



HUMAN RIGHTS FOR ALL

Canadian Human Rights Commission Dialogue
Session with Representatives from Racialized
Communities on Advancing Racial
Equality in Canada



Canadian
human rights
commission

Commission
canadienne des
droits de la personne

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1. Introduction

“Race is incredibly uncomfortable - no one wants to talk about it.”

- Participant

The Canadian Human Rights Commission has been on a journey of continuous improvement for many years. Over time, much work has been done to increase the Commission’s understanding of the foundation and manifestation of racism in Canada, and to support complainants in vulnerable circumstances through the human rights complaints process. This has included bringing in experts like Dr. Frances Henry, Dr. Rachel Zellars, Fo Niemi and Anthony Morgan to train staff on unconscious bias, the ways in which racism may manifest in Canadian society, and how to identify it within the legal framework of the *Canadian Human Rights Act*. It also included specific training on Islamophobia and anti-Semitism for Complaints staff.

For over five years, the Chief Commissioner has engaged and continues to engage in significant stakeholder outreach where she has been listening, learning and amplifying voices, and leading changes within the organization to reflect the feedback she has heard. In addition, policy and legal staff have developed training materials including case law updates and practical lessons learned advice for use by human rights officers who are responsible for assessing complaints of human rights discrimination. In fall 2019, the Commission launched a pilot project to provide additional investigative, policy and legal support to human rights officers responsible for assessing complaints of discrimination based on race, colour, or national or ethnic origin.

To assist complainants in vulnerable circumstances, the Commission has also adopted plain language principles on its website and in its guidance materials, has simplified its processes, and has created informational videos on human rights and the human rights complaints process. Commission staff also regularly provide support to individuals who require assistance in preparing their complaints or understanding the process. Further, complaints from individuals who are in particularly vulnerable circumstances are prioritized as a matter of course so that their concerns can be dealt with as expeditiously as possible with appropriate legal and policy supports to assess the issues they face. The Commission has also actively engaged with Pro Bono Students Canada and other legal networks, and is involved, with other partners, in a project led by Pro Bono Students Canada and the Ontario Association of Friendship Centres to provide legal support to Indigenous claimants seeking to advance human rights complaints in either federal or provincial jurisdiction. This project may serve as a model for future access to justice initiatives, including such initiatives for racialized Canadians facing discrimination.

On March 4, 2020, Commission members and staff held a one-day dialogue session in Ottawa, Ontario, on the unceded territory of the Algonquin Anishnaabeg People, with representatives of racialized groups from central and eastern Canada. The session served as a forum within which representatives could share their concerns with the effectiveness of the human rights complaints process for race-based complaints, as well as to generate ideas about what the Commission can do to ensure that human rights complaints and the mechanisms that support them remain a viable tool to advance racial equality in Canada.

This paper provides an overview of the day with a particular focus on what the Commission heard from stakeholder participants during the dialogue session.

For additional information, a meeting report and a supplementary report prepared by a consultant the Commission retained for this exercise are attached as appendices to this report.

2. Getting Started: Participant Introductions

The Director of the Complaints Coordination and Equal Access Division acted as the facilitator for the day. She set the stage by encouraging stakeholder participants to be open and frank in their discussions with Commission representatives; explaining that the first goal of the session was to hear participants' perspectives on how the Commission can help advance racial equality.

2.1 Participants

In total, 22 representatives from racialized communities participated in the dialogue session, including:

1. Anthony Morgan, Lawyer and Training and Development Consultant, City of Toronto Confronting Anti-Black Racism Unit (Toronto, ON)
2. Avvy Go, Executive Director, Chinese and Southeast Asian Legal Clinic (Toronto, ON)
3. Delvina Bernard, former Executive Director, Council on African Education (Halifax, NS)
4. Esi Codjoe, former Vice-Chair of Human Rights Tribunal of Ontario; Employment lawyer at Turnpenney Milne LLP (Toronto, ON)
5. Fo Niemi, Co-Founder and Executive Director, Centre for Research-Action on Race Relations (Montreal, QC)
6. Kymberly Franklin, Senior Legal Counsel, Nova Scotia Human Rights Commission (Halifax, NS)
7. Leslie Bisgould, Legal Counsel, Legal Aid Ontario (Toronto, ON)
8. Dr. Lillian Ma, Executive Director, Canadian Race Relations Foundation; former Ontario Human Rights Commissioner and former Member of Immigration and Refugee Board of Canada (Toronto, ON)
9. Mark Hart, former Vice-Chair of Human Rights Tribunal of Ontario, and Consultant (Toronto, ON)
10. Moya Teklu, Special Advisor, Racialized Communities Strategy, Legal Aid Ontario (Toronto, ON)
11. Nana Yanful, Lawyer, Black Legal Action Centre (Toronto, ON)
12. Rawlson King, City of Ottawa Councillor for Rideau-Rockcliffe and former co-Chair of Ottawa Police Service Community Equity Council (Ottawa, ON)

13. Richard Sharpe, Co-Founder, Federal Black Employees Caucus (Ottawa, ON)
14. Roger Love, Client Services Manager (Applications) and Legal Counsel, Human Rights Legal Support Centre (Toronto, ON)
15. Sameha Omer, Director of Legal Affairs, National Council of Canadian Muslims (Ottawa, ON)
16. Seema Lamba, Human Rights Officer, Public Service Alliance of Canada (Ottawa, ON)
17. Dr. Shaheen Azmi, Director of Policy, Education and Outreach, Ontario Human Rights Commission (Toronto, ON).
18. Shahina Siddiqui, Founder and Executive Director, Islamic Social Services Association (Winnipeg, MB)
19. Shawna Hoyte, Afrikan Canadian Prisoner Advocacy Coalition and Dalhousie University Legal Aid (Halifax, NS)
20. Silmy Abdullah, Lawyer, South Asian Legal Clinic of Ontario (Toronto, ON)
21. Yavar Hameed, Barrister and Solicitor, Hameed Law (Ottawa, ON)
22. Michèle Turenne, Legal Counsel, Commission des droits de la personne et des droits la jeunesse (Montreal, QC)

The following Commission representatives participated in the dialogue session:

1. Marie-Claude Landry, Chief Commissioner
2. Edith Bramwell, Commission member
3. Geneviève Cabot, Deputy Chief Commissioner
4. Ian Fine, Executive Director
5. Piero Narducci, Director General, Complaints Services Branch
6. Sherri Helgason, Director, Complaints Coordination and Equal Access Division
7. Elianne Hall, A/Director, Complaints Assessment Division
8. Marie-Josée Frenette, Director, Mediation and Initial Review Division
9. Valerie Phillips, Director, Legal Services Division
10. Tabatha Tranquilla, A/Director, Policy, Research and International Division
11. Asha Jibril, Senior Policy Advisor, Policy, Research and International Division
12. Sasha Hart, Legal Counsel, Legal Services Division
13. Gaston Boisvert, Manager, Complaints Assessment Division
14. Pascale Lagacé, Manager, Complaints Assessment Division
15. Erin Sweeney, A/Manager, Complaints Assessment Division
16. Michelle Carlesimo, A/Manager, Complaints Assessment Division
17. Andrew McArthur, Manager, Initial Review Unit

18. Misha Munim, Human Rights Officer, Complaints Assessment Division
19. Marcia Waldron, Human Rights Officer, Complaints Assessment Division
20. Khatoon Abbasi, Equal Access Advisor, Equal Access Unit
21. Melanie Mohammed, Chief of Staff
22. Janet Rothwell, Communications Advisor

Unless stated otherwise, the use of the term “participant” is intended to refer to the 22 external stakeholders who participated in the dialogue session.

2.2 What the Commission heard during Introductions

During the introductions, participants were asked to introduce themselves to the group and finish the sentence:

"I will have considered the discussions today to have been a success, if I/we..."

Stakeholder participant responses to this activity revolved around three major thematic areas that would prove to be threads throughout the day. They were:

1. Addressing Systemic Discrimination
2. Improving Access to Human Rights Mechanisms, and
3. Increasing Collaboration and Trust

Addressing Systemic Discrimination

Participants said that the Commission should identify steps that it will take to address systemic discrimination, and noted that pursuing systemic complaints will involve acquiring a more nuanced understanding of how racism works, and how unconscious bias can be a factor. Participants viewed that it would be important for the Commission to operationalize the information shared at this session, so as to translate the dialogue into meaningful change.

During this segment of the dialogue session and throughout the rest of the day there were widespread, strongly expressed, and repeated calls for the Commission to provide publicly available data, disaggregated by race. Participants said that such data is vital for acquiring information about who is filing complaints with the Commission, how the Commission is addressing race-based complaints, and whether there are differences in the outcomes of different race-based complaints. It was further emphasized that accessing this kind of data would allow racialized community stakeholder organizations to improve services to clients and determine the likelihood of success of particular kinds of race-based complaints.

Participants also said that it will be important for the Commission to continue to engage relevant stakeholders to assist with developing tools, sharing resources, identifying knowledge gaps, formalizing processes for meaningful discussions, addressing bureaucratic obstacles and identifying best practices. Participants expressed the need for a 'community of practice' to facilitate continued discussion and open sharing of information.

Improving Access to Human Rights Mechanisms

During introductions, participants also made a number of suggestions for improving access to the Commission's complaints process for Black and racialized people. These suggestions included:

- Re-evaluating aspects of the Commission's complaints process;
- Finding ways to institutionalize the experiences, needs and perspectives of low-income Black and racialized people into the process;
- Improving frameworks for accessing human rights; and,
- Devising best practice frameworks to amplify community efforts at addressing race-based complaints and establish measurable outcomes to adapt these frameworks as needed.

Participants also said that the Commission should spend more time identifying barriers in access to justice for racialized communities. It was felt that this would help to both improve individual access to human rights mechanisms, while also identifying specific systemic issues.

Increasing Collaboration and Trust

Participants expressed a need to bring back some sense of optimism for Black and racialized people in order to dispel negative perceptions about the Commission and a lack of trust in the complaint process. Participants were clear that the Commission must *show* Black and racialized people that it can be an ally.

One of the ways the Commission can do this is by ensuring that the results of the dialogue session is translated into meaningful change. This was tied to another theme that would be drawn out more clearly over the course of the day; some participants also said that the Commission must increase its awareness of the lived experience of racialized Canadians and work to understand their perspectives.

To achieve these objectives, participants identified that the Commission would need to engage in continual dialogue with the community of practice to develop tools, share resources, identify knowledge gaps, formalize processes for meaningful discussions, address bureaucratic obstacles and identify best practices.

2.3 What Commission Participants said during Introductions

During the introductory activity, responses from Commission participants focused around three main themes of what success could look like. They were:

1. To have an open, honest and frank discussion about how the Commission can better serve Canadians and improve access to the complaints process.
2. To get feedback from participants about improving the Commission's messaging to Black and racialized people.
3. To work with participants to develop concrete actions plans with measurable outcomes to operationalize feedback and improve the human rights situation for Black and racialized people in Canada.

3. Officially Acknowledging Participants

"Please allow me to thank you in advance for your honesty, your candour and your commitment to meaningful change."

- Chief Commissioner Marie-Claude Landry

Following the roundtable introductions, Chief Commissioner Marie-Claude Landry welcomed participants to the dialogue session sharing some of her own perspectives and hopes for the day. She also acknowledged the invaluable contributions of those around the table.

The Chief Commissioner informed participants that over the last ten years, complaints on the grounds of race, colour, and national and ethnic origin have been the fastest growing category of complaints. Additionally, the second largest category of complaints that the Commission accepted last year were race-related. She acknowledged that race-based complaints are some of the most challenging to investigate, and are further complicated by negative perceptions that often stem from more covert forms of systemic racism.

Although some of the Chief Commissioner's welcoming remarks focused on the Commission and our experience with race-based complaints, the key message was that the Commission cannot improve on its own. She expressed immense gratitude on behalf of the entire Commission for the time that participants have given (and will continue to give) to us, in order to help shine a light on our own unconscious – *or unexamined* – biases. The Chief Commissioner outlined that the Commission has already begun to address the treatment of race-based complaints, and this work will continue, informed by input we receive from a wide range of stakeholders including those participating in the March 4th session.

4. The Commission's Race Pilot Project, and Initial Discussion Questions

"Data is important. You can't argue with data. You can't challenge data."

- Participant

4.1 Pilot Project

Commission staff involved in the Race Pilot Project (RPP) provided a short update on initiatives that the team has undertaken to improve Commission processes relating to the treatment of race-based complaints.

The RPP is intended to equip human rights officers with the necessary knowledge, tools and resources to assess and make informed recommendations about complaints of discrimination on the basis of race, colour, national and ethnic origin. Human rights officers are encouraged to contact members of the RPP directly to seek advice or guidance at any point in the process of assessing discrimination complaints based on race, colour, national or ethnic origin, particularly those in which a recommendation of not to deal with (under section 41(1)(d) for example) or dismissal is anticipated. This support includes providing information on relevant policy, research and legal developments, as well as the proper application of legal and evidentiary principles in the intake and assessment of race-based complaints.

During the presentation, the RPP team shared that research has shown that in comparison to other types of discrimination cases, race-based cases often revolve around circumstantial, rather than direct evidence. As a result, it is necessary for those involved in the examination of such cases to focus on the subtle ways racism can exist. For example, there are situations where policies which may appear neutral actually have negative impacts on racialized groups. Allegations of racial discrimination are particularly complex and difficult to prove due to the evolving nature of prejudiced attitudes and discriminatory behaviour in Canada. While overt forms still exist, racial discrimination often occurs through subtle and subversive forms of differential treatment or disparate impact, which can only be detected by examining the relevant circumstances of a case. Seemingly neutral policies, practices and behaviours can produce or reinforce racial disadvantage. All the more, individuals who truly believe that they are not prejudiced can treat Black and racialized people differently based on biases which they may not be consciously aware of. This creates a complex landscape from which to identify and assess complaints of discrimination on the basis of race, colour, national or ethnic origin.

4.2 Discussion Questions: Part 1

"What gets measured gets done."

- Participant

Prior to the meeting, the Commission had circulated a series of discussion questions¹ focused on the themes of (Commission) "Priorities", "Access to Justice", and "Advocacy". Participants were asked to consider the questions ahead of time and come to the session prepared to share their thoughts and ideas.

