

RACIAL PROFILING AND SYSTEMIC DISCRIMINATION OF RACIALIZED YOUTH



REPORT OF THE CONSULTATION ON RACIAL PROFILING
AND ITS CONSEQUENCES

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*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 [...].*

*I have tons of experiences. I am often afraid for my children.
So far, so good.*

A Black mother

FOREWORD

The troubling testimony from this mother, whose fears for her children extend to the point of telling them to avoid the police, was one of the most compelling moments during our consultation on racial profiling and its consequences. In just a few moving words, she was able to illustrate the distress caused by racial profiling and its impact on our society.

Some may find it difficult to grasp the reality of racial profiling and systemic discrimination in Québec. It can be difficult to understand the suffering of its victims, because it is not easy to put yourself in their shoes. However, far from any dramatization, this report clearly reflects all of the submissions collected during the course of this consultation.

All parties had their say, and through a process of collective disclosure, the reality of Québec society was revealed, in all its diversity. The result: an objective and balanced report that meets the expectations of the public.

In September 2009, the Commission des droits de la personne et des droits de la jeunesse felt the need to launch this consultation in order to find potential solutions to counter racial profiling and systemic discrimination by focusing the discussion on the situations experienced by youth from racialized communities between the ages of 14 and 25.

The Commission began by listening to nearly 150 youth and their parents, experts, and representatives from community groups, all of whom agreed to share their experiences related to racial profiling and discrimination in the educational system, the youth protection system and the public security sector.

Based on their stories, and the results of research and analysis of racial profiling, the Commission published a consultation document in March 2010, which presented key questions designed to help frame the written presentations and exchanges during the public hearings held in Montréal and Québec City, in May and June 2010. The Commission received 54 written submissions, and 75 individuals – researchers, representatives from community organizations or institutions, and engaged citizens – participated in these public hearings.

This report contains our recommendations, but it is important to remember that this consultation has also created expectations. These individuals, who took part in the consultation, and the communities that they represent want to see an increase in society's awareness of what they experience, along with an acknowledgement of the need for change and the implementation of concrete actions.

This report invites Québec to meet these challenges, which will not disappear simply because they have been expressed. As a society, we must work together to overcome the problems associated with racial

profiling and systemic discrimination. Citizens, community organizations and decision-makers all have a role to play in fighting the prejudices that sustain racial profiling and systemic discrimination.

In order to change institutions, governments and decision-makers must examine the laws, standards and organizational policies whose effect, which is often subtle and even involuntarily, is to reinforce the exclusion or marginalization of racialized minorities.

During our consultation, we discovered that interesting initiatives and promising projects and partnerships already exist, but these are generally the result of isolated acts rather than institutionalized practices. Declarations of principle condemning racism and discrimination must be accompanied by real political commitment, leading to the implementation of preventive measures and effective remedies for the victims.

The denial of racial profiling must be replaced by official recognition of this form of discrimination, along with the establishment of accountability procedures that will force those in authority to answer for their actions with objective data. In order to ensure the success of such an ambitious program, institutions must allow and encourage the participation of racialized groups in the search for solutions, especially through close community involvement with their efforts.

It is also vital for all of the individuals and representatives from organizations and institutions that participated in the consultation to adopt the recommendations in this report.

We cannot allow ourselves to sink into apathy or despair. Our recommendations are viable paths to change that can make a difference, but the solutions will only become reality with the support of racialized groups and the organizations assisting them.

This report is the result of two years of sustained work by the Commission staff, but it is only a starting point. If the right to equality as set out in the Charter of Human Rights and Freedoms is ever to truly become reality for all, we must continue to work together.

In closing, we would like to thank all of the individuals and organizations that participated during the various stages of the consultation. Each of them brought us a unique insight into the issue of racial profiling. We would especially like to thank the community organizations for their ongoing commitment, the researchers for their expertise and innovative ideas, the institutions and government departments for their generous collaboration, and above all, the many youth and their parents who demonstrated their trust by sharing their testimony with us. This report belongs to them.

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INTRODUCTION

The mission of the Commission des droits de la personne et des droits de la jeunesse (the Commission) is to ensure the promotion and respect of the principles set out in the Charter of Human Rights and Freedoms¹, a quasi-constitutional law. The Commission is specifically mandated to ensure that Québec's laws, by-laws, standards and institutional practices, both public and private, comply with the Charter, which prohibits discrimination based on "race"², colour, ethnic or national origin and religion in the exercise of human rights and freedoms. Based on this responsibility, the Commission decided to conduct a public consultation on racial profiling.

Although racial profiling is not a new phenomenon, it has only recently been recognized as a form of discrimination and a violation of the right to equal protection from discriminatory harassment, rights that are explicitly protected by Sections 10 and 10.1 respectively of the Québec Charter.³ The term was invented in the United States to designate policies and practices employed by police in applying enforcement actions directed at members of particular racialized groups⁴ based on prejudices or stereotypes without factual grounds or reasonable suspicion for doing so.⁵ In 2003, the Ontario Human Rights Commission published the results of a wide-ranging inquiry detailing the various forms of racial

1 R.S.Q., c. C-12 (the Charter).

2 Although the term "race" appears in the Québec Charter and in most of the anti-discrimination provisions of international instruments and other national legislation, the Commission insists on repeating a warning with respect to the use of this word in this report. Although the idea of biological races has no meaningful value in science, [translation] "one cannot say the same of 'social race,' i.e.: race as a social construct. Moreover, prejudice and discrimination based on race, as well as the resulting inequalities, remind us that race, while originally an ideological fiction, nevertheless has had very real social effects that cannot not be neglected." Daniel DUCHARME and Paul EID, "La notion de race dans les sciences et l'imaginaire raciste: la rupture est-elle consommée?" in L'Observatoire de la génétique, No. 24 – September-November, 2005, [on line]. http://www.omics-ethics.org/observatoire/cadrages/cadr2005/c_no24_05/c_no24_05_02.html (page consulted on March 7, 2011).

3 It should also be noted that racial profiling violates the right to equality that is guaranteed by *the Universal Declaration of Human Rights* (art. 7), *the International Covenant on Civil and Political Rights* (art. 26) and the *Canadian Charter of Rights and Freedoms* (sec. 15).

The Charter, sec. 10: 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 condition, 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. The Charter, sec. 10.1: No one may harass a person on the basis of any ground mentioned in section 10.

4 In this report, the Commission prefers to use the term "racialized group" instead of "racial group". The reason for this choice is to emphasize that, far from corresponding to an objective reality, the concept of "race" refers to an essentializing and stigmatizing category applied by the majority group to minorities that were formerly colonized or subject to slavery.

5 See AMERICAN CIVIL LIBERTY UNION (ACLU) of NORTHERN CALIFORNIA, "Operation Pipeline," *Executive Summary*, Task Force on Government Oversight (September 1999), [on line]. <http://www.aclunc.org/discrimination/webb-report.html>; Summit on police services and race relations and racial profiling, Canadian Race Relations Foundation, Toronto, November 2002. The phenomenon of racial and ethnic profiling is well documented in Europe. See: Radouane BOUHLAL, R., *Rapport alternatif d'ENAR, Rapport supplément : Le profilage ethnique en Belgique, 2009/2010*, fact sheet no. 40, June 2009; Open society institute, *Profiling Minorities: A Study of Stop-and-Search Practices in Paris, 2009*; Open society institute, *Addressing Ethnic Profiling by Police A Report on the Strategies for Effective Police Stop and Search Project, 2009*; Open society institute, w 2009.

profiling found in the public sphere in Ontario.⁶ The Québec Commission has made fighting racial profiling one of its priorities. In 2005, it adopted a definition of racial profiling that reflects the systemic nature of this form of discrimination:⁷

“Racial profiling is 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.”

Like most other types of discrimination, racial profiling usually takes on subtle and insidious forms. Therefore, it is no simple matter to prove that a particular police action was not based on factual grounds or a reasonable suspicion, but rather on the colour or “race” of the targeted person. In addition, pulling a person over or issuing a ticket may be a response to an actual unlawful act. However, as set out in the second paragraph of the preceding definition, when police tend to penalize or scrutinize racialized persons more closely given equal offences or crimes, it is a form of systemic racial profiling that is characterized by a double standard.

Since 2003, the Commission has received and processed many complaints of racial profiling, mainly involving police officers, but also involving other public and private organizations. Although it is necessary, the system for handling individual complaints has showed its limitations. In fact, this type of remedy is not always the most appropriate way of revealing the systemic dimension of racial profiling and persuading the institutions concerned to apply structural remedies to their organizational standards and practices, from a preventive perspective.

That is why the Commission has sought new and wider-reaching approaches, while continuing to process individual complaints and represent complainants before the Court with full vigour. It was from this perspective that the decision was made to conduct a public consultation on racial profiling and its consequences. The consultation was intended to give a voice to victims of racial profiling, to stimulate a discussion of potential solutions, and to create a broader understanding of the consequences of this type of discrimination for Québec society. The Commission is of the opinion that such an understanding is vital, because the public appears to be unaware of the scope and systemic nature of racial profiling. However, there can be no doubt of its existence, with numerous studies having demonstrated that security forces, and notably the police, tend to scrutinize and suspect racialized minorities more often, without factual or valid grounds, and punish them disproportionately in the application of laws and by-laws.

The Commission opted to hold a consultation on the profiling and discrimination experienced by racialized groups. In today’s Québec, the “racialized” groups that are most likely to be victims of racial profiling are Blacks, persons of Latin American, South Asian or Arab origins, and Muslims as well as Aboriginal persons. Although Aboriginal persons are likely to be victims of racial profiling

6 ONTARIO HUMAN RIGHTS COMMISSION, *Paying the Price: The Human Cost of Racial Profiling* – Report, 2003, p. 7, [on line]. www.ohrc.on.ca

7 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, *Racial profiling: Context and Definition*, Michèle Turenne, (Cat. 2.120-1.25), 2005, p. 13.

and systemic discrimination, just like other racialized minorities, the Commission wishes to make it clear that the scope of the racial, cultural, economic, educational and social disadvantages faced by Aboriginal persons greatly exceeds the scope of this consultation. Many of the problems faced by Aboriginal persons result from centuries of alienation and the application of colonial and discriminatory policies. The consequences of these policies persist today, and cannot be ignored. For example, the existence of “reserves” and land claims constitute a source of political conflict. That being said, even though the problems faced by Aboriginal persons extend beyond the framework of this consultation, Aboriginals living in major urban centres are directly affected by the same racial profiling and systemic discrimination that all of those who belong to racialized groups suffer.

Although racial profiling affects racialized persons of every age, it soon became apparent that youth are the most likely to be targeted; partly because they are major users of public spaces (e.g.: parks, shopping centres, metro stations, etc.), but also because of stereotypes that attribute a greater propensity for anti-social behaviour to them. Based on this realization, the Commission decided to focus its consultation on racialized youth aged between 14 and 25.

Of course, racial profiling is only one of the manifestations of the discrimination experienced by young members of racialized minorities. Although discrimination persists in a number of sectors, such as the job and housing markets and in the area of sports, the Commission limited its consultation to racial profiling and systemic discrimination in the public services provided by institutions that play a key role in the lives of youth: public security, the education system, and the youth protection system. As will be seen in this report, the available data and the testimony that was heard confirm that racialized youth are at greater risk of being punished for violations of their school’s code of conduct, forced into educational paths that are not suited to their needs, and reported and placed under the care of the Director of Youth Protection (DYP). Although it does not constitute racial profiling as such, some of the issues raised by these problems reflect the logic of systemic discrimination. In light of this, the Commission concluded early on in the process that the consultation would be broader than the issue of racial profiling exclusively, and would instead embrace the broader issue of systemic discrimination.

The consultation procedure applied by the Commission focused on finding solutions, and not assigning guilt. It was from this perspective that individuals, organizations, government departments and public institutions were asked to provide their testimony. The Commission also felt that it was important to elicit the participation of citizens, organizations and institutions located outside of Montréal, specifically in Québec City, Sherbrooke, Gatineau and Trois-Rivières. However, despite our efforts, few regional organizations and institutions felt that our consultation related to them. We noted that, outside of Montréal, there is a general tendency to believe that racial profiling and discrimination are exclusively a Montréal problem, given the high concentration of ethnic and racialized minorities in the city and its suburbs. Certain public agencies and institutions went so far as to deny the existence of racial profiling and discrimination in their regions. The Commission regrets their lack of interest and attitude of denial, because ethnoracial discrimination also occurs in the regions, regardless of how few of their residents are members of minorities. It is important to remember that discrimination not only affects the individuals concerned, but also generates significant social costs.

Before undertaking the formal consultation, the Commission conducted a preliminary consultation during the summer of 2009, holding a series of meetings with representatives of approximately 100 different organizations in order to measure their support for and interest in participating in its efforts. In the fall of 2009, the Commission collected more than 150 accounts from people relating their experiences of racial profiling and discrimination. Based on these accounts, and on studies and research pertaining to this subject, the Commission published a consultation document in early 2010. This document served as the basis for public hearings that were held in Montréal and Québec City in the

spring of 2010. The Commission received a total of 54 briefs, 43 of which were presented during the public hearings.

During the consultation, community groups, public institutions, social workers, researchers and citizens shared their analyses, expertise and experience with a view to proposing possible solutions. It should be noted that the Commission insisted on involving government departments in the process, and organized an inter-ministerial panel to that end. As a result, there were three meetings of representatives from six departments between August 2010 and January 2011 for the purpose of discovering the measures that they had implemented or were planning to implement in order to prevent racial profiling and systemic discrimination in the public institutions under their authority.

This consultation report would not have been possible without the valuable contributions from all of these groups that expressed their confidence in the Commission and its role. It is our hope that the report will contribute to bringing about real changes in public institutions in the form of more inclusive approaches that enable youth from racialized minorities to participate in Québec civic life in complete equality.

1 . G E N E R A L

C O N T E X T

Although all Québec citizens formally have equal rights today, racialized groups are still the target of individual attitudes and behaviours tinged with prejudices, as well as discriminatory practices and organizational norms, which have deep historical roots. The cumulative effect on members of these groups resulting from structural disadvantages inherited from the past is still felt in every sphere of public life today. That being said, it cannot be denied that, given its desire to accept diversity, Québec society has implemented a large number of measures in recent decades aimed at enhancing the participation of racialized groups and immigrants in public life. However, these measures are too often limited to diversity management strategies that ignore the discriminatory procedures and subtle forms of racism that continue to reinforce the exclusion and marginalization of minorities. Discrimination and racism are permitted to flourish without restraint, because they occur within a sort of blind spot in terms of public policy. This prevents initiatives aimed at promoting inclusion from achieving their objective.

Under these conditions, it should come as no surprise that the devastating impact of racism and discrimination, of which racial profiling is merely one manifestation, goes unnoticed in the public discourse. Racial profiling primarily affects racialized youth, and in particular, young men living in disadvantaged neighbourhoods. This means that there are at least four intersecting grounds for discrimination: “race”, colour, age, sex and social condition. In addition, during the months preceding the public consultation, the Commission concluded that the profiling experienced by racialized youth was only one of the forms of the systemic discrimination practiced in their dealings with public institutions and persons in situations of authority who make decisions that affect them.

As mentioned in the Introduction, the education system and the youth protection system appear to us to be institutional environments in which youth from racialized minorities are at risk of experiencing prejudice that compromises the quality of the public services that they, as citizens, are entitled to expect. Although it is not directly related to racial profiling as defined above, the over-representation of these groups among drop-outs and students in difficulty, and among youngsters reported to and taken into charge by the DYP, forces us, as a society, to take a critical look at these institutions in order to ensure that they do not have systemic discriminatory effects.

In this section, we will begin by defining the concept of systemic discrimination as it is understood and used in this report. We will then discuss certain social issues and explanatory factors that must be taken into account across the board in any strategy that seeks to eliminate racial profiling, and in a broader sense, the systemic discrimination experienced by young Quebecers of racialized minorities in their dealings with the three targeted institutional sectors.

1.1 SYSTEMIC DISCRIMINATION

We speak of direct discrimination when a person is openly and avowedly subject to different treatment based on a prohibited grounds for discrimination. Indirect discrimination refers to the application of a rule, policy or practice that appears to be neutral, but that has potentially harmful effects on members

of groups designated in Section 10 of the Charter.⁸ Systemic discrimination involves both direct and indirect discrimination, but is also goes much further. It is based on the dynamic interaction between decisions and attitudes tainted by prejudice, and on organizational models and institutional practices that have harmful effects, whether intended or not, on groups that are protected by the Charter.⁹

In many cases, as the Supreme Court has pointed out, “(systemic) discrimination is then reinforced by the very exclusion of the disadvantaged group, because the exclusion fosters the belief, both within and outside the group, that the exclusion is the result of ‘natural’ forces.”¹⁰ In a recent judgment, the Human Rights Tribunal specified that: [translation] “[...] one of the characteristics of systemic discrimination is rather the disproportional exclusionary effect on the members of a group targeted by a prohibited grounds for discrimination that results from a set of practices, policies and attitudes.”¹¹

Finally, it should be noted that the Commission on systemic racism in the Ontario penal justice system noted in its report:

“Decision-making inserts racialization into systems where the standards or criteria for making decisions reflect or permit bias against the racialized people. Standards and criteria are part of a system’s operating norms, and may be formal and explicit in laws, policies and procedures. Or they may be informal, arising from accepted ways of doing things.”¹²

In our view, the three sectors targeted by the consultation must be analyzed from the perspective of systemic discrimination. In the area of public security, racial profiling can assume a systemic nature when certain policies or measures aimed at preventing criminality (such as anti-street gang programs) or socially disruptive behaviour result in making members of racialized groups the subject of disproportionate police scrutiny, and when they are more severely punished by laws and by-laws. In the education system, as in the youth protection system, systemic discrimination can be expressed in policies, measures, evaluation tools, or even organizational structures that have the effect of disproportionately penalizing racialized or immigrant youth.

However, whether it is direct, indirect or systemic, discrimination is generally sustained by stereotypes and prejudices, either conscious or not, that disqualify or stigmatize individuals specifically because of their colour, appearance or membership in an ethnic group, whether it is real or presumed.

1.2 FIGHTING STEREOTYPES AND PREJUDICES

Throughout the consultation, the majority of participants insisted on the fact that prejudices and stereotypes were the backdrop for discrimination, and therefore, that it was important to deconstruct

8 See: *Commission scolaire régionale de Chambly v. Bergevin*, [1994] 2 R.C.S. 525, p. 538-540. It should be noted that, the Supreme Court ruling: *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 R.C.S. 3, par. 29, the distinction between direct and indirect discrimination is no longer allowed in the defence of the person or organization accused of discrimination.

9 For more information concerning systemic discrimination, see: Marie-Thérèse CHICHA-PONTBRIAND, *Discrimination systémique, fondement et méthodologie des programmes d'accès à l'égalité à l'emploi*, Cowansville, Éditions Yvon Blais, 1989, p. 85.

10 *Action Travail des Femmes v. Canadian National*, [1987] 1 R.C.S. 1114, 1139 (1987) 8 C.H.R.R. D/4210 (S.C.C.).

11 *Commission des droits de la personne et des droits de la jeunesse v. Gaz métropolitain inc.*, Montréal, No.500-53-000204-030, September 18, 2008 CanLII 24 (TDPQ), par. 28. Permission to appeal granted, December 4, 2008 CanLII 1844 (QCCA); COMMISSION ON SYSTEMIC RACISM IN THE ONTARIO CRIMINAL JUSTICE SYSTEM, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, Toronto, Ontario Queen's Printer, 1995, (co-chairs: D. Cole and M. Gittens) p. 51.

12 *Ibid.*, p. 56.

them so that youth from racialized minorities would be able to enjoy the same rights as other citizens in full equality. Although everyone may have prejudices and stereotypes, their effects vary depending on whether the victim belongs to the majority or a racialized minority. In fact, racialized individuals are often excluded from the “us” in the representations of the majority group, and are more likely to be excluded from civic life, or when they do become involved in it, they must overcome additional obstacles in order to gain access to the same opportunities as non-racialized persons.

In all three sectors, one constant became obvious during the consultations: prejudice acts as a driver for the discriminatory interventions or treatment that racialized minorities suffer. Therefore, in all of the cases reported, the persons in a situation of authority were relying on stereotypes and prejudices in evaluating or perceiving the racialized persons, whether consciously or not. According to this logic, regardless of what they say or do, the members of the racialized minorities will be treated or judged as a function of a difference that is always ascribed to them. The effect of this is not only to affect their confidence in the institutions, but also their self-esteem and their identification with Québec society. That is why, from the outset of the consultation procedure, one of the main objectives of the Commission was to increase awareness among the population and the various decision-makers of the social impacts and costs of prejudice and stereotyping.

In addition, although the media was not a sector that was targeted by the consultation, several participants pointed out the non-negligible role of the media in reinforcing stereotypes and prejudices in society. They asserted that the various media contribute significantly to sustaining the stereotypes applied to ethnic and racialized minorities through reductive or distorted portrayals.¹³

During the consultation, we were told that a film crew had gone to a Montréal school that had a large concentration of students from Black communities to do a news report for TV. The students were very proud to participate, and were hoping to give the public a positive image of their school. They were extremely disappointed when they watched the report, because the perspective chosen by the journalist was to depict their school as a “problem” school, full of violence and inter-ethnic and “inter-racial” violence.

Anecdote reported by Anne-Marie Livingstone, researcher at McGill University.

Everyone decried the fact that, in general, minorities were very under-represented in the media, if not virtually absent. According to many, this absence goes a long way toward perpetuating the erroneous image of a culturally homogeneous Québec in representations of society. Furthermore, according to these same participants, this media invisibility is harmful to youth from ethnic and racialized minorities, to the extent that it deprives them of positive models with whom they can identify with pride.

Other participants noted that the few actors from racialized minorities who are seen on Québec TV series are often confined to stereotypical roles. Journalists were also criticized for not presenting the crimes of racialized persons in the same way as those committed by non-racialized persons. For example, some journalists continue to believe that it is relevant to mention the colour of a criminal when that person belongs to a racialized minority. In addition, although an individual crime committed by a White is presented as an individual pathology, a crime committed by a racialized person is interpreted as being the result of a cultural trait. Several processes, often unconscious, can contribute to reinforcing stereotypes and prejudices through the omission of facts or the choice of words, images

¹³ The tendency of the media to wrongly reflect the ethno-cultural diversity of society and to reinforce certain stereotypes and prejudices with respect to ethnic and racialized minorities is well documented in: CONSEIL DES RELATIONS INTERCULTURELLES, *A fair representation and treatment of ethno-cultural diversity in media and advertising*, June 2009.

and titles that can be slanted or misleading. As a whole, these stereotypical representations not only have negative effects on racialized persons, but because they are so repetitious, they can ultimately become the reality in the eyes of the public.

That being said, the Commission is aware that in recent years, the Québec media have made efforts to avoid reinforcing prejudices and stereotypes targeting racialized groups as well as to ensure better representativeness and visibility in the media. However, as participants in the consultation have stated, there is still much work to be done on this issue.

1.3 THE LEADERSHIP ROLE OF THE STATE IN FIGHTING DISCRIMINATION

There is no question that it is vital to fight prejudices and stereotypes, but it is also important to tackle the discrimination that they bring about in institutions and public spaces. In fact, pursuant to the Charter, the government is obliged to take all necessary measures to create the conditions that allow members of ethnic and racialized minorities to exercise their rights and freedoms in full equality. Such measures must contribute to promoting their inclusion in all spheres of society, specifically through increased employment, better representation in public institutions and positions of power, efforts to lower school drop-out rates, the fight against poverty, etc.

In recent years, the government has introduced a number of measures aimed at promoting the integration of racialized and immigrant groups. In 2008, the government published *Diversity: An added value: Government Policy to promote the participation of all in Québec's development*.¹⁴ This policy included a number of anti-discrimination measures, most of which had already been implemented, by the Commission in particular. It generally stressed measures aimed at promoting the integration of citizens, especially through access to employment. Although praiseworthy, these measures are likely to remain ineffective, because they do not attack the main source of the exclusion of racialized minorities: racism and discrimination in all its forms. That is why, as it has already done so,¹⁵ the Commission recommends that the government adopts a policy that provides for a comprehensive action strategy aimed at fighting racism and discrimination.

The Commission is of the opinion that one of the problems that should be prioritized in an anti-racism and discrimination policy is the under-representation of ethnic and racialized minorities in public institutions. In fact, if it intends to credibly assume a leading role in terms of fighting discrimination and profiling, the Québec government must take concrete steps to ensure that these groups are adequately represented in the public administration.

As it has stated on numerous occasions, the Commission believes that one of the factors that accounts for the under-representation of minorities in government is “the absence of follow-up, evaluation and monitoring procedures at every step of the process of implementing Equal Access Employment Programs (EAEP) in the public service, from setting objectives to implementing corrective measures.”¹⁶ Accordingly, given the expertise and methodological tools that it developed for implementing (EAEPs)

14 MINISTÈRE DE L'IMMIGRATION ET DES COMMUNAUTÉS CULTURELLES, *Diversity: An added value: Government Policy to promote the participation of all in Québec's development*, 2008.

15 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, *Mémoire à la Commission de la culture de l'Assemblée nationale sur le document de consultation Vers une politique gouvernementale de lutte contre le racisme et la discrimination* [Brief to the Culture Committee of the National Assembly on the consultation document on a government policy on fighting racism and discrimination], (Cat. 2.120-1.28), 2006.

16 *Ibid.*, p. 23-24.

in public agencies, the Commission again recommends that “Section 92 of the Charter be amended to subject EAEPs in the public service to the Commission’s accountability and control procedures.”¹⁷ Furthermore, taking into account the particular systemic discrimination that racialized minorities are subjected to, the Commission fails to understand why they do not constitute a specific target group within the framework of affirmative action programs implemented in the public service.¹⁸

1.4 FIGHTING POVERTY

Fighting racism and systemic discrimination cannot be dissociated from fighting poverty, because racialized minorities tend to be over-represented among the most disadvantaged strata of society. For example, according to Statistics Canada, among Quebecers aged 15 and older who have a university degree, the unemployment rate is 3.7% among persons who do not belong to a “visible minority,” compared to 11.9% among members of “visible minorities”. Although it is shrinking, the gap between these two groups persists when comparing only university graduates born in Canada, with the unemployment rate remaining twice as high among “visible minorities” than among persons not belonging to a “visible minority” (3.1% versus 6%).¹⁹ In terms of average income, even with the same degrees, it remains lower among “visible minorities”²⁰ Although all racialized persons risk experiencing discrimination or racial profiling, the most disadvantaged among them pay an even higher price.

This link between racialization and poverty is apparent in the three sectors targeted by the consultation. In the context of public safety, authors Bernard and McAll²¹ note that racialized youth living in disadvantaged neighbourhoods or areas with a large population of recent immigrants are targeted by police more often than those residing in more affluent neighbourhoods. In his remarks during the consultation, Ronald Boisrond²² stated:

17 *Ibid.*, p. 24. See sec. 92: The Government must require its departments and agencies whose personnel is appointed in accordance with the Public Service Act (chapter F-3.1.1) to implement affirmative action programs within such time as it may fix.

Sections 87 to 91 do not apply to the programs contemplated in this section. The programs must, however, be the object of a consultation with the Commission before being implemented.

According to Sections 87 to 91 of the Charter, the Commission oversees the application of Equal Access Employment Programs (EAEP) subject to the the Act respecting equal access to employment in public bodies (R.S.Q., chapter A-2.01, 2001).

18 *Ibid.*, p. 24.

19 STATISTICS CANADA, 2006 Census, Product No. 97-562-XCB2006017 in the Statistics Canada catalogue (Québec/Québec, Code 24).

20 According to Statistics Canada, among university graduates, the average income in Québec among persons who do not belong to a “visible minority” is \$67,063, compared to \$44,067 among those from “visible minorities”. In addition, among immigrants with a university degree, the average income of those who are not part of a “visible minority” is \$57,289, compared to \$42,780 for those from “visible minorities”. Finally, and even more surprising, among Canadian-born children of immigrants who have earned a university degree, the average income is \$73,305 among persons who do not belong to a “visible minority”, compared to a meagre \$45,733 among members of visible minorities. Statistics Canada, Population Census of 2006, Product No. 97-563-XCB2006060 in the Statistics Canada catalogue (Québec/Québec, Code 24).

21 LÉONEL BERNARD and CHRISTOPHER MCALL, “La mauvaise conseillère” [A Bad Advisor], (2010) 3, *Revue du CREMIS*, p. 12-13, [on line]. <http://www.cremis.ca/docs/Revue%20du%20CREMIS%20vol.%203%20no%201%2002-03-16%2072%20dpi.pdf>.

22 Ronald Boisrond is a filmmaker and member of a committee promoting cooperation between the SPVM (Montréal Police) and youth from Black minorities (Northern Region).

[Translation]

"The socioeconomic status of parents generally counts for a lot. The vast majority of youth of Haitian origin who appear in court come from underprivileged families."

That being said, even though racialized youth from a disadvantaged background are targeted by police more often, those from more affluent neighbourhoods are by no means spared. As Judge Westmoreland-Traoré commented in a Court of Québec judgment:

"[...] 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."²³

In the education sector, the disadvantage that disproportionately affects youth from racialized minorities is a factor that cannot be overlooked in responding to the problems of dropping out and lack of success in school among youth from these communities. In addition to experiencing this form of systemic discrimination, racialized students from disadvantaged neighbourhoods and their parents are victims of a double labelling resulting from the prejudices of the various school stakeholders due to their social class and their ethnic origin.

Racialization of poverty is also observed in the youth protection system. It is now clearly established in Québec, as well as in the rest of Canada and the United States, that poverty and disadvantaged circumstances constitute factors that are closely correlated with the probabilities that a child will be reported to the youth protection services for neglect.²⁴ In Québec, as elsewhere, the indicators for neglect that are recognized by law largely correspond to the indicators of poverty. Therefore, the overrepresentation of young Blacks in the youth protection system can also be explained, at least in part, by their over-concentration in the most disadvantaged social strata.

With respect to all three sectors, we were told during the consultation that many recent immigrants are forced to hold more than one job in order to provide for their family's needs, although of course they are not the only ones, and that these jobs are often poorly paid and characterized by long work days and exhausting night shifts.

For all of these reasons, the Commission considers that fighting poverty would make a significant contribution to promoting civic participation within Québec society in full equality by members of racialized groups. To this end, as the Commission has pointed out on numerous occasions, it is crucial that the economic and social rights guaranteed by the Québec Charter be fully respected. From this perspective, the Act to combat poverty and social exclusion,²⁵ which was adopted in 2002, and the resulting government Action Plans constitute essential levers for changing the conditions that perpetuate poverty and social exclusion.

23 R. v. Campbell, 2005 CanLII 2337 (QC C.Q.), par. 81. [on line]. <http://www.canlii.org/en/qc/qccc/doc/2005/2005canlii2337/2005canlii2337.html>; See also the case of Joël de Bellefeuille, Municipal Court, Longueuil.

24 See for example: Esther BELONY, "La prise en charge des enfants de l'immigration haïtienne par la Direction de la protection de la jeunesse: une analyse comparative" [The taking into care of children of Haitian immigrants by the Direction of Youth Protection], master's thesis, Université du Québec, INRS-UCS, 2007; Melissa JONSON-REID, Brett DRAKE and Patricia L. KOHL, "Is the Overrepresentation of the Poor in Child Welfare Caseload Due to Bias or Need?," *Children and Youth Services Review*, No. 3, 2009, p. 422-427, p. 426; Joy DUVA and Sania METZGER, "Addressing Poverty as a Major Risk Factor in Child Neglect: Promising Policy and Practice," *Protecting Children*, vol. 25, No. 1, 2010, pp. 63-74.

25 R.S.Q., c. L-7, 2002.

The Commission noted²⁶ that the most recent Government Action Plan for solidarity and social inclusion (2010-2015)²⁷ contained a number of beneficial measures, but it was disappointed in the fact that they were not sufficient.²⁸ It also pointed out that the government Action Plan “provides only a few concrete measures designed to ensure the employability of the most vulnerable persons in our society: recent immigrants, racialized minorities, Aboriginal people, handicapped persons, youth, etc.”²⁹ In fact, not only do these groups experience alarming rates of unemployment, but those who are employed are all too often concentrated in unskilled and precarious jobs.

1.5 HUMAN RESOURCES

Throughout the consultation, we were told that the most exemplary human resource management models in terms of fighting racial profiling were those in which senior management had demonstrated leadership in creating an institutional environment sensitive to diversity and free from discrimination, because they were convinced of the necessity of doing so. In this respect, the two avenues of intervention that are considered to be the highest priority involve hiring and training practices. More specifically, participants criticized the absence of diversity among the personnel in each of the sectors, along with the lack of intercultural and antiracism training in all job sectors concerned.

Pursuant to the Act respecting Equal Access to Employment in Public Bodies,³⁰ the application of which is monitored by the Commission, municipal police departments, youth centres and school boards, in particular, are required to implement an EAEP. The objective of these programs is to ensure that there is fair representation of certain specific groups among the personnel of agencies that are covered by the law, including ethnic and “visible” minorities. Legally, the members of the target groups must have representation within these agencies that is prorated according to their weight among those who are qualified to occupy the position to be filled in a given recruitment sector.³¹ According to available data, very few of the public agencies concerned by our consultation achieve their targets in terms of representation by ethnic and visible minorities.³² Furthermore, the objectives themselves are rather low, given the shortage of minority candidates who are qualified to work in certain sectors, such as police departments and educational institutions for example.

EAEPs were initially and primarily designed to allow members of minorities to exercise their right to equality in access to employment without discrimination. However, they can also play another equally important role. By helping to ensure diversity of personnel, EAEPs also facilitate the civic integration

26 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, *Commentaires sur le Plan d'action gouvernemental pour la solidarité et l'inclusion sociale*, (Cat. 2.170.4), 2010.

27 MINISTÈRE DE L'EMPLOI ET DE LA SOLIDARITÉ SOCIALE, *Government Action Plan for solidarity and social inclusion (2010-2015)*, Québec, 2010.

28 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, op.cit note 27, p.2.

29 *Ibid.*

30 Op. cit., note 17.

31 *Ibid.*, sec. 1 to 9.

32 For example, on December 29, 2007, the Montréal Police Force (SPVM) had on its staff 6.5% permanent officers from visible minorities while their objective was 8%. Moreover, the gap between the actual presence of the target groups and the targets for their representation is much greater for more senior positions. SERVICE DE POLICE DE LA VILLE DE MONTRÉAL, *Bilan 2007 en accès à l'égalité en emploi*, 2007, p. 7. As for school boards, according to our internal data, they very rarely achieve their visible minority representation targets, which vary by education level, job category and, in the case of teachers, subjects to be taught. As for youth centres, it is still too soon to know if they have achieved their objectives since the Commission has not yet completed its analyses of under-representation in this sector.

of the ethnic minorities served by the institutions. On the one hand, because they are continually exposed to cultural differences, employees who work in diversified work places must confront their own prejudices and stereotypes on a daily basis. In this respect, it is worth noting that, for the majority of participants, the excessive cultural homogeneity of the personnel of police forces, schools and youth centres acts as an obstacle to taking diversity into account in terms of the services offered. On the other hand, participants frequently pointed to the importance of allowing minority youth to identify with the personnel of these institutions in order for them to be able to develop a feeling of belonging in Québec society.

