

# ANTI-BLACK RACISM, SEXISM & SYSTEMIC DISCRIMINATION

in the Canadian Human Rights Commission



Report of the Standing Senate  
Committee on Human Rights

The Honourable Salma Ataullahjan, Chair  
The Honourable Wanda Thomas Bernard, Deputy Chair

## Anti-Black Racism, Sexism and Systemic Discrimination in the Canadian Human Rights Commission



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## **ACKNOWLEDGEMENT**

The Standing Senate Committee on Human Rights (the committee) would like to thank all the witnesses who appeared as part of this study, as well as those who submitted written materials. In particular, the committee wishes to acknowledge that discussing experiences of anti-Black racism and other forms of discrimination can be difficult and, in some cases, retraumatizing. The courage of these individuals to come forward with their stories is deeply appreciated and a critical step toward positive change.

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## THE COMMITTEE MEMBERSHIP



The Honourable  
Salma Ataullahjan  
*Chair*



The Honourable Wanda  
Thomas Bernard  
*Deputy Chair*

### The Honourable Senators



David Arnot



Amina Gerba



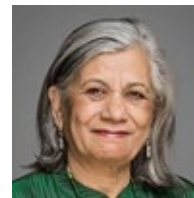
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**Anti-Black Racism, Sexism and Systemic Discrimination  
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***Ex-officio members of the committee***

The Honourable Senator Marc Gold, P.C., or Patti LaBoucane-Benson

The Honourable Senator Donald Plett or Yonah Martin

***Other Senators who have participated in the study***

The Honourable Senator Kim Pate

***Parliamentary Information and Research Services, Library of Parliament***

Robert Mason, Analyst

Brendan Naef, Analyst (until September 2023)

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***Senate Committees Directorate***

Sébastien Payet, Committee Clerk

Barbara Reynolds, Procedural Clerk

Debbie Larocque, Administrative Assistant

Lori Meldrum, Administrative Assistant (until September 2023)

***Senate Communications, Broadcasting and Publications Directorate***

Amely Coulombe, Communications Officer

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## ORDER OF REFERENCE

Extract from the *Journals of the Senate* of Thursday, March 3, 2022:

The Honourable Senator Ataullahjan moved, seconded by the Honourable Senator Wells:

That the Standing Senate Committee on Human Rights, in accordance with rule 12-7(14), be authorized to examine and report on such issues as may arise from time to time relating to human rights generally; and

That the committee submit its final report to the Senate no later than June 12, 2025.

The question being put on the motion, it was adopted.

Gérald Lafrenière  
*Interim Clerk of the Senate*



## Anti-Black Racism, Sexism and Systemic Discrimination in the Canadian Human Rights Commission

### Introduction

*On behalf of Black people in this country and around the globe, we deserve equitable treatment. We deserve the spaces we occupy and to exist in the skin that we are in. We deserve compassion and to be celebrated, and to experience joy, abundance and prosperity. We are intelligent, strong, resilient and talented. We will not tolerate being dehumanized anymore.*

*Bernadeth Betchi<sup>1</sup>*

In May 2023, the Standing Senate Committee on Human Rights (the committee) undertook a short study on allegations of anti-Black racism, sexism, and systemic discrimination in the Canadian Human Rights Commission (CHRC). While the study set out to focus primarily on anti-Black racism within the CHRC, the testimony revealed the existence of systemic discrimination throughout the federal public service, with differing impacts based on intersecting identity factors such as race, gender, religion, and ethnic origin.

The impacts of systemic discrimination are profound. In testimony to the committee, the Honourable Senator Wanda Thomas Bernard explained how anti-Black racism negatively affects “the mental, physical, emotional, spiritual and community health of African Canadians”, highlighting research showing that racism pertaining to employment is a particularly significant source of stress.<sup>2</sup> The committee heard that this stress and trauma can lead to mental health challenges that further affect career progression. Witnesses stated that the cumulative impacts of discrimination can destroy individuals and be catastrophic for families.<sup>3</sup>

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<sup>1</sup> Standing Senate Committee on Human Rights (RIDR), [Evidence](#), 8 May 2023 (Bernadeth Betchi, Employee of the Canadian Human Rights Commission).

<sup>2</sup> RIDR, [Evidence](#), 1 May 2023 (The Honourable Senator Wanda Thomas Bernard).

<sup>3</sup> RIDR, [Evidence](#), 1 May 2023 (Rubin A. Coward, CD Community Advocate and retired Senior Non-Commissioned Officer of the Canadian Air Force (Ret’d)); RIDR, [Evidence](#), 1 May 2023 (Deborah Ann Coward, as an individual).



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The committee's study was prompted by a set of grievances against the CHRC concerning its treatment of Black and racialized employees. In March 2023, the Treasury Board of Canada Secretariat (TBS) confirmed that the CHRC had breached the "No Discrimination" clauses of three collective agreements.

These findings are concerning for several reasons. Firstly, they indicate that real harm has occurred to employees at the CHRC. Workplace discrimination can have significant and lasting effects. It is never acceptable, yet it is a daily fact of life for many Black and racialized people in Canada.

Additionally, these findings call into question the ability of the CHRC to respond to human rights complaints in a fair and equitable manner. In testimony to the committee, the Honourable Wanda Thomas Bernard explained the impact of this loss of trust. Highlighting the trauma of anti-Black racism, she explained that activism and formal complaints processes are ways that Black people survive, but that these very processes can instead cause further harm. She observed that "Black Canadians from coast to coast to coast have lost trust in the commission, which is worse than not having a human rights commission at all because they are discriminating against the very population they promised to protect."<sup>4</sup>

The committee was disappointed that the Minister of Justice and Attorney General of Canada did not appear before the committee, despite an invitation. The committee wishes to thank the 24 witnesses who appeared, as well as the many individuals who submitted written briefs.

Their testimony and submissions demonstrated a crisis of confidence in the federal human rights system and underscored the disturbing fact that no institution is immune to systemic racism. Witnesses' views ranged significantly regarding how to address these critical problems. Some contended that the CHRC is broken beyond repair, while others believed that many of the issues raised through this study can be addressed by funding the federal human rights system in a manner that better reflects its importance. Testimony about possible reforms to the CHRC highlighted the complexity of human rights systems and raised issues that require further study.

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<sup>4</sup> RIDR, [Evidence](#), 1 May 2023 (The Honourable Senator Wanda Thomas Bernard).

## Anti-Black Racism, Sexism and Systemic Discrimination in the Canadian Human Rights Commission

This report briefly discusses the issue of systemic racism in the federal public service, explains the role of the CHRC, outlines recent criticism and allegations against it, summarizes steps that the CHRC has taken in response, and sets out some of the possible reforms that were discussed by witnesses. The report concludes with a list of 11 recommendations.

The committee wishes to note that the situation relating to systemic racism in the federal public service has continued to evolve since the committee last heard testimony on this topic in May 2023, including the availability of additional reports and data.<sup>5</sup>

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<sup>5</sup> See for example, Office of the Auditor General of Canada, [\*Report 5—Inclusion in the Workplace for Racialized Employees\*](#), 19 October 2023.

## Systemic Discrimination in the Federal Public Service

Canada's federal public service should reflect the talents and perspectives of all Canadians, and serve as a model of inclusivity to other employers. Unfortunately, the committee heard that the federal public service does not reflect this imperative.

Many of the complaints that reach the CHRC stem from discrimination against federal employees. While the committee's study was primarily focused on the issue of anti-Black racism within the CHRC, in examining this issue, it was impossible to ignore the broader problem of systemic racism across the federal public service.

Several witnesses and authors of written briefs courageously shared their stories of discrimination in various federal departments and agencies. Some of these experiences stretched back over decades, while others are alarmingly recent.

For example, in a brief submitted to the committee, Robin Browne (613/819 Black Hub) recounted facing retaliation from his employer after co-founding the Federal Black Employee Caucus. He stated that this retaliation culminated in him being banned from all departmental buildings, with security personnel being provided with his photo and instructed to call 911 if he showed signs of violence.<sup>6</sup>

In another brief received by the committee, Kethlande Pierre (Deputy Director, Canadian Intellectual Property Office, Innovation, Science and Economic Development Canada) explained that she has experienced racism throughout her career in government, providing the following example:

*In 2018, the straw that broke the camel's back occurred, when an employee entered my office. In her hand, she had a stuffed animal, a monkey, and she started to draw on my pad, making sure that I knew that she was drawing me and suggesting that I should be in the custodial team. When I reported this incident to my director, she looked at me, listened to me, hunched her shoulders and then went back to her work.*

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<sup>6</sup> Robin Browne (613/819 Black Hub), [Brief submitted to the committee \(email\)](#), 12 June 2023.

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*That day, I left the office early, in tears, not knowing which of the two people had hurt me the most.<sup>7</sup>*

Responding to the widespread problem of anti-Black racism within the federal public service, in 2021 a statement of claim was filed in the Federal Court alleging, among other things, that “[t]here has been a *de facto* practice of Black employee exclusion from hiring and promotion throughout the Public Service because of the permeation of systemic discrimination through Canada’s institutional structures.”<sup>8</sup> As explained by Nicholas Marcus Thompson (Executive Director, Black Class Action Secretariat), this class action claim represents tens of thousands of employees of the federal government who experience broad-based anti-Black racism and the inability of other mechanisms to address this problem.<sup>9</sup>

The class action reflects the painful reality of discrimination that many Black federal employees live with throughout their careers. Chris Aylward (National President, Public Service Alliance of Canada) provided the example of a claimant in the class action who, after 28 years in the public service, retired in the same position in which she started.<sup>10</sup> He noted that stories like these are indicative of systemic issues with staffing policies and practices.

