

d i s c r i m i n a t i o n

# Racial profiling



Consultation Document  
on Racial Profiling

March 2010



RESEARCH

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PRINTING

Imprimerie Lebnfon inc

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This document is the translation of the original published under the title:  
Document de consultation sur le profilage racial

Legal Deposit — Bibliothèque et Archives nationales du Québec — 2010  
ISBN 978-2-550-58388-2



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## MESSAGE FROM THE PRESIDENT

I am pleased to present the Consultation Document on Racial Profiling of the Commission des droits de la personne et des droits de la jeunesse. This document will guide discussions during the public hearings on racial profiling and its consequences that the Commission will hold in May and June 2010.

This consultation began in September 2009, with the objective of identifying possible solutions to end racial profiling, by increasing awareness of the existence of this form of discrimination and by fostering dialogue on the issue. The Commission chose to focus primarily on the profiling experiences of young people, aged 14 to 25, from racialized communities.

Every incident of racial profiling carries serious consequences and risks compromising the future prospects of young people at a critical time in their life. In addition, racial profiling can leave them with the impression that, no matter what they do, the fact that they belong to a racialized group will determine how they are treated by representatives of public institutions.

In recent years, the Commission has handled more than 100 racial profiling complaints. In 2005, it adopted a definition of racial profiling, and identified indicators that clearly allow its demonstration. Although critically important, the handling of individual complaints and the representation of victims before the Human Rights Tribunal pose serious challenges.

This consultation is therefore part of the ongoing work of the Commission, whose mandate is to ensure the promotion of and compliance with the principles enunciated in the *Québec Charter of Human Rights and Freedoms*, and to investigate any situation which, in its opinion, appears to be a case of discrimination. The Commission has a further mission, which is to ensure the protection of the interests of children and respect for their rights as recognized by the *Youth Protection Act and the Youth Criminal Justice Act*.

The document is based on approximately 150 submissions gathered from youths, parents, stakeholders, experts, and representatives of community groups, who agreed to share their racial profiling experiences, whether in the educational sector, the social services and child and youth protection sector, or in the area of public security. These submissions confirmed that racial profiling exists and that it has an impact on the lives of young people and their families, and on society as a whole.

The Consultation Document also includes important data, analyses and research findings on racial profiling. It presents key questions designed to help frame the discussions among individuals, organizations, and institutions that will take part in the Consultation by submitting written presentations to the Commission.



It is the Commission's hope that by the end of this process, all concerned stakeholders, will have offered constructive proposals to put an end to this discrimination. It is imperative that all those who are working to find solutions, whether in community organizations or public institutions, come together to end racial profiling.

Your participation in this process is crucial. We are counting on you.

A handwritten signature in black ink, reading "Gaétan Cousineau".

Gaétan Cousineau  
President of the Commission



## INTRODUCTION

Section 10 of the Québec Charter guarantees protection against discrimination:

“Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social status, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.”

Section 10.1 of the Charter prohibits harassment against an individual based on any of these grounds.

For the Commission, “Racial profiling refers to any action undertaken by a person or by persons in a situation of authority over a person or group of persons, for reasons including public safety, security or protection, based on real or presumed appearance factors such as race, colour, ethnic or national origin or religion, without real reason or reasonable suspicion, and that exposes the person to examination or to different treatment.

Racial profiling also includes any action undertaken by a person in a situation of authority who applies a measure – without reasonable justification or in a disproportionate way - to certain segments of the population because of their race or ethnicity.”<sup>1</sup>

Racial profiling is a phenomenon that is well documented in many western countries, and in Canada. However, very little scientific research has been conducted in Québec, and the courts have not heard many cases.<sup>2</sup>

Racial profiling can occur in a variety of contexts, including the following:

- In the field of public security;
- In situations involving security personnel (private agencies, doormen, security guards, etc.);
- In public institutions, in the context of applying laws, regulations, etc.;
- In cases involving public service providers (stores, bars, etc.).

It is important to remember that the racialized<sup>3</sup> groups that are most likely to be victims of racial profiling include Blacks, Latin Americans, Aboriginal People,<sup>4</sup> and individuals of Arab descent or members of the Muslim religion.



## **Young people from racialized communities**

Racialized minorities constitute approximately 9% of the population of Québec. However, these groups represent close to 16.5% of the population of the Metropolitan Montréal Region,<sup>5</sup> and their demographic weight is expected to increase over the years as a result of immigration and the high percentage of young people among these groups.

Not all racialized minorities are victims of discrimination or racial profiling in society. The most vulnerable groups include Blacks, Arabs, and Latin Americans, which represent 2.5%, 1.2%, and 1.2% of the population of Québec respectively, and 4.71%, 2.76%, and 2.1% of the population of Greater Montréal respectively.

The members of these three groups are considered to be underprivileged, and they experience systemic discrimination that is reflected in several areas, and particularly in their socio-economic environment. In fact, the unemployment rate for individuals born in Canada who hold a secondary school diploma is 14.7% among Blacks; 14.5% among Latin Americans; and 19.2% among Arabs; whereas the rate stands at 6.6% among non-racialized individuals. The unemployment rate for university graduates born in Canada is 6.3% among Blacks; 2.9% among Latin Americans; and 5.6% among Arabs; whereas the rate stands at 3.1% among non-racialized persons.

Racialized groups also report lower average annual incomes than non-racialized groups. On average, Blacks in Québec earn \$22,822; Arabs earn \$23,059; and Latin Americans earn \$21,000; whereas the average income for non-racialized persons is \$32,827. These variances persist even when the comparison involves only individuals born in Canada or those with the same level of education.



## RACIAL PROFILING AMONG YOUNG PEOPLE FINDINGS FROM THREE IMPORTANT SECTORS

This consultation relies on the fact that racial profiling exists and manifests itself in many areas of Québec society. The problem can be categorized into three main key sectors.

- The first sector that is analyzed is public security. In this context, racial profiling generally manifest itself during interventions involving public or private security officers, who target young people from racialized minorities for grounds involving security or crime prevention.
- The educational sector was also considered. In particular, we analyzed the possibility of the targeted application of codes of conduct and disciplinary measures involving racialized youths in schools. The educational paths followed by these youths are also discussed (e.g.: special needs classes, academic success, welcoming classes).
- The third sector that is addressed is social services, child and youth protection. Within the context of the *Youth Protection Act* (YPA), we analyzed the possibility that young people from racialized milieus may be victims of racial profiling or discrimination when they are reported to the Directeur de la protection de la jeunesse (DPJ) and subsequently, when decisions involving them are made.

### 1 PUBLIC SECURITY

#### 1.1 Police practices

In light of the testimonies that we received, it appears that the most frequent form of racial profiling involves contact between young people from racialized minorities and the police.

The fact that the vast majority of the testimonies from victims and representatives of community groups relate to the police is of particular concern, especially from the perspective that contact with public security forces constitute the gateway to the legal system. More specifically, if racial profiling guides police officers when they stop and question individuals and at the arrest stage, there will be an over-representation of young people from racialized minorities during all subsequent steps in the legal process, from the court process to incarceration. This is why police action warrants special attention.





### 1.1.1 Racial profiling in connection with the socio-economic situation

From a socio-economic perspective, a high percentage of persons from racialized groups are considered to be underprivileged, and therefore, their social status must be taken into consideration when analyzing the phenomenon of racial profiling. In this context, discrimination is based on a number of common factors. As such, a young man who is poor and racialized will accumulate risk factors, including age, gender, ethnic or racial origin, and social status.

Nevertheless, it is important to acknowledge that the socio-economic factor can easily be eclipsed by ethnic and racial origin. In addition, a racialized young man who belongs to a more comfortable class can also be a potential victim of racial profiling, depending on the circumstances.

In a decision reached by the Cour du Québec, Judge Westmoreland-Traoré made the following observation:

"[...] Socio-economic status is a bifurcated indicator. Young Black males are the object of racial profiling if they are well to do and driving expensive cars; they are also the object of racial profiling when they are poor."<sup>6</sup>



*I take the same route home every day, taking the back streets so that I don't have to make a U-turn. It was 1:30 in the morning, and I was with my wife and two children. I saw a police car with its lights flashing in the distance. I thought it had pulled somebody over. Just after I passed the police car, I turned where I usually do, and the police car turned and followed me. I was sure it was because I was Black and driving a Mercedes Jeep.*

*I parked in my spot, and the police car turned on its lights in front of my house. I asked what the problem was, and the police officer said he found it suspicious that I had noticed him and avoided him by turning in front of him (he had a smirk on his face). I explained to the police officer that this was the route I had taken every day for years. The officer asked for my driver's licence, and I asked him why he wanted to see it. He replied that he found my answer suspicious. I told him that this was my home, and that he had no reason to stop me, so there was no reason for me to give him my driver's licence.*

*The police officer called for backup, and approximately eight police cars pulled up in front of my house. I continued to refuse to hand over my driver's licence. I was frustrated. This was too much. I told them I was clean, and that I had never had a police record. I showed them my *Ordre des comptables* membership card.*



It is clear that racism and the stereotypes related to ethnic and racial origin constitute the most daunting challenge with respect to racial profiling.

