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To: The Standing Senate Committee on Human Rights (RIDR)

From: Canadian Association of Black Lawyers

Date: May 1, 2023

Re: **Study on Anti-Black Racism, Sexism and Systemic Discrimination in the Canadian Human Rights Commission**

A. Brief Overview of the Current Situation

On July 10, 2020, nine (9) Black and Racialized employees of the Canadian Human Rights Commission sent a letter to the Chief Commissioner outlining some of their ongoing experiences with racism, including anti-Black racism, in the workplace and making concrete recommendations for substantive change.

Amongst the experiences outlined in the letter were:

- Consistently excluded from training and career advancement opportunities;
- Subjected to demeaning and humiliating behaviour from managers and colleagues;
- Repeatedly given work that is at classification levels below their job description or given work at classification levels above their job description without the commensurate remuneration;
- Not meaningfully consulted regarding projects and initiatives, which are purportedly intended to address the handling of race-based complaints;
- Consistently excluded from formal and informal networks for career advancement;
- Made to feel as if their significant expertise and voices are not being heard, considered, respected or valued
- Tokenized in the workplace, including in the assignment of work;
- Subjected repeatedly to the characterizing of normal communication from Black employees as aggressive thereby perpetuating the stereotype of the “angry Black woman”;
- Targeted and further excluded when they speak out against systemic anti-Black racism;
- Subjected to differential treatment with respect to informal and formal mentoring, coaching and career advancement;
- Selectively excluded from discussions, meetings and investigations which have a direct impact on their work;

- Being excluded or not meaningfully included in discussions which require the expert advice and lived experiences of Black and racialized employees;
- Significantly under-represented in the workplace, including at managerial and senior levels
- Repeatedly subjected to inadequate and defensive responses by managers (including by upper management/senior leadership) when concerns about systemic racism are raised

Grievances were filed shortly thereafter by the bargaining agents of these employees. On March 6, 2023, the Employer, Treasury Board Secretariat of Canada, allowed the grievance and held that the Canadian Human Rights Commission breached the “Anti-Discrimination” clause of the Collective Agreements of the employees.

This is significant. Not only because the Government has agreed that Black and Racialized employees face discrimination, but also because it amplifies and supports our recommendations contained in our letter of April 2021 to Mr. Minister Lametti’s office. Our organization, along with over twenty (20) legal organizations, as well as the Canadian Bar Association and the Canadian Association of Labour Lawyers asked the government to allow a direct access system complaints model.

Issues with the Canadian Human Rights Commission Model

It is our position that Canadians, including Black and Racialized Canadians, and the legal community have lost confidence in the Canadian Human Rights Commission due to 2 key issues:

- **Dismissals of Raised Based Complaints:** As highlighted by CBC News, dismissal rates of race-based complaints by the Canadian Human Rights Commission have been higher compared to other complaints. In addition, Black and Racialized employees have been excluded from internal investigation processes undertaken to assess whether or not to refer race-based complaints to the Canadian Human Rights Tribunal for adjudication.
- **Delays and Lack of Access to Justice:** The current gatekeeping model of the Commission is redundant, paternalistic, and archaic and prone to significant delays. It’s common to have complaints being reviewed by the Commission for 2-3 years before a decision is made to refer or dismiss the complaint. Moreover, if a decision is made to refer the complaint to the CHRT, a *de novo* process is commenced, and it could take another 2 to 3 years to get to a hearing. This is not access to justice.

B. RECOMMENDATIONS

I. Direct Referral

We recommend that the government listen to calls from the legal community and many other stakeholders including our organization, the Canadian Association of Labour Lawyers, the Canadian Bar Association, and other community organizations, to implement a direct access model and allow complainants to file complaints directly with the Canadian Human Rights Tribunal (Commission).

It is our position that an impartial adjudicator at the Canadian Human Rights Tribunal is the best placed to decide whether or not the complaint has merit based on a review of the evidence, hearing from witnesses and assessing credibility. We would submit that individuals filing a Small Claims Court claim have more access to justice than complainants filing a human rights complaint with the Commission. This is unacceptable because human rights complaints deal with quasi-constitutional rights. A properly funded and resourced direct-access system *is* access to justice. Therefore, we believe that Canadians should have the right to file complaints directly with the Canadian Human Rights Tribunal so that they can receive a fair and timely remedy.

