

Response to the Commission's Testimony

On Monday May 8, 2023, Executive Director Ian Fine, Interim Chief Commissioner Charlotte-Anne Malischewski, and Director General and Senior General Counsel Holly Holtman, of the Canadian Human Rights Commission appeared before the Standing Senate Committee on Human Rights.

The Commission continues to say that they are committed to anti-racism, that they have made significant progress and take these issues seriously. It was painful to watch them appropriate the language of human rights to mislead, misquote and manipulate internal statistics on complaints to suggest reforms have been made and then in the same breath, deny key elements of the TBS decision. The Executive Director, Ian Fine, has been the head of this organization for decades and he shut the door on myself and others repeatedly, promoted the very perpetrators of that discrimination, refused to discuss issues of concern to us and has presided over the most toxic and racially charged workplace I've ever worked in. He also benefited from our trauma and received a promotion through a reclassification last year.

This document outlines the context and information regarding the omissions, false and misleading statements made on the record by the Commission.

The Commission's portrayal of the issues as mere individual misconduct rather than a systemic problem within their employment structure

- The Commission willfully lied before the Committee with respect to the allegations and context of the complaints made by employees. The leadership attempted to mislead the Committee into believing that the issues involved individual acts of discrimination between employees (otherwise known as 'misconduct') and that actions were taken to remove those key individuals.
- **Ms. Malischewski stated :**
 - "There were situations in our Complaints Services Branch in which employees responded in unprofessional and disrespectful ways to the contributions that their Black and racialized colleagues made at work. That had a profound negative impact, which we deeply regret and apologize for."
 - " Some of these are exactly the questions I had when I came into this role to try to understand, because we know this is systemic, but we also know that specific individuals engaged in misconduct. I take some comfort in knowing that none of those individuals are currently managing people at the Commission. That is very significant and important for us, because if we're going to have a workplace that is safe for all, it is very important that people be able to go to their managers and trust that they will be heard and respected. For us, that is a form of accountability that is very important, and I think needs to be highlighted." [emphasis added]
- This is a false and egregious attempt to mislead the Senate. As outlined in the letters, the grievance and the decision, the employees brought forward complaints of systemic discrimination in employment practices of the Commission and handling of race-based complaints. The Commission's policies and practices relating to hiring, retention, and promotion are the primary causes of the continued impediment to employment opportunities for Black employees. The commission emphasized only one part of the complaint (the issues regarding racist incidents by several individuals), but did not address the systemic employment issues (which are equally important).
- It is likely that the Commission chose to do so to shift responsibility. This directly implicates senior leadership as they were decision-makers in all aspects of the complaint. To the contrary, despite being identified to Ian Fine and others, several of the main perpetrators were promoted since the events, including the Director of Policy Tabatha Tranquilla and the

Director General of the Complaints Services Branch and General Counsel Valerie Phillips. In addition, these individuals definitely continue to have employees who report to them.

The Commission failed to adopt any of the recommendations put forth by the signatories of the 2020 letter. Rather than addressing the systemic anti-Black racism in the retention, hiring, and promotion practices, the Commission chose to implement a range of ineffective measures, namely:

Development of an “anti-racism” action plan:

- The Commission’s “anti-racism” plan is ineffective at addressing the structural racism at the Commission for the following reasons:
 - a) It does not have specific, time-bound, measurable goals and objectives that are aimed at reducing or eliminating racism within the organization;
 - b) It does not require data analysis of organizational demographics and experiences of Black employees to inform targeted strategies and identify areas of concern;
 - c) It doesn’t allocate resources, such as funding and staff time, to support the implementation of the plan and ensure its success;
 - d) It does not have mechanisms for continuous evaluation, learning, and improvement to ensure that it remains relevant and effective over time. It is extremely vague.
- A senior member of management (then Director of Legal Services and General counsel-Valerie Philipps) who was one of the main implicated individuals in the complaint of anti-Black racism was appointed to develop and implement the plan in July 2020. It is believed that she received an acting promotion for this work. She was identified as a perpetrator by the majority of signatories of the June 2020 letter to the Chief Commissioner. When the unions asked the Commission to appoint someone else given she was a key alleged perpetrator, they refused.
- Contrary to the Commission’s testimony, the Commission did not invite the signatories of the June 2020 letter to help develop the anti-racism plan. In fact, the Commission refused to adopt a participatory human-rights based approach with the Black and racialized employees that came forward. The plan was developed exclusively by senior leadership and posted secretly on the Commission’s website on January 1, 2021. When this was discovered by an employee in the weeks that followed, concerns were raised and a request was made that it be shared with the signatories for comment to ensure that it responds to the concerns in their letter. The next day, rather than doing so, the former Chief Commissioner, Marie-Claude Landry, shared the document with all staff by email for comments (over 200+ employees) and directed anyone with comments to contact their Director or the Director of Human Resources.

