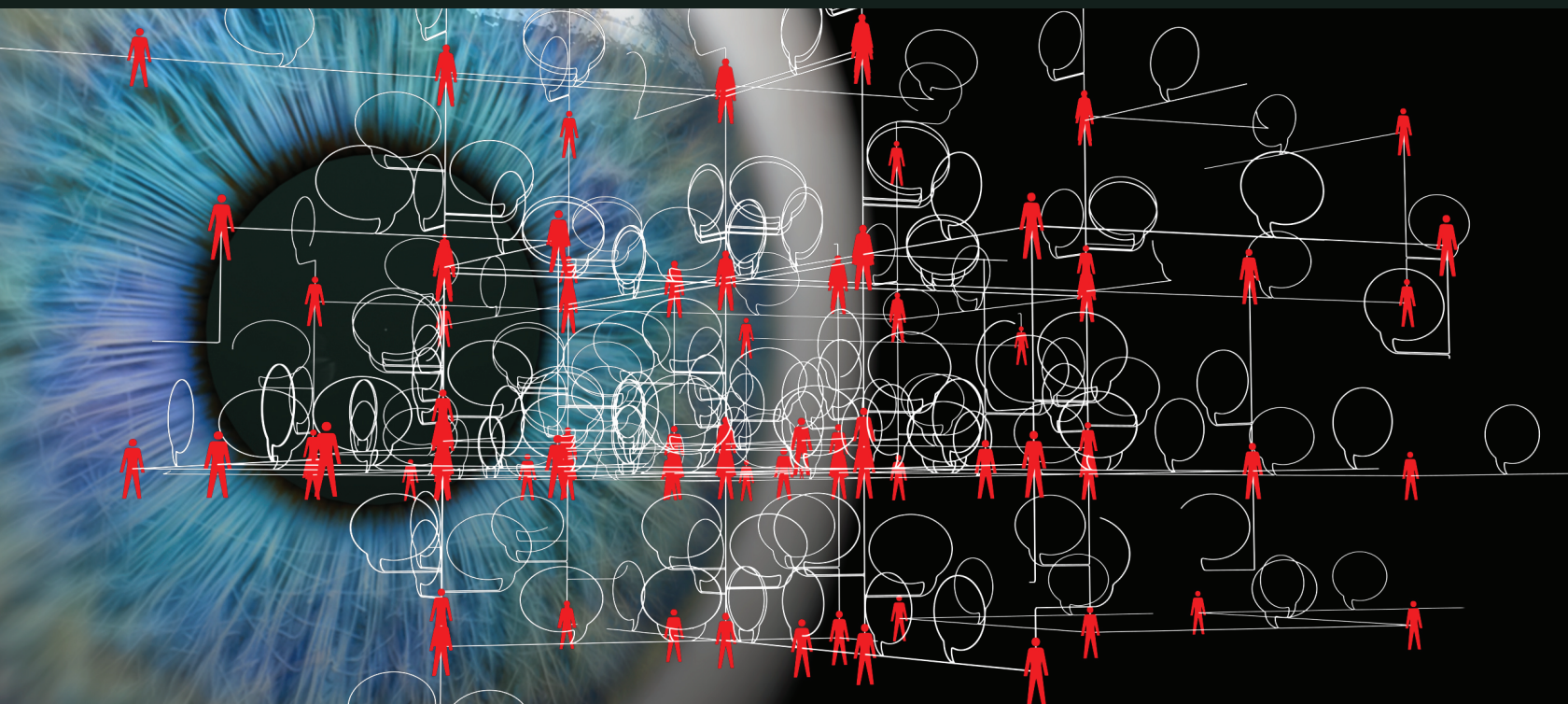


REPORT

UNDER SUSPICION

**Research and consultation report
on racial profiling in Ontario**



**Ontario
Human Rights Commission**
**Commission ontarienne des
droits de la personne**

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Research and consultation report on racial profiling in Ontario

Ontario Human Rights Commission

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**Ontario
Human Rights Commission**
**Commission ontarienne des
droits de la personne**

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Executive summary

I'm frequently followed by police while driving, to the point that I expect it to happen and I am surprised when it doesn't (Black male, age 25-34).

For many years, racialized and Indigenous communities have spoken out about their deep mistrust of public institutions – such as police, corrections, child welfare agencies and others. These are the very institutions we have entrusted to protect us and help us with highly sensitive issues, and which often respond to the needs of the most vulnerable people in our society. Yet, for racialized and Indigenous peoples, too often the trust they should feel is overridden by the lived experience of racial profiling, such as being unfairly singled out for surveillance, scrutiny, investigation and disproportionately harsh treatment.

Racial profiling is an insidious and particularly damaging type of racial discrimination that relates to notions of safety and security. Racial profiling violates people's rights under the Ontario *Human Rights Code* (Code). People from many different communities experience racial profiling. However, it is often directed at Indigenous peoples, Muslims, Arabs, West Asians and Black people, and is often influenced by the distinctly negative stereotypes that people in these communities face.

Racial profiling has profound effects

Racial profiling can have profound personal impacts. Racial profiling has a harmful effect on dignity. Victims may also lose their sense of being safe and secure, their liberty, their connection with their families and communities, and in the most tragic cases, their lives. Racial profiling also has harmful impacts on the social fabric of society.

I work as a midwife, primarily with Aboriginal women, and have lost track of how many racist assumptions and mistreatments I've observed based on race. For example... calling social workers or child protection agencies because parents are young and native – massive profiling in the selection of who has that involvement.

Then, once that involvement starts, Aboriginal women are much more likely to have their babies removed for much more dubious reasons (Mixed race – White and Aboriginal female, age 35-44).

Ontario is at a critical juncture

In terms of addressing racial profiling, we are at a critical juncture in Ontario. Ontario is becoming more racially, ethnically and religiously diverse and yet increasingly economically stratified. Many institutions in society are becoming more focused on assessing potential threats to safety, citing concerns about terrorism and violence. Concerns about racial profiling take place against this backdrop of heightened security.

Societal recognition of the phenomenon of racial profiling and its corrosive effects has grown in recent years. Today, many community leaders in Ontario, including several in the policing community, and many members of the general public more readily acknowledge that racial profiling exists. A growing body of decisions by Canadian human rights tribunals and courts have affirmed that racial profiling happens in policing and other areas, such as retail settings. Decisions and settlements arising from these claims have led some institutions to take steps to address racial profiling. Nevertheless, many still deny the reality of racial profiling. Some people and institutions see racial profiling as a normal, even effective tool for gathering information, assessing risk and ensuring safety.

I used to be a police officer, I saw this kind of thing literally EVERY SINGLE DAY. I saw the criminalization of racialized youth over time, and have witnessed racial profiling more times than I can count. I know that active officers (in general) don't see what they do as racial profiling. They are provided with an approved language to articulate what they are doing and why (White female, age 35-44).

A core part of the OHRC's work

Combatting racial discrimination, including racial profiling, has been a core part of the ongoing work of the Ontario Human Rights Commission (OHRC). In 2003, we released the results of a year-long public interest inquiry on the personal and

social impacts of racial profiling. Through detailed first-person narratives, our report, *Paying the price: The human cost of racial profiling*, showed the severe and widespread impacts of profiling on racialized and Indigenous individuals and communities.

In the years since, we have helped to advance the law before the Human Rights Tribunal of Ontario (HRT) and the courts, initiated partnerships with law enforcement institutions in an effort to effect large-scale organizational change, conducted training and public education, launched public interest inquiries, made submissions to government, and worked with community and advocacy groups.

