



Canadian
human rights
commission

Commission
canadienne des
droits de la personne

December 16, 2022

BY EMAIL

The Honourable Salma Ataullahjan, Senator
Chair, Senate Standing Committee on Human Rights
The Senate
Ottawa, Ontario
K1A 0A4

Dear Senator Ataullahjan:

On behalf of the Canadian Human Rights Commission, Canada's national human rights institution, and to follow through on the commitment made by our former Chief Commissioner and Chief Executive Officer, Marie-Claude Landry, during our November 21, 2022 appearance, it is my pleasure to provide information and data to support the Senate Standing Committee on Human Rights in the context of the Committee's study of Islamophobia in Canada, undertaken pursuant to its general order of reference adopted on March 3, 2022.

Framework for human rights protection

During the first round of questions, and stemming from the testimony of a witness who appeared during the first hour of the Committee's meeting of November 21, 2022, the Canadian Human Rights Commission was asked about "...the advantages and disadvantages of [a so-called direct access model for human rights protection]..." and how this model works in jurisdictions in which it has been adopted.

Mr. Brian Smith, Senior Counsel, Canadian Human Rights Commission, acknowledged there is a "legitimate policy question" around the relative strengths of screening and direct access models, and that "...it's for Parliament to decide what the right model would be in the federal sphere." He added that "...there are merits to the commission screening model that ought to be considered as part of any consideration of the debate," and made reference to a 2019 report of the Alberta Civil Liberties Research Centre, which cautioned that "...direct access has the potential to create as many problems as it cures." The Alberta Civil Liberties Research Centre's report, entitled [Alberta Human Rights Act: Opportunities for Procedural and Policy Reform](#), can be accessed via the Centre's website at www.aclrc.com/human-rights-resources.

The benefits of a screening body

As Mr. Smith mentioned, the *Canadian Human Rights Act* provides for the establishment of the Canadian Human Rights Commission and the Canadian Human Rights Tribunal, each endowed with separate duties, powers and functions.

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In keeping with international human rights instruments to which Canada is a party, including the [*Principles relating to the Status of National Institutions \(The Paris Principles\)*](#), Parliament designed the federal human rights system such that these two distinct institutions could operate independently from the Government, while working as part of a continuum that also comprises other adjudicative mechanisms, to ensure access to human rights justice for people in Canada. The duties, powers and functions conferred upon the Canadian Human Rights Commission with respect to complaints processing are articulated in Part III of the *Canadian Human Rights Act*, and are specifically meant to be executed by the Commission as a screening body.

Unfortunately, there is a common misunderstanding of the Commission's role, as many – in particular those who oppose the Commission screening model – believe that the Commission's only role is to receive complaints and either dismiss them or refer them for a hearing before the Canadian Human Rights Tribunal. This misunderstanding overlooks the significant efforts that are deployed to empower individuals and groups to realize their rights. Indeed, over the course of our nearly 45-year existence, we have worked hard to ensure that we are an accessible, compassionate, credible and reputable source of human rights assistance, guidance and support for all people in Canada. We are proud to support access to human rights justice through three principal means:

1. directing parties to the right forum in which to raise and resolve their issues;
2. helping parties resolve issues more economically and expeditiously; and
3. referring issues to the Canadian Human Rights Tribunal when parties are unable or refuse to resolve their issues through less adversarial means.

The Commission also has the right to represent the public interest before the Canadian Human Rights Tribunal, which is an important access to justice function played by the Commission, as the majority of complainants are unrepresented in hearings before the Tribunal.

Directing parties to the right forum

The Commission receives tens of thousands of inquiries per year about, but not limited to:

- issues of discrimination or harassment within the purview of matters coming within the legislative authority of Parliament, or of provincial or territorial legislatures;
- perceived infringements of rights enshrined in Canadian law, for example, issues related to mobility or official language rights as protected by the *Canadian Charter of Rights and Freedoms*; as well as
- issues related to matters such as public nuisances, property standards or pet ownership, which are regulated through municipal by-laws.

Between 2017 and 2022, the Commission received 32,999 such inquiries, a significant proportion of which did not constitute human rights complaints related to matters coming within the legislative authority of Parliament. Nevertheless, as the Commission is the body to which these inquiries were brought, we have necessarily dedicated resources to enable us to support inquirers and to work with provincial, territorial and other counterparts, as well as with other entities, to ensure the timely redirection of these matters to the appropriate jurisdiction or body. As many inquirers are experiencing distress when they contact the Commission, we have also invested resources to offer immediate mental health supports.

