

Review of Implementation of the Recommendations Issued in the Report of the Consultation on

Racial Profiling and its Consequences



INTRODUCTION

The Commission des droits de la personne et des droits de la jeunesse has been working to combat racial profiling and systemic discrimination against racialized people for many years. It does so in accordance with its mission and by using all the means of action provided for in the *Charter of Human Rights and Freedoms*, the fundamental law of Québec.

Discrimination and racial profiling are systemic. While attention needs to be paid to individual attitudes and behaviours that are marked by prejudice and stereotypes, important corrections must also be made to the standards and practices of all government departments and agencies concerned with this issue. This is why the Commission launched a broad public consultation in 2009 that focused more specifically on the racial profiling and systemic discrimination experienced by racialized youth aged 14 to 25 in the public security sector, the education sector and the youth protection system.

We released our consultation report in 2011. This report detailed the key issues surrounding racial profiling and systemic discrimination, and examined the extent of their consequences.

It brought to light many serious matters and contained **93 recommendations**:

- 6 cross-cutting and general recommendations
- 43 recommendations for the public security sector
- 34 recommendations for the education sector
- 10 recommendations for the youth protection system

The Commission also took this opportunity to make **eleven commitments** toward addressing racial profiling and systemic discrimination more effectively. One of these commitments was to carry out rigorous follow-up to ensure that our recommendations to the various institutions were in fact implemented. As part of this commitment, the Commission published a first progress report in 2012 and launched this review in 2018. This report is the result of that review and has four key objectives.





SUMMARY OF KEY FINDINGS

To assess the progress that has been made toward implementing our 2011 recommendations, the Commission gathered data in four ways: questionnaires, group interviews, one-on-one interviews and a review of the literature. Specifically, this included:

- questionnaires filled out by 48 government departments and public bodies regarding the actions and methods they have employed to fulfill the 2011 recommendations
- 13 focus groups in five Québec cities, involving more than 75 people: racialized individuals, including young people, and organizations that represent them
- one-on-one interviews with seven researchers whose work involves issues of racial profiling and systemic discrimination
- a cross-departmental progress review of the Commission's eleven 2011 commitments
- a review of the social sciences and legal literature on the topic.

While not all participants would agree, some progress has been made since the 2011 report. The Commission's work, in conjunction with the numerous reports that have been released on racial profiling, systemic discrimination and systemic racism, and combined with the citizen mobilization surrounding these issues, has undeniably raised awareness of the seriousness and scope of these issues. The government departments and public bodies affected by the Commission's 2011 recommendations have also taken certain measures to combat racial profiling and systemic discrimination in recent years.

However, we are forced to conclude that the majority of our recommendations have not been implemented or have been implemented only in part, and must therefore be reissued. In many cases, recommendations that were implemented were not done so consistently by all parties. The following provides an overview of the main 2011 recommendations.

ABORIGINAL PEOPLES

Although the experience of Aboriginal peoples was outside the purview of this consultation, the Commission's work has for decades shown that Aboriginal peoples are on the receiving end of systemic racism, systemic discrimination and racial profiling.

The Viens Commission, for example, exposed the systemic discrimination against Aboriginal peoples in public services. While beyond the scope of this particular review, the Commission reiterates the importance of genuine recognition of systemic racism against Aboriginal peoples. The relevant authorities must immediately and fully respond to the calls for action and

justice that have arisen from the Viens Commission, the National Inquiry into Missing and Murdered Indigenous Women and Girls and the Truth and Reconciliation Commission.

The expertise that the Commission has acquired on systemic racism and systemic discrimination may also be of use in developing measures for Aboriginal peoples. More broadly, the Commission will continue working to fight systemic racism and systemic discrimination against Aboriginal peoples. The Commission is committed to continuing to promote and advocate for the rights of Aboriginal peoples, in collaboration with Aboriginal leaders or organizations.

LITTLE PROGRESS ON THE CROSS-CUTTING RECOMMENDATIONS OF THE 2011 REPORT

A. A Government Antiracism and Antidiscrimination Policy

The government has not yet adopted a policy aimed at fighting racism and discrimination that provides a plan of action for preventing and eliminating racial profiling and its consequences, which was the first recommendation in the 2011 report. And yet among the researchers and focus group participants with whom the Commission consulted, there is broad-based consensus as to the importance of acknowledging racial profiling, systemic discrimination and systemic racism. These individuals emphasized that these issues must not be reduced to isolated and individual incidents, but rather, must be viewed as systemic and intersectoral in nature.

