

SUBMISSION



**SUBMISSION FOR
THE UNIVERSAL PERIODIC REVIEW ON CANADA
UNITED NATIONS
OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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Submitted by:

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1. CRARR would like to raise the following issues for consideration by the Working Group involved in the Universal Period Review on Canada:
 - a. Inaccessible and inefficient human rights commissions;
 - b. Inadequate measures to combat racially discriminatory police actions, and
 - c. Racial discrimination in employment.
2. CRARR's submission focuses on agencies and policies of Quebec, one of Canada's ten provinces, and in some cases, agencies and policies of the Government of Canada. It takes into account the rise in Canada of public and media attacks against human rights laws and commissions, hate on the Internet, racial and religious intolerance, and at the same time, a noted decrease in governmental support for human rights enforcement and promotion.

INACCESSIBLE AND INEFFICIENT HUMAN RIGHTS COMMISSIONS

3. The *International Convention for the Elimination of All Forms of Racial Discrimination* (ICERD)ⁱ, the *International Covenant on Civil and Political Rights* (ICCPR)ⁱⁱ, and the *Durban Programme of Action*ⁱⁱⁱ all call upon states to ensure that victims of racial discrimination have access to adequate, accessible and effective resources and to a competent tribunal to protect their rights. In its 5th Periodic Report on Canada's compliance with the ICCPR, the Human Rights Committee stated its concern about Canada in this regard;^{iv} so did the Committee on the Elimination of Racial Discrimination in its thirteenth and fourteenth periodic reports on Canada.^v

At the Federal Level: the Government of Canada

4. The lack of full and effective access to a competent tribunal is a serious issue at the federal level. Despite the report of the independent Panel to review the *Canadian Human Rights Act* entitled *Promoting Equality: A New Vision* and published in 2000, the Government of Canada has acted on very few of the Panel's 165 recommendations.
5. As of 2008, victims of discrimination at the federal level rely exclusively on the Canadian Human Rights Commission to investigate their complaints and to decide whether to refer their cases to the Canadian Human Rights Tribunal. This process can take up to three years. Further, the Commission has interpreted its empowering legislation to hold that when it refers cases to the Tribunal, it only intervenes as a third party if "in its opinion, [it] is in the public interest" to do so.^{vi} Accordingly, when the Commission upholds a complaint and refers it to the Tribunal, in practice, victims must then proceed at their own expense, either representing themselves without counsel, or having to pay for their own lawyers. The Commission often does not participate in such proceedings. In terms of public education, the Canadian Commission is poorly resourced to carry out this mandate, due in part to insufficient budget allocation from the Government of Canada.
6. Further, the Government of Canada abolished the Court Challenges program, which provided funding and assistance to increase access to justice and Canadian courts. Currently, said program has been restored but is restricted to cases relating to official language rights; however, victims of discrimination have no such government-funded assistance.^{vii}

At the Provincial Level: The Quebec Experience

7. Access to a competent tribunal and to an effective remedy is also a serious problem in Quebec. In 1997, a Canadian court held that victims of discrimination whose complaints are dismissed by the Quebec Human Rights Commission can no longer appeal such decision directly before the Quebec Human Rights Tribunal except in rare circumstances.^{viii} This results in many complainants simply abandoning their claims, or having to apply, at their expense, to the Quebec Court for a judicial review of the Commission's decision, a procedure that is prohibitive both financially and due to Canadian standards of judicial review. Studies show that about 45 cases per year are sent to the Tribunal by the Commission, out of approximately 1,500 cases per year.^{ix}
8. Another issue is excessive and inexplicable delays in investigating complaints of racism. The Quebec Commission often takes three to four years to reach a decision on a complaint, and in some cases supported by CRARR, has taken five years just to investigate. In one case of systemic racism in employment, filed in June 2003, the Commission changed investigators six times in five years; as of September 2008, no final decision has been rendered. In another case, the victim, a racialized disabled senior, waited for four years and passed away before any meetings with the Commission's investigator. Whether problems of excessive delay affect racism cases in a disproportionate manner is a matter currently being studied.
9. Furthermore, the Quebec Commission has faced systemic problems in addressing racism, particularly systemic racism, and the issue of race-based data collection. Despite being seized with many complaints with systemic dimensions, the Quebec Commission has repeatedly failed to adopt a detailed policy to operationally define racism in its indirect and systemic form, or to elaborate guidelines for investigating, analyzing and legally challenging systemic racism in employment and services.
10. The Commission also experiences difficulties in adopting a clear policy on the collection of race-based data to allow for analysis of racial discrimination in areas other than employment, so as to better assess disproportionate adverse impact.^x In addition, perhaps due to the fact that the Quebec Commission does not provide regular training on systemic racism to its investigative staff or its Commissioners, there has been inadequate handling of complaints with systemic dimensions. In these cases, victims of racism in employment have seen their complaints poorly investigated and dismissed even though the Commission failed to review systemic aspects (such as hiring criteria and patterns).
11. This may also explain the Quebec Commission's systemic tendency not to seek non-monetary remedies in cases of racism, and to often seek low monetary awards for moral and punitive damages – a fact that even the Quebec Human Rights Tribunal has noted (see *CDPDJ for E. Marseille c. Daniel Laverdière*, 2008 QCTDP 15. at para. 62). Without meaningful monetary compensation and effective systemic remedies, victims lose faith in the human rights system, while those who practice discrimination are not deterred.
12. Many of the above problems are the result of a lack of public accountability and oversight on the part of the National Assembly of Quebec, to which the Quebec Commission reports directly. Despite recommendations for change made by the Commission itself since 2003 and by a provincial task force on the Black communities in 2006, no action has been taken by