The members of the Commission's Race Pilot Project led two large group discussions on the discussion questions that had been circulated, one segment in the morning and the second during the afternoon. Participants were also invited to provide written responses to the rest of the discussion questions at their convenience.

During the morning session, the large group discussion focussed on the first three questions, which were:

1. Please identify 1-3 priority actions that the Commission can take to advance racial equality, improve access to justice for Black and racialized people and address systemic forms of racial discrimination? What would make the biggest difference?
2. Are there any systemic issues that the Commission is missing? (I.e. Systemic issues that we have not yet dealt with, lack the tools or resources to address, or is not covered by the CHRA etc.).
3. In your experience, what are the foremost barriers or challenges racialized complainants face when navigating: i) the Commission's complaints process; and ii) other human rights complaint processes? (I.e. lack of representation, time constraints, reprisals, CHRC's level of profile, awareness of federal, provincial and territorial commissions' jurisdictions and mandates etc.).

Although participants agreed that participants would discuss all three questions, a majority of the discussion during the morning session focused on the first question, relating to priority actions that the Commission should take to advance racial equality.

The following is a summary of what the Commission heard from participants.

Participants identified specific priority areas that they believe the Commission should focus on to have the greatest positive impact on advancing racial equality, improving access to justice for Black and racialized people and addressing systemic forms of racial discrimination. These included:

- Addressing systemic discrimination;

- Collecting and disseminating publicly available complaints data, disaggregated by race;
- Improving access to justice through the complaints process, including providing clearly articulated reasons for decision on race-based complaints; and
- Working to ensure the representation of Black and racialized people at all levels within the Commission and at the Tribunal.

Addressing systemic discrimination

Participants expressed the need for the Commission to take a leadership role in addressing systemic racial inequality issues in Canada. They spoke about the need for the Commission to recognize that under its current process it is difficult to tackle systemic discrimination because, in part, it often comprises both personal *and* systemic components. Some participants suggested that the Commission should divert human and financial resources away from individual complaints and focus them specifically on systemic discrimination issues. Participants identified that addressing systemic discrimination will necessarily involve a recognition of systemic barriers to access to justice, a consideration of such issues as those surrounding Bill C-65, and a concerted effort on the part of the Commission to remove bureaucratic obstacles to the complaint process.

Participants raised that employers are unwilling to provide information about systemic discrimination within their organization and it is unlikely that complainants have access to this information. They suggested that the Commission should harness its resources to assist organizations in obtaining data and information about systemic discrimination from respondent organizations.

It was suggested that many organizations, even large ones, may lack the necessary resources to address systemic discrimination. Some participants were concerned about whether the Commission was adequately resourced to address racism. They suggested that the Commission should make a clear commitment to provide adequate resources to support complainants to navigate its processes.

¹ Discussion Questions [Edocs #2767597](#)

Collecting and Disseminating Disaggregated Data

Participants stressed the need for the Commission to provide publicly available data about complaints, disaggregated by race. One participant noted that racialized groups do not always face discrimination in the same way and, as such, without concrete data, it is not possible to develop an understanding of how discrimination manifests itself on specific groups, and accordingly, how to formulate strategies to address these problems. It was raised that the collection and analysis of disaggregated data provides the ability to direct resources to those who have been most harmed by discriminatory practices.

It was suggested that the Commission can and should source data, studies and other relevant information from third parties who have experience and/or expertise about the existence of racism, and that this information should be made available on the Commission's website.

Participants were particularly interested in information about the kind of complaints that are referred to assessment and/or the Canadian Human Rights Tribunal. It was explained that this is useful information because it can assist individual complainants, particularly those who are self-represented, to establish a *prima facie* case for their complaints. This kind of information could also help advocates to formulate successful strategies to improve racial equality.

Improving access to justice through the complaints process

Participants said that they would like to be able to advise their clients or members that this is a valuable and effective process, but more work needs to be done to improve access to justice for racialized individuals and communities. It was said that the Commission needs to act as a leader in this area by both improving its own processes, and partnering with community groups to highlight broader access to justice challenges impacting racialized communities.

Some measures that were suggested included expanding availability of Commission publications in languages other than English or French. The complaint forms and other documents should be available in other languages and the Commission should be responsible for translation. Another measure is the provision of assistance to potential complainants who may have difficulty in articulating their allegation of racism. Finally, some participants suggested improving systems to ensure that self-represented litigants, including those with mental health issues, are not disadvantaged in the process. One participant noted that "racism is trauma" and so Commission processes need to be sensitive to this, and staff need to take trauma informed approaches.

Participants expressed concerns about the Commission's intake process. It was shared that some Black and racialized people may perceive the role of Intake Analysts as being similar to that of a "gatekeeper." The perception that Intake Analysts have individual discretionary power to accept or reject complaints could act as a deterrent for racialized individuals experiencing discrimination and/or exacerbate distrust in the process. The importance of having a diverse workforce on the "front line" was noted.

Some participants suggested that the Commission needs to provide greater clarity about the reasons for its decisions. It was said that complainants want to know "what is in their heads" when Human Rights Officers make decisions involving the assessment of a complaint they are dealing with. It was recommended that the Commission should work to answer the following questions in each report for decision:

- What working assumptions are necessary to ensure a thorough and effective assessment of race complaints?
- Are there any assumptions that must be actively challenged, whether conscious or unconscious?

It was said that such insight into the decision-making process could serve complainants by informing their submissions to reports, and/or their ability to understand – and potentially challenge – Commission decisions.

Other measures that participants suggested could be beneficial in improving access to justice within the Commission's complaints process included:

- Allocating human and/or financial resources to support unrepresented complainants in navigating the complaints process;
- Raising awareness and developing an evidence base on issues involving racial profiling;
- Increasing Commission wide awareness and understanding of micro-aggressive behaviour and unconscious racial bias, as well as how they may influence interactions between Commission staff and clients;
- Clarifying the differences between sections 5, 7 and 10 of the *Canadian Human Rights Act*, so that complainants can understand how they each might apply to their individual situation. One participant noted that section 5 complaints do not specifically allow for an allegation of systemic discrimination, and so it would be important to address this gap; and
- Increasing Commission engagement with a "community of practice" focused on improving the treatment of race complaints and developing strategies to address systemic discrimination.

Working to ensure representation of Black and racialized people

Participants spoke about the importance of diverse racial representation at all employment levels within the Commission and at the Tribunal. Some felt there was a strong need for employees with anti-oppression backgrounds; essentially participants wanted to know there are people “who look like us” working on complaints that are filed by racialized Canadians. Participants asked the Commission to provide information about representation within the organization as part of its follow up actions.

Participants urged the Commission to engage in ongoing dialogue, and to continue to identify priority issues and partnership opportunities. For example, it was raised that there may be opportunities for the Commission to partner with stakeholders and leverage the Commission’s international role to promote racial equality.

5. Systemic Discrimination: Table Discussions

"It is about what you know and what you do not know. There are certain things you can train, and certain things you cannot train."

- Participant

The next part of the morning session involved small group table discussions held specifically on the topic of Systemic Discrimination. Participants broke into small groups to brainstorm ideas, after which one designate from each group presented their ideas to the larger group. There were a number of common themes that came up, many of which were raised at other points in the day as well. The themes that were raised during this part of the day included:

- Data collection, analysis and dissemination
- Resource allocation for priority issues
- Partnerships and community focused outreach
- Equitable representation and developing capacity within the Commission
- Policy, language and other tools

For ease of reading the themes stemming from each of these small group discussions have been combined and presented together in this section.

Data collection, analysis and dissemination

Once again participants stated that the Commission should provide publicly available data, disaggregated by race. They suggested that the Commission could also use this data to examine potential patterns and inform operational decision-making.

According to participants, the data that is currently available only tells a part of the story. By way of example, one participant shared that there are an estimated 13,600 Black employees who are members of the federal public service, but we have no idea whether progress is being made to ensure these employees are being treated fairly in a human rights context. Some participants also had specific proposals for sourcing data, including using information gained from:

- Existing complaints
- Employment equity scans
- Mediations of race-based complaints

It was further suggested that the Commission could then advise communities how they could use this data to help advance their complaints.

It was shared that the Commission currently does collect some data on race-based complaints (such as the specific grounds identified), however, it does not have access to the specific national or ethnic origin backgrounds of individuals filing complaints on the basis of racial grounds. Some participants suggested tapping into community resources to explore best practices. One participant specifically recommended the work of the Metro Toronto Chinese and Southeast Asian Legal Clinic.

One participant noted that it was surprising that the Commission did not yet collect and provide disaggregated data, noting that “what gets measured gets done.”

Resource allocation for priority issues

Participants recognized the financial and human resource pressures that the Commission is often faced with; however, there were strong sentiments that it should still be allocating some resources to address priority systemic discrimination issues. It was suggested that as part of this exercise, the Commission could engage stakeholders involved in the “community of practice” to obtain feedback in order to identify priority systemic discrimination issues to inform its decisions about resource allocation. Some participants expressed that allocating funding to even one issue at a time would be preferable to failing to fund any.

Participants also said the Commission should clarify how it allocates resources between individual complaints and Commission-driven initiatives on systemic complaints. A number of participants went further, suggesting that the Commission should shift resources away from work on individual complaints to identifying patterns from those complaints and address them using a systemic approach.

Some participants pointed to the work of the Ontario Human Rights Commission as an example of how non-complaint driven initiatives can help tackle systemic discrimination, suggesting that the Commission should not limit its systemic discrimination initiatives to only those that are complaint driven. For example, there are also non-complaint driven initiatives that can address systemic issues, such as undertaking research to develop public communications, educational tools, special reports to Parliament, and/or reports to United Nations bodies².

² An explanation of the Commission’s role in providing reports to United Nations bodies follows on page 18.

Partnerships and community-focused outreach

Participants highlighted that many organizations have acquired a great deal of insight about human rights systems and the best way to approach them. It was pointed out that civil society organizations can also provide tools and guidance to the Commission with respect to community-led complaints and/or systemic discrimination. Participants reminded the Commission that many racialized communities have information readily available, and suggested that the Commission should be looking to further clarify its channels for stakeholder consultations.

Others called on the Commission to promote connections between regional offices, local racialized communities and appropriate industry groups. Participants emphasized that ongoing partnerships could lead to educational tools, websites, guides, studies, manuals, as well as opportunities to cross promote these respective resources. Another partnership idea revolved around training and/or guidance that participants believe the Commission should be providing to other adjudicative bodies that may not have a clear understanding of the way in which Black and racialized people face systemic discrimination.

A few participants called for a Commission-led initiative to lobby for changes to the remedies available under the *Canadian Human Rights Act*. One example of potential changes that was offered included removing the legislative cap on damages that can be awarded by the Canadian Human Rights Tribunal for systemic discrimination. Participants noted that if the Commission were to acquire a clear understanding about the nature of systemic discrimination issue, this information could serve to inform decisions about the type of remedies that should flow from it. One participant expressed concern about workplace violence issues, for example, as raised by Bill C-65, and the implications with respect to determining what is considered to be an adequate remedy.

Equitable Representation within the Commission

Participants reiterated earlier calls for increased representation at all levels within the Commission's organizational structure. Participants believe that, in order to have adequate representation, there must be a balance that takes both the representativeness of employees and their lived experience into account.

Participants agreed that a sophisticated understanding of the issues is needed. They expressed that it is important to see "people who look like us" at all levels of the Commission's structure, specifically noting management, and suggested that there should be purposeful recruitment of people with lived experience of racism, and who understand anti-oppression and anti-racism analytical frameworks. They noted that without representation, there is a disproportionate amount of "hand holding".

Some participants expressed that the diversity in representation among Commission staff, alone, is not effective; diversity also means representation of thought, and further, that it is important that staff should have the ability to analyse allegations of racism through a trauma-based approach. As one participant noted “You want the right people in the right jobs.”

It was suggested that the Commission should give some thought to working with expert professionals, such as social workers, to support individuals on an ongoing basis. Participants viewed that officers at the intake process must really listen to those who provide accounts of their experiences with racism, and document their experience with records that will support later stages in the process.

Policy, language and other tools

There were also calls for policy work about systemic discrimination. An exploration of different types of systemic discrimination sourced from individual complaints to inform discussions about broad societal patterns was suggested as a potential topic by one participant. Another participant suggested that the Commission devise a diagnostic model for assessment, mediation, and policy that could shape our understanding of systemic discrimination, organizational culture, and data collection. Yet another had the idea for the Commission to find ways to capture and share information from mediations to inform our understanding of systemic discrimination.

Participants suggested that there may be merit in exploring the internal employment practices of Canada’s national security organizations as part of such an initiative. Another research idea was for the Commission to examine the race-based complaints that it has dismissed to see if there are patterns that emerge.

One area that provoked much discussion was around the use of language. Participants emphasized that language can serve as a barrier in the discourse. The Commission should be cognizant of and acknowledge the power imbalance inherent in its relations with complainants, which is heightened in its relationship with members of immigrant communities.

Participants advised that Commission staff need to recognize that most complaints involve micro-aggressive behaviour, which makes it difficult for some complainants to articulate their experiences. As one Commission participant indicated, these types of complaints often contain “a story within a story, and our job is to find the complaint within that story so that it can be adjudicated.”

The Commission's role as an NHRI

The Acting Director of the Policy, Research and International Division, explained the role of the Commission as a National Human Rights Institute (NHRI). NHRIs are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote human rights at the national level. NHRIs address the full range of human rights, including civil, political, economic, social and cultural rights.

One of benefits of being recognized as an NHRI is that the Commission has standing on several Geneva-based United Nations treaty bodies that carry out periodic reviews of the human rights situations in member countries. The Commission provides these bodies with "parallel" or "shadow" reports to those provided by the Government of Canada. It also appears before the treaty bodies to respond to questions about the human rights situation in Canada. It was suggested that the Commission reach out to participants and other experts for input into parallel and shadow reports relating to the UN Committee for the Elimination of Racial Discrimination.

During the session, the Chief Commissioner committed that the Commission will continue its active outreach, and will develop tools to foster its relationships with stakeholders, as they in turn provide support to their communities. Participants also expressed interest in continuing to foster partnership opportunities with the Commission.

6. Considerations for Improving the Commission's Human Rights Complaints Process

"I have no idea of the racialized makeup of those [Commission employees] carrying out assessments."