Furthermore, this first recommendation has become all the more relevant since the Québec government set up its antiracism action group in June 2020, as we will see in more detail in this document.

B. Representation of Visible Minorities in the Workplace

The government departments and public bodies that we reviewed state that they have taken action to fulfill the Commission's

recommendations on representation of racialized and ethnic minorities among their staff. However, it is difficult to accurately analyze the progress that has been made for members of these two target groups. This is in part because the majority of institutions provided data that had not been broken down by target group. Some have even combined "visible minorities", "ethnic minorities" and "Aboriginal peoples" into one group. A necessary first step, then, is to standardize the ways in which representation data is gathered and published, to ensure clear distinction between the groups covered by equal access employment programs.

In addition, in light of the results of this report and the work it is carrying out in the area of access to equal employment opportunity, the Commission notes that issues related to access to equal employment opportunity for visible minorities persist in all the institutions concerned. These issues include the difficulties of achieving representation targets in all job categories, and the scarcity of basic measures that have been put in place. Another major obstacle is that equal access employment programs for the public service are still not subject to the Commission's accountability and oversight mechanisms.

Thus, in the opinion of several researchers and focus group participants, the presence of a few racialized individuals on these institutions' staff is not sufficient if not accompanied by

structural changes to workplace culture. Some felt that it was important to reach a critical mass of racialized employees in these government departments and public bodies. Changes are necessary at all organizational levels, including senior level positions, and senior leadership within each institution must take responsibility for this.

C. Antiracism and Intercultural Skills in Training and Staffing

The fourth 2011 recommendation concerned antiracism and intercultural training in university degree programs. The Commission was unable to assess the implementation of this recommendation, as the Ministère de l'Éducation et de l'Enseignement supérieur (MEES) did not respond to our questionnaire. The 2011 report also contained specific recommendations for each of the targeted sectors regarding initial and continuing antiracism and intercultural training.

All in all, the government departments and public bodies have taken a large number of initiatives in this area, and these efforts should be commended.

That said, the training being provided still contains shortcomings. The institutions appeared to focus their training more on interculturality than antiracism. Few had implemented an antiracism component, or a component on human rights and

freedoms, systemic discrimination and the right to equality, as the Commission had recommended. Furthermore, according to the majority of the responses the Commission received from the government departments and public bodies, such training is not mandatory, and does not include any evaluation or validation of acquired skills.

Overall, there is general consensus among the researchers and focus group participants who discussed training issues on the need for mandatory, adequate and current antiracism training that includes student evaluation. These participants also spoke of the need to amend educational materials and teaching tools to make them better suited to racialized youth.

As for hiring people with antiracism and intercultural skills, a third of the police departments and two government departments still appear to assess applicants' intercultural skills only. The Directors of Youth Protection (DYP) do not systematically and consistently use selection criteria to test applicants' intercultural and antiracism skills, and the Commission has no information on this issue for the education sector.

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I see that young people know what profiling is [...] but if you ask them, "Aren't you going to file a complaint?", then, no, they don't trust the system enough to do that. [...] They recognize racial profiling when they experience it, they know it when it happens to them, they discuss it among themselves, but that next step of actually going so far as to file a complaint, I think that for many young people, it's not yet that simple.

A focus group participant

D. Standard Indicators and Data Collection

In 2011, our fifth cross-cutting recommendation and a number of our sector-specific recommendations suggested the adoption of standard indicators and data collection, and systematic publication of this information.

To implement the data collection mechanisms that the Commission recommended, the government departments and public bodies were urged to adopt standard methods and indicators with a view to detecting discriminatory bias. None have done so at the time of this review. Some data has been gathered, however, notably by school service centres and DYPs. Certain other initiatives have also been taken in this regard, including by the Centre de recherche et d'expertise sur les jeunes en difficulté and, more recently, the Montréal police service (SPVM). Unfortunately, these efforts have been limited and incomplete. Furthermore, this data has not been made public.

In fact, it appears from the responses of the departments and public bodies, and from the obstacles they have identified, that the Commission's data collection recommendations have been poorly understood. Data collection is admittedly a complex undertaking, but the extensive work and research on the topic in recent years should be used to address the reservations expressed by these institutions.

Six of the seven researchers we interviewed and participants in seven of the thirteen focus groups identified the need for effective data collection. These individuals spoke to the importance of follow-up, assessment and accountability of all measures to combat racial profiling and systemic discrimination, and the need to improve and regulate the data collection already performed by public institutions.