In our 2017-2022 strategic plan, we committed to being a leadership voice on human rights issues and making sure that people's lived experiences are at the centre of our work. We will use our enforcement powers under the *Code* to work towards non-discriminatory practices in the criminal justice system, including ending racial profiling in policing.

As part of this ongoing work, we decided to provide more detailed policy guidance on racial profiling. The aim is to give specific information to organizations, individuals and communities on how to identify, address and prevent racial profiling. To do this, we reviewed the case law and undertook a year-long consultation. This report presents what we heard from the consultation.

The consultation

To gather information for the consultation, we connected with people and organizations representing diverse perspectives, including affected people from Indigenous, racialized and Muslim communities, legal and academic researchers, educators, human rights practitioners and police, among others. We conducted an online survey, analyzed applications made to the HRT that alleged racial profiling, held a policy dialogue consultation, conducted focus groups with Indigenous peoples and received written submissions. Overall, almost 1,650 individuals and organizations told us about their experiences or understanding of racial profiling in Ontario.

We call it the Brown Guy room at the airport for a reason. I even have my "regular seat" (South Asian Hindu male, age 45-54).

When we started this consultation, the aim was to highlight perspectives and reports of racial profiling. However, along the way we learned that to do justice to people's experiences, we had to talk about racial profiling alongside other forms of racial discrimination and racism, such as inequitable treatment, harassment, systemic discrimination, everyday racism and hate activity. These experiences are persistent in the lives of racialized and Indigenous peoples and are often hard to parse out from individual experiences of racial profiling. Although the focus of this report remains on racial profiling, by presenting these other experiences as well, we hope to more holistically portray how multiple forms of racial discrimination create barriers to equally accessing employment, housing and services in Ontario.

I was at my workplace and we have swipe cards to get into rooms. I went into my office and immediately security knocked at the door. They said they wanted to check who had gone in. I am pretty sure they got alarmed because all they could see was someone wearing hijab walking into an office (South Asian Muslim female, age 25-34).

What we heard

During the consultation, we heard many perspectives and experiences. We heard concerns about racialized and Indigenous peoples being subjected to unwarranted surveillance, investigation and other forms of scrutiny, punitive actions and heavy-handed treatment. We also tried to explore other, less well-understood forms of racial profiling, such as institutional policies, practices, assessment tools and decision-making processes, which may seem neutral but may nonetheless amount to systemic racial profiling. We also heard about potential solutions.

Some of the key findings from our consultation are:

- The widespread nature of incidents of racial profiling, along with a growing body of case law and social science and legal research, confirm not only that racial profiling exists, but also that it is a broad concern shared by many Ontarians. Alarmingly, the experiences we heard were similar to the ones we heard when we did our racial profiling inquiry back in 2003.
- Racial profiling causes considerable harm to individuals, families and the social fabric of communities. We heard how dealing with experiences of racial profiling and other forms of racial discrimination is exhausting because they are

so pervasive. Racial profiling is associated with negative effects, including effects on individuals' mental and physical health. It contributes to barriers that prevent racialized and Indigenous peoples from being able to achieve equal opportunity. Significantly, racial profiling – and the perception of racial profiling – severely diminishes people's sense of trust in public institutions. This eroded trust undermines the effectiveness and authority of these institutions.

- Although racial profiling in policing continues to be a major issue, racial profiling occurs in many other sectors beyond policing. Many participants told us they regularly experienced racial profiling in retail and private businesses, for example. People reported being racially profiled by various systems, organizations and institutions – education, retail, child welfare, transportation, private security, national security and other areas. Consultation participants commonly named multiple experiences of racial profiling and racial discrimination in more than one sector.
- Racial profiling is not just about individual incidents perpetrated by individuals in authority based on conscious or unconscious bias. In fact, racial profiling can be more subtle. It can become part of the “normal” way an organization operates. We heard how many individual incidents of racial profiling may arise because of policies, procedures, decision-making practices or culture embedded throughout the organization or sector. Collectively, we must start looking at racial profiling as institutional or systemic in nature.

We are encouraged that there appears to be growing consensus on what is needed to eliminate racial profiling. Racial profiling is entrenched in society, is complex, and can be challenging for all involved in addressing it. Preventing and addressing racial profiling is a shared responsibility. Government, public institutions and other responsible organizations must take concrete action and decisive steps to prevent, identify and respond to racial profiling. Only then can trust begin to be rebuilt between racialized and Indigenous communities and the organizations that serve them. And only then can organizations make sure they are meeting their obligations to uphold people's rights, under the Ontario *Human Rights Code*, to be free from racial profiling.

Next steps

To act on what we learned through our research and consultation, the OHRC will undertake a series of next steps to address and prevent racial profiling:

- The OHRC will develop specific policy guidance in the area of services to help individuals, community groups and organizations understand how racial profiling can be prevented and addressed. This policy guidance will focus on policing and law enforcement, child welfare, court and corrections and other sectors as needed.
- The OHRC will collaborate with First Nations, Métis and Inuit communities and groups to better understand Indigenous perspectives. We will work towards collaboratively developing resources and tools to address Indigenous peoples' human rights.
- Where appropriate, the OHRC will continue to launch public interest inquiries, intervene in cases and/or launch Commission-initiated applications to the HRTO to actively challenge cases of alleged racial profiling, with a focus on combatting racial profiling in the criminal justice system.
- The OHRC will continue to work with community stakeholders to enhance public education on racial profiling.
- The OHRC will continue to call for the collection of race-based data and data on other *Code* grounds to better understand if racial disparities exist in sectors such as policing, child welfare and education.
- The OHRC will consider modifying its racial profiling definition based on participant perspectives, bearing in mind its historical usage and how the term has been discussed in the case law.

1. Introduction

...[R]acial profiling occurs and is a day-to-day reality in the lives of those minorities affected by it.

...[R]acial profiling cannot be tolerated. It is offensive to fundamental concepts of equality and the human dignity of those who are subject to negative stereotyping. It fuels negative and destructive racial stereotyping of those who are subjected to profiling.

– Ontario Court of Appeal,
Peart v. Peel Regional Police Services, 2006¹

The Ontario *Human Rights Code*² (*Code*) recognizes the dignity and worth of every person. The *Code* makes it illegal to discriminate based on race, ancestry, colour, creed, citizenship, ethnic origin and place of origin, in five social areas, including housing, services and employment. Despite this legal protection from discrimination, racial profiling continues to be a serious and persistent human rights issue in Ontario.

People in racialized and First Nations, Métis, and Inuit (Indigenous) communities have had longstanding concerns about racial profiling and other forms of racial discrimination. Racial profiling is an insidious and particularly damaging type of racial discrimination that relates to notions of safety and security. It often, but not always, relies on stereotyping based on preconceived notions about the character of a person or group.

Racial profiling has profound effects

Racial profiling can have profound personal impacts. Racial profiling has a harmful effect on dignity. Victims may also lose their sense of being safe and secure, their liberty, their connection with their families and communities, and in the most tragic cases, their lives.

Racial profiling also has harmful impacts on the social fabric of society. For many years, racialized and Indigenous communities have spoken out about their deep mistrust of public institutions – such as police and child welfare agencies. These are the very institutions we have entrusted to protect us and help us with highly

sensitive issues, and which often respond to the needs of the most vulnerable people in our society. Yet, for racialized and Indigenous peoples, too often the trust they should feel is overridden by the lived experience of being unfairly singled out for surveillance, scrutiny, investigation and disproportionately harsh treatment.