The committee was troubled by these stories and is conscious of the reality that for every individual who shares experiences of discrimination, there are countless others who suffer in silence.

Systemic discrimination has profound consequences for the individuals who experience it directly, as well as for their families and communities. Several witnesses spoke about experiencing mental health consequences such as panic

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<sup>7</sup> Kethlande Pierre, [Brief submitted to the committee](#), 20 May 2023.

<sup>8</sup> Federal Court, Proposed Class Proceeding, [Nicholas Marcus Thompson et al. v. His Majesty the King](#), Court File # T-1458-20.

<sup>9</sup> RIDR, [Evidence](#), 1 May 2023 (Nicholas Marcus Thompson, Executive Director, Black Class Action Secretariat)

<sup>10</sup> RIDR, [Evidence](#), 15 May 2023 (Chris Aylward, National President, Public Service Alliance of Canada).

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attacks, depression, and post-traumatic stress.<sup>11</sup> Reflecting on these experiences, Mr. Aylward recommended that the federal public service provide culturally appropriate mental health support for Black employees who have experienced anti-Black racism.<sup>12</sup>

The committee welcomes commitments made in Budget 2023 to address systemic racism, such as “to create a Mental Health Fund for Black public servants and establish dedicated career development programs, including to prepare Black public service leaders for executive positions.”<sup>13</sup>

### Call to Action on Anti-Racism, Equity, and Inclusion in the Federal Public Service

In January 2021, the Clerk of the Privy Council, the late Honourable Ian Shugart issued the *Call to Action on Anti-Racism, Equity, and Inclusion in the Federal Public Service*, which urges leaders to appoint, sponsor, support and recruit Indigenous, Black and other racialized employees. It further calls on public service leaders to take specific, meaningful actions to establish a sense of belonging and trust, including through steps to foster a safe environment for dialogue, combat barriers to inclusion, empower employees to speak up, and measure progress by monitoring disaggregated survey results. The call to action notes that while senior leaders must be accountable for taking meaningful action, eliminating systemic discrimination is the responsibility of all public servants.<sup>14</sup>

In testimony to the committee, the late Honourable Senator Ian Shugart explained that the call to action arose from first listening to the experiences of Black employees, Indigenous employees, and other racialized Canadians, and then looking at public service data, such as data relating to rates of promotion and advancement.

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<sup>11</sup> See for example RIDR, *Evidence*, 1 May 2023 (Rubin A. Coward, CD Community Advocate and retired Senior Non-Commissioned Officer of the Canadian Air Force (Ret'd)) and RIDR, *Evidence*, 8 May 2023 (Bernadeth Betchi, Employee of the Canadian Human Rights Commission).

<sup>12</sup> RIDR, *Evidence*, 15 May 2023 (Chris Aylward, National President, Public Service Alliance of Canada).

<sup>13</sup> Government of Canada, *Budget 2023*.

<sup>14</sup> Privy Council Office, *Call to Action on Anti-Racism, Equity, and Inclusion in the Federal Public Service*, 22 January 2021.

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This led to the inescapable conclusion that systemic racism is a deep-seated problem in the federal public service. He further explained that:

*Racism is subtle. It may not involve overt hatred in the heart, but it can still be there. People don't like to admit or conceive of their organization being systemically racist, but we had to come to the point in this exercise that led to the call for action that this was systemic. When we look at the data, there is no other conclusion but that it is the system that is creating the circumstances that are holding people back. It is unfairly and unjustly targeted at certain of our fellow citizens.*<sup>15</sup>

The late Honourable Ian Shugart acknowledged that education and training are a fundamental part of what is required to address systemic racism, but stressed that action can and must be taken even in the absence of new resources. Emphasizing the need for leadership, he stated: “I didn’t wait to see what the resources would be. I didn’t ask for more resources to accompany the call for action. I just called for action.”<sup>16</sup>

Similarly, Harini Sivalingam (Director, Equality Program, Canadian Civil Liberties Association) noted that while education and training are important, political will is also necessary to change workplace culture.<sup>17</sup>

In a brief submitted to the committee, officials from Canadian Heritage provided information on the federal anti-racism framework, a resource that is intended to be applied by all public servants.<sup>18</sup> It includes analytical tools and institutional approaches that strive to embed an understanding throughout government “of how past harms have contributed to contemporary inequities.”<sup>19</sup>

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<sup>15</sup> RIDR, [Evidence](#), 15 May 2023 (late Honourable Senator Ian Shugart).

<sup>16</sup> Ibid.

<sup>17</sup> RIDR, [Evidence](#), 15 May 2023 (Harini Sivalingam, Director, Equality Program, Canadian Civil Liberties Association).

<sup>18</sup> Canadian Heritage, [Follow-up to testimony](#), 8 June 2023.

<sup>19</sup> Ibid.

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The committee was heartened to hear examples of leadership in addressing systemic racism, and urges all federal public servants to contribute their dedication and talents to these efforts.

### **The Federal Government’s Role in Creating a Culture of Rights**

In testimony to the committee, Gaveen Cadotte (Assistant Deputy Minister, Anti-Racism Strategy and Action Plan on Combatting Hate Sector, Canadian Heritage) explained that the federal government “has acknowledged the serious problem of systemic anti-Black racism in public institutions,” and is taking steps to combat racism throughout society, noting that:

*Since the launch of Canada’s Anti-Racism Strategy in 2019, Canadian Heritage has committed nearly \$100 million to combat racism and systemic discrimination, including racism against Black people. This includes the creation of the Federal Anti-Racism Secretariat to lead a whole-of-government approach to combatting systemic racism, discrimination and hate in Canada.<sup>20</sup>*

Ms. Cadotte also stated that Canada’s new Anti-Racism Strategy and Action Plan on Combatting Hate “will reflect the recommendations of hundreds of Black leaders from across the country, including Black youth, and will identify specific ways for the government to combat racism and hatred towards Black people.”<sup>21</sup>

The Federal Anti-Racism Secretariat and other federal departments and agencies have an important role to play in combatting racism and supporting the development of a culture of rights. Dominique Clément (Professor of Sociology, Faculty of Arts, University of Alberta) stated that the CHRC should be taking a leadership role in these efforts, including by working with teachers in K-to-12 schools, noting that

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<sup>20</sup> RIDR, *Evidence*, 8 May 2023 (Gaveen Cadotte, Assistant Deputy Minister, Anti-Racism Strategy and Action Plan on Combatting Hate Sector, Canadian Heritage).

<sup>21</sup> Ibid.



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developing a culture of rights throughout society “is really the only way that we can address systemic inequality.”<sup>22</sup>

The committee agrees that federal leadership is needed to combat racism and foster a culture of rights in Canada. However, for that leadership to be effective, systemic racism must be eradicated from the federal public service itself.

### Recommendation 1

**That the Clerk of the Privy Council and federal public servants at all levels act as leaders in confronting anti-Black racism, as outlined in the Clerk of the Privy Council’s *Call to Action on Anti-Racism, Equity, and Inclusion in the Federal Public Service*, that measures to promote diversity, equity and inclusion be included as a performance measurement across all federal departments and agencies, and that federal public servants analyze available data to make evidence-based improvements.**

### Recommendation 2

**That all federal departments and agencies increase mandatory anti-racism training for their employees, with the content of such training tailored to employees’ specific roles and responsibilities.**

### Recommendation 3

**That the Department of Canadian Heritage urgently complete its promised National Action Plan on Combatting Hate and updated Anti-Racism Strategy.**

### Recommendation 4

**That the Department of Canadian Heritage develop educational items on Anti-Black racism and other forms of systemic discrimination that can be incorporated into classroom and professional development activities for various age groups and stakeholders.**

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<sup>22</sup> RIDR, [Evidence](#), 15 May 2023 (Dominique Clément, Professor of Sociology, Faculty of Arts, University of Alberta).

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**Recommendation 5**

**That a parliamentary committee undertake a study about anti-Black racism in the public service as soon as possible.**

## Systemic Discrimination in the Canadian Human Rights Commission

Discrimination occurs in many forms and can have profound and lasting consequences. Individuals who experience these harms deserve an accessible human rights complaints process with meaningful remedies.

Pursuing a human rights complaint can be extremely challenging. The committee heard from several witnesses who discussed the mental health impacts of discrimination and of the lengthy process to obtain a remedy.<sup>23</sup> Deborah Ann Coward highlighted that these impacts extend beyond the complainant, noting that families also suffer terribly.<sup>24</sup>

Despite the significant consequences of discrimination, justice can be elusive. Faisal Bhabha (Associate Professor, Osgoode Hall Law School, York University) pointed out the sad reality that “human rights law offers a very fragile and a thin pathway to a remedy for discrimination for most of the people who need it, and especially for the people who need it the most.”<sup>25</sup> This needs to change.