E. Antipoverty Measures

The fight against racism and systemic discrimination is inseparable from the fight against poverty. With this in mind, the final 2011 recommendation for the Québec administration as a whole urged the government to provide more measures to specifically target poverty among the most at-risk groups, which include recent immigrants, Aboriginal peoples, racialized groups and single mothers.

In response to this recommendation, the government departments reported that they are involved in implementing the 2017-2023 Government Action Plan to Foster Economic Inclusion and Social Participation. They specifically identified measures they had taken to better meet the needs of people with significant mental health problems and to decrease incarceration rates for people living in poverty and social exclusion.

Nonetheless, the most recent Statistics Canada census showed that poverty is increasingly affecting certain segments of the population, such as racialized families and individuals.

A number of researchers and focus group participants also noted the persistence of

the criminalization of poverty, particularly in relation to racialized people and people with mental health problems. They also noted the need to take action upstream of the youth protection system, including through antipoverty initiatives.

DEFINITION OF RACIAL PROFILING

The Commission's work has contributed significantly to the recognition of racial profiling as a specific form of discrimination. The Commission's 2005 definition of racial profiling, which has been widely used since then, describes the hallmarks of racial profiling, as well as is its systemic nature.

For the Commission, racial profiling means:

Any action taken by one or more people in authority with respect to a person or group of persons, for reasons of safety, security or public order, that is based on actual or presumed membership in a group defined by 'race', colour, ethnic or national origin or religion, without factual grounds or reasonable suspicion, that results in the person or group being exposed to differential treatment or scrutiny.

Racial profiling includes any action by a person in a situation of authority who applies a measure in a disproportionate way to certain segments of the population on the basis, in particular, of their racial, ethnic, national or religious background, whether actual or presumed.

SECTOR-SPECIFIC RECOMMENDATIONS: UNEVEN AND INSUFFICIENT PROGRESS

In addition to our six cross-cutting recommendations, the Commission also issued important recommendations for three specific sectors: public security, the education sector and the youth protection system.

The responses we received from the government departments and public bodies as part of this review showed that some progress had been made toward implementing these recommendations. However, it must be said that, in general, progress in this area has been insufficient and inconsistent.

A. Public Security

Of the Commission's recommendations to the public security sector, 24 primarily concerned the surveillance of racialized people. These recommendations fell into four categories: to review police policies and practices, to supervise police actions, to hold police leaders accountable, and to develop partnerships. A further 19 recommendations concerned the remedies available under the *Code of Ethics of Québec Police Officers* and the system in effect at the time of the report for criminal investigations into police incidents and police detention involving severe injuries or death.

The Ministère de la Sécurité publique (MSP) and the various levels of police service involved in this review provided information on most of these recommendations.

First, in terms of the surveillance and scrutiny of racialized people, certain initiatives deserve credit. However, not all police departments have put such initiatives into action, and the majority of the Commission's recommendations have been fulfilled only in part. We will come back, for example, to our recommendation to definitively prohibit routine police checks, to which the MSP and the SPVM have instead responded by creating initiatives to structure these checks.

The feedback from the researchers and focus group participants who took part in this review is in line with the most recent research: **the problem of targeted scrutiny of racialized minorities persists**. Many of the solutions these participants identified echo the Commission's 2011 recommendations to review police policies and practices, to supervise police actions and to hold police leaders accountable.

Second, the government has failed to act on the majority of the Commission's recommendations regarding the remedies available under the police ethics commissioner's complaint system. Finally, with respect to investigations into police incidents involving severe injuries or death, the Commission welcomed the creation of the independent police investigations bureau (Bureau des enquêtes indépendantes). This was an important step forward from the procedure in place until 2013. However, neither the composition of the Bureau or its rules of investigation adequately reflect the Commission's recommendations.

Furthermore, in the view of the participants and researchers, there are persistent problems with the remedies for racial profiling and systemic discrimination. These include insufficient awareness of and access to these remedies, the matter of racialized people's continued distrust of the institutions in question and the issue of under-protection of racialized people by the police.

In a nutshell, this review showed that the police have been inconsistent in the initiatives they have taken in response to the Commission's recommendations.

Not one of the police departments involved in our review has implemented all of the Commission's recommendations. It is also striking that certain police departments believed that our recommendations did not apply to them, namely because of the ethnically homogeneous nature of the population they serve. While demographics clearly differ from place to place, such responses point to an inadequate understanding of racial profiling and systemic discrimination.