For all of these reasons, it is essential for each institution affected by the consultation to ensure that its personnel adequately reflect the ethnocultural diversity of the clientele that they serve by applying appropriate measures to meet or even exceed the representation targets that are established by law.

Although a diversified workforce can help personnel to become aware of and open to differences, it is important for all employees to acquire antiracism and intercultural skills, which is why antiracism and intercultural training must receive priority importance in terms of basic and ongoing education in all three sectors. It would appear that, when they complete school, social workers, school personnel and police officers are poorly prepared to deal with the reality of clienteles from origins different from their own. In fact, the basic education of these professionals tends to neglect or even ignore issues related to discrimination and intercultural relations. Programs that deal with these issues are few and far between, and those that do merely skim the surface within the context of courses addressing more general topics, while shrugging off the issues of racism, discrimination and social power structures between groups. The Commission is of the opinion that antiracism and intercultural education should not be part of courses designed exclusively for that purpose, but should be integrated across the board, throughout the entire program.

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Furthermore, learning intercultural and antiracism competencies is an on-going process that must continue within the various professional communities, even after the basic education has been completed. In this respect, a number of participants consider that continuing education represents one of the solutions to racial profiling and discrimination. In addition, this education must not only be provided for employees, but also for managers and the executives who are ultimately responsible for ensuring that intercultural and antiracism training that is adapted to each setting is accessible to all job categories and all organizational levels. Finally, the training must be ongoing and updated on a regular basis.

In light of the foregoing, the Commission considers that it is vital for antiracism and intercultural approaches to be integrated, in a complementary manner, into both basic and continuing education.

1.6 DATA COLLECTION

If there is one measure that appears to be met with a broad consensus among the groups and organizations involved in fighting racial profiling and discrimination, it is data collection. Many people pointed out that data collection is an essential condition for better defining the forms and the scope of “ethnoracial” discrimination in each of the institutional environments targeted by the consultation. In fact, by correlating information pertaining to the presumed colour, “race,” and ethnic origin of individuals who have been the subject of an intervention, we can track the paths of racialized youth in institutional settings, and thereby obtain a comprehensive portrait of the situation. This approach would enable managers and executives to detect possible discriminatory biases occurring at various points during their interventions. Moreover, without access to these data, it is impossible for managers

to take stock of the results of measures that have been applied to prevent and counteract systemic discrimination within their institution based on periodic reporting.

Of course, the data collection method must be adapted to the reality and the problems specific to each institutional sector, but there are certain common issues and shortcomings that are characteristic of all three sectors. First, it is clear that no data is collected in certain institutions, whereas data collection in others is not systematic. In addition, there is quite often no uniformity in terms of the indicators used to measure the “colour” or “ethnic origin” variable of the clientele in a single sector, or even within a single institution.

That being said, the Commission is aware of the concerns of some participants with respect to any type of data collection related to colour or ethnic origin. It was pointed out that such practices entail risks for ethnic and racialized minorities. In particular, the fear exists that, if the data were to reveal an over-representation of racialized youth among people with police records, dropouts or youth under the care of the DYP, it would contribute to stigmatizing these youth even more. Although these risks are real, the Commission is of the opinion that they can be reduced if “sensitive” data is placed in context and interpreted in the light of relevant explanatory variables, such as systemic discrimination and poverty, preferably by an independent authority. On the other hand, even though the concerns that have been mentioned are legitimate, data collection is a “necessary evil”, because it is absolutely essential to form a comprehensive portrait of the differential treatment and inequalities experienced by racialized youth in order to be able to conduct a targeted and effective attack on systemic discrimination.

THE COMMISSION RECOMMENDS:

- that the government adopt a policy aimed at fighting racism and discrimination that provides a plan of action for preventing and eliminating racial profiling and its consequences;
- that each institution targeted by this consultation ensure that its staff reflects the ethnocultural diversity of the clientele that it serves by applying appropriate measures to meet or even exceed the representation targets established in ;
- that the government take the necessary measures to increase the representation of ethnic and racialized minorities in the public administration, and concurrently, that section 92 of the Charter be amended to the effect that Equal Access Employment Programs in the public service are subject to the Commission’s reporting and monitoring procedures;
- that the ministère de l’Éducation, du Loisir et du Sport (MELS), in collaboration with the university faculties concerned, ensure that the degree programs for each sector concerned contain antiracism and intercultural training, and that the students have acquired intercultural competency upon completion of their studies;
- that government departments and institutions concerned adopt standard methods and indicators for collecting data pertaining to the ethnic origin and colour of their clienteles, with a view to detecting possible discriminatory biases;
- that the government provide more measures to combat poverty that specifically target the groups at the greatest risk of living below the poverty level, which include recent immigrants, Aboriginals, racialized groups and single mothers, and that it adopt tools to measure the effectiveness of such measures.

2 . THE PUBLIC SECURITY SECTOR

2.1 GENERAL CONTEXT AND ISSUES

Police officers and law enforcement agencies play a fundamental role in preventing criminality and protecting the public. However, in their actions, they must be careful to avoid racial profiling, not to be confused with criminal profiling, which remains an essential activity within the context of many police investigations.

In order to distinguish racial profiling from criminal profiling, the Commission has adopted the explanation given by the Ontario Human Rights Commission:

“[...] 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 since the former is based on objective evidence of wrongful behaviour, while racial profiling is based on stereotypical assumptions.”³³

Throughout the public consultation process, a number of participants reported abusive and harassing police scrutiny of racialized persons, as well as disproportionate deployment of police resources in the neighbourhoods that they frequent.

Recent studies³⁴ have demonstrated that these actions are closer to racial profiling than criminal profiling.

33 ONTARIO HUMAN RIGHTS COMMISSION, op.cit., p. 10.

34 For the Québec studies, see: Emerson DOUYON, “L’impact du 11 septembre sur les communautés ethnoculturelles au Canada,” in *Terrorisme, droit et démocratie. Comment le Canada est-il changé après le 11 septembre?*, Institut canadien de l’administration et de la justice, Éditions Thémis, 2002, 193-197; L. BERNARD and C. McALL, op.cit, note 22, p. 7-14; Léonel BERNARD et Christopher McALL, *Jeunes, police et système de justice - La surreprésentation des jeunes Noirs montréalais*, présentation de résultats de recherche, Centre de recherche de Montréal sur les inégalités sociales, les discriminations et les pratiques alternatives de citoyenneté (CREMIS), [on line]. www.cremis.ca. Centre affilié universitaire CSSS Jeanne-Mance, Montréal 19 mars 2009. [on line]. http://www.mbetv.com/docs/Jeunes_et_la_police_2009_03_31.pdf; Mathieu CHAREST, Ph.D., *Mécontentement populaire et pratiques d’interpellations du SPVM depuis 2005: Doit-on garder le cap après la tempête?*, [Popular discontent and interrogation practices of the SPVM since 2005: Should the course be changed after the storm] Draft, March 2009, Internal SPVM study (Charest, Report-1), SPVM, [online]. http://www.spvm.qc.ca/upload/documentations/Mecontentement_populaire_et_pratiques_dinterpellations.pdf; Mathieu CHAREST, Ph.D., *Mécontentement populaire et pratiques d’interpellation du SPVM depuis 2005: doit-on garder le cap après la tempête?* Mise à jour des données (2001-2008), Document de travail, 30 août 2010 (Charest, Report-2, SPVM, [on line]. http://spvm.qc.ca/upload/documentations/Mecontentement_populaire_mise_a_jour_2008.pdf; CONSEIL INTERCULTUREL DE MONTRÉAL, *Avis sur la problématique du profilage racial à Montréal*, octobre 2006. [on line]. http://ville.montreal.qc.ca/pls/portal/docs/page/conseil_interc_fr/media/documents/Avis_profilage_racial.pdf; Note: Under the provisions of the Charte de la Ville de Montréal, the CONSEIL INTERCULTUREL DE LA VILLE DE MONTRÉAL (CIM) is responsible for advising the city council and the executive committee. See also the following audiovisual documents: *Tolérance Zéro*, by Michka Saäl, National Film Board, 2004, *La couleur du temps*, by Ronald Boisrond, produced by Danic Champoux, 2008.

In this respect, racial profiling in the context of public security is the most well-known form of this phenomenon.³⁵ In this case, it generally occurs as part of interventions by police, law enforcement officers³⁶ or private security services,³⁷ which target youth from racialized minorities for reasons related to security or crime prevention.

Racial profiling undermines confidence in government institutions, both among racialized groups and the population in general. Several people from racialized communities who participated in the consultation affirmed that they do not enjoy the same freedoms as the rest of the population, including the freedom to circulate, to have fun or to get together with other racialized youth. They feel as if they are on the margin of society, and are under scrutiny and targeted when they occupy public spaces. Several participants found it especially revolting that, despite the fact that they were born in Canada, they were excluded and felt like undesirables in their own society.

[Translation] “[...] in procedural justice, four conditions are required so that individual has the feeling of being treated fairly by those who hold a legitimate authority:

to have an opportunity to explain;

to be convince of the neutrality and the objectivity of those who make decisions;

to be treated with dignity;

to have confidence in the motives of those who make the decision.

If these four conditions are not met, the decision’s outcome, positive or negative, will have little influence on the overall satisfaction of a citizen questioned by police. Perforce, racial profiling violates these four conditions.”

Maurice Chalom³⁸

Several of the examples that were mentioned were experienced in Montréal, not because the phenomenon is exclusive to Montréal, but rather because the majority of racialized persons live in the city. Therefore, the rare exhaustive Québec studies on racial profiling that were cited above pertained to Montréal. On the other hand, the Commission wishes to point out that, throughout the consultation process, a number of persons living in the suburbs of Montréal, such as Laval and Longueuil, or in other large cities, such as Québec City and Sherbrooke, reported experiences that constituted or could have been associated to racial profiling.

Given the ethnocultural diversity of its clientele, the Service de police de la Ville de Montréal (SPVM) cannot ignore the problems faced by persons from racialized, ethnocultural or immigrant minorities. A recently published SPVM document says:

[Translation] “It is reasonable to believe that most citizens will enter into contact with the police at some time in their life. Some will call on the police for various reasons, while others will attract their attention. For most, this contact will be without serious consequences, and will not result in any aggressiveness. However, others will have the feeling that they were targeted or treated unfairly, and may even go so far as to feel threatened and frustrated. Those who believe that they

35 This is probably due to the fact that this form of profiling is the most widely documented, as well as the most flagrant in terms of observations.

36 Public transit system officers in buses and subways in major cities.

37 Stores, bars, buildings that are open to the public or that offer services to the public, etc.

38 Maurice CHALOM “La pratique du profilage déshonore la profession policière,” (janvier-mars 2011) vol LXIV *Revue internationale de criminologie et de police technique et scientifique*, p. 83-100, p.89.

have been stopped because of visible characteristics, such as the colour of their skin, the way they dress, or their age, or for behaviour that is not illegal, may even feel that their rights have been violated.”³⁹

Further on, it states:

[Translation] “The fact that some individuals experience injustice and feel that their rights have been violated may, in itself, trigger a series of reactions, including violence. That is why, by definition, if a high proportion of a specific ethnic group believes that the agencies that apply the law employ differential measures with them, a serious problem exists, and must be taken into account.”⁴⁰

In the sections that follows, the Commission will present the issues and problems that require urgent attention in order to prevent and eradicate racial profiling as it applies to public security, based on studies, briefs submitted and testimony received during the consultation. In Section 2.2, we will examine the issue of targeted scrutiny of racialized minorities and its consequences, which include abusive questioning and arrest, as well as over-judicialization. In Section 2.3, we will take a critical look at the effectiveness of the remedies that are currently available to assist citizens in exercising their rights when they believe that they have been victims of racial profiling in their dealings with the police and agencies tasked with duties related to order and security.

2.2 TARGETED SCRUTINY OF RACIALIZED MINORITIES

Racialized minorities are the subject of targeted and disproportionate scrutiny by police forces. Such racial profiling exercised within the context of public safety is sustained by the idea that citizens who belong to certain racialized groups do not have equal weight in society, and therefore, are not treated with the same respect or the same degree of tolerance.

This prospective approach to reducing criminality, which consists of seeing correlations between specific criminal activities and certain group-based traits, has been increasingly recognized as ineffective.⁴¹ It leads to generalized dissatisfaction with and distrust of public institutions among racialized and vulnerable groups.

“All the young Latinos who were hanging in the park or in the vicinity were photographed, whether or not they had links with a street gang.”

A Montreal youth of Latin American origin

Unequal and discriminatory application of the law within a context of public security gives a false picture of reality. As a result, individuals who belong to a “profiled” community have a greater risk of being stopped, arrested, charged and exposed to different and unequal treatment during every step of the judicial process.⁴² It should also be remembered that individuals from racialized communities

39 Anne CHAMANDY, «La police et les citoyens,” in Michelle CÔTÉ, Ph.D. (dir.), *Lecture de l’environnement du service de police de la Ville de Montréal*, 2nd quarter 2010, SPVM, p. 49.

40 *Ibid.*, p. 51.

41 “[Prospective] criminal profiling uses probabilistic analysis in order to identify potential suspects and target them for surveillance.” HARCOURT, B. E., “The shaping of chance: Actuarial models and criminal profiling at the turn of the twenty-first century,” *The University of Chicago Law Review*, No. 70, 2003, p. 109, cited in: Jimmy BOURQUE, Ph.D., Stefanie LEBLANC, M.A., Anouk UTZSCHNEIDER, M.Sc., Christopher WRIGHT, M.A., *The Effectiveness of Profiling from a National Security Perspective*, Canadian Human Rights Commission and Canadian Race Relations Foundation, p. 6.

42 A study by the NATIONAL COUNCIL OF WELFARE (*Justice and the Poor*, Ottawa, spring 2000) reveals that contrary to popular belief, the poor are not necessarily more likely to engage in criminal activities than those better off. The crime rate attributed to the poor would be largely due to police practices.

are entitled to adequate protection from security officers when the situation requires it or when they themselves are victims of a criminal act.

In this section, the Commission will address its recommendations to the government, public institutions and police departments with respect to modifying or eliminating organizational practices, laws, by-laws and policies that in one way or another create or reinforce systemic racial profiling.

2.2.1 THE FIGHT AGAINST CRIMINALITY AND STREET GANGS

In an article on organized crime and street gangs,⁴³ criminologist Mathieu Charest explains:

[Translation] “Fighting street gangs has been one of the priority activities of the SPVM since the mid 2000s. [...] The name “street gangs” refers to a rather broad range of juvenile delinquents and criminal adults from such gangs who are really criminal entrepreneurs. While the patrols and mobile squads seek to limit incidents involving groups of youngsters, the specialized investigations are more focused on the less visible segment of larger scale traffickers.” (underlining added)

In his report⁴⁴ commissioned by the SPVM following the Montréal-Nord riots in the wake of the death of Fredy Villanueva, who was killed by a police officer in August 2008, Charest noted the significant over-representation of young Blacks among individuals stopped during police actions throughout the Island of Montréal.⁴⁵

This over-representation is not unrelated to the creation of special squads to fight street gangs, such as the “Avance” (2005-2008) and “Éclipse” (since June 2008)⁴⁶ squads.

Charest posits the following hypothesis:

[Translation] “Why did interrogations of Blacks increase drastically in 2006-2007 in some sensitive neighbourhoods and why didn’t they start to increase gradually starting in 2003-2004 (the year when the fight against street gangs became an SPVM priority)? Our main hypothesis is that the deployment of special flying squads, relieved from responding to calls and dedicated to fighting street gangs in Montréal, is largely responsible for the observed increase.”⁴⁷

The Charest report highlighted “certain of the harmful consequences of the fight against street gangs and the repercussions of special squads like Avance and Éclipse on the volume and quality of ID checks of members of ethnic groups.”⁴⁸

It notes that, between 2001 and 2007, the frequency of ID checks increased significantly in the city of Montréal⁴⁹ (60% in Montréal, 125% in Montréal-Nord and 91% in Saint-Michel).⁵⁰ In addition, it turns

43 Mathieu CHAREST, “Le crime organisé et les gangs de rue,” [Organized Crime and Street Gangs], in Michelle CÔTÉ, Ph.D. (dir.), *Lecture de l’environnement du service de police de la Ville de Montréal*, 2nd Quarter 2010, SPVM, p. 130-131.

44 M. CHAREST, Report 1, op.cit., note 35.

45 For his report, Mathieu CHAREST consulted the register of SPVM interview records, which contain information about the ethnic origin of those questioned. The SPVM also has a register of 10,000 names associated with the fight against street gangs.

46 Flying squads not assigned to a specific police station were tasked with supporting the action plans of various units of the SPVM in the field, based on the needs identified by these units. Four sectors were identified by the ministère de la Justice et de la Sécurité publique: fighting street gangs; fighting illegal drugs; cybercrime; and localized criminal phenomena.

47 M. CHAREST, Report 1, op.cit., note 35, p. 8.

48 *Ibid.*, p. 5.

49 *Ibid.*, p. 1.

50 M. CHAREST, Report-1, op.cit., note 35, p. 5: “There was no noticeable increase in ID checks in the borough of Rivière-des-Prairies (after an incident between Avance officers and a group of youth from the RDP project, the Station 45 officers agreed to supervise all group interventions and ask for support from Avance when needed).”

out that these observed increases are mainly attributable to stopping persons of “Black descent.”⁵¹

Much like other security services, the SPVM invokes the rate of criminality in order to justify its action in certain districts where there is a greater concentration of racialized minorities.

But is that the reality? Does the over-representation of youth from racialized communities in police interventions really reflect the criminality in which these youth are involved?

To those who believe that the criminality in certain districts of Montréal dictates police action, the Commission notes that the police data analyzed by Charest indicate that the proportion of crimes attributable to persons in the Black community is somewhere between 10% and 20%, depending on the offence involved, whereas they represent approximately 40% of those stopped and questioned.

In fact, an SPVM report⁵² indicates that “Criminality in Montréal-Nord [district associated with street gang groups] follows the trend observed since 2004 in the other sectors of the city of Montréal, namely a reduction or levelling in all types of crimes [...]”.⁵³

In addition, criminality associated with street gang activities represents only 1.6% of criminal acts reported in 2009.⁵⁴ Therefore, this criminal manifestation is marginal compared to all of the other criminal activities recorded in the territory served by the SPVM.⁵⁵

Moreover, in an article published in *Le Devoir*, Brian Myles revealed that, in 2006, the SPVM estimated that “500 individuals belonged to gangs, counting peripheral members and ‘wannabes’. The hard core consisted of some 50 hardened criminals.”⁵⁶ It is then surprising to learn, in the 2009⁵⁷ Charest report, that the SPVM has a register containing 10,000 names of individuals supposedly linked to street gangs. The fight against street gangs seems to provoke disproportionate police activity, not to mention newspaper headlines.

In the news article “Les gangs de rue, pas si dangereux,” quoted above⁵⁸ Jacques Robinette, Assistant Director of the SPVM Special Investigations acknowledged that: “In fact, the gravest problem facing Montreal from the police’s perspective, is crime against individuals. And street gang members committed only 4 % of those crimes.”

In order to legitimize police actions, Mr. Robinette explains:

[Translation] “Street gangs, that happens in the field, i a bar, in the metro, on the street while domestic violence (for example) happens inside a home... What worries citizens, is what he or she sees, People believe that the street gang phenomenon is taking lots, and lots more importance, and maybe a bit more importance than what we see in the field, he said. Of course, when when it represents only 2, 3 or 4 % of the criminal activity but occupies 60 or 70 % of the air time in the media, people have the impression that street gangs are proliferating. And it’s not necessarily the case.”⁵⁹

51 *Ibid.*, p. 3, Whereas for all other groups (Whites, Hispanics, other ethnic minorities), the number has remained relatively stable.

52 SERVICE DE POLICE DE LA VILLE DE MONTRÉAL, Résumé des réalisations - Contexte d’intervention-Pré et post événements, août 2008; SERVICE DE POLICE DE LA VILLE DE MONTRÉAL, *Dossier: Montréal-Nord, Réalisations Service de police de la Ville de Montréal*, October 2010.

53 M. CHAREST, Report 1, op.cit., note 34, p. 14.

54 “Les gangs de rue, pas si dangereux,” *LeDevoir.com*, February 17, 2010.

55 *Ibid.*

56 Brian MYLES, “Gangs de rue - 10 000 noms dans la banque du SPVM”, *Le Devoir*, October 1st 2010.

57 M. CHAREST, Report 1, op.cit., note 34, p. 2.

58 B. MYLES, op.cit., note 56.

59 B. Myles, op.cit. 56.

Based on the definition of racial profiling adopted by the Commission, it seems clear that the significant over-representation of Blacks among those stopped and questioned in Montréal in recent years confirms the perception that racial profiling is being applied to them. Therefore, the first Charest report, states that, in light of data compiled by the police, the “results indicate that about 40% of the Blacks questioned are not linked (either closely or remotely) to street gangs and have no record of recent arrests, and their being questioned did not result in either an arrest or ticket [...] the ID checks produce very few arrests or offences (5%).”⁶⁰

Furthermore, the report states that in the Saint-Michel borough of the city of Montreal, “two thirds of the Blacks were questioned for reasons that can be described as “weak” (routine inquiry, person of interest)... (as was the case for only one third of Whites).”⁶¹

Therefore, not only are Blacks more closely scrutinized and more frequently questioned than Whites, but it happens to them for more trivial reasons.

Charest explains: “The ID checks most likely to arouse popular discontent and the accusations of ethnic profiling are those in which the people questioned have no criminal record and are not linked in any way to a gang, and which result in neither an arrest nor a ticket. Questioning that satisfies none of these three criteria is difficult to justify.”⁶²

In his second report, Charest states that the overall number of Blacks stopped and questioned on the whole of the Island of Montréal stabilized after 2007, but nevertheless noted that police actions in Montréal-Nord,⁶³ where the Éclipse squad is active,⁶⁴ intensified after 2008.

Researchers Léonel Bernard and Christopher McAll⁶⁵ concentrated on the over-representation of young Blacks (between 12 and 18 years old) in the application of the Youth Criminal Justice Act.⁶⁶ They also observe that Blacks are more often arrested and prosecuted throughout the territory of the Island of Montréal. Young Blacks are also more often associated with street gangs. In 11% of cases involving the arrests of young Blacks, the police indicated that they suspected membership in a gang, whereas there was no such suspicion reported in the records of any of the White youth who were arrested.⁶⁷

These authors comment that, “while in 2006-2007, Blacks [all age groups combined] were 2.5 times more likely to be arrested on the Island of Montréal than Whites, they were 4.2 times more likely to be stopped and questioned. These rates are at their highest levels (7 to 11 times more likely to be stopped)

60 M. CHAREST, Report 1, op.cit., note 34, p. 1.

61 M. CHAREST, Report 2, op.cit., note 34, p. 6.

62 M. CHAREST, Report 1, op.cit., note 34, p. 6.

63 M. CHAREST, Report 2, op.cit., note 34, p. 3-4: “The gradual slowing of actions in Saint-Michel and downtown was accompanied by a shift in the intensity of activities toward Montréal-Nord. After successive increases in 2006 and 2007 (questioning of Blacks +126% since 2001), there was a third year of growth, with the number of ID checks (known) increasing by more than 50% (in 2008). The peaks in this rise occurred in the months preceding the riot. The increase in surveillance, which in 2006 and 2007 affected Whites as well, now involved only Blacks.”

64 In an article entitled “*Les Noirs davantage interpellés après le déploiement de l’escouade Éclipse*,” [Blacks questioned more after deployment of the Eclipse Squad], published on October 18, 2010 in *La Presse*, Catherine Handfield reported that “Various parties in Saint-Michel had protested during the deployment of Éclipse, which they felt jeopardized breaking the trust between the youth and the neighbourhood police. Over several years, Commander Fady Dagher and his team had established a culture of “concertation” between the various players in the neighbourhood, in order to bring the police closer to their community.” Quoting the Mayor of the Saint-Michel borough, the journalist wrote “In short, we made it clear to Éclipse that we had a different dynamic and that we were able to deal with our youth, said Anie Samson. The message got through inside.”

65 L. BERNARD and C. McALL, op.cit., note 21.

66 L.C. 2002, c. 1.

67 L. BERNARD and C. McALL, op.cit., note 21, p. 13.

in neighbourhoods where there are fewer Black residents.”⁶⁸

These studies sounded an alarm. Upon taking office in the fall of 2010, the new chief of the SPVM, Marc Parent, openly questioned the methods used by the Éclipse squad. During a news conference on September 23, 2010, Mr. Parent explained that the Éclipse squad “conveyed a negative image of the SPVM to youth.”

“Using a very broad approach like that, where they intervene in a very repressive way, it’s sure to increase tension with some youth, with different groups. We have reached a point where that type of strategy has to be reconsidered.”⁶⁹

Not only does the approach of the specialized squads require reconsideration, but that used by all of those involved in providing public security also requires review.

In a report that was commissioned by the SPVM after the Montréal-Nord riots, psychologist Martin Courcy explains:

“Youth complain of daily harassment, and say that they are asked too often to identify themselves.”⁷⁰

Later he adds:

“[...] Furthermore, very frequent checking of IDs is questionable, especially if the police officer calls a young person by his first name. [...] Such a continuous and constant practice generates tension. It can really drive a person crazy.”⁷¹

[...]

“I spent several hours walking along Pascal and Pierre streets. No police officer returned my greeting. The street workers who helped me told me that the police never say hello to them. Several times a day, the police drive through the parking lots of two small shopping centres at slow speed. I have never seen them say hello to the youth. They make their presence felt. I don’t know if it’s a provocation, but the attitude of the police, mostly unhealthy, doesn’t let them get close to the youth. On the contrary, it is likely to marginalize these kids even more, and even drive them into the street gangs. They don’t feel that the police respect them. How can they respect the police?

[...]

[They see] their condition with respect to the police as pre-determined. They will always be harassed by the police because of their poverty and the colour of their skin, and talking about what the police do won’t help them, because nothing will change. Except one day the pot will boil over [...]”⁷²

“In the early 80s, there were no Black inmates at the Bordeaux prison. Today, they represent about 40% of the population of that prison.”

Ronald Boisrond, in his film *La couleur du temps*.⁷³

68 Regardless of whether these neighbourhoods are more “affluent” (Outremont and Plateau Mont-Royal) or more “disadvantaged” (Hochelaga-Maisonneuve). See: L. BERNARD and C. McCALL, op.cit., note 22, p. 8.

69 Source: Radio-Canada, September 24, 2010.

70 Martin COURCY, *Rapport d’intervention à Montréal-Nord*, p. 7.

71 *Ibid.*, p. 8.

72 *Ibid.*, p. 9-10.

73 Boisrond, op.cit., note 34.

THE COMMISSION RECOMMENDS:

- that the cities and their police departments review their policies for deploying police by district in order to prevent discrimination and racial profiling;
- that the cities and their police departments review their policies for fighting crime and street gangs in order to reflect the discriminatory biases that are inherent in the policies or in their application;
- that the cities and their police departments take measures to ensure that the results of the application of their policies for fighting crime and street gangs are known to the public.

2.2.2 THE FIGHT AGAINST INCIVILITY AND THE DISCRETIONARY APPLICATION OF MUNICIPAL BY-LAWS

Several participants in the consultation indicated that the over-representation of racialized persons among those questioned by the police is probably due to the arbitrary and disproportionate application of certain by-laws or administrative guidelines.

The police enjoy significant discretionary power in the application of by-laws and in their role as guardians of public order. In addition, a number of by-laws that are written in vague terms are subject to interpretations that vary according to the context.

It should be noted that, in 2003, the SPVM adopted a policy to “combat incivility”, which reads as follows:

“Incivility is still a major concern for citizens, and often more of a source of insecurity than crime. Nuisances like noise, vandalism and homelessness are always among the concerns expressed by elected officials and in surveys, and more than half of Montréalers consider that there are problems with vandalism, graffiti and dirtiness in their neighbourhood.”⁷⁴

Accordingly, Section 1 of the By-law respecting peace and public order⁷⁵ reads as follows:

“No person may impede or obstruct pedestrian and vehicular traffic by standing still, prowling or loitering on public thoroughfares and places, and by refusing to move on, by order of a peace officer, without valid cause.”

There is no need to specify that the application of policies and by-laws of this kind is likely to target marginalized⁷⁶ or racialized persons to a greater extent.

In its brief submitted during the consultation, the Ligue des droits et libertés indicated:

“In this context of ‘crime prevention’ and ‘fighting incivility’, the police are likely to consider that any young person or any ‘unusual’ person, appearing innocent, is a delinquent without knowing it, especially if he is identified as belonging to an ethnocultural minority.”⁷⁷

74 SERVICE DE POLICE DE LA VILLE DE MONTRÉAL, *Optimisation de la police de quartier*, October 10, 2003, p. 9 and 10, [on line]. http://www.spvm.qc.ca/upload/documentations/Rapport_optimisation_2003_10_10.pdf.

75 R.R.V.M., c. P-1.

76 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, *La judiciarisation des personnes itinérantes à Montréal : un profilage social*, M^e Christine Campbell and Paul Eid, (Cat. 2.120-8.61), 2009, [on line]. http://www2.cdpedj.qc.ca/en/publications/Documents/itinerance_avis.pdf.

77 Brief presented by the Ligue des droits et libertés, p. 14.

Among the other SPVM by-laws, one could cite the By-law respecting cleanliness and the protection of public property and urban furniture⁷⁸, which reads as follows in section 20:

“No person may use street furniture for a purpose other than the one for which it is intended, damage it or alter it in any way.”

Several witnesses mentioned the issuing of tickets or harassing actions by police in the application of these provisions. One example involved tickets issued to young Blacks who were seated on a block of concrete near a public housing area in the Saint-Michel borough, on the grounds that it was the improper use of street furniture.

Other situations pertaining the application of the by-laws of Montréal’s public transit system, the Société de transport de Montréal (STM)⁷⁹, were reported. According to participants, police assigned to the application of STM by-laws seem to apply a principle of zero tolerance with respect to racialized youth. Several people criticized the discretionary power exercised by police in this context, citing as an example the by-law that provides that: “In or on an immovable or rolling stock, it is prohibited for anyone to: disturb or disrupt the free circulation of persons, in particular by standing still, lurking, loitering [...]”⁸⁰

A number of participants in the consultation emphasized that young Blacks who are in the vicinity of metro stations say that they are harassed by the police, who ask them to disperse as soon as two or more people are together and do not move (e.g.: while waiting for a friend or a less crowded train).

Some participants reported to us that youth from racialized groups who are entitled to reduced fares⁸¹ may be subjected to ID checks more frequently than young Whites.

With respect to the actions of private security guards, we heard testimony of disproportionate scrutiny, discrimination, harassment, and denial of access to shopping centres, stores, bars, etc., especially for Blacks and Latin Americans. They are largely targeted because they are linked to poor people or potential offenders.⁸²

“The event I’ll relate didn’t happen just once. It’s frequent in a number of bars in the suburbs. At the start of our 2009 session, a group of friends, women and men aged between 20 and 23, went to a bar in Brossard. The doorman refused to let the men in because Blacks had been involved in a fight the previous week. Why is it that we label Black men as being violent? Why does a whole group have to pay for the fault of others?”

A Black student from the South Shore

All of these acts constitute racial profiling according to the second paragraph of the definition adopted by the Commission.⁸³ In fact, in a context marked by prejudice, the application of the by-laws and rules of practices occurs in a way that the most marginal or stigmatized persons, and in particular racialized persons, pay the greater price.⁸⁴

78 R.R.V.M., c. P-12.2.

79 By-law prescribing standards of security and conduct to be observed by passengers in the rolling stock and immovable operated by or for the STM (*Act respecting public transit authorities*, R.S.Q., c. S-30.01, sec. 144).

80 *Ibid.*, sec. 4.

81 With proof of school attendance.

82 See decision: *Radek v. Henderson Development (Canada) Ltd.* (No. 3) 2005 BCHRT 302; COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, op.cit., note 77; NATIONAL WELFARE COUNCIL, op.cit. note 43.

83 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, op.cit., note 7, p. 18.

84 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, op.cit., note 7.

THE COMMISSION RECOMMENDS:

- that each city and its police department review the police policies and practices with respect to the application of municipal by-laws in order to detect and eliminate any discriminatory impacts on racialized persons;
- that the City of Montréal and the SPVM review the police policies and practices with respect to fighting incivility in order to detect and eliminate any discriminatory impacts on racialized persons.

2.2.3 UNDER-PROTECTION OF RACIALIZED PERSONS BY THE POLICE

The fact that racialized persons are perceived as potential criminals may partially explain the testimony of some participants from racialized groups in the consultation, who indicated that they feel less protected by the police, and believe that they receive less attention from the police when they are victims of a crime.

“If a Black commits a crime against a Black, that seems less serious than if the victim were White.”

Spokesperson for the Québec Black Coalition

Bernard and McAll⁸⁵ make the following observation:

“How to explain the virtual absence of young Blacks as victims of crimes committed by Whites? Either aggression always moves in the same direction (which would be surprising) or young Blacks are too afraid of the police to file complaints against White aggressors, or again, the police take the complaints filed by young Blacks against young Whites less seriously. The possibility that the fear of young Blacks (and their families) or their mistrust of the police and the justice system helps explain the apparent lack of complaints made by young Black victims against White attackers is suggested by the fact that young Blacks are more likely to use a lawyer than young Whites (18.3% versus 9.9%).”⁸⁶

In its presentation, the Québec Black Coalition maintained that, when the police intervene in a dispute between a racialized person and a White, too often it is the racialized person who is assumed to be at fault.

In addition, racialized women experience a special situation. One woman participant noted that, not only do they hesitate to call the police when they are victims of domestic violence, but when they do, they are not always taken seriously, and feel that they are less protected by the police.⁸⁷

In this respect, we can only join with the Fédération des femmes du Québec in deploring the lack of studies on the impact of racial profiling or police inaction (which is another form of racial discrimination) on racialized women.

85 L. BERNARD and C. McALL, op.cit., note 21, p. 10.

86 *Ibid.*, furthermore, the authors also point out: “Such an explanation could in itself explain a portion of the over-representation of young Blacks among the youth arrested and prosecuted, given that the fact of not complaining against young Whites would necessarily reduce their arrest rates and increase the over-representation of young Blacks.”

87 See: CANADIAN COUNCIL FOR SOCIAL DEVELOPMENT, *Nowhere to Turn? Responding to partner violence against immigrant and visible minority women*, Ekuwa SMITH, March 2004.

2.2.4 RECOGNITION AND PROHIBITION OF RACIAL PROFILING IN LAWS AND POLICIES

Like many of the participants, institutions and groups,⁸⁸ the Barreau du Québec deplores the fact that the distinction between criminal and racial profiling has not been clearly established.

For the purposes of discussion, it is useful to repeat the Commission's definition of racial profiling, which was stated in the Introduction, to the extent that it has become increasingly accepted among organizations fighting racism as well as in jurisprudence:

"Racial profiling is 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."⁸⁹

Several other definitions have been adopted in Québec.⁹⁰ They are somewhat similar to the first paragraph of the one adopted by the Commission. However, the second paragraph of our definition is unique. It specifically takes into account the systemic nature of the phenomenon, and points out that, as soon as an action is seen to be applied disproportionately to one category of people, there should be some consideration of whether it is racial profiling.

