

CENTRE DE RECHERCHE-ACTION
SUR LES RELATIONS RACIALES

Unis pour la diversité et l'égalité raciale



CENTER FOR RESEARCH-ACTION
ON RACE RELATIONS

United for Diversity and Racial Equality

fondé en / founded in
1983

**CRARR SUBMISSION TO THE UNITED NATIONS
SPECIAL RAPporteur ON CONTEMPORARY
FORMS OF RACISM, RACIAL DISCRIMINATION,
XENOPHOBIA AND RELATED INTOLERANCE**

**First Thematic Report: Racial and Ethnic-Based Discrimination
through Nationality and Citizenship Exclusion**

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Information about the Organization

The Center for Research-Action on Race Relations (CRARR) is a Montreal-based independent, non-profit civil rights organization that was founded in 1983 with the mandate to promote racial equality and combat racism in Canada. As an issue-based organization, CRARR works with all sectors of society that share its values of equality and diversity, especially equality-seeking groups.

CRARR activities and services include:

- Advocacy and defense for victims of discrimination based on race, religion, ethnic or national origin, citizenship status and other characteristics as protected by different federal and provincial human rights legislation,
- Research and litigation on racial equality issues,
- Organizing conferences, consultations, seminars, and trainings on different race relations and civil rights issues, and
- Interventions and advocacy before legislative, administrative, regulatory and judicial agencies.

Ending Discrimination against Non-Citizens

CRARR wishes to bring to the attention of the Special Rapporteur three specific areas in which discrimination based on citizenship status is still practiced in the Province of Quebec:

1. In employment,
2. In official identity documentation of gender for transgender non-citizens, and
3. In the provincial electoral system.

1. Citizenship Discrimination in Employment

In a 1989 judgment, known as the *Andrews* decision, the Supreme Court of Canada declared illegal and unconstitutional the requirement of Canadian citizenship as a

precondition for admission to the Bar of the Province of British Columbia.¹

Yet, the Quebec Human Rights and Youth Rights Commission (hereafter, “the Human Rights Commission”) decided, in 2017, that discrimination on the ground of “ethnic or national origin” as provided for in the *Quebec Charter of Human Rights and Freedoms*, cannot be interpreted as including non-citizen status. As a result of this failure to recognize citizenship status as an analogous ground of discrimination in the said *Charter*, discrimination based on citizenship remains legal in Quebec, in areas under provincial jurisdiction.

The Human Rights Commission’s narrow interpretation of “ethnic or national origin”, and failure to apply an intersectional analysis as suggested by the courts, runs contrary to well-established Canadian jurisprudence requiring a “broad and liberal” interpretation of human rights legislation.² It means that non-citizens who are Quebec residents cannot enjoy effective protection under the provincial human rights legislation.

The Commission adopted this position by rejecting a complaint by a Black woman, at the time a permanent resident of Canada and a citizen of Haiti, who was fired from a job with a non-profit association incorporated under the Quebec *Professional Syndicates Act*, CQLR c S-40 (PSA). This Act was originally adopted in 1924 and applies to over 1,700 unions and non-profit organizations in the Province. The Act’s most glaringly discriminatory provision is Section 8, which provides that “*only Canadian citizens may be members of the administrative council of a syndicate or form part of its personnel.*”

Based on immigration data, CRARR estimates that each year, between 200,000 and 250,000 permanent residents in Quebec are legally barred from employment in Quebec unions and non-profits incorporated under the PSA, with most of these permanent residents being racialized persons. Despite CRARR’s representations made in 2016 to the Government of Quebec, notably the Province’s Minister of Justice and Minister of Immigration, Diversity and Inclusion, to amend the PSA in order to abolish its discriminatory provisions, and to add “citizenship” or “citizenship status” as a ground of discrimination to the *Quebec Charter of Human Rights and Freedoms* (similar to the *Ontario Human Rights Code*, which contains such prohibition), no legislative action has yet been undertaken.

What is equally disturbing is that the Human Rights Commission made the decision at a time when most the positions of Human Rights Commissioner were vacant. Since the Human Rights Commission also has a mandate to oversee youth rights in the youth protection and youth criminal justice system, half of its Commissioners come from these sectors, and most of these Commissioners are not legally trained and have little human rights and non-discrimination training or experience prior to their appointment. It should also be noted that, since 1995, when the present Human Rights Commission was created

¹ *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143.