Among the inquiries that do pertain to alleged discrimination or harassment within the purview of matters coming within the legislative authority of Parliament are some that the Supreme Court of Canada and other courts have affirmed must, when possible, be resolved in other fora if procedurally fair options exist (see, for example, [Eadie v. MTS Inc., 2015 FCA 173](#), and [Northern Regional Health Authority v. Horrocks, 2021 SCC 42](#)). In other words, while the Commission retains concurrent jurisdiction with many other federal decision-making bodies to deal with human rights matters, Parliament and the courts have clearly indicated for decades now that other bodies may be more appropriate to deal with such allegations. These other bodies include, but are not limited to:

- labour processes;
- the Canadian Transportation Agency;
- the Canadian Radio-television and Telecommunications Commission; and
- the Canada Industrial Relations Board.

The Commission therefore works with counterparts, including those listed above, to ensure the smooth and timely transfer of these matters to the appropriate body. In referring matters to these other processes, the Commission is following the intent of the *Canadian Human Rights Act* and subsequent case law. This is a unique role played solely by the Commission as a screening body; the *Canadian Human Rights Act* confers no authority upon the Canadian Human Rights Tribunal to enable the Tribunal to play this role.

Between 2017 and 2022, approximately 24% (or, 7,799) of the 32,999 inquiries brought to the Commission pertained to discrimination or harassment in employment.¹ Among that 24%, over 70% (or, 5,546) fell within the purview of matters coming within the legislative authority of Parliament and required further investigation by the Commission.

Helping parties resolve issues more economically and expeditiously

Between 2017 and 2022, 323 of the 5,546 inquiries that fell within the purview of matters coming within the legislative authority of Parliament constituted complaints that pertained to discrimination or harassment in employment, and cited the word(s) “Islam” and/or “Muslim.” Among those, it was determined through a Commission-led assessment² that approximately 47% (or, 152) needed to be dealt with through other federal processes.

Of the remaining 53% of (or, 171) inquiries, the Commission – together with the parties – explored the possibility of resolving the issue through mediation or conciliation, at no cost to the parties. Through the Commission’s mediation service, parties can agree on remedies that could not be ordered by the Tribunal, such as an apology to the complainant for the injury they have suffered. As above, this approach to resolving issues in a more economical and expeditious way is a key role played by the Commission as a screening body.

¹ As provided by sections 5, 7, 10 and 14 of the *Canadian Human Rights Act*.

² Under sections 40 and 41 of the *Canadian Human Rights Act*.

As mediation is confidential by its nature, the Commission does not report in a detailed way on that work; however, between 2017 and 2022, nearly 54% of (or, 92) complaints that pertained to discrimination or harassment in employment, and cited the word(s) “Islam” and/or “Muslim” were settled by Commission mediators without the need for a full hearing before the Tribunal. Among those is one case in which a Muslim man was singled out for greater scrutiny while banking, another in which a Muslim man was singled out for greater scrutiny while travelling, and another in which a Muslim woman felt ostracized in the workplace, was assigned less interesting work and experienced other microaggressions.

As we mentioned when we appeared before the Committee on November 21, 2022, the majority of those who come to us for help on matters that fall within the purview of matters coming within the legislative authority of Parliament are not represented by a lawyer or other representative. While parties who are represented often want to engage in a full hearing before the Tribunal, the personal and financial cost of doing so can be prohibitive for the many who are not represented. With this in mind, the Commission deploys the maximum of our very limited resources to resolve issues in a more economical and expeditious way to help parties avoid the need to have their issue heard in a more adversarial forum, namely the Tribunal.

Referring issues to the Canadian Human Rights Tribunal

Between 2017 and 2022, of the 79 complaints that pertained to discrimination or harassment in employment, and cited the word(s) “Islam” and/or “Muslim,” and that could not be resolved despite the Commission’s efforts – either because the issue was not resolved, or because the parties refused to engage in the Commission’s process – were nearly 33% (or, 26) that were referred to the Tribunal for a hearing.

Such cases include one in which an individual who identified as Muslim and/or as practicing Islam was subject to racist comments by their supervisor and other employees, including comparing the individual to a terrorist. In another case, an individual who identified as Muslim and/or as practicing Islam alleged that coworkers mocked and insulted them when they became aware of their religious practices. In both cases, the issue could not be resolved and required referral to the Tribunal.

When a complaint is referred to the Canadian Human Rights Tribunal, the Tribunal’s unique role is to determine whether the matter brought forward in the complaint does indeed constitute discrimination within the meaning of the *Canadian Human Rights Act*, and to grant remedies if appropriate. The Act confers no authority upon the Commission to make such determinations.

Much has changed in Canada since the passage of the *Canadian Human Rights Act* in 1977; however, one thing that has remained constant over the past 45 years is the need for accessible, credible, reputable and compassionate human rights assistance, guidance and support. As limited as our resources are, the Commission understands that providing people with the aforementioned services represents the crux of the human rights system, and is fundamental to ensuring access to human rights justice for all, not just for those who have the means.