Two focus group participants



B. Education

In the Commission's 2011 report, we made 34 recommendations for the education sector regarding racial profiling and systemic discrimination. These recommendations were related to discipline and codes of conduct, academic success, the educational pathways available to non-French-speaking students in Québec's classes d'accueil integration programs, and adult education. The Commission noted that any measure to foster academic success among racialized or immigrant students must take into account the interrelationship between the protected grounds of 'race', colour, ethnic or national origin and social condition.

First, with respect to the application of disciplinary measures and codes of conduct, not one of the school boards involved in this review reported that its schools have expressly prohibited systemic discrimination and racial profiling of students in their internal policies and by-laws, as recommended by the Commission in 2011. The initiatives taken to end stereotypes about the behaviour of racialized students and to eliminate the disproportionate use of discipline against these students have been insufficient. For example, only half of the school boards reported that their schools

have implemented the recommendation to establish formal partnerships with community organizations and parents in order to find solutions for students with supposed behavioural problems.

Since the 2011 report, certain legislative and government initiatives have been taken to combat 'ethnocultural' discrimination in the education sector. In the Commission's view, however, the provisions of the Education Act that set out the duty for the education sector to put an end to all forms of bullying and violence, in particular those motivated by racism, have not had the effect of ending racial profiling and systemic discrimination against racialized and immigrant students. Participants in this review criticized the discriminatory conduct still present in the education sector, naming more than one level and sector of the system. These participants described the ways in which racial profiling, and racist standards, practices and attitudes, persist in the education sector.

In response to our 2011 recommendations on educational pathways and academic success, nearly all school boards reported having implemented parent-school collaboration initiatives that involve mediators, intercultural education agents and community group liaison officers.

In spite of this progress, participants in the Commission's review lamented the persistent negative bias that still streams racialized students into low-skill educational paths.

Many of our recommendations for the education sector directly concerned the Ministère de l'éducation et de l'enseignement supérieur (MEES) and the financial aid programs for disadvantaged schools. The Commission was unable to assess the MEES's implementation of these recommendations, as the ministry failed to respond to our questionnaire. However, in light of our own work on the issue, let us reiterate that the academic experience of racialized and immigrant students is still riddled with obstacles, making these students more likely to leave or quit secondary school with no diploma or qualifications. The Commission has recently stressed that allocation of funds for additional support to disadvantaged schools should be based on the socioeconomic conditions and particular needs of students and their families, as opposed to the socio-economic conditions of the school's territory.

Finally, the Commission found that the adult education services for racialized and immigrant youth still fail to meet these students' needs. The Commission calls on the MEES to provide and fund services that are appropriate for immigrant and racialized students, and calls on school service centres and adult education centres to collaborate to support the staff who provide these services.

In short, the education sector still fails to meet the needs of its clientele and work is still required to combat racial profiling and systemic discrimination against racialized and immigrant youth in school.

C. Youth Protection

The Commission's 2011 report contained 10 recommendations for the youth protection system. These recommendations involved education for the professionals of public services who make DYP reports, community and first-line services in support of DYP intervention, revision of clinical assessment tools, and incorporation of the antiracism and intercultural approach into the organizational policies of the Centres intégrés de santé et de services sociaux (CISSS) and Centres intégrés universitaires de santé et de services sociaux (CIUSSS).

In light of the Commission's own work, we can note that many of these recommendations remain relevant today. Indeed, even more issues have arisen since the 2015 enactment of the Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies.

First, with respect to reporting situations in which there is a reason to believe that the security or development of a racialized young person is in danger, this review showed that Black youth are still overrepresented in DYP reporting and evaluation. The Commission reiterates the importance of teaching education, health and social service professionals about the consequences for racialized youth and their families, and for Black communities in particular, of hastily reporting a situation to the DYP or relying on prejudiced impressions instead of factual signs of abuse or neglect.

Second, the Commission reviewed community and first-line services in support of DYP interventions. Our review revealed a lack of consistency in the intercultural consultation tools developed by the DYP, including its criteria and guidelines for intervention with racialized families and youth. In addition, while almost all of the DYPs report having partnered with front-line services, most of these partnerships remain informal and have not led to development of the recommended multidisciplinary and intersectorial teams to support racialized and immigrant families and youth. In fact, such teams appear rare.

Nevertheless, researchers and focus group participants alike stressed that the DYPs would benefit from multidisciplinary and intersectorial expertise in considering the needs of racialized parents and children. The importance of formal partnerships with youth centres, first-line health and social services and community organizations was also emphasized. The Commission also wishes to reiterate the importance for DYPs to have mechanisms in place for collaboration with other departments within their CISSS/CIUSSS and with other CISSS/CIUSSS to improve youth services.

