

Questionnaire on NHRIs and human rights defenders

1. a) **Please provide a brief overview of the legislative framework adopted to establish a NHRI in your country. Please cite the names of any such laws and regulations in full.**

The Canadian Human Rights Commission (CHRC) is established by the *Canadian Human Rights Act* (CHRA), which was enacted in 1977. The purpose of the CHRA is to extend the laws of Canada to give effect to the principle that all individuals should have an opportunity equal with others to make for themselves the lives they are able and wish to have without being hindered or prevented from doing so by discriminatory practices based on race, colour, national or ethnic origin, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for which a pardon has been granted or in respect of which a record of suspension has been ordered.

The Supreme Court of Canada has ruled that the CHRA has quasi-constitutional status in Canadian law, which means that, although the Constitution is the highest law, other national legislation is subordinate to, and must be in conformity with, the provisions of the CHRA.

The CHRC also ensures compliance with a second statute, the *Employment Equity Act* (EEA). The purpose of the EEA is to achieve equality in federally-regulated workplaces so that no person is denied employment opportunities for reasons unrelated to ability and, in fulfillment of that goal, to correct conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities. The CHRC is responsible for the enforcement of the obligations imposed on employers by the EEA and it conducts compliance audits to ensure that representation of the designated groups in an employer's workforce reflects their representation in Canadian society.

- b) **Please indicate how these laws and regulations comply with international human rights standards, and in particular, the Paris Principles.**

As discussed above, the CHRC is established through legislation which provides it with a broad mandate to promote and protect human rights, as described in greater detail below.

- c) **Please indicate the current accreditation status of the NHRI with the ICC and what measures, if any, have been taken to implement the recommendations made at the most recent ICC SCA meeting with a view to strengthening the NHRI's compliance with the Paris Principles.**

The CHRC was re-accredited with A-status in May 2011. At that time, the ICC SCA made recommendations with respect to the CHRC's selection and appointment process and its mandate. The CHRC has not taken any action to date to follow up on these recommendations.

2. a) Please provide details outlining the mandate adopted by the NHRI in relation to the promotion and protection of human rights in accordance with the range of competencies and responsibilities specified in the Paris Principles.

The CHRA provides the CHRC with a broad mandate to both promote and protect human rights, including by:

- receiving and processing complaints, investigating those that are determined to be within the CHRC's jurisdiction, and making a determination as to the outcome: dismissal, conciliation, or a hearing by the Canadian Human Rights Tribunal;
- throughout the complaint process, encouraging settlements by providing opportunities for dialogue and mediation;
- participating as a party or intervenor before courts and tribunals to make submissions in cases where this will advance human rights;
- conducting information programs, including developing publications and preparing press releases;
- conducting research;
- submitting Special Reports to Parliament;
- submitting reports to international bodies, including during the UPR and to the Treaty Bodies;
- interacting with the international and regional human rights systems, including the UN, the Organization of American States and the Commonwealth;
- commenting on the human rights impact of legislation;
- liaising with provincial and territorial human rights bodies;
- liaising with NGOs;
- liaising with Parliamentarians;
- developing policy; and
- issuing guidelines.

b) Please indicate whether the NHRI is mandated to consider and / or adjudicate individual complaints of human rights violations.

The CHRC has the mandate to receive complaints from individuals or groups of individuals, or to initiate a complaint itself, where it has reasonable ground for believing that a person is engaging in or has engaged in discriminatory practices. At any stage after the filing of a complaint, the CHRC may request that the Canadian Human Rights Tribunal (CHRT), a quasi-judicial body, institute an inquiry into the complaint.

c) If relevant, please indicate whether the mandate is limited to specific rights or whether complaints against the Government, the police and / or the military are permitted and how they are dealt with.

For the purposes of the CHRA, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted or in respect of which a record of suspension has been ordered.