- Participant

The early afternoon session consisted of a discussion about the Commission's human rights complaints process and ideas for how it could be improved to better meet the needs of racialized communities.

6.1 Complaints Overview

The session commenced with brief remarks from members of the Complaint Services management team, who provided an overview of how complaints are analysed, mediated, and assessed before a decision is made by Commission members.

The Director of Mediation Services and Initial Review explained that the aim of the intake process is to ensure that potential complaints meet the statutory criteria for receivability, for example, that complaints are within the Commission's jurisdiction and mandate. A triage team reviews complaints, and identifies those that raise systemic issues, or ones where there is significant complainant vulnerability. Part of the triage function is to determine next steps for complaints moving forward. There is a challenge in balancing the operations of the intake process with staff development and training, representation, and optimal use of resources. In mediation, an experienced mediator brings the parties together, normally over the course of a full day, with the objective of trying to resolve the issues that led to the complaint being filed.

The Acting Director of the Complaints Assessment Division explained the assessment process. There are two types of assessments, one under section 41 of the *Canadian Human Rights Act*, and one which is based on the merits of the complaint. It was explained that there has been a significant increase in the number of complaints, which has led to pressure on resources. The Assessment Division is currently working on developing training and tools, and some of these are being developed with the Race Pilot team. It is clear that additional work is needed on the question of dealing effectively with systemic discrimination. With respect to merit-based complaints, the process allows for direct referral to the Tribunal without a full assessment of the merits.

6.2 Participant Observations and Suggestions

This part of the dialogue mainly focused on the need for the Commission to examine its human rights complaints process and consider potential changes in areas such as:

- Language and communication

- Our expectations of complainants
- Our intake process,
- Our mediation process,
- Our complaints assessment process
- Staff development and training
- Supports for complainants
- Data collection and dissemination

During this part of the day, participants also identified barriers in access to justice within the larger national human rights system.

Language and Communication

There was general agreement among participants that the Commission should review its communications processes. Participants noted that telephone communications can be challenging or harmful for some complainants, and that staff should always try to listen without bias or quick judgement but with openness and empathy so that complainants feel they are being heard.

A number of participants raised concern about the use of certain language. They said there is a need to “de-colonize the organization” and language can act as a starting point. In fact, some participants had very specific suggestions for how the Commission change the language it uses with respect to its treatment of complaints.

The following table provides a record of these suggested changes:

Current Language	Proposed New Language	Rationale
Complaints	Claims	The term “complaints” is jarring
Merit-based complaints, no link, frivolous, trivial	Replace with language that speaks more to jurisdiction	These terms are demeaning
The Commission <i>may</i> consider complaints not submitted in English or French	The Commission <i>will</i> consider complaints not submitted in English or French	Ensures greater access for racialized individuals whose first language may not be English or French
Inclusive	Togetherness and building something together	It is a buzzword that implies the Commission has a role as gatekeeper
Evidence	No specifics provided	Explore using language that is more supportive and does not imply such a heavy burden of proof on the part of complainants

The Commission's Expectations of Complainants

Participants discussed the constraints posed by the Commission's three-page limit for complaint forms. Some felt that racialized complainants would not be able to articulate the nuances of their lived experiences of discrimination within this limitation. Others pointed out that it may be asking too much of complainants to frame systemic discrimination issues in three pages. Moreover, participants felt that the three-page limit can prove challenging for self-represented complainants to be able to draft their complaints in a way that allows for a reasonable prospect of success. Some participants noted that positions for merit-based and section 41 assessments do not have a page-limit. Another participant expressed concern about the fact that the timelines for filling complaints appear to have become tighter or less flexible over the years.

The Commission's Intake Process

Many participants expressed concern over the Commission's current intake process, particularly as some participants held the belief that intake officers have discretionary power to make decisions about whether to accept complaints. The concern was that this discretion could lead the Commission to dismiss a complaint at a very low level, potentially giving rise to issues with procedural fairness.

There were suggestions by some participants to enact safeguards to avoid decision-making at intake without a review process. Others went further, questioning whether there is any value-added by having a "gatekeeper" role. One participant questioned whether Intake Analysts end up "...thinking they are doing the job of the Tribunal." Some participants suggested that this raises issues surrounding judicial review processes.

Part of the discussion also focused on the fact that some complainants may struggle to articulate their experiences or make the necessary link to a ground without assistance. This is of particular concern for self-represented complainants, as they may be unaware of the type of information that is required for a complaint to be accepted. One participant shared that, in Nova Scotia, complainants have access to lawyers who can respond to questions from complainants about the provincial human rights complaints process. The participant noted that at the Nova Scotia Human Rights Commission, complainants are asked if they would like to speak to someone from their community. The representative indicated that the Commission was concerned that they had lost the trust of the communities, and were doing what they could to address that concern.

Participants encouraged Commission staff to really listen to people who provide accounts of their experiences with racism, and to help them record those experiences in a way that supports adjudicative processes.

Some participants wondered if Intake Analysts are overwhelmed by the sheer volume of complaints that they deal with, and if this results in fatigue. One participant posited that fatigue is problematic because it may lead analysts to more quickly review race-based complaints when in fact allegations of racial discrimination are particularly complex and difficult to prove due to the evolving nature of prejudiced attitudes and discriminatory behavior. Racial discrimination often occurs through subtle and subversive forms of differential treatment or disparate impact, which can only be detected by examining the relevant circumstances of a case. As a result, analysts may fall back on inherent biases when looking at race-based complaints, or devote greater focus to complaints that are easier to understand or relate to.

The Commission's Mediation Process

Some participants would like to see improvements in the mediation and settlement processes. For example, participants expressed concerns that data in complaints filed on the basis of race, colour or national or ethnic origin that are settled through mediation may not be captured in the larger complaints stats. Further, some participants were concerned that systemic remedies should not be confidential.

The Commission's Complaints Assessment Process

A few participants felt that there is a need to develop a process for dialogue as part of the section 41 process. One participant observed that the accelerated section 41 process appeared to be a duplication of the Commission's triage function.

With respect to section 41(1)(a) jurisdictional issues, participants expressed concerns / reflections about systemic barriers that are built into legislation in other jurisdictions.

One participant stressed that there are no meaningful remedies in grievances and union processes for staffing processes.

Participants called for Human Rights Officers to write clearly articulated reasons for their recommendations, with an explanation about why a case will or will not be recommended to proceed to the Canadian Human Rights Tribunal. One participant suggested a secondary review process for complaints that are being recommended for dismissal. In view of the time and resources needed for Human Rights Officers to carry out assessments, another suggestion was to consider implementing a less labour intensive assessment process by forwarding complaints that have basic merit to the Tribunal so that it may carry out the full assessment.

Participants noted that, as a priority, the Commission could create a review mechanism for the investigation of race complaints. Suggestions included establishing a committee of community interveners to review recommendations not to deal with or to dismiss complaints, having a senior officer review reports with the final level of review being the CEO, and providing the RPP team with support and sufficient resources.

Participants shared that a bias against complaints of racism exists within administrative bodies and tribunals, and can manifest itself in a number of ways, including through staff skepticism, disbelief, and/or minimization of a complainant's experience. Other participants noted that the Commission must recognize that Black and racialized people do not all experience racism in the same way. There are many factors that can lead to differences, including disability, language (especially for newcomers), faith (e.g. Muslims) and differing levels of legal knowledge.

The Commission was further reminded that it should always carefully consider the specific experience of racialized communities so as not to minimize, dismiss or delegitimize specific accounts. Similarly, some participants cautioned that the Commission must be mindful of any tendency to consider racialized complainants' accounts of their experiences of racism to be bolstered by supporting evidence that is provided by a white person.

The issue of evidentiary standards was a topic raised by a number of participants. There was a general sentiment that the Commission can leverage its position to help complainants to obtain evidence, given that much of the evidence relevant to a complaint lies in the hands of the respondent.

Participants suggested that the Commission should review studies of racial discrimination in the first instance for establishing a prima facie case, but should be aware of commonly held stereotypes and beliefs that can serve as a link (data, inquiries etc. can shed light on this). If there isn't research in this area, then the Commission can request that it be provided.

It was recommended that Commission staff should continually challenge their working assumptions. Participants noted the following as examples of assumptions that should be avoided:

- a. Assumption 1: If the complainant's version of events is supported by a white person, then it is valid.
- b. Assumption 2: The employer should be believed.
- c. Assumption 3: That it is okay to say, 'I do not believe this person.'
 - i. Participants stressed that this is not the function of the Commission. It is the function of the Tribunal.
- d. Assumption 4: The respondent has policies and/or training in place, therefore racial discrimination must not have occurred.
 - i. Participants stressed that this does not disprove the existence of racial discrimination.

Staff development and training

Participants felt the Commission should provide training opportunities and hold employees accountable for acquiring a particular level of knowledge and understanding about systemic discrimination issues. Participants noted that adequate staff training could help ensure more consistency in the analysis of race-based complaints, which in turn could lead to greater consistency in the decisions made in relation to these type of complaints. It was suggested that some amount of self-reflection is needed on the part of management and employees who carry out this work, and that this should be part of any training provided.

It was suggested that officers and analysts should be trained before they are assigned to assess a complaint. Participants identified that representation is key since there are certain things that you can train and certain things that you cannot train. They also suggested that exams for analyst and officers that test their ability to assess complaints could be implemented, similar to exams for legal positions.

Supports for complainants

Participants stated that there is a lack of supports in place for complainants who need assistance with articulating the link to a ground. They may be unaware of the type of information that is required for the complaint. This is of particular concern for self-represented complainants. Some participants suggested that some complainants may not understand the differences between sections 7 and 10 of the *Canadian Human Rights Act*, as well as the potential differences in scope of a complaint under each of these sections.

Data collection and dissemination

As was observed during earlier discussions, participants repeated their calls for the Commission to provide data disaggregated by race. As one participant stated, "*Race is incredibly uncomfortable. No one wants to talk about it. That is why data is important. You can't argue with data. You can't challenge data.*"

General Barriers in the National Human Rights System

While most of the conversation focused on ways to adapt the Commission's process, there was some discussion about barriers in access to human rights justice that exist in the national human rights system. For example, participants said that the current process for judicial review can act as a barrier, because it requires individuals to retain the services of a lawyer.

Some participants observed that moving the national system toward a direct access model could allow the Commission to focus on knowledge building, data collection, research and supporting complainants.

6.3 Preliminary Responses from Commission Participants

Commission participants addressed some of the concerns raised during this session.

The General Counsel and Director of the Legal Services Division explained that relevant case law has determined that there must be a basis for a complaint in law or in fact, not just “bald assertions.” The Commission is trying to devise additional tools to improve assessment of the information in complaints. With respect to screening and referring cases at the intake stage, *Figliola* and other decisions have established that the Commission does not have a monopoly on human rights protection. Many other bodies can also address human rights issues. She pointed out that although we use the word “subtle” to describe discrimination based on race, in reality, this type of discrimination is vicious, damaging and brutal. However, assessing them is challenging because of the evidence-based process that is required under the statutory framework.

The Director of the Mediation Services and Initial Review Division explained that Human Rights Analysts, who do intake, do not make decisions about complaints but do have a screening role. A triage team comprised of Legal, Policy and operational representatives, reviews complaints to ensure objectivity and a control mechanism for screening and to determine next steps. She indicated that the screening processes can always be improved, and plans are underway to provide additional training to intake and other staff. She noted that Commission staff sometimes do assist complainants, particularly those in vulnerable circumstances, to write their complaints. With respect to data collection, the Commission does not presently ask complainants to identify their race, gender, or other characteristics, however, if they were to decide to self-identify, this information could be a useful source of data.

The Acting Director of the Complaints Assessment Division took note of participants’ concerns about language, and advised that the Commission is mindful of the impacts of its use of language, specifically in reports that recommend the dismissal of complaints, or those recommending that a complaint not be dealt with pursuant to section 41.

7. Evidentiary Standards, and Follow-Up on Discussion Questions

Discussion Questions: Part 2

A member of the Race Pilot Project team led a follow-up discussion on the following questions that had previously been circulated to participants:

- The type of evidence sought when assessing systemic discrimination;
- The currency of criteria for assessing complaints;
- The type of evidence needed to show a “subtle scent of discrimination”;
- Situations where there is an absence of documentary evidence;
- Assessments for complaints involving adverse impact.

Participants noted that Black and racialized people often bear the onus for proving the veracity of their claims and suggested that the Commission should examine the types of evidence it requests from complainants in race-based cases, and consider if it needs to adjust its focus. There was a general agreement that the Commission should be leveraging its position to help complainants obtain evidence, particularly since much of the evidence required for a complaint often lies in the hands of the respondent. Participants suggested that Human Rights Officers should “peel back the layers” to consider the totality of the evidence, and not just one piece of evidence.

It was suggested that many respondents may not realize that there are systemic issues within their organizations. Similarly, many complainants may not realize that their complaints raise systemic issues. Moreover, although they are required to collect data about race under the *Employment Equity Act*, there are limitations in the collection of this data, and it does not necessarily lead to the ability to identify patterns for evidentiary purposes. Some participants suggested using Access to Information and Privacy (ATIP) requests to obtain information that respondents may be unwilling to provide. Others suggested drawing an adverse inference in situations where respondents cannot provide concrete data to show the absence of discrimination.

There was general agreement amongst participants that Human Rights Officers should accord less importance to respondents’ statistics and stated policies about race when assessing evidence. Commission staff should re-consider what a “neutral” policy is and unpack what this means, and how Black and racialized people are impacted by the application of such a policy. The existence of policies and statistics does not disprove discrimination; a more nuanced focus would be to carefully consider the impacts.

Some participants suggested that the Commission should treat race-based discrimination in the same way as sex-based discrimination with respect to how it assesses the evidence and what evidence is required from complainants. An example was cited that a sexual harassment complaint filed by a female complainant would most likely be assigned to a female human rights officer who is able to relate with the complainant. Similarly, a complainant who filed a race-based complaint would more likely be at ease interacting with a human rights officer who also looks like them and /or has similar lived experiences. Additionally, some participants offered that rather than using the term "evidence", which implies a burden of proof, the Commission needs to put in place additional support mechanisms to assist complainants who filed race-based complaints to meet the Commission's threshold standards to support their complaint.