For Indigenous peoples in particular, racial profiling must be understood in the context of colonization. It is often experienced as part of the legacy of historic state practices that were intended to eliminate Indigenous cultures and disrupt communities through forced assimilation. The deep mistrust felt by many racialized and Indigenous peoples negatively affects the legitimacy of institutions that serve the public interest, and makes them less effective.

Despite the potentially catastrophic consequences for individuals and communities, some people and institutions see racial profiling as a normal, even effective tool for gathering information, assessing risk and ensuring safety.

Ontario is at a critical juncture

In terms of addressing racial profiling, we are at a critical juncture in Ontario. Ontario is becoming more racially, ethnically and religiously diverse and yet increasingly economically stratified. Many institutions in society are becoming more focused on assessing potential threats to safety, citing concerns about terrorism and violence.³ As well, advances in technology make it easier for institutions that assess risk to collect, analyze, store and share people's information.

Concerns about racial profiling take place against this backdrop of heightened security. People from many different communities experience racial profiling. However, it is often directed at Indigenous peoples, Muslims, Arabs, West Asians and Black people, and is often influenced by the distinctly negative stereotypes that people in these communities face. In Ontario today, many people are concerned about racial profiling in the form of police stop practices (including "street checks" or "carding"), police use of force, deaths at the hands of police, disproportionate use of segregation on Indigenous and Black prisoners, heightened scrutiny and surveillance of Muslims, Arabs and West Asian people in society (including at airports and border crossings), the role that racial profiling may play in the overrepresentation of Black and Indigenous children in child welfare investigations, and disproportionate discipline of racialized students in the education system.

A core part of the OHRC's work

Combatting racial discrimination, including racial profiling, is a core part of the work of the Ontario Human Rights Commission (OHRC). In 2003, we released the results of a year-long inquiry on the personal and social impacts of racial profiling. Through detailed first-person narratives, our report, *Paying the price: The human cost of racial profiling*,⁴ showed the severe and widespread impacts of profiling on racialized and Indigenous individuals and communities. It described how racial profiling fractures trust in our public institutions, criminalizes youth, and decreases people's sense of citizenship and belonging in Ontario society.

This inquiry led to the development of the OHRC's *Policy and guidelines on racism and racial discrimination*⁵ in 2005. This policy provides guidance on people's rights under the *Code* to be free from racial discrimination, and on how organizations and individuals can prevent and respond to it. It addresses racial discrimination in all its forms, including racial profiling.

In the years since, we have continued to be active in our efforts to address racial profiling. We have helped to advance the law before the Human Rights Tribunal of Ontario (HRTO) and the courts,⁶ initiated partnerships with law enforcement institutions in an effort to effect large-scale organizational change,⁷ conducted training and public education,⁸ launched public interest inquiries,⁹ made submissions to government,¹⁰ and worked with community and advocacy groups.¹¹

In our 2017-2022 strategic plan, we committed to being a leadership voice on human rights issues. We will use our enforcement powers under the *Code* to work towards non-discriminatory practices in the criminal justice system, including ending racial profiling in policing.¹²

The consultation

As part of this ongoing work, we decided to provide more detailed policy guidance on racial profiling. The aim is to give specific information to organizations, individuals and communities on how to identify, address and prevent racial profiling. To develop this future policy guidance, we reviewed the case law¹³ and conducted a year-long consultation to understand more about:

- The social and historical context of racial profiling
- People's experiences of racial profiling
- How racial profiling should be defined

- What racial profiling looks like in different sectors and contexts
- The impacts of racial profiling
- Newer, emerging or contested forms of racial profiling
- Effective measures to address and prevent it.

To gather this information, we connected with people and organizations representing diverse perspectives, including affected people from Indigenous, racialized and Muslim communities, legal and academic researchers, educators, human rights practitioners and police, among others. We conducted an online survey, analyzed applications made to the HRTO that alleged racial profiling,¹⁴ held a policy dialogue consultation,¹⁵ conducted focus groups with Indigenous peoples and received written submissions. Overall, almost 1,650 individuals and organizations told us about their experiences or understanding of racial profiling in Ontario.

The information we received is integrated throughout this report. Consistent with the OHRC's commitment to bring people's lived experiences to the forefront of our work, the purpose of this report is to:

- Report on the feedback we heard during the consultation
- Provide Ontarians with a better understanding of the kinds of issues that may raise concerns about racial profiling across a variety of sectors
- Present related social science and legal research from Canada and the U.S., which provides context for the experiences and perceptions we heard about
- Inform the OHRC's future policy guidance on racial profiling
- Outline key themes and some next steps that the OHRC will take to address racial profiling.

Note that by examining racial profiling, we are examining the perceptions of profiling and not evaluating whether these perceptions are substantiated. Regardless of whether profiling can be proven to occur in a given context, the widespread perception among racialized and Indigenous groups that it is occurring is cause for concern.

What we heard

During the consultation, we heard many perspectives and experiences. We heard concerns about racialized and Indigenous peoples being subjected to unwarranted surveillance, investigation and other forms of scrutiny, punitive actions and heavy-handed treatment. We also tried to explore other, less well-understood forms of racial profiling, which may be systemic in nature. This report presents what we learned about institutional policies, practices, prediction and assessment tools, and decision-making processes, which may seem neutral but may nonetheless amount to systemic racial profiling. We also report on potential solutions. Encouragingly, we heard a great deal of consensus from consultation participants on what is needed to end racial profiling.

Societal recognition of the phenomenon of racial profiling and its corrosive effects has grown since the OHRC's racial profiling inquiry in 2003. Today, many community leaders in Ontario, including several in the policing community, and many members of the general public more readily acknowledge that racial profiling exists. A growing body of decisions by Canadian human rights tribunals and courts have affirmed that racial profiling happens in policing¹⁶ and other areas, such as retail settings.¹⁷ Decisions and settlements arising from these claims have led some institutions to take steps to address racial profiling.¹⁸ Some institutions are starting to collect race-based data, and in some cases this data has supported personal anecdotes about racially biased practices.

I've been given more attention in a negative regard by police, teachers, security in stores, malls and banks, and folks have made negative assumptive comments towards me in health care settings etc...The details don't come readily to mind aside from being followed, questioned, and scrutinized... (Black, First Nations female, age 25-34).

Increased public awareness about the existence and effects of racial profiling has led to greater understanding about the issue. High-profile reports of racial profiling incidents have contributed to calls from communities for change. Community organizations and groups, including grassroots movements such as Black Lives Matter and groups calling for a public inquiry to address missing and murdered Indigenous women and girls, have highlighted disparities in how racialized and Indigenous peoples are treated by public institutions, such as police, and have pushed for these systems to be overhauled.

However, there is still a long way to go. Many people and institutions still deny the reality of racial profiling. It is concerning that during our consultation we heard many of the same themes, experiences and impacts as we documented in *Paying the price*. Racial profiling is entrenched in society, is complex, and can be challenging for all involved in addressing it. Many consultation participants expressed great frustration with the slow pace of change. Coordinated efforts are needed from policy-makers, government, community groups and responsible organizations. Preventing and addressing racial profiling is a shared responsibility.

How this report can be used

At the end of some sections of this report, we have noted “key themes.” These points summarize and analyze what we heard. In Appendix C, we provide a list of relevant recommendations gathered from previous OHRC reports and submissions.

These recommendations should be used by organizations to identify how racial profiling may be taking place in their own establishments. The themes and recommendations also identify approaches organizations can use to prevent racial profiling. Community groups, academics, human rights practitioners and others may also find this report useful to help with their own research and advocacy around racism, racial discrimination and racial profiling.

