

SUBMISSION



**SUBMISSION FOR
THE UNIVERSAL PERIODIC REVIEW ON CANADA
UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS**

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Submitted by:

Centre for Research-Action on Race Relations (CRARR)
460 Sainte-Catherine Street West, Suite 610
Montreal, Quebec, Canada H3B 1A7
Telephone: (514) 939-3342 • Fax: (514) 939-9763
crarr@primus.ca www.crarr.org

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1. As a Montreal-based independent civil rights organization created in 1983 with the mandate to combat racial discrimination, CRARR would like to raise the following issues for consideration by the Working Group involved in the Universal Periodic Review on Canada:
 - a. Citizenship, religious freedom and secularism;
 - b. Racial discrimination and unequal access to effective human rights protections;
 - c. Racial discrimination in employment discrimination and
 - d. Safe and adequate housing.
2. CRARR's submission focuses on agencies and policies of the province of Quebec and in some cases, agencies and policies of the Government of Canada.

CITIZENSHIP, RELIGIOUS FREEDOM AND SECULARISM

3. In early October 2012, the Government of Canada eliminated funding of religious services to inmates in federal correctional institutions who belong to faiths other than Christianity. The Canadian Minister Public Safety Minister ordered that the federal prison system's 71 full-time chaplains, who are overwhelmingly Christian, will provide religious services to all inmates. The decision to cancel part-time chaplains' contracts will save approximately \$1.3-million of the program's total \$6.4-million budget. In 2011, there were approximately 23,000 inmates, 57% of whom were Christian, 4.5 % Muslim, 4% of different Aboriginal spirituality and less than 1% Jewish and less than 1% Sikh.
4. On September 4, 2012, a new government led by the Parti Québécois was elected in the Province of Quebec. The party's platform includes a pledge to enact a *Charter on Secularism*, which would ban all religious symbols from provincial public institutions and prohibit employees of these institutions from displaying "ostentatious" religious symbols such as the hijab, the kippa and the turban. According to a party spokesperson, if challenged under the constitutionally entrenched *Canadian Charter of Rights and Freedoms*, the government would resort to the "Notwithstanding Clause" in the *Canadian Charter* to allow a legislature to declare that its *Charter on Secularism* would operate notwithstanding the *Canadian Charter*. However, Christian religious symbols would not be banned. According to the 2001 Census, Muslims made up 1.52% of the Quebec population and Jews 1.26%.
5. If enacted, the *Charter on Secularism* would produce discriminatory and exclusionary effects on members of religious faiths other than Christianity, especially in employment in provincial and municipal public and para-public sectors (the para-public sector includes health care, social service and educational institutions). The proposed Charter would have a disproportionate adverse impact on English-speaking institutions such as hospitals, school boards, colleges and universities, where ethnocultural and religious diversity has historically developed differently and resulted in creative accommodation practices and enhanced employment and other opportunities for persons practicing these faiths.

6. The Parti Québécois also pledges in its electoral platform to enact a *Quebec Identity Act*, which establishes Quebec citizenship. The 2007 version of this bill, known as Bill 195, states that the acquirement of Quebec citizenship is dependent on “appropriate knowledge of the French language” and “appropriate knowledge of Québec and of the responsibilities and advantages of citizenship.” Bill 195 also states that “a Quebec citizen has the right to (1) run in municipal, school and legislative elections; (2) participate in the public funding of political parties; and (3) petition the National Assembly for the redress of grievances.”
7. The term “appropriate knowledge” is not defined and this distinction is one that, per section 49.6 of the Act, could present a significant barrier to minorities’ political and civic participation as well as compliance with international and domestic human rights laws; instant negative reactions during the electoral campaign led the party to clarify that this linguistic restriction would not apply to Aboriginal nations and long-established English-speaking citizens whose rights to participate in and manage institutions such as school boards (where trustees are elected through election), but only to “newcomers” or newly arrived immigrants.
8. The identity debates have led to divisions and at times discriminatory actions directed at immigrants, such as the publication by the City of Gatineau, of a code of living for immigrants, in which these persons are told to how to raise children, maintain body hygiene, be punctual and not to cook food with strong odor.