the provincial government to this effect. Recent requests for legislative oversight made by CRARR in 2006 to a parliamentary committee studying racism, and in 2007 in a written representation to the Quebec minister responsible for immigration and ethnic and racial minorities, have not lead to actions for review and reform.

RACIALLY DISCRIMINATORY LAW ENFORCEMENT

13. Art. 2 of the ICERD and Art. 71 and 72 of the *Durban Programme of Action* call upon states to enact measures to combat racially discriminatory law enforcement practices and more particularly, racial profiling. CRARR notes that the Quebec Commission has adopted a comprehensive set of policy guidelines to this effect. The Montreal Police Service (MPS) has also adopted a policy and comprehensive plan against racial profiling; however, it uses a definition of racial profiling which is inconsistent with that used by the Quebec Commission, as well as that adopted in Canadian jurisprudence on the matter (see Appendix).
14. Despite a growing number of complaints and legal challenges against racial profiling, there is still measurable institutional resistance to the formal and legal recognition of this practice. Examples can be found in two specific institutions.
15. The Police Ethics Commissioner is an independent provincial agency that receives complaints from the public against provincial and municipal police officers whose conduct may breach the *Quebec Code of Police Ethics*. However, despite the fact that racial profiling is discriminatory conduct falling within the purview of the *Code*, the Commissioner has refused to adopt a clear operational definition of racial profiling for its investigation and analysis of complaints. As many cases assisted by CRARR have shown, this situation leads to many race-based complaints being “de-racialized” and the racial profiling elements inadequately investigated and referred to the Police Ethics Committee (an administrative tribunal with the power to impose sanctions on police respondents). In some cases where the Commissioner failed to address the racial element of the case, it was ordered by the Committee to re-assess the cases and take race into account; still, the Commissioner often avoided the racial dynamics. This gives rise to perceptions of systemic racial bias.
16. The City of Montreal, which employs the MPS officers, also adopts a contradictory position on racial profiling. While the City adheres to the Canadian Coalition of Municipalities against Racism and Discrimination and adopted a symbolic *Charter of Rights and Responsibilities*, its Mayor has publicly denied the existence of racial profiling, despite cases before the courts to this effect. The City’s positions and actions before the Quebec Human Rights Commission and the courts, notably the Quebec Human Rights Tribunal, demonstrate strong resistance to formal judicial confirmation of racial profiling. In numerous instances, the City, through its lawyers, has systematically utilised procedures that create undue delays to the human rights investigation, and that create costly obstacles for complainants, the Human Rights Commission and ultimately, the public.
17. The City has also adopted, without public discussions, policies that contribute to racialized citizens feeling unfairly harassed and profiled. For instance, it has adopted a policy against “incivilities” for its police, public transit, housing and other municipal services, despite social

science evidence in France and the U.S. to the effect that it discriminates against youths of colour and economically disadvantaged persons. This policy leads to complaints that it incites abusive and discriminatory targeting as well as undue penalization of young minority men. In December 2006, the City's Intercultural Council, an advisory body, stressed the need to review this policy because it leads to racial profiling; no follow up has taken place.

18. Further, contrary to other Canadian provinces such as Ontario where an independent civilian agency (the Special Investigation Unit) investigates police actions leading to death or serious injury, the Quebec Government's policy keeps the entire process in the hands of another police service. Often the full report is never released even to the family of the deceased. The policy of having a police service investigate another police agency in cases of fatal intervention contributes to perceptions and allegations that public authorities resist "effective policies and programmes to prevent, detect and ensure accountability for misconduct by police officers... which is motivated by racism."^{xi} On August 9, 2008, a police shooting in Montreal led to one Hispanic young male being shot to death, and one Asian male and one Black male being wounded. The public reaction and outcry emphasizes the need for accountability and independent civilian review of police in Quebec where racialized persons have been disproportionately criminalized and involved in fatal police actions.