The Commission wishes to point out that, among the current definitions, the one adopted by the SPVM is problematic in several respects. It reads as follows:

"Racial and illegitimate profiling is defined as being any action initiated by persons in authority with respect to a person or group of persons, for reasons of security or protection of the public and based essentially on factors such as race, ethnic origin, colour, religion, language, social status, age, sex, disability, sexual orientation or political convictions, in order to expose the individual to an examination or differential treatment when there are no real grounds or reasonable suspicions for doing so."⁹¹ (underlining added)

88 Including: briefs by CRARR, Ligue des droits et libertés and the Québec Black Coalition.

89 This definition was used recently in the judgment of the Human Rights Tribunal, *Commission des droits de la personne et des droits de la jeunesse v. Bombardier Inc. (Bombardier Aerospace Training Center)* 2010 QCTDP 16 CanLII. [on line]. <http://www.canlii.org/fr/qc/qctdp/doc/2010/2010qctdp16/2010qctdp16.html>; also in the Court of Québec judgment: *Valkov v. Société de transport de Montréal*, 2007 QCCQ 5677.

90 For example, the "task force on racial profiling" co-chaired by the ministère des Communautés culturelles and the ministère de la Sécurité publique proposed the following definition: "Racial profiling is any action taken by one or more persons in authority with respect to a person or a group of persons, for reasons of safety, security or protection of the public, based on factors such as race, colour, ethnic or national origin or religion, without real grounds or reasonable suspicion, and whose effect is to expose the person to differential examination or treatment." We would point out that the Commission has made a substantial contribution to the development of this definition, which was presented to the National Assembly on March 23, 2004 by Minister Courchesne to mark March 21st, International Day for the Elimination of Racial Discrimination. There is also the definition proposed by the CONSEIL INTERCULTUREL DE MONTRÉAL DE LA VILLE DE MONTRÉAL op. cit. note 35. "Racial profiling would be: any action initiated by persons in authority with respect to a person or group of persons for reasons of security or protection of the public that is essentially based on factors like race, ethnic origin, color, clothing and behaviour, in order to expose the individual to differential examination or treatment when there are no real grounds or reasonable suspicions for doing so." [on line]. http://ville.Montreal.qc.ca/pls/portal/docs/page/conseil_interc_fr/media/documents/Avis_profilage_racial.pdf.

91 *Racial and illegitimate profiling*, [on line]. http://www.spvm.qc.ca/en/service/1_5_2_2_profilage-racial.asp.

As the participants noted, the terms “illegitimate” and “essentially” introduce a degree of ambiguity, and suggest that racial profiling can be a legitimate practice if it is part of a procedure to fight crime.⁹²

A decision by the Police Ethics Committee of January 12, 2011 agrees with this logic. The Committee rejected the SPVM definition, which it found to be too restrictive.⁹³

The Committee explained:

“The Montréal Police Service (SPVM), in its intervention – racial and illegitimate profiling – No. Pr. 259-1, in effect since January 24 2006, adds a specific character to the intervention by persons in authority in a definition similar to the preceding one:

[...] any action initiated [...] that is essentially based [...] on such factors as race [...].

Section 5 of the Code does not describe the prohibition in such a limited way. Here is its wording:

A police officer must act in such a manner as to preserve the confidence and consideration that his duties require.

A police officer must not:

(1) [...]

(2) [...]

(3) [...]

(4) commit acts [...] based on race, colour, [...].

Is it necessary to specify that a police department directive may not replace the law? The Committee does not feel that it is bound by the SPVM policy, and if Officer Gauthier were a member, the Committee would express the same opinion.

The use of racial profiling by a peace officer as a motive for intervening with a person of colour is not generally the subject of an admission. When it is, the proof of the existence presents a clear challenge for the party that claims it.”⁹⁴ (underlining added)

The Commission is of the opinion that only profiling that is carried out as part of a police investigation, without involving stereotypes, is legally acceptable.

Given the ambiguity that still persists with respect to the extent of protection against racial profiling, there is reason to take steps so that the concept is defined and officially recognized as harmful and discriminatory behaviour.⁹⁵

92 See: COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, *Proving racial profiling: perspectives for civil cases*, Michèle Turenne, (Cat. 2.120-1.26.1), 2006, p. 48, [on line]. http://www2.cdpdj.qc.ca/publications/Documents/proving_racial_profiling.pdf; Michèle TURENNE, *Le profilage racial : une atteinte au droit à l'égalité. Mise en contexte - Fondements - Perspectives pour un recours*, Commission des droits de la personne et des droits de la jeunesse, (Cat. 2.500.132), p. 74. See briefs from CRARR, la Ligue des droits et libertés, and the Barreau du Québec.

93 *Le commissaire à la déontologie policière c. L'agent Philippe Gauthier*, dossier No. C-2009-3581-2 (08-1557-2), 12 janvier 2011, Commission de déontologie policière, [on line]. <http://www.deontologie-policiere.gouv.qc.ca/fileadmin/deonto/documents/decisions/C-2009-3581-2-f.pdf>.

94 *Ibid.*, par. 62 to 65.

95 Which is the opinion of a number of participants in the consultation and of the CONSEIL INTERCULTUREL DE MONTRÉAL as well, op.cit., note 34, p. 23.

THE COMMISSION RECOMMENDS:

- that the government officially recognize a definition of racial profiling⁹⁶, and take steps to amend the Charter of Human Rights and Freedoms to include discriminatory profiling as a prohibited act. This amendment could be inserted after section 10.1 of the Charter, which protects against discriminatory harassment;
- that racial profiling be prohibited in the Police Act and in the Code of Ethics of Police Officers of Québec;
- that the government take steps to amend the Act respecting Private Security to include in it prohibited actions linked to racial profiling;
- that the cities and administrators of public transit systems provide policies prohibiting racial profiling linked to verifying the payment of fares and the movement of its clientele.

2.2.5 DATA COLLECTION

Incidents of racial profiling are not only anecdotal. Although they express a systemic problem, there have been few studies in this respect. There is an urgent need to collect exhaustive data in order to document the situation⁹⁷ not only with respect to the actions of peace officers, but also throughout the judicial system. In fact, the disproportionate surveillance of youth from racialized communities and of Aboriginals will necessarily result in an over-representation of these individuals all the way to the prison system.⁹⁸

Bernard and McAll state in their study:

“ [...] youth identified by police as “Blacks” are subject to more surveillance by police and security guards than youth identified as “Whites.” This “over-surveillance” could be enough to account for up to 58% of the over-representation of young Blacks. Each new arrest contains the risk of a new charge, resulting in a worsening of the criminal record (if the charge is proved) and the probability of a longer sentence and more restrictive conditions than the previous time.”⁹⁹

In its brief, which was presented during the consultation, the Barreau du Québec shared this view: “[racial profiling in the judicial system] seems to be partially responsible for the over-representation of certain racialized groups in the prison system, especially Blacks and Aboriginals [...]”¹⁰⁰

Moreover, independently of the profiling practiced by law enforcement officers, which feeds the over-judicialization of racialized persons, there are reasons to question the decisions made during every

96 In the Charter, or failing that, in a law. The definition adopted by the Commission and recently enshrined in a judgment by the Human Rights Tribunal could serve as a model: *Commission des droits de la personne et des droits de la jeunesse v. Bombardier inc. (Bombardier Aerospace Training Center)*, 2010 QCTDP 16 (CanLII), [on line]. <http://www.canlii.org/fr/qc/qctdp/doc/2010/2010qctdp16/2010qctdp16.html>.

97 In Ontario, an investigation on this scale demonstrated the extent of the systemic racism throughout the justice system. See: COMMISSION ON SYSTEMIC RACISM IN THE ONTARIO CRIMINAL JUSTICE SYSTEM, op. cit., note 12.

98 Data already confirm an over-representation of Aboriginals and Blacks in the federal penal system. In 2008-2009, Aboriginals represented 17.15 of the carceral population while they only represented 3.8% of the population. Blacks represented 7.4% of the carceral population while they only represented 2.5% of the population, according to CORRECTIONAL SERVICES OF CANADA, Public Safety Canada, December 2009.

99 L. BERNARD and C. McALL, op.cit. note 21, p. 12.

100 Barreau du Québec, brief p.9, repeated its observation presented in: BARREAU DU QUÉBEC, *Mémoire sur le document de consultation “Pour la pleine participation des Québécoises et des Québécois des communautés culturelles - vers une politique gouvernementale de lutte contre le racisme et la discrimination.”* August 2006, p. 25.

step of the judicial process that may have discriminatory impacts (in the laying of charges, criminal convictions, sentencing, conditions for release, etc.).

An example that may already illustrate one form of intersectional discrimination¹⁰¹ in the judicial system is the over-representation of racialized youth from disadvantaged communities. Certain participants, including the CRARR in particular, pointed out the fact that, in the criminal courts, “there are growing numbers of allegations to the effect that a number of lawyers [paid by legal aid] too often persuade their clients [...] to plead guilty in order to reduce the time invested in their defence and increase the number of cases [...] assigned to them.”¹⁰²

In this regard, the Commission is concerned by the absence of data, or at least public data, pertaining to the representation of youth from minorities in rehabilitation centres who have been sentenced pursuant to the Youth Criminal Justice Act. It is important to remember that, in 1994, the Commission de protection des droits de la jeunesse published a study that demonstrated that young offenders from racialized minorities were over-represented in rehabilitation centres, in particular because they had double the chance of others of being the subject of judicial measures (as opposed to “alternative measures”).¹⁰³ In addition, the study did not reveal any significant intergroup gap with respect to the likelihood of being taken into institutional care in protection cases. These data, which date back more than fifteen years, must be updated. Are young offenders from racialized minorities still over-represented in rehabilitation centres? By the same token, are DYPs less likely to propose extrajudicial sanctions when racialized young offenders are involved, or do they give greater preference to judicial prosecution?

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For the Barreau du Québec, “data must [...] be collected at every step of the system so that it becomes possible to determine whether racialized persons are being treated fairly by it. [...] Although there are risks of the wrong use of the data that could increase the stigmatization of racialized persons, and even of discrimination for them, these risks can be offset by effective data collection methods and a communications strategy for their disclosure. Data collection is essential in a multicultural society [...].”¹⁰⁴

The only known case of systematic data collection for analysis of the extent and process of racial profiling within a police department was carried out by the Kingston, Ontario Police Department. This data collection, which was limited in time, made it possible to not only detect certain discriminatory biases in police actions (decisions to intervene, questioning, detention, arrests, etc.)¹⁰⁵, but also, over the medium term, to provide objective arguments for increasing awareness among police with respect to the contra-productive effects of racial profiling in fighting crime.¹⁰⁶

101 It involves the confluence of several discrimination factors.

102 CRARR brief, p. 21.

103 COMMISSION DE PROTECTION DES DROITS DE LA JEUNESSE, *La clientèle multiethnique des centres de réadaptation pour les jeunes en difficulté*, 1994.

104 Barreau du Québec brief, p. 52.

105 Inquiry conducted between October 1, 2003 and September 30, 2004.

In this study, the Kingston police analyzed the frequency and nature of interventions (in public spaces and on public roads) by peace officers involving persons according to their ethnicity. According to the analyses, a Black man (men are stopped much more often than women) aged between 15 and 24 years old has three times the risk of being stopped by the police than a White person from the same age group, given their representation in the city. However, author Scot Wortley, who conducted the study, noted that other studies must be done to determine possible links between the rate of stopping and deviant behaviour by ethnicity.

106 Kingston’s former police chief, W.-J. Closs, made a very eloquent statement on this matter during the consultation.

In the article *La police et les citoyens* (Police and Citizens), published by the SPVM, the author states:¹⁰⁷

“The debate on the issue of profiling is very lively. Does profiling really exist? Who does it target and who does the targeting? How to prevent these interventions or how to demystify the role of officers in application of the law? These questions, among several others, can become secondary when looking at the simple fact that certain groups or individuals perceive that they are victims of racial profiling.

[...]

Although it is still impossible to empirically demonstrate the scale of racial profiling, the subject is increasingly topical. In fact, to demonstrate whether the practice of racial profiling exists, anecdotes or personal experiences alone are not taken seriously and remain inadequate. In order to prove it statistically, the official data should first of all be requested from the police departments.”

To summarize, data collected within a context of systematic data collection will make it possible to objectively document the situation of racial profiling in order to make the necessary corrections with a view to ensuring the protection of citizens' rights. Another benefit that will result from this process is a self-critical attitude among officers while in action. In fact, W.-J. Closs¹⁰⁸, the former Kingston police chief, explained that a number of recalcitrant officers began to question some of their actions as a result of this project.

THE COMMISSION RECOMMENDS:

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- that the municipal police departments and the Sûreté du Québec systematically collect and publish data¹⁰⁹ related to the presumed racial identity of individuals¹¹⁰ during police actions in order to document the phenomenon and take the appropriate measures; and that these same procedures be established by public transit companies with respect to the actions of their employees;
- that the ministère de la Justice and the ministère de la Sécurité publique take the necessary steps to document the path of racialized minorities throughout the judicial system (laying of charges, trial, sentencing, parole, etc.);
- that youth centres produce and publish data pertaining to the representation of racialized youth in rehabilitation centres who were sentenced pursuant to the Youth Criminal Justice Act, and pertaining to the types of measures (judicial or other) that the DYP is inclined to propose for these youth.

107 A. CHAMANDY, op.cit., note 39, p. 50.

108 There are examples of systematic data collection to counter racial profiling in several American states, see: AMERICAN CIVIL LIBERTY UNION (ACLU), *Traffic Stop Consent Searches Across the State of Illinois and by the Illinois State Police*, July 2008. The Kingston police force is the only police force in Canada to have implemented a data collection pilot project. See: WORTLEY, S., *Bias Free Policing: The Kingston Data Collection Project*, - Study conducted from October 1st 2003 to September 30, 2004 [on line]. <http://www.cantraining.org/BTC/docs/CanadianReferences/Bias%20Free%20Policing%20-%20Wortley.pdf>; *Profiling Minorities: A Study of Stop-and-Search Practices in Paris*, [on line]. http://www.soros.org/initiatives/justice/focus/equality_citizenship/articles_publications/publications/search_20090630/search_20090630.Web.pdf; RAMIREZ, D., J. McDEVITT and FARRELL, *A Resource Guide on Racial Profiling Data Collection Systems – Promising Practices and Lessons Learned*, Northeastern University, 2000, [on line]. <http://www.ncjrs.gov/pdffiles1/bja/184768.pdf>; HARRIS, D., “Driving While Black : Racial Profiling on our Nation’s Highways,” An ACLU Special Report, June 1999, [on line]. <http://www.aclu.org/racial-justice/driving-while-black-racial-profiling-our-nations-highways>.

109 Grounds linked to race, age, ethnicity or religion, etc.

110 In accordance with the Charter. The methodology applicable to such a collection could be based on the methodology applied pursuant to the *Act respecting Equal Access to Employment in Public Bodies* (R.S.Q., c. A-2.01) to offset systemic discrimination in employment, op.cit.17.

2.2.6 SUPERVISION OF POLICE ACTIONS, PARTNERSHIPS AND ACCOUNTABILITY

Most participants in the consultation have called for better supervision of police, in particular in terms of avoiding mistakes of a discriminatory nature. For them, racial profiling takes place in an institutional context in which political authorities must show leadership in order to counter its manifestations.

The supervision and feedback model for officers in the field should be revised. For example, the supervisors at the SPVM are members of the same union as the police who report to them. Many see this model as not guaranteeing impartiality with respect to decisions related to police exhibiting inappropriate behaviour. A procedure that would ensure greater neutrality in the regular supervision process ought to be developed.

Police inaction or ineffectiveness in certain situations where racialized minorities need police protection is a problem that was raised on occasion during the Commission's consultation. While as mentioned, some dubious actions by the police are based "fear"¹¹¹ generated by the public, the consultation also revealed that racialized individuals also complain that they are not adequately protected by the police.

Police forces, and especially those in large cities, should apply strategies of getting closer to citizens, both in order to protect them and to eliminate and prevent crime. Among the measures introduced by the SPVM, we would like to emphasize the community police model. In the SPVM study¹¹² that was cited earlier, the author states the following:

"The police consider that, in a context of high immigration, it is important to reinforce the links with the community in order to contribute to the harmonious co-existence of all citizens. Likewise, two components of the community police model are based on the concept of community relations. The first is to establish and maintain harmonious links with the community and its components. The second involves the establishment and maintenance of strategic partnerships."¹¹³

Among the strategic partnerships established with community players that have had some positive repercussions in connection with the problem of racial profiling on the Island of Montréal, there is the experience of the Saint-Michel and Rivière-des-Prairies districts.

The rate at which young Blacks were questioned in Rivière-des-Prairies was clearly lower than that observed in Saint-Michel and Montréal-Nord when the Avance group was deployed. After the introduction of community police in Saint-Michel, pointless questioning of young Blacks by police seems to have diminished.

In the brief that entitled: *Modèle partenarial d'intervention et d'actions contre le profilage racial* [Partnership model for intervention and actions against racial profiling], which was tabled during the Commission's consultation, Harry Delva, Coordinator of youth projects at the Maison d'Haïti in Montréal, explained:

"It is acknowledged that many of the concerns expressed and used to justify the existence of racial profiling in Québec and in Montréal, [...] are due to misunderstanding certain realities of the cultural communities. Such misunderstanding often results in the holders of "discretionary" power making extreme decisions on the basis of misunderstood facts or actions.

[...]

111 On this issue, see: L. BERNARD and McALL, op.cit., note 21.

112 A. CHAMANDY, op.cit., note 39, p. 54-55.

113 On this issue, see: SERVICE DES COMMUNICATIONS ET DES RELATIONS AVEC LES CITOYENS, *Politique pour un environnement paisible et sécuritaire*, Ville de Montréal, 2008.

Concretely, this axis of the approach is based on a local partnership [the Saint-Michel district of Montréal, in this case] among various levels of community action, public intervention, school sector and other local institutions (private and para-private) around a common issue. These stakeholders, who are knowledgeable about local problems, converge their actions in order to introduce a common vision of the viability of the sector or of the district.

[...] Today, because of this partnership model of intervention, waves of police intervention are very rare in this district, and the perceptions that youth and police have of each other have evolved along the lines of an informed understanding.”¹¹⁴

Several participants asked that steps be taken to integrate persons from the communities concerned into the decision-making process with respect to the deployment of security forces. They also propose that the police forces and private security agencies regularly analyze their actions in order to detect and prevent prohibited behaviour and risky practices from an antiracism perspective.

THE COMMISSION RECOMMENDS:

- that the ministère de la Sécurité publique and the cities implement an annual accountability process to document actions taken against racial profiling by police services;
- that police departments introduce measures that ensure greater impartiality in the supervision of their officers, in particular by involving police managers or commanders in the process;
- that police departments issue instructions to detect and track signs of racial profiling among their officers;
- that the cities establish anti-profiling watch committees consisting of members of civil society and city council members; and more specifically, that the City of Montréal make public reports by the Commission de la sécurité publique;¹¹⁵
- that the cities draw upon certain successful partnership initiatives between police and the community (such as in Rivière-des-Prairies and Saint-Michel) in order to develop alternative methods for preventing and controlling crime.

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2.2.7 HUMAN RESOURCES TRAINING AND MANAGEMENT

In his report¹¹⁶ to the SPVM, psychologist Martin Courcy writes:

“The youth say that police officers make remarks that they would never dare say in any other district of the city of Montréal, for example:

¹¹⁴ Brief tabled, p. 3 to 7.

¹¹⁵ Although the SPVM serves the residents of the whole Island of Montréal, it reports to the central city and is accountable to the Agglomeration Council which is made up of representatives of Montréal and the 15 other cities on the Island. As a result, the SPVM collaborates with a standing committee consisting of elected municipal officials and a representative of the Québec government, called the Commission de la sécurité publique (CSP). The CSP has the power to make recommendations to the Executive Committee and the Agglomeration Council.

¹¹⁶ M. COURCY, op.cit., note 70.

[...]

Dirty immigrant, go back to your country, dirty N... [...] If you don't like it, go back to your own country."¹¹⁷

In this respect, the CRARR noted the following:

"If, in case after case and year after year, it appears clear that the behaviour of police and public servants is marked or motivated by discriminatory prejudices, how is it still possible that, in college courses and training preparatory to the École nationale de police du Québec, diversity and human rights training is still marginal and non-integrated?"¹¹⁸

Thus, in the news article: *Les gangs de rue, pas si dangereux*, previously quoted, Jacques Robinette¹¹⁹ states:

"We give tools to the police officers [...] We don't claim to train 4,500 police experts. For that matter, the experts themselves don't agree on what constitutes a street gang."¹²⁰

In fact, even when training is given, as in the cégeps and at the École nationale de police du Québec and to existing officers, little has been done to assess the acquisition of the expected antiracism competencies.¹²¹

On this subject, the Barreau du Québec pointed out:

"the training should stress the perverse effects of racial profiling, and in particular the fact:

[...]

- that its impact on criminality is negligible in relation to the costs it entails;¹²²

[...]."

- that it generates a distrust on the part of racialized persons toward the police, which has the effect of reducing the effectiveness of police interventions to prevent and detect crimes and misdemeanours;

- that it reduces the effectiveness of police forces that depend on public cooperation for reporting offences and providing descriptions of suspects and giving testimony;

[...]."

According to participants, in order to combat prejudices, peace officers and all those involved in the court system must be made aware of the issues related to the phenomenon of racial profiling. With respect to the court system, the Barreau du Québec particularly noted that the lawyers and judges must be trained in issues related to using racial profiling as a defence during trials.¹²³

117 *Ibid.*, p. 4.

118 CRARR brief, p. 14.

119 Assistant-director, SPVM Chief of Special Investigations.

120 Op.cit. note 57.

121 See Maurice CHALOM, "Pour une justice juste" (automne 2008) 1:3, *Revue du CREMIS*; Maurice CHALOM et Luce LÉONARD, L., *Insécurité, police de proximité et gouvernance locale*, Éditions L'Harmattan, 2000. The SPVM recently adopted a tool allowing the detection of risky behaviour (of a discriminatory or anti-social nature), in police officers when they are being hired. However, it is too soon to measure the expected results.

122 ONTARIO HUMAN RIGHTS COMMISSION, op.cit., note 6.

123 Barreau du Québec brief, p. 40.

Furthermore, most of the participants indicated that diversity of the work force at all levels is another way to counteract discrimination and racial profiling. It is vital that police officers and private security agents, as well as those who work in the court system, be representative of the communities that they serve.¹²⁴ Not only is such representation desirable in terms of meeting the goals of equal employment, but it is also a condition for breaking down stereotypes and prejudices among personnel and in the decision-making process.

Finally, one of Mathieu Charest's recommendations in his document *Mécontentement populaire et pratiques d'interpellation du SVPM depuis 2005*, with regard to the need to establish partnerships with community groups to fight stereotypes and to improve police interventions should be noted:

"[the] leadership, based on the idea that [Rivière-des-Prairies] police officers have a better understanding of the issues and the specificities of the district, has allowed to avoid the explosion of ID checks observed in Montréal-Nord and Saint-Michel, and to preserve the (often fragile) relationship between police and cultural communities."¹²⁵

THE COMMISSION RECOMMENDS:

- that police training programs and the École nationale de police du Québec provide anti-racism training¹²⁶ that includes a formal evaluation of what has been learned by future police officers; and that the cities¹²⁷ and the ministère de la Sécurité publique establish a similar process for police officers;
- that the government amend the Private Security Act in order to have it include similar training adapted to the private security context;
- that the École nationale de police du Québec, the cities and the ministère de la Sécurité publique take steps to promote diversity training and activities within racialized communities, both as part the curriculum of officers in training and once they are employed;
- that cities and police departments take steps to ensure that their practices in recruiting, promoting and evaluating police take into account intercultural competencies;¹²⁸
- that the ministère de la Justice and the ministère de la Sécurité publique take steps to ensure that all participants in the legal system and administrative tribunals (judges, lawyers, crown prosecutors, parole officers, prison guards, etc.) be recruited, trained, evaluated and promoted in accordance with their intercultural competencies;

124 See briefs submitted by the CRARR, the Barreau du Québec, the Black Coalition of Québec, the Ligue des droits et libertés and Ronald Boisrond.

125 M. CHAREST, Report 1, op.cit., note 34, p. 10.

126 Already, further to the work of the taskforce on racial profiling established by the ministère des Communautés culturelles in 2003, basic training about the concept of "racial profiling" has been introduced in the cégep program and at the École Nationale de police du Québec. But neither the content nor what was learned is evaluated.

127 The SPVM has already arranged a number of training sessions for its members and developed sensitization material. However, this does not seem to be adequate to ensure that at risk police officers acquire new ways of being and acting.

128 The SPVM recently adopted a tool allowing the detection of risky behaviour (of a discriminatory or anti-social nature), in police officers when they are being hired. However, it is too soon to measure the expected results.

- that the Director of Criminal and Penal Prosecutions adopt rules of practice that make it possible to detect actions involving racial profiling in the cases submitted to him;
- that the administrators of police departments work with community partners¹²⁹ to fight effectively against crime, with respect for the rights of citizens, and that the government and the municipalities allocate adequate funding for this purpose in their budgets.

2.3 RECOURSE FOR CITIZENS

Throughout the Commission's consultation, participants from both racialized groups and from the majority communicated their lack of confidence in the legitimacy and efficacy of police action. Many indicated that society as a whole loses when certain citizens feel that they are subjected to unjustified behaviour by those who ought to guarantee the peaceful exercise of their civil and democratic rights. Such comments, which challenge the credibility and efficacy of the existing system, are not new. A number of reports, investigative committees and task forces have examined several aspects of police services, and issues of public confidence and system efficacy have always been at the core of the debate.¹³⁰

Many remedies are available to guarantee the rights and freedoms of citizens, including the right to be protected against discrimination and racial profiling.

Therefore, every incident resulting from a failure or omission with respect to a duty or a standard of conduct provided by the Code of Ethics of Québec Police Officers¹³¹, which was created pursuant to the

129 See: experiences in Rivière-des-Prairies, Ville LaSalle, Saint-Michel.

130 Québec Ombudsman, The Québec Investigative Procedure for Incidents involving Police Officers (Ministerial policy of ministère de la Sécurité publique) for a Credible, Transparent, and Impartial Process that Inspires Confidence and Respect, February 2010, [on line]. http://www.protecteurducitoyen.qc.ca/fileadmin/medias/pdf/rapports_speciaux/2010-02-16_Rapport_police_final.pdf. In Québec, a "task force on racial profiling", co-chaired by the ministère de l'Immigration et des Communautés culturelles and the ministère de la Sécurité publique and urged by representatives of the community network, debated issues and proposed actions to the government between 2003 and 2007.

See also these studies published by the COMMISSION DES DROITS DE LA PERSONNE (available in French only): Enquête sur les allégations de discrimination dans l'industrie du taxi à Montréal, 1984; Comité d'enquête sur les relations entre les corps policiers et les minorités visibles et ethniques (Rapport Bellemare), Enquête sur les relations entre les corps policiers et les minorités visibles et ethniques: rapport final du Comité d'enquête à la Commission des droits de la personne du Québec, 1988; Mise en application des recommandations du Rapport d'enquête sur les relations entre les corps policiers et les minorités visibles et ethniques, 1989. See also: QUÉBEC (PROVINCE) BUREAU DU CORONER (RAPPORT YAROSKY), Rapport du coroner suite à une enquête sur le décès de Monsieur Marcellus François survenu le 18 juillet 1991, à l'Hôpital général de Montréal résultant de blessures subies lors d'une opération policière du Service de police de la Communauté urbaine de Montréal, 1992; GROUPE DE TRAVAIL SUR LES RELATIONS ENTRE LES COMMUNAUTÉS NOIRES ET LE SERVICE DE POLICE DE LA COMMUNAUTÉ URBAINE DE MONTRÉAL (RAPPORT CORBO), *Une occasion d'avancer: rapport du Groupe de travail du ministre de la Sécurité publique du Québec sur les relations entre les communautés noires et le Service de police de la Communauté urbaine de Montréal*, 1992; Albert MALOUF, *Rapport de l'inspection de l'administration du Service de police de la Communauté urbaine de Montréal, de ses activités et celles de ses membres*, ministère de la Sécurité publique, 1994.

131 *Code of Ethics of Québec Police Officers*, c. P-13.1, r. 1, (Code of ethics).

See: Sec. 4: Any failure or omission concerning a duty or a standard of conduct provided for by this Code constitutes a derogatory act hereunder and may result in the imposition of a penalty under the Police Act (R.S.Q., c. P-13.1).

Sec. 5: A police officer must act in such a manner as to preserve the confidence and consideration that his duties require.

A police officer must not:

(1) use obscene, blasphemous or abusive language;

Police Act¹³², constitutes a derogatory act, and may result in the imposition of a penalty.

When the action that is objected to contains a discriminatory aspect¹³³, a Charter remedy is provided against officers involved in such events and their employer (private security agency or police department) awarding the victim material, moral and punitive damages. Such actions may be filed in the Human Rights Tribunal by the Commission, which was given a special role by the Charter.¹³⁴

Victims or their families may also seek judicial remedies involving civil liability against officers involved in such events and their employer (private security agency or police department) in order to obtain compensation¹³⁵ for the harm incurred.

Furthermore, if the incident involved, resulted in death or severe injuries caused by police officers, there are other investigative procedures available.

In this context, the Act respecting the Determination of the Causes and Circumstances of Death¹³⁶ provides for an investigation by the coroner¹³⁷ whenever there is an accidental death. Two approaches are used in fulfilling this responsibility, namely an “investigation”, which is the private process by which the coroner collects the information necessary to perform his duties, or a “public inquest”, in which relevant information and facts are presented to the coroner during public hearings.¹³⁸ In both cases, the coroner’s report is always made public.

The goal of the coroner’s investigation is not to determine the personal or criminal liability, but to examine the factors involved and propose remedies to prevent such situations from recurring¹³⁹, where appropriate.

(2) fail or refuse to produce official identification when any person asks him to do so;

(3) fail to carry prescribed identification in his direct relations with the public;

(4) commit acts or use injurious language based on race, colour, sex, sexual orientation, religion, political convictions, language, age, social condition, civil status, pregnancy, ethnic or national origin, a handicap or a means to compensate for a handicap;

(5) be disrespectful or impolite towards any person.

132 *Police Act*, R.S.Q., c. P-13.1, sec.127.

133 This recourse is civil in nature. Thus, private security guards, who are not subject to the Code of ethics may be sued pursuant to the Charter, sections 10, 49.

134 Charter, sec. 71, 111.

135 Civil Code of Québec, art. 1053, 1057.

136 R.S.Q., c. R-0.2.

137 *Ibid.*, sec. 2 The coroner’s function is to determine, by means of an investigation or, as the case may be, an inquest,

(1) the identity of the deceased person;

(2) the date and place of death;

(3) the probable causes of death, that is, the disease, pathological condition, trauma or intoxications having caused, led to or contributed to the death;

(4) the circumstances of death.

3. If pertinent, the coroner may also, during an investigation or an inquest, make any recommendation directed towards better protection of human life.

138 [on line]. http://www.coroner.gouv.qc.ca/index.php?id=investigation_enquete.

139 Act respecting the Determination of the Causes and Circumstances of Death, op.cit., note 136, art. 4: In no case may a coroner conducting an investigation or an inquest make any finding of civil liability or criminal responsibility of a person.

Finally, pursuant to a Ministerial Policy¹⁴⁰ applicable to deaths or serious injuries occurring as part of a police action or during detention, the ministère de la Sécurité publique must designate a police department that is not the one where the officers involved work to investigate their actions.¹⁴¹

Once the investigation is completed, the designated police department sends its report and recommendations to the Director of Criminal and Penal Prosecutions in order to determine whether criminal charges should be filed against the police officers and the department involved.

In this section, the Commission will examine the investigation system instituted pursuant to the Code of Ethics and the Ministerial Policy applicable to police incidents involving serious injury or death. Finally, the system provided for pursuant to the Charter for which the Commission is responsible is discussed in the section that addresses the Commission's commitments.

2.3.1 THE POLICE ETHICS COMMISSIONER'S COMPLAINT SYSTEM

The police play a vital role in a society where the primacy of law is considered to be a fundamental value. They provide one of the most important public services for society by maintaining public order and preventing and fighting crime. For this purpose, police officers have exceptional powers in the exercise of their duties.

In order to exercise these powers adequately, police must have the trust of the public. "That means that the population is reassured with respect to the fact that order and security will be maintained with professionalism and in conditions that respect the rights and freedoms of each individual. It also contains the promise of greater police efficacy, because the collaboration of the public is built on this basis and is essential for both preventing and controlling crime."¹⁴²

It should be remembered that the police ethics system is based on the application of the Code of Ethics of Québec Police Officers¹⁴³, which is governed by the Police Act.¹⁴⁴ On the Police Ethics Commissioner website, it is explained that "the system, governed by the Police Act, is meant to increase the protection of citizens by ensuring respect for individual rights and freedoms. Moreover, it aims to develop, within police services, high standards of services and conscientiousness."¹⁴⁵

Two independent civil authorities make up this system: the Police Ethics Commissioner, who receives and examines the complaints¹⁴⁶, and the Police Ethics Committee, which is a specialized administrative tribunal.¹⁴⁷

Based on the information gathered in the complaints, the Commissioner decides to send the file to

140 Powers derived from the Police Act, sec. 289, 304.

141 The investigation conducted pursuant to the Ministerial Policy is essentially a criminal investigation.

142 QUÉBEC OMBUDSMAN, op.cit., note 131, p. 1.

143 *Ibid*, note 130.

144 *Ibid*, note 131.

145 [on line] <http://www.deontologie-policiere.gouv.qc.ca/index.php?id=74&L=1>.

146 It is important to emphasize that the Commissioner may not submit the case on his own. He can only act when there is a complaint from a person, a request for investigation from the ministre de la Sécurité publique, or a final decision from a Canadian court declaring a police officer guilty of a criminal offence which also constitutes a breach of the Code of ethics. [on line] <http://www.deontologie-policiere.gouv.qc.ca/index.php?id=12&L=1>. See: Police Act, sec. 128 to 193.

147 See: Police Act, sec.194 to 255.11.

conciliation, calls for an investigation¹⁴⁸ or closes the file¹⁴⁹, as appropriate. Furthermore, if it appears that a criminal offence may have been committed, the case is immediately sent to an appropriate police force for the purpose of a criminal investigation, if this has not already occurred.

Upon completion of an investigation, if the allegations of the complainant are found to have merit¹⁵⁰, the file is transferred to the Police Ethics Committee, which holds a public hearing in order to determine whether the police officer has committed an act derogatory to the Code of Ethics, and if so, to impose a penalty. The Committee's decisions may be appealed in the Court of Québec.

The ministère de la Sécurité publique mandated Claude Corbo to examine the workings of the police ethics system, almost six years after it came into force.

In his report, Mr. Corbo¹⁵¹ reaffirmed the essential criteria for guaranteeing an effective ethical system. We repeat them here for the purpose of clarifying the issues:

“To be satisfactory, an ethics system must demonstrate the following characteristics:

148 See: Police Act:

Sec. 148: Every complaint relating to an event that in the opinion of the Commissioner involves the public interest, in particular, events in which death or serious bodily harm has occurred, situations potentially injurious to the public's confidence in police officers, criminal offences, repeat offences or other serious matters, shall be dealt with under his authority. Complaints which are clearly frivolous or vexatious and complaints in respect of which the Commissioner is satisfied that the complainant has valid reasons for objecting to conciliation shall also be dealt with under the Commissioner's authority.