[Racial profiling] made me feel like less of a person and that I can't be trusted because of the way I look (and in this case, the way my family looks) (Mixed heritage male, age 25-34).

We also have incorporated quotations from consultation participants throughout the report. These were excerpted from respondents' responses to the survey questions and chosen because they illustrate the various themes we heard about. Quotes from survey respondents are identified using relevant demographic information, such as the person's racial or ethnic background, gender and age range, and in some cases, their creed, as reported. Appendix B shows the demographic make-up of survey respondents.

Acknowledgements

We acknowledge and thank the many individuals and organizations that took the time to contribute to this process. We especially thank all the people who shared their personal, and often difficult, experiences with us. Special thanks to representatives from the organizations that helped us bring people together: York University's Centre for Human Rights, Equity and Inclusion; Institute for Social Research; and School of Public Policy and Administration; and the Ontario Federation of Indigenous Friendship Centres (OFIFC). A list of organizations that participated and people who provided papers to the OHRC's racial profiling policy dialogue is included in Appendix A.

1.1. A word about terminology

During our consultation, people identified themselves in many different ways. When referring to individual consultation participants, we use the terms they used to describe themselves. When describing research that may categorize people into different groups, we use the terms used by the authors.

Throughout this report, we use the term "racialized people" as a generalized term to refer to people who are not Indigenous or White. "Racialization" is the "process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life."¹⁹ The term "racialized" is widely preferred over descriptions such as "racial minority," "visible minority" or "person of colour" as it expresses race as a social construct rather than a description of people based on perceived characteristics. Of our survey respondents, "racialized" includes people who identified with the Statistics Canada categories of South Asian, Chinese, Black, Filipino, Latin American, Arab, Southeast Asian, West Asian, Korean, Japanese,²⁰ or more than one of these categories.

We use the term "Indigenous peoples" to collectively refer to people who are First Nations, Métis or Inuk (Inuit). This is the term used in the *United Nations Declaration on the Rights of Indigenous Peoples*,²¹ and is used by some Indigenous organizations, such as the OFIFC.

Indigenous peoples are also "racialized." Specific traits, physical features, attributes and characteristics that are connected in some way to Indigenous peoples are deemed to be "abnormal" and of less worth. However, we heard that to refer to Indigenous peoples along with people from other racialized groups fails to recognize that many members of First Nations, Métis and Inuit communities object

to being referred to as a racial group (for more information, see section 3.6: “Lessons learned from people in Indigenous communities”). To recognize the unique specific historical dynamic that gives rise to experiences of Indigenous peoples, we heard that these experiences must be considered separately from those of other racialized people. For this reason, throughout this report, we use the terms Indigenous, First Nations, Métis, and Inuit to refer to Indigenous individuals and groups.

The term “racialized” also refers to people from marginalized creed groups. Discrimination based on creed can intersect with discrimination based on race and race-related *Code* grounds including ethnic origin, colour, ancestry, place of origin and citizenship.

When referring to people who are African-descended, we use the terms “Black,” “African Canadian” and “people of African descent.”

All of these terms are not exclusive categories, and many people will identify with more than one group or reject these identifiers altogether.

2. Why examine racial profiling?

Racial profiling is a specific type of racial discrimination that pertains to safety and security. The OHRC currently defines racial profiling as:

[A]ny action undertaken for reasons of safety, security or public protection that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place of origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment.²²

Racial profiling is often not viewed as a serious human rights issue in the way that other forms of racial discrimination are. Many people and organizations generally understand that denying someone a job or an apartment based on race, colour or ancestry, or harassing someone at work because of their faith, violates people’s human rights.

However, in the past and today, many institutions, police leaders and people in the general public have denied the existence of racial profiling, or have viewed it as warranted. For example, in the past, some law enforcement institutions actively

used practices that over-scrutinized people from racialized and Indigenous communities, in the name of increased safety and security.²³

Although racial profiling has been more recently understood as illegal and harmful to racialized and Indigenous communities, belief in its effectiveness and legitimacy persists. We still see some institutions and the general public supporting practices that may amount to racial profiling because they are viewed as useful, benign and/or justified compared to other forms of racial discrimination.²⁴ For example, in 2015, when weighing in on the debate about carding,²⁵ the then-Chief of the Hamilton Police Service outlined what he felt was a suitable discretionary approach to collecting information:

When we send officers to this area in response to the shooting, we are going to be stopping, talking and investigating young black males. We are going to be stopping and talking to as many people as possible because we do not know who might be a suspect, person of interest, victim, witness or a person who may wish to be a confidential informant. We don't know until we gather the information.²⁶

In response, the OHRC called this a “textbook description of racial profiling.” Using this approach, anyone who happens to be a “young Black male” will be stopped and questioned without evidence or suspicion of evidence of wrongdoing, but solely because they are young Black males.²⁷

Because it may not be viewed as seriously as other forms of racial discrimination, the OHRC’s consultation focused specifically on racial profiling. This work can help affected communities understand what racial profiling is and how it may be different from other forms of racial discrimination. It is important for institutions to know what types of practices may constitute racial profiling and the specific approaches they can take to address it. Presenting consultation participants’ experiences of racial profiling shows the adverse impacts it has on people in racialized and Indigenous communities, and also shows its significance as a pressing human rights issue affecting Ontarians.

2.1. Scope of report

When we started this consultation, the aim was to highlight perspectives and reports of racial profiling. However, along the way we learned that to do justice to people’s experiences, we had to talk about racial profiling within a broader context. Other forms of racial discrimination and racism, such as inequitable treatment,

harassment, systemic discrimination, everyday racism and hate activity, are persistent in the lives of racialized and Indigenous peoples, in addition to racial profiling.²⁸ Many consultation participants gave multiple examples of these.

Many of these experiences could constitute violations of people's rights under the *Code*, but they may not be what the OHRC would typically define as "racial profiling" because they do not take place in the context of safety and security. However, these experiences can create the conditions that give rise to incidents of racial profiling and often happen alongside it.

At work, [I'm lucky] if I get past the screening phase, as my name suggests I am a minority. Out shopping, I am the probable shoplifter. Taking a walk, I am the probable wife snatcher or burglar (Black male, age 45-54).

There is also a "grey zone" when talking about racial profiling. Consultation participants cited many examples of racial discrimination, which, depending on the specific facts, could amount to what the OHRC defines as racial profiling. The definition of racial profiling focuses on the notion that a person's or organization's actions are motivated by safety, security or public protection. There are situations of racial discrimination that on the surface may not look like racial profiling, but on greater inquiry, they may very well be.

Although the focus of this report remains on racial profiling, to better reflect communities' broad concerns, we decided to present experiences and perceptions of other forms of racial discrimination as well. By doing so, we hope to more holistically portray how all these forms of discrimination create barriers to equally accessing employment, housing and services in Ontario. We have identified these other experiences of racial discrimination in several subsections in "Qualitative reports of racial profiling" (section 3.1.2).

Although we use the term "racial profiling," we recognize that it can also intersect with creed profiling. Muslims and people of other faiths may experience both. Creed profiling may happen when people are subjected to heightened security, scrutiny and surveillance because of their outward appearance or perceived belonging to a certain creed faith, based on stereotypes about people of that creed, or because of their associations with particular ethnic and racial groups.

This report discusses organizations and sectors that are covered by Ontario law, which must comply with the *Code*. It also addresses some sectors that are out of the *Code*'s jurisdiction, such as airports and border and national security agencies. These are covered by the *Canadian Human Rights Act*.²⁹

3. What we heard

3.1. Racial profiling trends and experiences

We heard many reports about racial profiling from individuals, community groups, academics and others. This section is divided into two parts. The first outlines the results from our racial profiling survey related to:

- Reported incidence of racial profiling
- Personal characteristics racial profiling was believed to be based on
- Reported frequency of racial profiling
- Sectors where it was perceived to have taken place.