RACIAL DISCRIMINATION IN EMPLOYMENT

At the Federal Level

19. Since 2000, Canada has adopted a program called *Embracing Change*, to increase the representation of "visible minorities" (i.e. non-whites or non-Caucasians) in the federal public service, especially for management and executive positions. By the end of 2005, many stakeholders concluded that *Embracing Change* had failed to reach its goals. For the fiscal year 2004-2005, the Public Service Commission of Canada reported that although 25% of applicants to the federal public service were minorities, only 9.1% were hired. In 2007, the Commission sounded the alarm when it found the recruitment rate of minorities fell from 9.8% to 8.7%, even though overall hiring in the departments increased. As of March 31, 2007, minorities made up only 9.6% of the federal civil service, despite their workforce availability of 10.7 % (if Canadian citizenship is accounted for, since the State party in practice selects citizens over permanent residents for its civil service) or 12 % for the Canadian labor force (including permanent residents who are active). Although in August 2008, the Clerk of the Privy Council of Canada ordered all department managers to increase minority hiring, there are no specific goals set and no accountability measures to this effect.

At the Provincial Level

20. Since 1981, the Government of Quebec has repeatedly adopted plans of action, programs and other initiatives to increase the representation of "visible" and ethnic minorities in the provincial civil service, from 2% in 1981 to a benchmark of 9%. According to data released by the Quebec Treasury Board in 2008, of the 67,138 provincial civil servants as of March 31, 2007, members of ethnic and "visible" minorities made up 4.1% (or 2,736 employees). In fiscal year 2002-2003, the percentage was 3.1%; in other words, between 2002 and 2007, there was a 1% increase of minority representation (or a net gain of 595 positions). In recent

years, the Quebec Government has not enforced pro-active measures to require accountability and results on the part of senior managers of departments and agencies.^{xii}

21. Obstacles to fair employment for members of minorities in Quebec are present in many areas. While the unemployment rate among young people of colour between the ages of 15 and 24 is double that of the provincial rate for the same age group, a February 2008 Statistics Canada study shows that the unemployment rate among Quebec citizens and permanent residents who are of origins from the Maghreb region (Northern Africa) is 28%. In addition, foreign trained doctors, most of whom are racialized persons licensed and recognized by the provincial regulatory body (the Collège des Médecins), continue to face discriminatory barriers in accessing internship positions that allow them to become full-fledged physicians: in 2007 and 2008, more than 100 international medical graduates in Quebec were unjustifiably denied fair access to medical internship positions.

ITAR (*International Traffic in Arms Regulations*)

22. Under the U.S. State Department's ITAR, Canadian private companies in the aerospace industry that receive defense contracts from the American Government or companies, must comply with ITAR security measures. These measures require them to deny access to data, products, services, and even employment to persons who were born in some 24 countries deemed to be threats of American national security (such as China, Cuba, Haïti, Iran, Lebanon, Syria, Vietnam, etc.), even when these persons are Canadian citizens and permanent residents. As a result, many Canadian workers are subjected to race/ethnicity-based segregation, restriction, increased scrutiny on the job, and termination. Despite this form of explicit racism, different levels of government in Canada have not acted to protect citizens and permanent residents; the Quebec Human Rights Commission adopts a case-by-case reactive approach instead of initiating a legal challenge, which it is empowered to do under the *Quebec Charter of Human Rights and Freedoms*.
23. The above information shows that Canada still needs to respond to the CERD's recommendation 24 in its Seventieth Session report, regarding the need for actions to combat racism in employment and reduce unemployment among minority groups.

ⁱ See Article 6.

ⁱⁱ See Articles 2 and 26.

ⁱⁱⁱ See paras. 89, 90, and paras. 160 to 166.

^{iv} October, 2005.

^v CERD/C/320/Add. 5, para. 25, October 2005.

^{vi} *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, at s. 51.

^{vii} See recommendation #26 of the Report of the Committee on the Elimination of Racial Discrimination, CERD/C/CAN/CO/18, XX March 2007, Seventieth Session ("Report").

^{viii} *Ménard v. Rivet*, [1997] R.J.Q. 2108 (Québec Court of Appeal).

^{ix} Eliadis, P. "Human Rights Tribunals and Direct Access to Adjudication: A New Generation of Human Rights Protection?" in *Access to a Specialized Human Rights Tribunal* (Les Éditions Yvon Blais, 2008).

^x See recommendation #11, supra note 7.

^{xi} Art. 71 of the *Durban Programme of Action*.

^{xii} Secrétariat du Conseil du Trésor, Gouvernement du Québec, *L'effectif de la fonction publique du Québec, 2006-2007*, Québec, May, 2008.