² *See, for example, B. v. Ontario (Human Rights Commission)*, [2002] 3 SCR 403, at para 44.

with a dual human rights/youth rights mandate, none of the Youth Rights Commissioners have been from racialized groups. In the present case, the decision was made by a committee of three Commissioners, whose names are not made public, which further raises the issue of the fundamental lack of transparency and accountability on the part of the Human Rights Commission in adjudicating complaints of discrimination based on race and ethnic or national origin.

Additionally, CRARR stresses the excessive delay in investigating complaints of discrimination on race, ethnic or national origin and religion. The average length of time for the Human Rights Commission to investigate a complaint of discrimination and to render a decision is four to five years. Often, the Commission declines to provide a reason for the delay, or a firm date to publish a decision. In one particular CRARR-assisted case of discrimination in employment involving a Haitian immigrant man whose application for a public transit inspector was rejected, the complaint was filed in October 2011, and the Commission's investigation was completed in October 2014. Since then, until February 2018, the Commission has been unable and unwilling to explain the delay.

Finally, it should be noted many international medical graduates ("IMG") have been denied access to medical internship positions and foreign trained doctors have been barred from re-entering the profession in Quebec. Many of these graduates or doctors are immigrants from African and Middle-Eastern countries. This situation of obvious ethnic or racial discrimination has been well-documented by the Human Rights Commission in a report on an investigation launched at CRARR's request in 2007.³ Yet despite this report, which unequivocally identifies systemic barriers to full access to medical residency positions for IMGs, the Human Rights Commission has not successfully brought forward a single case of discrimination based on ethnic or national origin against IMGs before the Quebec Human Rights Tribunal.

A primary reason for the Commission's failure to do so is its own refusal to adopt comprehensive guidelines on investigating complaints of systemic racism, and intersectional discrimination, as found in most complaints filed by IMGs.

2. Discrimination against Transgender Immigrants

Discrimination based on citizenship in Quebec also extends to non-citizen transgender immigrants, who are legally denied the right to change their gender marker and name in official provincial documents, such as their Medicare card or driver's license. Under s. 71 of the *Quebec Civil Code*, "... only a person who has been domiciled in Québec for at least one year and is a Canadian citizen may obtain such changes." The related

³ Commission des droits de la personne des droits de la personne et des droits de la jeunesse, Résolution Com-559-5.1.1, 10 novembre 2010.

Regulation respecting change of name and of other particulars of civil status also contains a citizenship restriction.⁴

Quebec remains the only province of Canada that continues to deny non-citizens the right to change their gender in official provincial documents, which disproportionately affects racialized persons and results in significant barriers for these persons in employment, housing rental, banking and other sectors of society. These barriers force many non-citizen transgender peoples into desperate situations of double or triple jeopardy, economic, social and legal hardship as well as criminalization and deportation.

Despite Quebec's uniquely progressive record on LGBTQ civil rights, the Government of Quebec, namely its Minister of Justice (who is also responsible for the Human Rights Commission), has consistently declined to rectify this form of legislated discrimination. Recent legislative reforms in Quebec to protect transgender persons from discrimination, which include the addition of the ground of "gender identity" to the provincial human rights legislation, fail, for inexplicable reasons, to grant full equality to transgender non-citizens.

The Official Opposition introduced, in 2017, Bill 895 in the Quebec National Assembly to eliminate this form of discrimination. However, this Bill has not been adopted by the Government.

3. Citizenship Discrimination in the Quebec Electoral System

Under the present *Election Act of Quebec*⁵, it is forbidden for a non-resident to make a financial contribution to a political party or an election campaign (s. 87), or to be hired as electoral staff (s. 136, which requires that electoral officers be "chosen among the qualified electors"). This statutory restriction violates non-citizens' constitutional freedom of political expression, and their constitutional right to equality in employment. It also represents a paradox since it is no longer necessary to be a Canadian citizen to work in the Quebec provincial and municipal civil service.

Furthermore, provincial electoral districts are drawn on the basis of the number of voters, instead of residents (ss. 14 - 16), which effectively leaves out non-citizens and other non-voters such as children and youths under 18. At the federal level, however, electoral boundaries are based on the number of residents.⁶

⁴ *Regulation respecting change of name and of other particulars of civil status*, CQLR c CCQ, r 4, at ss. 2 and 4.

⁵ R.S.Q., E-3.3

⁶ *Electoral Boundaries Readjustment Act*, R.S.C., 1985, c. E-3.