The survey was based on a non-random sample. It was conducted in the summer of 2015 and gathered 1,503 responses. We do not aim to present our results as being representative of the Ontario population, and they should not be interpreted in this way.³⁰ For example, conclusions cannot be drawn about the proportion of people in Ontario who experience racial profiling based on the proportion of survey respondents who reported that they were racially profiled. The numeric survey results only provide context for respondents' qualitative answers.

As stated earlier, reports of racial profiling are based on participants' perceptions. These reports have not been independently verified, and without additional information, it is difficult to conclude that they stem from discrimination. However, they do point to concerns, themes and areas that are critically important when trying to understand the phenomenon of racial profiling.

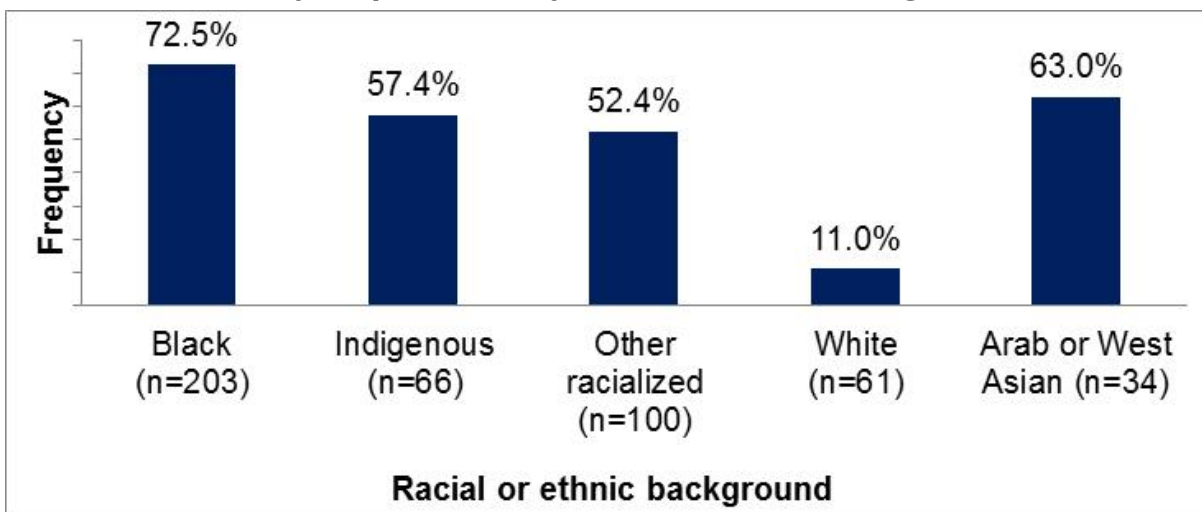
Section (3.1.2.) presents themes from the many qualitative accounts of racial profiling and other forms of racial discrimination reported in the different sectors.

3.1.1. Survey respondents' reports of racial profiling

➤ *Reported incidence of racial profiling*³¹

We asked survey respondents, "Have you ever been racially profiled?" Overall, almost four in 10 survey respondents (38.3% or 499) reported having been racially profiled.³²

Figure 1. Reported incidence of racial profiling among survey respondents by racial or ethnic background



Notes: Percentages are calculated based on the number of respondents with each racial or ethnic background who answered the question. People who identified as "Black," "Indigenous" and "Arab or West Asian" may have also identified with more than one racial or ethnic background. "Other racialized" excludes people who identified as Indigenous, White, Black, Arab, West Asian or Other. "White" reflects people who identified exclusively as White.

Any comparisons between groups of different racial backgrounds, ancestries, creeds or sexes must be interpreted with caution because some people identified with multiple categories. Therefore, quantitative comparisons between groups will involve some overlap ("double-counting"). The percentages derived for each group, and any comparison between groups, reflects the survey respondents only and are not representative of the total population.

Over half of racialized and Indigenous survey respondents said they had experienced racial profiling compared to 11% of White survey respondents. Almost three-quarters of Black survey respondents said they had been racially profiled.

We also asked if survey respondents knew of others who had been racially profiled. A majority of respondents said they knew of someone who had been racially

profiled (76.6%). Compared to people who identified exclusively as White (67.8%), greater proportions of racialized (85.4%) and Indigenous survey respondents (83.7%) reported knowing of other people who were racially profiled.

➤ *Personal characteristics racial profiling may be based on*

Table 1. Perception of *Code* grounds as factors racial profiling was based on, by select *Code* grounds

<i>Code</i> ground	Percentage	Count
Ethnicity or ancestry	46.8	247
Place of origin	21.2	112
Race or colour	69.3	366
Religion	19.7	104
Other	13.4	71
		Total responses 528

Notes: Percentages do not total 100 due to multiple categories being selected. Percentages reflect the survey respondents only, and are not representative of the total population.

Survey respondents were asked “Why do you think you were racially profiled?” Over two-thirds believed they were racially profiled because of their race or skin colour (69.3%), followed by their ethnicity or ancestry (46.8%).

The vast majority of Black survey respondents (93.1%) identified “race or colour” as the primary reasons why they were racially profiled, as did respondents who identified as Chinese, Filipino, Japanese, Korean, Latin American, South Asian, or Southeast Asian (“Other racialized”) (73.2%).

Muslim survey respondents (78.8%) were more likely to view their religion as the number one reason why they were racially profiled, compared to survey respondents of almost all other creed groups.³³ Indigenous peoples were more likely than other groups of other racial backgrounds to report ethnicity or ancestry as the primary factors. Arab or West Asian survey respondents viewed their ethnicity or ancestry, followed by their religion, as the top reasons why they were racially profiled.

Many survey respondents and other consultation participants pointed to specific racialized characteristics as the reason (or reasons) why they were profiled. Many people identified more than one characteristic, which supports that these factors

may combine in unique ways to give rise to specific racial stereotypes. For example, the OFIFC reports that anti-Indigenous profiling and discrimination can occur by targeting individuals because of their “clothing or attire, socio-economic status, cultural and traditional ways of being, speech and use of Indigenous languages, neighbourhood dynamics, modes of transportation, and participation in, or association with, particular organisations and programs.”³⁴

Similarly, in addition to race and related grounds, many survey respondents believed they had experienced racial profiling or other forms of racial discrimination based on their:

- Dress and appearance: e.g. having a beard (which some said means that they were perceived as Arab or Muslim), wearing a hijab, dressing in hip hop pants, wearing a hoodie, having dreadlocks
- Activities: e.g. listening to rap music, driving an expensive car, having travelled to the Caribbean or to places where there are suspected terrorist activities, supporting Palestinian human rights
- Accent
- Being an immigrant or newcomer
- Having a racialized name: e.g. having an Arabic name
- Associations with others: e.g. having a racialized or Indigenous spouse, having racialized friends, hanging out with people in a group (particularly racialized and Black youth).

