

CENTRE DE RECHERCHE-ACTION
SUR LES RELATIONS RACIALES

Unis pour la diversité et l'égalité raciale



CENTER FOR RESEARCH-ACTION
ON RACE RELATIONS

United for Diversity and Racial Equality

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CRARR SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

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Additional information regarding the proposed *List of themes in relation to the combined twenty-first to twenty-third periodic reports of Canada (CERD/C/CAN/Q/21-23)*, following up on both the *Concluding observations on the nineteenth to twentieth periodic reports of Canada*, adopted by the Committee on the Elimination of Racial Discrimination (CERD) at its eightieth session (13 February – 9 March 2012) and the twenty-first to twenty-third periodic reports of Canada, received 13 May 2017.

Prepared by

the Centre for Research Action on Race-Relations

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Information about the Organization

The Center for Research-Action on Race Relations (CRARR) is a Montreal-based independent, non-profit civil rights organization that was founded in 1983 with the mandate to promote racial equality and combat racism in Canada. As an issue-based organization, CRARR works with all sectors of society that share its values of equality and diversity, especially equality-seeking groups.

CRARR activities and services include:

- Advocacy and defense for victims of discrimination based on race, religion, ethnic or national origin, citizenship status and other characteristics as protected by different federal and provincial human rights legislation,
- Research and litigation on racial equality issues,
- Organizing conferences, consultations and seminars, and trainings on different race relations and civil rights issues, and
- Interventions and advocacy before legislative, administrative, regulatory and judicial agencies.

1. Prevention of Racial Discrimination and Racial Profiling in the Criminal Justice System:

CERD Committee Position

In the context of the implementation of articles 2 and 5 of the Convention, the Committee has noted that one possible indicator of racial discrimination is “Insufficient or no information on the behaviour of law enforcement personnel vis-à-vis persons belonging to the groups referred to in the last paragraph of the preamble” (General recommendation No 31 (2005), para. 1 (c)).

All States parties have also been called upon to “take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person’s colour or features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion” (General recommendation No 31 (2005), at para. 20).

Canada specifically was called upon to “(a) Take necessary steps to prevent arrests, stops, searches and investigations and over-incarceration targeting different groups, particularly

African Canadians, on the basis of their ethnicity; [and] (b) Investigate and punish the practice of racial profiling” (CERD/C/CAN/CO/19-20, at para. 11).

This question has again been identified as a theme for this periodic review (CERD/C/CAN/Q/21-23, at para. 13, calling for “Information on the existence and implementation of special measures in the State party and the impact of such measures on the situation of people of African descent, other ethnic minority groups and indigenous peoples (CERD/C/CAN/21-23, para. 11 and CERD/C/CAN/CO/19-20, para. 10).”

It should be noted that the Committee reminds States parties that racial profiling should be prevented at all stages of criminal procedure, whereas many authorities limit their assessment of racial profiling to what triggers the interception of an individual by a police officer.

Canadian Government Response

Although some Canadian jurisdictions have implemented policies and training programs relating to “bias-free” policing, the most recent periodic reports of Canada notably fail to describe any concrete measures that have been adopted in order to identify, investigate and punish the phenomenon of racial profiling on a systemic level (*see* CERD/C/CAN/21-23, at paras. 170-5). In particular, there continues to be a near-total lack of data collection relating to problematic areas such as traffic stops, which suggests a reluctance to identify and publically discuss systemic discrimination.¹

With regards to the broader subject of the treatment of African Canadians in the Canadian criminal justice system, the Government of Canada simply states that “Race, ethnicity or visible minority status of accused and offenders is not collected nationally; therefore, the number of African Canadians who are involved in the Canadian criminal justice system is not known” (CERD/C/CAN/21-23, at para. 194). The only data that is available – based on research from the federal Office of the Correctional Investigator – is concerning, and perhaps points towards the existence of profiling: “In 2012-2013, 8.9% of federal offenders self-reported as Black, while according to the 2011 National Household Survey, African Canadians made up only 2.9% of the population. (CERD/C/CAN/21-23, at para. 194).

¹ Examples of this type of public data collection have been limited to several one-off studies conducted in Ontario: *see*, for instance, the Ottawa Traffic Stop Race Data Collection Project (2012 - 2016) (<https://www.ottawapolice.ca/en/news-and-community/Traffic-Stop-Race-Data-Collection-ProjectTSRDPC.asp>), and Scot Wortley and Lysandra Marshall, “Bias Free Policing: The Kingston Data Collection Project Final Results” 20 September 2005 (<http://hdl.handle.net/1974/8655>).