### **1.1.2 The police intervention trigger element**

Stereotypes related to racialized persons play a key role in triggering police intervention.

In one of the rare recent studies pertaining to relations between minority groups in Québec and the police, researchers Bernard and McAll mention that Blacks are more likely to be stopped by a police officer who suspects or witnesses a violation, on the order of 26.7% among Blacks as opposed to 13.3% among Whites. Inversely, arrests of young Whites are likely to be the result of a 911 call in 80% of cases, as opposed to 65% of cases for Blacks. In addition, the percentage of 911 calls that are made by department store security guards is higher when Blacks are involved (16.6%) than when Whites are involved (5%). Overall, "direct observations by police officers in public places and by security guards in department stores account for 43.3% of arrests involving young Blacks, as opposed to only 18.3% involving young Whites."<sup>7</sup>

One social worker from Sherbrooke reported having witnessed a fight between two young Whites, which a young Black man tried to separate. When they arrived on the scene, the police arrested the young Black man without asking anyone any questions.



*(...) In Ville St-Laurent, a tall 16 year-old Black youth leaves school and waits for the bus. A fight breaks out at school. A police car stops in front of the 16 year-old, handcuffs him, and takes him to the school principal.*

*The principal was appalled by what happened to his student. He demanded that the child be released, because he had nothing to do with it. The next day, the principal calls the child's parents to apologize for the police. The child is hurt by the incident.*

*Days later, the 16 year-old is jaywalking and is ticketed by the same cop. He is followed by the police.*

*Québec society is set up such that Black children lose hope by the age of 10.*

Community worker



### 1.1.3 More intense surveillance of racialized minorities and discretionary application of power by the police

Some studies claim that racial profiling is a function of criminal and rational profiling, because it is based on statistics and objective observations that demonstrate that individuals from a given group are more prone to commit certain crimes.

It is important to remember how the Ontario Human Rights Commission distinguishes racial profiling from criminal profiling:

"[...] racial profiling differs from criminal profiling, which isn't based on stereotypes, but rather relies on actual behaviour or on information about suspected activity by someone who meets the description of a specific individual. In other words, criminal profiling is not the same as racial profiling, because the former is based on objective evidence of wrongful behaviour, while racial profiling is based on stereotypical assumptions."<sup>8</sup>

That being said, a number of European and American studies<sup>9</sup> have shown that, even when all of the variables are neutralized, there is a difference between the treatment of individuals belonging to racialized minorities and those belonging to non-racialized minorities.



*We were a group of four friends who were all Black. A white guy came up to us and tried to mug us. The guy punched my friend, and tried to steal his wallet. A police van happened to drive by. When they arrived, I figured: "Oh good, I can tell them what just happened." By this time, the guy started running across the street. He passed in front of the van. The police came out of the van. They asked us what we were doing. They wanted to give us a ticket for making noise. They told us not to get rowdy. We were just trying to explain that that guy tried to mug us. They handcuffed one of my friends, who is male, and put him in the van. They told us that they would be taking him to the police station. Obviously, by this time, we were trying to explain and getting aggravated that they didn't understand. It turned out that they drove my friend around for several blocks and then let him off (...)*

*When the police arrived, they saw a White guy running. They disregarded him, and assumed that we had done something wrong.*

Young Black Montreal woman



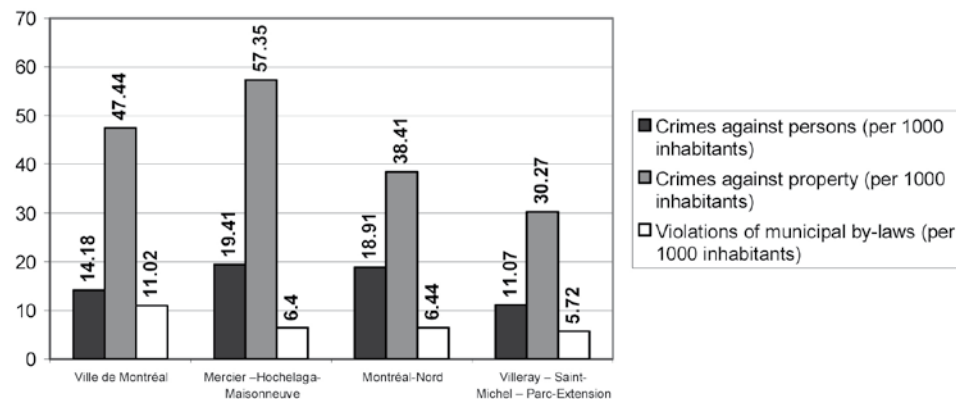
*I was coming home from church in my car. When I arrived at my door, I noticed that a police car had followed me. They put on their flashing lights. I asked why they had stopped me. They asked if this was my car. I said yes. They asked me for my driver's license. I asked if there was a problem. They then said I went through a red light. I said that there were no lights to go through. The route from church to my home has no lights at all. They went to check their computer and found nothing. They said that they would write me a ticket, but not this time. They let me go.*

**Black woman who lives in a Montreal suburb**

We also note that, with the discretionary powers that they are given, police forces may have been driven by stereotypes in all phases of their interventions: random interception or during investigations, identity control, traffic control, pursuit, detention, arrest for questioning, issuing tickets, search without valid reason, etc.

The Commission recently analyzed specific indicators relating to crime rates in certain boroughs based on data from the Service de police de la Ville de Montréal (SPVM).<sup>10</sup>

**Crime rates in certain boroughs of Montréal**



In 2001, the estimated percentage of persons belonging to racialized minorities in Montréal was 20.7%. However, they were not equally represented throughout the city. Montréal-Nord accounted for 23.11% of racialized minorities, and Villeray – Saint-Michel – Parc-Extension accounted for 37.9%. These rates are clearly higher than those observed in Hochelaga-Maisonneuve (9.3%), where it is noted that the rates reported by the SPVM for the three most common types of offences are



higher than those noted in Villeray – Saint-Michel – Parc-Extension. The same phenomenon was observed in the Borough of Montréal-Nord, with the exception of violations of municipal by-laws, for which the rate is similar to the one observed in Hochelaga-Maisonneuve.

According to the submissions received, residents of districts with high populations of racialized individuals are more aware of the constant police presence. In light of the data presented above, there is reason to ask whether the deployment of security forces and police actions are related to objective results resulting from the crime rate in a district where they are largely guided by preconceived ideas pertaining to racialized individuals.



***There are a lot of Asians in Saint-Michel. They are targeted because of how they dress. They think they're a gang. Asians are still a minority.***

**Young Asian man**

On August 28, 2009, the *Métro Montréal* newspaper published internal SPVM data relating to the number of Blacks in Montréal stopped and questioned by the police in 2006-2007. During this period, Blacks accounted for 29.1% of individuals who were stopped and questioned and 17.1% of arrested individuals, although they only account for 7% of the population of Montréal. Therefore, their weighting among individuals arraigned by the SPVM is 4.2 times higher than their actual weighting among the population.

In analyzing the data, we noted that the over-representation of Blacks tends to be even more marked in boroughs where they represent a low percentage of the population, such as in Outremont, Plateau Mont-Royal (South), and Hochelaga-Maisonneuve.



***My 15-year-old son was playing hockey in an alley near our home in Outremont, like he always does. I gave him an 8:00 p.m. curfew. During the game, a police car pulled up and motioned for my son to approach the car. The police officers asked him a number of questions, including his name, the name of his school, and the names of his parents. My son is mulatto. They asked him which one of his parents was Black.***

***When he replied that his mother was black, one of the police officers said "that's not a Haitian name!" They asked him what he wanted to be when he grew up, and he told them that he wanted to be a lawyer. Then***



*they asked him “What do you have against the police force?” My son explained that he had nothing against them, but that he wanted to be a lawyer and that he had to go because it was nearly 8:00 p.m. and his parents had given him a curfew.*

*He told us about it the next day. We went to the police station three days later. We were told that this is how they do their job. They call it “getting close to the people”.*

*Strangely, my son was the only “visible” minority among his group of friends, and he was the one who was questioned without reason. He wasn’t dressed “yo”, but in sportswear, like the others.*

A Black mother

#### **1.1.4 Stopping and questioning, arbitrary arrests and inappropriate or disrespectful actions**

Law and order officials overstep their powers, such as when stopping a vehicle pursuant to the Highways Safety Code, and then taking advantage of the situation to conduct a criminal investigation of the vehicle’s passengers without valid reason.