Participants raised concerns that human rights officers tend to question a complainant's "credibility" in race-based discrimination complaints. They also said that there is a tendency for human rights officers to give greater credibility to a complainant's account of discrimination or racism when it is supported by a white witness, or evidence provided by a white person. Participants suggested that Commission staff should believe complainants, unless it can be proven otherwise, and leave the role of assessing credibility to the Canadian Human Rights Tribunal.

Participants observed that a bias against complaints of racism exists within administrative bodies and tribunals; it is real and manifests itself in a number of ways – through skepticism, disbelief, and minimization of lived experience. It was suggested that Human Rights Officers should carefully consider the specific experiences of racialized communities so that they do not minimize, dismiss, or delegitimize these accounts. They should be mindful of community held stereotypes, which themselves can help to establish a link to a ground. Participants outlined that with respect to the assessment of systemic complaints, Commission staff should consider the body of evidence and research about such issues a "driving while black" and "shopping while black."

Participants overall expressed the view that the Commission must challenge the "Euro-centric approach" to what constitutes evidence, how evidence is gathered and even whether evidence should be assessed within a strictly legal framework. Not all evidence will be included in documentation, and not all evidence will indicate measurable patterns. It was suggested that the Commission should seek feedback from racialized communities about what constitutes evidence, as the lived-experiences of Black and racialized people need to inform evidence-based processes. As one participant observed; the Commission may not need to abandon the legal way of gathering evidence entirely, but it may need to acknowledge that there are different ways of knowing something.

8. Moving Forward: Where do we go from here?

"If racism can be institutionalized, why can't anti-racism be institutionalized?"

- Participant

As the dialogue session drew to a close, participants provided their thoughts on follow up work that the Commission could undertake in relation to the issues discussed throughout the day. These ideas included:

- Following up with participants to provide information about the policies and practices that the Commission is implementing with regard to data collection and measurable change, improving employee representation, and allocating human and financial resources to address systemic issues;
- Making the work of the Race Pilot Project team a permanent aspect of the Commission's processes;
- Finding ways to increase transparency within the Commission's processes;
- Providing support to complainants throughout the complaints process, including providing post-complaint supports within local communities;
- Reconsidering the way the Commission assesses evidence, including the sufficiency of evidence, and issues surrounding the credibility of the evidence that Black and racialized people bring forth.

One of the final sentiments shared was that participants will continue to hold the Commission accountable for showing improvements in the areas that were discussed during the dialogue session.

For its part, the Commission is committed to developing an action plan to move forward on the issues that were raised during the dialogue session. This includes continuing the dialogue with racialized communities to develop a wider "community of practice" to support the implementation of the action plan.

Appendix A: CHRC Meeting with Stakeholder Groups representing Black and Racialized People – Consultant's Report

Appendix B: Supplementary Report and Recommendations from March 4, 2020 Stakeholder Meeting – Consultant's Report

Appendix A: CHRC Meeting with Stakeholder Groups representing Black and Racialized People

Consultant's Report

Prepared by: Mark Hart

Introduction

1. The Canadian Human Rights Commission held a full-day meeting in Ottawa on March 4, 2020, identified as an "Expert Dialogue Session on Access to the Complaints System". The meeting was attended by Commission staff and representatives of stakeholder groups representing Black and racialized people.
2. At this meeting, practitioners and representatives from a variety of disciplines were consulted on how to improve the complaints process. The Commission's objective for the session was to foster dialogue with participants on what the Commission can do to ensure that human rights complaints filed by racialized claimants remain a viable tool to advance racial equality in Canada.
3. I have been retained by the Commission as a consultant to assist the Commission in updating the criteria and guidelines it currently uses to assess race-based cases, to develop specific tools and resources for Commission staff to use in working on race-based cases, to prepare a report outlining recommendations for strengthening the Commission's assessment of race-based cases, and to provide a full-day training session for Commission staff on the updated criteria and guidelines, the tools and resources for race-based cases, and on other ways to strengthen the Commission's handling and assessment of race-based cases.
4. I also was retained by the Commission to attend the March 4 meeting, and to prepare a report setting out the feedback received from the participants, as it relates to the other work I have been retained to do.
5. Rather than taking a simple chronological approach to describing the feedback from this meeting, I instead have distilled the participants' feedback and organized it into separate issues, with the hope that by doing so, the feedback will be more comprehensible and helpful to the Commission.

6. The purpose of this Report is to set out the various issues and concerns raised by the meeting participants. As such, this Report should be read as a description of the various issues and concerns that the Commission needs to consider in order to strengthen its handling of race-based cases. This Report is not intended to specifically address or respond to the issues and concerns raised, or to provide any particular recommendations or plans of action in relation to those issues and concerns. Those matters will be addressed through the other work I have been retained to do.
7. You will note that in this Report, I use the term "claimant" rather than "complainant". This is based on a comment made by a participant at the meeting, with whom I agree, that "claimant" is a preferable and less derogatory-sounding term.

Intake and Initial Review

8. Concern was expressed about the level of support provided to claimants at the intake stage of the process. The Commission explained that it has seen an increase in claimant needs, with more claimants having mental health needs, more being self-represented, and an overall increase in people filing complaints. The Commission expressed that it wants to be responsive to these needs, but also needs to balance its resources and ensure that the process is moving forward in an acceptable timeframe. The Commission advised that its staff sometimes are involved in writing complaints for claimants, but due to resource issues, this assistance needs to be reserved for the most vulnerable.
9. The Commission advised that it has partnered with community groups in order to assist claimants in preparing complaints. Specific mention was made of a partnership with groups in the disability community, as well as funding to support Indigenous community groups to help with drafting complaints. Support for these initiatives was expressed at the meeting, and for the need to extend these initiatives to encompass race-based complaints.
10. It was specifically expressed that the Commission could collaborate with community groups on the ground to assist with intake. For example, community groups could assist by providing claimants with language assistance, by ensuring that they understand what information and details are required for the complaint, and by questioning claimants to ensure that all supporting information and additional details are obtained. It was noted that doing this work can sometimes result in multiple grounds of discrimination being identified.
11. It was stated that the Commission should consider how to empower communities to help themselves, and whether the Commission has the resources and means to go into communities to educate them about what the Commission needs from them.
12. Particular concern was expressed about what were described as “bureaucratic obstacles” at the front end, and a feeling of being in a “constant fight” with the Commission in the early stages. In this regard, concern specifically was raised at what was described as “intake officer decisions” that a complaint does not fall within the CHRA. This was described as not being an official Commission decision under s. 41(1) of the CHRA, but just a letter from an intake officer. This requires a claimant to do additional work to respond to questions asked by the intake officer regarding the Commission’s jurisdiction and to incur additional legal costs where represented, and was described as an “additional layer of bureaucracy”. Concern was further expressed about whether there was any internal review mechanism in relation to these intake officer decisions. It was stated that the Nova Scotia HRC found that too many complaints were being dismissed when no review mechanism was in place.

13. The Commission explained that letters sent out by its Initial Review staff do not represent a Commission decision or an official dismissal of the complaint. However, it was noted that the Commission does perform a screening role at the front end. For example, if a person comes to the Commission with a provincial matter, then the Commission wants to refer them to a provincial human rights commission as soon as possible, and tries to do so more informally at the front end rather than requesting formal submissions under s. 41(1).
14. Concern was further expressed about the Commission's use of the accelerated s. 41 process, especially where the intake officer already has requested a response from the claimant to questions about jurisdiction. The concern is that a claimant will provide the information in response to these questions, and then be confronted with a recommendation for dismissal under s. 41 under the accelerated process, without any such request or objection having been raised by the respondent. This was seen as being duplicative, with the suggestion being simply to proceed directly to the s. 41 stage and skip the initial request for a response to jurisdictional questions.
15. Concern was expressed about the current three-page limit for complaints, which was characterized as being too limiting for race-based complaints. It also was noted that while there is a three-page limit for the complaint, there is no page limit on the claimant's submissions in response to jurisdiction questions raised at the intake stage.
16. Questions were raised about the training, and specifically the legal training, provided to intake staff. Concern was expressed that if intake staff are not legally trained, they may fall into a place where they think that they are doing the Tribunal's work and take too aggressive an approach to sifting through cases. Concern also was expressed about the structural framework for the Commission's work, particularly in relation to resource issues. When dealing with limited resources, concern was expressed that intake staff may default to things that they can more easily understand, such as allegations of gender or disability discrimination, and that race cases may be too hard to understand and so may be dismissed more readily. The question was raised as to whether this explains why the numbers look the way they do. It also was noted that some officers can pick out the minutiae of a claimant's allegations and some can't.
17. The Commission recognized that the training of intake staff is extremely important, and referenced the full-day training that already had been provided on unconscious bias and race analysis last June. The Commission also noted that complaints are reviewed by a triage team, which is assisted by legal staff, and that lawyers are available for consulting as needed. Nonetheless, the Commission acknowledged that its intake team needs to help claimants better express racism and racial discrimination in complaints, and to shape up complaints to address any systemic aspects of the allegations. The Commission also stated that its intake team should reflect the diversity of the claimants served.

18. Finally, concern was expressed about Commission staff questioning a claimant at the intake stage as to whether they are relying on s. 7 or s. 10 or both in relation to employment complaints. The concern is that once a complaint proceeds under s. 10, it takes on a systemic dimension which may be beyond the claimant's ability to properly address. It was noted that the impact is really seen when cases proceed to the Tribunal under s. 10, because then the claimant is going against the respondent's entire processes, practices and policies. The question was raised as to what can be done to make a claimant better understand the difference between s. 7 and s. 10 for the purpose of making any decision that may be required at the intake stage.

Mediation

19. There was not much discussion of the Commission's mediation process at the meeting. The Commission expressed that its challenge when reviewing the statistics, is that its mediators are having less success in resolving race-based complaints than complaints filed on other grounds, and the Commission is concerned about how that can be improved.
20. One concern expressed at the meeting was whether the Commission was "losing information" about complaints that are referred to mediation and settled. The suggestion was made that the Commission should think of ways to capture this information.

Sections 41(1)(a) and (b)

21. Concern was expressed about ss. 41(1)(a) and (b) of the CHRA representing a barrier for race-based complaints and an access to justice issue especially for unionized employees, who were described as “victims of the *Parry Sound* decision”.
22. Concern was expressed that other forums, such as grievance or staffing processes, may not have meaningful remedies for claimants. While it is recognized that the caselaw says that the Commission can dismiss a complaint under ss. 41(1)(a) and (b) even if the other process doesn't provide the same remedies, this still represents a systemic barrier for unionized employees. It was felt that the criteria being applied by the Commission under s. 41(1)(a) and (b) needs to be carefully examined. It was noted that people need meaningful access to the Commission, especially if they feel they have experienced racial discrimination.
23. Concern particularly was expressed about Bill C-65 and race-based workplace violence and harassment investigations, and whether the Commission will determine that this is more appropriate procedure under s. 41(1)(a) or (b).
24. Concern also was expressed that sometimes the Commission won't deal with a complaint under ss. 41(1)(a) or (b) because it could be more appropriately dealt with under a grievance or review procedure or some other statutory procedure, but people are not satisfied that the issues they have raised have really been dealt with through the other procedure. It was expressed that the Commission needs to consider whether the other procedure has really dealt with all of the issues raised.
25. A question was raised as to whether the Commission could group cases together to address larger issues, such as issues under ss. 41(1)(a) or (b) as to whether a complaint could more appropriately be dealt with under a grievance or review procedure or some other statutory procedure, and perhaps involve intervenors.
26. The Commission noted that it already has a large caseload, and the courts have given clear direction that human rights commissions and tribunals are not the only fora capable of dealing with human rights issues, referencing *Figliola*, *Penner*, *Parry Sound* and *Tranchemontagne*. It was further noted that the Supreme Court of Canada recently granted leave in *Northern Regional Health Authority v. Linda Horrocks*, 2020 CanLII 15306 (SCC), in which the issue is raised as to whether labour arbitrators and human rights commissions and tribunals have concurrent jurisdiction or whether labour arbitrators have exclusive jurisdiction over human rights issues raised through the grievance process.

Section 41(1)(d)

27. Questions were raised about how the Commission conducts its assessments under s. 41(1)(d), particularly in light of the evidentiary challenges faced by claimants especially in race-based cases. An analogy was drawn to the summary hearing process at the Human Rights Tribunal of Ontario ("HRTO"), where the HRTO holds a preliminary hearing to hear submissions from the parties as to whether the claim has a reasonable prospect of success. At that stage, the evidentiary standard is lower, and the HRTO considers whether the claimant has a legally viable claim. The facts alleged by the claimant are presumed to be true, and while the claimant will be asked to point to evidence to support the claim, this is done with recognition that the claim is at a very early stage and relevant evidence and documents are in the hands of the respondent. This approach recognizes that, at this preliminary stage, the claimant may not have all of the evidence to support their claim, but it may be out there and justifies further inquiry or investigation, not summary dismissal. The question was raised as to whether the Commission's assessment officers were operating within that framework when assessing complaints under s. 41(1)(d).
28. The Commission noted that it was stuck with the language in the Act, which requires that a claimant have "reasonable grounds for believing" that they have been subjected to a discriminatory practice. As a result, the Commission is required to test whether there is a basis in fact and law to support the allegation. This needs to be more than a bald assertion to support an alleged link or connection between the acts complained of and the discriminatory ground cited. It was stated that this makes a difference in race cases, where there typically are no witnesses or documents to support the allegation, and the Commission needs to be looking at different ways to prove race discrimination.
29. Concern also was raised about the Commission's reliance on s. 41(1)(d) when considering potential dismissal of a race-based complaint because there is an insufficient basis to support a connection or link to a race-related ground. It was noted that in such circumstances, the language of whether such a complaint is "frivolous" or "vexatious" is demeaning to claimants who, whether they can legally support it or not, nonetheless have a sincerely-held belief that they have experienced racial discrimination. It was noted that at the HRTO, such cases are dealt with on the basis of the HRTO having no jurisdiction (which is equivalent to s. 41(1)(c) of the CHRA) in cases where it is "plain and obvious" that there is no link or connection to a protected ground. So under the Ontario *Code*, the tribunal has moved away from using terms like "frivolous" or "vexatious" in favour of dealing with such issues on a jurisdictional basis.