Many consultation participants also named intersecting *Code* grounds such as race, age and gender as reasons why they were racially profiled or discriminated against. Based on their unique combination of identities, people may be exposed to distinct forms of racial discrimination, including racial profiling. They may experience the personal pain and social harm that accompanies these acts of discrimination in unique ways.³⁵

For example, in 2016, the Urban Alliance on Race Relations (UARR) organized a forum to discuss concerns about police street checks/carding as it affects racialized, Indigenous, Muslim women and/or trans people, who may be living in poverty.³⁶ We heard that intersections between these identities must be central in discussions about racial discrimination, including racial profiling, to understand how they affect women.³⁷ One paper submitted to the OHRC’s racial profiling policy dialogue discusses how racialized women are profiled in gender-specific ways (for

example, as suspected drug users, drug couriers or sex workers).³⁸ The author argues that these intersecting racial and gender stereotypes make women more vulnerable to police racial profiling.

We heard that being a youth is also a significant intersecting factor that makes people vulnerable to certain types of racial profiling.

Markers of low income, or perceived low income, and stereotypes surrounding race and poverty were also seen as important intersecting factors that contribute to people being singled out for over-scrutiny. Several survey respondents said they believed they or others were racially profiled because they lived in social housing or lower-income neighbourhoods. These reports may relate to the common stereotypes we heard relating to racialized and Indigenous peoples and their perceived social condition. We heard that people from these groups are commonly assumed to be poor and/or receiving social assistance.

Another prominent theme was that people believed they experienced profiling because they were doing something that seemed “out-of-place,” or not in line with common stereotypes held about racialized or Indigenous peoples. For example, we heard that racialized and Indigenous peoples may be perceived as out-of-place (and therefore engaging in suspicious activity) when they are driving expensive cars. This concept is explored further in section 3.1.3.

We commonly heard that people may be racially profiled because of their *perceived* racial or ethnic background, Indigenous identity or religion. Some White survey respondents even described being singled out for scrutiny because they were mistakenly believed to be racialized. For example, a White woman related how she was followed by police when she and her boyfriend wore baggy jeans and baggy hooded sweatshirts. When she took off her hood, it became clear she was a White woman. At that point, police drove away.

➤ *Reported frequency of racial profiling incidents***Table 2. Reported frequency of incidents of racial profiling in the last 12 months**

Frequency	Percentage	Count
Once	31.1	142
Twice	19.0	87
3-5 times	27.8	127
6-10 times	8.3	38
More than 10 times	13.8	63
		Total responses 457

Note: Percentages reflect the survey respondents only, and are not representative of the total population.

Most survey respondents who indicated that they had been racially profiled reported being profiled once in the last 12 months. This was closely followed by respondents who reported being profiled 3-5 times. Almost 14% reported having been profiled more than 10 times in the last year.

These results varied by demographic grouping and sub-groups. The majority of Black survey respondents who answered the question reported having been racially profiled multiple times. Almost three-quarters reported being racially profiled more than once in the past year, with almost one in five Black survey respondents (18.5% or 31 people) reporting having been profiled more than 10 times in the last year.

Muslim survey respondents most commonly reported having been racially profiled once in the past year (33.3% or 24 of 72 responses).

Indigenous peoples most commonly reported that they experienced racial profiling once and 3-5 times in the last year (29.7% for each).

Of the survey respondents who identified with other racial or ethnic backgrounds, most (one-third) said that they were profiled between 3-5 times in the past year (32 of 95 responses).

Impact of repeated incidents of racial profiling

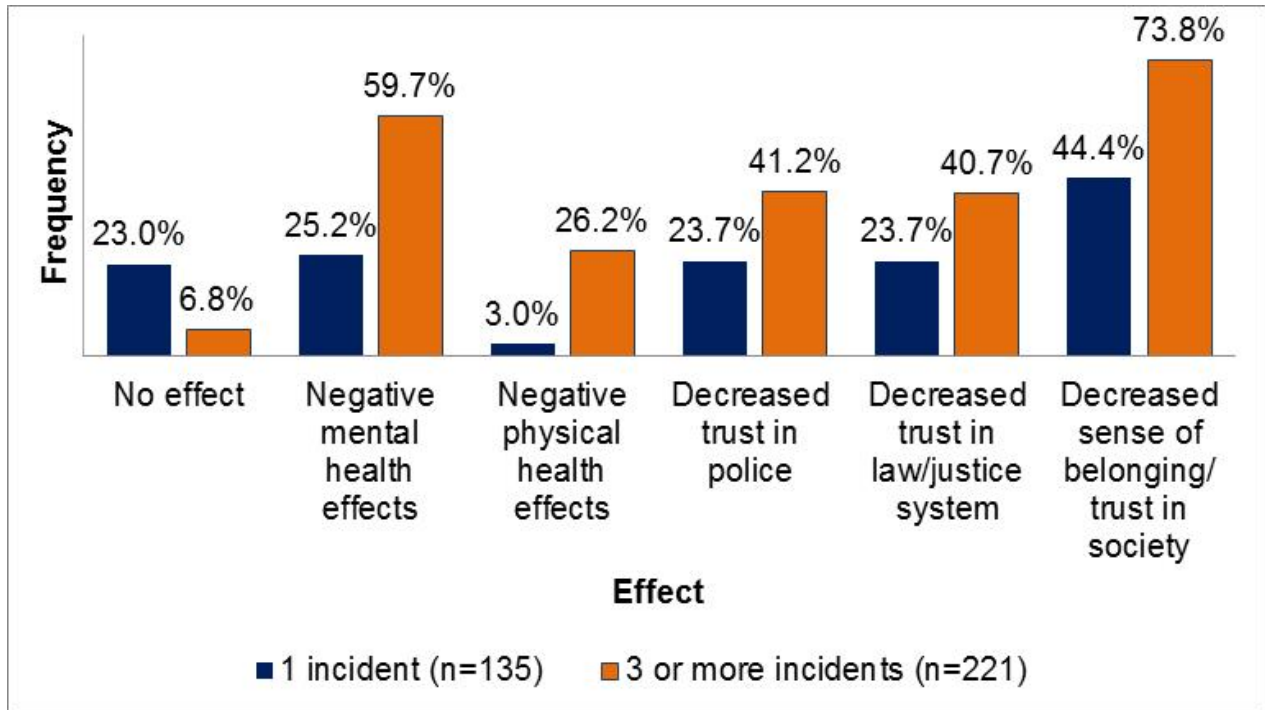
As a black male, people treat me differently. The onus is always on me to debunk people's suspicions. It gets tiring and without inner strength, there is the tendency to become a constantly angry person who fulfills the script (Black male, age 45-54, racially profiled more than 10 times in the last 12 months).

Research has found that people who report being frequently stopped and searched by police have less trust in the criminal justice system.³⁹ For survey respondents, there were multiple cumulative negative effects associated with reports of racial profiling.

Compared to respondents who reported having been profiled once in the last 12 months, people who said they were racially profiled three or more times were much more likely to report negative effects in all areas (see Figure 2).

In particular, survey respondents who reported being racially profiled three or more times were far more likely to say that their mental health was negatively affected. Also, almost three-quarters of people (73.8%) who reported three or more experiences of racial profiling in the last year said that their sense of belonging or trust in Ontario society was diminished, compared to 44% of people who reported having been racially profiled once.

Figure 2. Reported effects of racial profiling by number of reported incidents in the last 12 months



Note: Percentages reflect the survey respondents only, and are not representative of the total population.

➤ *Racial profiling incidents by sector***Table 3. Sector where racial profiling was reported to have taken place, by type of sector**

Sector	Percentage	Count
Police	32.4	159
Court	5.1	25
Correctional service	1.6	8
National security or intelligence	6.5	32
Private security (e.g. mall security)	18.3	90
Education (e.g. school)	19.8	97
Housing	10.4	51
Child welfare	3.3	16
Healthcare	14.1	69
Government or social service (e.g. Service Ontario, foodbank)	11.8	58
Public facility (e.g. library or recreation centre)	14.3	70
Financial service (e.g. bank)	12.0	59
Private business or retail service (e.g. store or restaurant)	32.2	158
Employment	27.1	133
Contracts	3.9	19
Transportation (e.g. bus, subway or train service, airport)	26.5	130
Other	12.6	62
	Total responses	491

Note: Percentages reflect the survey respondents only, and are not representative of the total population.