This type of situation has been the subject of a decision by the Comité de déontologie policière du Québec. The related facts involve a Black woman<sup>11</sup> who was driving her minivan, with her young sons in the vehicle, who was intercepted by the Québec police pursuant to Section 636 of the Highway Safety Code. The police not only investigated the driver, but also verified the identities of the passengers while they were not in the process of conducting a criminal investigation.

In this case, it was determined that, in light of the absence of a valid reason,<sup>12</sup> the interception of the vehicle and the verification of the identity of all of its occupants was based on race.



*A patrol vehicle asked us to stop on the street. One of the police officers approached me because I was the driver, and told me that a vehicle similar to mine had been stolen. My car was old. A Buick Century. While the first police officer was asking me questions and checking my paperwork, his colleague was in the process of checking the identities of the passengers, who were all sitting properly with their seat belts fastened. The police officer who was talking to me asked us where we were going. I initially responded that I did not understand why he was asking that question. I could see that this annoyed him. I then told him we were going to... I was telling the truth. He raised his voice, and said “Are you being smart with me? Are you being arrogant? Well I’ll show you that the police can play hat game too!” He walked around the car. He orde-*



*red me to test all of the lights, and he found two that were defective, and he gave me two \$90 tickets.*

*Young Black man*

Exaggerated behaviour (calling for backup, applying excessive force) and harassing, disrespectful, and discriminatory words are reported in the testimonies that were collected.



*I have a Latino friend. He is a calm, serious young man who has a great work ethic and who works for a government department. He got home one night at around 10:00 p.m. He was intercepted by the police, who asked him his name. He asked them why.*

*They raised their voice. They appeared threatening. My friend got scared, and decided to answer them. But one of the police officers told him it was too late. They jumped on him and roughed him up.*

*They also disparaged Latinos and immigrants in general. Because he was bleeding, the police officers called an ambulance. One of the police officers amused himself in front of the ambulance technicians by asking him his name and address three times, pretending not to understand the answers. He answered, and the police officer said "What? I don't understand your accent. Tell me again." The ambulance technician appeared to be shocked, and had to intervene, and repeated the information to the police officer. It was only after this that the ambulance technicians were able to intervene and care for my friend.*

A young man explains what happened to his friend

### 1.1.5 The difference in treatment during the litigation process

After analyzing a random sampling of 120 reports written by police officers – 60 of which involved Blacks and 60 of which involved Whites, Bernard and McAll (above-mentioned) noted that, in the case of young Whites, offences relate "more to behaviours that are out of the ordinary (e.g.: a young driver who accelerates when in sight of a police officer)... it seems that young Blacks are more likely to be observed by police officers on the street or on patrols and arrested for more benign actions (dropping something on the ground, which later turns out to be drugs), for not having a light on a bicycle, smoking a joint."<sup>13</sup>



*I was coming back from lunch with a Black colleague in my car. We were looking for a parking spot. I asked my colleague to get out and look*



*around for me. As soon as they saw my friend, the police came by. I was trying to park. They put on their flasher. He got out of the car. I rolled down my window. He asked for my ID and driver's license. I asked what the problem was. I thought something wasn't working properly. He said my flasher wasn't working. I got out and checked. Both my lights were clearly working, front and back, and he saw this. I looked at him with a question on my face. He then said: "Ok, move along".*

*I couldn't believe it. I was in denial. I almost wished my flasher wasn't working so that I could say: "It's my fault". But it wasn't. My flasher was working. He made up an excuse. It's a good thing I checked.*

**A social worker, visibly shaken by this experience.**

In their study, Bernard and McAll noted that young Blacks under the age of 18 are at higher risk of being arrested by the police and prosecuted by the Crown. Accordingly, "of the 1,518 youths aged 12 to 18 who were arrested in 2001 on the Island of Montréal and whose files were retained for prosecution, 340 (22.4%) were identified by the police officer under the heading "Request to launch proceedings" as being Blacks living on the Island of Montréal.<sup>14</sup> In 2001, young Blacks represented 10.1% of young people aged 12 to 18 in Montréal, but their representation in the penal justice system was double the percentage that they represent in the population.<sup>15</sup>

### **1.1.6 Process for addressing complaints involving racial profiling in the application of the Code de déontologie des policiers du Québec**

The police ethics system ensures that the Code de déontologie des policiers du Québec (Québec police code of ethics) is applied. Racial profiling is a discriminatory act that is in violation of this Code, and therefore, an alleged victim of racial profiling can complain to the Commissaire à la déontologie policière (Police Ethics Commissioner). Many victims are not familiar with all the complaint mechanisms that are available. A complaint can be made online, and can also be sent by e-mail, fax, regular mail, or submitted to an employee working at the Commissioner's office. In addition, a complaint can be made in person at any police station, traffic control office, or point of service operated by the Société de l'assurance automobile du Québec (SAAQ).

For many people, the only avenue they know entails visiting a local police station. In addition to the effect of intimidation and dissuasion that this procedure may have on victims, it appears to those who have experience in the matter that the police officers entrusted with registering these complaints have proven to be uncooperative, and even hostile, going so far as to not follow up on the matter at all.





*I was driving my Lexus... He (the police officer) got out of his car, slammed me against the hood, and brutally put the handcuffs on me. He told me that I was under arrest.*

*As soon as I was released, I went to the local station. I told the officer in charge... that I wanted to file a complaint against two officers, whose names I had, for an abusive arrest and racial profiling. He refused to give me the forms, and told me to use the Internet. He said that the police officers may have made a mistake, but that can happen to anyone, and that, in fact, he had hit a suspect in the head with his weapon without a reason. I left the police station where he refused to take my complaint, frustrated. It was completely the opposite of the official speech by the Commander, who wanted his police officers to be closer to the community.*

*The worst thing about all this is that I was a community worker, and I was experiencing the same thing that the youths tell me happens to them.*

Black community worker

*I went to the police station. I wanted to complain against a police officer who brutalized me without reason. I made a note of his badge number. I wanted proof of his brutality, and I asked for a paper. The supervisor arrived. He led me into a room. He questioned me, suggesting that the police officer had a reason to act that way against me. When I hit this wall, I left, frustrated*

Black street worker

The Commission also experiences difficulties of a procedural nature when dealing with complaints involving police ethics. Therefore, the Commission's jurisdiction is called into question, because the police officers involved invoke their "right to remain silent" until a decision is reached pursuant to the Code of Ethics. These obstacles delay the Commission's complaints procedure.

## **1.2 Public security and non-police actions by persons in authority**

Several other workers in situations of authority play active roles in the racial profiling process, particularly with respect to the provision of public services, such as the public transit system (bus, métro), shopping centres, stores, bars, etc.

These same questions raised with respect to police actions apply while adapting them to these contexts. However, some of the situations that prevail in the transit system, particularly in Montréal, and in certain areas of the private sector (stores, bars, etc.) are described below.



### 1.2.1 Racial profiling in the public transit system

Submissions and complaints received at the Commission involving the public transit system, particularly in Montréal, raise the hypothesis of more obvious surveillance and harassment of youths from racialized communities in terms of infraction violations (loitering, checking transit tickets, etc.).

These actions are often initiated by drivers, controllers, security guards, or police officers assigned to metro stations. In this context, this type of profiling can result in the judicialisation of racialized youths.



*I was on the bus. There were four or five young Blacks at a bus stop in front of a high school. The driver did not want to pick them up, and drove right by. I went to see the driver, and speaking in a perfectly normal voice, I told him that this was not acceptable in 2009, and not very “fair” to the youths. He did not really listen to me, and continued to drive a few streets further. He suddenly stopped the bus and said: “OK, everybody off. I’m going to the garage. My day is over.” Everyone looked at each other, not really knowing what to do. They all got off the bus, and some protested, and I told the driver that he had picked the wrong person. I said: “You can call the police, but I refuse to get off the bus.” He drove off in the direction of the garage, and I called 911. I told them that I had been kidnapped and I was in the process of being taken away. The driver called his supervisor, who answered him.*

*The driver tried to defend himself, saying that it was a school bus stop, even though this was not true. I looked at it and even took a picture of the stop, and I had the stop number, because I returned after the incident to be sure. I explained the situation to the supervisor, and he seemed to understand and did not defend the driver’s actions. The police officers understood the situation quickly, I wanted to file a complaint, and they told me that I had to submit my complaint to the STM or in municipal court. When I told the driver that I was going to complain, he answered: “I don’t give a... They’ll pay me overtime.” Some people who were on the bus earlier came and thanked me and told me I was brave.*

Young Black man

Facts reported in a complaint to the Commission that resulted in an out of court settlement:

A 14-year old black teen was at the Outremont métro station with his friends after school. Because there were a lot of commuters, he got separated from his friends,



who got on the train without him. He ran after the car for a few moments to signal to his friends. He was then stopped by two STCUM (now STM) security guards, who accused him of “metro surfing” and escorted him to a room, where he was interrogated. During the incident, one of the guards accused him of lying about his age, adding “As all Black kids do”.