Additional Information

In March 2017, Justice Michael Tulloch of the Ontario Court of Appeal published a wide-ranging report resulting from Ontario's recent Independent Police Oversight Review. Justice Tulloch emphasized the need for the collection and publication of demographic data by police oversight bodies, and observed that "without data and research, the conversation about police violence and racial profiling is dominated by allegations and anecdotes."² Justice Tulloch similarly pointed out that "for systemic issues, [such as racial profiling] groups need research to support their claims, and the police and policy-makers need official data to identify problem-areas and develop programs."³

Similarly, in a 2011 report on the subject of racial profiling, the Québec Human Rights and Youth Rights Commission concluded that:

"There is an urgent need to collect exhaustive data in order to document the situation not only with respect to the actions of [police] officers, but also throughout the judicial system. In fact, the disproportionate surveillance of youth from racialized communities and of Aboriginals will necessarily result in an over-representation of these individuals all the way to the prison system."⁴

In light of those observations, the Commission made a formal recommendation:

"That the municipal police departments [of Québec] and the Sûreté du Québec systematically collect and publish data relating to the presumed racial identity of individuals during police actions in order to document the phenomenon and take the appropriate measures."⁵

Despite this clear recommendation from the Québec Human Rights and Youth Rights Commission, and in apparent disregard of the Committee on the Elimination of Racial Discrimination's own recommendations regarding the prevention of racial profiling, the largest municipal police force of the Province of Quebec, the Service de Police de la Ville de Montreal (SPVM) has unequivocally refused to collect, process and publish demographic data that might reveal racial profiling. In a discussion document published

² Report of the Independent Police Oversight Review, The Honourable Michael H. Tulloch, Queen's Printer for Ontario, 2017, at Chapter 11, para. 15. https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/police_oversight_review/

³ Ibid, at Chapter 11, para. 16.

⁴ Commission des droits de la personne et de la jeunesse, Racial Profiling and Systemic Discrimination of Racialized Youth: Report on the Consultation on Racial Profiling and its Consequences, 2011, at p. 35. http://www.cdpdj.qc.ca/publications/Profiling_final_EN.pdf

⁵ Ibid,

by the City of Montréal in May 2017 in anticipation of a municipal consultation on racial profiling and social profiling, the City wrote:

“The SPVM has decided to not collect statistical information concerning persons who are intercepted, assisted, referred, or arrested, and has informed the Commission des droits de la personne et de la jeunesse of this decision” (unofficial translation).⁶

The Montreal Police Service’s decision constitutes a form of institutionalized avoidance of the recognition of racial profiling in Montreal, despite the fact that its prevalence on a systemic level has been quantitatively confirmed through social science research conducted elsewhere in Canada and also recognized in individual cases in Quebec court rulings dating back to 2005.⁷ This decision to avoid public accountability runs counter to Canada’s commitment to effectively study and respond to the systemic problem of racial profiling and threatens to undermine Canada’s implementation of articles 2 and 5 of the Convention.

Recommended Questions

1. Is there a formal national policy framework, or in accordance with Canadian public policy, a federal-provincial-territorial framework, to ensure the collection, analysis and public release of race-based data in different police services with the view to document, measure, prevent and sanction racial profiling and related systemic racism “at all stages of the criminal justice system”?
2. If not, will Canada undertake to adopt such a national policy framework?

⁶ Ville de Montréal, Bilan général des actions de l’agglomération de Montréal pour lutter contre le profilage racial et le profilage social 2012 – 2016, at p. 40. Original: “*Le SPVM a décidé de ne pas effectuer de collecte de données sur les personnes interpellées, aidées, référées ou arrêtées et en a avisé la Commission des droits de la personne et de la jeunesse.*” http://ville.montreal.qc.ca/pls/portal/docs/page/commissions_perm_v2_fr/media/documents/docconsult_20170519.pdf

⁷ For the social science research, see the reports cited in note 1, above. For Québec court cases concerning racial profiling, see *R. c Gelin*, 2017 CanLII 8506 (QC CM) (<http://canlii.ca/t/gxnbp>); *Longueuil (Ville de) c. Debellefeuille*, 2012 QCCM 235 (CanLII) (<http://canlii.ca/t/fstrc>); and *R. v. Campbell*, 2005 CanLII 2337 (QC CQ), at para. 63 (<http://canlii.ca/t/1jq0v>).