Sec. 193.4: The Commissioner may submit the complaint to conciliation, deal with it under the Commissioner's authority if it relates to a case described in Section 148, or reject it.

Sec. 193.5: Within 60 days after the receipt of the complaint or the identification of the police officer concerned, the Commissioner must, after a preliminary analysis of the complaint,

- (1) decide whether the complaint is to be dealt with under the Commissioner's authority or must be rejected;
- (2) refer the complaint to the appropriate police force for the purposes of a criminal investigation if it appears to the Commissioner that a criminal offence may have been committed;
- (3) where applicable, designate a conciliator and forward the file;

[...]

149 When the Commissioner closes a file, he explains his decision and presents it in writing. The complainant has a right to a review of this decision, POLICE ETHICS COMMISSIONER, *Rapport annuel de gestion 2009-2010. Police Ethics Commissioner*, p. 1, [on line]. http://www.deontologie-policiere.gouv.qc.ca/fileadmin/deonto/documents/publications-administratives/Commissioner/Commissioner_rapport_annuel_2009-2010.pdf (French only)

150 Otherwise the file is closed with the reasons given to the complainant. See: Police Act, sec. 193.5 to 198.5.

151 Claude CORBO, président, *À la recherche d'un système de déontologie policière juste, efficient et frugal*, Rapport de l'examen des mécanismes et du fonctionnement du système de déontologie policière, Québec, ministère de la Sécurité publique du Québec, 1996 (Second Corbo Report).

Sec. 193.7: The Commissioner shall notify, in writing, the complainant, the authority that would normally deal with the complaint in the police officer's home province or territory and the authorizing official concerned of any decision under Section 193.6, including reasons. The Commissioner shall also inform the complainant of the complainant's right to obtain a review of the decision by submitting new facts or elements to the Commissioner within 15 days. The Commissioner shall make a decision on a review within 10 days and the decision is final.

[...]

193.8. Not later than 45 days after deciding to hold an investigation, and afterwards as needed during the course of the investigation, the Commissioner shall notify, in writing, the complainant, the authority that would normally deal with the complaint in the police officer's home province or territory and the authorizing official concerned of the status of the investigation, unless, in the Commissioner's opinion, to do so might adversely affect the investigation.

[...]

1. The complaints must be handled by a body that is distinct from and independent of the police department;
2. The majority of the members of such a body must not be police;
3. [...]
4. The system must demonstrate general transparency and, in particular, in its tribunal functions, must allow public hearings;
5. [...]
6. The persons responsible for handling complaints must be appointed by a public authority.”¹⁵²

A number of participants in the consultation declared that they are not inclined to complain to the Police Ethics Commissioner, because they have little confidence in the institution, for several reasons. In the following section, the Commission will attempt to present the main complaints, along with its recommendations.

2.3.1.1 Accessibility of information and the complaint procedure

First of all, several participants reported that many citizens do not know that the Police Ethics Commission exists, or they believe that the office is associated with the police. While they recognize that the Commissioner’s website is very clear about its independence, people have to consult the website to obtain the information.

In its 2009-2010 Annual Report, the Commission recognizes this situation, and points out the following:

“The Commission needs to become accessible to citizens by applying measures that will help make the ethical system known and to reinforce trust in the institution, especially from minorities.

[...] the current social context in Québec makes it imperative to ensure real accessibility to the police ethics system for members of ethnic communities. Moreover, the Commissioner is aware of their lack of trust that he has had to overcome, because their expectations are great since they feel that their rights and freedoms are in greater danger than those of other citizens.

Moreover, the need to expand our communication with visible minorities results, in particular, from the problem of “racial profiling”. It is therefore vital that those individuals who feel they have been harmed by certain police behaviours or racial discrimination or racism know what recourse they have for police ethnics and are not afraid to use it.”¹⁵³

Although the website allows users to download a complaint form, many people who are unaware of this option and instead go to a police station to file their complaint. A number of participants reported that, they were told that the forms were out of stock. However they were not told to consult the website. Others, for their part, stated that they were very uncomfortable about asking for such a form at a police station.

Another an explanation for participants’ misgivings with respect to the effectiveness of the police ethics

¹⁵² *Ibid* p. 18-19.

¹⁵³ POLICE ETHICS COMMISSIONER, *op.cit.*, note 149, p. 12. In this respect, the Commissioner noted that a number of activities were undertaken to establish links with the various cultural communities and that contacts had been established with the Québec Black Coalition and CRARR, among others.

system is the absence of any compensation for victims. The Commissioner is aware of this, and pointed out:

“The key to a civil surveillance system is unquestionably the support and collaboration of the public. In fact, since a citizen generally gets no personal benefit from his police ethics complaint, we can only appeal to the civic-mindedness of the complainants and witnesses to ensure their support throughout the process.”¹⁵⁴

Added to this is the overlapping of various remedies and the public’s lack of understanding of their complementary nature.

The Commissioner explained:

“the overlapping ethical, disciplinary and criminal investigations are very worrying in terms of efficiency. In fact, such multiplicity is always likely to create inconsistencies. In practice, most criminal allegations are never the subject of any ethical complaints. Moreover, many citizens whose criminal complaints are rejected then fail to pursue ethical complaints when already launched.”¹⁵⁵

In this respect, it is important to consider another limit of the ethical system: many situations that are likely to be of interest are not pursued because the formal complaint must be filed before an investigation can begin.

These complaints clearly show the importance of making all relevant information about recourse available to citizens. Therefore, it would be desirable for an ethical complaint that involves a potentially discriminatory behaviour to be sent to the Commission in order to determine whether there should be a Charter investigation, and whether material, moral and punitive damages should be sought.

THE COMMISSION RECOMMENDS:

- that the government amend the Police Act and the Code of Ethics of Québec Police Officers to enable the Commissioner to conduct investigations on his own initiative when required by the public interest, in order to ensure effective civilian monitoring of the police;
- that the ministre de la Sécurité publique take steps to enable citizens to better understand the duties of the police and the remedies provided for by the Code of Ethics of Québec Police Officers;
- that the government amend the Police Act and the Code of Ethics of Québec Police Officers to oblige police, subject to penalties, to inform citizens of their rights whenever they stop someone, make an arrest or write a ticket;
- that the government amend the Police Act and the Code of Ethics of Québec Police Officers so that the Police Ethics Commissioner, with the consent of the complainant, can send any complaint alleging potentially discriminatory behaviour to the Commission des droits de la personne et des droits de la jeunesse for review.

¹⁵⁴ *Ibid.*, p.12.

¹⁵⁵ *Ibid.*, p. 3.

2.3.1.2 THE COMPLAINT HANDLING PROCESS

Participants have expressed concerns about the complaint handling process. The Commissioner makes a preliminary analysis, and then has the option to send the complaint to conciliation, order an investigation or close the file.

In this respect, it is important to remember that the Police Act stipulates that, before an acceptable complaint is sent for investigation, it must first have been referred to a conciliation process to which the complainant and the police involved are invited. If the conciliation process is successful, the complaint is withdrawn.¹⁵⁶

The law also stipulates¹⁵⁷ that the complainant may refuse conciliation, but the process is cumbersome, and the complainants must provide reasons in writing. In addition, refusal does not guarantee that an investigation will be held instead.¹⁵⁸

Several participants decried the fact that the complainant is immediately at a disadvantage, both during the investigation process and when the Committee hears the matter. For example, many of the investigators are former police officers (although former police officers are not permitted to investigate their former police department), just as in investigations held after a death or serious injuries, and many participants feel that a former police officer should not be responsible for such an investigation, especially if that officer is acting alone. It would be preferable for two investigators to be named for each investigation, and for a civilian to always participate in the investigation.

Another widespread criticism is linked to the application of section 192¹⁵⁹ of the Police Act, which

156 The personal record of the police officer then contains no mention of the complaint or the conciliation settlement. However, the Commissioner must keep the entry for this complaint in the complaints' register, as provided for by law. If the conciliator ends a conciliation session or determines that the parties cannot agree, he reports this to the Commissioner. The Commission then makes a new analysis of the complaint and decides what further steps to take, namely to hold an inquiry or to close the file at this stage, [on line]. <http://www.deontologie-policiere.gouv.qc.ca/index.php?id=175>.

157 See: sec. 193.7, op. cit., note 151.

158 The Commissioner only rarely refers a complaint for investigation. The 2009-2010 Annual Report indicates that approximately 90% of complaints are resolved by conciliation.

Furthermore, the website lists the possible outcomes of conciliation: "The Commissioner may:

- allow the request and refer the complaint to an investigator;
- dismiss the reasons, maintain the file in conciliation and designate a conciliator. At this point, the conciliation procedure becomes compulsory;
- decide to reject the complaint because of the refusal of the complainant to participate in conciliation. This measure, which is allowed, is used only as a last resort, and after the Commissioner has tried to convince the complainant that conciliation is the appropriate procedure. [on line]. <http://www.deontologie-policiere.gouv.qc.ca/index.php?id=161&L=1>.

159 See Police Act:

Sec. 189: The Commissioner and any person acting as an investigator for the purposes of this division may require of any person any information or document he considers necessary.

Sec. 190: No person may hinder, in any manner whatever, the Commissioner or any person acting as an investigator for the purposes of this division, deceive him through concealment or by making a false declaration, refuse to furnish him with information or a document relating to the complaint he is investigating, refuse to allow him to make a copy of such a document, or conceal or destroy such a document.

Sec. 192: Sections 189, 190 [...] do not apply in respect of a police officer whose conduct is the subject-matter of a complaint.

No statement made by a police officer in whose respect no complaint has been made and who cooperates with the Commissioner or the investigators during an investigation carried out following a complaint made against another police officer, may be used or held against that police officer, except in a case of perjury.

See: *Shallow v. Simard* 2008 QCCS 2981, July 7, 2008.

allows a police officer to remain silent before the Police Ethics Committee. Many believe that this protection against self-incrimination should only apply in criminal matters, pursuant to Section 11 of the Canadian Charter¹⁶⁰, and not in civil matters.

In its brief the CRARR says it no longer recommends that victims of racial profiling appeal automatically to the Police Ethics Commissioner, because: 1) the Commissioner has rendered only one racial profiling ruling in the last decade; while an innumerable number of racial discrimination complaints have been filed over the years, 2) the Commissioner has not adopted any guidelines relative to racial profiling complaints and 3) “because section 192 of the Police Act gives police officers who are the subject of a complaint the right to not cooperate with the Commissioner’s investigation, which has the effect of giving the police officers a superior advantage.”

It is important to note that “the Ombudsman has already written about similar issues, specifically in 1997 on the police ethics system, on the occasion of the adoption of the Act respecting the Act Amending the Police Organization Act and the Police Act with respect to police ethics.”¹⁶¹

Finally, although participants acknowledged the regulatory role performed by the police ethics system, they complained about its penalties¹⁶², which they often find to be inappropriate or hardly dissuasive.

160 *Canadian Charter of Rights and Freedoms*, Part 1 of the Constitution Act of 1982 [Appendix B of the Canada Act, 1982, c. 11 (U.K)], sec.11: Any person charged with an offence has the right (c) not to be compelled to be a witness in proceedings against that person in respect of the offence.

161 QUÉBEC OMBUDSMAN, op.cit., note 130, p. 5.

162 In determining the penalty, the Committee takes into consideration the seriousness of the misconduct as well as all the circumstances, as well as the content of the ethics record of the police officer involved. See: Committee Report, p. 15.

Police Act, sec. 233: The committee shall decide whether the conduct of the police officer constitutes a transgression of the Code of ethics and, if so, shall impose a penalty.

Before imposing a penalty, the committee shall allow the parties to be heard in respect of the penalty.

Police Act, sec. 234: Where the ethics committee comes to the decision that the conduct of a police officer is a transgression of the Code of ethics, it may, within 14 days after the date of the decision, impose on the police officer, for each count, one of the following penalties which may, where applicable, be consecutive:

- (1) a warning;
- (2) a reprimand;
- (3) a rebuke;
- (4) a suspension without salary for a period not exceeding 60 working days;
- (5) a demotion;
- (6) dismissal.

In addition, where a penalty cannot be imposed on a police officer because he has resigned, has been dismissed or has retired, the police officer may be declared disqualified from exercising the functions of a peace officer for a period of not more than five years.

Police Act, sec. 235: In determining the penalty, the ethics committee shall take into account the gravity of the misconduct having regard to all the circumstances, and the ethical record of the police officer.

In fixing the duration of the suspension without salary of a police officer, the committee shall also take into account any period during which the police officer was, in respect of the same facts, provisionally relieved of his duties without salary by the director of the police force to which he belongs. Where applicable, the committee may order that the police officer be paid the salary and other benefits attaching to the position that he did not receive for the period during which he was provisionally relieved of his duties which exceeds the duration of the suspension without salary imposed on him by the committee. Upon its filing in the office of the competent court by any interested person, a decision ordering the back payment of salary becomes executory as if it were a judgment of that court and has all the effects thereof.

THE COMMISSION RECOMMENDS:

- that the government amend the Police Act in order to make the conciliation process optional when a complaint is filed with the Police Ethics Commissioner and to guarantee an investigation when the Commissioner has reason to believe that the Code of Ethics of Québec Police Officers has been violated;
- that the government amend the Police Act in order to abrogate section 192, which confers upon police officers the right to silence and non-collaboration, given that the police ethics system is of civil rather than criminal nature;¹⁶³
- that the ministère de la Sécurité publique establish guidelines for the application of the Code of ethics of Québec police officers in order to better guide the Police Ethics Committee in the attribution of the penalties provided for in sections 234 and 235 of the Police Act;¹⁶⁴
- that the ministère de la Sécurité publique and the Director of Penal and Criminal Prosecution issue a directive that provides for withdrawing charges by the Crown in application of sections 24(1) and 24(2) of the Canadian Charter when the Code of Ethics of Québec Police Officers has been violated by a police officer;¹⁶⁵
- that the government amend the Police Act in order that, when it is proven that a ticket was issued as a result of motives or circumstances violating the Code of ethics of Québec Police Officers, the entity that collected the fine (municipality or government) provide financial compensation equivalent to the sum and fees paid.

2.3.1.3 The obligation to accountability and representativity

In terms of accountability and independence, the office of the Police Ethics Commissioner is an entity that is independent of the police departments, and its personnel are exclusively civilians. It can be seen from the organization chart¹⁶⁶ that the Commissioner and Deputy Commissioner are lawyers. The heads of all of the other departments are lawyers, with the exception of the investigations department. The Commissioner and the Deputy Commissioner and the members of the Committee are appointed by the government for a renewable term of up to five years.

Some participants proposed that, in order to guarantee greater independence and impartiality in the ethics system, the process for appointing the Commissioner, Deputy Commissioner and members of the Committee be made known to the public.

163 This right to silence should apply only in criminal investigations and only pursuant to section 11 (c) of the Canadian Charter, *op.cit.* note 160.

164 The possible penalties for each offence are listed in the Criminal Code.

165 Canadian Charter: sec. 24 (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

166 POLICE ETHICS COMMISSIONER, *op.cit.*, note 145.

Several participants also deplored that persons from ethnic and racialized minorities are not fairly represented within the institution, and that there are too many former police officers among the investigators.

THE COMMISSION RECOMMENDS:

- that the ministère de la Sécurité publique implement appropriate measures so that a majority of civilians who are not former police officers conduct the investigations and the conciliation process involving police ethics;
- that, in order to guarantee greater independence and impartiality for the ethics system, the process of appointing the Ethics Commissioner, the Deputy Commissioner, and members of the Ethics Committee be made known to the public;
- that the ministère de la Sécurité publique implement appropriate measures in order to ensure that there is fair representation of ethnic and racialized minorities and women within police ethics system.

2.3.2 CRIMINAL INVESTIGATION OF POLICE INCIDENTS INVOLVING SEVERE INJURIES OR DEATH

In the past several decades, there have been a number of incidents involving police officers in Montréal in which persons from racialized communities have died.¹⁶⁷ The most recent was the death of Fredy Villanueva, who was shot by a SPVM police officer in August 2008. It is important to remember that there are several different investigatory procedures that can be triggered by such incidents, all dealing with the same event but from different angles.

In this section, the Commission will look at the process involved in investigations that could lead to criminal charges. Such investigations are conducted pursuant to the Ministerial Policy¹⁶⁸ applicable when deaths or serious injuries occur on the occasion of a police operation or during detention. In such situations, the Policy provides that the ministère de la Sécurité publique designates a different police department than the one to which the officers involved belong to investigate their actions.¹⁶⁹

It should be noted that the remedies exercised under the Code of Ethics, under the Charter with the Commission or with regard to civil liability before a tribunal are civil, and not criminal. In such cases, the burden of proof is according to the “preponderance of evidence”. This means that the plaintiff must “provide evidence that makes the existence of a fact more probable than its non-existence”.¹⁷⁰

Evidence in criminal matters, on the other hand, uses the standard of “beyond all reasonable doubt”, based on the principle of the presumed innocence of the defendant that is enshrined in the Canadian Charter (sec. 11 (d)). Because this standard is more difficult to prove, it is possible that, for the same incident, police officers could be found to be ethically or civilly responsible and not be subject to criminal prosecution.

167 Among the racialized persons killed by Montréal police officers are Anthony Griffin (November 1987), Marcellus François (July 1991), Mohamed Anas Bennis (December 2005). For more details, see: QUÉBEC OMBUDSMAN, op.cit., note 131, p. 65-68.

168 The legislative basis of this policy is the Police Act (R.S.Q., c. P-13.1, sec. 304), which makes the ministre de la Sécurité publique responsible for determining the main orientations for police organization and crime prevention. The Police Act provides that the Minister must develop policies for the use of police organizations.

169 The investigation conducted in application of the Ministerial Policy is essentially a criminal investigation.

170 See: Jean-Claude ROYER, *La preuve civile*, 3rd ed., Cowansville, Éditions Yvon Blais, 2003, p. 113. See also: art. 2804 C.C.Q. (Civil Code of Québec, L.Q. 1991, c. 64).

During the consultation, a number of participants indicated that they did not trust this type of investigation. The Commission is of the opinion¹⁷¹ that the principle of having police from one police department investigate another is problematic. When the investigation is completed, the police report is transferred to the Director of Criminal and Penal Prosecution. More often than not, there is no criminal prosecution, and fact, when one takes place, it is very rare for the police involved to be found guilty or any wrongdoing.

In the view of the participants, this process lacks transparency, especially since the reasons for deciding whether to undertake criminal prosecution are generally confidential.¹⁷² Citizens complain that they do not receive relevant information that allows them to “evaluate the integrity, probity and efficacy of the process”.¹⁷³

Another concern that is very often reported is the impartiality of the investigators. Because police officers investigate their peers, many consider that “police” solidarity makes it impossible to trust the process.

The participants propose that an independent entity consisting of investigators who are specifically trained for this type of investigation be assigned to this task, and not existing police officers.¹⁷⁴ Moreover, civilians should also monitor and ensure the accountability of the process.¹⁷⁵

In addition, other participants noted that measures aimed at ensuring a fair representation of ethnocultural diversity among the investigators ought to be considered.

In a report that provides a detailed analysis of the procedure that is currently followed in Québec for this type of investigation, the Québec Ombudsman comes to the conclusion that the *status quo* is not acceptable and is not in the interest of citizens, police officers or sound governance.”¹⁷⁶

In its analysis, the Ombudsman reiterates and adapts the criteria used in the second Corbo report¹⁷⁷ such as “the consistent application of formal rules, the transparency of the process and the results, impartiality, independence and, finally, oversight and accountability.”¹⁷⁸ Eight recommendations for a reform along these lines were formulated in the Ombudsman’s report. The Commission unreservedly subscribes to them, and our recommendations are largely inspired by them.

171 Just as in the Québec Ombudsman’s report.

172 In the case of the Villanueva affair, exceptionally, the Director of Criminal and Penal Prosecution publicly disclosed numerous details of the testimony collected and the reasons leading to the decision not to lay criminal charges against the police officers involved.

173 QUÉBEC OMBUDSMAN, op.cit., note 130, p.26.

174 *Ibid.*, p. 8. Incidentally, the QUÉBEC OMBUDSMAN subscribes to the conclusions of the Poitras, Corbo, Bellemar, Davies (British Columbia) and Salhany (Manitoba) Commissions, which stated that entrusting the investigation of serious incidents involving police officers to a different police department does not ensure their independence.

175 *Ibid.*, p. 5.

176 *Ibid.*, p. 8, “According to officials in the Ministère de la Sécurité publique, the Policy is now being revised. Among the changes made so far since December 2008, each instance of application of the Ministerial Policy has been announced in a press release, first as a “Ministerial Policy of independent investigation” and then, since January 2009, simply as an “independent investigation,” MINISTÈRE DE LA SÉCURITÉ PUBLIQUE, “Politique ministérielle d’enquête indépendante”, press release, December 22, 2008, [on line]. <http://www.msp.gouv.qc.ca/msp/communiqués/communiqués.asp?c=1580&theme=police> (Page consulted on July 23, 2009) and ministère de la Sécurité publique, “Enquête indépendante relative à une intervention policière”, press release, January 11, 2009, [on line]. <http://www.msp.gouv.qc.ca/msp/communiqués/communiqués.asp?c=1582&theme=police> (Page consulted on July 23, 2009).

177 Op.cit., note 151, p. 18-19.

5. [...]

6. [Translation] Those in charge of the complaint process must be appointed by an independent public authority.

178 QUÉBEC OMBUDSMAN, op.cit., note 130, p.15.

2.3.2.1 Legislative framework governing the investigation process

The Police Act¹⁷⁹ stipulates that the ministre de la Sécurité publique is responsible for preparing strategic plans, policies and the Guide des pratiques policières [Guide to Police Practices].

The practice of intervening in the event of death or serious life-threatening injuries as part of a police operation or during detention is found in this Guide.¹⁸⁰

As the Ombudsman indicates, “As its name indicates, Guide des pratiques policières is a ‘guide.’ Police organizations are autonomous and free to determine different directives. Some police forces have adopted the guide in full, while others have adapted it to better correspond to their reality.”¹⁸¹

The Ombudsman also notes that there is no definition of what constitutes a serious life-threatening injury in the Ministerial Policy.¹⁸²

“This term is therefore evaluated on a case-by-case basis by the police chiefs responsible for notifying the ministère de la Sécurité publique when an incident occurs that, in their estimation, warrants application of the Ministerial Policy.”

Pursuant to this policy, once the investigation has been completed by the designated police department, it sends its report to the Director of Criminal and Penal Prosecutions.¹⁸³ The decision to file criminal charges against the police involved is determined according to Section 25 of the Criminal Code.¹⁸⁴

The Ombudsman points out:

“From the moment when it is assigned to do the investigation, the designated police force has entire discretion to conduct the investigation according to its usual practices. In principle,

179 Police Act, sec. 289 and 304.

180 Police practice: 2.3.12 – Death or life-threatening injuries on the occasion of a police operation or during detention [translation] appears in Section 2.0 Operations, sub-section 2.3 “Arrest and Detention” of the Guide.

181 QUÉBEC OMBUDSMAN, op.cit., note 130, p. 8.

182 *Ibid*, p. 9.

183 The police department also sends its report to the Coroner’s office.

184 *Criminal Code* (L.R., 1985, c. C-46), 25. (1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law:

[...] (b) as a peace officer or public officer,

[...] is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

[...]

(3) Subject to sub-sections (4) and (5), a person is not justified for the purposes of sub-section (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person’s protection from death or grievous bodily harm.

[...]

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if:

(a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;

(b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;

(c) the person to be arrested takes flight to avoid arrest;

(d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and

(e) the flight cannot be prevented by reasonable means in a less violent manner.

the investigation method under the Ministerial Policy is the same as in any other criminal investigation.

The investigating force assigns the case to one or more of the criminal investigators who normally handle major criminal or homicide investigations. Some police forces have adopted special directives or procedures for investigations conducted under the Ministerial Policy. However, the Ministère de la Sécurité publique confirmed to us that there are no specific procedures or directives governing or formalizing investigation methods under Québec's Ministerial Policy. The method of investigation is left entirely to the police force assigned to this.

[...]

Ministère de la Sécurité publique has no by-law, directive, or policy setting procedures specific to such inquiries."¹⁸⁵

A recent illustration of the anachronisms of such a legislative vacuum was provided by the Ombudsman with respect to the Villanueva affair:

"The Sûreté du Québec investigators in charge of the investigation did not attempt to question the police officers involved in events before receiving written reports from them. The witness officer filed her report six days after the events and the officer directly involved, thirty days later. After receiving the written reports, investigators chose not to question the witness officer, and met with the officer directly involved, who exercised his right to silence.

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The Ombudsman is concerned that, unlike other witnesses, the officers involved were not separated from each other and questioned directly. Furthermore, the amount of time given the officers to provide their own versions of the facts remains unexplained."¹⁸⁶

The Commission, like the Ombudsman and a number of participants, maintains that the Police Act must be amended in order to provide a regulatory framework specifying the standards for how an inquiry should take place and how it is made public. The Ombudsman clearly set out the milestones and elements that such a framework ought to include:

That the Police Act [...] ¹⁸⁷ be amended to provide for regulatory oversight of the investigation process for incidents involving police officers that lead to death, serious injury, or injury resulting from the use of a firearm or conducted energy device during a police intervention or detention. These new legislative and regulatory provisions should include:

- i. A definition of "serious injury"
- ii. A definition of "witness officer" and "subject or involved officer"
- iii. The requirement that the police force involved in the events immediately report the incident to the appropriate body, which will take charge of conducting an investigation of the events
- iv. The obligation on the part of the police force involved to preserve the integrity of the evidence

¹⁸⁵ Op.cit., note 130, p.16.

¹⁸⁶ Footnote in the Ombudsman's report, p. 18: "Stéphanie Pilotte submitted her report on August 15, 2008, and Jean-Loup Lapointe on September 9, 2008." This information was supplied to us in a conversation with François Brière, criminal and penal prosecuting attorney designated December 18, 2008, by the Director of criminal and Penal Prosecutions to advise Sûreté du Québec agents on all aspects of their investigation. The information was later confirmed by Sûreté du Québec investigator Bruno Duchesne at the coroner's inquest hearings held between October 26 and 30, 2009.

¹⁸⁷ R.S.Q. c. P-13.

and scene pending the arrival of the investigators designated to conduct the investigation

v. The granting of priority at the scene to the investigators responsible for investigating the involved officers

vi. A prohibition against communication between officers involved in the incident and the obligation on the part of the police chief to ensure that involved officers are segregated until they can be interviewed by the investigators in charge of the investigation

vii. An obligation on the part of investigators to interview the involved officers (witnesses or subjects) as quickly as possible and within a maximum of 24 hours after the incident, unless there are exceptional and justifiable circumstances

viii. The obligation on the part of witness officers to fully cooperate with the investigation and provide all relevant documents, including notes on the events

ix. The establishment of an ethics violation for any officer who breaches or fails to comply with the regulatory requirements set forth, with investigators having the option of filing a complaint in this regard with the Police Ethics Commissioner.¹⁸⁸

THE COMMISSION RECOMMENDS:

- that the government amend the Police Act in order to provide a regulatory framework for the process of investigating incidents involving police officers that lead to death or serious injury, and that this framework include all the elements and milestones recommended by the Ombudsman;
- that the ministère de la Sécurité publique adopt guidelines to ensure greater transparency for the investigation process, in particular with respect to the reports transferred to the Director of Criminal and Penal Prosecution.

55

2.3.2.2 Need to assure the impartiality of this type of investigation

These investigations are currently conducted by police, but the Ministerial Policy is essentially based on the assumption that, if the investigation is conducted by a police department different from the one that is involved in the events, it allows for an independent investigation.

However, a number of the participants in the consultation asserted that they could not have confidence in an investigation conducted by police officers who are asked to judge their peers. While acknowledging the police expertise necessary to conduct these investigations, these participants, along with the Ombudsman, consider that the presence of civilian investigators could assure greater impartiality. In addition, fair representation of ethnocultural diversity and women among the investigators is essential in order to improve the process.

¹⁸⁸ OMBUDSMAN, op.cit., note 130, Recommendation 1, p. 21-22.

Given these imperatives, the creation of an independent entity consisting of civilians and former police officers would be the route to take. It is a model that is already used in some Canadian provinces.¹⁸⁹

THE COMMISSION, LIKE THE OMBUDSMAN, RECOMMENDS:

- that the government amend the Police Act in order to establish a Special Investigations Bureau, an independent agency that would be charged with conducting investigations of incidents involving police officers that result in death or life-threatening injuries;
- that the government take steps to ensure the presence of civilian investigators who are not former police officers on the teams responsible for conducting this type of investigation;
- that the government promote a male-female balance and a representation of Québec's ethnocultural diversity among those responsible for conducting, monitoring and supervising these investigations.

2.3.2.3 Accountability and reporting

For many participants, accountability and reporting remain a way of ensuring the legitimacy of the investigations. At present, the ministère de la Sécurité publique is not able to report in a satisfactory and detailed way on the application of the Ministerial Policy by police organizations.

Moreover, in order to ensure that the entire process is transparent, an independent organization could be responsible for coordinating such investigations (such as a Special Investigations Bureau)¹⁹⁰ and issue an annual public report.

THE COMMISSION RECOMMENDS:

- that the ministre de la Sécurité publique submit an annual report to the National Assembly on investigations of incidents involving police officers resulting in a death or serious injuries, and on the decisions made in such cases;
- that any new independent entity charged with investigating incidents involving police officers that result in death or serious injuries submit an annual report to the National Assembly on the management of the investigations it has conducted.

189 Experience acquired in other administrations demonstrates that it is possible to train qualified civilian investigators to conduct investigations of serious incidences involving police officers. See: George W. ADAMS, Q.C. (2003), *Review Report on the Special Investigations Unit* See: George W. ADAMS, Q.C. (2003), *Review Report on the Special Investigations Unit Reforms*. Prepared for the Attorney General of Ontario, [on line]. <http://www.siu.on.ca/adamsreview2003.pdf>; Thomas R. BRAIDWOOD, Q.C. (2009), *Restoring Public Confidence: Restricting the Use of Conducted Energy Weapons in British Columbia*, Braidwood Commission on Conducted Energy Weapon Use, June 2009, [on line]. <http://www.braidwoodinquiry.ca/report/>; Patrick J. LESAGE, Q.C. (2005). *Report on the Police Complaints System in Ontario*. Submitted to the Attorney General. Toronto: Ministry of the Attorney General, [on line]. <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/LeSage/enfullreport.pdf>; SPECIAL INVESTIGATIONS UNIT (SIU). *One law: 2007-2008 Annual Report*. Mississauga, Ontario: Special Investigations Unit [on line]. http://www.siu.on.ca/pdf/siu_-_2007-2008.pdf; Josiah WOOD, Q.C. (2007). *Report on the Review of the Police Complaint Process in British Columbia*. Submitted to the Minister of Public Safety and Solicitor General, British Columbia.

190 Recommendation of the Québec Ombudsman.

3 . T H E E D U C A T I O N

S E C T O R

3.1 C U R R E N T C O N T E X T A N D I S S U E S

During the public hearings, a number of groups, researchers and officials in the education sector, echoing the issues raised in our consultation document, called our attention to a varied range of factors that compromise the right of youth from racialized minorities or immigrant groups to non-discrimination, both in the application of codes of conduct and disciplinary measures and with respect to decisions, measures and organizational policies that have an impact on their educational path and their chances of success. These many forms of discrimination are not directly the result of the logic of racial profiling as such.

The concept of profiling is applied to decisions and measures intended to maintain discipline and guarantee security within the school environment. In fact, the application of codes of ethics and disciplinary punishments (e.g.: detention, suspension, expulsion, etc.) constitutes “actions taken by persons in authority [...] for reasons of security, safety or protection of public.” In addition, when these actions are based on real or assumed identifications, such as race, colour, ethnic or national origin, and are without real grounds or reasonable suspicion, and have the effect of exposing the persons concerned to different treatment or disproportionate punishment, the application of the concept of racial profiling to describe the nature of the discriminatory act performed is entirely justified.

However, it is different with decisions, measures or organizational policies that determine the educational path of students. The concept of profiling does not apply. There is no doubt that the actions or decisions of the school officials involved are taken by persons in positions of authority, but they are not taken for reasons of security, safety or protection of the public. The discrimination factors that help to explain the educational problems of racialized students cannot be reduced to merely a series of individual decisions, based consciously or not on racial prejudice. As we will see, this is a form of systemic discrimination. Such discrimination is based in part on individual decisions affected by prejudice, but also, and significantly, on organizational models or institutional structures that, although appearing to be neutral, are not adapted to the needs of certain groups or are clearly harmful to them.

As we will see below, the over-representation of Black communities or immigrant students in special education classes, among drop-outs or on educational paths that do not meet their needs and interests cannot be explained solely in terms of ethnoracial discrimination. The disadvantages that affect certain racialized minorities or recent immigrants are a factor that cannot be neglected in responding to the problems of school drop-out rates and failure among youngsters from these communities. That is why any measure that is intended to promote better school results for racialized or immigrant students must take into account the inter-relationship between disadvantage and ethnoracial identity.

In recent years, the government and the entire education sector have made success and retention in school a priority goal, and a number of initiatives have been introduced in order to achieve them. However, as part of these efforts, little attention has been paid to the problems that more specifically

affect youth from racialized minorities and the children of recent immigrants. During the public consultation, a number of participants deplored that the education sector is little inclined to recognize the existence of ethnoracial inequalities in access to educational success, and even less willing to engage in any self-criticism of its standards and organizational procedures in connection with this problem. In terms of racial profiling associated with the application of codes of conduct, the attitude of denial in which certain members of the education sector persist contrasts sharply with the testimony of youth and community organizations that we heard.

The Commission hopes that this report will be an opportunity for the education sector to reconsider its practices and recognize the problems of ethnoracial discrimination, whether direct, indirect or systemic. Just as in the public security sector, the main obstacle to their recognition of discrimination is, if not the absence, then at least the shortage of data to guide measures aimed at promoting respect for the right of equality of youth from racialized minorities and recent immigrants throughout their schooling.

3.2 DISCIPLINARY MEASURES AND THE APPLICATION OF CODES OF CONDUCT

As noted above, the way in which codes of conduct and disciplinary measures are applied in the education sector can result in manifestations of racial profiling. As observed with respect to public security, racial profiling is especially sustained by the assumption, very often unconscious, that certain racialized groups, and especially young Blacks, are more likely to disturb order or threaten security within a school. In the following paragraphs, we will suggest certain potential solutions for reducing the risks of racial profiling associated with the school's exercising of its responsibilities with respect to order and security.

3.2.1 TARGETED SCRUTINY

Because they are considered to be at greater risk of adopting anti-social behaviours, youth of racialized minorities receive more intense scrutiny by school personnel than what is applied to other students. According to this logic, disciplinary control adopts groups of individuals who are pre-judged as being more likely to adopt objectively threatening or disruptive behaviour as its target rather than the actual behaviour. As has been reported to us, groups of young Blacks in the same physical space, such as a cafeteria or a common area, are likely to attract a disproportionate amount of attention from the personnel responsible for maintaining order in the school.

According to much of the testimony that we heard, this form of profiling has its source in prejudices and stereotypes that ascribe a greater cultural predisposition to delinquency to youth from certain racialized groups. Several participants deplored the tendency of school personnel to rush to suspect, without reason that young Blacks and young Latinos, for example, belong to a street gang as soon as they gather in a group. As such, it is not rare for the scrutiny exercised by school personnel to be greater during extracurricular activities that are very popular among young Blacks, such as basketball or hip-hop shows, and that on such occasions, for exceptional security arrangements be put in place, such as systematic ID checks in order to detect undesirable outside elements.