The same agent then contacted the youth’s parents in order to tell them that their son had received a ticket and had lied about his age, repeating that “All Black kids do that”.

One month later, the youth was stopped at the same métro station by a female guard, who was accompanied by the guard who had originally accused him of lying about his age. This time, the youth was accused of spitting on the stairs, and was given a \$93 fine. The two guards interrogated him and made fun of him, telling him: “We got you again and will get you again”.

The Commission concluded that the STCUM agents violated the rights to integrity and dignity because of his age, race, and colour, and that he was a victim of racial profiling.

### 1.2.2 Racial profiling at shopping centres, stores, bars, and clubs

Security guards, like the rest of the population, may be influenced by prejudice and stereotypes associated with individuals belonging to visible minorities, such as believing that they are more inclined to steal or to be involved in public disorder (loitering, violence, etc.).

While there is disproportionate supervision in stores and shopping centres, racial profiling in bars and clubs can take the form of banning people from entering the premises with no other justification than the client’s apparent race.



*My friends and I often go to a bar in Repentigny on Wednesdays, because drinks are cheaper then. We had heard that there are often brawls there. The brawls mainly involve Whites. They passed a by-law stating that people who live in Repentigny are the only ones who are allowed to go on Wednesdays, which excludes the people from Montréal-Nord and Rivière-des-Prairies. The doorman checks proof of address every time. One Wednesday, I went with three other girls and one man, all Black. The doorman wouldn’t let me in.*

*I have never felt so ashamed, because this is the first time I have ever been refused entry to a bar. The reason they gave was that we were not from Repentigny, and because Blacks had brawled there the week*



*before. We were profiled as being violent because we were Black. Even though, we were girls. But the doormen saw us there every Wednesday. When Whites fight, they kick them out. When Blacks fight, they call the police for backup.*

Young Black woman

Private security guards play a decisive role in racial profiling in terms of surveillance of racialized youths and in the discretionary practice of reporting situations to the police.



*This happened at a bar outside of Montréal. I am a show promoter (dance evenings with DJs). I wanted to organize an event: a "Bal en Blanc". Everything went well on the telephone with the bar owner. I paid for the rental (a deposit), and only had to show up on the day of the event. That day, I went to the bar with my representative. As soon as he saw me, the owner told me that he didn't want anything to do with my event. I had previously given him my references and my website. He returned with an envelope, accompanied by his security guards. He gave me back my deposit. They asked me to leave the premises. I had already sold tickets, and I had to refund them. I lost all the money I invested in the advertizing, and the reality was that the show was not intended for a specific community.*

*I think that, in some areas, police pressure certain owners to cancel shows organized by Black promoters. One time, an owner clearly explained to us that it was the police who asked him to cancel. If the owner refused, the police threatened to revoke his liquor licence if there was an incident. But there are more incidents in White clubs than in Black ones, even though you never hear about it. It's a reality experienced by Black promoters (...) I think the police act out of racism, but they don't admit it. They say it's because of street gangs.*

Black businessman



*I was buying groceries at a supermarket in Outremont (in 2009), when a man came up to me and said: "You should not be here". I did not understand. I thought he was crazy, or homeless. I soon realized that he was a security guard. I did not realize what was going on, and I wondered what was happening. The guard became increasingly aggressive*



*in his tone, and insisted that I leave. I asked him what I had done, and he came closer to me and said "Lady, you know what you did".*

*I left my cart and left. I was overcome by panic, and I called my husband. My husband called the store, and was told that they would call him back the next day, because the manager was not there. The next day, the manager said she would have to check what had happened, and that she would get back to us. We called several times and got no answer.*

*(A few days later) the owner of the security agency called us. He explained to us that a supermarket employee must have identified me and confused me with someone who was not allowed to shop there. So the agent threw me out without asking questions or telling me why.*

Black Outremont resident

### 1.3 Impact of racial profiling on victims

Racial profiling carried out against persons within the context of keeping the peace and upholding public security impacts several areas of the lives of the young victims, as well as their loved ones and the public as a whole.

Criminologist Scott Wortley explains:

"To argue that racial profiling is harmless, that it only hurts those who break the law, is to totally ignore the psychological and social damage that can result from always being considered one of the "usual suspects".<sup>16</sup>

Many people are resigned to it, and see the phenomenon as commonplace.



...I was on my way home from school. Outside the métro station, two police officers stopped me and my friend. They asked: "What are you guys doing here?" We're just here chilling with friends...It has happened about five times this year. I know kids that get stopped all the time.

You can't do much. You can't ask them why. They'll just make up an excuse... They say my friend spit. He said "no". Then they let us go. The people around saw this and think I did something wrong. What's the point?

Student of South Asian origin

People are affected on an emotional, psychological, and social level. The impacts on several aspects of their lives are demonstrated by a loss of self-confi-



dence, a decreased sense of belonging as a citizen, feelings of revolt, verbal and physical violence, the adoption of anti-social behaviour, increased distrust of institutions and the established order, etc.



*I was leaving the metro with a Black friend. I was 16 (at the time). The police jumped on us and brought us to the station. They said that we fit the description of a suspect who had committed a break and entry. They took our shoes. They interviewed us separately. They realized that they had the wrong people, and let us go after two to three hours.*

*I was in a state of shock... I still shake a bit today when I think of it.*

**Black community worker, referring to an incident that occurred a few years ago.**

Unexpected impacts over the short or long term can lead to dropping out of school and failure to thrive from a socio-professional perspective.



*I don't feel good about myself. This led me to drop out of cégep. I could not concentrate. After the incident... at school, I kept hearing about it.*

*...I dropped my studies, but I go to the adult education centre. I want to go back to cégep...*

**Black student**

Racial profiling also has an impact on other people, including parents, friends, and members of the community to which the victims belong. The parents of the youths who are marginalized in this manner feel particularly deprived, upset and powerless.



*I grew up in Montreal. I don't shout racism all the time. But it happens. I tell my children to be careful, and to be polite to the police. It's almost normal to get pulled over. It's going to happen. You have to parent differently. You tell your children to stay out of the way of the police. You have to have a talk with your male children or they won't live to the age of 21... It stays with them. There is no faith in the police ethics process. I have tons of experiences. I am often afraid for my children. So far, so good.*

**A Black mother**



Sometimes I talk about this with my friends. My White friends, they can't believe it!

A young Asian man



*My daughter-in-law is white, French-Canadian. My son is Black. She would blame problems that Black people have on Black people themselves. Until she met my son. When she's driving with my son, they get stopped by the police, they ask for ID, registration, whose car this is, etc. Her viewpoint changed very quickly.*

Black woman



*I was in the process of buying a house. I wanted to cash in my investments. I went to the bank in my new area. The teller took one look at me and refused. She didn't believe that I was for real.*

*I was shocked and upset. I couldn't believe it. I called my financial advisor, who is white. I had to rely on her to explain things to the bank on my behalf.*

*My wife, who is White, was shocked. We thought our dreams had vanished.*

Black man

Many people from the communities in question are adopting new behaviours in order to deal with the racial profiling experience. Some parents move, change their children's schools, impose curfews on their children, forbid them from entering certain neighbourhoods or from dressing in a way that makes them stand out too much, etc.



*I was born in Québec City. One day, I was stopped by two police officers. They asked me why I had moved to Québec, and before I even had a chance to answer, he told me I was not welcome in Québec City. He added: "We're keeping an eye on you. You destroyed Montréal, and we don't want the same thing to happen to Québec City." After a while, I left Québec City, like a lot of minorities who are not treated well there.*

Young Black man



### **Questions raised – Public security**

- How can police officers be equipped so that they can make the distinction between criminal profiling and racial profiling?
- How can we ensure that ethno-racial and cultural diversity are taken into consideration by the police force and the legal system?
- How can we ensure that citizens are well informed of their rights and of the limitations of police action?
- Is it necessary to systematically collect data pertaining to the ethnic origins of individuals who are stopped and questioned by the police and those who are prosecuted? What is the most appropriate way to do this?
- What measures should be taken to ensure the adequate training of private security guards with respect to human rights and protection against racial discrimination?
- How can we ensure confidence in the complaint system used by the Commissaire à la déontologie policière among citizens?
- In cases where the same facts are the subject of a complaint to the Commissaire à la déontologie policière and the Commission des droits de la personne et des droits de la jeunesse, what actions should be taken by the government and the institutions in question in order to better respond to the expectations of citizens, particularly with respect to the timeframe for the investigation?
- How can the Commission des droits de la personne et des droits de la jeunesse better fulfill its mandate with respect to education and the prevention of discrimination involving racial profiling?