### Role of the Canadian Human Rights Commission

Enacted in 1977, the *Canadian Human Rights Act* prohibits discrimination in areas of federal jurisdiction based on the following grounds:

race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.<sup>26</sup>

To promote, monitor and enforce non-discrimination, the *Canadian Human Rights Act* establishes the CHRC and the Canadian Human Rights Tribunal (the Tribunal). The

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<sup>23</sup> See for example, RIDR, *Evidence*, 1 May 2023 (Rubin A. Coward, CD Community Advocate and retired Senior Non-Commissioned Officer of the Canadian Air Force (Ret'd)).

<sup>24</sup> RIDR, *Evidence*, 1 May 2023 (Deborah Ann Coward, as an individual).

<sup>25</sup> RIDR, *Evidence*, 1 May 2023 (Faisal Bhabha, Associate Professor, Osgoode Hall Law School, York University).

<sup>26</sup> *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, s. 3(1).

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CHRC is the first point of contact for registering a human rights complaint at the federal level.<sup>27</sup> It performs preliminary screening of cases, first determining whether a human rights complaint can be accepted based on whether it meets the necessary criteria, then assessing whether there is a reasonable basis in the evidence to warrant referral to the Tribunal for a more in-depth inquiry. When the CHRC refers a case to the Tribunal, the Tribunal hears evidence, decides whether discrimination has occurred, and may award remedies.<sup>28</sup>

The CHRC also has a broader mandate to promote human rights through research, policy development, awareness raising, and conducting employment equity audits of employers under federal jurisdiction. The CHRC also receives a significant number of inquiries from the public that do not constitute human rights complaints, and directs people in such cases to the appropriate forum.<sup>29</sup> In addition, the CHRC provides mediation services at no cost, which can help resolve issues more quickly and affordably than the adversarial process at the Tribunal. Finally, the CHRC may act as a party before the Tribunal to represent the public interest, which can be particularly helpful for unrepresented complainants.<sup>30</sup>

### Experiences of Discrimination

Allegations of anti-Black racism have raised concerns about the CHRC's treatment of its own employees, as well as its decision-making processes when dealing with complaints. Witnesses described a toxic culture at the CHRC and provided specific evidence of systemic discrimination.

Sadly, these issues are not new. As noted by the Honourable Wanda Thomas Bernard, former Member of Parliament Howard McCurdy raised concerns in the 1980s about the CHRC's seeming inability to address complaints relating to anti-Black

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<sup>27</sup> The Canadian Human Rights Commission's (CHRC) jurisdiction applies to federal government departments and agencies, Crown corporations, as well as to businesses under federal jurisdiction, such as banks, airlines, broadcasting organizations and interprovincial transportation companies.

<sup>28</sup> On appeal, the Tribunal's decision may be reviewed by the Federal Court for reasonableness, meaning that it falls within a range of reasonable outcomes.

<sup>29</sup> The appropriate forum could include, for example, provincial or territorial human rights commissions, labour processes, or the Canadian Radio-television and Telecommunications Commission.

<sup>30</sup> Canadian Human Rights Commission, "[About the Process](#)".

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racism.<sup>31</sup> Likewise, Mr. Thompson stated that the CHRC's failures over the past 50 years to effectively address anti-Black racism calls into question its capacity to address systemic complaints.<sup>32</sup>

More recently, Black and racialized employees have spoken out about their personal experiences and observations of anti-Black racism while working at the CHRC. On 11 June 2020, an employee resignation letter stated that there were "deeply entrenched biases against racialized complainants" within the CHRC.<sup>33</sup> More specifically, the employee recalled attending "countless meetings within the Complaints branch where racist comments have been made about Black, Indigenous, and Muslim people."<sup>34</sup> In testimony to the committee, the CHRC acknowledged that "there were situations in our Complaints Services Branch in which employees responded in unprofessional and disrespectful ways to the contributions their Black and racialized colleagues made at work."<sup>35</sup>

Following this resignation, on 10 July 2020, nine employees signed a letter to the Chief Commissioner. The letter noted that many racialized persons had left the CHRC due to issues such as racial discrimination, micro-aggressions<sup>36</sup> and "adverse differential treatment in promotion opportunities and assignment of projects and files."<sup>37</sup> It expressed particular concern about:

- lack of safe space and under-resourcing of supports for Black and racialized employees involved in the assessment of race-based complaints;

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<sup>31</sup> RIDR, [Evidence](#), 1 May 2023 (The Honourable Senator Wanda Thomas Bernard).

<sup>32</sup> RIDR, [Evidence](#), 1 May 2023 (Nicholas Marcus Thompson, Executive Director, Black Class Action Secretariat).

<sup>33</sup> Bernadeth Betchi, "[Resignation Letter of Employee \(name redacted\), 11 June 2020](#)", Document submitted to the committee, 11 May 2023.

<sup>34</sup> Ibid.

<sup>35</sup> RIDR, [Evidence](#), 8 May 2023 (Charlotte-Anne Malischewski, Interim Chief Commissioner, Canadian Human Rights Commission).

<sup>36</sup> Microaggressions are small acts of hostility or negativity related to factors such as race or cultural identity that create a sense of exclusion, often without malicious intent. See Government of Canada, "[Recognizing and Overcoming Biases and Microaggressions in the Workplace](#)".

<sup>37</sup> Bernadeth Betchi, "[Joint Letter from CHRC Employees \(names redacted\), 10 July 2020](#)", Document submitted to the committee, 11 May 2023.

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- lack of representation at all levels;
- employment practices and decision-making processes that discriminate and entrench disadvantage against Black and other racialized employees; and
- high dismissal of race-based complaints.<sup>38</sup>

Several witnesses confirmed that race-based complaints are often dismissed at a higher rate than other discrimination complaints, with fewer cases referred to the Tribunal. For example, CHRC data indicates that in 2018, just 6% of cases based on race, colour or national or ethnic origin were referred to the Tribunal.<sup>39</sup>

To address these issues, the letter recommended several actions, including reforming the complaints intake and assessment process; appointing an independent consultant to investigate the experiences of Black and racialized employees and make binding recommendations; providing career and developmental opportunities to Black and racialized employees; and committing to the collection, analysis and public reporting of disaggregated race-based data.<sup>40</sup>

Bernadeth Betchi (an employee of the CHRC currently on secondment to another department) described working at a level that was not commensurate with her qualifications and facing hiring practices – such as the use of non-advertised processes – that effectively devalued Black candidates. Moreover, she recounted being shocked to hear racist attitudes and dehumanizing conversations among people in charge of assessing complaints, stating that:

*Long before any investigation took place, it was commonplace for staff to speculate about how a complainant is imagining things. It couldn't possibly be about race. They must be lying. Pre-judging the outcome of a complaint is sadly normalized among all grounds, but the insidiousness of*

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<sup>38</sup> Ibid.

<sup>39</sup> Charlotte-Anne Malischewski, [Follow-up to testimony](#), 12 May 2023.

<sup>40</sup> Bernadeth Betchi, "[Joint Letter from CHRC Employees \(names redacted\), 10 July 2020](#)", Document submitted to the committee, 11 May 2023.

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*racism meant that almost every race-based complaint I saw was dismissed, irrespective of the evidence presented.*

*In a workplace where discrimination and racism are present, I felt marginalized, isolated, unsupported and excluded. I know that this is what created and continues to create feelings of anxiety, stress and trauma. The impact of racism is far-reaching and long-lasting. It affected my physical and mental health. I left the commission on sick leave in September 2020. I was then pregnant with my third child and was worried at how stress and violence experienced in the workplace were negatively affecting my pregnancy.<sup>41</sup>*

Raphael Tachie (President, Canadian Association of Black Lawyers) outlined some of the other experiences of employees at the CHRC, such as being excluded from training and career advancement opportunities, and “being subjected to demeaning and humiliating behaviour from managers and colleagues.”<sup>42</sup> Similarly, Mr. Aylward highlighted persistent issues raised by CHRC employees, including distrust in the CHRC’s ability to recognize and address systemic racism, and fear of retaliation for bringing up issues of anti-Black racism.<sup>43</sup>

The leadership of Black and racialized employees at the CHRC in raising these concerns has been powerful. As a direct result of this leadership, the Public Service Alliance of Canada, the Association of Justice Counsel, and the Canadian Association of Professional Employees filed grievances against the CHRC. In March 2023, the TBS rendered its decisions, finding that the CHRC breached the “No Discrimination” clauses of the EC (Economics and Social Science Services), LP (Law Practitioner) and PA (Program and Administrative Services) collective agreements. The decisions noted that the CHRC has taken proactive steps to address these matters and encouraged parties to engage in mediation to seek a meaningful resolution. The grievances have

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<sup>41</sup> RIDR, [Evidence](#), 8 May 2023 (Bernadeth Betchi, Employee of the Canadian Human Rights Commission).

<sup>42</sup> RIDR, [Evidence](#), 1 May 2023 (Raphael Tachie, President, Canadian Association of Black Lawyers).

<sup>43</sup> RIDR, [Evidence](#), 15 May 2023 (Chris Aylward, National President, Public Service Alliance of Canada).



