

**OPINION OF THE COMMISSION DES DROITS DE LA PERSONNE
ET DES DROITS DE LA JEUNESSE
IN RELATION TO CANADA'S SIXTH PERIODIC REPORT REGARDING
*THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS***

This is a translation of the *Commentaires de la Commission des droits de la personne et des droits de la jeunesse relatifs au sixième examen du Canada dans le cadre du Pacte international relatif aux droits civils et politiques*, adopted at the 618th meeting of the Commission, held on May 29, 2015, by Resolution COM-618-7.1.1



Claude Boies, Lawyer
Secretary of the Commission

Written by :

M^e Daniel Carpentier, Deputy Director
M^e Evelyne Pedneault, Legal Counsel
Research, Education-Cooperation and Communications Department

Stéphanie Gauvreau, Investigator
Ariane Roy LeFrançois, Researcher
Louise Sirois, Investigator
Protection and Promotion of Youth Rights Department

Word processing:

Chantal Légaré
Research, Education-Cooperation and Communications Department

INTRODUCTION

1. The Commission des droits de la personne et des droits de la jeunesse (Human Rights and Youth Commission) is a public organization independent from the Québec Government constituted under the *Charter of Human Rights and Freedoms*. Members of the Commission are appointed by the National Assembly on the motion of the Premier. These appointments must be approved by two-thirds of the members of the National Assembly.
2. The Commission's mission is to promote and uphold the principles stated in the Québec *Charter of Human Rights and Freedoms*. It also ensures that the interests of children are protected and that their rights, which are recognized in the *Youth Protection Act* are respected and promoted. In addition, the Commission oversees compliance with the *Act respecting Equal Access to Employment in Public Bodies*.
3. In compliance with the Charter, the Commission intervenes in matters of Québec's legislative jurisdiction. The Commission has many responsibilities, including the following: it carries out investigations in cases of discrimination or exploitation of elderly or disabled persons, and in situations where the rights of a child may have been violated, on its own initiative or following receipt of a complaint. It develops and implements an education and information program on human rights and youth rights; conducts and promotes research and publications on fundamental rights and freedoms and on youth rights; identifies provisions in Québec legislation that are contrary to the Charter; and makes appropriate recommendations to the Government. The Commission also receives and examines suggestions, recommendations, and requests with respect to human rights and freedoms and makes appropriate recommendations to the Government. It cooperates with any organization dedicated to the promotion of human rights and freedoms, in Québec or elsewhere. The mission and responsibilities of the Commission are in keeping with those required of national human rights institutions under the Paris Principles. Furthermore, the Commission also bases its opinions and recommendations on international human rights law.
4. The Commission wishes to draw the Human Rights Committee's attention on two elements of concern that are related: on the one hand, to questions 10 and 24, which the Committee submitted to Canada regarding police intervention and, on the other hand, to question 23 regarding protection of Inuit youth rights.

AN INDEPENDENT POLICE OVERSIGHT MECHANISM

Right to life, prohibition of torture and cruel, inhuman or degrading treatment, family life and an effective remedy (arts. 2, 6 and 7)

Question 10

Further to the Committee's previous concluding observations (CCPR/C/CAN/CO/5, para. 20) please provide information on the measures taken to ensure that all allegations of ill-treatment and excessive use of force by the police are impartially investigated by an independent body, including those related to the police use of force during the student protests in Quebec in 2012.

Dissemination of information relating to the Covenant and the Optional Protocol (art. 2)

Question 24

Please provide information on arrangements made to raise the awareness of judges, public servants, police officers and other law enforcement officials, lawyers and academics with regard to the Covenant. Please also provide more information on the involvement of Aboriginal and minority groups, civil society and non-governmental organizations in the preparatory process of the report (CCPR/C/CAN/6, para. 6).