Timeframe for processing complaints alleging Islamophobia or anti-Muslim hate

On November 21, 2022, the Canadian Human Rights Commission was also asked by Committee members how many complaints alleging Islamophobia, or anti-Muslim hate or racism we have received over the past five years, and the duration of time it takes to process them. As we did not have all the details on hand, we committed to follow up to provide it.

It is important to note that the following information is based on data available at the Canadian Human Rights Commission. To respond to the question of the number of complaints filed by Muslims or those who practice Islam, or referencing Islamophobia, the Commission identified all complaints for which “Muslim” or “Islam” was identified as a keyword.³ Due to the nature of assigning keywords to complaints, caution needs to be exercised in interpreting the data as reflecting a reliable and valid data set.

Keywords are assigned for the purposes of providing an efficient search term for retrieving complaints for processing. An Intake Officer will assign a keyword during the initial contact with a potential complainant. The activity is not a systematic review of all possible keywords that may be associated with a complaint, but more an informal capture of salient points that are raised in a potential complainant’s story.

As well, keywords are identified for complaints regardless of ground cited. So, a complaint from a Muslim or person who practices Islam alleging a failure to accommodate a disability in the workplace may be identified with the keyword “Muslim” if the complainant described themselves as such, but this detail would not otherwise be captured if the complainant did not proactively identify themselves. In other words, complaints tagged with the keywords “Muslim” or “Islam” will not necessarily allege discrimination on the grounds of religion, race, colour, or national or ethnic origin. The data set gives us some useful information, but is not a reliable indicator of religion, race, colour, or national or ethnic origin complaints filed by Muslims.

Finally, the Commission collects data for a complaint in accordance with the *Privacy Act*. As such, the Commission will not request information about a potential complainant’s religious denomination if the information is not material to the assessment of the complaint by the Commission. While the Commission is currently implementing a means to capture disaggregated data of complainants’ demographic information, it is still in its infancy. The Commission is also taking steps to mitigate the effects of the foregoing considerations, including through the development of an integrated data strategy, such that future data needs can be more accurately addressed.

The Commission’s complaints data are live. In addition to the foregoing considerations, the data will change as new information is uncovered about a complaint.

³ The data cited during the November 21, 2022 appearance pertained to complaints alleging harassment or discrimination on the basis of religion, and which cited the word(s) “Islam” and/or “Muslim.” The data presented herein pertain to complaints alleging discrimination or harassment in employment within the legislative authority of Parliament, and which cite the word(s) “Islam” and/or “Muslim.”

Timeframe for resolution of complaints (filed on any ground protected under the *Canadian Human Rights Act*)

Resolution Year	Mean Duration (months)	Median Duration (months)
2017	22.4	17.1
2018	20.2	17.0
2019	19.2	15.2
2020	22.0	15.3
2021	25.2	22.3
2022	29.7	28.0
Total Duration 2017-2022 (months)	22.9	19.2

Timeframe for resolution of complaints citing the word(s) “Islam” and/or “Muslim” (filed on any ground protected under the *Canadian Human Rights Act*)

Resolution Year	Mean Duration (months)	Median Duration (months)
2017	38.2	17.7
2018	17.2	14.4
2019	15.7	12.9
2020	16.8	12.4
2021	21.0	17.8
2022	27.1	27.0
Total Duration 2017-2022 (months)	22.1	17.0

Timeframe for resolution of complaints citing the word(s) “Islam” and/or “Muslim,” and filed on the grounds of race, colour, and national/ethnic origin under the *Canadian Human Rights Act*

Resolution Year	Mean Duration (months)	Median Duration (months)
2017	33.0	16.0
2018	17.1	13.6
2019	18.0	15.4
2020	16.8	12.4
2021	20.6	14.8
2022	25.8	27.0
Total Duration 2017-2022 (months)	21.5	16.5

Global leaders in countering Islamophobia, or anti-Muslim hate or racism

Finally, the Canadian Human Rights Commission was asked to provide examples of countries that have successfully reduced Islamophobia or implemented effective policies against it.

The April 2021 Report of the Special Rapporteur on Freedom of Religion or Belief, entitled [Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief](#), notes best practices in the international space, in particular on pages 18-19. This section also lists countries doing good work on the topic.

Conclusion

I do hope this information is helpful to Committee members in the context of this important study. Please know that the Canadian Human Rights Commission remains available and willing to support the Committee in its endeavour to shine a light on the alarming incidence of Islamophobia, and anti-Muslim hate and racism, and will continue to speak out in this regard.

Yours sincerely,



Charlotte-Anne Malischewski
Interim Chief Commissioner
and Chief Executive Officer

c.c.: Mr. Sébastien Payet, Clerk
Standing Senate Committee on Human Rights