounds at the same time. A study which looks at each ground separately may miss the crucial understanding of such individuals' experience.

The realities of systemic racism and discrimination in Canada have been repeatedly recognized by international and regional human rights mechanisms, by civil society and Indigenous organizations, by domestic human rights institutions, and – in many cases – by government. Nevertheless, substantive progress towards addressing these realities remains largely elusive.

Recommendation 9: That Canada require a human rights analysis that fully integrates race-based and intersectional considerations in the development and evaluation of legislation, policies and programs.

III. CHRC DATA ON BARRIERS IN EMPLOYMENT AND SERVICES

The CHRC receives complaints under the CHRA and may resolve, dismiss, or refer complaints to the Canadian Human Rights Tribunal (CHRT) for a full hearing when further inquiry is warranted. Where there is a strong public interest – which often involves systemic discrimination issues – the CHRC fully participates in the hearing. The following complaints data can provide a snapshot of what kinds of issues are being raised, and which systemic issues are being sent to the CHRT.

From 2012 to October 31, 2017 the CHRC accepted 1060 complaints alleging discrimination in employment or in the provision of services on the basis of race, colour,

religion, national or ethnic origin, or some combination of these grounds. This represents 27% of the total number of complaints accepted by the CHRC during this time. More of these complaints related to discrimination in employment than to discrimination in the provision of services. Of the complaints accepted on the basis of colour, the most commonly cited colour was Black (54%), and of the complaints accepted on the basis of religion, the most commonly cited religious identity was Muslim (40%).

Of these complaints, 7% raised systemic issues such as racial profiling by police, limited access to religious programs for Indigenous inmates, unfair treatment of Muslim travellers at borders, and denial of banking services based on national or ethnic origin.

Many systemic complaints have been referred to the CHRT. Of the complaints sent to the CHRT, race (5%) and national or ethnic origin (5%) were sent more often than the average of all complaints (4%).

The EEA requires employers of a certain size under federal jurisdiction to take proactive measures to remove barriers to employment to improve accessibility and opportunities in employment for the designated groups. However, after twenty years of the EEA, members of visible minorities and Indigenous persons could still be better represented across Canada's workplaces. For instance, in 2014, the representation of members of visible minorities in the federally regulated public sector was 13.8% with an availability of 17.8%. In addition, in the same year, the representation of Indigenous people in the federally regulated private sector was 2.1% with an availability of 3.5%.

IV. OTHER CONSIDERATIONS

a. Definitions in Human Rights Context

The CHRC acknowledges that during its work, the Committee has heard many diverse views and opinions on the use and definition of the term "Islamophobia." However, the CHRC submits that the debate surrounding this specific term and its definition should not detract from the study's core purpose to make recommendations on reducing or eliminating systemic racism and religious discrimination.

b. Statutory Protections from Hate Speech

The CHRC welcomes consideration of a broad range of legislative and regulatory options to better address hatred, systemic racism and religious discrimination and reach the balance between the right to freedom of expression and the right to live free from discrimination. We urge these to be considered within a human rights framework.

The CHRC supports other witness suggestions to make it easier to lay charges and prosecute hateful speech under the Criminal Code of Canada.

The CHRC is also aware that the issue of reviving older statutory prohibitions which addressed "telephonic" hate speech and hate on the internet under a now-repealed clause (section 13) in the CHRA, has arisen occasionally in Committee discussions.

The CHRC submits that merely amending the CHRA or providing for clauses similar to the previous s.13, would be insufficient. In this modern era, this one legal change could not alone provide either the scope or the level of protections or remedies necessary to either avoid hateful online harassment or address the prevalence of hate speech effectively. We urge a broader and more comprehensive analysis of hate speech and hate-motivated harassment and violence as part of any future work.

If the Committee or government undertakes an exploration of legislative amendments to the CHRA or human rights statutes as part of a broader response to hate speech, the CHRC would be glad to engage further at that time.

V. SUMMARY OF RECOMMENDATIONS

The CHRC recommends that Canada:

1. develop and introduce a modern National Action Plan Against Racism, using international best practices as a model, and report publicly on progress against it.
2. implement a mandatory disaggregated data collection policy.
3. develop a concrete and specific strategy to implement the Truth and Reconciliation Commission's 94 Calls to Action, including implementation of the United Nations Declaration on the Rights of Indigenous Peoples, in consultation with Indigenous peoples.
4. develop a concrete and specific strategy to address the child welfare, policing, education, safe drinking water and housing situations on First Nations reserves on an urgent basis.
5. develop a concrete and holistic strategy to address the over-policing and over-incarceration issues facing Black and Indigenous persons, on an urgent basis.
6. provide the necessary training and resources to ensure that existing provisions relating to sentencing and alternatives to incarceration for Indigenous peoples are more fully understood and more consistently applied.
7. ensure security organizations are subject to appropriate independent oversight, and that oversight bodies reflect the principle of pluralism in their membership, by including members of racialized communities, Indigenous peoples, persons with disabilities and LGBTQ2I individuals.
8. require all security organizations to collect and analyze human rights-based data in relation to their activities, including complaints based data such as allegations of systemic racism, and to account publicly for their performance.
9. require a human rights analysis that fully integrates race-based and intersectional considerations in the development and evaluation of legislation, policies and programs.