Black students, from a Montreal cégep reported that they were the target of unjustified ID checks at a dance organized at school. Apparently, the security guards only checked the IDs of young Blacks, on the grounds that they suspected that there was a drug dealer in the school.

Of course, exceptional scrutiny may be understandable if the personnel have reason to believe that members of street gangs are present in the school, to use the example reported to us. However, some youth challenge the tendency of school authorities to intervene more on the basis of presuppositions linked to prejudice than on the basis of targeted information or rational signs that would allow for the identification of real suspects. In all cases, even in cases where the school tightens its security on the basis of reasonable grounds, it should ensure that the methods used do not turn into a form of racial profiling.

3.2.2 THE APPLICATION OF DISCIPLINARY MEASURES: A LAST RESORT?

Based on this disproportionate scrutiny given the same behaviour, groups of racialized students are more likely to be punished for violating rules that are also applied to them more severely. In this respect, one criticism that was frequently heard was of the tendency of school officials to turn to disciplinary measures too quickly for racialized students. In other words, school personnel are criticized for not sufficiently respecting the principle of gradation of response in applying punishments. It is said that they frequently turn to punitive measures too quickly without having first exhausted the range of “alternative” measures available to assist students in correcting their behaviour. The severity of the punishment ought to be proportional to the gravity of the fault charged, and the most severe punishments, such as suspension or expulsion, should only be used as a last resort.

Schools too often rely on a repressive approach, in which every fault automatically calls for punishment. Although the trend for schools to prefer a repressive rather than a preventive approach in response to misbehaviour does not affect racialized students exclusively, it would appear that they are disproportionately subject to its effects.

Several participants noted that the repressive approach is more appropriate for police than for schools, which, given their socialization mission,¹⁹¹ should instead emphasize prevention, education and reintegration. Many people who took part in the public hearings would prefer that interventions by school personnel to correct misbehaviour put more emphasis on dialogue and sensitization. They also stressed the importance of keeping students in school in order to maintain their motivation and perseverance. It should be noted that, according to many participants, schools would benefit from establishing partnerships with community organizations and collaborating with parents in seeking negotiated solutions for students with behavioural problems. As a result of their better grasp of the situation, parents, like community organizations, are often better able to assist school officials in achieving behavioural changes in students. Such an approach is more likely to yield positive results than purely repressive ones (e.g.: suspension, expulsion, reports to the police).

3.2.3 INVOLVEMENT OF SCHOOL ADMINISTRATION

In order to ensure that interventions by school personnel who are responsible for applying the code of conduct are free of discrimination, school administrations must first analyze the situation at their school. This will provide the knowledge required to act in a focused way in order to correct any problem. Too few school administrators take the time to review issues associated with security and discipline in their school with an eye for discriminatory bias. In order to ensure a better analysis of the situation and detect and measure the scope of racial profiling, if present, it is necessary to document the application of disciplinary measures.

¹⁹¹ *Education Act*, R.S.Q., c. I-13.3, sec. 36(2): (In keeping with the principle of equality of opportunity, the mission of a school is to impart knowledge to students, foster their social development and give them qualifications, while enabling them to undertake and achieve success in a course of study.” (emphasis added).

School administrators ought to make it clear to their staff what they require with respect to the prevention of racial profiling, and ought to conduct regular follow-up in order to ensure that their instructions are actually being followed. From a preventive approach, the administration should organize training pertaining to discrimination and racial profiling, not only for supervisors, but for all staff members who are likely to apply the code of conduct and rules as part of their work.

It would seem that, in the past few years, more and more secondary schools, cégeps and universities have sub-contracted order-keeping and security functions on school property to private agencies.¹⁹² When that is the case, it is more difficult for the administration of the institution to apply “quality control” to the work done by guards who do not report directly to them. However, just as the security guards must be accountable to the agency that employs them, the agency is accountable to the school administration with which it has a service contract. Therefore, as a client of the agency, the school has the power, and even the obligation, to ensure that the intervention methods used by the guards respect the right to equality without discrimination guaranteed to students, not only by the Québec Charter, but also in most of the “educational mission statements” and codes of conduct adopted by each school.

3.2.4 THE REPERCUSSIONS OF PROFILING ON EDUCATIONAL SUCCESS AND RETENTION

It is worth emphasizing that, the discriminatory application of codes of conduct and of punishments for security reasons in school is not unrelated to the problem of school drop-out rates and failure among youth from racialized minorities. Racialized students who are expelled or suspended are more likely to experience failure in school, and as a result of lack of motivation, to drop out. In addition, during those periods when their schooling is interrupted, or if they drop out early, these youth are likely to spend more time in public spaces, increasing their contacts with police, and by that fact alone, placing them at greater risk of experiencing profiling.

“I’m Colombian. I have two sons. One has dark skin while the other one, who has lighter skin, has never been stopped and questioned by police. Two sons, the same education, two different paths. I believe that the school is responsible for the difference. If the school principal hadn’t taken away soccer from my son (as a disciplinary measure), he could have turned it around and completed high school. He did eventually finish high school but at adult education when he was 18.”

A mother of Colombian origin

Moreover, once they are adults, drop-outs, whatever their origin, are at greater risk of experiencing poverty and socio-economic exclusion. In short, racial profiling cannot be considered to be independent of the more general systemic discrimination that youth experience in their contacts and interactions with government institutions.

THE COMMISSION RECOMMENDS:

that school administrations: 1) explicitly state in their educational mission and organizational standards that discrimination in all its forms is prohibited at school, including with respect to maintaining order, discipline and security and 2) examine their practices and organizational standards in order to ensure that they are free of discriminatory bias;

¹⁹² In the case of secondary schools, the work of the security agents is carried out in collaboration with members of the school staff.

- that school administrators collaborate more closely with parents and community organizations in order to find solutions to student behavioural problems;
- that school boards offer training on discrimination and racial profiling to school administrators, faculty and non-teaching staff;
- that, when school administrations hire a private security agency, they require that the work of the guards be free of racial profiling, that clear instructions to that effect be given and that close control be exercised over them.

3.3 EDUCATIONAL PATH AND ACADEMIC SUCCESS

In this section, the Commission will examine the impact of certain socio-demographic factors, such as origin, colour, immigration status and socio-economic status, on the guidance that students receive starting at secondary school toward differentiated education options, and on their success at school and graduation. Although the issue of discrimination is only one of the explanatory factors to be taken into account in understanding this phenomenon, it nevertheless remains unavoidable.

However, some qualifications are required with respect to the terms used. In this regard, we were told by a number of participants that the logic at work in these processes is often more of a reflection of systemic discrimination than actual profiling. When there are practices and organizational models at work that have disproportionately harmful effects on students from racialized minorities or immigrant origins, even though they appear to be neutral, there is systemic discrimination involved.

Furthermore, such systemic discrimination may be sustained by prejudices, whether conscious or not. For example, it sometimes happens that the orientation of a student toward particular educational options and the earlier classification and evaluation practices used in orienting that decision are based on prejudices that are founded on the student's origin or culture.

3.3.1 THE IMPACT OF PREJUDICE ON THE EDUCATIONAL PATH

During the consultation, a number of participants mentioned the influence of prejudice on the orientation process in the various educational paths available to students, based on their own experience in the field or on their professional expertise.

The education sector often resorts to categorization in the processes used to orient and evaluate students. Although these processes are inevitable, they nevertheless lead to labelling, in the sense that school personnel are at risk of categorizing students as a function of their social status or group identity, whether real or assumed. Such labelling has the effect of causing the school to reduce the range of possibilities offered to the student. It can also have an impact on the way the counsellor interacts with the student, such as investing less effort with some students because of lower expectations, or automatically orienting students toward education that is focused on employment, based on some prejudice about their capacity to pursue later schooling. It was mentioned on numerous occasions during the consultation that young Blacks were especially likely to be victims of these stereotypes, expressed in the form of lower expectations. Due to a lack of vigilance on the part of the school administration, such prejudice and discriminatory attitudes, whether conscious or not, may ultimately leave a systemic imprint on the school's institutional culture. Although categorization is inherent to every form of perception, it is important for school personnel to be aware of it in order to limit its impact on how they evaluate the capacities or chances of success of students.

Schools are often reproached for adopting a form of communication that is overly directive, which dictates how parental participation must be exercised. The school tends not to recognize parents as an equal partner in the educational and socialization functions that it assumes with their child. In fact, some researchers¹⁹³ and community organizations, such as the Third Avenue Resource Centre, assert that this model of asymmetric communication is applied especially to immigrant parents, because of the tendency of school personnel to disqualify them from the outset based on the pretext that they do not have the cultural competencies to properly understand the school's expectations of them.

Prejudices and ethnocultural stereotypes can not only affect the relationship between counsellor and student, but also the relationship between school and parents. More specifically, school personnel do not always give parents from racialized groups the place they should have in decisions pertaining to the choice of educational paths offered to their child. We were told that a number of parents believe that they are not sufficiently involved in the decision-making process in the choice of paths. They have the impression that they are only informed once the decision has been made, which makes them feel unqualified.

The parent-school relationship can seem uneasy when the counsellors come to perceive problems in establishing a connection with parents as cultural obstacles. For example, it sometimes happens that school personnel view the unavailability of parents as a reflection of their lack of commitment to school, and do not try to dig deeper in order to understand the underlying causes, and in particular, factors of an individual or socio-economic nature.

According to the testimony of one school principal, it requires a lot of will and perseverance to establish good contacts with some parents, and the school staff must not automatically conclude that the unavailability of parents is because they have abdicated their responsibility.

In addition to seeking to neutralize the prejudices of school staff, the school also has the responsibility to be creative when establishing communication with immigrant parents is difficult. Current research in education demonstrates that the most successful partnerships between school and immigrant families are the results of the school's capacity to be creative in developing communications strategies. Therefore, in a study of the conditions required in order for family-school collaboration models to succeed, researchers Kanouté and her colleagues demonstrated that the most effective formulas are not the application of a single rigid model, but rather those that reflect the capacity of the school to adapt its communication strategies to the social, economic and cultural realities of immigrant families.¹⁹⁴ The researchers invite the school to adopt alternative models of collaboration when necessary, such as recognizing "mediators" mandated by parents to act on their behalf, including members of their extended family or representatives of community organizations or ethnic organizations, as legitimate interlocutors.

THE COMMISSION RECOMMENDS:

that school boards and schools that serve a clientele of ethnic and racialized minorities make it compulsory for all of their personnel to attend antiracism and intercultural training;

193 Michèle VATZ LAAROUSSI, Fasal KANOUTÉ and Lilyane RACHÉDI, "Les divers modèles de collaborations familles immigrantes-écoles: de l'implication assignée au partenariat," *Revue des sciences de l'éducation*, vol. 34, No. 2, 2008, p. 291-311.

194 *Ibid.*

that schools develop alternative models of parent-school collaboration, specifically recognizing persons or parties asked by parents to act on their behalf, including members of their extended family or representatives of community organizations, as legitimate interlocutors.

3.3.2 FOR BETTER TARGETED SUPPORT FOR DISADVANTAGED SCHOOLS

A number of participants insisted that the efforts to promote educational success by immigrant students and those from Black communities should be closely harmonized with the fight against poverty. In fact, we note that youth from disadvantaged communities are more likely to fail at school and drop out, regardless of whether they belong to an ethnocultural or racialized minority. Therefore, according to the MELS data compiled by the Conseil supérieur de l'éducation, the graduation rate at the end of secondary school in Québec in 2006-2007 was 65.3% in the most disadvantaged schools, compared to 79.1% in the most advantaged ones.¹⁹⁵

The Commission is pleased that, over the past few years, the MELS has developed various programs to facilitate educational success and retention for students in difficulty largely, but not exclusively, from disadvantaged communities. These programs include: "New Approaches, New Solutions"; "I care about school! All together for student success"; "Success for All"; "Supporting Montréal Schools Programs, and Tutoring services, and emergent literacy materials for disadvantaged schools programs.

All of these measures and the programs aimed at encouraging success and retention in schools serving a disadvantaged clientele can only benefit racialized students. That is because, as demonstrated above, a large proportion of these students come from families with high rates of socio-economic disadvantage. While highly laudable, for the most part, these programs are hardly or badly adapted to the needs of the multi-ethnic schools of Greater Montréal.

First, some participants pointed out during the consultation that the index that is currently used by the MELS to allocate funds for additional pedagogical support to disadvantaged schools is poorly adapted to the disadvantages experienced by immigrant children who attend Montréal's multi-ethnic schools. The two indicators used by the MELS for this purpose, as recommended by the Institut de la statistique du Québec, are the under-scolarization of the mother (2/3 of the index weight) and prolonged unemployment (1/3 of the index). In fact, these two indicators may underestimate the disadvantage among many immigrant or racialized families. It is known that the education rate of immigrant mothers is above average because of a selection grid that gives preference to candidates with a high level of education. However, in Québec, the fact that a foreign-trained worker is well-educated is not necessarily a guarantee of successful socio-economic integration given the numerous obstacles such persons face, especially in terms of gaining recognition for their degrees and experience.¹⁹⁶ As a result, a number of them experience occupational downgrading upon arriving in Québec that can result in socioeconomic decline.¹⁹⁷

In light of this, it is important for the MELS to consider whether the indices that are currently used to measure disadvantage in a school's territory are correctly adapted to the poverty profile that is typical of recent immigrants.

195 CONSEIL SUPÉRIEUR DE L'ÉDUCATION, *Rapport sur l'état et les besoins de l'éducation 2008-2010. Conjuguer équité et performance en éducation, un défi de société*, Québec, June 2010, p. 75.

196 Paul Eid (dir.), *Pour une véritable intégration: droit au travail sans discrimination*, Montréal, Fides, 2009 (proceedings of the symposium of this name organized by the Commission in November 2008).

197 Marie-Thérèse CHICHA and Éric CHAREST, "L'intégration des immigrants sur le marché du travail à Montréal. Politiques et enjeux", *Choix IRPP*, vol. 14, No. 2, March 2008, ISSN 0711-0685, [on line]. www.irpp.org.

THE COMMISSION RECOMMENDS:

- that the MELS, in collaboration with the Institut de la statistique du Québec, conduct validity tests in order to ensure that the index of disadvantage used to determine which schools are eligible for additional financial aid is properly adapted to the schools that serve a high proportion of racialized or immigrant families.

Similarly, it is important that the MELS budgets intended to provide educational support for students in difficulty are actually used for this purpose. In fact, some participants from the education sector indicated that it was not rare for these funds to actually be used for the purchase of materials or resources. While this responds to a real need (e.g.: purchase of computers, educational projects intended for other target groups), it does not meet the specific needs of students in disadvantaged areas. In order to deal with this problem, the MELS should insist that the beneficiary schools report back on how the funds were actually spent more systematically, in order to ensure that they go toward providing educational support for “at-risk” student.

Moreover, it would be useful for the MELS to supply the schools with guidelines that establish precise criteria to be met by projects in order to be eligible for the funding programs designed to promote educational success and retention among students in difficulty in disadvantaged neighbourhoods.

THE COMMISSION RECOMMENDS:

- that the MELS demand better reporting from schools that benefit from financial aid programs for disadvantaged schools, in order to ensure that the funds are actually used for projects to promote educational success and retention among students in difficulty in disadvantaged neighbourhoods;
- that the MELS provide schools with guidelines that define the precise criteria that proposed projects must meet in order to be eligible for funding from programs designed to promote educational success and retention among students in difficulty in disadvantaged neighbourhoods.

3.4 SPECIAL NEEDS STUDENTS

Pursuant to the Education Act and the Policy on Special Education entitled *Adapting Our Schools to the Needs of All Students* (1999), the MELS has agreed to offer personalized educational services for students with special needs. Since 2000, these students have fallen into two administrative categories: students with handicaps, social maladjustments or learning difficulties (SHSMLD) and “at-risk” students. While the first category consists of students with a handicap or serious behaviour problem diagnosed by a professional, the second, which is a much larger category, consists of students who “present certain vulnerability factors that may affect their learning or behaviour, and who may therefore be at risk, especially of falling behind either academically or socially, unless there is timely intervention.”¹⁹⁸

The intervention plans prepared for students with special needs (both categories) may call for the student to remain in the regular class with support measures or to be sent to an alternative educational setting, also called “special” classes, to which only students with special needs are assigned. However,

198 MINISTÈRE DE L'ÉDUCATION, DU LOISIR ET DU SPORT, *Organization of Educational Services for At-Risk Students and Students with Handicaps, Social Maladjustments or Learning Difficulties*, 2007.

this option is only to be applied as a last resort. In fact, in its Policy on Special Education, the MELS identifies seven preferred ways of promoting the educational success of children with handicaps, social maladjustments or learning difficulties¹⁹⁹. In fact, in more than one place in the Policy, it states that integration into regular classes constitutes the standard under the Education Act toward which every school board should tend and has the obligation to offer adapted or specialized students to students whose special needs make them necessary, to the extent possible and within the guidelines provided by law. It is only in cases of excessive constraints that the school board may make a choice other than integration into regular classes for children with special needs.²⁰⁰ The Commission has also long recommended such an approach, both in court²⁰¹ and in its opinions and briefs.²⁰²

The Commission is aware of the fact that the decision to send a student to a special class is sometimes in the child's best interest. That being said, during the public consultation, some participants asserted that students from certain minorities are identified as "at-risk" more often, and are assigned to special classes more often. What is really going on? Is there an over-representation of racialized or immigrant students among children diagnosed as SHSMLD or "at-risk" among students sent to special classes? If so, what accounts for this over-representation, and what are the potential solutions for eliminating it? Finally, do we have all the data necessary to draw an accurate snapshot of the situation?

3.4.1 SHSMLDs

Within the context of the consultation, a number of observers and experts from the education sector asserted that the processes for evaluating and categorizing students as SHSMLDs could be tainted by racial profiling. In the following paragraphs, we will examine the existing data pertaining to these students among immigrant and racialized students, taking care to distinguish between those who are sent to special classes and those who are integrated into regular classes.

First of all, the MELS data shows that the proportion of SHSMLD students among immigrant children²⁰³ for the 2000-2001 and 2003-2004 school years was the same or slightly below the general average, both among integrated SHSMLD students (regular classes) and non-integrated ones (special classes).²⁰⁴ However, there is one notable exception: the proportion of SHSMLDs among students born in the

199 MINISTÈRE DE L'ÉDUCATION, DU LOISIR ET DU SPORT, *Adapting Our Schools to the Needs of All Students, A New Direction for Success, Policy on Special Education*, 1999: "Placing the organization of educational services at the service of students with special needs by basing it on the individual evaluation of their abilities and needs, by ensuring that these services are provided in the most natural environment for the students, as close as possible to their place of residence, and by favouring the students integration into regular classes." p. 20 (emphasis added).

200 *Ibid.*, p. 21: Only if integration would impose an excessive constraint on the school board or significantly undermine the rights of the other students can a school board choose a course of action other than to integrate the student into a regular class or group. However, since rights are protected by charters, the school board would have to prove the existence of an excessive constraint; an unjustified refusal could constitute discrimination on the grounds of the handicap of the person about whom the decision was made.

201 For example: *Commission des droits de la personne et des droits de la jeunesse v. Commission scolaire des Phares*, QCTDP, No. 100-53-000009-032, November 30, 2004; *Commission des droits de la personne et des droits de la jeunesse c. Commission scolaire des Phares*, QCTDP, 19, No. 100-53-000012-085, December 2, 2009.

202 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, *L'inclusion en classe ordinaire des élèves présentant une déficience intellectuelle. Proposition d'un cadre organisationnel*, Daniel Ducharme, (Cat: 2.120-12.50), 2007.

203 The category of "students from immigrant families" in the MELS study, includes any "student born outside of Canada (first generation) or born in Canada (second generation), but one of whose parents was born outside of Canada or who does not have either French or English as their mother tongue," MINISTÈRE DE L'ÉDUCATION, DU LOISIR ET DU SPORT, *Portrait scolaire des élèves issus de l'immigration: de 1994-1995 à 2003-2004*, 2006, p. 35.

204 *Ibid.*, p. 18. For example, in 2003-2004, among students from immigrant families, the proportion of non-integrated special needs students was 1.3% in primary school and 1.6% in secondary school, compared to 1.3% in primary school and 1.9% in secondary school for all students.

Caribbean and Bermuda is double the average. Marie McAndrew and Jacques Ledent obtained concordant results in their study of educational success among students from Black communities²⁰⁵ attending public secondary schools in Québec.²⁰⁶ Thus, in the French language sector, students who are born or who have one parent born in the Caribbean are more likely than other students, whether they are immigrant or not, to be found SHSMLD and to be sent to a special class for that reason. The situation is particularly alarming in the case of Creole-speaking Caribbean origin students²⁰⁷. They have a rate of 17.7% among SHSMLD students, of which 14.8% of which are non-integrated, whereas these proportions are 12.6% and 8.9% respectively among all students.

Based on these data, taken from two separate studies with consistent results, the Commission notes a recurring trend. Students from Caribbean Black communities who are diagnosed as SHSMLDs and especially those whose mother tongue is Creole, tend to be sent to special classes more often than other students. The Commission considers these results to be of sufficient concern to urge the MELS and those involved in the education sector to ask themselves questions concerning the reasons underlying this over-representation.

It would be necessary to conduct more intensive studies in order to be able to interpret these figures adequately. First, it would be important to break down these data as a function of the types of problems that justify a SHSMLD diagnosis. This would make it possible to obtain a more precise snapshot of the various types of handicaps or problems diagnosed within each group of immigrant students. For example, are they more concentrated in the categories of “intellectual or physical disabilities” or “serious behaviour problem”? This exercise would enable us to detect possibly discriminatory biases, if present, in the attribution of problem codes, the decision as to whether to integrate a diagnosed student into regular class, or finally, in the educational services provided in the intervention plan.

It should be noted that, during the consultation, a number of participants called on the MELS, along with the schools and school boards, to review their evaluation tools in order to ensure that they are not tainted by prejudices or cultural biases that are likely to result in inadequate classifications. However, beyond the issue of tools, it is important to ensure that the professionals who are responsible for making the diagnoses take the cultural dimension into account in their evaluation. Consideration of the familial and cultural context results in more refined and nuanced readings of the problems, and makes it possible to adapt the measures to the real needs of each student more effectively. Such a caution especially applies to certain types of diagnosis, such as behavioural problems or language impairments.

We currently have little relevant data to ensure that the evaluation and classification of special needs students is not tainted by discriminatory bias.

205 In the study, considered as belonging to “Black communities” were students born or whose parents were born in the Caribbean or Africa and whose mother tongue is French, English or Creole.

206 Marie McANDREW and Jacques LEDENT, *Educational success among high school students from black communities*, Research report, September 2008.

207 The study by McAndrew and Ledent shows that, in general, students of Caribbean origin whose mother tongue is Creole encounter more serious problems in school than students of Caribbean origin whose mother tongue is either French or English. These differences cannot be explained without taking into consideration, notably, the fact that students of Caribbean origin whose mother tongue is Creole, were part of a large wave of Haitian immigration that included a large proportion of disadvantaged persons with low levels of education.

THE COMMISSION RECOMMENDS:

- that the MELS break down the data pertaining to SHSMLD students in such a way as to provide a more refined statistical snapshot that will make it possible to see the relative weight of racialized and immigrant students within each sub-category and the proportion of such students who are sent to special classes;
- that the MELS revise its evaluation tools for special needs students in order to ensure that they are not tainted by cultural biases that result in inadequate classifications, and to ensure that the specialized personnel who are authorized to make these classifications take the cultural dimension into account in their evaluations.

3.4.2 “AT-RISK” STUDENTS

Since 2000, “at-risk” students have been those who “present certain vulnerability factors that may affect their learning or behaviour, and who may therefore be at risk, especially of falling behind either academically or socially, unless there is timely intervention.”²⁰⁸

The Commission shares the point of view expressed by a number of participants in the consultation, to the effect that the introduction of the “at-risk” student category in 2000 poses a problem, because it gives substantial discretionary power to school personnel in terms of deciding which students it should be applied to. It is well known that the exercise of discretionary power leaves a lot of room for subjectivity among those who wield it, and therefore, increases the risks that discriminatory prejudices, such as those based on colour, language, ethnic origin or social class, will taint decision-making processes. In the next section, the Commission will examine the risks of discrimination associated with the use of this category as a tool for detecting certain students in difficulty.

Whereas the SHSMLD category is divided into sub-categories²⁰⁹, each of which is defined according to specific criteria that only certain specifically designated professionals are entitled to use for diagnostic purposes, the label of “at-risk” student instead has been much vague and more of a general criteria, and can be attached to a student without requiring any clinical diagnosis. Therefore, this category may include students with slight intellectual disability as well as those with learning disabilities or minor behavioural problems.

The introduction of this category is a reflection of the MELS’s will to facilitate access to financial resources for students whose learning or behavioural difficulties would have been too slight to justify a SHSMLD diagnosis under the old system, which was then the only way for a school to obtain additional financial assistance for students with special needs. Therefore, the MELS explains that it “introduced the notion of “at-risk” students and abolished the declaration of students as having social maladjustments or learning difficulties. This was done to ensure that all students who experience difficulties in their schooling will be given proper support, without necessarily being labelled as having handicaps, social maladjustments or learning difficulties.”²¹⁰ Although these objectives are understandable, the Commission is concerned by the substantial room left for arbitrary decisions by school personnel who are responsible for applying the “at-risk” student category.

In addition, since the MELS introduced this category, it no longer seems to be producing data that would allow for a count of the students to whom it has been applied or what percentage they

208 MINISTÈRE DE L’ÉDUCATION, DU LOISIR ET DU SPORT, op.cit., note 198.

209 *Ibid.*, p. 12 to 22. These sub-categories are: severe development problems, moderate to severe intellectual impairments, mild motor impairments, organic impairments, severe motor impairments, visual impairments, hearing impairments, pervasive developmental disorders, psychopathological disorders, language disorders.

210 MINISTÈRE DE L’ÉDUCATION, DU LOISIR ET DU SPORT, op.cit., note 198, p. 2 (emphasis added).

represent among special needs students, and more specifically among those placed in special classes. It is also impossible to ascertain the profile of “at-risk” students, and therefore, to track their academic trajectory. In addition, it becomes difficult to identify which factors influenced the decision to identify a student as being “at risk,” and the precise nature of the difficulty (e.g.: behavioural disorder, learning disability, etc.).

There is clearly an absence of data pertaining to the characteristics of “at-risk” students. It is thus essential for the MELS to produce data and analyses in order to ensure that the decision-making is free of discriminatory bias toward students from racialized groups, and in particular those of Caribbean origin.

THE COMMISSION RECOMMENDS:

- that the MELS provide a better definition of the concept of “at-risk” students by more clearly stating the criteria that justify the use of this label by school personnel;
- that the MELS produce data pertaining to the proportion of “at-risk” students represented among racialized and immigrant students, and in particular among those who are sent to special classes or remedial schools;
- that the MELS break down the data pertaining to “at-risk” students from ethnic and racialized students according to whether they are students with learning disabilities or behavioural problems.

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3.5 WELCOME CLASSES

Welcome classes often represent the first gateway to Québec society, not only for youth from immigrant families, but also for their parents. In fact, the education system is often one of the main channels of integration through which immigrant families become acquainted with the various aspects of their adoptive society, along with the labour market. As we will see in the following paragraphs, although welcome classes are an obligatory passage for newly arrived students, the school system is not always ready to welcome them and respond adequately to their needs, thereby creating systemic discrimination against recent immigrants. Furthermore, because 64% of recent immigrants belong to a “visible minority”, according to Statistics Canada²¹¹, this systemic discrimination affects a majority of racialized immigrants.

3.5.1 EDUCATIONAL AND SOCIAL INTEGRATION

Welcome classes are intended to facilitate the educational, language and social integration of allophone students who are newly arrived in Québec. However, it appears that these students are not always offered a framework that corresponds to their profile allowing them to pursue their education in regular classes without academic delay.

During the public consultation, no participant challenged the principle of so-called “closed” welcome classes, but several pointed out certain significant shortcomings associated with this model as it is currently applied in Québec. As was indicated by Armand, Beck and Murphy, “the closed welcome class remains a model that is quite suitable for a large number of students, on condition that the

211 STATISTICS CANADA, 2006 Census data, Product No. 97-562-XCB2006011 in the Statistics Canada catalogue (Québec / Québec, Code 24).

educational team keeps in mind that it constitutes a transition to the regular class and not a parallel course in which too many allophone students are isolated for two or three years.”²¹² It is evident that plunging allophone students directly into regular classes would reduce their chances of success, because they would have to cope with a number of forms of adaptation simultaneously. More specifically, in addition to the language learning, they must deal with a new school system and new classroom rules. Therefore, it is up to the welcome classes to efficiently equip these students so that they can pursue their route to educational and social integration into regular classes as quickly as possible.

At this time, the Educational Integration and Intercultural Education Policy²¹³ does not require doing anything with respect to the organizational structure of the welcome sector, but encourages the education sector to innovate and diversify the approaches used in this area. In fact, the obstacle that is most often reported during the consultation deals precisely with how the school is organized with respect to this sector. Not only does the integration of allophone students seem to be problematic, but the measures adopted with respect to their success seem to be deficient in a number of ways.

In its brief submitted to the Commission, the Fédération des commissions scolaires du Québec pointed out that the situation related to welcome classes is not homogenous. In fact, several participants also mentioned that the resources and services offered to allophones students and their families were not standardized from one school board to another.

The participants and researchers that have examined the issue of welcome classes point out several factors that interfere with the educational and social integration of newly arrived students. It was suggested that the school boards ought to integrate these students into their neighbourhood school from the outset, instead of sending them to their school board’s service point, which is often much farther away from their home. Physical proximity between the student’s school and home not only promotes social and educational integration for the student, but also facilitates the development of links with the parents and their involvement in school life.

Finally, as we know, in order to ensure successful integration, it is essential for school personnel to work closely with the parents of newly arrived students. The Commission considers that one of the essential conditions for a successful integration is for the school to take charge of welcoming allophones students and their families. In this respect, it is worthwhile to consider a model that is often cited as exemplary by experts: the one that is applied by the Commission scolaire de la Région-de-Sherbrooke. This model consists of establishing a real welcoming structure that takes into consideration the many facets of the integration process. As soon as the newly arrived student is registered, a team consisting of an education advisor, a psychologist, a teacher and an interpreter has a lengthy meeting with the family and the student in order to better understand their migration route and their family history.

In addition, the various capacities of the student, both cognitive and psychosocial, are evaluated during this meeting. In order to more precisely assess the student’s educational level, the welcome team uses the services of an interpreter in order to verify the student’s mother-tongue competencies in reading and writing, and thus detect any learning problems. The welcome team uses this meeting as

212 Françoise ARMAND, Isabelle Anne BECK and Tresa MURPHY, “Réussir l’intégration des élèves allophones immigrants nouvellement arrivés”, *Vie pédagogique*, No. 52, October 2009, [on line]. www.the.MELS.gouv.qc.ca/sections/viepedagogique/152/index.asp?page=dossierD_1 (page consulted on March 14, 2011)

213 MINISTÈRE DE L’ÉDUCATION, DU LOISIR ET DU SPORT, *A School for the Future – Policy Statement on Educational and Intercultural integration*, 1998.

an opportunity to give the parents information concerning the Québec school system, to answer their questions and to calm their fears with respect to the process of integration into a new society.

The Commission considers welcoming immigrant families to be very important, and therefore, encourages the adoption of this initiative, as established by the Commission scolaire de la Région-de-Sherbrooke.

3.5.2 SCHOOL ORGANIZATION

In a report dating from 1996²¹⁴, the MELS had already included a number of cautionary remarks about immigrant students that are still relevant today. In this report, the MELS emphasized that intervention with such students must be quick: “They must not be put in a position of failure in the Québec education system and demotivated. Action must also be comprehensive, which means that it must simultaneously involve learning both French and other subjects and promote the development of ‘literacy’.” As we will see below, the educational difficulties faced by allophone students are as much due to shortcomings inherent in the procedures for welcoming and integrating newly arrived students as to the procedures that provide for the transition from the welcome sector to regular classes.

Even today, the winning conditions that will assure a successful transition from welcome classes to the regular sector continue to be the subject of some dispute. They are even considered to be a sensitive subject in some schools, as reported by Armand, Beck and Murphy: “In the welcome classes for allophones students, their integration into regular classes remains a sensitive zone in the school organization, sometimes generating comments or concerns among the various stakeholders, and even misunderstandings or conflicts in the schools.”²¹⁵ In fact, faculty apprehension is often related to the anticipated complication of their workload that they fear will be caused by the integration of students from welcome classes into regular classes.

Despite studies that have proven that, within the context of learning a new language, it is important for allophone students to experience immersion by being in real learning situations, some schools persist in not offering at least a partial integration into regular classes right from the start, even if only for the benefit of social integration, as some schools have recognized, integrating these students into physical education and art classes or in various educational projects. Other schools go so far as to open up the classes in order to respond to the path and individual pace of the allophone student, and thus offer gradual integration. Given the variety of needs among newly arrived students, there is a wide range of models of services adapted to these needs and their capacities.

Funding rules previously called for a set stay of ten months in welcome class, but today, there is no longer any prescribed minimum term. Therefore, it is possible for an allophone student who has acquired sufficient language skills to be integrated into regular classes more quickly, with linguistic support where necessary. On the other hand, an allophone student with a significant academic delay and who requires more time and support should be able to benefit from welcoming services extended over a longer period, according to his or her needs.

Furthermore, it seems that there is a connection between the age of entry into the Québec school system and the chances of educational success. As such, the secondary school graduation rate is noticeably higher among students who were integrated into the Québec school system starting in the first year of primary school (68.9%) than for those who entered during the first year of secondary

214 MINISTÈRE DE L'ÉDUCATION, DU LOISIR ET DU SPORT, *Le point sur les services d'accueil et de francisation de l'école publique québécoise: pratiques actuelles et résultats des élèves*, 1996.

215 F. ARMAND, I. A. BECK et T. MURPHY, op.cit., note 212.

school (34.3%).²¹⁶ In this respect, the Commission notes that the Education Act already provides students with a handicap with the possibility of obtaining an exemption that entitles them to secondary education services until the age of 21. Similarly, such an exemption could be of great assistance to allophone students with less education who entered the Québec school system when they were older.

In fact, in its *Guide de gestion des allocations relatives aux services aux élèves des communautés culturelles* (2010-2011) [Guide to managing allocations for services to students from cultural communities], the MELS mentions that “the duration of welcome services and services supporting the learning of French depends on the development of the student’s language competency, and the form that this support assumes must evolve with the student’s needs.”²¹⁷ A number of participants mentioned to us that this was far from being the case in practice, and that a number of schools offered only closed welcome classes to these students until they were definitively able to integrate into the regular class or, where appropriate, into a remedial class for those who are too far behind.

These same participants also decried the fact that, in many cases, allophone students who were integrated into regular classes generally benefited from a very limited number of hours of support services for learning French, without regard for the severity of their problems. Finally, it appears that teachers in the regular sector are reluctant to accept students from the welcome sector into their class because of the lack of linguistic support in regular classes and the fact that they have little or no preparation for integrating students of this kind.