Investigation

30. It was recognized that the Commission faces significant resource limitations and that the investigation process is time-intensive. The question was raised as to whether, if a race-based complaint meets a bare threshold of merit under s. 41(1), there might be a way for the Commission to use a triage process to review these cases and consider whether to simply push them to the Tribunal, rather than having these cases get bogged down by the level of scrutiny required in an investigation. One way to do this would be simply to refer such complaints to the Tribunal under s. 49, rather than conducting an investigation as required under s. 44.
31. The view was expressed that too often, there is an expectation that the claimant already has all of the evidence required to support their claim, when in fact they don't. It was stated that it is really up to the Commission to gather this evidence, and to make sure the respondent is providing this evidence. There needs to be more robust requests and efforts by the Commission to go after this information, which the employer tends not to provide to individual claimants. It was observed that a lot of evidence lies within the hands of the respondent, and the question was raised regarding the extent to which the Commission could leverage its powers to get this evidence.
32. It was observed that it can't reasonably be expected that a claimant, especially a self-represented claimant, will be able to present all of the evidence relevant to assessing whether their claim is supported. Putting this onus on the claimant shifts the focus away from Commission staff. The real question should be, what kinds of evidence should the Commission be seeking and/or asking for to properly assess a race-based complaint? It is important not to place too much emphasis on the claimant for this evidence, as the claimant typically will not have access to the kind of evidence, information and/or documents required to establish discriminatory patterns, such as evidence regarding similar treatment of other racialized employees or differential treatment of non-racialized employees. This kind of evidence is generally within the control of the respondent. The issue of what evidence the claimant can present to support their allegations is only relevant at the s. 41 stage, where there is a very low threshold and where the Commission should be actively seeking from the claimant, and assisting the claimant in presenting, relevant evidence to support the link or connection to race.
33. Concern was expressed about the use of telephone interviews in the investigation process. While it was recognized that there may be situations where this is required due to long distances or disability accommodations, the importance of face-to-face contact cannot be under-estimated. It was expressed that conducting only a telephone investigation or interview, especially with the claimant, can leave the person feeling that they have not been heard, and inevitably involves missed opportunities for communications that can only happen when meeting face-to-face.

34. Where the investigation involves the reliance on or application of policies, it was noted that it often is not the policy on its face, but nuances as to how the policy is applied in the specific circumstances which results in adverse impact. It was observed that, on the face of the policy, if the investigating officer doesn't have a critical race lens and is not immersed in race analysis, then they may not recognize the discrimination in how the policy was relied on or applied and may believe that there was no discrimination. Another participant observed that when reference is made to "seemingly neutral policies", it is important to understand who is saying that the policy is neutral, and whether this assertion is being made by the employer.
35. With regard to conclusions reached by investigating officers as to whether there was discrimination and/or systemic discrimination in an institution, reference was made to research demonstrating that the mere existence of human rights policies or the mere fact that an institution has delivered human rights training does not disprove the existence of discrimination. It was noted that research like this should be used and relied upon to guide the investigation process.
36. It was observed that when making a recommendation under s. 44 of the *CHRA*, there appears to be a blurring of the lines at the Commission between its proper role in assessing the sufficiency of the evidence in supporting the complaint, as opposed to exercising the decision-making function that is reserved for the Tribunal. It was noted that it is important for the assessment report to provide sufficient reasons to justify dismissing a complaint at the s. 44 stage, without crossing the line to exercising the function given to the Tribunal. Further, where a referral recommendation is being made, it was noted that it was important for the assessment officer to write a strong report supporting a race-based case because not everyone "gets it".
37. It also was noted that the Commission needs to demonstrate a nuanced understanding about how racism and racial discrimination is experienced by different racialized groups, and the different racial biases and stereotypes and different forms or patterns of discrimination different groups are subjected to.
38. There further is a need for the Commission to remain alive to intersectionality issues in race-based cases, for example how Muslim or Black women can experience the double disadvantage of racial and gender discrimination in a way that is different than the experience of racial discrimination by men.

Evidence from the Claimant

39. A number of observations were made about how the claimant's own statements about what occurred are regarded and treated by the Commission.
40. One participant observed that Commission staff should be operating on the basis that the claimant's word is their evidence. Another participant observed that the claimant's word should be taken at face value, unless there is evidence to the contrary. An analogy was drawn to sexual harassment cases, where it was long ago recognized that there is unlikely to be any witnesses or documentary evidence, but that this should not prevent a claimant from being believed. Concern was expressed that a different standard seemed to be applied in race-based cases.
41. These views were echoed by another participant, who observed that at the Commission, it seemed that staff were not taking the complaint as written by the claimant as being true, despite the fact that the claimant had confirmed the truth of their statements on the complaint form. It was observed that at other tribunals, like the Immigration and Refugee Board members are taught that when a claimant swears to a statement, it has to be taken as true unless there is reason to disbelieve it. The evidence of a witness, including the claimant, should be believed unless there is proof to the contrary.
42. It was observed that, at the Commission, this point is particularly important, because it is not the Commission's proper role as a screening body to be assessing or testing credibility. That is the proper role of the Tribunal.
43. It was further observed that, if the Commission states in a report that there is no witness evidence or documents to support the claimant's allegations, and concludes that there is "no evidence" to support the complaint, then the Commission fundamentally is not believing the statements made by the claimant.
44. As expressed by one participant, it is important to carefully examine why one race-based case makes it to the Tribunal while another doesn't. When making a dismissal recommendation, it is important for the assessment officer to be able to articulate why that recommendation is being made. If part of the reason comes down to the fact that the officer did not believe the claimant, then that is a problem. In addition, dismissal recommendations often come down to not understanding the real issue, and then the issue becomes how to build capacity to make sure people are applying the appropriate race analysis.
45. As stated by another participant, the discussion of this issue was a reminder that problem is not that claimants and their representatives and supporters are not bringing the evidence in support of their claims, but rather it is the analysis of this evidence that is the problem.

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46. Some participants put this issue in the context of slavery and the history of anti-Black racism, given that 35% of race-based complaints are filed by Black claimants. Disbelieving the claimant's own statements needs to be confronted in the context of the history of Black people not being seen or believed by decision-making bodies like the courts. It was specifically observed that there is a working assumption that if a complaint by a racialized claimant is supported by the evidence of a White person, then it has more credibility. It was noted that this kind of working assumption is rooted in racism and slavery, because people who were racialized were not regarded by the Tribunals as "persons", so their statements were not considered evidence unless corroborated by a White person.
 47. Reference was made to the existence of an "anti-claimant bias" among people working at human rights commissions and tribunals, where one starts from a place of disbelief, skepticism, minimization and challenge to the claimant's lived experience, unless and until the claimant can sufficiently prove the truth of their allegations. On the other hand, there is a greater willingness to accept and/or believe the respondent's version of events, unless there is proof to the contrary. Particularly where the respondent is a large, sophisticated organization, the attitude too often is that they should be believed because things like racial discrimination simply don't happen in such places, when in fact, the problem of racial bias affects all organizations. There is a need for Commission staff to be aware of and to actively challenge any such bias, in a working environment where they are supported in doing so.
 48. It was clarified that this is not about reversing the legal onus of proof, but rather about Commission staff challenging their own internal biases and accepting the truth of what the claimant says unless there is proof to the contrary, while still seeking the evidence required to support the link or connection to race. As with the #MeToo movement, there is a difference between moving from a place of "I don't believe you until you can prove it", to starting from a place of hearing and accepting the claimant's stated experience with an approach of openness and curiosity, without abdicating the need to ultimately assess the evidentiary support for the allegation required by the legal process.
 49. One participant noted that some people are of the view that the legal onus of proof should be reversed in racial profiling or racial discrimination cases, given how difficult it is to prove such allegations. It was noted that under Quebec labour law, when a woman is pregnant and fired from her job, then the legal onus is on the respondent to show that it was not the pregnancy that caused the woman to lose her job.

50. Feedback from the meeting identified a number of incorrect and invalid working assumptions that appear to be operating as barriers to race-based complaints: (1) that in order to be valid, the claimant's version of events needs to be supported by a White person, which as noted above is rooted in racism and slavery; (2) that the employer should be believed, which is not true, as no matter how large the organization, it does not mean that there is internal capacity to understand issues of race in a nuanced way; (3) that it is okay for the Commission to say, "I do not believe this person", which is not the proper function of the Commission, but rather is the preserve of the Tribunal; and (4) that if the respondent has policies and/or training in place, then racial discrimination cannot have occurred, despite research demonstrating that policies and training alone do not effectively dispel the existence of racial discrimination in an organization. It was noted that these working assumptions need to be challenged at the Commission, and that staff and management need further training on these kinds of issues.

Supports for Claimants

51. One participant expressed the view that we are at a place where we are talking about the relevance of the Commission's gatekeeping function, in light of the change to the direct access model in Ontario and British Columbia and the recommendations made in the LaForest report. The view was expressed that, for access to justice, we need to get rid of that gatekeeping function.
52. It was noted that the Commission has a tremendous wealth of knowledge and resources to assist claimants in accessing justice at the Tribunal. In the "old days", claimants were prepared to go through the investigation process because they would be supported by the Commission before the Tribunal. This participant expressed the view that in their experience, the Commission currently is an obstacle to accessing justice by a claimant and a labyrinth of procedural barriers. This participant wants to be able to tell claimants that the Commission's process is valuable, and that they should engage the Commission's process because they will have the prospect of adjudicating their complaint before the Tribunal. To allow for access to justice, the Commission should be using its resources to support claimants, especially in race cases.
53. Several participants observed that it is important to recognize whether a claimant is self-represented or has counsel, and that the Commission needs to make sure that the self-represented claimant is not disadvantaged. One participant in particular made reference to a Council of Canadian Administrative Tribunals (CCAT) study from 2016 that includes a list of things for tribunals and agencies to self-examine when providing access to justice for self-represented parties.
54. Many participants noted the impact that the human rights process has on the mental health of racialized claimants. It was observed that claimants who don't have the knowledge but want to fight for justice are the ones who suffer most. These claimants need a lot of support to go through the process. Many people are totally destroyed because they want to fight for justice.
55. The Commission was encouraged to take a non-Euro-centric approach to its work, from the point of intake right to the Tribunal. The Commission needs to recognize that racism is very traumatic, and has a devastating impact especially on self-represented claimants. It was observed that to tell these claimants to go to the Commission's website and fill out forms may not be supportive or even sensible.
56. One participant noted that racism is trauma, and must be recognized as such. In the context of the traumatic experience of racism, it was further observed that lawyers are not used to dealing with these kinds of issues, and that the Commission should think of other roles to help support claimants as they experience trauma, for example by using social workers, trauma workers and other types of mental health professionals to provide support to claimants. This participant suggested providing information on after-care, trauma and/or community supports for people rejected from the process.

57. It also was observed that it is important not to re-traumatize the claimant as a result of the process. One participant from another human rights agency cited the example of a respondent police officer showing up at mediation or as part of restorative justice wearing a gun and vest.
58. Another participant encouraged the Commission to look at what are the barriers to people even coming forward, such as language and lack of knowledge regarding their legal rights, and asked what efforts are being made to reach out to those communities and to collaborate with groups that work with those communities, for example to provide language-specific services.
59. A suggestion was made for the Commission to put together a guidance booklet setting out how claimants can bring complaints, and to provide basic information about what information is required. It was noted that this kind of guidance booklet also could help claimants identify if their complaint was based on systemic issues.
60. One participant expressed concern about the Commission's approach to providing translation of documents in languages other than English or French. The question was raised as to why the claimant is required to provide document translation rather than this being provided by the Commission. Additional concern was expressed about Rule 11.7 of the Complaint Rules, which states that the Commission "may" consider the translated version of a document in another language, even though this rule requires the translated document to be accompanied by a translator's declaration. It was stated that the Commission needs to look at these issues from a race and equity perspective
61. With regard to the timelines set by the Commission for filing submissions, it was observed that sometimes setting timelines scares people off and can become a barrier. It was noted that years ago, the Commission was more flexible when claimants were unable to meet timelines. A specific example given was when the Commission has sent a recommendation to dismiss to a unionized claimant, but the claimant only brings this to the union's attention two days before the timeline expires.

Support for Claimants before the Tribunal

62. Concern was expressed regarding the lack of support by the Commission when a complaint is referred to the Tribunal. In the past, Commission legal counsel, while not representing the claimant, would nonetheless appear at the hearing before the Tribunal and present the case on the claimant's behalf. Now, often when the Commission allows a complaint to proceed to the Tribunal, the case goes forward at the claimant's expense, without assistance or participation by Commission legal counsel, while the respondent is represented by legal counsel. A claimant often cannot afford to retain their own personal legal counsel, and this presents a real systemic barrier to succeeding with their claim before the Tribunal.

Systemic Discrimination

63. It was observed that there is a loose understanding of “systemic discrimination”, and that the term is not well-defined. When “systemic discrimination” is being discussed, often people are not talking about the same thing. So one of the biggest needs is to better comprehend what the term means, what types of systemic racial discrimination there are, what kinds of tools can be used to identify it in different contexts, and what kind of remedies should flow.
64. It was noted that the OHRC, as part of its work on its Racism and Racial Discrimination policy, developed a diagnostic model for systemic discrimination. This includes consideration of: 1) an organization's policies, practices and decision-making procedures, much of which will be informal and unwritten; 2) the organizational culture and how it contributes to adverse impact; and 3) systemic data collection, which for race-based complaints needs to be connected to race specifically. The CHRC needs to have its staff understand what they need to put together to shape up systemic discrimination claims.
65. When dealing with systemic racial discrimination, a number of participants observed that this was the Commission's role and should not just be left to individual claimants. It was observed that asking individuals to shape up and frame systemic complaints is too much to ask. This kind of work takes significant resources, doing the research necessary to put the evidence together, and requires the Commission with its powers of inquiry and investigation to ensure that these kinds of systemic racial discrimination complaints have substance behind them.
66. It was universally recommended that the Commission identify and prioritize systemic racial discrimination issues in consultation with community groups. The OHRC and others suggested that the Commission first do an environmental scan to identify a list of priority systemic issues, and then consult with community groups to see if it got the issues right, if any issues are missing, and what the priorities should be. As part of this environmental scan, it was noted that the Commission should look from the ground up, to identify individual complaints raising systemic issues, and from the top down, to see what systemic matters are not being addressed through individual complaints. It was noted that there is much more systemic racial discrimination in society than is raised through individual complaints, because people are disempowered in terms of their ability to bring systemic complaints.