Under the CHRA, it is a discriminatory practice:

- i. in the provision of service, to deny access to that service or to differentiate adversely in relation to an individual based on a prohibited ground of discrimination;
- ii. in the provision of commercial premises or residential accommodation, to deny occupancy of such premises or to differentiate adversely in relation to an individual based on a prohibited ground of discrimination;
- iii. in employment, to refuse to employ or continue to employ an individual or to differentiate adversely in relation to an employee based on a prohibited ground of discrimination;
- iv. to circulate any form of application for employment that expresses or implies any limitation, specification or preference based on a prohibited ground of discrimination;
- v. in the context of employee organizations, to exclude an individual from membership in that organization, to expel or suspend a member of the organization, or to limit, segregate, classify or otherwise act in a way that adversely affects an individual based on a prohibited ground of discrimination
- vi. for an employer, an employee organization or employer organization to establish or pursue a policy or practice that deprives an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination;
- vii. for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value;
- viii. to publish or display before the public, or cause to be displayed, any notice, sign, symbol, emblem or other representation that expresses or implies discrimination or that incites or is calculated to incite others to discriminate; and
- ix. in the provision of a service, commercial premises or residential accommodation, or in matters related to employment, to harass an individual on a prohibited ground of discrimination.

The above are not discriminatory practices where:

- i. in employment, an employer can establish that the otherwise discriminatory practice is based on a *bona fide* occupational requirement;
- ii. employment is refused or terminated because the individual has not reached the minimum age proscribed by law or regulation;
- iii. employment is terminated because the individual has reached the normal age of retirement for employees working in positions similar to the position of that individual;
- iv. an employer, employee organization or employer organization grants a female special leave or benefits in connection with pregnancy or child-birth or grants employees special leave or benefits to assist them in the care of their children;
- v. in the provision of a service, commercial premises or residential accommodation, where there is a *bona fide* justification for denial or differentiation; or
- vi. where the otherwise discriminatory practice is part of a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be based on or related to the prohibited grounds of discrimination.

Only those individuals or groups of individuals who are legally present in Canada or, if temporarily absent from Canada, entitled to return to Canada, may file a complaint with the CHRC.

All employers and service providers under federal jurisdiction, whether in the public or private sphere, may be the object of a complaint. This includes the federal government, the Canadian Armed Forces and the national police force, the Royal Canadian Mounted Police.

d) In this regard, please indicate whether the NHRI is empowered to carry out protection functions including providing remedies to victims of human rights violations, witness protection mechanisms and conducting visits to detention facilities.

Under the CHRA, where it finds that a complaint is substantiated, the CHRT, not the NHRI, may make an order against the person found to have engaged in discriminatory practices to:

- a. cease the discriminatory practice and take measures, in consultation with the CHRC on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in the future;
- b. make available to the victim of the discriminatory practice, on first reasonable occasion, the rights, opportunities or privileges that were denied as a result of the discriminatory practice;
- c. compensate the victim for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice;
- d. compensate the victim for any or all additional costs of obtaining alternative goods, services, facilities or accommodation and for any expenses incurred by the victim as a result of the discriminatory practice;
- e. compensate the victim, by an amount not exceeding \$20,000, for any pain and suffering that the victim experienced as a result of the discriminatory practice; and / or
- f. compensate the victim, by an amount not exceeding \$20,000, if the CHRT finds that the person has engaged in the discriminatory practice willfully or recklessly.

Under the CHRA, it is a discriminatory practice for a person against whom a complaint has been filed, **or any person acting on their behalf**, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim of the discriminatory practice.

Also under the CHRA, every person is guilty of an offence, liable on summary conviction to a fine not exceeding \$50,000, who threatens, intimidates or discriminates against an individual because that individual has made a complaint or given evidence or assisted in any way in respect of the initiation or prosecution of a complaint.

3. **a) Please indicate what mechanisms, if any, are in place within the NHRI to ensure that human rights defenders at risk are protected (e.g. through protection programmes, early warning systems or by submitting complaints to regional bodies on specific cases).**

The protections available for human rights defenders under the CHRA are outlined above under question 2d).

b) Please indicate whether any obstacles or challenges exist with regard to the effective protection of human rights defenders through these mechanisms, and how the NHRI addresses them.

The CHRC is not aware of any challenges which exist with regard to the effective protection of human rights defenders through these mechanisms.

4. a) Please describe the working relationship between the NHRI and civil society, including human rights defenders, in accordance with the Paris Principles.