Creation of an internal “de-colonization committee”:

- This Committee is informal and operates more like a social club. It is a token gesture by management, rather than a genuine effort to address racism in the workplace. The Committee doesn’t have the authority or power to make real change in the workplace. It does not have the ability to enforce policies or decisions.
- In addition, when Black employees took issue with the fact that problematic members of management sat on that committee, the Commission refused to change that structure.
- The decolonization committee does not bring system change as it attempts to only addresses the surface-level manifestations of racism rather than the underlying causes of the structural racism.
- To date, this committee has failed to make any impact on the Commission's employment practices, as the Commission persists in utilizing informal procedures that unfairly hinder the career progression, recruitment, and retention of Black employees.

Retaining of “external facilitators” Arleen Huggins and Mireille Giroux to interview Black and racialized employees:

- Ms. Huggins was not permitted to put any of her findings or recommendations in writing, and she was only allowed to brief senior management orally.
- Our unions asked the Commission to provide them with the scope and mandate of their contract, however this was never provided
- The Commission did not share with employees what Ms. Huggins' findings and recommendations were.
- Contrary to what the Commission said in its Senate appearance, this is not at all what employees asked for in our June 2020 letter. Employees asked that Ms. Huggins be retained to conduct a workplace assessment of the experiences of Black and racialized employees and that this report and its recommendations would be shared with employees and made public.

Retaining Nina Fernandez to conduct an investigation in July 2020:

- The Commission called this investigation a “workplace wellness” investigation. The unions asked the Commission to provide them with the scope and mandate of Ms. Fernandez’s contract, however this was never provided. The Commission also refused to agree to provide our unions with a copy of Ms. Fernandez’s report.
- The investigator also engaged in questionable and coercive practices, such as disclosing information and contacting the friend of an employee, who refused to participate, to try to convince them to do so.

Retaining Mark Hart, a former Vice-Chair of the Ontario Human Rights Tribunal to write a report about how to strengthen the Commission’s handling of race-based complaints:

- He provided his report in 2020, most of his recommendations have still not been implemented.
- In addition, they have buried the part of his report that touches on the systemic workplace issues the Commission needs to address (such as increasing representation of Black employees at all levels of the organisation).

Increasing Black representation at senior levels of the organization:

- There are no Black individuals that hold positions at the EX-3 level or higher, which is considered senior management, even today. This is unacceptable because it is really those in the position of EX-3 and above at the Commission that have significant decision-making power.
- The Commission continues to employ informal procedures that unfairly obstruct the career progression, recruitment, and retention of Black employees. The Commission also continues to deny employment opportunities to Black employees even when similar acting and permanent positions are offered to non-Black employees.

Commission’s refusal to provide relevant documents:

- In the context of the policy grievances filed, the unions repeatedly requested that the Commission disclose relevant documents and data (such as data relating to the hiring and promotion of Black employees). However the Commission refused to provide these documents and the unions had to file a complaint with the Information Commissioner. The Information Commissioner found that complaint to be well-founded and ordered the Commission to produce the documents. However, the documents that were produced were so heavily redacted so as to be rendered completely incomprehensible.
- The Commission has likewise repeatedly refused to release disaggregated race-based data on human rights complaints received from the public. Where it has done so, it has made critical decisions on the framing and categorization of that data in order to tell a very different story than what employees know to be true about the high and disproportionate rate of dismissal of race-based complaints.

Commission’s response following recent media reports:

- The Commission has sent recent emails to all staff that has focused more on the “mental health” impacts that this recent exposure has had on members of management, rather than on the racial trauma Black employees have endured.
- The Commission’s Director General and Senior General Counsel has repeatedly belittled the Treasury Board finding of racial discrimination –by saying things like “oh its conclusion wasn’t based on any real findings of fact” and “oh there were no Charter breaches found, only breaches of the “no discrimination” clause of the collective agreements”. (These statements were made in a townhall)
- It is also notable that the interim Chief Commissioner lied in the CBC article. She stated that the Commission took action within days of the complaint. However the Commission was repeatedly made aware of the concerns of the Black and racialized employees dating back to 2019.