## 2 EDUCATIONAL SECTOR

Racial profiling can occur in the school environment through the targeted application of codes of conduct and other school rules by members of a school's personnel and administration with respect to youths belonging to racialized groups. In fact, testimonies alleging the disproportionate and even targeted application of disciplinary measures, particularly in terms of behavioural problems is an issue that warrants consideration.

The Commission notes that youths who are victims of racial profiling in the application of school rules are often the same individuals who fail, drop out, or follow less prestigious academic paths, to a disproportionate degree. In addition, when their schooling is interrupted for a significant period of time, these disciplinary measures risk seriously affecting their motivation and perseverance. Could it be that these marginalized and stereotyped youths are victims of an institutionalized or systemic form of discrimination that hampers their academic success and socio-professional future? This is why the issues of perseverance, success, and differentiated pathways cannot be overlooked during this consultation.

According to a number of people who we met, the Québec model of welcoming classes and the existing gateways between these welcoming classes and regular classes should also be questioned in terms of their impact on the academic path and success of students. In light of this, participants are asked to submit their thoughts on this issue.

### 2.1 Application of codes of conduct and disciplinary measures

Many submissions collected during the pre-consultation process addressed the application of "codes of conduct" and disciplinary measures against students who were accused of deviant behaviour. In fact, it would appear that the rules in effect at school are sometimes applied in a stricter, and therefore disproportionate, manner with respect to students belonging to racialized minorities.

This type of profiling, which is often subconscious, may be practiced by teachers, school administration, or any other staff member who has the authority to punish students for deviant behaviour. This problem mainly occurs at the elementary and secondary levels, but also in cégeps to a lesser extent. It appears that it is not uncommon for students of certain racialized minorities to be targeted by heightened surveillance and stricter severity by supervisors or teachers at these establishments.

For example, at one cégep on the Island of Montréal, groups of young Blacks in public areas of the establishment were considered by authorities to be too disruptive, because they are too noisy. In order to prevent these informal groups from gathering, the school's administration rearranged the spaces where the Black students gathered in order to make them inaccessible. As "compensation", the admin-



istration offered these youths a classroom where they could meet informally, which only heightened their frustration and the feeling that their presence is not welcome in the school's public areas.

This example illustrates the problem that racialized youths are very familiar with in terms of being confronted in public areas, especially in their dealings with the police. When they are gathered in a group, these young people are the subject of closer scrutiny at school and on the street, to the point where their gatherings are considered to be more "threatening" and "disruptive", and they are seen as street gangs in the minds of authorities.

Similarly, it is important to ask whether the discretionary power held by school administrations in the determination of punishments could be tainted by profiling. In this respect, a number of testimonies have related cases where certain groups exhibiting the same behaviour received unequal sanctions. It appears that severe disciplinary measures, such as suspensions, expulsions, and referral to "special classes", are applied in a disproportionate manner to students of ethnic and racialized minorities in high schools.

In many cases, these measures punish a mistake or averted deviance. However, many people have denounced the clear disproportion reported in certain cases between the prejudice experienced by the student to whom such sanctions are applied on the one hand, and the low degree of severity of the reproached behaviour on the other, as an expulsion or suspension may compromise a student's academic path.

A number of people have asked whether some prejudice related to the propensity for undisciplined behaviour or delinquency of such and such a group has had the effect of causing the school personnel to demonstrate less tolerance (zero tolerance) with respect to students who are categorized in this way.

According to the principal of school for special needs students with a student population that is 60% Haitian, a large percentage of the youths who are sent there by other establishments were expelled by their high schools because the rules were applied to the letter, with no regard for the severity of their behaviour. For example, she explained that it is not uncommon for a student to have been expelled for being late on three consecutive days.

In addition, many of the school workers we met denounced the fact that, in some cases, the school did not take all of the necessary measures to help the student correct the alleged behaviour before being suspended or expelled. There is little room for more progressive intervention methods, such as attempting to correct the problem through closer guidance, active listening, or taking into consideration elements of the student's family context that would make it possible to better understand the causes underlying the behaviour.



Finally, it was mentioned on several occasions that excessively swift recourse to suspensions or expulsions may have very damaging effects on the students in question. This type of measure is demotivating for the student, and risks creating all of the conditions necessary for him or her to fail at school, and eventually drop out.



*When I returned after a suspension, I was expelled from my high school for having an “attitude” ... I did not go to school for a year, and I did nothing during that entire time... Finally, I registered at another school. The experience had a very negative effect on my academic motivation.*

**Young girl from a racialized community**

In this respect, many people underscored the fact that expelled or suspended students who are no longer being educated are more likely to be socialized within “street cultures”, and therefore, become easy prey for street gangs, or more simply, for petty delinquency.

**2.2 Distinct academic paths**

Recent studies conducted by the MÉLS<sup>17</sup> and by university researchers<sup>18</sup> demonstrate that there is an over-representation of students from certain racialized groups among students who are in difficulty or have dropped out.

Marie McAndrew and Jacques Ledent conducted a comparative study of the academic success of three cohorts of students who integrated into Secondary 1 in the public school system in 1994, 1995, and 1996. For each retained indicator, the students from Black communities, and to a lesser extent, immigrants in general, reported a significant deficit in relation to the student population. The most alarming situation among the Black communities is the one experienced by students from the West Indies whose mother tongue is Creole. This category is largely made up of young Haitians from underprivileged immigrant families.

For example, among the students in the French language sector who began Secondary 1 at a normal age, 34.2% of Black students and 25.9% of immigrant students were delayed by Secondary 3, compared to only 19.8% for all students. With respect to Creole-speaking students from the West Indies, 50% were academically delayed when they started Secondary 3. Still in the French language sector, the rate for obtaining a high school diploma after five years is 57.8% for all students, 45.5% for immigrant students, only 37.1% for Black communities, and just 23.7% for students from the West Indies whose mother tongue is Creole.

Finally, students from Black communities are proportionately diagnosed as being special needs students<sup>19</sup> more often than the rest of the student population (14.8% as compared to 12.6%), and they are more at risk of being sent to a “special class”



(11.7% versus 8.9%),<sup>20</sup> if applicable. The variance with respect to the rest of the students is even greater if we take into consideration Creole West Indies students, who present a rate of 17.7% of students diagnosed as requiring special classes, with 14.8% of these students not being integrated into regular classes.

It is worth questioning the explanatory factors that allow these data to be interpreted by placing specific importance on the role of racial profiling.

### **2.3 Academic path and social condition**

Many school workers underscored the fact that, regardless of their origins, students in underprivileged environments do not have the additional pedagogical support they need at home that would enable them to overcome their learning difficulties, or at least lessen the negative impact on their performance at school.

Lacking information, parents from underprivileged environments do not always completely understand the implications of decisions made by academic personnel to guide their children to special education or vocational training or in a direction that does not correspond to the child's best interests. This is even truer for immigrant parents, who are even less familiar with the Québec school system. Many of these parents view these training options and the time it takes for them to reintegrate into normal schooling as temporary measures. Although returning to regular classes is a reality for some, it is not an easy feat, because taking a "special class" risks exacerbating the academic delay already experienced by the student, in addition to the demotivating effect.

In addition, parents from underprivileged environments, and particularly those of immigrant origins, do not have all the necessary information concerning the relatively limited professional opportunities available to children who are placed in a special program, opportunities that often starkly contrast with the hopes they had for their son or daughter. Immigrant parents who do not have a command of French or English are doubly underprivileged in this context. Furthermore, the school does not always make the effort or have the resources necessary to find interpreters, which often leaves the parents feeling excluded and powerless.

Other people have pointed out that, although schools are obligated to involve the parents and the student in the development of an intervention plan devised for the latter in theory, there is not enough compliance with this principle in practice. As a result, many parents feel blindsided when the school administration refers their child to training avenues that lead to less skilled jobs.