As for the revision of its clinical assessment tools, the DYP reported that it has not adopted a reference document on integrating the intercultural and antiracism approach into their clinical evaluation processes.

Given the findings of this review, the Commission considers that it is still necessary for the Ministère de la Santé et des Services sociaux (MSSS) to develop a framework for all DYPs to integrate the intercultural and antiracism approach into their clinical assessment process and to take into account the specificities of racialized children and families.

In the same vein, the CISSS and CIUSSS must clearly incorporate the antiracism and intercultural approach into their organizational policies, mission statements and code of ethics. These institutions must also incorporate mechanisms to ensure that this approach is also applied to DYP work.

Finally, the cultural identity of racialized and ethnic minority children is a key part of assessing their best interests when making decisions about them under the Youth Protection Act. Characteristics related to the prohibited grounds for discrimination of 'race', colour, ethnic or national origin, language and religion are central components of this cultural identity. The Commission therefore calls on the government to amend the Youth Protection Act accordingly.

Systemic discrimination, that is not just a police problem. That is a problem in the society, certainly in the government's structures. And people don't always understand what is meant by systemic discrimination. People, they think "If I don't call you the N word or I don't slap a woman alongside her head, that is not discrimination". They think it's personal. These policies they're not policies put in place like "no Jews or Muslims, or Black or women allowed". They are not that blatant. They're things such as "how accessible are you? What jobs do people get? Who holds the power?"

Professor Myrna Lashley

PRIORITIES

For many years, the Commission's work on racial profiling and systemic discrimination and systemic racism has demonstrated that these issues exist in Québec. It is essential to strike racism and its manifestations at their source and to ensure that all Charter rights are upheld. We all have a role to play in this, and society as a whole must be involved.

This review demonstrates this yet again. The Commission has had to reiterate a great number of recommendations, many of which are interconnected. All of these recommendations need to be fulfilled if we are to eliminate and prevent racial profiling and systemic discrimination, and they have become more relevant than ever in the current context.

The Commission calls on the government departments and public bodies involved to implement all of these recommendations. At the same time, we would like to focus on certain priority issues that we consider to be of the utmost importance in the current context. These issues should be addressed in part through a government policy to combat systemic racism and systemic discrimination.

GENUINE RECOGNITION OF RACIAL PROFILING, SYSTEMIC DISCRIMINATION AND SYSTEMIC RACISM: A GOVERNMENT POLICY TO COMBAT SYSTEMIC RACISM AND SYSTEMIC DISCRIMINATION

The first recommendation of the 2011 report was that the government adopt a policy aimed at fighting racism and discrimination that includes a plan of action for preventing and eliminating racial profiling and its consequences.

We received a great deal of feedback from researchers and focus group participants about recognition of the systemic nature of racial profiling, discrimination and racism. Many criticized the unwillingness to call these issues by their name, and noted that we cannot fight what we cannot see. This review also highlights the need for a comprehensive, intersectorial approach to understanding systemic racism and systemic discrimination in all its complexity.

Given that the Québec government recently set up an antiracism action group, a policy aimed at fighting systemic racism and systemic discrimination is a clear priority.

The government has important responsibilities to fulfill in this area, but also has an educational role to play in terms of diagnosing the problem. In this sense, we remind everyone that the existence of systemic discrimination and systemic racism in Québec does not mean that the individuals or society as a whole are 'systematically' racist. Whether conscious or not, systemic racism and systemic discrimination are the result of laws, regulations, policies, practices, decision-making processes, approaches, and decisions, many of which were made in the past. To acknowledge the systemic nature of racism and discrimination is to acknowledge the existence of persistent structural barriers to participation and inclusion for everyone. Systemic racism and systemic discrimination cannot be reduced to a few bad apples and isolated incidents.

For this reason, the Commission considers it a priority to reiterate our recommendation that the government adopt an intersectorial policy aimed at fighting systemic racism and systemic discrimination that provides a plan of action for preventing and eliminating racial profiling.

This policy should take into account the particular realities faced by racialized people and immigrants. To do so, it should consider the socio-historical and political context that has led to the perpetuation of racism, and the social power relations and socio-economic inequities that uphold it.