This recommendation is supported by research. In 2000, retired Supreme Court Justice Gérard LaForest authored the LaForest Report, which was commissioned to investigate the *Canadian Human Rights Act* and the functioning of the Commission and recommended among other things direct referral.

There are several reasons to support the implementation of a direct referral system for the Commission. These reasons have been highlighted by Justice LaForest and many others:

1. **Increased access to justice:** The direct referral system would eliminate barriers to accessing the human rights complaint process by allowing individuals to bring their complaints directly to the CHRT, without having to go through the Commission's screening and referral process. This would make it easier for people to access justice and seek remedies for human rights violations.
2. **Streamlined process:** The direct referral system would create a more efficient and streamlined process for handling human rights complaints. By eliminating the Commission's screening and referral process, complaints would be able to move more quickly through the system, reducing delays and improving the overall efficiency of the process.
3. **Increased independence:** The direct referral system would increase the independence of the Commission by reducing the Commission's involvement in the complaint process. Currently, the Commission has a role in both the intake and screening of complaints, as well as in the investigation and resolution of complaints. By eliminating the intake and screening function, the Commission would have less involvement in the process, which could improve its overall independence.
4. **Greater focus on systemic discrimination:** The direct referral system would allow the CHRC to focus more on systemic discrimination, which is discrimination that is entrenched in institutions and policies. By removing the Commission's involvement in individual complaint screening and referral, the Commission could focus more on addressing systemic discrimination through its public education and advocacy functions in the same manner as the Ontario Human Rights Commission. The Commission's current activities on public education and advocacy is quite limited.
5. **Consistency with other jurisdictions:** There are several other jurisdictions, including the Ontario and British Columbia, have implemented direct referral systems for human rights complaints. Implementing a similar system at the Commission would bring the Federal institution in line with other jurisdictions and could help to promote consistency in the handling of human rights complaints across Canada.

Furthermore, in 2008, the Pinto Report also endorsed the benefits of a direct access model in Ontario. The Report stated that a direct access model resulted in "greater efficiency" and more timely resolution of human rights complaints. The Report also found that with a direct access system:

- The Tribunal is able to handle a greater volume of complaints without accumulating a backlog;
- Applications are processed faster;
- There is greater transparency to the Tribunal's decision-making achieved through the public availability of procedural and substantive written decisions;
- There is a significantly greater volume of final decisions decided on their merits; the Tribunal's rulings on discrimination appear impartial; and

- Public interest remedies are routinely awarded where discrimination is found.

II. Independent expert to conduct review of anti-black racism at Commission

To address the anti-Black racism within the Commission, we recommend the following:

1. An independent expert should be retained to conduct a workplace review/assessment, focused on the experience of Black employees at the Commission. This review should include a look at the Commission's formal and informal practices relating to the hiring, promotion, and retention of Black employees. It is imperative that this review meet the following:
 - a. It should be conducted by an independent, reputable individual or organization with demonstrated expertise in anti-Black racism and workplace discrimination.
 - b. The expert should evaluate the Commission's formal and informal practices for hiring, promotion, and retention of Black employees, as well as the corporate culture, including attitudes, beliefs, and decision-making processes, to identify any instances of anti-Black discrimination.
 - c. It should cover the last 10 years to ensure a comprehensive review.
 - d. The expert's mandate should include making recommendations to address any findings of systemic anti-Black racism with the aim of creating an equitable work environment that supports Black employees' growth and advancement, free from discrimination.
 - e. The expert's report, along with their recommendations, should be made public for accountability purposes.

Yours Sincerely,



Raphael Tachie
President
Canadian Association of Black Lawyers

About the Canadian Association of Black Lawyers

The Canadian Association of Black Lawyers is a national network of law professionals (students, lawyers and the judiciary) with an overall mandate to promote the advancement of black lawyers within the profession by providing support systems, promoting academic and professional excellence and advancing issues of equity and diversity among the bar and judiciary.