The CHRC maintains regular contact with civil society. This contact takes many forms, including: individual and group meetings and consultations; forums; seminars and workshops; conference calls; joint research; publications, and projects; and participation in litigation related to complaints. The frequency of this contact varies, depending upon the subject matter.

b) Please indicate whether any challenges or obstacles exist that may prevent interaction and cooperation with civil society and / or human rights defenders and how the NHRI seeks to address them.

Resource constraints sometimes limit the extent of interaction that the CHRC is able to have with civil society.

5. a) Please indicate whether any member of the NHRI's staff has ever been the victim of threats, or other kinds of harassment, as a result of work carried out on behalf of the organization.

Several employees of the CHRC have been the victim of threats and harassment as a result of their work in receiving processing and investigating complaints from the public, and in particular in relation to their processing of complaints of hate messaging. Threats have included the posting of pictures and information about employees on websites controlled by certain groups opposed to the CHRC's work, death threats, harassing phone calls, and threats of physical violence.

Provincial and territorial human rights commissions across Canada were also forwarded this question for response. The Northwest Territories Human Rights Commission reports that its five employees have all had occasion to deal with irate individuals and have had to contact the police on occasions where they have received hate messages left on office voice mail, death threats against employees, and threats from individuals that they intend to harm a third party.

b) Please specify what measures are in place, if any, to protect NHRI members investigating human rights violations. If applicable, please specify what mechanisms at the institutional, national, regional and international level have been employed to protect NHRI members.

In 2008, the CHRC conducted a Threat and Risk Assessment and has implemented various measures to ensure the protection of employees, including: access control (card-activated locks, commissionaires / security) at all CHRC offices, live monitoring (cameras) at CHRC headquarters, and the provision of protection of personnel training and general awareness training. In addition, investigators are able to conduct the

majority of their work by phone and no complainant may make initial contact with a Commission employee face-to-face, thus reducing risk to employees.

Provincial and territorial human rights commissions across Canada were also forwarded this question for response. The Northwest Territories Human Rights Commission reports that they have taken various safety measures to protect employees including: installing a motion detector with a bell that goes off each time someone enters or leaves the office; installing panic buttons linking to the police in all offices; ensuring meetings with clients take place in interview rooms with two exits; and ensuring that two employees are in the office at all times and that another employee is informed that a meeting will be taking place with a client. Where inappropriate behaviour by a client does occur, this is documented in a report to the Director of the Commission and difficult encounters are debriefed for the benefit of all employees. Employees are able to request that another employee be present if they are required to meet with an individual who has engaged in inappropriate behaviour in the past. Finally, employees have received training on how to deal with hostile individuals.

c) Please indicate whether the NHRI has ever been subjected to an unannounced visit by representatives from the police or state authorities, or if it has otherwise been subject to interference or threat that may jeopardize its independence as an NHRI under the Paris Principles.

The CHRC has not been subject to such unannounced visits or threats.

6. a) Please indicate the main sources of funding for the NHRI.

The CHRC is funded through Parliament by a separate annual vote. No portion of the CHRC's budget is donor funded.

b) In this regard, please indicate whether any challenges exist, particularly in relation to the functional autonomy of the organization and how this impacts on the work of the NHRI.

Like many other NHRIs, the recent economic crisis has precipitated the tightening of the CHRC's budget. However, this has not affected the functional autonomy of the CHRC, and it continues to operate as an effective NHRI.

7. a) Please describe the procedures in place relating to the selection and appointment of members of the governing body.

The governing body of the CHRC consists of a Chief Commissioner, a Deputy Chief Commissioner and not less than three or more than six other members. Members are appointed by official act, namely by Order in Council. This appointment is made by the Governor General on the advice of the Queen's Privy Council, represented by Cabinet, based on recommendations made by the Minister of Justice.

b) Please indicate what mechanisms are in place to ensure independent scrutiny of candidates and security of tenure for members of the governing body.

Since 2007, all vacancies for positions of Commissioner are widely advertised and anyone can apply. Vacancy announcements are published on the internet, as well as

published in the *Canada Gazette*, which is the official newspaper of the Government of Canada and is available in paper and electronic format to all Canadians. Referrals for appointments originate from many sources, including academic communities, senior public servants and civil society.