5. As early as 1987, the Commission resolved to conduct an investigation on its own initiative about allegations of discriminatory treatment and racist behaviour by the police toward ethnic and visible minorities. The investigation also focused on the causes of the strained relations between these minorities and the police. The Commission then set up an investigation committee on relations between the police and visible and ethnic minorities.
6. The investigation committee's approach focused on discipline within the police force and the mechanisms in place to monitor and control the exercise of police duties. Following 16 days of public hearings and after reviewing 106 cases alleging breaches of "public service obligations", the committee established an overall picture of an *in-house* disciplinary system, which suggested that when it comes to disciplinary matters, the police seemed to be both judge and jury.
7. The investigation committee's recommendations led to the establishment of a police ethics system in Québec in 1988, followed in 1989 by changes to investigative procedures when a person dies during a police intervention or while in police custody. During the period covered by the commented report, the Commission nevertheless had the opportunity to conclude that many of the findings identified by the investigation committee are still relevant.
8. In 2005, the Commission examined allegations of systemic discrimination against homeless people in Montréal, including discrimination at the hands of the city's police department (Service de police de la Ville de Montréal – SPVM). A taskforce was set up. It brought together representatives from the Commission and from homeless support groups, the SPVM, and the public transit authority (Société de transport de Montréal – STM). Elected members of the City of Montréal's executive committee and public security and social development officials of the City of Montréal were also part of the taskforce.

9. The Commission's examination of the municipal by-laws relating to uncivil behaviour, as well as its examination of SPVM institutional standards and policies that guide the enforcement of these by-laws, led it to conclude that the homeless in Montréal are subjected to social profiling. The Commission also concluded that social profiling may sometimes take several forms, including: unwarranted harassment of an already highly vulnerable group of people; inappropriate or even offensive remarks; abuse of rights or authority; judicialization; and ill-treatment. The Commission's opinion on the judicialization of the homeless:

Opinion [In French]: http://www.cdpedj.qc.ca/Publications/itinerance_avis.pdf

Summary: http://www.cdpedj.qc.ca/Publications/Homeless_Summary.pdf

10. Also during the period covered by the commented report, the Commission received and processed many racial profiling complaints involving primarily the police. In 2009, given the magnitude of the problem, the Commission launched a public consultation on the issue of racial profiling and systemic discrimination of racialized youth (this expression is now used by the Commission in place of visible minorities) in Québec.

11. This consultation provided an opportunity for many people from racialized communities to explain how they "feel as if they are on the margin of society, and are under scrutiny and targeted when they occupy public spaces" and that "they do not enjoy the same freedoms as the rest of the population, including the freedom to circulate, to have fun or to get together with other racialized youth." Moreover, the Commission's consultation report takes a critical look at the effectiveness of remedies currently available to help citizens exercise their rights when they believe they have been victims of racial profiling in their dealings with police officers or law enforcement agencies.

12. In light of these findings, the Commission made several recommendations, including with regards to setting up an independent civilian body tasked with investigating incidents involving police officers that lead to death or serious injury, as well as supervising these investigations. The Commission's report on racial profiling and its consequences:

http://www.cdpedj.qc.ca/publications/profiling_final_en.pdf

13. The Commission reiterated these recommendations on several occasions, including during the process leading up to the adoption of Bill n°12, *An Act to amend the Police Act as concerns independent investigations*, introduced on November 29, 2012 at the National Assembly. The independent investigation bureau laid out in the bill, known as the Bureau des enquêtes indépendantes, represents an important legislative development. Bill n°12 still required certain improvements to ensure that the independent investigation mechanism meets independence, impartiality, transparency, and accountability criteria that will ensure its credibility and restore public confidence. The Commission's brief on the above-mentioned Bill n°12 [In French]: http://www.cdpedj.qc.ca/Publications/memoire_pl12_enquetes_police.pdf

14. The Commission deplores the substantial delays in the setting up of the Bureau des enquêtes indépendantes. More than two years after the adoption of the legislation establishing the organization, the legislative provisions requiring that it conduct an investigation "if a person, other than an on-duty police officer, dies, is seriously injured or is injured by a firearm used by a police officer during a police intervention or while the person is in police custody" are still not in force. Provisions relating to the Bureau are included in Chapter III.1 (Title V) of the *Police Act*: http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/P_13_1/P13_1_A.htm

15. The Commission also notes substantial delays in the drafting and adoption by the Government of regulations provided by law, especially with regard to the definition of the concept of serious injury as it applies to the relevant sections of the *Police Act*, as well as the rules governing the way investigations by the Bureau des enquêtes indépendantes are handled. The law, while providing for the establishment of the Bureau, offers very limited information on necessary guidelines to the investigative procedure.