A comprehensive strategy to combat systemic racism and systemic discrimination must not address these issues in isolation, but rather in their interconnectedness with other forms of discrimination, such as that based on sex, social condition, disability, language, sexual orientation, etc. This is what it means to take an intersectional approach to analyzing discrimination. Finally, the Commission wishes to underscore the importance that such a policy include regular assessment and proper accountability mechanisms. We will return to this later.

AN URGENT NEED FOR SYSTEMIC, AMBITIOUS, SUSTAINABLE AND CONCERTED ACTION

This review has shown that most of the parties involved have indeed implemented measures to counter racial profiling and systemic discrimination, and the Commission commends these efforts. Unfortunately, these initiatives have often been limited and sporadic. Moreover, they have largely been implemented in a way that lacks depth, consistency, formalization and systematization.

That is why it is necessary to have a true government policy aimed at fighting systemic racism and systemic discrimination that provides a plan of action for preventing and eliminating racial profiling. Systemic problems call for systemic solutions. The government policy should provide for firm commitments with specific timelines. The Commission also made recommendations for legislative and regulatory changes.

Expectations are increasing the longer action is not taken, as numerous reports and consultations continue to document persistent inequality. It is now all the more urgent to take systemic, ambitious, sustainable and concerted action. The following are among the key actions that need to be taken without delay.

A. Representation of Visible Minorities in the Workplace

For decades, the Commission's work has demonstrated the challenges that racialized people face in obtaining employment and being promoted to executive or managerial positions. The current review, however, once again reveals the difficulty that the government departments and public bodies have in achieving their representation targets for members of the groups covered by the *Public Administration* Act, the Public Service Act and the Act respecting equal access to employment in *public bodies.* One of the legislature's priorities should be to standardize the categories used to designate the groups covered by equal access employment programs so as to better establish specific representation targets for each group and to allow for meaningful comparison of the program results achieved by government departments and public bodies.

Furthermore, achieving representation targets is only feasible if the government departments and public bodies properly apply the various types of equal access to employment measures: corrective, equal opportunity, support, consultation and informational. In addition, the workforce analysis used to identify underrepresentation of target groups must be accompanied by review of all levels of the employment system, with a view to detecting and eliminating discriminatory

bias in policies and practices. Systemically speaking, there needs to be a focus on overall organizational culture.

Finally, action on equal access to employment in the public service should also lead to stronger accountability mechanisms. For this reason, the Commission has repeatedly recommended that section 92 of the Charter be amended to make equal access employment programs for the public service subject to the Commission's accountability and oversight mechanisms. The Commission has also repeatedly recommended that the requirement to institute an equal access employment program be extended to private sector companies as well.

B. Targeted Police Scrutiny of Racialized People

Racial profiling in law enforcement is the most familiar form of this kind of discrimination. For this reason, a government policy aimed at fighting systemic racism and systemic discrimination that provides a plan of action for preventing and eliminating racial profiling should include a specific set of measures for the public security sector.

There is an urgent need for an end to targeted police scrutiny of racialized people, and numerous recommendations have been made in this regard. This review echoes the wide range of work showing

that targeted scrutiny persists which has been published since the 2011 report. The case law also acknowledges the existence of "disproportionate policing of racialized and low income communities."

This targeted scrutiny in the public space creates significant disparity in numbers of police checks, as noted in the Armony-Hassaoui-Mulone report. The report revealed that the SPVM stops Aboriginal and Black people at 4-5 times the rate of white people, Arabic people at twice the rate of white people and Latin American people at nearly 1.5 times the rate of white people. In addition, the total number of police checks has increased sharply in recent years, from less than 19,000 in 2014 to more than 45,000 in 2017, an increase of 143%. During this review, the researchers and focus group participants would often use the term 'harassment' in describing racialized people's feelings about these police checks.

It was for these reasons that the Commission recommended that all police checks without due cause be prohibited immediately and permanently.



It is important to actually have better representation of Black people in these powerful institutions, not just to say, "Oh, we tried to recruit some." No! They have to work harder to get Black people into decision-making bodies and decision-making positions [...] Black people have gone to school, they have training [...] but when they apply for these positions, the doors close. That is not progress.



A focus group participant

The Commission noted the initiatives that the SPVM and the Ministère de la Sécurité publique (MSP) announced in the summer of 2020. In addition to raising data collection issues, both the MSP's policing practices and the SPVM's police check policy are deficient. The Commission especially regrets that the MSP and the SPVM chose to structure and guide random police checks, rather than strictly prohibiting them. In addition, both the MSP and the SPVM state that one of the reasons they carry out police checks is to prevent inappropriate behaviour. It appears they have disregarded the Commission's recommendation to review police policies and practices in this area: policies to curb inappropriate behaviour continue to be linked to targeted scrutiny of racialized minorities. The Commission also notes that, contrary to our recommendation, neither document requires the police to inform people of their rights when they stop them. The documents also fail to provide any specific penalties for failure to comply.