2. Prevention of Racial Discrimination in the Criminal Justice System: Racial Diversity in the Judiciary

CERD Committee Position

In its 2012 *Concluding observations on the nineteenth to twentieth periodic reports of Canada* the Committee refers to the training of judges on the principles of the Convention as one means of preventing racial profiling “at all stages of criminal procedures” (CERD/C/CAN/CO/19-20, at para. 11).

In addition, the Committee has expressed, in its proposed List of themes for this year’s review of Canada, its wish to receive from Canada, “Information on the participation of ethnic minorities in public life and their representation in State institutions, including statistical data on members of minority groups employed in public institutions, law enforcement services and the judiciary, at all levels” (CERD/C/CAN/Q/21-23, at para. 12).

Canadian Government Response

Although Canada’s most recent periodic reports speak to efforts regarding the training of judges on the principles of the Convention, no information is provided regarding the representation of racialized persons and ethnic minorities in the judiciary, or efforts to increase diversity within public institutions more generally (CERD/C/CAN/Q/21-23, at paras 179-181).

Additional Information

CRARR wishes to provide further information regarding the issue of racial diversity of the judiciary, especially in criminal and penal courts and in administrative tribunals such as the *Quebec Human Rights Tribunal* and the *Quebec Police Ethics Committee* (a specialized administrative tribunal which adjudicates citations of police misconduct).

At the present time, amongst the more than 500 judges in all common-law courts in the province of Quebec, from the lowest Municipal Court to the highest court in the province, the Court of Appeal, there are less than 8 racialized judges.⁸ It is even more striking that racialized judges have been consistently absent in recent years among the two administrative tribunals most often seized with cases of racial profiling, or the broader issue of racial bias in law enforcement services, namely the Quebec Human Rights Tribunal and the Police Ethics Committee (the latter does currently have two part-time Indigenous members).

⁸ See, for instance, “Canada's shortage of non-white judges creates 'an obvious gap'”, Michael Tutton, CBC News, 19 July 2016 (<http://www.cbc.ca/news/canada/nova-scotia/canada-shortage-of-non-white-judges-creates-an-obvious-gap-1.3685026>).

Where the Federal Court apparatus and the Supreme Court of Canada are concerned, there is no judge belonging to racialized groups.⁹ Never in the history of the top court of the land has there been a Justice who is Indigenous or a member of a racialized group.

Although racial diversity in the judiciary is identified by the Government of Québec as a formal public policy priority, there is still no tangible evidence of implementation of this policy in the province's judicial system.

Recommended Question

1. What concrete measures will Canada undertake to ensure that its judiciary system at all levels fairly reflects the racial diversity of Canadian society, and more specifically Canada's Indigenous heritage?

3. Sanctioning Hate Crime and Hate Groups

CERD Committee Position

In its 2012 concluding observations, the Committee expresses its concern with Canada's record on hate crimes and hate groups. It notes in particular its concern "a) at the refusal by the State party to introduce in its legislation a specific offence criminalizing and punishing acts of racist violence; and b) at the State party's approach to prohibit racist activities of racist organizations rather than prohibiting and declaring illegal such organizations (art. 4)" (CERD/C/CAN/CO/19-20, at para. 13).

Canadian Government Response

While Canada's most recent periodic reports describe legislative provisions that could be used to sanction different forms of race-based hate speech, but do not provide any evidence to suggest that those provisions are consistently used, similarly do not address either of the specific proposals discussed in the preceding paragraph.

Additional Information

On January 29, 2016, in Québec City, 6 Muslims were shot to death in their mosque, and 19 others were wounded, by a young white male who had expressed Islamophobic and xenophobic sentiments on-line. It was the most serious acts of fatal gun-related killing of civilians in the province of Quebec since the massacre of 14 women at the École Polytechnique in 1989, and the deadliest hate-motivated attack on the life, security and

⁹ Andrew Griffith, "Diversity among federal and provincial judges", Policy Options, 4 May 2016 (<http://policyoptions.irpp.org/2016/05/04/diversity-among-federal-provincial-judges/>).

integrity of Muslim Canadians.