16. When it was called upon to interpret the scope of a regulatory provision regarding Ontario's Special Investigations Unit (SIU), the Supreme Court of Canada stated, like the Ontario Court of Appeal previously, that "It provided a regulatory framework designed to ensure that the SIU could conduct its investigations in an independent and transparent fashion." Thus, regulations regarding the concept of serious injury or the way in which investigations are carried out still represent important challenges, and solutions found may or may not result in the mechanism's independence, impartiality, transparency, and accountability. The judgment of the Supreme Court of Canada in the case *Wood v. Schaeffer* [2013] 3 R.C.S.1053: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13388/index.do>

17. Among other steps to be taken, the duties and obligations must be clearly defined for every person involved, including witnesses and their line supervisors, and Bureau des enquêtes indépendantes investigators. Deadlines for reporting to the Bureau must be established and respected. Rapid deployment of investigators to the site must be assured. Integrity of evidence and the scene must be preserved. The police officers involved as well as police witnesses must be kept apart, their reports must be submitted as soon as possible, and they must be required to meet investigators upon request. These guidelines must translate into tangible requirements. Compliance with these requirements must be monitored to ensure the investigations' credibility, while non-compliance must be monitored and sanctioned. They should also establish adequate procedures and criteria.

18. Furthermore, it is worth noting that the Commission has often reiterated the need to adapt police officer training, including continuing education programs, to include a component specifically devoted to the study of human rights and discriminatory profiling. This training and continuing education should be mandatory for members of the Bureau des enquêtes indépendantes as well. The Commission has underscored that the Bureau's mandate, when it comes to investigating serious injury, should require specific training in areas such as investigative methods in sexual assault cases. In addition, all training programs should be subject to systematic and mandatory evaluations. In response to this recommendation, Québec's ministry of Public Security has indicated that part of the Bureau's training program, developed in collaboration with the École nationale de police du Québec, will be devoted to the study of human rights and freedoms. The Commission's opinion on the subject [In French]: http://www.cdpedj.qc.ca/Publications/commentaires_bureau_enquetes_policieres_independantes.pdf

19. Finally, regarding the student protests held in Québec in 2012, as indicated in the aforementioned question 10, the Commission considered the issue in the light of protection of freedom of expression and peaceful assembly addressed in the Committee's question 18. Therefore, in its comments on the *Act to Enable Students to Receive Instruction from the Postsecondary Institutions they Attend*, published in July 2012, the Commission concluded that sections 12 to 31 of the *Act* violated the Charter by infringing one or more of the guaranteed fundamental freedoms, namely freedom of conscience, of opinion, of expression, of peaceful

assembly and of association (section 3). The Commission was also of the view that those provisions could not be justified under section 9.1 of the Québec Charter and should be deemed inapplicable in law under section 52 thereof. Under Decree 924-2012 concerning the cessation of effect of the *Act to Enable Students to Receive Instruction from the Postsecondary Institutions they Attend* issued by the Government of Québec on September 21, 2012, cessation of effect of sections 12 to 31 of the *Act* was set out the same day. The comments of the Commission on the *Act to Enable Students to Receive Instruction from the Postsecondary Institutions they Attend* [In French]:

http://www.cdpdj.qc.ca/Publications/commentaires_PL_78.pdf

20. Moreover, the Commission received several complaints which report discrimination during these demonstrations regarding the work of the police in particular. The Commission is presently processing these complaints.

INUIT YOUTH AND YOUTH PROTECTION

Non-discrimination and rights of persons, including children, belonging to ethnic, religious or linguistic minorities (arts. 2, 24, 26 and 27)

Question 23

Please provide updated information on the 2008 Truth and Reconciliation Commission as well as on documenting the extent and impact of residential school experiences of Aboriginal children. Please report on steps taken to ensure that the Canadian foster care programmes respect the rights of the Aboriginal peoples. In this regard, please respond to allegations that children belonging to the First Nations are more likely to be taken away from their families and placed in the child welfare system, while indicating and explaining any disparities in the provision of welfare services between Aboriginal and non-Aboriginal communities. Please also explain Aboriginal children's overrepresentation in prisons and describe preventive measures taken.

21. Nunavik is home to 10,750 Inuit, representing 89.1% of the population of this region in Québec and 18.1% of the total Inuit population in Canada. Nunavik stands out because its population is particularly young. Indeed, the region has the lowest median age in Québec: 13% of Inuit who live there are 4 years old or younger and 40% are under 15 years of age. The Innulitsivik and Tulattavik Health Centres are the two institutions whose mission is to provide services to the people of this region.