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since been referred for an arbitration hearing at the Public Sector Labour Relations and Employment Board, which will determine the next steps.<sup>44</sup>

While anti-Black racism and toxic work environments are troubling in any context, the committee is particularly concerned that the ability of the CHRC to handle race-based complaints in a fair, equitable and timely manner has been called into question. Richard Sharpe (Director, Black Equity Branch, Centre for People, Culture and Talent, Treasury Board Secretariat, Ontario Public Service) stated that the CHRC is “where race-based human rights complaints go to die, either rejected at disproportionately high rates or left to languish for years until people become too tired to fight anymore.”<sup>45</sup> He noted that in his capacity as a union representative and human rights advocate, he often counsels people that going to the CHRC is futile.<sup>46</sup>

Kethlande Pierre, a federal public servant with a case before the Tribunal, similarly emphasized her distrust of the CHRC despite the relative success of her case, stating that:

*The Commission does not intervene in a timely manner to protect victims. It only analyzes a complaint once all internal mechanisms have been exhausted. I have had to endure a complaints-processing system that was arduous, unfair and biased. I had to be resilient enough to get through the process and earn the right to file a complaint before the Commission while facing the possibility that it might be too late to do so...*

*At least two people in charge of my file were not racialized and did not seem to have experience processing discriminatory harassment cases due*

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<sup>44</sup> RIDR, [Evidence](#), 8 May 2023 (Carole Bidal, Associate Assistant Deputy Minister, Employee Relations and Total Compensation, Office of the Chief Human Resources, Treasury Board of Canada Secretariat).

<sup>45</sup> RIDR, [Evidence](#), 1 May 2023 (Richard Sharpe, Director, Black Equity Branch, Centre for People, Culture and Talent, Treasury Board Secretariat, Ontario Public Service). CHRC data indicate that complaints based on race, colour, and national or ethnic origin remain at the CHRC for an average of 24.7 months, compared to an average of 24.17 months for other complaints. See Charlotte-Anne Malischewski, [Follow-up to testimony](#), 12 May 2023.

<sup>46</sup> Ibid.

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*to skin colour... This creates a feeling of incredible despair. Who else can we turn to if the Commission is not familiar with the issues?*<sup>47</sup>

The committee is disturbed by these stories, and grateful to the individuals who shared them. Both the reality and the perception of unfairness within the federal human rights system are damaging to marginalized communities. Everyone who has experienced discrimination deserves to have a reliable path to justice.

### Steps Taken in Response

The committee heard that the CHRC has accepted the TBS findings and “unreservedly apologizes for all instances in which the [CHRC] as an employer or service provider fell short of its obligations.”<sup>48</sup> Moreover, the CHRC has undertaken a number of measures since 2020 to address the issue of systemic discrimination, including developing an anti-racism action plan. The committee welcomes the CHRC’s apology and efforts to address systemic racism.

The committee heard that in April 2020, an independent consultant completed a review of the CHRC’s criteria and guidelines to ensure that race-based complaints were appropriately assessed. The report’s recommendations included changes to the wording of the CHRC’s assessment criteria and guidelines to better align with the CHRC’s role of determining whether there is a reasonable basis for the complaint. Other recommendations related to providing better support for claimants and ensuring that the CHRC adequately interviews complainants in race-based cases, particularly when the link to race is not immediately apparent.<sup>49</sup> The CHRC informed the committee that this report resulted in mandatory in-depth training for all decision makers, as well as significant changes to its complaints assessment tools. The CHRC stated that these actions were responsible for measurable increases in referrals to the Tribunal for race-based complaints. Specifically, referrals to the

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<sup>47</sup> Kethlande Pierre, [Brief submitted to the committee](#), 20 May 2023.

<sup>48</sup> Charlotte-Anne Malischewski, [Follow-up to testimony](#), 12 May 2023.

<sup>49</sup> Mark Hart, [Strengthening the Commission’s handling of Race-based Cases](#), 30 April 2020.

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Tribunal based on race, colour or national or ethnic origin increased from just 6% in 2018 to 21% in 2022, and are now comparable to referrals based on other grounds.<sup>50</sup>

Additionally, in July 2020, the CHRC responded to the allegations raised by Black and racialized employees by commissioning independent workplace investigations. The CHRC stated that these investigations “found that disrespectful behaviour had occurred, and that Management had taken appropriate and timely corrective actions to address the conduct.”<sup>51</sup> Moreover, Charlotte-Anne Malischewski (Interim Chief Commissioner, CHRC) assured the committee that employees who had been found to have engaged in unprofessional and disrespectful behaviour were not in managerial positions and were no longer in the same positions as they were at the time of the incidents.<sup>52</sup>

However, other witnesses objected to the CHRC’s focus on individual acts of discrimination between employees, arguing that it served to deflect attention from deeper issues of systemic racism.<sup>53</sup> Moreover, David McNairn (President, Association of Justice Counsel) informed the committee that during these initial investigations, unions representing CHRC employees raised concerns about the integrity of the process, and that the CHRC’s failure to address these concerns prompted many employees to choose not to participate.<sup>54</sup>

Following the initial investigations, in the fall of 2020 the unions called for an independent workplace assessment.<sup>55</sup> Instead, the CHRC worked with an independent facilitator and stated that the resulting findings informed the development of its anti-racism action plan. Mr. McNairn characterized this as a “watered-down process” that “intentionally excluded any written report.”<sup>56</sup>

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<sup>50</sup> Charlotte-Anne Malischewski, [Follow-up to testimony](#), 12 May 2023.

<sup>51</sup> Ibid.

<sup>52</sup> RIDR, [Evidence](#), 8 May 2023 (Charlotte-Anne Malischewski, Interim Chief Commissioner, Canadian Human Rights Commission).

<sup>53</sup> See for example Bernadeth Betchi, [Follow-up to testimony](#), 15 May 2023.

<sup>54</sup> RIDR, [Evidence](#), 15 May 2023 (David McNairn, President, Association of Justice Counsel).

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

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Additionally, the CHRC commissioned independent experts to conduct an employment equity audit and an employment systems review, which concluded in 2021 and 2022 respectively. These reports found that the CHRC has strong representation from members of the four designated groups (women, Aboriginal peoples, persons with disabilities, and visible minorities) under the *Employment Equity Act*, and that these groups are fully represented at the EX-level.<sup>57</sup> Ms. Malischewski emphasized to the committee that the CHRC “consistently meets or exceeds representation targets under the *Employment Equity Act*.”<sup>58</sup> She provided data showing that as of 2020, 3.9% of employees at the CHRC were Black, compared to 3.5% in the overall federal public service, and that the representation of Black employees in executive positions increased from 6% to 14% between 2020 and 2022.<sup>59</sup>

Despite these improvements, Ms. Betchi observed that there are currently no Black employees at the EX-3 level or higher at the CHRC, arguing that this is a critical gap since senior executives have significant decision-making power.<sup>60</sup>

Finally, in 2021, the CHRC launched an anti-racism action plan, which aims to address the effects of systemic racism as it relates to the CHRC’s multiple roles as an employer, a service provider and regulator, and a human rights advocate.<sup>61</sup> An October 2022 progress report indicated that seven of the promised actions have been completed, namely:

- establishing an internal consultation committee;
- identifying barriers in the workplace;
- requesting that counsellors from Health Canada’s Employee Assistance Program with expertise in discrimination and trauma be consistently, reliably and confidentially available to employees;

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<sup>57</sup> Samson, *Final Audit Report: Employment Equity Audit Canadian Human Rights Commission (CHRC)*, March 2021; CHRC, *Final Report - Employment Equity: Employment Systems Review*, 8 November 2022.

<sup>58</sup> Charlotte-Anne Malischewski, *Follow-up to testimony*, 12 May 2023.

<sup>59</sup> Ibid.

<sup>60</sup> Bernadeth Betchi, *Follow-up to testimony*, 15 May 2023.

<sup>61</sup> CHRC, *Anti-Racism Action Plan*, 21 September 2021.

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- establishing an external mechanism for screening complaints that are against the CHRC itself;
- collecting retroactive disaggregated data on complaints for the period beginning in 2019;
- releasing a guide on special programs pursuant to section 16 of the Canadian Human Rights Act;<sup>62</sup> and
- designing and implementing a public submission process for the Federal Housing Advocate.<sup>63</sup>

An additional 21 actions are in progress, including the development of an employment equity plan, following the completion of the employment equity audit.<sup>64</sup> Mandatory unconscious/implicit bias training for commissioners and staff is also in progress.

Finally, 12 actions are ongoing or have been integrated into the CHRC's work, such as participation in federal anti-racism working groups, and reporting on trends in CHRC complaints.<sup>65</sup>

Although the CHRC has made progress in achieving its goals, Ms. Betchi stated that the anti-racism action plan lacks several key components, including requirements to analyze organizational demographics, mechanisms for continuous evaluation and improvement, and specific objectives that are measurable and time-bound.<sup>66</sup> Moreover, Mr. McNairn stated that the plan was developed without meaningful engagement with Black employees.<sup>67</sup>

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<sup>62</sup> Section 16 of the *Canadian Human Rights Act* allows for the creation of special programs designed to prevent or reduce disadvantages suffered by certain groups of individuals based on the prohibited grounds of discrimination. These programs aim to improve opportunities for these groups in areas such as employment, goods and services, facilities, and accommodation.

<sup>63</sup> CHRC, *Anti-Racism Action Plan: Progress Report*, 21 October 2022.

<sup>64</sup> Samson, *Final Audit Report: Employment Equity Audit Canadian Human Rights Commission (CHRC)*, March 2021.

