

## **OHRC submission to the Standing Senate Committee on Human Rights regarding the role of human rights commissions in addressing anti-Black racism and other forms of systemic discrimination**

May 18, 2023

*The Standing Senate Committee on Human Rights (the Committee) has invited the Ontario Human Rights Commission (the OHRC) to make a brief submission to the Committee on best practices or policies for combatting anti-Black racism and to share the OHRC's perspective on a direct tribunal access model compared to a commission screening model for dealing with human rights complaints.*

The OHRC has operated under both models in its 60-year history as Canada's oldest human rights commission. In 2008, Ontario's human rights system underwent significant change from commission investigation to direct tribunal access for individual complaints. The OHRC's public interest mandate, however, remained in place. In its experience, human rights commissions can play a unique and critical role to help address anti-Black racism and other forms of systemic discrimination under either model, if given independent and a clear mandate, broad functions and powers, and adequate human and financial resources to promote and enforce compliance with human rights laws. In fact, Canada adopted this view when it signed the United Nations ['Paris' Principles Relating to the Status of National Human Rights Institutions](#). The Paris Principles set out minimum standards for credible and effective operation of human rights commissions and other human rights institutions contemplated under either model.

Before the change in Ontario's system, the OHRC's stated functions include power to investigate individual complaints and authority to address anti-Black racism and other forms of systemic discrimination. Examples of its systemic work at that time included the OHRC's ground-breaking public inquiry and 2003 report, [Paying the price: The human cost of racial profiling into racial profiling](#). That report led to the release of the OHRC's 2005 [Policy on racism and racial discrimination](#). The OHRC subsequently used its powers to reach [settlements](#) in the investigation of systemic complaints against the Ontario Ministry of Education and the Toronto District School Board on the disproportional negative impact of safe school legislation on racialized students and students with disabilities. Also, the Commission began to examine the intersectional impacts of racism in other public consultations and policy work on discrimination in [rental housing](#), [family status](#), and [competing human rights](#).

After Ontario's change to direct access in 2008, the OHRC retained its broad functions and powers and continued addressing anti-Black racism and other forms of systemic and intersectional discrimination in various areas including its work on ['Canadian' experience barriers](#) faced by foreign trained professionals and other workers, [mental health and addiction disabilities](#), and [segregation in correctional service institutions](#).

More recent examples of the OHRC using its functions to undertake research and public consultation, make recommendations and develop policies on application of Ontario's *Human Rights Code* (*Code*) to address anti-Black racism and other forms of racial discrimination include:

- [\*Under suspicion: Research and consultation report on racial profiling in Ontario\*](#) (2017)
- [\*To dream together: Indigenous peoples and human rights dialogue report\*](#) (2018)
- [\*Advice to government on its efforts to address systemic anti-Black racism in the Ontario Public Service\*](#) (2019)
- [\*Policy on eliminating racial profiling in law enforcement\*](#) (2019)
- [\*Framework for change to address systemic racism in policing\*](#) (2021).

The OHRC has exercised its public inquiry powers under the *Code* to address issues of racism related to child welfare and policing, respectively:

- [\*Interrupted childhoods\*](#) report following the OHRC's inquiry into the over-representation of Indigenous and Black Children in Ontario child welfare (2016)
- [\*A Collective Impact\*](#) (2018) and [\*A Disparate Impact\*](#) (2020): OHRC interim reports on its public inquiry into anti-Black racism by the Toronto Police Service.

The OHRC has also used its mandate to intervene in several cases where anti-Black racial discrimination was at issue before the Human Rights Tribunal of Ontario and various levels of court, including:

- [\*Logan v. Ontario \(Solicitor General\)\*](#), 2022 HRTO 1004
- [\*Peel Law Association v. Pieters\*](#), 2013 ONCA 396 (CanLII)

Litigation can sometimes lead to positive settlements. For example, in 2012, the OHRC [settled](#) a case involving the Ottawa Police Services Board (OPSB). As part of the settlement, the OPS officers would collect race-based data on traffic stops for two years beginning in 2013.