***Schools do not provide the parents with sufficient information concerning the various decisions made pertaining to their children. Instead of criticizing parents for not being sufficiently involved, or even having***



*“given up”, schools should spend more time establishing better communication with parents..*

**School administrator**

Finally, a number of people have criticized the tendency of some school stakeholders to abusively blame “culture” for the academic problems experienced by students from underprivileged immigrant families, thereby failing to take into consideration the impact of the socio-economic characteristics of their family environment on their academic performance.

## **2.4 Welcoming classes**

In many cases, welcoming classes are mandatory for allophone students integrating into the Québec academic system during the course of their education. Many school administrators and teachers report that the learning difficulties that are experienced by students attending integration classes today can be explained in part by a host of problems experienced by the integration system itself. Therefore, it would be worthwhile to question whether we might be in the presence of institutional norms and practices that, although they appear to be unbiased, have the effect of disproportionately excluding students from welcoming classes.

It has been pointed out that students who are placed in welcoming classes often tend too to be directed to employment training shortly after being integrated into regular classes. Among the explanations for this, some experts and workers mentioned the academic delay experienced by the students in the welcoming classes upon entering the regular system. According to some, such a delay may be due to an unbalanced distribution of time spent teaching French in comparison with other subjects (e.g.: mathematics, history, geography, etc.), among other things.

Other people blame this academic delay on insufficient teaching material that is poorly adapted to welcoming classes. On more than one occasion, the criticism was made that these classes are being academically diluted due to teachers’ tendencies to use pedagogical material that is either obsolete or inadequate with respect to the ages and abilities of the students.

Among the examples of the inadequate use of teaching materials in welcoming classes that were reported to us, there is one that is emblematic, although it should not be generalized:



*There were teachers in the welcoming classes – when I was there a few years ago – who made teens watch episodes of the children’s series “Passe-Partout”. This created a sense of humiliation and infantilization. I felt stupid.*

*A youth who attended welcoming class*



It was also mentioned on several occasions that the welcoming class sector suffers from a permanent shortage teachers who are qualified to meet the specific needs of the clientele. Others also criticized the excessively long delays – sometimes as long as two years – before students who are placed in welcoming classes are placed in regular classes. An extended and unwarranted stay in a welcoming class can contribute to the academic delay of these students when they rejoin the regular system.

Under these conditions, it is not surprising that a high number of students from welcoming classes are behind when they transfer to regular classes. Although this statement is rarely contested, the reflexive response of establishments, which all too often consist of referring these youths to schools for students with special needs, is to encourage them to choose job-training programs without taking into consideration their aspirations and abilities, or to direct them to adult education.



*We came to Montréal when my son was 17. He was placed in a welcoming class, and when he turned 18 he was told he had to leave school. He was unable to obtain his high school diploma and was sent to adult education. He was unable to learn French. He was frustrated and unmotivated, and he developed behavioural problems.*

*We have relatives in Calgary and in Toronto, and my nieces and nephews are doing well in school, even though they were initially placed in welcoming classes. The only difference was the city where they settled. The welcoming class model is different in Québec.*

Mother of Pakistani origin

## **2.5 Impact of prejudice and training**

Many people pointed out the more or less conscious role that prejudice and ethno-racial stereotypes can play among racialized students. In addition, the fact that a high percentage of members of certain racialized groups are underprivileged may constitute an aggravating factor.

One of the often repeated comments was the criticism that some of the teachers and members of school personnel tend to not motivate and support students of racialized minorities to succeed when they exhibit learning difficulties.

In other words, it seems that prejudice or abusive generalization can sometimes lead certain members of the teaching and specialized personnel to invest less effort in supporting, coaching, and bringing up to grade level students of certain racialized minorities, and particularly those from Black communities. This is not a conscious discriminatory attitude, but a tendency to prejudice the chances of a student's prog-



ress, not based on his or her individual abilities, but based on presumed cultural predispositions that would make him or her less able to succeed at school and to exhibit the necessary effort and discipline, etc.

During the Commission's pre-consultations, a professor of social work techniques at the cégep level stated that she observed an average dropout rate of 35% among her students after the first year of the program. Considering the fact that the majority of students who dropped out were girls of Haitian origin, she felt it appropriate to conduct an "internal" investigation among some of those aged 16 and 17, to ask them what they perceived to be the reason for their lack of success.



*These students explained that, because of their origins, many of their high school teachers invested less time in helping them make progress. Some teachers told them: "In Haiti, school is not very advanced, so you won't do well here", and: "There's no point, because you won't be going to cégep"; "There's no point, because you will never continue your studies"; "There's no point, because you Haitians aren't capable of doing any better."*

**Cégep teacher**

It is important to ask whether the directing of racialized minorities to special classes or vocational programs at the high school level takes into consideration the actual interests and abilities of these students, or on the contrary, whether this decision is conditioned by stigmatizing prejudice with respect to the potential for success of certain cultural groups in some cases. The lack of investment and guidance can lead to a self-fulfilling prophecy: after a certain amount of time, without receiving appropriate support, students risk accumulating academic difficulties that are so severe that it becomes impossible for them to stay in regular classes.

Finally, the Commission would like to reiterate the fact that the lack of pedagogical support provided for students with difficulties, regardless of whether these difficulties are diagnosed, does not only affect students from racialized minorities or immigrant origins. This is definitely not the case. In this respect, society must carry out a more comprehensive reflection pertaining to financial resources and the organizational structure that is required in order to implement an academic integration model in Québec that is free of discrimination based on disabilities, social status, origin, and colour.



### Questions raised – Educational sector

- What means can we use to avoid having schools apply different approaches with respect to disciplinary measures for students from racialized minorities in the case of comparable situations or behaviours? Which prejudices are involved, and how can these be overcome?
- What measures can be put into place in order to ensure that immigrant or racialized students experiencing difficulties are not subjected to different treatment that hampers their chances for success because of their race?
- How can we prevent and combat prejudices that can be suffered by immigrant or racialized parents in their dealings with school personnel? How can we ensure that parents are more involved and better informed at each step in their child's progress, specifically in terms of examining the various training options offered to students?
- Do school stakeholders assign sufficient weight to socio-economic factors in their interventions with students of racialized minorities or of immigrant origin? How can these factors be taken into consideration more effectively?
- How can we improve the welcoming class system in order to foster the integration of this clientele into the regular system?
- What type of training can be put into place or improved for academic personnel in order for racial profiling and discrimination to be eliminated at schools?
- How can we ensure greater ethno-cultural diversity among school personnel?
- What research should be carried out in order to counter the lack of knowledge or data pertaining to racial profiling in the educational sector?





### **3 SOCIAL SERVICES, CHILD AND YOUTH PROTECTION SECTOR**

Pursuant to the *Youth Protection Act*<sup>21</sup> (YPA), the Commission must ensure the promotion of and compliance with the rights of any child whose situation has been reported to the Directeur de la protection de la jeunesse (DPJ) for the reason that his or her development is or may be considered to have been compromised. It must also ensure that the child's rights are upheld during the various steps involving the intervention of the DPJ.

The steps in the intervention pursuant the YPA are as follows: receipt and processing of the report;<sup>22</sup> evaluation of the child's situation; orientation and selection of protection measures; implementation of protection measures; review of the child's situation and termination of the intervention. Through this consultation, the Commission would like to encourage participants to reflect on the risks of racial profiling during each of these steps.

In this section, the Commission presents an overview of the sometimes diverse paths followed by racialized minorities during the various steps of the process. It would like to encourage participants to find possible solutions to the problem of over-representation of racialized groups within the youth protection system, focusing on the issue of prejudice and worker training.

It is important to mention that, due to the low number of testimonies collected for this section, the general findings addressed with a view to developing participants' reflections are primarily based on information taken from research.

#### **3.1 Differences among groups during the various protection service steps**

Among racialized youth minorities, the case of young Blacks is particularly alarming. In fact, Black youths are over-represented in the youth protection system compared to their weight in the population. This over-representation begins with the initial report stage, and progresses throughout all subsequent steps, namely the evaluation of the child's situation and the living conditions, the determination of protection needs, and the application of measures.