<sup>65</sup> CHRC, *Anti-Racism Action Plan: Progress Report*, 21 October 2022.

<sup>66</sup> Bernadeth Betchi, *Follow-up to testimony*, 15 May 2023.

<sup>67</sup> RIDR, *Evidence*, 15 May 2023 (David McNairn, President, Association of Justice Counsel).

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The committee was concerned to hear that senior leadership at the CHRC has diminished the significance of the TBS findings, and that its process in developing and implementing anti-racism initiatives has not sufficiently reflected the views of Black and racialized employees.<sup>68</sup> Mr. McNairn referred to the CHRC's response as lacking in transparency and accountability, characterizing it as merely performative.<sup>69</sup>

The committee agrees that the CHRC must do more to change its workplace culture and practices to regain the trust of its own Black and racialized employees, as well as the trust of communities that rely upon it for justice.

### Recommendation 6

**That the Canadian Human Rights Commission consider providing immediate legal and psychological support for complainants and their families.**

### Recommendation 7

**That the Government of Canada take steps to ensure that victims of discrimination have access to a human rights system that is fair, effective and timely.**

### Proposed Reforms

While recognizing the significant challenges faced by the CHRC, particularly in terms of addressing anti-Black racism, witnesses who appeared before the committee offered more than critiques. They came equipped with solutions, demonstrating a commitment to overcoming existing issues. As Peter Sloly (Founder and Chief Executive Officer, Sloly Solutions Inc.) reminded the committee, crisis moments such as these are as much about ownership and acknowledgment as they are about seizing the opportunity for positive, generational change.<sup>70</sup>

The committee heard a wide range of opinions regarding how to address systemic discrimination within the CHRC. Some witnesses expressed the view that the CHRC is

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<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> RIDR, *Evidence*, 1 May 2023 (Peter Sloly, Founder and Chief Executive Officer, Sloly Solutions Inc.).

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“broken beyond repair” and needs a “fundamental revamp,”<sup>71</sup> highlighting profound lack of trust in the CHRC as an institution. Others suggested that the identified problems can be better addressed by appropriately investing in “a well-resourced, well-funded, representative human rights system.”<sup>72</sup>

Among the proposed reforms brought forth were the transition of the CHRC to a direct access model, the appointment of a Black Equity Commissioner, commissioning an independent review of the CHRC, modernization of the *Employment Equity Act*, and amendments to the *Canadian Human Rights Act*. The committee believes that these proposals reflect an understanding of the systemic issues at hand and represent dedication to addressing the problem.

### **Adopting a Direct Access Model**

During discussions on reforms to the CHRC, some witnesses advocated for structural changes to the organization that would allow complainants direct access to the Tribunal. The change would be aimed at streamlining the complaint process and eliminating what witnesses referred to as the CHRC’s “gatekeeper” role.<sup>73</sup>

### ***The Canadian Human Rights Commission’s complaint process***

Hugh Scher (Human Rights and Constitutional Lawyer) underlined several issues with the current complaint process. He emphasized that a failure to apply the correct preliminary analysis during the processing of complaints has led to complainants having to resubmit their cases multiple times, forcing them to repeatedly confront their trauma. Mr. Scher added that the CHRC has not been successful in resolving complaints effectively, with many cases being dismissed before they have the

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<sup>71</sup> See RIDR, [Evidence](#), 1 May 2023 (Hugh Scher, Human Rights and Constitutional Lawyer); and RIDR, [Evidence](#), 1 May 2023 (Richard Sharpe, Director, Black Equity Branch, Centre for People, Culture and Talent, Treasury Board Secretariat, Ontario Public Service).

<sup>72</sup> See RIDR, [Evidence](#), 15 May 2023 (Harini Sivalingam, Director, Equality Program, Canadian Civil Liberties Association) and RIDR, [Evidence](#), 1 May 2023 (Faisal Bhabha, Associate Professor, Osgoode Hall Law School, York University).

<sup>73</sup> For example, RIDR, [Evidence](#), 1 May 2023 (Richard Sharpe, Director, Black Equity Branch, Centre for People, Culture and Talent, Treasury Board Secretariat, Ontario Public Service).



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opportunity for adjudication. Furthermore, such decisions are made before a comprehensive review or assessment of the evidence is allowed.<sup>74</sup>

The Canadian Association of Black Lawyers (CABL) provided additional insight into the challenges posed by the CHRC's complaint process, including:

*concerns that the Commission's gatekeeping function serves to hinder access to justice for complainants, that it results in excessive delays, that complaints are mostly investigated by staff who have no legal training and lack the level of expertise to fully understand the nuances of human rights complaints, and the fact that many meritorious complaints are often dismissed without the opportunity to be considered by a Tribunal member with legal expertise. Historically, these concerns have not only been raised by racialized communities, but by many other stakeholder groups, including those representing the interests of women and persons with disabilities.*<sup>75</sup>

In addition, CABL critiqued the CHRC for its tendency to dismiss race-based complaints on grounds of insufficient direct and obvious evidence of racism, overlooking the more subtle forms it often takes in Canada, including racial profiling by federal entities. They noted that the Federal Court has occasionally reviewed these dismissal decisions and found the CHRC to be in error. However, they pointed out that few dismissal decisions are reviewed by the Federal Court due to the high costs and complexity of the judicial review process. The process also necessitates legal counsel, which many complainants cannot afford.

CABL indicated that, as a result, most Black complainants do not seek judicial review of CHRC dismissal decisions, allowing the denial of access to justice to largely go unchecked.<sup>76</sup>

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<sup>74</sup> RIDR, *Evidence*, 1 May 2023 (Hugh Scher, Human Rights and Constitutional Lawyer).

<sup>75</sup> Raphael Tachie, "[Canadian Association of Black Lawyers' 6 April 2021 Letter to Minister Lametti](#)," Document submitted to the committee, 1 May 2023.

<sup>76</sup> Ibid.

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### ***The direct access model***

The concept of a direct access model is not a new one. In 1999, an independent panel chaired by the Honourable Gérard La Forest, former Supreme Court Justice, conducted a comprehensive review of the *Canadian Human Rights Act* and issued 165 recommendations. A major focus of these recommendations was to switch from a commission screening model to a direct access model, in which complainants could bring their cases directly to the Tribunal. Under this model, the CHRC would still deal with questions from the public and assist potential claimants but could be largely reoriented toward combatting systemic issues. The panel further recommended that claimants have access to public legal assistance in cases where the CHRC chooses not to be a party to the proceedings.<sup>77</sup>

CABL informed the committee that various United Nations (UN) bodies have urged all orders of government in Canada to establish a direct access model. In 1998, the UN Committee on Economic, Social, and Cultural Rights urged Canada to guarantee that “all human rights claims not settled through mediation are promptly determined before a competent human rights tribunal, with the provision of legal aid to vulnerable groups.”<sup>78</sup> In 2006, the UN Human Rights Committee expressed concern that Canada’s federal, provincial and territorial human rights commissions “still have the power to refuse referral of a human rights complaint for adjudication and that legal aid for access to courts may not be available.”<sup>79</sup>

Despite these recommendations, the federal human rights system and most of the provinces and territories continue to use the commission screening model. British Columbia switched to a direct access model in 2002, with Ontario following in 2008.

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<sup>77</sup> Canadian Human Rights Act Review Panel, *Report of the Canadian Human Rights Act Review Panel*, June 2000. See also Raphael Tachie, “[Canadian Association of Black Lawyers’ 6 April 2021 Letter to Minister Lametti](#)”, Document submitted to the committee, 1 May 2023.

<sup>78</sup> United Nations Economic and Social Council, *Concluding Observations of the Committee on Economic, Social and Cultural Rights, Canada*, 10 December 1998, para 51; Raphael Tachie, “[Canadian Association of Black Lawyers’ 6 April 2021 Letter to Minister Lametti](#)”, Document submitted to the committee, 1 May 2023.

<sup>79</sup> United Nations Human Rights Committee, *UN Human Rights Committee: Concluding Observations, Canada*, 20 April 2006; Raphael Tachie, “[Canadian Association of Black Lawyers’ 6 April 2021 Letter to Minister Lametti](#)”, Document submitted to the committee, 1 May 2023.

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In both provinces, human rights complaints can be filed directly with a tribunal, while human rights commissions conduct public education, research and advocacy work.<sup>80</sup>

Hugh Scher was among the witnesses in favour of a direct access model that mirrors those in Ontario and British Columbia. Such a model, he explained, would allow complaints to be dealt with more effectively and swiftly, provided there are sufficient public resources for legal representation of complainants before the Tribunal.<sup>81</sup>

Raphael Tachie urged the committee to acknowledge the appeals from the legal community and numerous stakeholders, including CABL, the Canadian Association of Labour Lawyers, and the Canadian Bar Association, who advocate for a direct access model. He explained that an impartial adjudicator like the Tribunal would be the most suitable venue to determine the merit of a complaint, review evidence, and assess the credibility of witnesses.<sup>82</sup>

However, other witnesses cautioned that a direct access model may not be the comprehensive solution for the CHRC that some have portrayed it to be. Professor Clément highlighted the need to address anti-Black systemic racism within the CHRC. However, he advocated for a transformation of its internal culture rather than a structural overhaul, as he worried such significant change might erase the progress made to date. Despite recognizing the need for a substantial “reboot,” he advised caution when considering the direct access model. He pointed out the potential issues with the model, such as delays, case backlogs, a marginal increase in cases reaching hearings, and lower success rates for complainants. He stated that the commission model continues to be the standard across Canada for these reasons.<sup>83</sup>

Faisal Bhabha (Associate Professor, Osgoode Hall Law School, York University) elaborated, explaining that direct access to a tribunal does not necessarily lead to increased representation or easier access for cases. He indicated, rather, that the core issue is the institutional capacity and willingness to recognize specific racialized experiences as discrimination. He stated that existing obstacles would not

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<sup>80</sup> See Ontario Human Rights Commission, “[About the Commission](#)”, and British Columbia’s Office of the Human Rights Commissioner, “[About the Office](#)”.