Compliance with human rights legislation should be sought through collaboration as well. For example, the OHRC is engaging with Black communities and institutional duty holders to address anti-Black racism through its [Human Rights Project](#) with Peel Regional Police and the Peel Police Services Board. The OHRC is also working to develop an [Action Plan](#) to tackle anti-Black racism in Ontario's publicly funded education system, and recently hosted the first phase of this initiative, a roundtable discussion with students and duty-holders within the education sector.

Human rights commissions should work collaboratively to address systemic racism through public education. For example, the OHRC's popular e-learning module, [Call it Out: Racism, racial discrimination and human rights](#), is being adapted for use by the Government of Canada School of Public Service to help train federal civil servants.

Commissions can also support government and public institution accountability on meeting Canada's international human rights obligations. In 2022, for example, the OHRC made a [submission](#) on Canada's 24th and 25th Reports to the UN Committee on Elimination of Racial Discrimination, highlighting areas of ongoing concern and priorities for action.

Taking these types of integrated approaches using promotion and enforcement functions over time enable human rights commissions to significantly address racism on a systemic scale, if they receive adequate resources.

Inevitably, there will be differing views about the benefits and drawbacks of direct access over commission investigation models among the various stakeholders who are involved in human rights systems across Canada. However, the choice of system will not determine how well the system deals with anti-Black and other forms of systemic discrimination.

The OHRC believes the following core principles and elements will ensure an effective human rights system and commission under any model. An effective human rights system must be:

- **Independent**, both in appearance and substance
- **Adequately resourced** to ensure effective advancement of its mandate
- **Fostering a culture of human rights** through a broad and multifaceted educative mandate
- **Integrating promotion and protection** to ensure that these functions build on each other
- **Harmonized with international obligations** to give effect to Canada's international commitments
- **Internally harmonized** so that all actors in the human rights system work cooperatively
- **Accessible**, regardless of disability, financial means, geography, language, culture or other power imbalances
- **Systemic** in its approach to human rights issues
- **Expert and representative** at all levels
- **Timely** in resolving human rights matters
- **Flexible** in its approach to human rights complaints
- **Allowing people to feel heard** on their stories and experiences at key phases of the process, and
- **Fair and effective**, both procedurally and substantively, in admitting and assessing human rights complaints.

Any process considering human rights system reform should involve, and have the support of, the individuals and communities whom the system is intended to serve. Given varying perspectives on what is an ideal system, full consensus will be difficult to achieve. However, change can be credible if it is based on broad, open, and transparent dialogue with the public, and a full range of stakeholders, and, if it builds on shared principles and goals.

Consideration of any changes to human rights frameworks in Canada should be guided by the following principles:

- Clarify the principles and elements of an effective human rights system
- Create an opportunity for a broad and balanced discussion on the issues and options
- Ensure a transparent and open process leading to change
- Develop meaningful and viable conclusions that will support a revitalization of the human rights system, and
- Ensure the human rights institutions and non-government organizations working in the current system are invited to assist in developing the best human rights system possible.

It is particularly important to involve Indigenous communities in making any changes to existing human rights systems. As I recently said in my [remarks](#) before the Standing Senate Committee on Indigenous Peoples, any amendments to human rights legislation should, among other things, explicitly recognize the unique status of Indigenous peoples. Indigenous communities should also have the right to create distinct and unique approaches to human rights and Indigenous-led human rights institutions if they desire.

Finally, and most critically, existing human rights institutions, and any changes to these institutions, will not be successful without representative staff and appointments and sufficient dedicated funding to exercise all their roles and powers.

The Senate Committee may wish to review these resources to learn more about the OHRC's views around the time of the change to Ontario's human rights system:

- OHRC [Discussion paper: Reviewing Ontario's human rights system](#) (2005)
- OHRC [Consultation report: Strengthening Ontario's Human Rights System - What We Heard](#) (2006)
- OHRC [remarks](#) to the Standing Committee on Justice Policy regarding Bill 107, an Act to Amend the Human Rights Code (2006)
- Report of the Ontario Human Rights Review 2012 /Andrew Pinto.

The OHRC is always available to share its experiences and offer advice on the effective design and use of a commission mandate.

The OHRC appreciates the opportunity to make this submission to the Committee.

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