When asked about the sector where racial profiling had happened, survey respondents reported on experiences in a wide range of areas. Racial profiling was not seen as exclusive to policing and law enforcement.

At the same time, policing (32.4%) and private businesses/retail (32.2%) were the most commonly reported sectors. If one adds private security (9% of responses⁴⁰) to the retail sector – as most qualitative responses in this area related to store and mall security – retail becomes the sector where survey respondents most commonly reported experiences of racial profiling (41.2%).

When people wrote about other people's experiences versus their own, they were much more likely to recount incidents of racial profiling involving police than other sectors. Almost three-quarters (72.8%) of survey respondents who said that they knew of someone who had been racially profiled said that it happened in policing.

There were some notable differences between male and female respondents.⁴¹ Overall, women most commonly reported being racially profiled in private businesses or retail (35.2%), followed by the policing sector, transportation and employment. Men most commonly reported being racially profiled by police (44.0%), followed by racial profiling in employment, transportation and private businesses or retail.

➤ *Racial profiling by sector by group***Table 4. Top five sectors where racial profiling was reported to have taken place, by select racial or ethnic backgrounds and creed groups**

Group	Sector	Count	Percentage
Black	Private business or retail service	81	46.6
	Police	66	37.9
	Employment	51	29.3
	Government or social service	46	26.4
	Education	42	24.1
Indigenous	Private business or retail service	23	33.3
	Police	22	31.9
	Healthcare	18	26.1
	Education	14	20.3
	Government or social service	11	15.9
Muslim	Employment	29	38.2
	Transportation	28	36.8
	Education	22	28.9
	Private business or retail service	20	26.3
	Police	15	19.7
Arab or West Asian	Transportation	12	32.4
	Employment	12	32.4
	Education	10	27.0
	Private business or retail service	8	21.6
	Other	8	21.6
South Asian	Transportation	34	42.5
	Employment	27	33.8
	Police	25	31.3
	Education	20	25.0
	Private security	16	20.0

Note: Percentages are based on the total number of people identifying with this racial, ethnic or creed category who answered this question. Percentage totals exceed 100, due to survey respondents identifying multiple sectors. Percentages reflect the survey respondents only, and are not representative of the total population.

The sectors where racial profiling was reported varied by survey respondents' creed and racial or ethnic background. Black and Indigenous respondents most commonly reported racial profiling in private businesses or the retail sector, and then in policing. Almost half of Black respondents (46.6%) reported that they experienced profiling in the retail sector or by private businesses.

Compared to all survey respondents, greater proportions of Indigenous respondents said they were racially profiled in health care (a difference of 12.0%), a sector which was not otherwise commonly reported. Muslim, South Asian and Arab or West Asian respondents reported being most often racially profiled in employment and in transportation, such as on buses, subways, trains and at airports.

3.1.2. Qualitative reports of racial profiling in different sectors

This section presents themes from the many qualitative accounts we heard about racial profiling and other forms of racial discrimination in different sectors. The themes were drawn from the open-ended survey questions we asked on the survey, notes we took during focus groups, notes and papers from the racial profiling policy dialogue, and our analysis of racial profiling applications made to the HRTO. This section also reflects relevant social science and legal research that pertain to racial profiling.

In our racial profiling survey, we asked respondents to report on their experiences in various sectors (see Table 3 for a complete list). These sectors were chosen because they cover a range of social areas protected by the *Code*, including types of services, housing and employment. The list also includes sectors that may be out of the jurisdiction of the *Code* (such as national security) but where concerns about racial profiling may still exist. We heard a great deal of concern about racial profiling in the following sectors and chose to report on these:

- Police
- Courts
- Corrections
- Child welfare
- Transportation
- Education
- Health care

- Private businesses/retail sector/private security
- National security
- Government and social services
- Housing
- Employment.

Consultation participants commonly named multiple experiences of racial profiling and racial discrimination in more than one sector.

3.1.2.1. Police

I used to be a police officer, I saw this kind of thing literally EVERY SINGLE DAY. I saw the criminalization of racialized youth over time, and have witnessed racial profiling more times than I can count. I know that active officers (in general) don't see what they do as racial profiling. They are provided with an approved language to articulate what they are doing and why (White female, age 35-44).

We received hundreds of responses about racial profiling by police, from all regions of the province. In addition, the HRTO applications we analyzed alleged racial profiling by police most often (41%). The extensive nature of the reports is consistent with the notion that racial profiling in policing is a widespread concern across Ontario.

Concerns about racial profiling by police in Canada have also been raised at the international level. In October 2016, the United Nations Working Group of Experts on People of African Descent stated that there is “clear evidence that racial profiling is endemic in the strategies and practices used by law enforcement” and urged the government to “develop and implement an African Canadian Justice Strategy to address the anti-Black racism and discrimination within the criminal justice system.”⁴² The UN group specifically raised the issue of the use of “carding” or street checks (both of these are described later on in this section).

Canadian case law has recognized that racial profiling is a systemic problem in policing.⁴³ Even in individual situations of racial profiling by police, there may be a systemic component to it. Racial profiling is not limited to decisions to stop, question or detain someone, but can affect how an officer continues to deal with a person after an initial encounter.⁴⁴ For example, racial profiling can occur in traffic stops,⁴⁵ searches,⁴⁶ DNA sampling,⁴⁷ arrest decisions,⁴⁸ and incidents involving use of force.⁴⁹

A growing body of Canadian survey research⁵⁰ and data collected on police traffic stops⁵¹ and street checks⁵² support that African Canadian and Indigenous peoples, and in some cities, Middle Eastern people, are disproportionately likely to be stopped and/or searched by police than White people or people from other racialized groups. Arrest and charge data collected by the Toronto Police Service (TPS) and analyzed by the *Toronto Star* also shows that Black people may be treated more harshly than White people upon arrest.⁵³ The results of this body of research are consistent with many studies that have been done in the U.S. and the U.K.⁵⁴

Whether data that shows that racialized people are overrepresented in police stops is attributable to racial profiling has been hotly debated. For example, some academics criticized earlier Canadian studies, reports and the *Toronto Star* analysis that showed disparities between racial groups in law enforcement practices.⁵⁵ They cited poor methodology and over-reaching conclusions, and disagreed with claims that these analyses prove racial profiling. Generally speaking, racial profiling cannot be definitively proven through a quantitative study alone, even one that is well-designed. However, overrepresentation of racialized and Indigenous persons in police stops can provide strong circumstantial evidence of the existence of inequitable practices. Courts and tribunals have accepted that racial profiling can rarely be identified by direct evidence; it will more often be proven by circumstantial evidence and inference.⁵⁶

➤ *Police perspectives*

Although many police officers and organizations in Ontario acknowledge that racial profiling may occur in police interactions with racialized and Indigenous peoples, not all have come to accept that it is a concern. In 2010, the Ontario Association of Chiefs of Police (OACP) passed a resolution acknowledging that racial bias exists in Ontario and that “members of police services can be susceptible to its pernicious influence.” The resolution encourages police services across Ontario to continue

putting in place measures to ensure bias-free decision-making in policing. These measures include developing policies, engaging with the community and creating systems of supervision and accountability.⁵⁷

There have been various efforts by police organizations in Ontario to prevent and address racial profiling. These include training through the Ontario Police College,⁵⁸ developing policies,⁵⁹ collecting race-based data,⁶⁰ and partnering with the OHRC on large-scale human rights organizational change projects.⁶¹ Several police representatives also took part in the OHRC's racial profiling policy dialogue to provide their perspectives.