<sup>81</sup> RIDR, [Evidence](#), 1 May 2023 (Hugh Scher, Human Rights and Constitutional Lawyer).

<sup>82</sup> RIDR, [Evidence](#), 1 May 2023 (Raphael Tachie, President, Canadian Association of Black Lawyers).

<sup>83</sup> RIDR, [Evidence](#), 15 May 2023 (Dominique Clément, Professor of Sociology, Faculty of Arts, University of Alberta).

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automatically vanish with the adoption of a direct access model. Instead, the institutional inability to identify and progress valid racial discrimination cases could simply be replaced by a tribunal's incapacity to find enough credible evidence or make necessary inferences to conclude that discrimination occurred. He added, "This is likely to lead to different versions of the same questions that this committee is now considering and a further degradation in public trust."<sup>84</sup>

Finally, Kasari Govender (Human Rights Commissioner, British Columbia's Office of the Human Rights Commissioner) noted that removing the gatekeeper role of commissions does not necessarily solve delay issues at the tribunal level, but can enhance the efficacy of the commission itself. Commissions without a role in the acceptance or resolution of complaints, she explained, can focus on systemic issues without diverting resources between immediate conflict resolution and long-term systemic change. She noted that this also mitigates potential conflicts of interest between individual cases and systemic reform efforts.<sup>85</sup>

Ms. Govender emphasized that two key concerns associated with the commission model – delays in the complaint process and inability to effectively address systemic human rights issues – are inherently tied to funding. She asserted that both issues could be mitigated with appropriate resources.<sup>86</sup>

In discussing the impact of proposed structural changes, Ms. Govender offered a nuanced perspective:

*I don't think that a structural shift alone will solve any systemic racism that has been identified in the commission nor does it guarantee better outcomes in the complaint process. What it could do is be a fresh start, one in which the mandate is renewed and the culture is rebuilt. It can also, very importantly, make much-needed room for the commission to*

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<sup>84</sup> RIDR, *Evidence*, 1 May 2023 (Faisal Bhabha, Associate Professor, Osgoode Hall Law School, York University).

<sup>85</sup> RIDR, *Evidence*, 15 May 2023 (Kasari Govender, Human Rights Commissioner, British Columbia's Office of the Human Rights Commissioner).

<sup>86</sup> *Ibid.*

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*take more leadership on changing the federal laws, policies and practices where systemic inequality is embedded.*<sup>87</sup>

The committee believes that structural changes may be necessary to ensure timely access to justice for human rights complainants. While the direct access model appears to offer some significant benefits, further study is required to examine the possible trade-offs of such an approach, including its impacts on various marginalized communities.

### **Establishing a Black Equity Commissioner**

Several witnesses expressed concern about the profound distrust that exists within the public service, particularly among Black employees, when it comes to investigating systemic barriers and incidents of discrimination. For example, Mr. Thompson questioned the logic of involving public service leaders, who are allegedly involved in discriminatory practices, in the resolution of these issues. Moreover, he questioned the capability of the public service to effectively put into action measures such as the Clerk of the Privy Council's Call to Action.<sup>88</sup>

Along with other witnesses, he recommended the establishment of a Black Equity Commissioner to confront institutional and systemic racism in the CHRC and within the broader public service. Hugh Sher further detailed this concept, suggesting a role comparable to the Auditor General of Canada. The Commissioner, acting as an expert on anti-Black racism, would evaluate federal public service systems, policies, and practices through a diversity, inclusion, equity, and anti-Black racism lens. This role would involve direct reporting to Parliament and issuing necessary recommendations.<sup>89</sup>

In addition to holding governmental departments accountable, the Commissioner could encourage education about systemic racism through various platforms,

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<sup>87</sup> Ibid.

<sup>88</sup> RIDR, [Evidence](#), 1 May 2023 (Nicholas Marcus Thompson, Executive Director, Black Class Action Secretariat); RIDR, [Evidence](#), 15 May 2023 (late Senator Ian Shugart).

<sup>89</sup> RIDR, [Evidence](#), 1 May 2023 (Hugh Scher, Human Rights and Constitutional Lawyer).

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including media and parliamentary forums. Hugh Sher also noted that the Commissioner could ensure Canada meets its international obligations through “the concrete review and assessment of domestic policies and practices in a way to identify the barriers, identify what solutions have been implemented or not and make concrete recommendations, just as the Auditor General does.”<sup>90</sup> He indicated that the creation of a Black Equity Commissioner role, built on similar lines, is the most promising strategy among existing mechanisms to root out institutional harms and to deliver the necessary level of accountability.

Richard Sharpe added that the scope and role of a Black Equity Commissioner should extend beyond the public service to include various institutions and functions across Canada. He highlighted that the issues with the CHRC have prompted a need to think “outside the box” and create a long-term, institutional solution to combat anti-Black racism, instead of transient programs or activities.<sup>91</sup> Mr. Sharpe referred to the establishment of a Black Equity Commissioner as a “legacy-building piece” for Canada.<sup>92</sup>

While acknowledging potential challenges to implementing such a role, Raphael Tachie told the committee that, “As a Black man in Canada, viewing legislation and implementation of policies and programming through an equity lens and removal of systemic anti-Black racism would be great things to have.”<sup>93</sup>

In testimony to the committee, Ms. Malischewski stated that the CHRC would welcome the establishment of a Black Equity Commissioner.<sup>94</sup>

### Commissioning an Independent Review

In a brief submitted to the committee, the Canadian Association of Professional Employees (CAPE) suggested that an independent expert should be hired to carry out

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<sup>90</sup> Ibid.

<sup>91</sup> RIDR, [Evidence](#), 1 May 2023 (Richard Sharpe, Director, Black Equity Branch, Centre for People, Culture and Talent, Treasury Board Secretariat, Ontario Public Service).

<sup>92</sup> Ibid.

<sup>93</sup> RIDR, [Evidence](#), 1 May 2023 (Raphael Tachie, President, Canadian Association of Black Lawyers).

<sup>94</sup> RIDR, [Evidence](#), 8 May 2023 (Charlotte-Anne Malischewski, Interim Chief Commissioner, Canadian Human Rights Commission).

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a workplace review at the CHRC, focusing specifically on the experiences of Black employees, similar to the independent review led by former Justice Louise Arbour into systemic sexual misconduct in the Canadian military in 2022. According to CAPE, the scope of the review should cover both formal and informal practices related to hiring, promotion, and retention of Black employees at the CHRC. CAPE added that:

- a) It should be conducted by an independent, reputable individual with demonstrated expertise in anti-Black racism and workplace discrimination.*
- b) The expert's mandate should include making specific time bound recommendations to address any findings of systemic anti-Black racism.*
- c) The expert should have access to, among other things, all relevant internal Commission disaggregated data and all other information relating to the hiring, promotion, and retention of Black employees.*
- d) It should assess at least the last 10-year period. A review of the past 10-year period will permit the expert to have a comprehensive understanding of the systemic issues and will allow them to be better placed to recommend lasting solutions.*
- e) The expert's report, along with their recommendations, should be made public because this is the best way to ensure accountability.*
- f) The Commission should be required to implement all the recommendations within the timeframe indicated in the report and publicly report on its actions toward implementation.<sup>95</sup>*

In addition, CABL, the Black Legal Action Centre, and the Association of Justice Counsel also submitted briefs to the committee, echoing CAPE's recommendation for a review of the workplace experiences of Black employees at the CHRC over the last

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<sup>95</sup> The Canadian Association of Professional Employees (CAPE), [Brief submitted to the committee, 15 May 2023](#), p. 7.



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decade.<sup>96</sup> They also stressed that the chosen expert should be independent, reputable, and experienced in anti-Black racism and workplace discrimination, and that an eventual report should be made publicly available. CABL's proposal further noted the importance of assessing the CHRC's corporate culture, involving a detailed review of attitudes, beliefs, and decision-making processes within the organization.<sup>97</sup>

In addition to the above, Bernadeth Betchi stated that the independent expert “absolutely needs to be a Black person with anti-Black racism knowledge, which has not happened.”<sup>98</sup>

### Modernizing the *Employment Equity Act*

The committee heard testimony critical of the classification system of “designated groups” set out in the *Employment Equity Act* (i.e. women, Aboriginal peoples, persons with disabilities, and visible minorities). In addition to being outdated, these terms may not allow for recognition of discrimination that does not align with the established categories. Moreover, the “visible minorities” category might inadvertently mask specific instances of discrimination within subgroups of the designated groups.<sup>99</sup>

Witnesses emphasized that the unique historical and modern experiences of Black Canadians with institutional anti-Black racism warrant separate consideration.<sup>100</sup> For example, Mr. Thompson told the committee that the Act's grouping of all racialized people into a single category often excludes Black employees from promotion opportunities. He shared that federal employers have told him they cannot tailor

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<sup>96</sup> Canadian Association of Black Lawyers (CABL), [Brief submitted to the committee](#), 1 May 2023; Black Legal Action Centre, [Brief submitted to the committee](#), 15 May 2023; Association of Justice Counsel, [Brief submitted to the committee](#), 15 May 2023.