22. During the Katimajjiit Forum held in August 2007, the Québec Government committed itself to develop six specific actions to improve the protection services delivered to Inuit youth. In a follow-up report published in September 2010 after a systemic investigation into the application of the *Youth Protection Act* (YPA) in Nunavik, the Commission des droits de la personne et des droits de la jeunesse showed that the local population was struggling with alcohol and drug abuse issues, family and domestic violence, an alarming suicide rate, and major problems regarding the formal education of young people. The report also revealed that the inability to recruit and retain foster families resulted in many situations where children remained in unhealthy environments or had to be moved repeatedly among members of their extended families. Services that were meant to support families and protect children were inadequate, unsuitable and insufficient. The Commission noted disruptions in the delivery of services to users, a misunderstanding of the concept of youth protection, and poor application of most aspects of the YPA.

The investigation report and the follow-up report are available:

http://www.cdpdj.qc.ca/Publications/rapport_Nunavik_anglais.pdf

http://www.cdpdj.qc.ca/Publications/Follow_up_report_Nunavik_2010.pdf

23. Even though the health and social services network had mobilized in an attempt to help the people of Nunavik, the Commission underscored the extent of the task at hand and the uncertainty of the outcomes, two tell-tale signs of the fragile situation for youth in this region.

24. Since then, in the exercise of its mandate conferred under section 23 of the YPA, and sections 10 to 39 of the Charter, the Commission, through its work, has made a number of observations about changes in the situation for the Inuit in Québec.

25. Between 2010 and 2015, the Commission received 60 youth intervention requests related to services provided by both Nunavik Health Centres. For files that were closed during this period, the main issues relating to rights violations included the following: the right to end a situation where the security or development of a child is in danger; the right to decisions made in the child's best interests; the child's right to be kept in his/her family environment whenever possible; the child or parents' right to be heard; and their right to receive appropriate, ongoing and individualized health and social services. Of these 60 requests, 35 cases remain open. The issues raised in these cases are related to violence (domestic, physical, and sexual), alcohol and drug abuse, the suicide rate, school absenteeism, inadequate housing, inadequate application and compliance with the YPA, and shortcomings in the delivery of health and social services.

26. It was observed that Nunavik children did not have access to appropriate educational services, because of significant teacher absenteeism. For example, between September 1, 2014 and April 10, 2015, teachers did not show up for work regularly on a weekly basis. Many children had to be sent back home, deprived of educational services, and thereby compromising their education, protection, safety and development.

27. Social upheavals in recent decades have resulted in major changes in Inuit lifestyle. Traditionally, Inuit willingly shared their encampment with several people brought together by their shared activities, family ties or affinities. Today, the housing shortage is a reality that has a direct impact on youth and leads to situations that endanger their security and/or their development. This social condition forces several members of an extended family to live together. This overcrowding creates situations the YPA aims to avoid, such as cases of neglect, of being exposed to domestic violence, or physical or sexual abuse. And in some cases, repeated assaults since victim and aggressor sometimes have to live under the same roof.

28. The Commission has noted that, since 2010, youth intervention requests have been related to violations of children's rights under the *Youth Protection Act*, the *Charter of Human Rights and Freedoms*, and the *Convention on the Rights of the Child*. The Commission has noticed, among other issues, that basic rights such as the right to security, to protection, to development, and to schooling were not being respected.

29. Despite improvements made since 2010, particularly in terms of knowledge of the YPA and of organizational structures, the Commission notes that shortcomings in the application of the *Act* similar to those criticized during the systemic investigation have not been resolved and that violations of Inuit rights are still commonplace. At the moment, and for all the aforementioned reasons, the Commission remains concerned about the fragile and precarious situation of Inuit youth in Québec. This fragility and precariousness, as well as the ongoing difficulties discussed above, call for direct, structured, and coordinated action from relevant institutions.

30. The Commission has observed that over the years, the Québec Government set up sectoral action plans. Unfortunately, these plans are not integrated into an overall plan nor are they culturally appropriate for the Inuit population. The Commission considers that the situation requires joint action from the Government in developing an overall plan that is based on the will of the Inuit population to take charge of these services.