ASSESSMENT AND ACCOUNTABILITY MECHANISMS

The lack of accountability or evaluation mechanisms for systemic discrimination and racial profiling measures arose as a clear issue in this review and should be a priority.

As the Ontario Human Rights Commission recently stated regarding a proposal for racial profiling reform, "action plans without accountability and enforceability are not meaningful."

All parties must establish reliable indicators and mechanisms to systematically collect and publish data. This is essential to accountability, and the Commission has repeatedly issued recommendations on this subject. These recommendations have been based on repeated calls by the institutions that monitor the international rights conventions that Québec has signed on to. They are also in keeping with the large body of work that has come out on the issue of data collection and law enforcement.

The disproportionate effects of the current pandemic on vulnerable groups are yet another important reminder of the need for best practices in data collection. I'm Black, I'm young, I drive my car, I get stopped 50 times a month, each time with a different excuse. Your licence plate's not clear, you did or did not do something, we thought you were someone else, we got a call about someone who looks like you, so we're checking your papers, we received a description of a car like yours. But as a Black person, you know that you're going to be stopped multiple times a month just because of your skin colour.

A focus group participant

In practical terms, establishing indicators and collecting data, done in accordance with all Charter rights, would allow for a comprehensive assessment of racial profiling and systemic discrimination, and would allow for identification and description of the action needed to combat these issues and for evaluation and reporting of results.

Given the intersectionality of the prohibited grounds for discrimination that has been amply documented in this review, these indicators and data collection efforts should focus not only on 'race', colour and ethnic or national origin, but on other prohibited grounds of discrimination as well. Special attention should be paid to social condition and, where possible, to sex, gender identity or expression, sexual orientation, age, religion, language and disability.

Disaggregation and breakdown of data are also needed to better meet the needs of certain more marginalized subgroups. Finally, data collection must be compliant with all Charter rights, including the right to privacy and to protection of personal information. Considering the seriousness of these issues, the Commission urges all of the institutions to bring in independent experts to help implement these data collection recommendations.

INTERRELATED RIGHTS

This review has once again demonstrated the broad scope of consequences that systemic discrimination and racial profiling have on the lives of those who experience it. Racial profiling and systemic discrimination wear many faces, appear in many ways, and undermine the equal exercise of many guaranteed rights, including the right to equality.

The fight to prevent systemic racism and systemic discrimination must therefore take into account the interrelated nature of human rights. Government intervention against systemic racism and systemic discrimination needs to involve comprehensive measures to enable effective exercise of all guaranteed Charter rights, especially economic and social rights.

For example, the latest data agree that poverty is increasingly affecting certain groups of the population, notably racialized people. In light of this review, the Commission reiterates that, in all three sectors, the fight against systemic racism and racial discrimination must take into account the intersectionality of 'race', colour, ethnic or national origin, and social condition.

As such, action to eliminate these issues must be accompanied by antipoverty measures that specifically target the groups at greatest risk of falling below the poverty line, including recent immigrants, Aboriginal peoples, racialized people and single mothers.

Similarly, racial profiling cannot be stopped without confronting the ways in which it intersects with other prohibited grounds for discrimination. This review once again reveals the overlap between profiling based on 'race', social condition and disability, including mental health issues. Intersectionality and inappropriate use of force by police are connected. Preventing systemic racism and systemic discrimination also requires solutions to the excessive judicialization of racialized and vulnerable people.

Concretely, this means funding local health, social and community services in a move away from criminal management of social problems. Furthermore, municipalities should emulate other successful partnership initiatives between police, the health services and social services network, and the community sector, which use communication and conflict deescalation as alternatives to the inappropriate use of police force.

More broadly, the seriousness of these issues again raises the importance of amending the Charter to give economic and social rights the same status as all other human rights and to explicitly establish their legal primacy.

PARTICIPATION

One of the objectives of the Commission's consultation on racial profiling and systemic discrimination was to give a voice to the victims of this treatment. Victims' testimony must be listened to and taken into account in any attempt to acknowledge and understand racial profiling and its manifestations. Indeed, listening was one of the themes that emerged among the focus groups that were held in this review. The issue of racialized people's distrust of the concerned institutions was referred to extensively during our review and has been a central issue of many recent reports.