67. The Commission was encouraged to use community groups to provide guidance in relation to systemic complaints that can be brought forward, and to leverage the tools and resources that have been developed by community groups. As just one example, community groups would have been able to identify for the Commission the spike in Islamophobia when the Syrian refugees arrived. The Commission also was encouraged to use connections between its regional offices and community groups in the regions, including industry groups, to identify systemic issues.
68. Specific suggestions for possible systemic racism initiatives included an inquiry into the national security sector, or a review of how the RCMP polices Indigenous and Racialized groups.
69. Concern was expressed about the Commission's lack of resources to pursue major systemic initiatives. One group suggested that despite an overall scarcity of resources, the Commission may nonetheless have sufficient resources to pursue one systemic initiative at a time. Another group encouraged the Commission to check to ensure that its allocation of resources matches its values and priorities.
70. A further suggestion was made for the Commission to review its existing individual complaints to identify patterns, and to consider grouping complaints together to address underlying systemic issues. It was noted that an approach of this nature may actually help the Commission to save resources.
71. The Commission also was encouraged to consider non-complaint initiatives to address and/or highlight systemic issues, for example by issuing special reports, by making reports to the United Nations , or by speaking out publicly.
72. It was noted that sometimes cases that raise systemic racial discrimination issues are proceeding before courts or tribunals other than the CHRT. It was suggested that the Commission do an environmental scan to identify these kinds of cases, and consider intervening to address the issue and assist the claimant.

Need for Data to support Systemic Initiatives

73. It was stated that data is critical in order to support initiatives to address systemic discrimination. As was stated by one group, data is a foundational piece in identifying and addressing systemic discrimination because “what gets measured gets done”.
74. It was expressed that racism and racial discrimination are uncomfortable topics that nobody wants to discuss or talk about and everyone has an excuse to avoid. But you can't argue with data, which is why collecting data is so important. For example, the success in addressing the problem of street checks in Nova Scotia was due to the collection of data.
75. Participants expressed that the collection of data needs to be advocated for, and organizations need to be pushed to collect data. It was noted that data is not collected because of a resistance to collecting data, and the Commission needs to identify and address what is the basis for this resistance and what are the impediments to collecting data.
76. Additional concern was expressed about the failure of most organizations to collect or publish disaggregated race data. For example, in the context of the federal public service survey, there is a need for race data to be disaggregated. It was stated that the OHRC has been pushing police services to collect disaggregated race data since 2003, but to date, only the Ottawa Police Service does this and only for traffic stops and only as the result of the settlement of a complaint. Reference was made to the Colour of Poverty website, which contains tools for the collection of disaggregated race data, as well as to the standards recently created in Ontario regarding data collection. One participant noted that in the federal employment context, employers are supposed to be collecting data. It was noted that information and privacy requests can be made to try to obtain this data, but most claimants don't know how to do this or are screened out. It was expressed that the Commission needs to do something to try to obtain that data.
77. It was stated that respondents have gotten smarter, and are trying to suppress complaints of systemic discrimination by not collecting data. Concern was expressed that, in these kinds of cases, the Commission often will tell a claimant that the respondent says it doesn't have the data requested. But if the respondent should have this data, then the Commission should consider why it isn't there. One participant expressed a “radical idea”: namely, that if a respondent should have been collecting data and says it doesn't have it, then the Commission should draw an adverse inference.

78. It was expressed that when trying to demonstrate systemic discrimination, employment equity data would be useful. However, it was noted that the legislation has been changed since the National Capital Alliance of Race Relations (NCARR) decision to limit the use of employment equity data in the context of a human rights complaint: see CHRA, s. 40.1, stating that a complaint cannot be based “solely on statistical information that purports to show that members of one or more designated groups are underrepresented in the employer’s workforce”.

Representation of Racialized Groups within the CHRC

79. Widespread concern was expressed by participants about the need for the Commission at all levels to represent the racial diversity of the clients it serves. One participant framed this need in the context of the importance of “decolonizing the institution” from the inside, so that the Commission reflects people of diverse backgrounds. The importance of the need for this kind of representation was expressed in a variety of ways.
80. One participant expressed curiosity regarding the representation of members of racialized groups among Commission staff and Commissioners, and whether that was one of the questions that needed to be asked in relation to where the Commission is today, in terms of the Commission's challenges in dealing with race-based complaints.
81. Another participant expressed that in order to effectively assess race-based complaints, you need people who have anti-oppression experience and people who look like racialized claimants and know the micro-aggressions that they experience. It was stated that even when White folks go through training, they still don't see it. This participant expressed concern about the racial make-up of the people doing assessments, and what the plan is to make the kinds of changes necessary to ensure proper representation.
82. A further participant expressed agreement that Commission staff on the front-lines need to look like Black and racialized people they serve, but stated that the representation of racialized groups also must go right up to the top, so that proper race analysis is supported throughout all levels at the Commission. Another participant asked whether the Commission's directors and managers look like people the Commission serves, and stated that if the Commission doesn't know, then it's not following best practices.
83. The Commission was encouraged to lead by example, and to make sure that its staff was as reflective of the racialized population as people accessing the system would hope and expect. It was noted that the Commission needs to ensure that it is staffed by individuals who have requisite anti-oppression and anti-racism analysis and lived experience. It was expressed that the Commission should engage in advocacy to increase the representation of racialized groups and people with a sophisticated understanding of race issues not only at the Commission, but also at the Tribunal.
84. One participant expressed the importance of Commission staff on the front-line being racially diverse in the context of the knowledge of racism as trauma. In this context, not only is it often difficult for claimants to articulate their experiences of racism, but it is important for Commission staff to be able to understand what they're hearing so that they can assist these claimants in properly articulating their experiences and putting them down in writing.

85. Another participant expressed the importance of the person gathering the information in support of a race-based complaint to have immersion in the subject matter. It was noted that people with lived and learned experience of racism and racial discrimination are important in terms of the way in which evidence is gathered.
86. It was expressed that having individuals doing the front-end work look like the people making complaints gives credibility and reality to the Commission's work. Concern was expressed about the disproportionate amount of hand-holding and work expended with people who have not had lived experience of racism or racial discrimination.
87. It was observed that in sexual harassment cases, it is likely most of the time that the Commission staff member dealing with the complaint is a woman. The question was raised as to why in race cases, the Commission staff member often isn't a member of a racialized group. A suggestion was made to give the claimant the option of meeting with a staff member who looks like them, who can pick out the micro-aggressions the claimant experienced, and who can distill the claim from the story being told.
88. Another important reason in support of racial diversity among Commission staff was expressed as their ability to connect with community organizations to identify specific issues, such as racial profiling.
89. One participant stated that they were struggling with the issue of whether Commission staff needed to look like racialized claimants or whether it was sufficient for staff to have knowledge regarding race issues, whether both were required.
90. A need was identified for ongoing training for Commission staff on racial bias and systemic discrimination, and for introspection on how racial bias operates within the Commission itself in relation to its hiring practices and gate-keeping role and how it affects the decision-making processes of well-intentioned people engaged in social justice work.
91. While ongoing training was regarded as important, one participant expressed the view that there are certain things you can train people on, and certain things you can't. The Commission can't simply rely on the delivery of training, but must also implement ongoing monitoring and assessment of staff to identify what their strengths and weaknesses are, and to capitalize on the strengths and address the weaknesses. In this context, note was made of the importance of self-reflection by Commission staff.

Accountability

92. Participants discussed the need for ongoing accountability measures to be implemented by the Commission to support a continuing commitment to improve its handling of race-based cases.
93. Drawing from the example of the OHRC, it was stated that the OHRC found that knowledge of racism and racial discrimination was not consistent within the organization, and because of this, managers were not able to hold their staff to account for how they dealt with race-based cases because the managers themselves lacked knowledge. This was addressed by the OHRC through the development of its Racism and Racial Discrimination policy, which was then followed by three days of training focused on task-specific learning for all divisions, and then by the implementation of accountability measures. Based on this experience, it was expressed that differentials between higher dismissal rates for race-based cases than others can be dealt with, but it takes a concerted effort over a number of years. This was and remains a long-term undertaking for the OHRC.
94. It was observed that the Commission admitting it has a problem in dealing with race-based cases is an important first step. What is required now is a road map for what is going to happen next to ensure that both individual and systemic race-based complaints go forward and are addressed appropriately, so that people feel that the process has been beneficial. The need for concrete, measurable outcomes was emphasized.
95. While viewing the stakeholder meeting as an important and positive step, participants expressed that it was important that the dialogue not stop there, and that the Commission needed to set up further opportunities to continue the dialogue and to be open to hard feedback. It was suggested that the Commission establish a network of community groups and other organizations interested in the issue of confronting racism and racial discrimination, in order to continue to get feedback on the progress of the Commission's work.

Request for Disaggregated Data from the CHRC

96. As part of the desire for accountability by the Commission, a request was reiterated at the meeting for the Commission to provide disaggregated data regarding the success rate for race-based complaints. It was expressed that the failure to provide this data was a significant gap, and cause to question the relevance of the Commission in addressing race-based discrimination.
97. Participants want to know not just the number of race-based complaints being filed with the Commission, but what is happening specifically to race-based complaints at later stages of the process, including how many race-based complaints are proceeding to investigation and how many are being referred to the Tribunal. It was noted that without being provided with disaggregated data, stakeholders are not able to get a baseline to start with or to monitor whether the Commission is making progress in its handling of race-based complaints.
98. At the end of the meeting, the Commission stated that it believed it had a solution to this request, and that it would be able to provide the disaggregated data requested.
99. A separate issue arose regarding not just data disaggregated by ground of discrimination, but data disaggregated within the race-based grounds to identify different racialized groups. The Commission clarified that it does not ask claimants what race they are and doesn't collect this kind of disaggregated race data on the complaint form itself. However, if a claimant self-identifies as being a member of a specific racialized community, that information may be collectible as a keyword.
100. It was noted that as part of its work, the CHRC needed to actually go and look at its individual complaints in order to obtain disaggregated data by racialized group.
101. Concern was expressed about the Commission not requesting or collecting disaggregated race data from claimants. It was noted that in order to identify, address and have remedies for systemic discrimination against specific racialized groups, you need to have data. The Commission was encouraged to find a way to collect this kind of data.

Transparency

102. A number of participants expressed the importance of the Commission being transparent with its work in trying to improve its handling of race-based cases. As stated by one participant, the information being provided to Commission staff should be transparent and available on the Commission's website so that it is open to everyone. Commission staff may have the criteria they are applying to race-based cases in their heads and know what the Commission will be considering, but unless this information is shared with the parties, they will be unable to make informed submissions in response. It was expressed that transparency is an essential element of fairness.
103. The Commission was asked to ensure that the work that it is doing to improve its handling of race-based cases, including the development of any criteria or guidelines to be applied to these cases, be made publicly available so that the parties can understand what principles and considerations are being applied to their cases.
104. A suggestion was made for the Commission to develop a publicly accessible databank including third party studies on racism and race-related issues, that could be drawn upon by Commission staff and the parties in support of the proper analysis of race-based cases. Specific reference was made to a study done by the Canadian Race Relations Foundation regarding the experience of racism by different racialized groups. Reference also was made organizations that are doing work on race-related issues in the US and the UK, and the great literature coming out of those places.
105. It was expressed that the Commission should take advantage of community supports, and organizations that can provide the Commission with the resources to help the Commission help their communities. It was stated that community groups and organizations have lots of tools to help identify racism, racial discrimination and systemic discrimination, and would be open to a reciprocity of supports and shared knowledge.

Status of Race-Based Complaints Pilot Project

106. Concern was expressed about the members of the Race-Based Complaints Pilot Project team doing their own full-time jobs on top of the work they are doing in support of the pilot project, and the need to ensure that the team members get the resources they need to properly perform this important work.
107. As stated by one participant, "If racism can be institutionalized, why can't anti-racism be institutionalized?" Hope was expressed that the "Pilot Project" could be made permanent and institutionalized at the Commission.

Other Issues

108. At the outset of the stakeholder meeting, the Commission recognized that certain groups were missing from the room, including Francophone representatives of racialized groups, and organizations and community groups from Western Canada. The Commission stated that it plans to reach out to these groups for their input in other ways.
109. Reference was made at the meeting to a number of groups who may need special consideration or attention in the context of race-based complaints, including: inmates and veterans; low-income and vulnerable workers; claimants whose income levels are too high for legal aid but who still can't afford private legal representation; and unionized workers where their unions don't understand racial discrimination.
110. A few issues were raised by participants about the need for advocacy by the Commission for legislative change, including: to remove the legislative caps on compensation for pain and suffering under s. 53(2)(e) and for special compensation under s. 53(3); to remove the barrier to the use and disclosure of employment equity data to support a human rights complaint; and perhaps to include a reconsideration process where a complaint is dismissed under s. 41 or s. 44 to help determine whether the Commission missed something or had misinterpreted its own legislation or jurisdiction, which was stated to be particularly important in the context of analyzing why race-based cases are being disproportionately dismissed.
111. Concern was expressed about the under-funding of the Commission, and the need for the Commission to have adequate resources to carry out its mandate. A question was raised as to how community groups and organizations could assist on this issue, for example by initiating a letter-writing campaign or other advocacy from a grassroots level.
112. One participant expressed the need for the Commission to initiate employment equity audits, rather than just relying on employer self-audits.

March 30, 2020

Appendix B:

**Supplementary Report and Recommendations from March 4, 2020
Stakeholder Meeting**

Prepared by: Mark Hart

April 30, 2020

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Executive Summary

The Commission has made a laudable commitment to strengthening its handling of race-based cases, and has taken some significant preliminary steps. But a lot of hard and challenging work lies ahead that will require a sustained commitment of the Commission's time and resources in order for its efforts to strengthen its handling of race-based cases to be successful.