THE COMMISSION RECOMMENDS:

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- that school boards integrate students from the welcome sector into their neighbourhood school from the outset, rather than sending them to a service point for their school board;
- that school boards provide a transition plan that allows each student in the welcome sector to be integrated into regular classes as quickly as possible, in a way that is adapted to their needs and pace of learning;
- that the MELS allow for a reduction in the number of students per class when students from the welcome sector are being integrated into regular classes;
- that school boards, in collaboration with the MELS, ensure that students from the welcome sector who are integrated into regular classes continue to receive language support adapted to their needs;
- that the Education Act provide an exemption that allows allophone students who enter the Québec school system late and have a major academic delay to continue their secondary school education until the age of 21.

216 M. McANDREW and J. LEDENT, op.cit., note 206, p. 51-53. Moreover, according to this study, the graduation rate is higher among immigrant students who were integrated into secondary school in the course of the program (41.2%), rather than at the beginning of the first year of high school (34.3%). The authors point out that more thorough statistical analyses would be necessary in order to explain these results.

217 MINISTÈRE DE L'ÉDUCATION, DU LOISIR ET DU SPORT, *Guide de gestion des allocations relatives aux services aux élèves des communautés culturelles* (2010-2011), 2010, p.16.

3.5.3 EVALUATION OF THE LANGUAGE COMPETENCIES OF NEWLY ARRIVED STUDENTS

Another worrying finding with respect to the integration of newly arrived students lies in the fact that the MELS does not impose any specific evaluation of language competencies on school boards, such that there is an enormous disparity in the evaluation methods and instruments used from one school board to the next. It is up to each school board to develop its own evaluation tools and to decide who is responsible for doing so. For example, in some schools, it is the teachers who are entrusted with these tasks, while in others, it is the educational advisors. It may even happen that no test is developed, and that the evaluation of a student's language competencies is carried out in an approximate way, which increases the risks of a decision being made based on discriminatory prejudices.

In a recent decision by the Court of Québec, a judge ruled that a father of Haitian origin had been the victim of discriminatory treatment — similar to a form of “profiling”²¹⁸ according to the judge — because his local primary school had automatically sent his child to a welcome class for the sole reason that he was born in Haiti, without even having taken the trouble to verify the child's language competencies, as provided for by a school board directive.

Mondestin v. Commission scolaire de la Pointe-de-l'Île, 2010 QCCQ 10047 (decision to be appealed)

However, it is this evaluation of competencies that will determine the welcome and French support services for each newly arrived student, and that will allow the school boards to claim the necessary funding for this purpose. At the present time, we are told, the evaluation is too often dictated by budgetary logic than by the real needs of the allophone students for linguistic and integration support. Furthermore, in its previously mentioned guide to budgeting, the MELS itself felt that it was important to include a reminder that “the duration of services offered to a student must not in any way be determined by the student's eligibility for the ‘adjustment for welcome and French-learning support services.’”

In light of this, there is reason to ask questions about the autonomy that the MELS gives to school boards with respect to managing the evaluations of the language capacities of allophone students.

THE COMMISSION RECOMMENDS:

- that the MELS standardize the tools for evaluating the language competencies of allophone students;
- that the MELS require school boards to submit to a more detailed accounting of the use and management of funding intended for students receiving welcome and French-learning support services;
- that the MELS require school boards to document, with data, the educational path of students from the welcome sector in order to verify the efficacy of the welcome and linguistic support services models;
- that school boards introduce initiatives for newly arrived families in order to create optimum conditions for school and social integration.

218 *Mondestin v. Commission scolaire de la Pointe-de-l'Île*, 2010 QCCQ 10047, par. 160.

3.5.4 EDUCATIONAL TOOLS AND SECOND-LANGUAGE LEARNING

During the consultation, organizations that assist students who have learning difficulties deplored of the segregation of welcome classes in certain schools. They decried the fact that welcome classes were separated, sometimes in an isolated section of the school. The Commission is of the opinion that one can reasonably doubt that such a physical configuration can promote the social and educational integration of these students.

Similarly, these same organizations mentioned the problem of outdated teaching materials for teaching French in welcome classes. The teaching materials that are currently used do not correspond to either the reality or the age group of these students. There were also complaints about the absence of textbooks designed specifically for linguistic, school and social integration of allophone students attending welcome classes. In short, in order to give allophone students the same chances of success as other students, it is essential that the education sector provide welcome services with effective, varied educational tools that correspond to the specific needs of this category of students. Furthermore, it is often forgotten that learning a second language is a slow and complex process that continues even once the student is integrated into regular classes. There are a number of steps involved in learning a second language, and the various school interveners who work with these students must understand the nature of and the order in which these steps occur. In addition to the complexity of this learning, the newly arrived student must deal with a number of other forms of adaptation, as mentioned above.

Welcome classes do not seem to be prioritized in terms of resources. The teachers receive no support, become discouraged and transmit their feelings of impotence and failure to their students [...].

Excerpt from the brief from *Services d'aide et de liaison pour immigrants La Maisonnée*

Therefore, it is vital that the various school interveners are not only made aware of the context experienced by these young students, but also that they become aware of the role that they have to play in the integration process. As we were told during the consultation, too many teachers are still poorly prepared for this challenge. In particular, it appears that they are poorly prepared to distinguish between school difficulties linked to learning a second language and those linked to real learning disabilities.

THE COMMISSION RECOMMENDS:

- that school boards ensure that the teaching tools and educational materials used in welcome classes are adapted to the specific needs, socio-cultural realities and ages of the students in this sector;
- that school administrations ensure that there is collaboration between the welcome classes and the regular classes in order to allow for optimum integration of students who move from one sector to the other.

3.6 ADULT EDUCATION

In this section, we will examine a problem that was brought up often during consultation. Over the past few years, the adult education sector has taken in a growing number of students who have not succeeded in earning their high school diplomas in the time required, including a large number of young immigrants. In its current state, is this sector prepared to welcome these students, who are trying to complete their secondary studies while overcoming their educational or behavioural problems without ever having dropped out? According to several participants, there are good reasons to doubt it.

In the following paragraphs, we will see that the adult sector is currently poorly prepared to meet to the needs of these students, and we will propose certain avenues that enable it to do a better job.

The adult education sector, both general and vocational, was initially designed to allow adult drop-outs to return to school in order to obtain a high school diploma (HSD). In fact, over the last decade, Adult Basic Education (ABE) has witnessed an increase in the number of under 20-year-olds who come directly from the youth sector, without having interrupted their education. Between 2000 and 2009, this number rose from 44,580 to 56,077, an increase of 25.8%.²¹⁹ In addition, although “in 2007-2008, 16.4% of the students of a school-age generation went directly from the youth to adult basic education in the adult sector before the age of 20, without even interrupting their education [...], in 1984-1985, this rate was only 1.3%; it has therefore multiplied by 12.”²²⁰

These data confirm what many researchers and participants mentioned during the consultation: that it has now become increasingly common to direct students who are 16 years old and older and who are failing or show serious academic delay to the adult sector, and this includes a large proportion of students are “at-risk”. Furthermore, in Montréal, youth with immigrant backgrounds appear to contribute disproportionately to this phenomenon. Thus, citing the MELS figures, Potvin and Leclercq point out that the “constant growth of 16-24 years in ABE since the 1990s is largely due, in the Montréal region, to students from immigrant families.”²²¹ As an illustration, according to the study by McAndrew and Ledent that was cited above, the students from Black communities²²² and from immigrant families²²³ who obtain their High School Diploma (HSD) tend to obtain them from the adult sector more often than the school population as a whole.²²⁴ Such data would tend to corroborate the hypothesis that minority youth tend to move directly from the youth sector to the adult sector in order to obtain their HSD more than other students.

Based on this quantitatively succinct description, questions emerge that relate to the objectives of the current consultation and the main findings submitted by participants. From the perspective of an analysis of discrimination, it is important to ask whether there are obstacles of a systemic nature that are inherent in the way the adult education works that would have the effect of penalizing this category of students who go directly from the youth sector to the adult sector and who do not have

219 Maryse POTVIN and Jean-Baptiste LECLERCQ, *Trajectoires sociales et scolaires de jeunes de 16-24 ans issus de l'immigration en formation générale des adultes et analyse de deux projets de "Persévérance scolaire" (2007 et 2009)*, July 2010, p. 6.

220 MINISTÈRE DE L'ÉDUCATION, DU LOISIR ET DU SPORT, *Indicateurs de l'éducation. Édition 2009*, Québec, 2009, p. 60.

221 M. POTVIN and J.-B. LECLERCQ, op.cit., note 219, p. 14.

222 M. McANDREW and J. LEDENT, op.cit., note 203. In the study by McANDREW and LEDENT, students from Black communities are students born in the Caribbean or Africa or whose parents were born in the Caribbean or Africa and whose mother tongue can be English, French, Creole or an African language.

223 *Ibid.*, op.cit., note 206 In the McANDREW and LEDENT study, the youth from immigrant families are those born abroad or whose parents were born abroad, excluding the students of the Black communities as defined in the previous note.

224 *Ibid.*, p. 29.

the typical profile of the adult “returning student”, who goes back to school after spending time in the work force. Is the adult sector adapted to the varied needs of this new clientele? This question is all the more relevant to this report, because youth of racialized minorities and from immigrant families are over-represented in ABE.

Finally, it is important to ask whether the adult sector can respond to the francization and integration needs of youth who immigrated to Québec at a relatively late age and who moved from welcome classes to the youth sector.

3.6.1 HARMONIZING THE YOUTH AND ADULT SECTORS

First of all, it was pointed out that there are no procedures in place for harmonizing the youth and adult sectors that would make it possible to ensure an efficient transfer of the records of students from the youth sector. As a result, Adult Education Centres (AEC) are not in a position to take account of information concerning the educational needs and school problems identified by the secondary schools, and particularly any action plans. In addition, the classification tests given upon entry by the adult sector do not take into consideration classifications and evaluations made earlier in the youth sector. Given that the two sectors make parallel classifications, it means that the two systems involved operate in isolation from each other, whereas they should be complementary to each other. Therefore, it is by no means rare for there to be substantial differences between the classifications made by the two sectors.

The Commission is aware that the lack of these harmonization procedures is largely due to the fact that the adult sector was not originally designed to accommodate a clientele of students in difficulty from the youth sector. On the other hand, because this category of students now accounts for an ever larger percentage of the clientele in the adult sector, it is vital for school boards to harmonize the evaluation tools used in both sectors in order to minimize the risks of downgrading.

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THE COMMISSION RECOMMENDS:

■ that school boards ensure that the Adult Education Centres take better account of the classifications made in the youth sector and of the information on educational needs and school difficulties recorded by secondary schools, and particularly of intervention plans.

3.6.2 SCHOOL ORGANIZATION

The approach preferred in the adult sector, which consists of individualized and personalized teaching, does not necessarily suit all types of students. Such an approach may suit adults who return to school and who, it may be thought, demonstrate greater maturity and autonomy. In fact, this clientele in the adult sector appears to appreciate the autonomy and flexibility, the modular learning (rather than lecture courses), the more personalized instructional support, the individual study pace and the smaller classes that are characteristic of adult learning.²²⁵

On the other hand, the adult education approach is a much less ideal approach for youth who are not very autonomous, and therefore, have greater need of supervision, or for those with greater learning

225 Nadia ROUSSEAU et al., “L’éducation des adultes chez les 16 à 18 ans. La volonté de réussir l’école... et la vie”, *Éducation et francophonie*, vol. XXXVIII, n° 1, spring 2010, p. 154-177.

difficulties. In fact, such youth are less likely to benefit from the many specialized instructional support and specialized resources they need and were receiving in the youth sector. In spite of their good will and efforts, teachers in the adult sector are not trained to respond to the specific needs of these youth, and even if they were, the school structure used in the Adult Education Centres does not allow them to respond easily to such needs. In fact, the adult education approach underlying the ABE was not designed for young students, who are expected to act like adults, but who are not prepared for so much autonomy.²²⁶

In addition, students in ABE who have learning or behavioural problems — which is the case for the majority of those who move from one sector to the other without interrupting their schooling — have an even greater need of adapted instructional support and specialized resources, either in the form of specialized school workers or professionals who deal with psychosocial disorders. Unfortunately, such resources and the adapted instructional support that these young students require is substantially lacking in the adult sector.

This is not intended to suggest that the adult sector must be completely redesigned in the image of the youth sector, but rather that it would benefit from an adaptation that takes into account the educational and instructional needs of this new clientele consisting of students in difficulty who arrive directly from the youth sector²²⁷.

THE COMMISSION RECOMMENDS:

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■ that the MELS ensure that students with special needs who attend Adult Education Centres can benefit from an instructional services that is adapted to their needs.

In a related area, both researcher Maryse Potvin and TCRI (consisting of organizations serving refugees and immigrants) pointed to the same aspect of the administrative structure of the adult sector that appears to disadvantage students coming from regular school. Their point is that ABE funding is mainly calculated as a function of the number of hours of student attendance in class. Therefore, attendance is compulsory and recorded, and repeated absences are punished by expulsion. Although such a formula may be entirely appropriate for mature, autonomous adults who are motivated to succeed, it is much less so for 20 year-old and younger students who arrive from secondary school unmotivated and struggling with learning or behavioural problems. Because they are left to themselves, these students, who need more structured supervision, risk accumulating absences, and thus are at risk of being expelled from their program. In fact, it appears that repeated absences is one of the reasons most commonly given by students in the adult sector to explain why they are leaving school, along with having found a job.²²⁸

THE COMMISSION RECOMMENDS:

■ that school boards revise the method for funding Adult Education Centres so that they are no longer given an incentive, even indirectly, to punish repeated student absences with expulsion.

226 M. POTVIN et J.-B. LECLERCQ, *op.cit.*, note 206, p. 34.

227 At the same time, we note that the youth sector should restructure the services for students with serious difficulties (e.g.: academic delay, inadequate mastery of French, learning impairments, etc.) in order to better respond to their needs, and thus maximize their chances of earning their HSD at regular school.

228 N. ROUSSEAU et al., *op.cit.*, note 225.

3.6.3 FRANCIZATION PROGRAMS

Finally, during the consultation, Maryse Potvin and TCRI drew the Commission's attention to the fact that the adult sector is not well-equipped to respond to the needs of young immigrants who have spent time in the welcome classes in the youth sector in terms of francization and integration. In fact, this clientele seems to be largely over-represented in the ABE. Based on the available data, Potvin and Leclercq conclude that "one might think that a rather large proportion of youth 16-24 years old with immigrant backgrounds, having accumulated some academic delay in the GEY sector because of their time spent in welcome classes (francization or the Welcome and Assistance in Learning French Program) and late entrance in the Québec school system, will wind up in ABE."²²⁹ All studies demonstrate that the later a young immigrant enters the Québec school system, the greater that his or her chances of developing an academic delay that will be hard to make up later, which would account for the fact that a number of them move into the adult sector starting at age 16.

AECs offer many programs for literacy and francization, but these are mainly intended for older immigrants who are seeking to obtain a mastery of French oriented toward social and vocational integration. The needs of younger immigrants, those 20 years old or younger, are not met by these programs. According to certain interveners from the adult sector, they do not need to take French classes focused on socio-vocational insertion as much as they need to perfect their mastery of a more "literary" French that is better adapted to the school subjects required for obtaining their HSD.²³⁰

THE COMMISSION RECOMMENDS:

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- that school boards ensure that the adult sector establishes francization programs that are better adapted to the needs of young immigrants, meaning courses that are adapted to mastering the subjects required for obtaining their HSD.

3.6.4 THE YOUTH SECTOR AND EDUCATIONAL SUCCESS OF STUDENTS IN DIFFICULTY

Based on the foregoing, it appears that the adult sector does not always have the required resources to respond to the needs of students in difficulty from the regular sector.²³¹ That is why, in the preceding sections, the Commission recommended that school boards make the necessary changes to the Adult Education Centres in order to make them better suited to meeting the educational needs of this new category of students, which includes a large proportion of immigrants. Such an approach is necessary, because the number of students in difficulty moving directly from the regular sector to the adult sector does not seem likely to decline in the immediate future, but rather to grow.

That being said, it is as much the responsibility of the MELS and the school boards to devise solutions for the future that will increase the chances of success and thus of graduation rate of students with adaptation problems or learning disabilities who are in the regular sector, if not more so. In addition, the regular sector has a legal responsibility to deploy educational services that are appropriately adapted to this situation.²³² The Commission is aware that achieving such an objective is not easy and that the methods for doing so are varied and involve numerous considerations.

²²⁹ M. POTVIN and J.-B. LECLERCQ, *op.cit.*, note 206, p. 20.

²³⁰ Maryse POTVIN, brief submitted to the Commission, p. 9.

²³¹ There is nothing surprising about such a finding, because this sector was not designed to meet the needs of this clientele, having instead the mission of enabling adult drop-outs who were already part of the workforce to obtain the qualifications required to make their plans for advancement or vocational reorientation come true.

²³² *Education Act*, R.S.Q., c. I-13.3. In particular, sections 96.14, 185, 234 and 235.

Without thoroughly examining these complex issues, we would nevertheless like to mention that, during the consultation, Professor Maryse Potvin and TCRI suggested that secondary school students be allowed to remain in the regular sector until the age of 21 in order to obtain their HSD, as it is done in other Canadian provinces. Currently, students have the right to attend the regular sector until the age of 18, except for disabled students, who, under the Education Act, are entitled to remain until age 21. Although the Commission recommended in Section 2.5.2 above that this exemption be applied to allophone students who entered the Québec school system late and who have a serious academic delay, it does not feel qualified to speak to the relevance of extending this measure to all students with difficulties.

THE COMMISSION RECOMMENDS:

that the MELS, in collaboration with the school boards, take the steps necessary to enable students in difficulty to obtain their secondary school diploma in the youth sector, to the extent possible, and thereby reverse the current trend of secondary schools guiding this category of students to the adult sector.

3.7 TRAINING AND HUMAN RESOURCES

3.7.1 TEACHER TRAINING

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The importance of acquainting future teachers with an education philosophy and teaching method that integrates the major principles of the antiracism approach and of intercultural intervention was mentioned by participants on numerous occasions. In fact, both researchers and interveners from the education sector asserted that teachers are not sufficiently well-trained in the principles of intercultural and antiracism education. This means that faculty members are poorly prepared to work in multicultural schools and classes. According to researcher Josée Charrette, who participated in the consultation, this deficiency has been noted and deplored by the elementary teachers themselves who, she writes, believe that they are “not prepared to receive culturally different children in their class.”²³³

In fact, everyone agrees that the solution must necessarily, but not exclusively, involve the basic and continuing education of teachers in particular, and of school personnel. With respect to the current situation involving continuing education, the MELS and the school boards devote significant effort each year to providing interculturalism training to school personnel, in collaboration with university researchers and various organizations. However, it is important to note that such training is not compulsory, and that there is no guarantee that it has actually been given to a significant proportion of the faculty and other members of the school staff working in culturally diversified settings.

Given the multiple and varied professional development needs, it may appear to be difficult to require school staff to follow intercultural and antiracism training. However, the Commission considers that, at the very least, the main principles of this approach should be taught as part of a compulsory course given to all students who are studying to be teachers. This would ensure that future teachers, regardless of the socio-educational setting in which they later work have acquired at least the foundations of the intercultural and antiracism approach by the end of their university program. In fact,

233 Josée CHARRETTE, *Représentations du racisme et pratiques inspirées de l'approche antiracisme chez des enseignants du primaire*, Master's thesis presented to the Département de psychopédagogie de la Faculté des sciences de l'éducation of the Université de Montréal, April 2009, p. 146.

the Commission notes that, at the present time, not all teacher training programs include a compulsory course that addresses these issues.

Furthermore, in a 2006 brief,²³⁴ the Commission expressed its concern that, even when they introduce students to the intercultural approach in education, teacher training programs offered in Québec tend to side-step the problems of racism and discrimination. Therefore, interethnic relations are neither set in their historical context nor explained in light of the power relationships between the majority group and minorities.²³⁵

In light of this, it is important that teacher training explicitly include not only intercultural competencies, but also the principles of the antiracism approach. These objectives should have been included in the teacher training document that was published by the ministère de l'Éducation du Québec (MEQ) in 2001: *Teacher training. Orientations. Professional Competencies*, which is intended to define the orientations and learning objectives that faculties of education are required to reflect in their teacher training programs. From this perspective, the antiracism approach should also have been better integrated into the intercultural training sessions given to teachers who are already working in schools.

THE COMMISSION RECOMMENDS:

- that faculties of education include compulsory courses or training on antiracism and intercultural education in their basic teacher training programs, and that school boards include them in their continuing education programs;
- That the MELS, in its publication *Teacher Training. Orientations. Professional Competencies* (MEQ, 2001) add a thirteenth competency to the twelve professional competencies that future teachers must acquire: the capacity to become engaged in a process of openness to diversity using an antiracism and intercultural approach.

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3.7.2 RECRUITING A DIVERSIFIED STAFF

A number of participants in the consultation asserted that one of the strategies that would contribute to making schools a discrimination-free environment would be to ensure that the ethnocultural profile of the teachers and specialists (e.g.: remedial teachers, speech therapists, etc.) better reflect the diversity that characterizes the school clientele in regions and schools with high ethnic concentrations. Not only would a school staff who better reflects the ethnocultural diversity of the students be better equipped to take into consideration the needs specific to such students, but students from immigrant families would have models of success and inspiring authority figures with whom they could identify more easily.

As was pointed out in the “General Context” section, although school boards are required to institute EAEPs (Equal Access Employment Programs) pursuant to the Act respecting equal access to employment in public bodies, many primary and secondary schools do not achieve their representation goals. Furthermore, in Montréal, these legal objectives, which fluctuate between 7% and 8% for teaching positions, are largely insufficient in terms of providing an adequate reflection of the ethnocultural diversity of most Montréal schools.

²³⁴ COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, op.cit., note 15., p. 15-17.

²³⁵ *Ibid.*

The problem is that, for a number of job categories in the education sector, and particularly for teacher positions, the pool of members of ethnic and racialized minorities who are qualified to apply is very limited. In order to remedy this problem, the faculties of education of the universities ought to take steps to increase the representation of minorities among their students. To this end, these schools could establish “Equal Access Employment Programs”, pursuant to section 86 of the Charter. We know of at least one precedent: Collège Ahuntsic applies an equal access employment program to its police technology program. It explains its reasons for doing so on its website:

“In order to enable the various police departments, particularly in the Montréal region, to provide better representation of various social, cultural and racial groups among their employees, Collège Ahuntsic is part of an equal access employment program. This program applies to women, members of ethnocultural minorities, members of visible minorities and Aborigines.”²³⁶ (emphasis added)

The Commission considers the example of Collège Ahuntsic to be one that should be followed by faculties of education in order to expand the pool of members of ethnic and racialized minorities who are qualified to teach, and thus enable the schools to assure a more adequate representation of these groups among their personnel. Finally, the faculties of education should plan recruiting campaigns, including such incentive measures as scholarships, with a view to convincing members of ethnic and racialized minorities to opt for a university education leading to teaching at the preschool, primary and secondary school levels.

THE COMMISSION RECOMMENDS:

- that faculties of education establish Equal Access Employment Programs designed to increase the representation of members of ethnic and racialized minorities among their teacher training students;
- that faculties of education conduct recruiting campaigns, including incentive measures like scholarships, designed to convince members of ethnic and racialized minorities to opt for university programs leading to teaching at the preschool, primary and secondary school levels.

236 For more details, [on line]. <http://www.collegeahuntsic.qc.ca/public/7e1f5c75-1d2e-429e-8dc70c9373d8a53c/documents/tech-policiers/acces-egalite.pdf> (Page consulted on January 20, 2011)

4 . THE YOUTH PROTECTION SYSTEM

In this section, the Commission will consider ways of minimizing the impacts of prejudices, stereotypes, generalizations and even analysis grids and organizational policies that do not take into account cultural differences on decisions made by social workers in the youth protection system and by professionals who are asked to report situations that require intervention.

Such a problem can, and even must, be analyzed from the perspective of racial profiling. In fact, as is the case with the application of laws and by-laws by police forces, or of codes of conduct by school personnel, the decisions made in application of the Youth Protection Act²³⁷ (YPA) are made by persons in a situation of authority for reasons of safety and protection, and are likely to be based on factors such as real or assumed membership in an ethnic or racialized minority, the consequence of which can be to submit the youth concerned and their families to discriminatory differential scrutiny or treatment.

Furthermore, as in the education sector, a number of participants, including the Association des centres jeunesse du Québec (ACJQ), asserted that the over-representation of youth from Black communities in the protection system cannot be reduced to an issue of racial profiling. For this reason, an analysis of profiling in this sector must be combined with an analysis of systemic discrimination. As such, as a number of participants insisted, those involved in the system must also be able to count on solid intercultural and antiracism competencies in order to take the cultural specificities of their clientele into consideration. Moreover, the YPA stipulates that those who are involved in the youth protection system have an obligation to apply measures with the child and their parents that take into consideration the characteristics of “cultural communities” and “Aboriginal communities” in their interventions.²³⁸

In addition, aside from discriminatory mechanisms specific to the protection system that can fuel in over-representation, the analysis must also take into consideration the fact that the concentration of poverty among racialized groups increases the risks of neglect, and consequently, the risk of reports to the Director of Youth Protection (DYP). These concerns were raised regularly during the consultations, and must also be considered. In many respects, the indicators of neglect correspond to the indicators of poverty. In order to be convinced, it is sufficient to examine the forms that parental neglect can assume within the meaning of section 38 of the YPA:

“(b) “neglect” refers to

(1) a situation in which the child’s parents or the person having custody of the child do not meet the child’s basic needs,

(i) failing to meet the child’s basic physical needs with respect to food, clothing, hygiene or lodging, taking into account their resources;

(ii) failing to give the child the care required for the child’s physical or mental health, or not allowing the child to receive such care; or

(iii) failing to provide the child with the appropriate supervision or support, or failing to take the necessary steps to provide the child with schooling”.²³⁹

237 R.S.Q., c. P-34.1.

238 *Ibid.*, sec. 2.4, par. 5 (b) and (c).

239 *Ibid.*, sec. 38.b.

The definition of what constitutes parental neglect that can endanger the security or development of a child within the meaning of the YPA closely reflects the traditional indicators of poverty, understood in both the material (few financial resources) and symbolic (little educational and social capital) meanings. The Commission recently noted that “nearly one child in four is currently living in poverty in Québec [...] [and that] the consequences of such a situation are detrimental to the development of these children; they are more likely to experience food insecurity, suffer psychological distress, mistreatment or neglect as well as academic lag, and dropping out without a high school diploma.”²⁴⁰

The fact that poverty creates conditions that can lead to situations where parents may be deemed unfit may account in part for the disproportionate contacts of young Blacks with the youth protection system. Whatever indicator is used, Black communities in Québec experience greater rates of disadvantage, not only when compared to persons not belonging to a racialized minority, but also compared to other racialized minorities.²⁴¹ In fact, in a comparative analysis, researcher Esther Belony concludes that the “over-representation of children from Haitian immigrant families is obviously the product of a cumulative disadvantage that puts them at greater risk of being taken into care by the DYP than the children of other families. Thus, children of Haitian immigrant families can be described as ‘victims’ of the precarious socio-economic conditions in which their families live.”²⁴²

In the following paragraphs, the Commission will first provide a succinct review of the existing data pertaining to the over-representation of young Blacks and young immigrants in the youth protection system. Second, based on briefs submitted during the public hearings, the Commission will draw attention to certain mechanisms or factors, whether inherent or external to the protection system that may compromise the right of youth from minorities to equality, as well as possible solutions to correct the identified problems.

4.1 CONTEXT AND ISSUES

In Québec as elsewhere in Canada and the United States, youth from Black families, as well as those from Aboriginal communities, are over-represented in the youth protection systems. With respect to aboriginal youth, a study revealed that their presence in the youth protection systems across Canada (30-40%) in 2000-2002 was at least six times higher than their weight in the Canadian population (5%).²⁴³ In Québec, a study by Léonel Bernard and Christopher McAll revealed that, based on data from 1997, young Quebecers of Haitian origin under 18 years old were twice as likely to be reported to the DYP as young Quebecers of French Canadian origin, and that healthcare and school professionals constituted the primary sources of these reports, whereas youth from the majority were reported first and foremost by their immediate or extended family.²⁴⁴ Bernard and McAll also noted that, compared to youth of French Canadian origin, youth of Haitian origin were more often given a priority urgency code in the processing of their files (22% versus 16%), were more often removed from their family on an emergency basis when the report concerning them was accepted (59% versus 45%), and were twice as likely to not return home thereafter. Finally, their situation was more often referred to the court system (68% versus 52%), and more of them were placed in care (65% versus 50%).²⁴⁵

240 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, *op.cit.*, note 7.

241 See: James TORCYNER, “Inégalité dans la main-d’œuvre : conclusions préliminaires du Projet d’études démographiques sur les communautés noires montréalaises,” dans EID. P., (dir), *op.cit.*, note 195, p. 161.

242 E. BELONY, *op.cit.*, note 24, p. 118.

243 Pamela GOUGH, Nico TROCMÉ, Ivan BROWN, Della KNOKE and Cindy BLACKSTOCK, “Pathways to the overrepresentation of Aboriginal children in care,” Centre of Excellence for Child Welfare, 2005. [on line], www.cecw-cepb.ca/sites/default/files/publications/en/AboriginalChildren23E.pdf (Page consulted on November 12, 2010)

244 Léonel BERNARD and Christopher McALL, “Pauvreté et ‘protection’”, *Revue du CREMIS*, fall 2009, p. 26-30, p. 27.

245 *Ibid.*, p. 27.

In some areas, the Bernard and McAll data were contradicted or qualified by the results of a more recent study conducted by Chantal Lavergne, Sarah Dufour and their colleagues, which involved all of the children with respect to whom reports were accepted by the DYP in 2007-2008.²⁴⁶ This study confirmed that, compared to other children, young Blacks are nearly twice as likely to be reported. As for “Caucasian” youth, they were under-reported to the DYP, given their weight in the population, as were those of racialized minorities other than Black. Reports from professionals in the education, health and social services sector are more prevalent in the case of Black (83%) and other-than-Black (85%) racialized minorities than for young Whites (75%).

However, contrary to the Bernard and McAll study, the study by Lavergne and colleagues did not detect any significant difference between the three groups with respect to the proportion of cases in which the facts alleged in the report were corroborated during evaluation. Their study actually made it possible to see that the corroboration rates — or in other words, the proportion of cases where the allegations reported turned out to be true upon evaluation — are more or less similar for Blacks (78%), Whites (80%) and visible minorities other than Blacks (79%). On the other hand, when the alleged facts were corroborated, young Blacks and those of other visible minorities required protection services less often than White youth²⁴⁷, which means that, in their case, redirection toward family support services offered by the CSSS (centres de santé et de services sociaux) was deemed preferable to having the child taken into care by the DYP.

In addition, when the DYP takes a child into care, white children are slightly more often placed in care than black children and those of other visible minorities (32%, 29% and 24%, respectively). It should be noted that these results are partly due to the fact that the parents of white children and youth have much greater psychosocial risk factors associated with mistreatment or neglect than those of families of young Blacks or racialized minorities other than Blacks. A more detailed statistical analysis indicated that, after taking into account the impact of the “parents’ characteristics” and “gravity of alleged facts”, the rate at which protection services are required by Whites and Blacks are similar. Such an observation led the authors of the study to conclude that “it is not ethnocultural identity that affects this decision, but rather the characteristics of the situation.”²⁴⁸

The study cited above also reveals significant differences between the three groups in terms of the reasons for reporting. Looking only at the cases where the report is based on a single reason²⁴⁹, the most frequent reason among young Whites is “neglect” (25%), whereas for young Blacks (29%) and those of other visible minorities (23%), it is “physical abuse.”²⁵⁰ The authors point out that, in the case of racialized minorities, situations of physical abuse, which are the reason for the largest number of reports, “appear to be very closely associated with disciplinary methods and educational standards different from those approved by the majority group.”²⁵¹

What should be retained from the study by Lavergne and colleagues is that, unlike young Whites

246 Chantal LAVERGNE, Sarah DUFOUR, Janet SARNIENTO and Marie-Ève DESCÔTEAUX, “La réponse du système de protection de la jeunesse montréalais aux enfants issus des minorités visibles,” *Intervention*, No. 131, (winter 2009), p. 233-241.

247 *Ibid*, p. 238. The proportion of cases in which the DYP recommended protection services after evaluation and orientation is 62% for Whites, 55% for Blacks and 52% for visible minorities other than Blacks.

248 C. LAVERGNE, S. DUFOUR, J. SARNIENTO et M.-È. DESCÔTEAUX, *op.cit.*, note 245, p. 239.

249 In the case of co-occurrence, when a child is reported for more than one reason, the study does not indicate the nature of the cumulative grounds.

250 Sarah DUFOUR, Chantal LAVERGNE, Ghayda HASSAN, Florentine DEMOSTHÈNE et Gérald SAVOIE, *Diversité culturelle et mauvais traitement envers les enfants. Savoirs et pratiques*, PowerPoint of the 10th “Winter Conference given by the authors on March 26, 2010, [on line]. www.centrejeunessedemontreal.qc.ca/recherche/PDF/Conferences/diversite_culturelle_2010.pdf (Page consulted on November 14, 2010), p. 27.

251 C. LAVERGNE, S. DUFOUR, J. SARNIENTO and M.-È. DESCÔTEAUX, *op.cit.*, note 246, p. 240.

and youth from racialized minorities other than Black, youth from the Black communities are greatly over-represented in the youth protection system, taking into account their weight in the population. The source of this over-representation is reporting. It remains stable at the evaluation stage, but is somewhat reduced at the orientation stage. However, we should remember that Blacks are less often the object of protection measures, especially withdrawal from the family, than Whites and those of racialized minorities. The authors use their data to support the conclusion that there exists among professionals in the healthcare, education and social services sector an “*a priori* [attitude] unfavourable to Blacks” in the identification of situations where the rights of the child are at risk, a bias that the evaluation and orientation process of the DYP appears to be less likely to reproduce.”²⁵²

The Commission is of the opinion that, although the data actually suggest that an important part of the problem of the over-representation of young Blacks in the protection system is attributable to the difference between perceptions and reality of the adults making a report, it should not prevent youth centres from making a critical examination of their interventions and practices in order to ensure that they are free of discriminatory biases based on criteria, unrelated or even contrary, to the best interest of the child. It is also important to note that some youth centres have already begun to review their intervention practices and procedures in light of the principles of the intercultural approach, and have, to varying degrees, taken concrete steps along these lines. These initiatives must be acknowledged, but throughout the consultation, a number of participants pointed out certain practices that need correction or improvement, along with a lack of uniformity in terms of the services offered by the youth centres. In this area, the Commission heard a number of promising solutions, which will be discussed in the next section.

4.2 RAISING AWARENESS AMONG PROFESSIONALS WHO MAKE REPORTS

The Commission, with its mission of ensuring respect for the rights of the child as guaranteed by the Charter and the YPA, is in a good position to recognize that reporting youth whose security or development appear to be in danger to the DYP is an obligation that is imposed upon professionals in the education, healthcare and social services networks.

Above all, it is vital to remember that the Commission, like the DYP, subscribes to the principle that, when in doubt, it is always in the best interest of the child to report. However, a number of participants in the consultation deplored that education, healthcare and social service professionals tend to make reports to the DYP more often in the case of young Blacks than other youth.²⁵³ According to these same participants, among the factors that explain these statistical discrepancies is a form of racial profiling. More specifically, some adults who make reports from the education and healthcare community are said to have a greater tendency to prejudge a situation of physical abuse or neglect on the basis of unfounded suspicions or misinterpreted signs when dealing with youth from Black communities.