That said, meaningful participation by those most affected by an issue is key to any process to end their exclusion. These people have expertise to share. As a priority, government action against systemic racism and systemic discrimination must provide appropriate participation mechanisms for racialized people. Racialized people must be involved and listened to at all stages, including the development, implementation and evaluation of this government action.

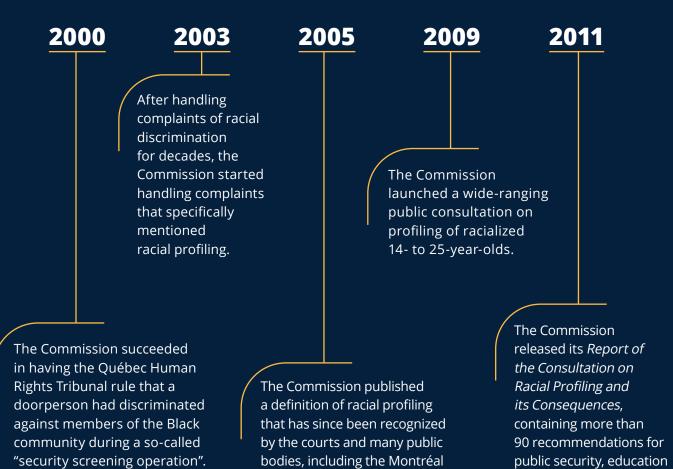
AN ONGOING COMMITMENT

This consultation and review process represents an important part of the Commission's ongoing commitment to fight systemic racism, systemic discrimination and racial profiling. In addition to calling on the whole of Québec society to take action, the Commission also wishes to reaffirm our own commitment. We will continue to pursue our mission and responsibilities under the Charter, including by monitoring how all parties respond to our recommendations.



A HISTORY OF FIGHTING RACIAL PROFILING

Over the past 20 years, the Commission has taken various actions to combat racial profiling.



police service (SPVM).

and youth protection.

(2000 CanLII 17 (QC TDP)).

2013

2014

2015

2017

The Commission released its one-year stocktaking report on the 2011 Report of the Consultation on Racial Profiling and its Consequences.

The Commission won the first Québec Human Rights Tribunal ruling in favour of a complainant of Arabic origin who experienced racial profiling by an SPVM police officer. (2012 QCTDP 5).

Having already recommended independent investigation into police incidents involving severe injuries or death, the Commission outlined its recommendations for the creation of the Bureau des enquêtes indépendantes.

During Montréal's public Consultation on Racial and Social Profiling, the Commission criticized the city's failure to take action on many earlier recommendations, and emphasized the great deal of work still required to eliminate this kind of discrimination.

The Commission submitted comments to the UN Committee on the Elimination of Racial Discrimination regarding review of the twenty-first to twenty-third periodic reports of Canada under the International Convention on the Elimination of All Forms of Racial Discrimination.

The Commission won the first Québec Human Rights Tribunal ruling involving racial profiling by a commercial establishment, a bar in Terrebonne (2013 QCTDP 6).

The Supreme Court of Canada upheld the Commission's 2005 definition of profiling in *Bombardier Inc.* (2015 SCC 39).

2018

In response to the Montréal police service (SPVM) strategy to prevent racial and social profiling, the Commission criticized the lack of a systemic approach and the lack of published data on the presumed 'racial affiliation' and social condition of the individuals involved in police interventions. This was an important recommendation made by the Commission in 2011, and one which we have reiterated many times since.

The Commission won a case against the Montréal police service (SPVM) and two officers, who were sentenced to pay \$12,000 in damages to a victim of racial profiling. (2018 QCTDP 5).

2019

As part of the Public
Consultation on Systemic
Racism and Discrimination
of the Office de consultation
publique de Montréal, the
Commission recommended
that the City of Montréal
develop a policy to combat
systemic racism and
systemic discrimination,
and that this policy take
into account the specific
realities of Aboriginal
peoples, racialized people
and immigrants.

The Commission recommended that the City of Montréal immediately and definitively prohibit routine police checks, which disproportionately affect certain groups.

2020

The Commission called attention to the exacerbation of social and racial inequity caused by the COVID-19 pandemic, highlighted how this had further weakened vulnerable groups in certain parts of greater Montréal and called for an immediate response from all levels of government.

Following the horrific killing of George Floyd in Minneapolis, the Commission expressed its solidarity with Black communities in Québec and around the world.