Ian Fine’s lack of acknowledgement of racism within the Commission is troubling

- In addition to the aforementioned attempts to mislead the Senate, Ian Fine’s response to Senator Bernard’s questions raise serious concerns about his ability to continue to lead the Canadian Human Rights Commission.
 - **Senator Bernard:** “ I’ll direct my question specifically to Mr. Fine. One of the things we’ve heard is that one of the alleged perpetrators was actually in charge of developing the action plan. Could you comment on that, please?”
 - **Mr. Fine:** “The person who developed the action plan, senator, was someone who was a long-standing member of our organization who was very committed to our anti-racism efforts. It is, for me, unthinkable that the individual who was in charge of that could have in any way done anything untoward. In fact, she is someone who is very committed to the work we’re doing and very committed to anti-racism, and is herself racialized.”
- The individual in question was then Director of Legal Services, Valerie Phillips. Mr. Fine vigorously defended the alleged perpetrator and went so far as to state that "it is unthinkable that the individual who was in charge of that could have in any way done anything untoward." This suggests a clear disregard for the Treasury Board's decision and its findings and implies that the individuals who filed the grievance were lying. When someone as senior as Mr. Fine denies the existence of racism at the Commission, it sends a troubling message that the Commission may not be willing or ready to reform itself. Furthermore, it underscores a shocking and inexcusable lack of understanding of anti-Black racism, which exists in racialized and non-racialized communities.
- In addition to several other occasions, I can attest that Mr. Fine was made personally aware of these complaints and the implicated parties in a meeting that I had with him in June 2020. Mr. Fine continues to reward such behaviour, even in light of the grievances, resignations and the TBS decision. He has promoted all of the perpetrators and executives implicated in the complaint and they have been able to leverage these unilateral and non-transparent actions in response to the complaint to qualify for higher level positions.

Conclusion

For all the reasons noted above, the Commission's adoption of measures aimed at addressing anti-Black systemic racism falls short in delivering the comprehensive and impactful change necessary to combat this deeply ingrained issue. Instead, these measures appear to be mere surface-level gestures that lack the depth required to tackle systemic racism head-on. They fail to address the fundamental problems within the retention, hiring, and promotion practices that perpetuate anti-Black racism.

These adopted measures can be likened to a thin veneer, merely providing the illusion of progress while failing to address the underlying challenges faced by Black individuals within the Commission. By focusing on superficial solutions, the Commission missed the opportunity to bring about meaningful change and eradicate the structural barriers that hinder the advancement of Black individuals.

In order to truly foster inclusivity and racial equity, it is imperative to confront the systemic obstacles that impede the progress of Black individuals within the Commission. These obstacles, rooted in long-standing biases and discriminatory practices, cannot be ignored or merely brushed aside. By disregarding these structural barriers, the Commission's measures ultimately prove ineffective in dismantling the systemic anti-Black racism that persists.

To truly effect change, a more comprehensive and proactive approach is required. The Commission needs to acknowledge the existence of systemic anti-Black racism, engage with the recommendations put forth by the signatories of the 2020 letter, and implement strategies that target the root causes of anti-Black discrimination. This entails examining and reforming the retention, hiring, and promotion practices to ensure they are equitable, fair, and free from bias.

It is disheartening to witness the lack of accountability and the Commission's failure to address systemic anti-Black racism within its ranks. The promotion of individuals involved in perpetuating discrimination, coupled with the dismissive stance taken by Mr. Ian Fine, the most senior civil servant of the Commission, who denies the presence of racism, raises significant doubts about the Commission's willingness to effect meaningful change.

Furthermore, the Commission's decision to disregard the findings of the Treasury Board decision is deeply concerning. This disregard not only undermines the urgent need to address and rectify these issues but also casts doubt on the Commission's commitment to dismantling the barriers that hinder the progress of Black individuals.

Given these circumstances, I doubt the Commission's ability and willingness to undertake the necessary reforms. The lack of sincerity and demonstrated disregard for the urgency of the situation erode confidence in the Commission's capacity to bring about meaningful and lasting change.