RACIAL DISCRIMINATION AND UNEQUAL ACCESS TO EFFECTIVE HUMAN RIGHTS PROTECTION

9. Since the last UPR review of Canada, the Montreal Police Service (SPVM) has, in a comprehensive 2011 plan to address racial profiling, changed its definition of racial profiling to be more consistent with that used by the Quebec Human Rights and Youth Rights Commission, and adopted in Canadian jurisprudence. This change consists of dropping the requirement that a police action must be proven to be “essentially” based on the race or ethnicity of a person to be considered as racial profiling when the intervention is not based on valid grounds or motives.
10. Many public rights protection agencies such as the Canadian Human Rights Commission (CHRC) still have no policy regarding racial profiling or, like its Quebec counterpart, race-based suspect description, despite the fact that many racialized persons, especially Black men, are regularly exposed to these two forms of racially discriminatory law enforcement actions. Likewise, the Quebec Police Ethics Commissioner still operates without a clear operational definition of racial profiling for its investigation of complaints.
11. Despite some major court decisions in Quebec clarifying and striking down racial profiling in law enforcement (*Vens-Cols* in 2011 and *Rezko* and *Debellefeuille* in 2012) and employment (*Latif*, 2009), most public institutions, including the judiciary, still encounter great difficulties in addressing race discrimination and profiling. “De-racialization” results with the avoidance of and resistance to

recognizing the dynamics of racial bias and collecting race-based data for documentation and comparative purposes. Without clear policies, statistical data and a race-conscious approach, victims of racial profiling and other systemic racial discrimination cases lack access to effective protection. The result of public protection agencies' failure to recognize direct, systemic and circumstantial evidence of race bias is detrimental because most victims lack adequate financial means to seek direct redress or judicial review of human rights commissions' decisions before the courts. For instance, a Black bank customer was mistaken by a bank teller to be a bank robber and reported to the police; despite marked difference in skin color and other traits, the Canadian Human Rights Commission seeks to dismiss the complaint as "frivolous." In another case, a Black man was stopped and fined while driving his BMW because his "Québécois" family name" raised suspicions in two police officers' minds. The trial court dismissed his racial profiling defense, compelling him to appeal to a higher court which then overturned the case and sent it back for retrial, all at his own expenses. With legal counsel, he won his racial profiling case the second time around.

12. The City of Montreal continues to maintain policies that contribute to racialized and other socially and economically disadvantaged residents being unfairly and routinely profiled and penalized, such as its policy against "incivilities" or undesirable conduct, in police, public transit, housing and other services, despite social science evidence in France and the U.S. to the effect that it discriminates against youths of colour and disadvantaged persons such as the homeless. This policy often provides a "valid motive" to the police to stop and conduct I.D. checks on citizens, under the guise of issuing fines for municipal by-law violations; without adequate race-based data, it is difficult for human rights authorities and to assess possible disproportionate adverse impact on members of specific groups. Despite pledges by the Quebec human rights commission to combat "social profiling", no civil rights cases have been brought before the courts to strike down this policy.
13. The criminalization of what is institutionally defined as marginalized or undesirable conduct also includes the Montreal Police Service and the Quebec Games and Liquor Licensing Board's practice of banning clubs and bars in the city from playing rap and hip hop music as a condition of license.
14. Furthermore, as CRARR mentioned in the 2009 review, contrary to other Canadian provinces such as Ontario where an independent civilian agency (the Special Investigation Unit) investigates police actions leading to death or serious injury, the Quebec Government's policy keeps the process in the hands of another police service. Often the full report is never released even, to the family of the deceased. Despite recent legislative attempts to create a provincial observer to shadow police investigations of the police, the present system sustains perceptions and allegations that authorities resist "effective policies and programmes to prevent, detect and ensure accountability for misconduct by police officers... which is motivated by racism." (s. 71 of the *Durban Programme of Action*).

RACIAL DISCRIMINATION IN EMPLOYMENT

15. In terms of employment discrimination, CRARR notes that the current Government of Canada has substantially downgraded employment equity programs. Canada has recently eliminated adequate budgetary resources for the implementation and monitoring of the *Employment Equity Act* and the Federal Contractors' Program. Employment equity in the federal public service, and in the Quebec civil service, still has not produced either quantitative or qualitative goals (the Quebec's equity program for the provincial civil service applies only to recruitment, not promotion and other levels of employment). In addition, the Government of Canada abolished in 2010 the detailed national census data collection methodology, which will complicate the collection and analysis of comprehensive data on labor market conditions of equity-designated groups such as women, "visible" minorities, people with disabilities and Aboriginal persons.