<sup>97</sup> CABL, [Brief submitted to the committee](#), 1 May 2023, p.4.

<sup>98</sup> RIDR, [Evidence](#), 8 May 2023 (Bernadeth Betchi, Employee of the Canadian Human Rights Commission).

<sup>99</sup> In its brief to the committee, CAPE indicated that the United Nations Working Group of Experts on People of African Descent noted in its 2017 report following its mission to Canada that “the category ‘visible minority’ obscures the degrees of disparity in treatment and specific human rights concerns of African Canadians.” CAPE, [Brief submitted to the committee](#), 15 May 2023, p. 9.

<sup>100</sup> RIDR, [Evidence](#), 1 May 2023 (Hugh Scher, Human Rights and Constitutional Lawyer); RIDR, [Evidence](#), 1 May 2023 (Nicholas Marcus Thompson, Executive Director, Black Class Action Secretariat); See also CAPE, [Brief submitted to the committee](#), 15 May 2023.

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staffing and competitions specifically for Black employees because of the Act's provisions.<sup>101</sup> Moreover, in a follow-up email to his testimony to the committee, he suggested that federal departments consistently mask the issue by hiding behind the term “visible minorities” and neglecting Black employees.

As an example, he noted that since the Clerk's call to action on 28 January 2021, the CHRC has not appointed any Black executives, though they have appointed an executive from a racialized group.<sup>102</sup> He shared an instance where the Canada Revenue Agency stated they would not implement the call to action for Black employees because “Black” is not a designated category under the *Employment Equity Act*. He quoted a CRA director saying, “The clerk could say whatever they want, we are following the Act.”<sup>103</sup>

For his part, Hugh Sher cited a 2019 study on promotion rates across the federal public service over 27 years, highlighting a promotion rate differential for Black employees. He explained that neglecting this subgroup data, under the guise that it falls outside the mandate of the Act, fundamentally contradicts the purpose of employment equity—to identify and remove barriers to full participation for all groups. He stated, “There are certain ethnic groups within [the visible minorities] group who have fared better, and when you aggregate them all together you get a misleading picture. That’s what the government has historically done.”<sup>104</sup>

Both Mr. Sher and Mr. Thompson proposed an amendment to the *Employment Equity Act* to create a separate category for Black employees distinct from racialized employees. Furthermore, Mr. Sher advocated for specific targets for Black Canadians, emphasizing the need to ensure measurable, positive results rather than allowing their experiences to be overshadowed or “washed under.”<sup>105</sup>

As follow up to its testimony, the Public Service Alliance of Canada (PSAC) provided the committee with a copy of its April 2022 submission to the *Employment Equity Act*

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<sup>101</sup> RIDR, *Evidence*, 1 May 2023 (Nicholas Marcus Thompson, Executive Director, Black Class Action Secretariat).

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> RIDR, *Evidence*, 1 May 2023 (Hugh Scher, Human Rights and Constitutional Lawyer).

<sup>105</sup> Ibid.

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Review Taskforce.<sup>106</sup> Highlighting the fact that no equity group is homogenous, the submission recommends that:

*The Employment Equity Act must be amended to collect and analyze disaggregated data for every designated equity group. By so doing, representation rates and barriers faced by distinct groups within designated equity groups can be examined and addressed more appropriately. Each specific designated employment equity group should be broken down or be distinct employment equity groups (e.g. Black, South Asian, Chinese, Arab, etc.) so that barriers for specific communities can be identified and addressed pursuant to the Employment Equity Act.*

*The data should also be collected in a manner that allows for intersectional analysis.<sup>107</sup>*

Finally, the CHRC has indicated that it is open to amendments to both the *Canadian Human Rights Act* and the *Employment Equity Act*, to supplement its ongoing initiatives to combat workplace racism.<sup>108</sup> Ms. Malischewski told the committee that the CHRC aligns with many concerns voiced by the witnesses, stating, “For years we’ve been advocating for many of the changes they have called for.”<sup>109</sup>

### **Other Amendments to the Canadian Human Rights Act**

Building upon the suggested amendments to the *Employment Equity Act*, witnesses also recommended a review of the *Canadian Human Rights Act*, pointing out that the

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<sup>106</sup> Public Service Alliance of Canada, “[Public Service Alliance of Canada Submissions on the Employment Equity Act Review to the Taskforce on Employment Equity Act Review, April 2022](#)”, Document submitted to the committee, 15 May 2023, p. 8.

<sup>107</sup> *Ibid.*, p. 10.

<sup>108</sup> Charlotte-Anne Malischewski, [Follow-up to testimony](#), 12 May 2023, p. 7.

<sup>109</sup> RIDR, [Evidence](#), 8 May 2023 (Charlotte-Anne Malischewski, Interim Chief Commissioner, Canadian Human Rights Commission).

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legislation has not undergone substantial revisions for decades and that there are several gaps and potential areas for improvement.<sup>110</sup>

Both Harini Sivalingam and Ms. Malischewski underscored the need to raise the current cap of \$20,000 for financial compensation to victims of discrimination. Ms. Sivalingam emphasized that the cap “is far too low by today’s standards,” while Ms. Malischewski pointed out that the existing limit does not adequately reflect the seriousness and impact of the trauma experienced by individuals who come forward with discrimination complaints.<sup>111</sup>

Ms. Malischewski recommended that amendments to the Act should address the difficulty in accessing the system, primarily due to its time-consuming nature and associated costs. She emphasized that the current structure does not provide coverage for legal costs during the complaint process, often reducing the financial viability of legal representation. She added that the CHRC is supportive of other amendments to the Act, including removing the requirement for legal presence in Canada as a prerequisite for filing a complaint.<sup>112</sup>

A lack of sufficient protection against retaliation for those who file complaints was also singled out as an area for improvement.<sup>113</sup> This issue was detailed in a brief communicated to the committee by Zelda Sun (as an individual), who highlighted that the complaints processes are often misused, leading to stress and harm for the individuals involved. She explained that abuses can include unreasonable scheduling, excessive documentation requests, disputing expert accreditations, threats of discipline within a workplace, intrusive monitoring, and placing an individual accused of discrimination in a supervisory position over the complainant.

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<sup>110</sup> Ibid.; RIDR, [Evidence](#), 15 May 2023 (Harini Sivalingam, Director, Equality Program, Canadian Civil Liberties Association); RIDR, [Evidence](#), 15 May 2023 (Chris Aylward, National President, Public Service Alliance of Canada); RIDR, [Evidence](#), 15 May 2023 (Chris Aylward, National President, Public Service Alliance of Canada).

<sup>111</sup> RIDR, [Evidence](#), 15 May 2023 (Harini Sivalingam, Director, Equality Program, Canadian Civil Liberties Association); RIDR, [Evidence](#), 8 May 2023 (Charlotte-Anne Malischewski, Interim Chief Commissioner, Canadian Human Rights Commission).

<sup>112</sup> RIDR, [Evidence](#), 8 May 2023 (Charlotte-Anne Malischewski, Interim Chief Commissioner, Canadian Human Rights Commission).

<sup>113</sup> Ibid; Zelda Sun, [Brief submitted to the committee](#), 12 May 2023.

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Zelda Sun stated that fear of retaliation against witnesses makes many hesitant to come forward or to speak truthfully. The problem is exacerbated by the typically small number of Black and Indigenous employees in a workplace, making it easier to identify unnamed witnesses.<sup>114</sup> Expressing similar concerns about retaliation, Ms. Pierre recommended that the CHRC should not notify a department about an employee complaint until it is prepared to address the complaint.<sup>115</sup>

Bernadeth Betchi stated that the *Canadian Human Rights Act* should be revised to mandate that the six Governor-in-Council-appointed commissioners represent a diverse array of experiences and competencies, including individuals from equity-seeking groups.<sup>116</sup> Her view aligned with recommendations stemming from a March 2020 employee dialogue session facilitated by an independent consultant, which recommended that “the Commission raise the issue of increasing the representation of racialized groups among appointments as Commissioners and to the Tribunal, and advocate for increased representation.”<sup>117</sup>

### Recommendation 8

**That the Government of Canada appoint a Black Equity Commissioner as an independent officer of Parliament.**

### Recommendation 9

**That the Government of Canada commission an independent review of the conditions of CHRC employees from diverse backgrounds past and present, with particular focus on the experience of Black, racialized and Indigenous employees, and that the report be published by a specified date.**

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<sup>114</sup> Zelda Sun, [Brief submitted to the committee](#), 12 May 2023.

<sup>115</sup> Kethlande Pierre, [Brief submitted to the committee](#), 15 May 2023.

<sup>116</sup> RIDR, [Evidence](#), 8 May 2023 (Bernadeth Betchi, Employee of the Canadian Human Rights Commission).