According to this hypothesis, prejudices and ethnocultural stereotypes can lead to a distorted interpretation of a situation by healthcare and education professionals based on the available information. In addition, it is even possible that these professionals sometimes come to a conclusion that is accurate in factual terms, but that they may have judged too quickly that the situation needs to be brought to the attention of the DYP. This may explain why, in the case of reported young Blacks,

²⁵² *Ibid.*

²⁵³ *Ibid.*, op.cit., note 241, p. 238. Note that this over-representation is confirmed by the data taken from the study.

sometimes, the alleged facts are founded but the DYP does not consider protection measures to be necessary.²⁵⁴

In addition, as the ACJQ pointed out in its brief, the fact that corporal punishment is more commonly used as an educational or disciplinary method among some ethnocultural minorities might account, in part, for the tendency of professionals to over-report youth from these groups to the DYP for that reason. When there is physical abuse, the healthcare and education and social services professionals are obliged to make a report if they have reason to believe that the security of the child could be in danger, and to leave it up to the DYP to verify whether the alleged facts are founded or not.

Although the Commission subscribes to this precautionary principle, it would like education, healthcare and social services professionals to acquire better intercultural and antiracism competencies, and thus be better able to recognize the signs that justify a report. The goal would be to equip them in such a way as to minimize doubts generated by ignorance or misconceptions about cultures that are foreign to theirs. This would require the inclusion of an intercultural and antiracism approach in their training.

It was noted on a number of occasions that healthcare, education and social service professionals too often tend to believe that, in order to intervene with racialized clientele, they have to master the “code” or the “DNA” of the communities concerned, which is perceived as being homogenous entities for whom it will be enough to learn their distinctive traits in order to understand their essence. It is true that, in some cases, it is useful or even necessary to consider cultural differences in order to arrive at a correct interpretation of a situation. However, culturalist explanations have their limits, because they run the risk of being reductive.

In this respect, the Commission subscribes to the idea that was frequently brought up during the consultation to the effect that good intercultural and antiracism training should also contribute to deconstructing certain analysis grids used in the case of racialized families, often unconsciously, that cause professionals to ascribe excessive weight to real or assumed cultural differences in explaining observed behaviours and attitudes. In this respect, it would be useful if healthcare, education and social service professionals had a better understanding of the factors used by the DYP to evaluate the risks of mistreatment or neglect. They could then rely on real signs that the rights of the child or the youth were in danger when deciding whether to report a child or youth, as the validity of these factors are founded and reliable, regardless of the ethnocultural origin of the child or youth.

Several individuals also indicated that, whether racialized or immigrant families are involved, persons making reports to the DYP tend to overlook the effect of socio-economic inequalities in their evaluation of the situation, again as the result of culturalist readings. Such a trend is particularly harmful for racialized families or recent immigrant families, because a high proportion of them live in difficult socio-economic conditions.

THE COMMISSION RECOMMENDS:

- that the ministère de la Santé et des Services sociaux (MSSS), in cooperation with the ministère de l'Éducation, du Loisir et du Sport (MELS) provide professionals in the education, healthcare and social services sector with intercultural and antiracism training designed to reduce incorrect readings of the family dynamics prevalent among youth of racialized and immigrant minorities;

²⁵⁴ *Ibid.*, p. 238-239.

- that the CSSS, in collaboration with youth centres and experts who specialize in intercultural and antiracism intervention, take on a leading role in establishing this training.

4.3 COMMUNITY AND FIRST-LINE SERVICES IN SUPPORT OF DYP INTERVENTIONS

One of the key ideas that resulted from the consultation is the importance for the DYP, when intervening with cultural minorities, to be able to rely on community resources and first-line services at every stage of handling files. Although this type of partnership is desirable regardless of the ethnocultural origin of a family with whom the DYP intervenes, it is especially important in cases of immigrant or racialized families, because it enables the interveners in such cases to benefit from proven expertise in intercultural intervention, and to avoid making decisions based on discriminatory biases caused by prejudices or misconceptions.

The Commission entirely supports such an approach, and in the following paragraphs, will point out the good practices in this area that were brought to its attention and that deserve wider adoption. It will also propose certain measures that were suggested during the public hearings that would improve current practices.

4.3.1 INTERCULTURAL CONSULTATION

With respect to intercultural intervention, the most common form of collaboration between the DYPs and the external organizations seems to be intercultural consultation. This type of consultation is designed as much to ensure that the DYP's intervention is well adapted to the cultural specificities of various minority groups as to ensure that it is not guided by abusive generalizations and prejudices that would mask the individual characteristics of the child or youth and the family involved.

In areas where immigrant or racialized populations are concentrated, particularly in Montréal and the Montérégie, the social workers at the youth centres already solicit, intercultural expertise from outside to varying degrees, most often from community organizations, in order to inform the decisions that are made at one of the stages of their intervention. However, this type of initiative is more the exception than a generalized practice based on institutionalized procedures. On the other hand, it should be noted that the Centre jeunesse de Montréal-Institut universitaire (CJM-IU) has developed indicators designed to allow social workers to evaluate the necessity of an "ethnocultural consultation [...] as soon as possible and on an on-going basis".²⁵⁵ Such a practice is undoubtedly beneficial, in that it contributes to alerting DYP social workers, at all stages, to the presence of signs indicating that an intervention seems to have reached an impasse in communication or otherwise, as the result of certain cultural misunderstandings or fixed and reductive cultural readings of the situation.

THE COMMISSION RECOMMENDS:

- that DYPs develop indicators that allow their social workers to assess the situations for which an intercultural consultation with an expert is required at each step in the youth protection system.

255 Jean-Marie DAIGNEAULT, "L'intervention auprès des enfants et des familles issus de l'Immigration. Un processus clinique sensible à la réalité ethnoculturelle," *Défi Jeunesse*, vol. XVI, No. 3, May 2010, p. 18-22, p. 22.

4.3.2 THE IMPORTANCE OF PARTNERSHIPS

A number of participants asserted that, over and above intercultural consultation, the DYPs should establish multidisciplinary and intersectorial teams, in addition to the DYP social workers, representatives of first line services and community groups. Although this type of partnership is generally beneficial for all the types of DYP clientele, it is especially so for racialized or immigrant minorities. In addition, it is relevant for the DYP to turn to these specialized teams as needed during every step of the process. Among the benefits associated with the establishment of partnerships between the DYP, community organizations and first-line services working with migrant or racialized families, are improved intercultural understanding, a better reading of the situation, and a response that is more adapted to the needs of the families involved.

During the consultation, representatives of the Batshaw Youth and Family Centres (Batshaw) mentioned the existence of this type of partnership within their institution, and emphasized that such a strategy allows for an integrated intervention that better supports the needs of immigrant or racialized families. As for CJM-IU, it also occasionally creates partnerships with the community and the CSSS in order to better integrate the intercultural dimension into its work. However, such practices are rarely institutionalized, which means that these collaborations depend on the good will of the social worker overseeing the case, and have to be renewed on an *ad hoc* basis.

At this point, the Commission would like to acknowledge a very good example of a partnership, that was reported by Centre jeunesse de la Montérégie. In 2009, it signed a service agreement with the CSSS serving its territory and the Maison internationale de la Rive-Sud (MIRS), a community organization devoted to supporting the integration of new arrivals and intercultural understanding. The agreement, a copy of which was obtained by the Commission, specifically provides that MIRS would receive funding from the Centre jeunesse, not only for providing interpretation and intercultural mediation services for the social workers as required, but also for collaborating on consultation meetings and attending case conferences during which action plans are discussed, and at “review and orientation groups in order to determine the needs, objectives and means to be prioritized with immigrant families.”

To those who would object that the DYP would not have time to mobilize its partners for quick intervention in emergency situations, we would mention that the service agreement between Centre jeunesse de la Montérégie and its partners stipulates first that, in an “emergency situation, a telephone referral can trigger the intervention process” and second, that the community organization involved (MIRS) “agrees to begin its services within a period of 48 hours.”

For the Commission, this type of partnership with first-line services and the community aimed at adapting protection services to a diversified clientele constitutes a very promising initiative that would benefit from being copied. However, it is important to note that partnerships of this type are currently the exception rather than the rule.

In the following paragraphs, the Commission will point out the benefits of a form of multidisciplinary and intersectorial intervention at various steps of the protection system, while providing examples of good practices in this area that were discussed during the public hearings.

4.3.2.1 Receipt and processing of the report

The creation of a multidisciplinary and intersectorial team as described above is useful as soon as a report is received. The DYP can then work in collaboration with its partners to more efficiently identify

the services that the youth and the family require. The social workers would then be better able to assess whether the DYP ought to continue to process the file, or whether the family should instead benefit from assistance provided by the community organizations or by the CSSS specifically in order to facilitate its socioeconomic integration, meet the primary needs of the children, or modify certain educational practices in order to bring them into compliance with the law.

The LaSalle Community Prevention Project

During the consultation, Batshaw brought to our attention an especially interesting experiment in partnership with the community and the healthcare and social services sector in order to prevent children from being placed in the care of the DYP. This is the LaSalle Community Prevention Project, which involves Batshaw, the Boys' & Girls' Club of LaSalle and the Dorval-Lachine-LaSalle CSSS. Among the objectives underlying this project, which was established between January 2005 and December 2009, is the desire to provide services that are adapted to the needs of Black families who are in contact with the DYP, in particular by promoting the search for solutions that, where possible, are compatible with family norms and respectful of parental authority. Among the other objectives that are worthy of mention is a desire to recognize the role and expertise of the extended family in finding solutions.

Following reception of the report and its processing, the youth and his or her family were referred to the intervention team which immediately became involved. The innovative aspect of such a project lay in the fact that Batshaw collaborated with its partners in order to change, wherever possible, the behaviours or the problematic family context, and thus avoided having the report maintained. Between 2005 and 2009, 113 families in which one or more children were the subject of a report accepted by Batshaw participated in the LaSalle Prevention Community Project. Of these, 90% were able to avoid having their child taken into care by the DYP as a result of this intervention,²⁵⁶ and only 10 children were removed from their families.

In 2008, the ACJQ awarded Batshaw a prize for excellence in the "Clinical Intervention Experiment" category for the LaSalle Prevention Community Project. In fact, in its brief submitted to the Commission, Batshaw pointed out that, despite its undeniable success and effectiveness, the program came to an end in December 2009, after the MSSS notified it that a youth centre was not authorized to provide prevention services.²⁵⁷

For its part, the Commission encourages this type of partnership, to the extent that it has proven to be an effective prevention measure for dealing with the factors associated with endangering children and youth and as part of a collaborative intervention in which the DYP can rely on the expertise and experience of organizations working, among others, with racialized groups.

4.3.2.2 Immediate protection measures

A multidisciplinary team that is familiar with the intercultural approach can assist the DYP in determining with greater discernment whether immediate protection measures are required in cases

256 For comparison, of the 4,602 reports accepted by the DYP in 2008-2009, 3,301 (or 72%) resulted in the file being closed at the end of the evaluation, on the grounds that the child's development or security were not considered to be in danger. ASSOCIATION DES CENTRES JEUNESSE DU QUÉBEC, *Bilan des directeurs de la protection de la jeunesse 2008-2009*, p. 17.

257 "This project came to end in December 2009 due to government mandates that clearly stated that preventative services could not be delivered by a youth centre, as it is not the mission of a youth centre to prevent referrals to its services. Nevertheless, it is a model that has proven its effectiveness and one that can be emulated by a community group or a CSSS in collaboration with a youth centre." Brief presented to the Commission by Batshaw Youth & Family Centres, p. 1-2.

where the security of the child appears to be endangered. In this area, the ACJQ noted that DYPs are perhaps more quick to apply immediate protection measures to Black youth because they are more often reported for physical abuse, a reason that generally requires a preventive placement as soon as possible. The ACJQ recognized that DYPs should engage in a self-criticism exercise in order to ensure that, in the case of Blacks, the risk management analysis is not overzealous. Here again, a collaborative intervention by the DYP, community organizations and first-line services at this stage would greatly help in terms of reducing cases where the risk assessment was wrong because it was based on an erroneous assessment.

4.3.2.3 Evaluation

A number of participants drew attention to an innovative role that the interventions by the DYP could perform when conducted in partnership with the community and first-line services. They saw this as an opportunity for the partners involved to not only inform the decisions taken by the DYP with respect to youth who have been reported and their families, but also to intervene during the evaluation in order to avoid children being taken into care by the DYP. In the following paragraphs, the Commission will draw attention to an experiment that, although is not unique, deserves to be mentioned, because it provides a good illustration of the relevance of partnerships in assisting the DYP to improve its intervention at the evaluation stage in a context of cultural diversity.

The *Éduquons nos enfants sans corrections physiques* [Let's Educate our Children without Corporal Punishment] Program

This is a partnership involving CJM-IU and two community organizations. Within the framework of this partnership, the DYP may, during the evaluation stage, recommend to parents of children who are reported for "physical abuse" that they take a course on parenting skills called "*Éduquons nos enfants sans corrections physiques*". This program, which seeks to develop parenting skills using alternatives to corporal punishment, has been available since the end of the 1990s from the Maison d'Haïti, which works with families of Haitian origin in Montréal, and since 2001 from the Centre Mariebourg, whose mission is to stop the spread of violence by promoting non-violent behaviour. These two organizations offer training to parents who are referred to them by a school, a CLSC or a DYP social worker.²⁵⁸

Parents are only referred by the DYP during the evaluation stage if they satisfy eligibility criteria²⁵⁹ and if an intervener from the evaluation/orientation team handling their file considers this approach to be appropriate. At the end of the course, which is voluntary and which comprises four meetings, an attendance and progress report is provided to the DYP social worker by the organization's trainer. If the "report is satisfactory, of in other words, if the parent has actively participated in the four meetings and shown a desire to find alternatives to the use of corporal punishment, the file can be considered to be closed." On the other hand, if the parent does not satisfy the criteria for success in the program, the evaluation process continues.

This program was evaluated by researchers in 2003-2004 in order to determine its effectiveness. Subject to some recommendations aimed at improving the program, these researchers found that it

258 Isa IASENZA, "Comment éduquer nos enfants sans utiliser la correction physique," *Revue professionnelle Défi jeunesse*, 1999, [on line]. www.centrejeunessedemontreal.qc.ca/pdf/cmulti/defi/defi_jeunesse_9910/correction.htm (Consulted on December 9, 2010)

259 *Ibid.* The eligibility criteria are as follows: 1) parents must be the subject of an evaluation by the DYP for physical abuse for the first time, and 2) the child whose situation has been reported must be between 5 and 12 years old.

was relevant and effective.²⁶⁰ In fact, of the 72 parents of Haitian origin who participated in the course given by the Maison d'Haïti in 1998-1999, 18 had been referred by the DYP during the evaluation stage. Of this group, 14 received a certificate attesting that they had successfully completed the training, and accordingly, had their files closed by the DYP.²⁶¹

At the time of this writing, CJM-IU mentioned to the Commission that it was about to make its partnership with the Centre Mariebourg official in a formal arrangement for the first time. However, it would appear that agreements of this type are precarious, because we were told by CJM-IU that the community organization involved has not been offered additional funding for the services that it is agreeing to offer.

4.3.2.4 Voluntary measures

The valuable contribution of community organizations and first-line services during the orientation stage was also mentioned in terms of promoting the application of voluntary measures and thus avoiding bringing the case to court. In this respect, it is worth mentioning that, in the study cited above²⁶² on all reports accepted in 2007-2008 by CJM-IU and Batshaw, it appeared that the DYP went to court more often in cases involving black families (60%) than white families (54%), although the difference was not significant. In this context, organizations that specialize in intercultural and antiracism intervention or those that serve Black communities can assume an active role in facilitating better intercultural understanding between the DYP social workers and the families concerned. Quite often, these people can assist the authorized DYP personnel in terms of identifying and applying measures that promote the active participation of children and their parents, and are also compatible with the family's cultural and educational norms, to the extent possible.

"Too often the youth centre social workers don't try hard enough to collaborate with the parents, to understand them and to support them in helping them get their act together.

Eugénia Romain, Conseil ethnique des droits humains

Overall, it appears that the partnership experiences involving the DYP, the community and first-line services generally achieve their objectives. In fact, these partnerships make it possible to apply an intervention model based on the complementarity of expertise and driven by a preventive, proactive approach that is sensitive to the reality and the needs of the communities served at every stage of the protection system.

THE COMMISSION RECOMMENDS:

- that the MSSS ensure that formal partnerships with youth centres, first-line services and community organizations become the standard for youth protection, and secure its funding;
- that youth centres and CSSS establish more formal partnerships with community organizations, when the situation allows, so that interventions with migrant or racialized families are supported by a multidisciplinary and intersectorial team with a view to ensuring that the services are adapted to the needs of this clientele.

260 Marie-Ève CLÉMENT, Karine CÔTÉ and Isa IASENZA, "Que retenir de l'implantation et de l'efficacité du programme "Éduquons nos enfants sans corrections physiques"?", Défi Jeunesse, November 2004, vol. XI, No. 1, p. 8-13.

261 I. IASENZA, op.cit., note 258.

262 C. LAVERGNE, S. DUFOUR, J. SARNIENTO and M.-È. DESCÔTEAUX, op.cit., note 246, p. 238-239.

4.4 REVISION OF CLINICAL ASSESSMENT TOOLS

During the consultation, some participants mentioned that youth centres should revise their assessment tools in order to ensure that they take into consideration issues associated with cultural diversity during the evaluation and orientation stage. It was suggested that the clinical indicators used by the DYP at this stage should be subjected to a rigorous examination in order to ensure that they allow for readings of the situation that are sensitive to the ethnocultural diversity of the clientele. The challenge here is to ensure that the indicators developed for majority group families remain valid when applied to families belonging to ethnocultural minorities. Both CJM-IU and Batshaw are aware of the importance of these issues. To this end, Batshaw has adopted “policies and structures that promote the development of clinical and administrative processes that ensure that our interventions/decisions show sensitivity to cultural diversity.”²⁶³

As for CJM-IU, it created a task force with the following terms of reference in March 2008:

“Make all adjustments required to the integrated clinical process so that the ethnocultural dimension is systematically considered, whenever relevant to do so, in order to ensure the best possible services to this clientele;

Identify the indicators that will alert social workers to the necessity of seeking an opinion from a professional with expertise in immigrant clienteles;

Revise the tools used at all key collaborative moments of the integrated clinical process so that they take into account specific dimensions to be considered when the intervention concerns a child from a cultural community.”²⁶⁴

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At the conclusion of this work, CJM-IU prepared a reference document entitled *Enjeux à considérer dans l'application du processus clinique intégré auprès de la clientèle issue de l'immigration* [Issues to consider in the application of the integrated clinical process to an immigrant clientele].²⁶⁵ However, it would seem that these major orientations had not yet been implemented in practice in the spring 2010, even though they are now taken into consideration within the framework of clinical development.²⁶⁶

The Commission is pleased to see that CJM-IU and Batshaw have developed reference documents stating the guidelines for ensuring that the ethnocultural dimension is taken into account in the clinical evaluation process.

THE COMMISSION RECOMMENDS:

■ that all DYPs adopt a reference document stating the guidelines for integrating the intercultural and antiracism approach to their clinical evaluation processes, and that they ensure that the orientations and principles of this document are well understood and applied by the social workers.

263 S. DUFOUR, C. LAVERGNE, G. HASSAN, F. DEMOSTHÈNE and G. SAVOIE, op.cit., note 246, p. 52.

264 J.-M. DAIGNEAULT, op.cit., note 255.

265 *Ibid.*

266 *Ibid.*

4.5 TRAINING AND HUMAN RESOURCES

4.5.1 INCLUDING THE INTERCULTURAL AND ANTIRACIST APPROACH IN ORGANIZATIONAL POLICIES

Throughout the consultation, many participants asserted that one of the essential conditions for eliminating racial profiling is to include the main principles of the antiracism and intercultural approach in an institution's organizational policies. Such an approach makes it possible for senior management to make all personnel aware of the guidelines and philosophy that should underlie the actions of each employee and professional involving clientele from ethnocultural and racialized minorities. It would also allow the institution to describe exemplary intervention procedures for each guideline.

The Commission asked the youth centres from the Montréal region (CJM-IU and Batshaw) whether the principles of the antiracism and intercultural approach were formally included in their respective organizational policies.

In 1993, Batshaw included the main principles of the intercultural and antiracism approach in the statement that sets out its institutional undertakings²⁶⁷, and then in its code of ethics in 1994²⁶⁸. It also adopted two policies in 1995, one entitled "Commitment to Racial and Cultural Equality" and the other entitled "Basic Principles and Guidelines for Services to Visible Minorities in Foster Care." As their names indicate, the first is intended as the foundation of the principles of an antiracism intervention, while the second sets out the guidelines for guaranteeing that ethnocultural diversity is taken into account in the services provided for children who are placed in care.

As for CJM-IU, at the time of the public hearings, it had no policy specifying that it was committed to including an antiracism and intercultural approach in the framework of its interventions, but it had adopted a Policy on Ethnocultural Diversity in December 2010.

However, unlike Batshaw, CJM-IU has yet to include in its mission statement and its code of ethics a commitment to respect the principles of an intercultural and antiracism approach with its clientele.

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THE COMMISSION RECOMMENDS:

that youth centres include their commitment to respecting the principles of an antiracism and intercultural approach in a policy, their mission statement and their code of ethics.

4.5.2 INTERNAL RESOURCES SUPPORTING THE CONSIDERATION OF ETHNOCULTURAL DIVERSITY

Youth centres that serve a diversified clientele generally recognize that it is essential for them to be able to rely on intercultural expertise to guide their interventions. But what strategies have they developed in order to be sure of having access to such expertise in practice? As we have seen, the consultations made it clear that partnerships created with community groups are a winning strategy in this respect. However, such strategies, while essential, are not sufficient.

267 In their mission statement, the Batshaw Centres state that they are committed to "respect the values, beliefs and sexual orientations of those we serve in this community which has many races, languages, cultures and religions." [on line]. <http://www.batshaw.qc.ca/sites/default/files/mission-statement-2006.pdf> (Consulted on December 13, 2010)

268 The Batshaw Code of Ethics (revised in 2008) includes the following passage: "We treat individuals with respect and dignity [...] by: - actively and continually seeking to inform ourselves of the values and lifestyles of different cultures, religions, histories, sexual orientations of users and to know them; - participating in activities or by developing programs that encourage understanding of diversity as well as by developing the competencies necessary to intervene in this context; - understanding the religious or cultural practices of a family and taking them into consideration," cited in S. DUFOUR, C. LAVERGNE, G. HASSAN, F. DEMOSTHÈNE and G. SAVOIE, op.cit., note 250, on page 47.

Youth centres must also provide in their organizational structures procedures that will ensure that the intercultural and antiracism approach is taken into consideration in the work of their social workers. In this section, we will examine the procedures that have already been implemented by CJM-IU and Batshaw to this effect, and suggest certain recommendations for improving the institutional offering with respect to intercultural expertise internally.

Without assuming that these are unique cases, we should mention that Batshaw and CJM-IU told the Commission that they have advisory committees on issues regarding clientele from ethnic and racialized minorities. For example, CJM-IU has had an “advisory Committee on the accessibility of services for ethnocultural communities” since 1996, the purpose of which is to advise the Executive Director of any issue involving the management of ethnocultural diversity. In addition to representatives from all departments, this committee includes a youth of Haitian background and representatives of three community partners: the Alliance of the Cultural Communities for Equality in Health and Social Services (ACCESS), the Centre haïtien d’action familiale (CHAF) and TCRI. This committee meets approximately six or seven times per year, adopts an annual plan, and reports on its achievements annually. The Commission can only agree with CJM-IU when it points out that the existence of such a committee “contributes to improving the quality of services offered in a context of cultural diversity, and allows close links to be maintained with the community.”²⁶⁹ Finally, we note that CJM-IU recently created the position of Community Partnership and Ethnocultural Management Advisor.

For its part, Batshaw established an advisory committee on “multiracial and multicultural issues” in 1995. This committee reports directly to the Executive Director, and its mandate is to validate the content of the institution’s various policies in order to ensure that they respect “our commitment to racial and cultural equality.”²⁷⁰ In addition to this committee, Batshaw has two special advisory committees, for the Jewish community and the Black community, both of which report the Board of Directors.

In 2009, CJM-IU established an internal “intercultural consultation clinic” that includes members of the personnel identified as experts in this field and responsible for supporting intervention in an intercultural context upon request. CJM-IU also uses interpreters provided by the health and social services agencies as required. The equivalent of such an initiative at Batshaw is the existence of a “bank of consultants and language and cultural interpreters comprising employees from diverse ethnic and cultural communities.”

The Commission notes with satisfaction that CJM-IU and Batshaw have advisory bodies or human resources responsible for assisting the protection services in integrating the intercultural approach, both in the planning of their main orientations and policies and in the daily work of the social workers. However, in order for such initiatives to reach their full potential, DYPs must ensure that all of the personnel at the youth centres adopt and use the available resources to support their interventions in an intercultural context.

THE COMMISSION RECOMMENDS:

■ that youth centres establish procedures intended to ensure that the intercultural and antiracism approach is taken into account at all levels of the organization.

269 S. DUFOUR, C. LAVERGNE, G. HASSAN, F. DEMOSTHÈNE and G. SAVOIE, op.cit., note 250, p. 63.

270 Letter from the Batshaw Centres, at the request of the Commission, reporting their achievements contributing specifically to counter “any possibility of racial profiling.”

4.5.3 PERSONNEL TRAINING

Throughout the consultation, many participants asserted that a work force that is well trained in the intercultural and antiracism approach constitutes one of the essential keys to a strategy for preventing and curbing “ethnoracial” discrimination. In the youth protection system, such training seeks to equip the social workers to avoid drawing conclusions based on prejudices or misunderstandings of cultures foreign to their own in their evaluation of the situation.

“Researcher Léonel Bernard states that DYP social workers express concern when they see a pantry filled with corn, rice, beans and vegetable oil. A family that doesn’t follow the Canadian Food Guide? They note that the child is not well fed.”

Excerpt from a news story “Un racisme méconnaissable” [Unrecognizable Racism] by Judith Lachapelle, in *La Presse*, September 30, 2008.

Since 1994, Batshaw has been offering a compulsory course on cultural diversity and intervention in a multicultural setting to all of its personnel. CJM-IU only recently started to offer intercultural training to its employees, beginning in September 2010. The course, which is voluntary, is given in collaboration with the CSSS de la Montagne research centre. According to CJM-IU representatives, it has been very successful among its employees.

Although the Commission does not doubt the interest shown by CJM-IU employees in this course, it would like to point out that those who are most in need of taking such a course are often those who fail to recognize its value. That is why Batshaw’s idea of making such a course compulsory seems to us to be relevant in order to reach all employees.

THE COMMISSION RECOMMENDS:

- that youth centres that serve a clientele from ethnic and racialized minorities make an intercultural and antiracism course compulsory for all of their employees.

4.5.4 RECRUITING A DIVERSIFIED WORKFORCE THAT IS SENSITIVE TO DIVERSITY

The advantages that an employer can derive from an ethnically diversified work force no longer need to be demonstrated. Therefore, in the following paragraphs, we will examine the preferred methods and the results obtained by Batshaw and CJM-IU, together with the two objectives mentioned above, namely hiring a workforce that is both culturally diverse and sensitive to cultural diversity.

Batshaw applies a hiring policy that not only reflects the ethnocultural diversity of its clientele, but it does so in greater proportions than the representation objectives imposed on it by the Act respecting Equality of Access to Employment in Public Bodies.²⁷¹ According to the analyses of representation that Batshaw provided to the Commission in January 2010, its permanent employees include 21.9% visible minorities and 19.9% ethnic minorities.²⁷² Although the Commission has not yet performed

²⁷¹ Op.cit., note 17.

²⁷² The criteria that determine membership in an ethnic minority within the meaning of the Equal Access Act are the following: “[...] persons who are members of visible minorities because of their race or the colour of their skin and persons whose mother tongue is neither French nor English and who belong to a group other than the aboriginal peoples group or the visible minorities group” (sec. 1).

under-representation analyses²⁷³ for the youth centres, these percentages seem to be remarkable at first glance, given that the Montréal population consisted of 15.1% visible minorities and 17.8% allophones²⁷⁴ in 2006, according to Statistics Canada. Finally, it is important to point out that, according to another data source,²⁷⁵ Blacks account for up to 19% of the temporary and permanent employees working at Batshaw. For comparison purposes, according to Statistics Canada, Blacks represent 4.9% of the Montréal population 15 years old and older.²⁷⁶ In the Commission's view, this representivity of Blacks among the Batshaw staff constitutes an important asset, given the disproportionate weight of youth from Black communities in the youth protection system.

In addition, Batshaw has noted a constant growth in the number of persons belonging to visible minorities among its managers, although a sort of glass ceiling remains to be broken among senior management. Finally, five of the 16 members of the Batshaw Board of Directors are members of racialized minorities.²⁷⁷ Such a result deserves attention, even more so because the public health and social services establishments, including youth centres, have a legal obligation to ensure that appointments of members of their Board of Directors, reflect the ethnocultural and linguistic composition of the clientele they serve.²⁷⁸

As for CJM-IU, the only data that the Commission has with respect to its staff come from the representation analyses that this organization provided in January 2010. According to these data, CJM-IU staff comprise 10.1% visible minorities and 1.8% ethnic minorities.

Therefore, in a number of respects, Batshaw has a more diversified personnel than CJM-IU in "ethnoracial" terms. Some of the measures that Batshaw has adopted in order to ensure that racialized and ethnic minorities are adequately represented among its personnel and that the individuals who are hired have good intercultural competencies, deserve mention.

First, for certain job openings, Batshaw includes special requirements that candidates must satisfy, such as "proven knowledge of the culture, community resources and religion of the clientele served."²⁷⁹

Secondly, the Batshaw "Advisory Committee on multiracial and multicultural issues" participates in the development of interview protocols in order to ensure that they properly assess the intercultural competences of candidates.

Finally, we note that at least one member of the "Advisory Committee on multiracial and multicultural issues" is a member of the selection committees responsible for filling management positions, in order to ensure that the candidates who are selected to occupy management or senior executive positions are sensitive to ethnocultural diversity and discrimination related issues. This specific practice attracted our attention, to the extent that it contributes, through systemic measures, to ensuring

273 Under-representation is calculated as follows pursuant to the Equal Access Act: "In order to determine whether a target group is under-represented in a type of occupation, the Commission shall compare the representation of the group within the public body's workforce with the representation of the group among persons qualified for that type of occupation or capable of becoming qualified for that type of occupation within a reasonable time in the relevant recruitment area." (Sec. 7).

274 It should be noted that the concept of allophone, which designates persons whose mother tongue is neither French nor English, covers, fairly well, if imperfectly, the ethnic minorities within the meaning of the Equal Access Act.

275 S. DUFOUR, C. LAVERGNE, G. HASSAN, F. DEMOSTHÈNE and G. SAVOIE, *op.cit.*, note 250, page 45. Note that the Commission has verified the validity of this information with Batshaw.

276 STATISTICS CANADA, *2006 Population Census*, Product No. 97-562-XCB2006010 in the catalogue.

277 S. DUFOUR, C. LAVERGNE, G. HASSAN, F. DEMOSTHÈNE et G. SAVOIE, *op.cit.*, note 250, page 51.

278 *Act respecting health and social services*, R.S.Q., c. S-4.2, sec. 138, par. 2.

279 *Op.cit.*, note 270.

that the managers and senior executives play a leadership role in the fight against racial profiling and discrimination of an “ethnoracial” nature within their institution.

In conclusion, the Commission considers the institutional practices instituted by Batshaw for recruiting to be exemplary. Measures of this type are in line with the philosophy underlying the work of the Commission when it examines the recruiting practices of public bodies that are subject to the Equal Access Law in order to change, by appropriate corrective measures, any rule, standard or practice that is likely to fuel systemic discrimination against target groups.

THE COMMISSION RECOMMENDS:

- that youth centres develop and apply an interview protocol and hiring examinations that ensure that the instruments and selection criteria used for the purposes of recruiting in fact measure the intercultural and antiracism competencies of candidates for all job categories, including executive positions.

5 . T H E C O M M I S S I O N ' S

C O M M I T M E N T S

The Commission was one of the pioneers in Québec in thinking about, conceptualizing and then engaging in the awareness-raising work involved in having the existence of racial profiling recognized as a form of discrimination. It has made a significant contribution in its submissions and publications to better define the concept of racial profiling²⁸⁰ and to clarify the key indicators that allow this form of discrimination to be detected, and then to be proved in the courts.²⁸¹ This preparatory work provided the necessary tools for the Commission's investigation department to receive complaints of racial profiling starting in 2003. In addition, the Commission has organized training sessions on ethnoracial discrimination in general and on racial profiling specifically. It has also been asked to support various organizations, educational institutions and assistance groups in their search for solutions to concrete problems of discrimination or racial profiling or internal intercultural tension.

However, the Commission is entirely aware that its work in fighting discrimination and racial profiling can be improved. In fact, during the consultation, it quickly realized that the loss of trust in public institutions, as expressed by victims of racial profiling and by groups and organizations that have devoted themselves to its elimination, had not spared the Commission, but rather the opposite. Most of the people and groups who were consulted acknowledged and supported the efforts of the Commission in fighting racial profiling, but more than a few either stated that its actions along these lines were inadequate or that it seemed to adopt a wait and see attitude or that it was unwilling to fight, especially on the judicial front. It should be said that a number of participants were thinking of previous consultations or public hearings held in Québec on racism and discrimination. They were quick to remind us that these exercises generally had not contributed to making significant and lasting changes, and therefore, they doubted that this consultation would succeed where the others had failed.

Noting these criticisms, the Commission would like to explain in this section how it intends to act in order to deal with expectations expressed with respect to its work during the consultation.

5.1 D E T E C T I N G R A C I A L P R O F I L I N G A N D F I N D I N G E V I D E N C E

Among the criticisms directed to the Commission was that it accepted too few complaints of racial profiling, and set the bar too high in its search for evidence. It cannot be repeated too often that racial profiling is a form of discrimination that is difficult to define, because it is extremely subtle and insidious. Searching for contextual elements in which racial profiling is practiced requires special expertise. That being said, it was vital for the Commission that the personnel assigned to handling complaints know and understand the relevant elements required to prove racial profiling. To this end, the research department of the Commission produced a document entitled "Racial profiling: guidelines for investigations" for the use of its complaint handling personnel staff, and training was offered in this area.

Nevertheless, the Commission is aware that there remains much to be done in order to ensure that this training actually achieves its objectives. The group that has been most critical in this respect is CRARR,

280 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, *op.cit.*, note 7.

281 *Ibid*, *op.cit.*, note 7.

which assists a number of the complainants in racial profiling cases. In its brief, CRARR concluded that the Commission staff assigned to complaint handling was poorly equipped to verify allegations of racial profiling in its search for relevant evidence. The Commission is aware of this criticism, and intends to take the necessary measures to ensure that training on racial profiling given to its staff is accompanied by follow-up procedures intended to measure its effectiveness and make any appropriate corrections, just as it has recommended to other institutions.