This Report focuses on issues of an institutional or structural nature within the Commission that were raised by the stakeholders at the meeting on March 4, 2020. Under a separate contract, I also have prepared a Report: Strengthening the Commission's handling of Race-based Cases that focuses on issues relating to the Commission's substantive work. The discussion and recommendations from these two Reports need to be reviewed and addressed together. In order to be successful in strengthening its approach to race-based cases, the Commission cannot merely focus on its substantive work without also attending to institutional and structural issues that may be contributing to its deficiencies in handling race-based cases. These two aspects of anti-racism organizational change are inextricably intertwined, and must be addressed in tandem in order to achieve success.

In Section A, I address the concern expressed at the stakeholder meeting about the lack of representation of members of racialized groups at all levels of the Commission, including front-line staff, managers, directors and Commissioners, and I discuss the need for improving this level of representation in order for the Commission to be more effective in its handling of race-based cases and issues. I recommend a review the Commission's recruitment, hiring and promotion processes and practices in order to identify the barriers that are impeding the greater representation of members of racialized groups at the Commission at all levels, from front-line employees to executive management.

In Section B, I address the need for accountability in the Commission's efforts to improve its handling of race-based cases and issues, and recommend the creation of a network of community groups and organizations that are interested in and committed to helping the Commission with this work. I further recommend that an action plan to implement the changes required to improve the Commission's handling of race-based complaints, based on the recommendations made in my Report: Strengthening the Commission's handling of Race-based Cases and in this Report and with additional input from the Pilot Project team and the community stakeholders, be developed by a steering committee that includes representation from community groups and that can monitor the Commission's progress.

In Section C, I address the request for data and disaggregated data made at the stakeholder meeting, and make specific recommendations about race data that should be disclosed by the Commission now, and steps that can be taken going forward to collect disaggregated race data.

In Section D, I address the need for transparency with the community about the Commission's work on strengthening its handling of race-based cases, in order to afford an opportunity for community feedback and improvement of this work and to enhance accountability. I recommend that the Reports I have prepared and other key work done as part of this initiative be made publicly available.

And finally, in Section E, I address the Pilot Project on Race-based Complaints, and make recommendations to account for the significant amount of extra work being done by the team members, and to strengthen the project's positioning within the Commission's institutional framework.

The Recommendations I have made throughout this Report may appear challenging, or even daunting. They are not intended to be cast in stone, and no doubt may be improved by further engagement and discussion. But the underlying issues identified and addressed in my Reports as impairing the Commission's handling of race-based cases are very real, and demand urgent and sustained action.

Supplementary Report and Recommendations from March 4, 2020 Stakeholder Meeting

Consultant's Report Prepared by: Mark Hart

April 30, 2020

Introduction

[1] I was retained by the Commission to attend a full-day meeting in Ottawa on March 4, 2020, attended by Commission staff and representatives of stakeholder groups representing Black and racialized people (the "stakeholders meeting").

[2] On March 31, 2020, I provided the Commission with a Report (the "Feedback Report") setting out the feedback received from the participants at this meeting, which I stated should be read as a description of the various issues and concerns raised by the meeting participants that the Commission needs to consider in order to strengthen its handling of race-based cases. I clarified that the Feedback Report was not intended to specifically address or respond to the issues and concerns raised or to provide any particular recommendations or plans of action in relation to those issues and concerns, and that those matters would be addressed through other work I was retained to do.

[3] This Supplementary Report represents my discussion of certain key issues raised at the stakeholders meeting, and my recommendations relating to those issues. This forms part of my contractual mandate to prepare a report from the stakeholders meeting relating to the feedback received from the participants, with a view to strengthening the Commission's assessment of race-based complaints.

[4] The issues I am addressing in this Report are more of an institutional or structural nature within the Commission, as opposed to the issues about the Commission's substantive work that I address in my companion Report on Strengthening the Commission's handling of Race-based Cases. While these Reports were prepared under two separate contracts, in my experience, in order for an organization to be successful in strengthening its approach to race-based issues, an organization cannot merely focus on its substantive work without also attending to institutional and structural issues that may be contributing to the organization's deficiencies in handling race-based issues. These two aspects of anti-racism organizational change are inextricably intertwined, and must be addressed in tandem in order to achieve success.

A. Representation of Racialized Groups within the CHRC

[5] Significant concern was expressed at the stakeholder meeting about the lack of representation of members of racialized groups at all levels of the Commission, including front-line staff, managers, directors and Commissioners. While I do not have access to employment equity data to confirm the precise level of representation, my own personal observation supports this concern, especially at the manager level and above.

[6] I share agreement with the basis upon which many participants expressed the importance of having increased representation of members of racialized groups at the Commission. People who have a lived experience of racism and racial discrimination are in a better position to recognize and understand allegations of racial discrimination raised by racialized claimants, especially when they are based on more subtle forms of discrimination. Black and racialized people who have this lived experience are better able to identify the kinds of micro-aggressions frequently involved in the allegations raised by racialized claimants. Racialized claimants often are more comfortable dealing with Commission staff who share their racial identity, just as claimants alleging sexual harassment frequently are more comfortable dealing with women. The feeling of a shared lived experience makes it easier for claimants to open up and tell their stories in these circumstances.

[7] The need for representation of members of racialized groups is not restricted to front-line employees, but extends all the way up the management chain. Managers and directors who are reviewing the work of front-line staff need to be able to understand and recognize how racial discrimination manifests in order to provide support for this work, which is enhanced when these managers come from a place of lived experience. And Commissioners are the people responsible for making decisions in relation to race-based complaints, and so must have access to the same kind of knowledge and understanding as enhanced by lived experience.

[8] Increasing the representation of members of racialized groups at the Commission also would serve to give increased credibility to the Commission's work, particularly in relation to race-based cases.

[9] There is no doubt that merely being a member of a racialized group does not automatically equip a person with the knowledge, skills and ability to do effective human rights work, including in relation to race-based complaints. There is a need for the people doing this work to have learned knowledge and experience in anti-racism and anti-oppression analysis.

[10] At the same time, it is a salient question to ask whether the lack of representation of members of racialized groups at the Commission has contributed to the challenges the Commission has confronted and continues to confront in how it deals with race-based complaints. It seems to me that the conclusion is inescapable that this lack of representation has played a role.

[11] In order to address this issue, my recommendation is for the Commission to review its recruitment, hiring and promotion processes and practices in order to identify the barriers that are impeding the greater representation of members of racialized groups at the Commission at all levels, from front-line employees to executive management. This review should include consultation with racialized employees at the Commission, who can assist in identifying barriers. The review should examine the role played by job descriptions, that may not be sufficiently specific regarding the types of knowledge, experience and abilities required to do human rights and particularly anti-racism work. The review also should examine the way that mentoring, acting assignments and secondments not only can serve as barriers, but also can be used as positive measures to assist racialized employees and increase representation.

Recommendation A.1: That the Commission review its recruitment, hiring and promotion processes and practices in order to identify the barriers that are impeding the greater representation of members of racialized groups at the Commission at all levels, from front-line employees to executive management. This review should include consultation with racialized employees at the Commission, who can assist in identifying barriers. The review should examine the role played by job descriptions, that may not be sufficiently specific regarding the types of knowledge, experience and abilities required to do human rights and particularly anti-racism work. The review also should examine the way that mentoring, acting assignments and secondments not only can serve as barriers, but also can be used as positive measures to assist racialized employees and increase representation.

[12] I am well aware that Commissioners and Tribunal members are Cabinet appointees, and so are not within the control of the Commission and would not properly form part of the review that I have recommended.

[13] At the same time, there is a need for increased representation of members of racialized groups among the Commissioners, to assist in their knowledge and understanding of racism and racial discrimination and improve their decision-making in relation to race-based complaints, and to enhance the Commission's credibility with racialized communities.

[14] I make the same observation about the Canadian Human Rights Tribunal, and the need for increased representation of members of racialized groups at that body as well, for the same reasons.

[15] While the Commission has no control over these appointments, this does not mean the Commission is entirely powerless. The Commission can at the very least raise the issue with the Minister, and advocate for increased representation in these appointments. The current government has demonstrated an understanding of the need to increase the representation of members of racialized groups in judicial appointments. There is no reason to believe that its approach would be any different with human rights appointments. In fact, there is every reason to believe that there is an even stronger need for increased representation in the human rights area.

Recommendation A.2: 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.

B. Accountability

[16] The Commission is to be commended for the work that it has done over the past year to improve its handling of race-based complaints, that includes: the training on unconscious bias and the fundamental legal principles applicable to racial discrimination that was provided to all Commission staff in June 2019 and subsequently to the Commissioners; the establishment of the Race-based Complaints Pilot Project and the work that it has been doing directly with Commission staff on race-based cases; the development of the Guidelines to assist Commission staff in the analysis of race-based cases; the work on updating the Criteria and Guidelines and making recommendations to strengthen the Commission's handling of race-based cases that the Commission has retained me to do; and the stakeholder meeting with community groups and organizations representing Black and racialized people that was held on March 4, 2020.

[17] As noted above, the Commission also will be providing further training for all Commission staff to be presented by me on the tools and resources I have developed in the Case Patterns, including workshops on the practical application of these tools and resources. As indicated, this training originally was scheduled to proceed on April 28, 2020, but needed to be postponed due to the coronavirus crisis.

[18] These are very important early steps to lay the groundwork for the Commission as an organization to improve its handling of race-based complaints. But while these are good early steps, more is required in order for the Commission to effect lasting change.

[19] First, the Commission needs to build on the stakeholder meeting to create a network of community groups and organizations that are interested in and committed to helping the Commission with this work. I am aware that some participants from the stakeholder meeting recently have sent a letter to the Chief Commissioner expressing their interest in such an initiative. My recommendation is that the Commission establish a broader network of these community groups and organizations with which to share information and seek feedback, but also create a smaller steering committee that includes representation both from the Commission and the community network that would be responsible for developing an action plan to implement the required changes and for ongoing monitoring of the Commission's progress. There would need to be a Commission representative involved with the steering committee from an executive level, who would have the authority to ensure that the work required under the action plan gets done.

[20] Second, as indicated, the Commission needs to create an action plan to implement the changes required to improve its handling of race-based complaints, based on the recommendations made in my Report: Strengthening the Commission's handling of Race-based Cases and in this Report and with additional input from the Pilot Project team and the community stakeholders. My recommendation is that this action plan be developed and finalized by the steering committee described above, in consultation with the broader community network. For this purpose, I am recommending that this Report and my Report: Strengthening the Commission's handling of Race-based Cases be shared with the community network together with a proposed action plan. The action plan should set out clear timelines, and concrete, measurable goals or outcomes.

[21] Third, once finalized, the Commission would bear primary responsibility for implementation of the action plan. However, the steering committee would continue to meet on an ongoing basis in order to monitor the implementation, to assess whether the stated goals and/or outcomes are being met, and to provide input into any changes that need to be made to the action plan in order to achieve its purpose. Once again, this ongoing monitoring would be done in consultation with the community network.

[22] This ongoing monitoring is essential to ensure an ongoing commitment to the work. Too many times, I have seen organizations make tremendous efforts to address a problem at a time of crisis, only to allow this great work to atrophy over time once the immediate crisis has passed. That cannot be allowed to happen here.

Recommendation B.1: That the Commission create a network of community groups and organizations that are interested in and committed to helping the Commission to improve its handling of race-based cases, and a steering committee that includes representation both from the Commission and this community network that would be responsible for developing an action plan to implement the required changes and for ongoing monitoring of the Commission's progress. The steering committee needs to include a Commission representative from an executive level, who would have the authority to ensure that the work required under the action plan gets done.

Recommendation B.2: That the Commission create an action plan to implement the changes required to improve its handling of race-based complaints, based on the recommendations made in my Report: Strengthening the Commission's handling of Race-based Cases and in this Report and with additional input from the Pilot Project team and the community stakeholders. This action plan is to be developed and finalized by the steering committee described above, in consultation with the broader community network. For this purpose, this Report and my Report: Strengthening the Commission's handling of Race-based Cases should be shared with the community network together with a proposed action plan. The action plan should set out clear timelines, and concrete, measurable goals or outcomes.

Recommendation B.3: That the steering committee continue to meet on an ongoing basis to monitor the implementation of the action, to assess whether the stated goals and/or outcomes are being met, and to provide input into any changes that need to be made to the action plan in order to achieve its purpose, in consultation with the broader community network.

C. Request for Disaggregated Data from the CHRC

[23] At the stakeholder meeting on March 4, 2020, a request was repeated for the Commission to provide disaggregated data regarding the success rate for race-based complaints. Participants wanted to know not just the number of race-based complaints being filed with the Commission, but what is happening specifically to race-based complaints at later stages of the process, including how many race-based complaints are proceeding to investigation and how many are being referred to the Tribunal.

[24] I am aware that on March 26, 2020, this request was further particularized by some of the meeting participants through a letter to the Chief Commissioner. I understand from this letter that the Chief Commissioner's office may already have put the wheels in motion to set up a further meeting to better understand what data is being requested and how to collect it.

[25] In addressing this issue, I will separate it into two parts: (1) the request as it relates to the outcomes for race-based complaints at different stages of the Commission's process; and (2) the request as it relates to disaggregated race-based data.

[26] With regard to the first aspect of the request, this relates to data already being collected on the Commission's complaint form and should be readily available. The complaint already requires claimants to indicate if their complaint raises allegations of discrimination or harassment on the grounds of race, colour, or national or ethnic origin. These grounds already are separately tracked by the Commission in order to provide a breakdown of the complaints filed by the different grounds. At a minimum, the Commission readily should be able to disclose the following data:

- Complaints accepted by ground
- Complaints dismissed under s. 41 by ground
- Complaints the Commission decides to "deal with" under s. 41 by ground
- Complaints dismissed under s. 44 by ground
- Complaints referred to the Tribunal under s. 44 or s. 49 by ground

[27] In addition to this data, I also think it would be important for the Commission to disclose the following data:

- Complaints referred to mediation by ground
- Complaints resolved at mediation by ground
- Complaints referred to the Tribunal with "full participation" by ground

- Complaints referred to the Tribunal with “partial participation” by ground

[28] This basic data is critically important in order to allow the Commission and the public to understand whether and to what extent race-based complaints are being dismissed and/or not resolved at mediation at greater rates than non-race-based complaints, or are being given less access to legal resources before the Tribunal. The data, for example for the fiscal year 2019-2020, could provide a baseline that the Commission and the community could then have reference to in order to assess and measure the extent to which the steps taken to improve the Commission's handling of race-based complaints has been successful.