<sup>117</sup> Mark Hart, [CHRC Meeting with Stakeholder Groups representing Black and Racialized People: Consultant’s Report](#), 30 March 2020, Appendix A, p. 1.

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**Recommendation 10**

**That the Government of Canada introduce legislation to modernize the *Employment Equity Act*, including by amending the designated groups under the Act to better reflect intersectionality and to specifically include Black and other equity deserving groups.**

**Recommendation 11**

**That the Department of Justice undertake a comprehensive review of the *Canadian Human Rights Act* that includes a comparative study of human rights systems in various Canadian and international jurisdictions, and propose amendments to improve access to justice for marginalized groups, including by considering changes to:**

- **shift to a direct access model;**
- **increase the compensation ceiling for the pain and suffering of victims from the current cap of \$20,000;**
- **strengthen protections against retaliation by employers;**
- **remove the requirement for legal presence in Canada as a prerequisite for filing a complaint; and**
- **ensure that commissioners include individuals from equity deserving groups.**

## Conclusion

*Canadians may be shaken by the revelations that the Canadian Human Rights Commission is not what they thought it was, but now that we have the data, we have the evidence and we have the verdict, the challenge for us now as a society, as institutions, is whether we have the level of ambition to achieve results for Canadians, even for those who are Black.*

*Richard Sharpe*<sup>118</sup>

Anti-Black racism and other forms of systemic discrimination are unacceptable in any institution. The committee was therefore concerned to hear that anti-Black racism is pervasive in the federal public service and was particularly troubled by its presence within the CHRC, a body designed to be a watchdog for human rights. People who have experienced discrimination deserve a human rights system that is fair, timely, and effective. The CHRC has fallen short of that standard.

The issues raised throughout this study are serious, and many of the solutions are complex. Further in-depth study is urgently required to identify strategies to combat anti-Black racism across the federal public service and to improve the fairness and efficacy of the human rights system.

In presenting this report and its 11 recommendations, the committee hopes to provide a roadmap for immediate action, while laying a strong foundation for future study. Further reforms will be necessary to achieve a more inclusive and equitable future in which systemic racism is confronted head-on and eradicated from our institutions.

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<sup>118</sup> RIDR, *Evidence*, 1 May 2023 (Richard Sharpe, Director, Black Equity Branch, Centre for People, Culture and Talent, Treasury Board Secretariat, Ontario Public Service).

## Full List of Recommendations

### Recommendation 1

That the Clerk of the Privy Council and federal public servants at all levels act as leaders in confronting anti-Black racism, as outlined in the Clerk of the Privy Council's *Call to Action on Anti-Racism, Equity, and Inclusion in the Federal Public Service*, that measures to promote diversity, equity and inclusion be included as a performance measurement across all federal departments and agencies, and that federal public servants analyze available data to make evidence-based improvements.

### Recommendation 2

That all federal departments and agencies increase mandatory anti-racism training for their employees, with the content of such training tailored to employees' specific roles and responsibilities.

### Recommendation 3

That the Department of Canadian Heritage urgently complete its promised National Action Plan on Combatting Hate and updated Anti-Racism Strategy.

### Recommendation 4

That the Department of Canadian Heritage develop educational items on Anti-Black racism and other forms of systemic discrimination that can be incorporated into classroom and professional development activities for various age groups and stakeholders.

### Recommendation 5

That a parliamentary committee undertake a study about anti-Black racism in the public service as soon as possible.

### Recommendation 6

That the Canadian Human Rights Commission consider providing immediate legal and psychological support for complainants and their families.



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**Recommendation 7**

**That the Government of Canada take steps to ensure that victims of discrimination have access to a human rights system that is fair, effective and timely.**

**Recommendation 8**

**That the Government of Canada appoint a Black Equity Commissioner as an independent officer of Parliament.**

**Recommendation 9**

**That the Government of Canada commission an independent review of the conditions of CHRC employees from diverse backgrounds past and present, with particular focus on the experience of Black, racialized and Indigenous employees, and that the report be published by a specified date.**

**Recommendation 10**

**That the Government of Canada introduce legislation to modernize the *Employment Equity Act*, including by amending the designated groups under the Act to better reflect intersectionality and to specifically include Black and other equity deserving groups.**

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- **shift to a direct access model;**
- **increase the compensation ceiling for the pain and suffering of victims from the current cap of \$20,000;**
- **strengthen protections against retaliation by employers;**
- **remove the requirement for legal presence in Canada as a prerequisite for filing a complaint; and**
- **ensure that commissioners include individuals from equity deserving groups.**

## APPENDIX A – Witnesses

### Monday, May 1, 2023

The Honourable Senator Wanda Thomas Bernard

Faisal Bhabha, Associate Professor, Osgoode Hall Law School, York University,  
as an Individual

Deborah Ann Coward, as an Individual

Rubin A. Coward, CD Community Advocate and retired Senior Non-  
Commissioned Officer of the Canadian Air Force, as an Individual

Hugh Scher, Human Rights and Constitutional Lawyer, as an Individual

Richard Sharpe, Director, Black Equity Branch, Centre for People, Culture and  
Talent, Treasury Board Secretariat, Ontario Public Service, as an Individual

Peter Sloly, Founder and Chief Executive Officer, Sloly Solutions Inc.

Raphael Tachie, President, Canadian Association of Black Lawyers

Nicholas Marcus Thompson, Executive Director, Black Class Action Secretariat

### Monday, May 8, 2023

Bernadeth Betchi, Employee of the Canadian Human Rights Commission, as an  
Individual

Carole Bidal, Associate Assistant Deputy Minister, Employee Relations and  
Total Compensation, Office of the Chief Human Resources, Treasury Board of  
Canada Secretariat

Gaveen Cadotte, Assistant Deputy Minister, Anti-Racism Strategy and Action  
Plan on Combatting Hate Sector, Canadian Heritage

Ian Fine, Executive Director, Canadian Human Rights Commission

Peter Flegel, Executive Director, Federal Anti-Racism Secretariat, Canadian  
Heritage

Holly Holtman, Director General and Senior General Counsel, Canadian Human  
Rights Commission

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Charlotte-Anne Malischewski, Interim Chief Commissioner, Canadian Human Rights Commission

**Monday, May 15, 2023**

Chris Aylward, National President, Public Service Alliance of Canada

Tasia Brown, Political Assistant to the National President, Public Service Alliance of Canada

Dominique Clément, Professor of Sociology, Faculty of Arts, University of Alberta, as an Individual

Kasari Govender, Human Rights Commissioner, British Columbia's Office of the Human Rights Commissioner

Seema Lamba, Human Rights Officer, Public Service Alliance of Canada

David McNairn, President, Association of Justice Counsel

The late Honourable Senator Ian Shugart, P.C., former Clerk of the Privy Council

Harini Sivalingam, Director, Equality Program, Canadian Civil Liberties Association

## APPENDIX B – Briefs and Supplementary Evidence

Association of Justice Counsel, [brief](#), 15 May 2023

Bernadeth Betchi, Employee of the Canadian Human Rights Commission, [follow-up to testimony](#), 15 May 2023

Black Legal Action Centre, [brief](#), 15 May 2023

Robin Browne (613/819 Black Hub), [brief](#), 12 June 2023

Canadian Association of Black Lawyers, Raphael Tachie, President, [brief](#), 1 May 2023

Canadian Association of Professional Employees (CAPE), [brief](#), 15 May 2023

Canadian Civil Liberties Association, Harini Sivalingam, Director, Equality Program, [brief](#), 15 May 2023

Canadian Heritage, [follow-up to testimony](#), 8 June 2023

Canadian Human Rights Commission, Charlotte-Anne Malischewski, Interim Chief Commissioner, follow-ups to testimony, [12 May](#) and [21 September](#) 2023

Dominique Clément (as an individual), Professor of Sociology, Faculty of Arts, University of Alberta, [follow-up to testimony](#), 18 May 2023

Rubin A. Coward, follow-ups to testimony, [1 May](#) and [6 May](#) 2023

Richard Fearing, [brief](#), 12 May 2023

Ontario Human Rights Commission, Patricia DeGuire, Chief Commissioner, [brief](#), 18 May 2023

Kethlande Pierre, [brief](#), 20 May 2023

Zelda Sun, [brief](#), 12 May 2023

Nicolas Marcus Thompson, Executive Director, Black Class Action Secretariat, [follow-up to testimony](#), 13 May 2023

Renée Vaugeois, Executive Director, John Humphrey Centre for Peace and Human Rights, [letter](#), 24 May 2023

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## APPENDIX C – Exhibits

Bernadeth Betchi, “[Joint Letter from CHRC Employees \(names redacted\), 10 July 2020](#)”, Document submitted to the committee, 11 May 2023

Bernadeth Betchi, “[Resignation Letter of Employee \(name redacted\), 11 June 2020](#)”, Document submitted to the committee, 11 May 2023

Public Service Alliance of Canada, [Submissions on the Employment Equity Act Review to the Task Force on Employment Equity Act Review](#), April 2022

Raphael Tachie, “[Canadian Association of Black Lawyers’ 6 April 2021 Letter to Minister Lametti, Minister of justice and Attorney-General of Canada](#)”, Document submitted to the committee, 1 May 2023



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