It remains to be seen how in this case, the prosecution will raise, and the courts will apply the sentencing principle of s. 718.2 (a)(i) of the *Criminal Code of Canada*, which provides that:

“A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor”

This unprecedented Islamophobic killing also underscores the role of racist talk radio programs (“radio poubelles”) whose regulatory body, the Canadian Radio-Television and Telecommunications Commission (CRTC) appears to have, in the last ten years, considerably relaxed the enforcement of its own regulations regarding the spreading of “contempt and hatred on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability .”¹⁰

Recent official reports published by the Government of Canada, the Government of Quebec and the Montreal Police Service show a rise in hate-motivated crimes, notably against people of the Muslim faith and Arabic racial/ethnic background.¹¹ Crimes against properties belonging to religious minority groups, notably Jews and Muslims, are also reportedly on the rise.

Questions still remain as to the concrete state actions taken to prosecute hate-motivated crimes, and to effectively bring solace to the victims of said crimes through criminal and civil sanctions against the perpetrators. Our recent canvassing of case law pertaining to s. 430 (4.1) of the Canadian *Criminal Code*, RSC 1985, c C-46 (regarding acts of mischief

¹⁰ See *Radio Regulations*, 1986, SOR/86-982 (Broadcasting Act), s. 3(b); and, *Television Broadcasting Regulations*, 1987, SOR/87-49 (Broadcasting Act), s. 5(1)(b).

¹¹ Statistics Canada, Police-reported hate crime in Canada, 2015, Juristat (vol. 37, no. 1; published June 13, 2017) (finding that “Police-reported crimes motivated by hate against the Muslim population rose 61% in 2015”) (<http://www.statcan.gc.ca/pub/85-002-x/2017001/article/14832-eng.htm>); See also, Quebec Ministère de la sécurité publique, “Criminalité au Québec: Principales Tendances 2015”, at p. 40, revealing a 40% rise of hate-motivated crimes in Quebec between 2013 and 2014. (http://www.securitepublique.gouv.qc.ca/fileadmin/Documents/police/statistiques/criminalite/2016/criminalite_2015.pdf).

relating to religious property which is motivated by bias, prejudice or hate), for instance, reveals a total absence of court decisions related to these criminal offenses in the last ten years.

As well, it is unknown what kind of training on hate crimes has been provided to Crown prosecutors and judges in Quebec, and what kind of input from civil society groups, especially those most targeted by these crimes, is solicited and integrated into such training.

Similarly, concrete state actions to combat and prevent hate-motivated crimes, and to support victims of said crimes, remain elusive. The Government of Quebec, through its *2015-2018 Plan of Action against Radicalization*, has committed to certain measures against acts of hate such as public dissemination of speeches promoting violence and discriminatory statements engaging the prohibited grounds defined by the *Quebec Charter of Human Rights and Freedoms*, CQLR c C-12.¹² In order to enforce this plan, the Government intends to delegate new powers to the *Quebec Human Rights and Youth Rights Commission* and has committed to ensuring the training of first responders on the “management of persons with mental health issues involved in hate crimes and intimidation.”

However, in its mission to combat discrimination, especially discrimination based on race and ethnic or national origin, the Quebec Human Rights and Youth Rights Commission is seriously hampered by its underfunding and understaffing. As an illustration, in CRARR’s experience, an investigation into a complaint of discrimination, especially race discrimination may take between 3 to 5 years to complete. In several cases, the delay has reached 7 years.

Furthermore, the Commission has avoided engaging with the systemic dimension of racial discrimination and has resisted adopting policy guidelines on systemic racism. It has often based its investigations and decisions on an outdated intent-based definition of discrimination, avoiding applying the effect-based analysis called for by Canadian human rights case law. In this regard, concerns also exist as to the limits of civil sanctions against violent forms of civil rights violations and hate incidents characterized by the type of systemic and intersectional dimensions that would require a nuanced and contextual systemic analysis.

Finally, the growing presence and activities of hate groups, operating in real time as well as in the social media, and often self-labeled “ultra-nationalist” in defense of “national identity” and “national values” have not been adequately addressed by the Government of Canada nor the Government of Quebec.

It should also be noted that since the expiry of the 2005 *Canadian Action Plan on Racism*, the Government of Canada has not produced, to date, any new or updated

¹² http://www.midi.gouv.qc.ca/publications/fr/dossiers/PLN_Radicalisation.pdf.

national strategy to combat racism, and more particularly hate crimes and related intolerance across the country.

