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Submission to the Standing Committee on Human Rights regarding study of anti-Black racism, sexism, and systemic discrimination at the Canadian Human Rights Commission

Canadian Civil Liberties Association

Harini Sivalingam Director, Equality Program
Noa Mendelsohn Aviv, Executive Director and General Counsel

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Canadian Civil Liberties Association
124 Merton St., Suite 400
Toronto, ON M4S 2Z2
hsivalingam@ccla.org
www.ccla.org

CCLA's office is located on the traditional territories of many Indigenous nations including the Haudenosaunee Confederacy, the Huron-Wendat and Petun Nations and the current treaty holders the Mississaugas of the Credit.

Canadian Civil Liberties Association (CCLA)

The Canadian Civil Liberties Association (CCLA) is a national, non-profit, non-partisan and non-governmental organization. As a public interest organization that promotes the rights and freedoms of all peoples in Canada, we make these submissions to this Committee to express our condemnation of anti-Black racism, sexism and systemic discrimination at the Canadian Human Rights Commission (the Commission).

CCLA appreciates the opportunity to provide these written submissions to the Committee.

Anti-Black Racism at the CHRC

The finding¹ of the Treasury Board of Canada Secretariat that the Commission violated the non-discrimination clause of the collective agreement amplifies what has been a known and lived reality for members of Black communities: that racism, sexism, and systemic discrimination exist pervasively in our public institutions.

We have heard of disproportionate dismissal of race-based claims at the Commission, in particular complaints of anti-Black racism. According to the Commission's own annual reports, in 2021, 31% of complainants self-identified as Black, whereas in 2022, only 8% of complaints self-identified as Black.²

Complaints of racism are often the most difficult and challenging claims. These are precisely the types of claims that require more support and resources from the human rights system.

- 1. We strongly urge the Commission to take accountability and implement proper measures to address anti-Black racism, sexism, and systemic discrimination internally within its own practices and externally in how it handles race-based discrimination claims.**

The Important Function of National Human Rights Institutions

We urge Members of the Committee to use this opportunity as a catalyst for driving meaningful and effective changes to enhance the federal human rights system to meet the needs of Black and racialized communities in Canada.

CCLA was a key player among civil society organizations that advocated for the creation of the Commission, as well as the Ontario Human Rights Commission in the 1970s.

¹ Carole Bidal, Associate Assistant Deputy Minister's response to policy grievance filed by the Association of Justice Counsel #2020-1219, March 6, 2023.

² [Calling for Inclusion: CHRC Annual Report to Parliament](#), 2022

National human rights institutions serve an important function in upholding rights and freedoms in Canada.

They have been described as a cornerstone for the protection of human rights. These bodies serve a unique role of being independent of government and neutral investigators of human rights complaints and offer a less intimidating forum than a court-like setting to those who have had their rights and freedoms violated.

Yet as we have seen and heard, these institutions, are themselves not immune to anti-Black racism, sexism, and systemic discrimination.

The current state of the Canadian Human Rights Commission cannot be left unaddressed.

What is critical to ensuring the protection of rights and freedoms in Canada is a *better* funded *more* accessible, *representative* human rights system for marginalized and vulnerable communities.

Our recommendations for advancing human rights in Canada include the following key principles:

2. Ensure the federal human rights system is adequately funded and well-resourced

Without adequate resourcing, funding, and support, even the most theoretically ideal systems are destined to fail. Key aspects of the Paris Principles³ that should form the core basis of a strong national human rights institution include the **need for adequate funding and pluralistic representation that is reflective of those who reside in the state.**

At these current funding levels, the federal human rights system lacks capacity to advance the protection and promotion of human rights. The planned departmental spending for the Commission in 2023-24 and 2024-25 will decrease due to decreases in funding programs. According to Departmental Plans, starting in 2023–24, funding decreases again in line with decreases in National Housing Strategy Act funding⁴

3 Take concrete measures to representatively staff the federal human rights system with candidates who demonstrate experiences with anti-racism practices

In addition to being well resourced, the composition of decision makers, leadership, as well as other staff, at federal human rights institutions should reflect and represent the lived realities, experiences, and perspectives of Indigenous, Black, and racialized people in Canada. Ensuring meaningful representation requires implementing anti-racist

³The key pillars of the Paris Principles are pluralism, independence and effectiveness. The Paris Principles set out requirements so that national human rights institutions are able to promote and protect all human rights. Principles related to the Status of National Institutions (The Paris Principles) General Assembly resolution 48/134 (20 December 1993): <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>.

⁴ [Calling for Inclusion: CHRC Annual Report to Parliament](#), 2022

workplace practices regarding who gets in, who are let go, and who rises up, in particular in decision-making and gate keeping functions.

4. The federal human rights system must be accessible for the most marginalized and vulnerable members in our communities.

For many marginalized and vulnerable communities, the human rights system remains inaccessible. There are too many barriers to access justice for these communities. Pursuing human rights claims can be lengthy and costly. Many don't even know of this potential avenue to protect their rights and freedoms.

It is an uphill battle to advance these claims through the federal human rights system, which is often a David and Goliath type of situation. All the Respondents are large institutional actors, either the federal government, or federally regulated industries such as banking/finance, transportation, and communications, who are well-resourced to fight these claims vigorously. For example the majority (57%) of complainants at the Tribunal in 2022 were not represented by counsel, whereas the overwhelming majority (94%) of Respondents were represented by counsel.⁵

5. Conduct a comprehensive review of the *Canadian Human Rights Act*

The *Canadian Human Rights Act (the Act)*, is in dire need of an overhaul. There have been no significant reforms to the Act for the past 25 years. For example, an element of the Act that desperately requires updating includes the statutory cap on special damages of \$20,000, which is far too low by today's standards.

6. Key elements that should be considered as part of an adequately funded, well-resourced and representatively staff national human rights system include:

- *A Commission* – that at a minimum functions around research, education, with strong investigative powers to pursue test cases, interventions, and systemic cases
- *A Direct Access Tribunal* - for claimants that removes barriers and obstacles to adjudication
- *Legal Resources, Supports and Representation* - for marginalized communities to ensure that claimants have the funded legal supports needed to advance their claims through the system

7. While continuing to have a mandate for an enhanced Commission structure, there should also be some room for direct access to the Tribunal with funded legal resources, supports and representation for claimants.

⁵ In the vast majority of cases at the Tribunal the Respondents are represented by counsel (in 2022, 135 Respondents had counsel while 5 were self-represented), while the majority of complainants are not represented by counsel (in 2022, only 60 complainants had counsel, and of those who were unrepresented complainants 24 were in cases where the Commission did not participate in the proceedings. ([Strengthening Access to Justice: Canadian Human Rights Tribunal Annual Report, 2022](#)))

All of these are important elements to ensure an effective, responsive, and accountable federal human rights system is in place.

We look forward to the concrete recommendations from this Senate study to strengthen the human rights framework and ensure there are strong, adequately resourced, and representative national human rights mechanisms to promote and protect the human rights of all of us in Canada -- especially Black communities, and other marginalized and vulnerable communities.