Recommendation C.1: That the Commission compile and make publicly accessible the following data at the earliest date

- **Complaints accepted by ground**
- **Complaints dismissed under s. 41 by ground**
- **Complaints the Commission decides to “deal with” under s. 41 by ground**
- **Complaints dismissed under s. 44 by ground**
- **Complaints referred to the Tribunal under s. 44 or s. 49 by ground**
- **Complaints referred to mediation by ground**
- **Complaints resolved at mediation by ground**
- **Complaints referred to the Tribunal with “full participation” by ground**
- **Complaints referred to the Tribunal with “partial participation” by ground**

[29] The second part of the request is for disaggregated race data. I appreciate the significance of disaggregated data in the context of the Commission's work, because for example, it could highlight specific racialized groups whose complaints may have particularly high levels of dismissal and so allow for specific efforts and resources to be allocated to such groups. Disaggregated data also could allow the Commission to better identify patterns of race-based complaints that it is receiving in relation to a specific racialized group, that may call for a more comprehensive or systemic approach.

[30] The issue that would need to be determined is the manner in which the Commission could collect this data, and the resources that would be required in order to collect it. At the stakeholder meeting, it was discussed that the OHRC at one time reviewed complaints individually in order to try to compile disaggregated race data. In my view, for the Commission to undertake this kind of effort would be resource-intensive, and would divert limited resources away from taking the many other actions required not only for the Commission to do its regular work, but also to implement the actions required to improve its handling of race-based cases.

[31] It also was mentioned at the stakeholder meeting that the Commission can track key words in complaints, so if a particular claimant has self-identified in the complaint, this could be tracked. This would not prove a reliable source of disaggregated race data, because the data would depend upon whether any particular claimant chose to self-identify, and what particular term or language that particular claimant chose to identify their racialized group.

[32] In my view, if the Commission is going to collect disaggregated race data, it should be done on a go-forward basis. This could rather easily be accomplished for on-line complaints by embedding an additional set of questions where a claimant clicks on the grounds of race, colour, or national or ethnic origin, which would ask the claimant to identify their specific racialized group from a list of choices, for example as set out in the Ontario government's data standards. For race-based complaints not filed on-line, the claimant could be sent a letter requesting that this additional information be provided. Whether on-line or in the letter, an explanation could be provided as to why this data is being collected, and how it would be used.

[33] In my view, consideration of whether and how to collect disaggregated race data is a matter best left for discussion at the steering committee in consultation with the community network, for incorporation into the action plan in a way that makes sense in the context of competing priorities and the Commission's limited resources.

Recommendation C.2: That the Commission consider the collection of disaggregated race data from claimants on a go-forward basis through discussion at the steering committee in consultation with the community network, for incorporation into the action plan in a way that makes sense in the context of competing priorities and the Commission's limited resources.

D. Transparency

[34] At the stakeholder meeting, the Commission was asked to ensure that the work that it is doing to improve its handling of race-based cases, including the development of any criteria or guidelines to be applied to these cases, be made publicly available so that the parties can understand what principles and considerations are being applied to their cases. It was expressed that unless this information is shared with the parties, they will be unable to make informed submissions in response, and that transparency is an essential element of fairness.

[35] I agree. I appreciate that the Criteria and Guidelines are styled as being subject to solicitor-client privilege, presumably on the basis that these documents were prepared by legal counsel for use by their client, the Commission. However, solicitor-client privilege can be waived by the client, and so does not prevent the Commission from choosing to make this information publicly available. In my view, there is every reason for the Commission to do so.

[36] While the Criteria are merely a generic template to guide investigations and the preparation of s. 44 assessment reports, they nonetheless would be very helpful to the parties by identifying the key considerations and questions on which the Commission is focusing, so that the parties can be sure to address their evidence and submissions to these points. Similarly, the Guidelines contain a lot of very useful information about the appropriate approach to the analysis of race-based complaints, which would be equally useful for the parties to know, once again so that they can focus their evidence and arguments on these key points. Except for the fact that the Commission is capable of claiming solicitor-client privilege over these documents, I fail to see any real reason why these documents should not be made publicly available.

[37] In addition, it is my view that significant materials prepared during the course of the Commission's work on improving its handling of race-based complaints also should be made available to the public, or at the very least to the community network. This in my view would include the very excellent PowerPoint presentation from the June 2019 training on the fundamental principles applicable to the analysis of race-based cases. This is a tremendous resource, that would be of general benefit to the public and particularly to the parties in race-based cases, as it collects in one place the main case law and principles that have developed in this area.

[38] It is my further view that the main aspects of the work I have been retained to do also should be made publicly available, or at the very least to the community network. This would include my Report from the March 4, 2020 stakeholder meeting, this Report, and the Case Patterns. In terms of my Report from the stakeholder meeting, I am aware that the Commission committed to the participants that a report from the meeting would be prepared and distributed to them. Given this commitment, there would appear to be no reason why my Report would not be disclosed, even if the Commission also chooses to disclose some other report it has prepared.

[39] In terms of this Report, there are several reasons for public disclosure. First, while I have worked diligently to identify the key issues affecting the Commission's handling of race-based complaints and have endeavoured to make the best recommendations I can, I do not pretend to be perfect and there is always room for improvement in any project. So making this Report available to the public would give people the opportunity to provide input or feedback to the manner in which I have identified and analyzed the various issues, to identify any issues I may have missed, and/or to provide input or feedback on the recommendations I have made. In my view, all of this would be useful information for the Commission to consider.

[40] Second, making this Report publicly available would support transparency on the part of the Commission and help to re-build trust with racialized communities, particularly those who have expressed their concerns about how the Commission has been handling race-based cases.

[41] Third, making this Report publicly available would help with accountability, in terms of letting the public know the issues that have been identified and the recommendations that have been made, so that the public has the information required to hold the Commission to account as a public body if concerns about its handling of race-based cases continue. Disclosing this Report for the purpose of accountability does not mean that the Commission needs to accept and implement all of my recommendations. But it does mean that the Commission may be called upon to explain why certain recommendations were not acted on, especially if things don't improve. Being held accountable is not a bad thing, or something to shy away from. Often being held accountable is the way things get done.

[42] Finally, disclosing the Case Patterns is important, because these are the tools and resources Commission staff will be using in their work on race-based cases. There is nothing about the information set out in the Case Patterns that needs to be kept a secret. In fact, in my view, it would be very helpful to the parties to know the kinds of questions they may be asked, the kinds of documents they may need to produce, and the kind of analysis that may be applied, once again so that they can focus their evidence and submissions from an informed perspective.

Recommendation D.1: That the Commission should make the following materials publicly available: the Criteria; the Guidelines; the materials from the June 2019 training; my Report from the stakeholder meeting; this Report; and the Case Patterns. The Commission further should commit to making any other major work from this project publicly available.

E. Race-based Complaints Pilot Project

[43] At the stakeholder meeting and in the letter to the Chief Commissioner, concerns were expressed about the level of resources being committed by the Commission to the Race-based Complaints Pilot Project team.

[44] I share these concerns. First, I am concerned that the bulk of the work on the Pilot Project is being required to be performed by three Commission employees who also are still performing their full-time jobs at the Commission. Since the Pilot Project was initiated in the fall of 2019, these three team members have been responsible for preparing the Guidelines, reviewing draft assessment reports in race-based cases and providing advice, more recently reviewing race-based complaints and providing advice at the front end, taking a lead role at the stakeholder meeting, and being closely involved in the work I have been doing both by acting as a resource and answering my questions and by reviewing and providing input on my draft materials. All of this is extremely important work that has been taking up a significant amount of their time. In my view, expecting these three employees to continue to work in this way on the Pilot Project while still fulfilling their full-time responsibilities is unreasonable, and will very likely cause them to burn out.

[45] Accordingly, I recommend that the regular job responsibilities for each of these employees be reduced to half-time so that they each can devote the remaining half of their time to the Pilot Project, and that their regular work beyond a half-time level be re-distributed to other staff.

[46] Second, while the three individuals on the Pilot Project team have a wealth of knowledge and expertise that is invaluable, I am concerned that they are all at a non-managerial level within the Commission. Anti-racism organizational change within an organization requires the commitment and drive of people like the members of the Pilot Project team, but in order to be successful, also needs a champion at a high level within the organization, who can provide support and who has the authority to ensure that the advice of the team members is heeded and that the necessary actions are taken. In my view, this person needs to be at the executive level and needs to be committed to the project and to be prepared to devote time and resources to ensure its success.

[47] Third, in my view the status of the "Pilot Project" should be changed to become permanent, so that even after the immediate work to be undertaken through the action plan has been completed, there still will be a group of employees within the Commission charged with both being a resource on race-based cases and monitoring the Commission's work to prevent back-sliding. This does not mean that the Pilot Project team members need to make a career long commitment to the project, or that as time goes by and the major work is completed, there still needs to be three members of the team. But there needs to be at least someone within the Commission whose responsibility it is to keep an eye on this issue on an ongoing basis.

Recommendation E.1: That the Commission reduce the regular job responsibilities of the Pilot Project team members to half-time, and re-distribute work beyond this level to other staff, so that the team members have the time required to perform the work required for the Pilot Project. The Commission also needs to identify a person, ideally at the executive level, who can provide support to the Pilot Project team and who has the authority to ensure that the advice of the team members is heeded and that the necessary actions are taken to ensure the success of this project. The Commission also should change the status of the "Pilot Project" so that it becomes a permanent part of the organization. The Commission should consult with the members of the Pilot Project team before any of these changes are implemented.

Appendix A – Mark Hart Bio

Mark has over 30 years of experience working in the human rights field. Until recently, Mark was a Vice-Chair at the Human Rights Tribunal of Ontario for 12 years from 2007 to 2019. Prior to joining the Tribunal, Mark had a law practice focused on human rights and employment issues. Before that, he was counsel at the Ontario Human Rights Commission and the Employment Equity Commission.

Specifically in relation to race issues, Mark has had a particular focus on race-related issues and race analysis since the early 1990's when he was legal counsel at the OHRC. While at the OHRC, Mark was a member of the OHRC's Anti-Racism Committee, and led projects on developing a litigation strategy for race-related cases and applying race analysis to review the OHRC's investigation reports in racial discrimination and harassment cases.

While in private practice, Mark co-chaired a human rights symposium on Racial Discrimination, through Osgoode Hall Law School's Professional Development Program (May 2003). Mark also co-taught Racism and the Law in Canada at Ryerson University, and Discrimination and the Law at Osgoode Hall Law School.

As an adjudicator at the HRTO, Mark has written some of the leading decisions on race-related issues, including decisions that address racially poisoned work environments, racial stereotypes and unconscious racial bias, subjective hiring and promotion processes and the halo vs. devil effect, and recognizing allegations of "playing the race card" as a form of racial discrimination.

Appendix B – Summary of Recommendations

A. Representation of Racialized Groups within the CHRC

A.1: That the Commission review its recruitment, hiring and promotion processes and practices in order to identify the barriers that are impeding the greater representation of members of racialized groups at the Commission at all levels, from front-line employees to executive management. This review should include consultation with racialized employees at the Commission, who can assist in identifying barriers. The review should examine the role played by job descriptions, that may not be sufficiently specific regarding the types of knowledge, experience and abilities required to do human rights and particularly anti-racism work. The review also should examine the way that mentoring, acting assignments and secondments not only can serve as barriers, but also can be used as positive measures to assist racialized employees and increase representation.

A.2: 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.

B. Accountability

B.1: That the Commission create a network of community groups and organizations that are interested in and committed to helping the Commission to improve its handling of race-based cases, and a steering committee that includes representation both from the Commission and this community network that would be responsible for developing an action plan to implement the required changes and for ongoing monitoring of the Commission's progress. The steering committee needs to include a Commission representative from an executive level, who would have the authority to ensure that the work required under the action plan gets done.

B.2: That the Commission create an action plan to implement the changes required to improve its handling of race-based complaints, based on the recommendations made in my Report: Strengthening the Commission's handling of Race-based Cases and in this Report and with additional input from the Pilot Project team and the community stakeholders. This action plan is to be developed and finalized by the steering committee described above, in consultation with the broader community network. For this purpose, this Report and my Report: Strengthening the Commission's handling of Race-based Cases should be shared with the community network together with a proposed action plan. The action plan should set out clear timelines, and concrete, measurable goals or outcomes.

B.3: That the steering committee continue to meet on an ongoing basis to monitor the implementation of the action, to assess whether the stated goals and/or outcomes are being met, and to provide input into any changes that need to be made to the action plan in order to achieve its purpose, in consultation with the broader community network.

C. Request for Data and Disaggregated Data from the CHRC

C.1: That the Commission compile and make publicly accessible the following data at the earliest date

- Complaints accepted by ground
- Complaints dismissed under s. 41 by ground
- Complaints the Commission decides to “deal with” under s. 41 by ground
- Complaints dismissed under s. 44 by ground
- Complaints referred to the Tribunal under s. 44 or s. 49 by ground
- Complaints referred to mediation by ground
- Complaints resolved at mediation by ground
- Complaints referred to the Tribunal with “full participation” by ground
- Complaints referred to the Tribunal with “partial participation” by ground

C.2: That the Commission consider the collection of disaggregated race data from claimants on a go-forward basis through discussion at the steering committee in consultation with the community network, for incorporation into the action plan in a way that makes sense in the context of competing priorities and the Commission's limited resources.

D. Transparency

D.1: That the Commission should make the following materials publicly available: the Criteria; the Guidelines; the materials from the June 2019 training; my Report from the stakeholder meeting; this Report; and the Case Patterns. The Commission further should commit to making any other major work from this project publicly available.

E. Race-based Complaints Pilot Project

E.1: That the Commission reduce the regular job responsibilities of the Pilot Project team members to half-time, and re-distribute work beyond this level to other staff, so that the team members have the time required to perform the work required for the Pilot Project. The Commission also needs to identify a person, ideally at the executive level, who can provide support to the Pilot Project team and who has the authority to ensure that the advice of the team members is heeded and that the necessary actions are taken to ensure the success of this project. The Commission also should change the status of the "Pilot Project" so that it becomes a permanent part of the organization. The Commission should consult with the members of the Pilot Project team before any of these changes are implemented.