Recommended Questions

1. What concrete measures will Canada undertake to combat and prevent hate crimes committed against persons and properties belonging to racial, religious and sexual minorities, and Indigenous peoples, to ensure appropriate criminal and civil sanctions against such crimes and to provide adequate, effective protection and support to victims of such crimes?
2. What concrete measures will Canada undertake to combat, sanction and prevent the growth of hate groups and racist, anti-immigrant and intolerance-based activities and communications, especially in social media and on talk radios?

4. Ending Discrimination against Non-Citizens

CERD Committee Position

Among the themes in relation to the combined twenty-first to twenty-third periodic reports of Canada, the Committee identifies, in para. 20 of CERC/C/Can/Q/21-23, at p. 2, one area of interest, i.e., “Information on measures taken to ensure that non-citizens have access to rights under the Convention, without discrimination, and the implementation and impact of such measures.”

Canadian Government Response

Canada’s most recent periodic reports do not speak to this issue.

Additional Information

CRARR wishes to bring to the Committee’s attention two specific areas where discrimination based on the citizenship status is still practiced in the Province of Quebec: in employment and in official documentation of gender.

In a 1989 judgment, known as the *Andrews* decision, the Supreme Court of Canada declared illegal and unconstitutional the requirement of Canadian citizenship as a precondition condition for admission to the Bar of the Province of British Columbia.¹³ Yet, the Quebec Human Rights and Youth Rights Commission decided, in 2017, that discrimination on the ground of “ethnic or national origin” as provided for in the *Quebec Charter of Human Rights and Freedoms*, cannot be interpreted as including non-citizen

¹³ *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143.

status. As a result of this failure to recognize citizenship status as an analogous ground of discrimination in the said *Charter*, discrimination based on citizenship remains legal in Québec, in areas under provincial jurisdiction.

The Human Rights Commission’s narrow interpretation of “ethnic or national origin”, and failure to apply an intersectionality analysis as suggested by the courts, runs contrary to well-established Canadian jurisprudence requiring a “broad and liberal” interpretation of human rights legislation.¹⁴ It means that non-citizens who are Quebec residents cannot enjoy effective protection under the provincial human rights legislation.

The Commission adopted this position in rejecting a complaint by a Black woman at the time a permanent resident of Canada and a citizen of Haiti, who was fired from a job with a non-profit association incorporated under the Quebec *Professional Syndicates Act*, CQLR c S-40 (PSA). This Act was originally adopted in 1924 and applies to more than 1,700 unions and non-profit organizations in the Province. Its most glaringly discriminatory provision is Section 8 which provides that “*only Canadian citizens may be members of the administrative council of a syndicate or form part of its personnel.*”

Based on immigration data, CRARR estimates that each year, between 200,000 and 250,000 permanent residents in Quebec are legally barred from employment in Quebec unions and non-profits incorporated under the PSA, most of these permanent residents being racialized persons. Despite calls to the Government of Quebec to amend the PSA in order to abolish its discriminatory provisions, and to add non-citizenship as a ground of discrimination to the *Quebec Charter of Human Rights and Freedoms* (similar to the *Ontario Human Rights Code*, which contains such prohibition), no legislative action has yet been undertaken.

Discrimination based on citizenship also extends to transgender non-citizens, who are legally denied the right to change their gender marker in official provincial documents such as their Medicare card or driver’s license. Under s. 71 of the *Quebec Civil Code*, “... *only a person who has been domiciled in Québec for at least one year and is a Canadian citizen may obtain such changes.*” The related *Regulation respecting change of name and of other particulars of civil status* also contains a citizenship restriction.¹⁵

Quebec remains the only province of Canada that still denies non-citizens the right to change their gender in official provincial documents, disproportionately affecting racialized persons and resulting in significant barriers for these persons in employment, housing rental, banking and other sectors of activity.

¹⁴ See, for example, *B. v. Ontario (Human Rights Commission)*, [2002] 3 SCR 403, at para 44.

¹⁵ *Regulation respecting change of name and of other particulars of civil status*, CQLR c CCQ, r 4, at ss. 2 and 4.

Recommended Question

1. What concrete actions will Canada take to eliminate discrimination based on citizenship status towards non-citizens in the Province of Quebec in order to ensure their full access to equality in employment and other aspects of daily life?