##### **Reporting**

In a study based on a sampling of 3,918 youths aged 17 and under who were reported pursuant to the terms of the YPA between July 2007 and July 2008,<sup>23</sup> researchers Chantal Lavergne and Sarah Dufour made the following finding: Although young Blacks only represent 7% of the population of Montréal in the 0 to 15 age group, they comprise approximately 18% of minors reported to the DPJ. Inversely, young Whites, like youths from other racialized minorities (e.g.: Latin Americans, Arabs, Chinese, etc.), are under-represented at the reporting step. This



trend prevails throughout all subsequent steps in protection services process. Finally, we are aware that the over-representation of young Blacks in the Francophone sector of the youth protection system mainly comprises children from Haitian families,<sup>24</sup> and particularly those with immigrant origins.<sup>25</sup>

### **Evaluation, orientation, and application of measures**

According to the study by Lavergne and Dufour,<sup>26</sup> the percentage of cases where the child's safety or development are deemed to be compromised at the evaluation step are essentially the same for White families, Black families, and those from other racialized minorities. The same does not hold true with respect to the measures prescribed to rectify the problem. According to the researchers, when the alleged facts prove to be correct, young Blacks and those from other racialized minorities require less severe protection services than young Whites. Therefore, White children are more often subject to placement at the stage where measures are applied than children from Black families and those from other racialized minorities.

These results are consistent with the fact that, according to the study, the families of young Whites whose reporting was retained presented a higher psychosocial risk than the families of young Blacks or other racialized groups whose reporting was retained. In this context, the evaluation was based on a series of variables associated with risks of parental abuse or negligence, such as the mother's age at the birth of the child, single parenting, the presence of family violence, legal history, or parents with substance abuse problems, etc. Based on these criteria, racialized families, and particularly Blacks, are more numerous in terms of presenting no risk of psychosocial risk, while more White families present with one or more risk factors. In light of this, it is surprising to note that the rates of the DPJ taking charge of the child following evaluation are the same for young Blacks and young Whites.

Finally, we underscore that Dufour and Lavergne noted that, when the alleged facts are found to be true, the DPJ has recourse to a court to apply protection measures for black children more often, which confirms the trend already noted by Bernard and McAll. These results are surprising in light of the research results identified by Esther Belony. In referring to the testimonies of social practitioners, she evaluated the level of family collaboration with the DPJ during the evaluation of facts and orientation. It became evident that Haitian parents collaborate with DPJ workers at a rate similar to other groups (non-immigrants and "other" immigrants).

### **Immediate protection measures**

When a report is retained, a DPJ worker must determine whether the safety or development of the child is sufficiently compromised to justify "emergency" measures, which may involve immediately withdrawing the child from the family. The study by Lavergne and Dufour made it clear that immediate protection measures



are applied to Black children in emergency situations more often. However, it appears that placement rates are approximately the same for Black families and for White families following the evaluation of the alleged facts.

Similarly, in a 2004 study, Bernard and McAll noted that the number of Haitian families reported to the DPJ is proportionately higher in terms of being assigned Treatment Code 1, which is reserved for emergency situations that are deemed to be the most serious with respect to the safety of the child (21.9% for Haitians and 15.8% for non-Haitians).

In light of this, it is important to ask whether DPJ workers are too quick to declare an emergency situation, specifically in the case of Black families, without finding out more about the situation and its context (cultural, family, etc.). We could also ask whether the child and parents were sufficiently consulted, to the extent possible, with a view to obtaining their opinion in terms of the need to apply immediate protection measures.

### **3.2 The role of prejudice**

Among the explanatory factors that should be considered to explain the over-representation of Blacks among minors who are taken in by the DPJ, it is important to question the role played by racial profiling at the gateway to the system. More specifically, we need to ask whether youths from some of these racialized minorities are likely to be the subject of decisions that are motivated by prejudice or stereotypes at the reporting step, either consciously or otherwise.

It is important to note that several studies<sup>27</sup> confirm that White families are more at risk of being reported to the DPJ by a citizen than Black families or those from other racialized minorities. By comparison, the latter are far more at risk of being reported to the DPJ by professional sources than White families, and particularly by schools and daycare centres.<sup>28</sup> With respect to the reason, it seems that young Blacks and those from other racialized minorities are proportionately the subject of far more reports for “physical abuse” than young Whites.

Is it possible that professionals in the education, healthcare, and social services networks tend to be more suspicious of parents of racialized minorities with respect to applying punitive methods that could compromise the safety of their children for cultural reasons? It is important to ask whether there is a risk that the families that are categorized in this way are sometimes reported to the DPJ because of hasty judgments or unfounded prejudice.



In 2007, my mother scolded my little sister, who was 9-years old, because of her bad grades at school. I want to point out that she did not beat my sister. My sister went to school, and the teacher asked her questions. The teacher contacted the DPJ, and told my sister to not tell my mother anything. The DPJ officers came to the house to meet with my sister and my mother. They asked a lot of questions, and decided to follow up for three weeks. My mother was very upset at being judged when, in reality, she was looking out for my sister. We saw this as an abusive report.

Young Black girl

Similarly, we can ask ourselves whether some professionals also tend to more easily read proof of parental negligence into the signs of poverty that are observed in families of racialized minorities. In such a case, these families are victims of discrimination based on ethno-racial affiliation and social status.

Finally, several people criticized the fact that children who are monitored or under the care of the DPJ, like their foster families, are victims of a stigma that negatively colours their relationships with representatives of public institutions. In addition, if this stigma affects children who are under the care of the DPJ and their foster families, it risks further affecting Black families in a process where discrimination based on "race" and social status fuel each other.

### **3.3 The role of the underprivileged environment**

In the quest to overcome racial profiling, several people warned us against the temptation to seek the causes of over-representation of Black youths in the protection system exclusively among parenting education models. By placing excessive weight on culture, we risk not taking into consideration factors that are closely related to the risk of parental abuse and negligence, such as the underprivileged environment and socio-economic inequality.

The relevance of such a caution is confirmed by the research conducted by Esther Belony.<sup>29</sup> For the year 2001, she compared the socio-economic profiles of families from three categories of youths under the care of the DPJ: youths from immigrant Haitian families; youths from other (non-Haitian) immigrants; and non-immigrant youths. She noted that the marked underprivileged environment that prevails among Haitian immigrant families under the care of the DPJ are also found in unusually high numbers among the immigrant Haitian population in Montréal.<sup>30</sup>

This finding led the researcher to conclude that the over-representation of immigrant Haitian families in protection services is mainly attributable to the precarious socio-economic conditions in which this category of the population evolves in a disproportionate manner.



### **Questions raised – Social services, child and youth protection sector**

- Are certain racialized groups more at risk of being reported to the DPJ and possibly being transferred to the responsibility of the latter in the case of comparable behaviours or situations? How can we explain this situation? What are the possible solutions?
- What means can the DPJ use to foster the adoption of voluntary measures and to minimize recourse to courts in the case of youths from racialized minorities?
- Are the emergency situation evaluation measures that are in place at the DPJ adequate in terms of taking into consideration the cultural reality of racialized youths? If not, how can this problem be resolved?
- How can we overcome the double prejudice faced by racialized youths under the care of the DPJ and their families from representatives of public institutions?
- How can we train DPJ personnel with respect to an intercultural and anti-racist approach, in order to intervene among youths from racialized minorities and their parents effectively throughout all of the steps in the protection system process? Otherwise, what measures can be put into place in this respect?
- What means can we use to palliate the lack of knowledge or data related to racial profiling in the areas of social services and youth protection?
- How can social services intervene with underprivileged families from racialized groups in a more targeted and adequate manner in order to prevent the risk of being reported to the DPJ?