5.2 THE SYSTEMIC APPROACH

As mentioned repeatedly in this report, racial profiling is often systemic in nature. For example, that is the case when the individual behaviours that are criticized in one or more police officers can only be understood in light of the broader social and organizational context in which they occur. In such cases, the complexity of the case requires analysis, an investigative method and a judicial strategy that are likewise systemic. Some participants, like CRARR and the Barreau du Québec, feel that the Commission has not yet sufficiently considered the systemic nature of racial profiling in its handling of complaints, either when searching for evidence during an investigation or when seeking remedial measures from a respondent.

The Commission finds such criticism to be not totally unfounded. It is already taking steps to ensure that the staff assigned to complaint handling has access to adequate expertise with respect to systemic intervention, when necessary and at every step of the process. However, it is most often requests for specific expertise on precise points, such as those addressed to the legal or research and education departments, that cause difficulty. In other words, a true method of systemic intervention still needs to be developed and adopted. That is why the Commission, in order to better fulfill its responsibility of defending rights, is now in the process of developing an intervention model that, in the case of complaints containing a systemic dimension, would form a multidisciplinary team combining complementary expertise whose members would collaborate during all steps of complaint handling.

Such an intervention method would enable the Commission to be more attentive to “contextual” evidence, such as statistical data that reveal suspicious recurring “patterns” in police actions, or organizational policies that have discriminatory effects on how police interact with racialized minorities. The Commission would then be in a better position to propose or demand, as the case may be, remedies that would bring the respondent to implement corrective measures of a structural nature. It should not be forgotten that systemic remedies have a much larger scope than a simple remedy in an individual case.

5.3 MEDIATION

The Commission is aware that, in files involving a systemic dimension for which there are no precedents in case law, a settlement achieved by mediation can be a disappointment for certain groups that are focused on the public interest and advancement of the law. However, it is important to remember that, pursuant to section 71(2) of the Charter, the Commission must “foster a settlement between a person whose rights allegedly have been violated, or the person or organization representing him, and the person to whom the violation is attributed.” In such cases, it is not up to the Commission to object to the wish of the complainant, unless it is contrary to the public interest to do so. However, the Commission agrees to continue, in the public interest, to make certain settlements obtained through mediation accessible, while protecting the anonymity of the parties.

The Commission also wishes to draw attention to the fact that, in cases of racial profiling, moral and psychological exhaustion, and even discouragement, loom very large among the reasons why some complainants decide to withdraw their complaint at the end of mediation. Such scenarios are even more likely to occur when, as is the case for many complaints of racial profiling currently handled by the Commission, the investigation process or the resulting legal proceedings are seemingly endless. The issue of the time involved in handling racial profiling complaints is discussed in the next section.

5.4 DELAYS IN HANDLING COMPLAINTS

If there is one criticism that was often heard during the consultation, it was of the length of time taken by the Commission's investigations and judicial proceedings in racial profiling cases. It was repeatedly mentioned that such excessive delays are largely responsible for the loss of confidence in the Commission with respect to fighting racial profiling, as expressed by ethnic and racialized minorities.

Not only is the Commission concerned by this problem, but it also intends to do everything it can to attack it head on. Before reviewing the factors that cause these excessive time periods in handling racial profiling complaints and the steps required to fix the problem, let us first look at some statistics. Since 2003, the Commission has received 194 complaints involving racial profiling. Although the great majority of them involve police departments, some are also directed against public transit companies, private security agencies and the managers of public spaces. As of today, there are 89 still active files of racial profiling files. Of these, 11 are at the preliminary evaluation stage, four are in mediation, 67 are being investigated while in seven other files, the Commission has made recommendations in order to obtain redress. However, the Québec Human Rights Tribunal has yet to rule on the merits of a racial profiling case and the Commission has not been able to win compensation for the harm done.

Why has Commission not succeeded in obtaining a single judgment on the merits in matters of racial profiling since 2003? Some believe that this result is partly due to the slowness of the work of the personnel assigned to complaint process, especially during the investigation stage. Although the Commission has made a number of efforts to reduce its complaint processing time in recent years, it is aware that it can do better. In addition, considering that the Commission has made the fight against racial profiling an organizational priority in its most recent strategic plan, it is committed to doing everything is in its power to minimize the time required for handling complaints of racial profiling, in particular during the investigation stage.

Finally, all participants are aware that the excessive delays in the handling process of racial profiling complaints are largely due to the legal strategy of the City of Montréal, which has consisted of multiplying its delaying tactics in order to keep the Human Rights Tribunal from hearing complaints on their merits. These tactics, which have been going on for at least five years, are of two types. First, the City of Montréal challenged in court the Commission's right to pursue racial profiling cases if the complainant had already been found guilty of the offence that he was charged with. Yet, recently the Québec Court of Appeal²⁸² upheld the decisions of the Human Rights Tribunal and the Superior Court²⁸³ which both ruled that a conviction for a violation of a municipal by-law did not, in an of itself, render impossible a consideration of the merits of the allegations of profiling with respect to the reasons underlying the police intervention.

282 *Montréal (Ville de) c. Commission des droits de la personne et des droits de la jeunesse*, QCCA 519, no. 500-09-019768-092, March 17, 2011.

283 *City of Montréal v. Human Rights Tribunal*, S.C. Montréal, no. 500-17-045563-080, May 21, 2009. *Montréal (City of) (Service de police de la Ville de Montréal (SPVM) v. Commission des droits de la personne et des droits de la jeunesse*, QCTDP 23, no. 500-53-000284-081, August 28, 2008.

The other legal front opened by the City of Montréal involves the refusal of police officers to collaborate and testify in the Commission's investigations. It should be stated from the outset that, in general, complaints of racial profiling against police that are filed with the Commission are concurrently with complaints to the Police Ethics Commissioner. However, as mentioned in the section on public security, police officers refuse, in such cases, to cooperate with the Commission investigators at the fact-finding stage, invoking their right to avoid self-incrimination pursuant sections 189 and 192 of the Police Act.²⁸⁴ According to these provisions, in a police ethics investigation, an officer can refuse to provide any information or document that the Commissioner requests. The police officers who exercise this right when concurrently the subject of an investigation by the Commission for the same facts state that, for reasons of caution, they prefer not to give their statement to the Commission investigators for fear that their remarks will reach the attention of the Police Ethics Commissioner. In addition, in some cases, even when they are not the subject of an ethics complaint, the police officers involved in a Commission investigation refuse to collaborate with its investigators in case the complainant decides to file an ethics complaint within the one-year period prescribed by law.²⁸⁵

In response to the numerous *subpoenas* sent by the Commission to the City of Montréal to direct its police officers to collaborate with its investigations, the City sought to challenge their legality in Superior Court. Such tactics, which persist to this day, contribute to delaying and considerably extending the investigation process in racial profiling cases.

In short, in racial profiling cases, the Commission is facing a particularly aggressive legal strategy. More specifically, the City of Montréal and its police department have chosen to multiply the proceedings in order to prevent the Commission from doing its work, and thus avoid having the Human Rights Tribunal examine allegations of racial profiling on their merits at all costs. In 2009, Marc-André Dowd, then Vice President of the Commission, explained why such a strategy is harmful:

"It has as its consequence that two public institutions, the Commission des droits de la personne et des droits de la jeunesse and the SPVM, must devote very large public resources to legal matters. It also results in serious delays, for all the parties involved, alleged victims as much as police officers, before justice is done. In recent months, between motions to dismiss, appeals of interlocutory decisions and applications for judicial review, we have resumed the debate with the SPVM on collateral issues before the Human Rights Tribunal, the Superior Court and the Québec Court of Appeal, without ever having had an opportunity to thoroughly discuss any case and answer the fundamental questions: are the elements presented as evidence before the Court proof of racial profiling, contrary to the Charter of Human Rights and Freedoms? If the SPVM has the right to choose its legal strategy, we also have the right to criticize its consequences, in particular as they relate to disputes that involve two public bodies, both administering public funds."²⁸⁶

In other words, the procedural "war of attrition" that is being waged at this time by the City of Montréal and its Legal Department is a deplorable strategy, even if it were only because it deprives complainants of their elementary right to justice, but also because it is very costly, both in human and social terms. Faced with these tactics, the Commission has so far been largely helpless. Like the majority

284 *Police Act*, op.cit., note 136, sec. 192: "Sections 189 [...] do not apply in respect of a police officer whose conduct is the subject-matter of a complaint. No statement made by a police officer in whose respect no complaint has been made and who cooperates with the Commissioner or the investigators during an investigation carried out following a complaint made against another police officer may be used or held against that police officer, except in a case of perjury."

285 *Ibid.*, sec. 150.

286 Marc-André Dowd, "Le profilage racial et la Commission des droits de la personne et des droits de la jeunesse", *Développements récents en racial profiling (2009)*, Service de la formation continue du Barreau du Québec, 2009 (closing remarks at the symposium on racial profiling).

of participants who testified during the consultation, it holds that the City of Montréal must cease to try to prevent the Tribunal from deciding the allegations of racial profiling brought before it on their merits. If the City of Montréal is serious in its public commitment to prevent and fight racial profiling, it must insist that the SPVM instruct the police officers involved to give testimony to the Commission's investigators so that it can determine the facts in an objective way during the investigation phase.

That being said, some participants made it clear to the Commission that they wanted it to revise its own legal strategy in matters of racial profiling. In this respect, Alexandre Popovic, President of the Coalition contre la répression et les abus policiers (CRAP), urged the Commission to show more of a fighting spirit and to be more proactive in responding to the offensive legal strategy of the City of Montréal. The Commission is sensitive to this criticism, and intends to take it into account in the future. Therefore, if the Legal Department of the City of Montréal continues to multiply proceedings in order to avoid collaboration by the police officers involved with its investigators, the Commission is committed to revising its legal strategy. It will present its case to the Tribunal, even in the absence of collaboration or testimony from the impleaded party (the SPVM). It is true that section 71(1) of the Charter provides that an investigation by the Commission should be a non-adversary investigation, which assumes that both parties can give their version of the facts. However, in cases where the respondent party does not make use of this right, nothing prevents the Commission from filing an action in the Tribunal, on behalf of the complainant. Such a procedure would not only be a legitimate way of ending the legal impasse into which the Legal Department of the City has put the Commission, but would also significantly contribute to reducing its investigation times.

In addition, while the Commission is not entirely responsible for the excessive delays in matters of racial profiling, it is nevertheless receptive to criticism expressed by the CRARR with respect to requests for information from complainants about progress in their case:

"The often excessive and unexplained delays, despite repeated requests for information about developments in a particular case (an increasingly frequent trend). It may be normal that some delays result from the lack of financial and human resources, forcing the investigators to extend the duration of an investigation from time to time or to set a file entirely aside for several months, in order to devote their attention to other, older files (...). But it is abnormal and unacceptable, as in our recent experience, for the delays not to be explained to the complainants, despite requests for information submitted in writing to the investigators and their supervisors [...]"²⁸⁷

Taking note of this criticism from the perspective of improving the quality of the services offered to citizens, the Commission undertakes to respond to requests for information from complainants in a more timely and diligent manner, even if it is only to explain to them, where appropriate, the reasons why the handling of their case has been delayed or suspended.

5.5 REGAINING THE CONFIDENCE OF COMMUNITY ORGANIZATIONS

In terms of fighting racial profiling and discrimination, the Commission is committed to regaining the trust of not only ethnic and racialized minorities, but also of the groups and organizations that represent them and defend their interests. Restoring this trust is essential, because the Commission seeks to be a credible leader and partner in the eyes of those involved in this battle on the ground.

287 Brief submitted by the CRARR during the public hearings.

In order to do so, the Commission is committed to maintaining the spirit that characterized its consultation on racial profiling, while remaining attentive to the numerous community organizations that were met on this occasion, as well as continuing to work in collaboration with them. It undertakes to guarantee rigorous follow-up in the coming years in order to ensure that its recommendations to various institutional actors in this report are in fact implemented.

THE COMMISSION UNDERTAKES TO:

- ensure that the courses on racial profiling, in particular those given to its own personnel assigned to complaint handling, are accompanied by follow-up procedures intended to measure their effectiveness, and where necessary, to make the appropriate corrections;
- design and implement an intervention model that, in the case of complaints with a systemic dimension, provide for the formation of a team that brings together complementary expertise and whose members work in collaboration during every stage of the complaint processing;
- pay careful attention, when handling complaints of racial profiling, to elements of contextual evidence, such as statistical data revealing recurring suspicious patterns in police interventions or organizational policies with potentially discriminatory effects;
- be more inclined, when handling complaints of racial profiling, to propose or demand, as the case may be, corrective measures of a structural nature;
- make accessible, in the public interest, the settlements obtained by mediation, while protecting the anonymity of the parties;
- guarantee better follow-up with complainants in order to keep them better informed of the progress of the handling of their complaint;
- reduce the time involved in handling complaints of racial profiling at every stage to the extent possible;
- prioritize the option of referring cases of racial profiling to the Human Rights Tribunal on their merits in its decision-making process, even in the absence of collaboration from the police officers involved during the investigation stage;
- pursue its efforts to have municipalities, including the City of Montréal and the SPVM instruct their police officers to collaborate in the Commission's investigations of racial profiling, in particular by providing testimony when requested;
- remain attentive to that community organizations that it encountered during the consultation, and to continue to work in collaboration with them;
- carry out rigorous follow-up in the future in order to ensure that the recommendations that it has addressed to various institutions in this report are in fact implemented.

C O N C L U S I O N

If there is one conclusion that the Commission can legitimately draw from this consultation, it is that the problems of racial profiling and systemic discrimination as perceived by youth of racialized minorities within the targeted institutions are sufficiently important for society as a whole to feel concerned by them. Québec cannot allow some of its citizens to lose their trust in its public institutions, or even worse, to feel like foreigners in their own society.

Racial profiling and discrimination are sustained by prejudice and stereotyping. Although it is true that both are likely to be found in all layers of society, representatives of the State, given the discretionary power that they exercise in the application of the laws and by-laws, and more generally in the exercise of their duties, have an obligation to neutralize them. In addition, the Commission has pointed out how policies and organizational models in any sector that appear to be neutral can produce systemic discriminatory effects, which is why public institutions, along with the government departments that oversee them, must review their organizational policies in order to ensure that they do not generate discriminatory effects on racialized minorities.

The Commission concludes that the consultation has been beneficial, if only because it has made it possible to identify promising and concrete solutions that cannot be ignored if the government is serious in its intention to eliminate racial profiling and institutional discrimination. In closing, without reviewing all of its recommendations individually — they are listed in the previous section — the Commission insists on restating the axes of intervention that must be applied across the board in the three targeted institutional sectors:

- Antiracism and intercultural training must be provided to both managers and personnel who will be called to work (basic education) or already working (continuing education) in the institutional sectors concerned;
- The personnel of the institutions concerned must reflect the ethnocultural diversity of the groups of people that they serve, at every level of their hierarchical structure;
- The prohibition of racial profiling and discrimination must be formally stated in the law, the regulatory framework or the organizational policy, as appropriate, and there must be remedies aimed at penalizing violations;
- Public institutions must establish rigorous procedures for data collection and analysis, or where appropriate, must revise those that already exist, in order to better detect instances of racial profiling or discrimination;
- Accountability procedures must be instituted at every level of the organizational structure in order to make each stakeholder accountable for its actions aimed at preventing racial profiling and discrimination;
- The public institutions concerned must establish more sustainable partnerships with community organizations that interact with ethnic or racialized minorities in order to benefit from their expertise.

Finally, the Commission wishes to continue to work in cooperation with government departments, public institutions and community organizations so that the recommendations contained in this report can become a reality. Pursuant to its obligation to monitor respect for the principles stated in the Charter and to protect the interest of children and the respect of the rights conferred upon them by the YPA, the Commission also undertakes to ensure rigorous follow-up with respect to the recommendations that it addresses to the various stakeholders, and to honour the commitments that it has made in terms of improving its own interventions.

RECOMMENDATIONS
OF THE COMMISSION DES DROITS
DE LA PERSONNE ET DES DROITS
DE LA JEUNESSE

THE COMMISSION RECOMMENDS:

1. that the government adopt a policy aimed at fighting racism and discrimination that provides a plan of action for preventing and eliminating racial profiling and its consequences;
2. that each institution targeted by this consultation ensure that its staff reflects the ethnocultural diversity of the clientele that it serves by applying appropriate measures to meet or even exceed the representation targets established in;
3. that the government take the necessary measures to increase the representation of ethnic and racialized minorities in the public administration, and concurrently, that section 92 of the Charter be amended to the effect that Equal Access Employment Programs in the public service are subject to the Commission's reporting and monitoring procedures;
4. that the ministère de l'Éducation, du Loisir et du Sport (MELS), in collaboration with the university faculties concerned, ensure that the degree programs for each sector concerned contain antiracism and intercultural training, and that the students have acquired intercultural competency upon completion of their studies;
5. that government departments and institutions concerned adopt standard methods and indicators for collecting data pertaining to the ethnic origin and colour of their clienteles, with a view to detecting possible discriminatory biases;
6. that the government provide more measures to combat poverty that specifically target the groups at the greatest risk of living below the poverty level, which include recent immigrants, Aboriginals, racialized groups and single mothers, and that it adopt tools to measure the effectiveness of such measures.

THE PUBLIC SECURITY SECTOR

THE COMMISSION RECOMMENDS:

7. that the cities and their police departments review their policies for deploying police by district in order to prevent discrimination and racial profiling;
8. that the cities and their police departments review their policies for fighting crime and street gangs in order to reflect the discriminatory biases that are inherent in the policies or in their application;
9. that the cities and their police departments take measures to ensure that the results of the application of their policies for fighting crime and street gangs are known to the public;
10. that each city and its police department review the police policies and practices with respect to the application of municipal by-laws in order to detect and eliminate any discriminatory impacts on racialized persons;
11. that the City of Montréal and the SPVM review the police policies and practices with respect to fighting incivility in order to detect and eliminate any discriminatory impacts on racialized persons;
12. that the government officially recognize a definition of racial profiling, and take steps to amend the Charter of Human Rights and Freedoms to include discriminatory profiling as a prohibited act. This amendment could be inserted after section 10.1 of the Charter, which protects against discriminatory harassment;
13. that racial profiling be prohibited in the Police Act and in the Code of Ethics of Police Officers of Québec;
14. that the government take steps to amend the Act respecting Private Security to include in it prohibited actions linked to racial profiling;
15. that the cities and administrators of public transit systems provide policies prohibiting racial profiling linked to verifying the payment of fares and the movement of its clientele;
16. that the municipal police departments and the Sûreté du Québec systematically collect and publish data related to the presumed racial identity of individuals during police actions in order to document the phenomenon and take the appropriate measures; and that these same procedures be established by public transit companies with respect to the actions of their employees;
17. that the ministère de la Justice and the ministère de la Sécurité publique take the necessary steps to document the path of racialized minorities throughout the judicial system (laying of charges, trial, sentencing, parole, etc.);
18. that youth centres produce and publish data pertaining to the representation of racialized youth in rehabilitation centres who were sentenced pursuant to the Youth Criminal Justice Act, and pertaining to the types of measures (judicial or other) that the DYP is inclined to propose for these youth;
19. that the ministère de la Sécurité publique and the cities implement an annual accountability process to document actions taken against racial profiling by police services;

20. that police departments introduce measures that ensure greater impartiality in the supervision of their officers, in particular by involving police managers or commanders in the process;
21. that police departments issue instructions to detect and track signs of racial profiling among their officers;
22. that the cities establish anti-profiling watch committees consisting of members of civil society and city council members; and more specifically, that the City of Montréal make public reports by the Commission de la sécurité publique;
23. that the cities draw upon certain successful partnership initiatives between police and the community (such as in Rivière-des-Prairies and Saint-Michel) in order to develop alternative methods for preventing and controlling crime;
24. that police training programs and the École nationale de police du Québec provide anti-racism training that includes a formal evaluation of what has been learned by future police officers; and that the cities and the ministère de la Sécurité publique establish a similar process for police officers;
25. that the government amend the Private Security Act in order to have it include similar training adapted to the private security context;
26. that the École nationale de police du Québec, the cities and the ministère de la Sécurité publique take steps to promote diversity training and activities within racialized communities, both as part the curriculum of officers in training and once they are employed;
27. that cities and police departments take steps to ensure that their practices in recruiting, promoting and evaluating police take into account intercultural competencies;
28. that the ministère de la Justice and the ministère de la Sécurité publique take steps to ensure that all participants in the legal system and administrative tribunals (judges, lawyers, crown prosecutors, parole officers, prison guards, etc.) be recruited, trained, evaluated and promoted in accordance with their intercultural competencies;
29. that the Director of Criminal and Penal Prosecutions adopt rules of practice that make it possible to detect actions involving racial profiling in the cases submitted to him;
30. that the administrators of police departments work with community partners to fight effectively against crime, with respect for the rights of citizens, and that the government and the municipalities allocate adequate funding for this purpose in their budgets;
31. that the government amend the Police Act and the Code of Ethics of Québec Police Officers to enable the Commissioner to conduct investigations on his own initiative when required by the public interest, in order to ensure effective civilian monitoring of the police;
32. that the ministère de la Sécurité publique take steps to enable citizens to better understand the duties of the police and the remedies provided for by the Code of Ethics of Québec Police Officers;

33. that the government amend the Police Act and the Code of Ethics of Québec Police Officers to oblige police, subject to penalties, to inform citizens of their rights whenever they stop someone, make an arrest or write a ticket;
34. that the government amend the Police Act and the Code of Ethics of Québec Police Officers so that the Police Ethics Commissioner, with the consent of the complainant, can send any complaint alleging potentially discriminatory behaviour to the Commission des droits de la personne et des droits de la jeunesse for review.
35. that the government amend the Police Act in order to make the conciliation process optional when a complaint is filed with the Police Ethics Commissioner and to guarantee an investigation when the Commissioner has reason to believe that the Code of Ethics of Québec Police Officers has been violated;
36. that the government amend the Police Act in order to abrogate section 192, which confers upon police officers the right to silence and non-collaboration, given that the police ethics system is of civil rather than criminal nature;
37. that the ministère de la Sécurité publique establish guidelines for the application of the Code of Ethics of Québec Police Officers in order to better guide the Police Ethics Committee in the attribution of the penalties provided for in Sections 234 and 235 of the Police Act;
38. that the ministère de la Sécurité publique and the Director of Penal and Criminal Prosecution issue a directive that provides for withdrawing charges by the Crown in application of Sections 24(1) and 24(2) of the Canadian Charter when the Code of Ethics of Québec Police Officers has been violated by a police officer;
39. that the government amend the Police Act in order that, when it is proven that a ticket was issued as a result of motives or circumstances violating the Code of Ethics of Québec Police Officers, the entity that collected the fine (municipality or government) provide financial compensation equivalent to the sum and fees paid;
40. that the ministère de la Sécurité publique implement appropriate measures so that a majority of civilians who are not former police officers conduct the investigations and the conciliation process involving police ethics;
41. that, in order to guarantee greater independence and impartiality for the ethics system, the process of appointing the Ethics Commissioner, the Deputy Commissioner, and members of the Ethics Committee be made known to the public;
42. that the ministère de la Sécurité publique implement appropriate measures in order to ensure that there is fair representation of ethnic and racialized minorities and women within the police ethics system;
43. that the government amend the Police Act in order to provide a regulatory framework for the process of investigating incidents involving police officers that lead to death or serious injury, and that this framework include all the elements and milestones recommended by the Ombudsman;
44. that the ministère de la Sécurité publique adopt guidelines to ensure greater transparency for the investigation process, in particular with respect to the reports transferred to the Director of Criminal and Penal Prosecution;
45. that the government amend the Police Act in order to establish a Special Investigations Bureau, an independent agency that would be charged with conducting investigations of incidents involving police officers that result in death or life-threatening injuries;

- 46. that the government take steps to ensure the presence of civilian investigators who are not former police officers on the teams responsible for conducting this type of investigation;
- 47. that the government promote a male-female balance and a representation of Québec's ethnocultural diversity among those responsible for conducting, monitoring and supervising these investigations;
- 48. that the ministre de la Sécurité publique submit an annual report to the National Assembly on investigations of incidents involving police officers resulting in a death or serious injuries, and on the decisions made in such cases;
- 49. that any new independent entity charged with investigating incidents involving police officers that result in death or serious injuries submit an annual report to the National Assembly on the management of the investigations it has conducted.

THE EDUCATION SECTOR

THE COMMISSION RECOMMENDS:

- 50. that school administrations: 1) explicitly state in their educational mission and organizational standards that discrimination in all its forms is prohibited at school, including with respect to maintaining order, discipline and security and 2) examine their practices and organizational standards in order to ensure that they are free of discriminatory bias;
- 51. that school administrators collaborate more closely with parents and community organizations in order to find solutions to student behavioural problems;
- 52. that school boards offer training on discrimination and racial profiling to school administrators, faculty and non-teaching staff;
- 53. that, when school administrations hire a private security agency, they require that the work of the guards be free of racial profiling, that clear instructions to that effect be given and that close control be exercised over them;
- 54. that school boards and schools that serve a clientele of ethnic and racialized minorities make it compulsory for all of their personnel to attend antiracism and intercultural training;
- 55. that schools develop alternative models of parent-school collaboration, specifically recognizing persons or parties asked by parents to act on their behalf, including members of their extended family or representatives of community organizations, as legitimate interlocutors;
- 56. that the MELS, in collaboration with the Institut de la statistique du Québec, conduct validity tests in order to ensure that the index of disadvantage used to determine which schools are eligible for additional financial aid is properly adapted to the schools that serve a high proportion of racialized or immigrant families;
- 57. that the MELS demand better reporting from schools that benefit from financial aid programs for disadvantaged schools, in order to ensure that the funds are actually used for projects to promote educational success and retention among students in difficulty in disadvantaged neighbourhoods;

58. that the MELS provide schools with guidelines that define the precise criteria that proposed projects must meet in order to be eligible for funding from programs designed to promote educational success and retention among students in difficulty in disadvantaged neighbourhoods;
59. that the MELS break down the data pertaining to SHSMLD students in such a way as to provide a more refined statistical snapshot that will make it possible to see the relative weight of racialized and immigrant students within each sub-category and the proportion of such students who are sent to special classes;
60. that the MELS revise its evaluation tools for special needs students in order to ensure that they are not tainted by cultural biases that result in inadequate classifications, and to ensure that the specialized personnel who are authorized to make these classifications take the cultural dimension into account in their evaluations;
61. that the MELS provide a better definition of the concept of "at-risk" students by more clearly stating the criteria that justify the use of this label by school personnel;
62. that the MELS produce data pertaining to the proportion of "at-risk" students represented among racialized and immigrant students, and in particular among those who are sent to special classes or remedial schools;
63. that the MELS break down the data pertaining to "at-risk" students from ethnic and racialized students according to whether they are students with learning disabilities or behavioural problems;
64. that school boards integrate students from the welcome sector into their neighbourhood school from the outset, rather than sending them to a service point for their school board;
65. that school boards provide a transition plan that allows each student in the welcome sector to be integrated into regular classes as quickly as possible, in a way that is adapted to their needs and pace of learning;
66. that the MELS allow for a reduction in the number of students per class when students from the welcome sector are being integrated into regular classes;
67. that school boards, in collaboration with the MELS, ensure that students from the welcome sector who are integrated into regular classes continue to receive language support adapted to their needs;
68. that the Education Act provide an exemption that allows allophone students who enter the Québec school system late and have a major academic delay to continue their secondary school education until the age of 21;
69. that the MELS standardize the tools for evaluating the language competencies of allophone students;
70. that the MELS require school boards to submit to a more detailed accounting of the use and management of funding intended for students receiving welcome and French-learning support services;
71. that the MELS require school boards to document, with data, the educational path of students from the welcome sector in order to verify the efficacy of the welcome and linguistic support services models;

72. that school boards introduce initiatives for newly arrived families in order to create optimum conditions for school and social integration;
73. that school boards ensure that the teaching tools and educational materials used in welcome classes are adapted to the specific needs, socio-cultural realities and ages of the students in this sector;
74. that school administrations ensure that there is collaboration between the welcome classes and the regular classes in order to allow for optimum integration of students who move from one sector to the other;
75. that school boards ensure that the Adult Education Centres take better account of the classifications made in the youth sector and of the information on educational needs and school difficulties recorded by secondary schools, and particularly of intervention plans;
76. that the MELs ensure that students with special needs who attend Adult Education Centres can benefit from an instructional services that is adapted to their needs;
77. that school boards revise the method for funding Adult Education Centres so that they are no longer given an incentive, even indirectly, to punish repeated student absences with expulsion;
78. that school boards ensure that the adult sector establishes francization programs that are better adapted to the needs of young immigrants, meaning courses that are adapted to mastering the subjects required for obtaining their HSD;
79. that the MELs, in collaboration with the school boards, take the steps necessary to enable students in difficulty to obtain their secondary school diploma in the youth sector, to the extent possible, and thereby reverse the current trend of secondary schools guiding this category of students to the adult sector;
80. that faculties of education include compulsory courses or training on antiracism and intercultural education in their basic teacher training programs, and that school boards include them in their continuing education programs;
81. that the MELs, in its publication Teacher Training. Orientations. Professional Competencies (MEQ, 2001) add a thirteenth competency to the twelve professional competencies that future teachers must acquire: the capacity to become engaged in a process of openness to diversity using an antiracism and intercultural approach;
82. that faculties of education establish Equal Access Employment Programs designed to increase the representation of members of ethnic and racialized minorities among their teacher training students;
83. that faculties of education conduct recruiting campaigns, including incentive measures like scholarships, designed to convince members of ethnic and racialized minorities to opt for university programs leading to teaching at the preschool, primary and secondary levels.

THE YOUTH PROTECTION SYSTEM

THE COMMISSION RECOMMENDS:

84. that the ministère de la Santé et des Services sociaux (MSSS), in cooperation with the ministère de l'Éducation, du Loisir et du Sport (MELS) provide professionals in the education, healthcare and social services sector with intercultural and antiracism training designed to reduce incorrect readings of the family dynamics prevalent among youth of racialized and immigrant minorities;
85. that the CSSS, in collaboration with youth centres and experts who specialize in intercultural and antiracism intervention, take on a leading role in establishing this training;
86. that DYPs develop indicators that allow their social workers to assess the situations for which an intercultural consultation with an expert is required at each step in the youth protection system;
87. that the MSSS ensure that formal partnerships with youth centres, first-line services and community organizations become the standard for youth protection, and secure its funding;
88. that youth centres and CSSS establish more formal partnerships with community organizations, when the situation allows, so that interventions with migrant or racialized families are supported by a multidisciplinary and intersectorial team with a view to ensuring that the services are adapted to the needs of this clientele;
89. that all DYPs adopt a reference document stating the guidelines for integrating the intercultural and antiracism approach to their clinical evaluation processes, and that they ensure that the orientations and principles of this document are well understood and applied by the social workers;
90. that youth centres include their commitment to respecting the principles of an antiracism and intercultural approach in a policy, their mission statement and their code of ethics;
91. that youth centres establish procedures intended to ensure that the intercultural and antiracism approach is taken into account at all levels of the organization;
92. that youth centres that serve a clientele from ethnic and racialized minorities make an intercultural and antiracism course compulsory for all of their employees;
93. that youth centres develop and apply an interview protocol and hiring examinations that ensure that the instruments and selection criteria used for the purposes of recruiting in fact measure the intercultural and antiracism competencies of candidates for all job categories, including executive positions.

THE COMMITMENTS
OF THE COMMISSION DES DROITS
DE LA PERSONNE ET DES DROITS
DE LA JEUNESSE

THE COMMISSION UNDERTAKES TO:

1. ensure that the courses on racial profiling, in particular those given to its own personnel assigned to complaint handling, are accompanied by follow-up procedures intended to measure their effectiveness, and where necessary, to make the appropriate corrections;
2. design and implement an intervention model that, in the case of complaints with a systemic dimension, provide for the formation of a team that brings together complementary expertise and whose members work in collaboration during every stage of the complaint processing;
3. pay careful attention, when handling complaints of racial profiling, to elements of contextual evidence, such as statistical data revealing recurring suspicious patterns in police interventions or organizational policies with potentially discriminatory effects;
4. be more inclined, when handling complaints of racial profiling, to propose or demand, as the case may be, corrective measures of a structural nature;
5. make accessible, in the public interest, the settlements obtained by mediation, while protecting the anonymity of the parties;
6. guarantee better follow-up with complainants in order to keep them better informed of the progress of the handling of their complaint;
7. reduce the time involved in handling complaints of racial profiling at every stage to the extent possible;
8. prioritize the option of referring cases of racial profiling to the Human Rights Tribunal on their merits in its decision-making process, even in the absence of collaboration from the police officers involved during the investigation stage;
9. pursue its efforts to have municipalities, including the City of Montréal and the SPVM instruct their police officers to collaborate in the Commission's investigations of racial profiling, in particular by providing testimony when requested;
10. remain attentive so that community organizations that it encountered during the consultation, and to continue to work in collaboration with them;
11. carry out rigorous follow-up in the future in order to ensure that the recommendations that it has addressed to various institutions in this report are in fact implemented.

LIST OF WRITTEN SUBMISSION RECEIVED DURING THE RACIAL PROFILING PUBLIC HEARINGS *

Alliance of South Asian Communities

Association des centres jeunesse du Québec (ACJQ)

Barreau du Québec

Esther Belony

Léonel Bernard and Christopher McAll, Centre de recherche de Montréal sur les inégalités sociales, les discriminations et les pratiques alternatives de citoyenneté (CREMIS)

Black Coalition of Québec

Black Communities Demographic Project, McGill Consortium for Ethnicity and Strategic Social Planning

Ronald Boisrond

Borough of Pierrefonds-Roxboro

Centre for Research-Action on Race Relations (CRARR)

Josée Charrette, researcher, Université de Montréal

W.-J. Closs, former Chief of police – Kingston, Ontario

Coalition contre la répression et les abus policiers (CRAP)

Commission scolaire de la Région-de-Sherbrooke

Concordia Student Union

Conseil de l'École nationale de police du Québec

Conseil ethnique des droits humains

Sarah Dufour, researcher, Université de Montréal

Équipe RDP (Rivière-des-Prairies)

Fédération des commissions scolaires du Québec (FCSQ)

Fédération des femmes du Québec (FFQ)

Forum Jeunesse de l'Île de Montréal

Immigration-Québec – Estrie, Mauricie et Centre-du-Québec

Jamaica Association of Montreal Inc.

La Maisonnée Inc. – Service d'Aide et de liaison pour Immigrants

LaSalle Community Prevention Project

LaSalle Multicultural Resource Centre

Ligue des droits et libertés

Maison d'Haïti

Marie McAndrew, researcher, Chaire de recherche du Canada sur l'Éducation et les rapports ethniques, Université de Montréal (CEETUM)

Montreal Consortium for Human Rights Advocacy Training

Mouvement Action Justice

Aly Ndiaye

Official Opposition - Ville de Montréal

Maryse Potvin, researcher, UQAM, Centre Métropolis du Québec Immigration et métropoles (CMQ-IM)

Project X

Projet Montréal

Regroupement des centres d'amitié autochtones du Québec

Segal Centre for Performing Arts

Service de protection des citoyens de Laval – Département de police

Syndicat étudiant du Cégep Marie-Victorin

Table de concertation des organismes au service des personnes réfugiées et immigrantes (TCRI)

The Iritical Soldiers Rastafari Establishment of Montreal

Third Avenue Resource Centre

Ville de Montréal

Dorothy Williams

Youth in Motion

* A number of presenters did not wish to be identified publicly

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