ITAR (*International Traffic In Arms Regulations*)

16. Since CRARR's 2009 review, Canada and the U.S. have in 2010 changed the policy concerning the U.S. State Department's ITAR. Prior to the reform, the measures had denied to Canadian citizens and permanent residents who were born in some 25 countries deemed to be threats of American national security (such as China, Cuba, Haïti, Lebanon, Iran, Vietnam, etc.) access to products, services, information and even employment in Canadian aerospace companies. The new policy adopts a case-by-case basis, where the Government of Canada has supported an approach based on conditions of assessment that emphasizes security (and screening of employees for "substantive contacts" with prohibited countries) rather than country of origin alone. However, as noted by cases which CRARR receives after the review, the policy change has not in practice deterred industry-level racial and ethnic discrimination. These reforms still act to inhibit recruitment of potential employees born in these countries, regardless of length of naturalized Canadian citizenship.

Union Misrepresentation and Restricted Access to Human Rights Protection

17. Due to rulings from the Supreme Court of Canada in 2003 (the *Parry Sound* case) and then in 2004 (the *Morin* case), unionized workers in Canada who are victims of discrimination at work must first turn to the labor arbitration process for protection. They can only go to human rights commissions under some conditions, such as when the union is in a conflict of interest because it is involved in reaching a collective agreement containing discrimination. These court decisions effectively shut the door to effective protection for victims of race discrimination in particular who systemically encounter resistance and non-assistance from their local unions in filing grievances (if the union fails to file grievances on their behalf, workers then have to file a complaint of union misrepresentation under the *Labor Code* and defend themselves before labor tribunals). Furthermore, most labor arbitrators, the vast majority of whom are still white men, lack training and competency in applying human rights laws and

remedies of a monetary and non-monetary nature.

UNSAFE AND INADEQUATE HOUSING

18. Residents in the City of Montreal face serious unsanitary conditions of rental accommodation and civil rights violations. With other tenants' rights groups, CRARR has found that problems with mould, excessive humidity, cockroaches and bedbugs are widespread and re-occurring. This issue is perpetuated by the City's reluctance to enforce housing sanitation and maintenance standards, negatively impacting the quality of life for tenants, many of whom are seniors, new immigrants, refugees, low-income and social disadvantaged persons and international students.
19. In 2011, City Hall received 3,729 complaints involving the *By-law Concerning Sanitation and Maintenance of Dwelling Units*, which sets out landlords' duties to ensure housing conditions and the City's authority to enforce such standards. This figure is only a fraction of the issue, considering that many tenants are afraid of their landlords, and many are unaware of their right to adequate and safe housing, as stipulated by the *International Covenant on Economic, Social and Cultural Rights* and other domestic laws. When complaints are made to housing authorities, many negligent landlords (sometimes chronic offenders) will ignore recommendations made by city inspectors. In such cases, the City has the power to carry out the necessary work, at the landlord's expense, but this is a rarity rather than the rule. Few prosecutions of delinquent landlords occur.
20. The issue of housing sanitation disproportionately affects those with low-income. In 2011, the Montreal Public Health Agency (DSP) revealed that humidity and mould are major factors in the development of asthma and other respiratory health problems among children aged 6 months to 12 years. This constitutes a failure to meet the duties set out in the *Convention of the Rights of the Child*. The DSP also found that this issue could also lead to mental health problems such as stress, sleeping disorders, depression and anxiety.
21. In its 2012 annual report, the City's Auditor General reported that based on his study of some districts, only 5% of rental dwellings was inspected by the City. The fact that the City of Montreal has failed to enforce the by-laws is detrimental given the state of Montreal's rental accommodation stock. The City estimates that in 2009, 65% of people in rented accommodation were living in properties built between 1946 and 1980.
22. Additionally, the DSP makes note of the fact that city inspectors lack the necessary tools and equipment to detect hazardous issues such as water infiltration and safe humidity levels. Although community groups have brought this to the attention of Montreal's authorities, their efforts have been ignored at City Hall. This inevitably results in serious violations of residents' right to safe and sanitary housing and a clean environment.