- 1 Commission des droits de la personne et des droits de la jeunesse, *Racial Profiling: Guidelines for Investigations*, Michèle Turenne, (Cat. 2.120-1.27) 2005, [www.cdpedj.qc.ca/en/publications/docs/racial\\_profiling\\_guidelines\\_investigations.pdf](http://www.cdpedj.qc.ca/en/publications/docs/racial_profiling_guidelines_investigations.pdf); Commission des droits de la personne et des droits de la jeunesse, *Proving racial profiling; Perspectives for civil cases*, Michèle Turenne, (Cat. 2.120-1.26) 2006, [www.cdpedj.qc.ca/en/publications/docs/racial\\_profiling\\_guidelines\\_investigations.pdf](http://www.cdpedj.qc.ca/en/publications/docs/racial_profiling_guidelines_investigations.pdf).
- 2 For more information, refer to: David M. Tanovich, *The Colour of Justice: Policing Race in Canada* (Toronto: Irwin Law ed., 2006); Commission des droits de la personne et des droits de la jeunesse, *Proving racial profiling; Perspectives for civil cases*, Michèle Turenne, (Cat. 2.120-1.26) 2006, [www.cdpedj.qc.ca/en/publications/docs/racial\\_profiling\\_guidelines\\_investigations.pdf](http://www.cdpedj.qc.ca/en/publications/docs/racial_profiling_guidelines_investigations.pdf); Michèle Turenne "Le profilage racial : une atteinte au droit à l'égalité – Mise en contexte, fondements, perspectives pour un recours" [Racial profiling: limiting the right to equality – context, legal foundation and remedies perspectives] in *Développements récents en profilage racial* [Recent racial profiling developments] (Cowansville: Éditions Yvon Blais, 2009).
- 3 A word about the vocabulary: The concept of race does not refer to a scientific reality. Races and the associated qualities are the outcome of social processes that seek to establish differences that have never been able to be objectively demonstrated between groups. Like other stakeholders, the Commission prefers to use the term "racialized groups", which helps to illustrate discriminatory effects.
- 4 Aboriginal Peoples are not defined as being racialized minorities or immigrants, and even though they are highly vulnerable with respect to this phenomenon, it is not appropriate to single out their specific situation during this consultation. The Commission believes that the scope of the racial, cultural, economic, educational, and social disadvantages faced by the Aboriginal Peoples largely exceeds the nature of this project. A large number of the problems faced by Aboriginal Peoples are the result of several centuries of alienation and discriminatory policies targeting them. Still today, they suffer the consequences of these policies, and therefore, they cannot be abstracted. For instance, the existence of "reserves", and even land claims, can all constitute a source of tension and draw the attention of authorities to the realities and actions of Aboriginal Peoples. This being said, even if the reality faced by Aboriginal Peoples exceeds the scope of this consultation, the Commission intends to collect testimonies from Aboriginal participants.
- 5 Including the City of Montréal and surrounding areas.
- 6 *R. v. Campbell*, C.Q. Montréal, n° 500-01-004657-042-001, January 27, 2005, j. Westmoreland-Traoré, par. 81. [www.jugements.qc.ca/php/decision.php?liste=12640922&doc=475A4352560B1F03](http://www.jugements.qc.ca/php/decision.php?liste=12640922&doc=475A4352560B1F03).
- 7 Léonel Bernard and Christopher McAll, "Jeunes, police et système de justice – La surreprésentation des jeunes Noirs montréalais" [Youth, police and justice system – The overrepresentation of young Black Montrealers], Presentation of research findings, Centre de recherche de Montréal sur les inégalités sociales, les discriminations et les pratiques alternatives de citoyenneté (CREMIS), [www.cremis.ca](http://www.cremis.ca).
- 8 Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling* – Report, 2003, [www.ohrc.on.ca](http://www.ohrc.on.ca), 7.
- 9 American Civil Liberty Union (ACLU), *Traffic stop consent searches across the State of Illinois and by the Illinois State Police*, July 2008, [www.aclu-il.org/news/ACLU\\_traffic\\_data\\_report-7-08.pdf](http://www.aclu-il.org/news/ACLU_traffic_data_report-7-08.pdf).



- 10 Annual Report of the SPVM - 2008; see additional data and statistical tables for 2008, Ville de Montréal website: Montréal en statistique: [ville.montreal.qc.ca/portal/page?\\_pageid=2076,2454592&\\_dad=portal&\\_schema=PORTAL](http://ville.montreal.qc.ca/portal/page?_pageid=2076,2454592&_dad=portal&_schema=PORTAL) (accessed on July 16, 2009).
- 11 Judgment on the merits: *C.D.P. v. Pelletier and Caron*, Feb. 1, 2006, C-2005-3275-2, [www.deontologie-policiere.gouv.qc.ca/decisions\\_rendues/C-2005-3275-f.pdf](http://www.deontologie-policiere.gouv.qc.ca/decisions_rendues/C-2005-3275-f.pdf); [www.jugements.qc.ca/php/decision.php?liste=14026199&doc=4553435E02521D02](http://www.jugements.qc.ca/php/decision.php?liste=14026199&doc=4553435E02521D02), April 19, 2006 sentencing: suspension without pay for five working days of eight hours. *C.D.P. v. Pelletier and Caron*, C-2005-3275-2, [www.jugements.qc.ca/php/decision.php?liste=38823181&doc=859BBBEDB075D300389E7CEACCF3950C19C91791BE9F84D8BE85CC2764CA0D5A](http://www.jugements.qc.ca/php/decision.php?liste=38823181&doc=859BBBEDB075D300389E7CEACCF3950C19C91791BE9F84D8BE85CC2764CA0D5A).
- 12 The fact that the vehicle is a “vehicle of interest” because it is “easy to steal” falls under the Criminal Code, and not the Highway Safety Code.
- 13 Léonel Bernard and Christopher McAll, “Jeunes, police et système de justice – La surreprésentation des jeunes Noirs montréalais” [Youth, police and justice system – The over-representation of young Black Montrealers], Presentation of research findings, March 19, 2009, p.10. Centre de recherche de Montréal sur les inégalités sociales, les discriminations et les pratiques alternatives de citoyenneté (CREMIS), [www.cremis.ca](http://www.cremis.ca).
- 14 *Id.* 2.
- 15 In relation to the judicialisation process, when we analyze the rate of imprisonment in the federal adult prison system, we note an over-representation of Blacks and Aboriginal Peoples. See: Correctional Services of Canada, *Corrections and Conditional Release Statistics Overview– 2008*, [www.publicsafety.gc.ca/res/cor/rep/\\_fl/2008-04-ccrso-eng.pdf](http://www.publicsafety.gc.ca/res/cor/rep/_fl/2008-04-ccrso-eng.pdf).
- 16 Scott Wortley, *Racial Differences in Customs Searches at Pearson International Airport: Results of a Pilot Survey* (report prepared for the African Canadian Legal Clinic, 2002).
- 17 Ministère de l'Éducation du Loisir et du Sport, “Portrait scolaire des élèves issus de l'immigration : de 1994-1995 à 2003-2004” [Overview of students from immigration: 1994-1995 high school cohort], 2006; Ministère de l'Éducation du Loisir et du Sport, “Études exploratoires du cheminement scolaire des élèves issus de l'immigration : cohorte de 1994-1995 des élèves du secondaire” [Exploratory studies of the school pathways of students with immigrant origins: 1994-1995 Secondary level students], *Bulletin statistique de l'éducation*, n° 34, January, 1-19.
- 18 Marie McAndrew and Jacques Ledent, *La réussite scolaire des jeunes des communautés noires au secondaire. Rapport final* [Academic achievement of high school youth from Black communities. Final Report], September 2008, [www.chereum.umontreal.ca](http://www.chereum.umontreal.ca).
- 19 Students with handicaps, social maladjustments, or learning difficulties.
- 20 However, the percentage of students categorized as “special needs” with immigrant origins (9.8%), and within this group, the percentage of students following a special program (6.4%) is slightly below the average.
- 21 Among other things, the mission of the Commission is to protect the interests of the child and to uphold the rights recognized by the YPA and by the *Youth Criminal Justice Act*.



- 22 Section 39 of the YPA specifically stipulates that professionals working with children and teachers, daycare personnel, and police officers must report to the DPJ all situations where the safety or development of a child may be considered as being compromised.
- 23 Chantal Lavergne and Sarah Dufour, "Enfants issus de minorités visibles en besoin de protection: disproportion, caractéristiques individuelles, familiales et services rendus [Children from visible minorities in need of protection: disproportion, individual and family characteristics and services], summary of 2008 research findings, PowerPoint document. [www.inspq.qc.ca/Pdf/Evenements/1564\\_t\\_rauma/seance\\_5/08\\_sarah\\_dufour.pdf](http://www.inspq.qc.ca/Pdf/Evenements/1564_t_rauma/seance_5/08_sarah_dufour.pdf) (accessed Jan. 31, 2010).
- 24 Léonel Bernard and Christopher McAll, "La surreprésentation des jeunes Haïtiens dans le système québécois de protection de la jeunesse", [The over-representation of young Haitians in the Quebec youth protection system], *Intervention Magazine*, n° 20, 2004.
- 25 Esther Belony, "La prise en charge des enfants de l'immigration haïtienne par la Direction de la protection de la jeunesse : une analyse comparative" [Children of Haitian immigration taken into charge by the Direction de la protection de la jeunesse: a comparative analysis], Master's Thesis, Université du Québec, INRS-UCS, 2007.
- 26 Lavergne and Dufour, previously mentioned.
- 27 See: Lavergne and Dufour, Belony, Hassan and Rousseau, and Bernard and McAll.
- 28 Note that researcher Esther Belony observed that youths from immigrant Haitian families, like those from other immigrant families, face a risk of being reported to the DPJ by the school that is twice as high as youths from non-immigrant families (p. 63).
- 29 *Id.*
- 30 We note that an underprivileged environment is not the prerogative of Haitians from Black communities in Montréal, as demonstrated by the data presented in the first section of this document. In fact, Blacks as a whole are clearly disadvantaged at a socio-economic level when compared to the rest of the population and other racialized minorities. In addition, these inequalities persist regardless of their level of education or whether they were born here.