Despite these approaches, many police leaders and organizations, including police associations, continue to question the nature, degree and extent of racial profiling that is reported by many people in racialized and Indigenous communities. For example, many in the policing community do not agree that data showing racial differences in police stops is consistent with racial profiling.⁶²

➤ *Police stops*

When asked about experiences of racial profiling by police, survey respondents most often related their own and others' experiences of being stopped by police in public spaces – walking on the street or driving – without an adequate reason. We heard mostly from Black, Indigenous, South Asian and Latin American respondents, although people from other racial or ethnic backgrounds reported similar experiences. Survey respondents reported their concerns that Black young men, in particular, tend to be singled out by police for extra scrutiny without proper justification, and often experience incidents of racial profiling.

Most survey respondents who said they were racially profiled by police said it was because of their race or colour.

We heard reports of incidents that happened in public places across the community, but many racialized people described being stopped either in predominantly White or affluent neighbourhoods. Research has shown that Black people are subjected to disproportionately more stops and arrests for drug-related reasons in neighbourhoods that are more socio-economically advantaged and where White people are more likely to live.⁶³ This may be because racialized people

are perceived to be “out-of-place” in these neighbourhoods⁶⁴ due to systemic police neighbourhood monitoring practices and stereotypes about racialized people and criminality.⁶⁵

At the same time, many survey respondents told us they were stopped in heavily-policed neighbourhoods where many people have low incomes. Some people said that they were, or knew of others who were, stopped in the vicinity of social housing. One Black male reported that police said that being in a “high priority area” was the reason why he was pulled over.

Many survey respondents reported being stopped while they were driving. They commonly said that while obeying traffic laws, they were stopped without explanation or because of a “random” or “routine” check and asked for identification. Many believed they were pulled over because they were racialized or Indigenous and driving a nice car. Many respondents reported being questioned by police about their car and asked how they could afford it. The implication, in some respondents’ perspectives, was that they had stolen their car, or must have engaged in illegal activity to afford it. In the vast majority of cases, people reported being let go without a charge or ticket.

I am a male with brown skin, and at the time, I also had a beard. I was approached by a Caucasian police officer while stopped at a red light in Scarborough. The officer asked for my license. When I asked why he needed it, he repeated himself and gave no reason. He then proceeded to raise his voice so I complied as I didn't want to experience what many of my friends, colleagues and family have experienced. He then told me I could pick my license up at the police station after 3 pm. When I asked how I was supposed to drive without it, he walked away. By the time I made it to the police station, I was extremely upset that my rights were violated and the fact that I was very clearly racially profiled...It took almost an hour to get my license back and I left with no answers and wondering why this happened to me. I tried to get badge numbers from the officers in question but they refused to provide them... I sent a formal complaint but no one ever followed up with me (West Indian/Caribbean male, age 25-34).

Other commonly reported themes were that police gave false or dubious explanations for the vehicle stop. These could be examples of stops that are made on the pretext of investigating suspected criminal activity.⁶⁶ For example, a South Asian Muslim woman who wears a hijab told us about how, when driving with her children, a police car followed her and stopped her. The officer said he stopped her because her children needed to be in booster seats, even though, under the law, they were too old. Some racialized survey respondents said they were told they were stopped for “suspicious” activity – such as parking near a bank.

Some survey respondents reported being stopped and asked for information and identification and told they were approached because a crime had taken place in the community. Many people indicated that when they were stopped, either on the street or in their vehicle, they were told it was because they or their vehicle fit a particular description, when the description clearly did not resemble either, or the suspect description was vague. One survey respondent, a racialized woman driving a black sedan, said she was stopped by police looking for a Black male driving a red pickup truck. The police officer then reportedly searched her car for “stolen items” – and found nothing. Another survey respondent said:

I was pulled over because I matched the description of someone who committed a crime earlier in the day. When I asked what the description was, I was told “young, black male” (Black male, age 25-34).

Some Indigenous survey respondents said that they believed they were followed or stopped because they were known to live in First Nations communities (because their licence plates showed that they lived on a First Nations reserve), or because they were incorrectly assumed to be intoxicated.

The reservation I live on is located next to a town of 9,000 people. The police often sit on the road between the town and our reserve waiting for people who may violate the rules of the road. What the police will say is that they are conducting normal traffic monitoring. Yet if you drive out toward the west

of the town where there is a non-native community the police presence is nearly non-existent.... For all I know maybe it is a good place to issue tickets but to me it looks bad and looks like racial profiling (First Nations male, age 55 and over).

Some racialized survey respondents identified that the law was selectively enforced when they were driving. Some admitted to speeding, but said that they were stopped while others, including White people, were also speeding or speeding faster. In some cases, the racialized and Indigenous passengers were questioned and asked to show identification, not just the driver.⁶⁷ Some people said that they or their cars were inappropriately searched after they were questioned. Several racialized people said that they received trumped-up tickets or were charged inappropriately, having done nothing wrong.

Another common theme reported was racialized people being followed and monitored by police without being stopped. For example, one South Asian man related two stories about being watched carefully by multiple police officers, which he attributed to being racialized and having a beard. Another survey respondent said:

I'm frequently followed by police while driving, to the point that I expect it to happen and I am surprised when it doesn't (Black male, age 25-34).

Recent Canadian quantitative research provides some evidence that certain ethno-racial groups may be disproportionately represented in traffic stops and outcomes. York University researchers analyzed race-based traffic stop data collected by the Ottawa Police Service (OPS) over a two-year period.⁶⁸ The data shows that Black and Middle Eastern people experienced disproportionately high incidences of traffic stops. Black drivers were stopped 2.3 times more than one would expect based on their representation in the driving population, and Middle Eastern drivers were stopped 3.3 times more. Young male Black drivers (age 16-24) were stopped 8.3 times more than would be expected, while young male Middle Eastern drivers were stopped 12 times more.⁶⁹ Middle Eastern female drivers were stopped almost three times more than their representation in the driving population. This was the highest disproportion of any of the women included in the research. The OHRC has said that the data is consistent with racial profiling.⁷⁰

➤ *Street checks/carding*

A large number of racialized and Indigenous survey respondents talked about being arbitrarily stopped by police while walking and questioned about who they were, why they were in the area, where they were going, and asked for identification. This appears to correspond with the phenomenon of “street checks.” Street checks or “carding” (also called “community contacts”) are “non-arrest police approaches that involve and/or are for the purpose of asking for, recording and/or obtaining identification, personal information and/or information about an individual’s circumstances.”⁷¹ Of additional concern was that records of these contacts are housed long-term in police databases.⁷²

Police street check practices have been perceived to disproportionately negatively affect racialized and particularly Black youth. These concerns were supported when the *Toronto Star* published its review of over a million TPS civilian “contact cards,” which showed that Black people were highly overrepresented. Between 2008 and 2013, they were three times more likely to appear in the contact card dataset than their representation in the population.⁷³ The *Toronto Star* also found that across the city’s patrol zones, Black people and people with “Brown” skin were more likely than White people to experience police stops that did not result in arrests or charges being laid. The Association of Black Law Enforcers (ABLE) says that police services across the province have asserted that street checks are “an effective tool that [are] integral to their ability to maintain public safety and solve crimes.”⁷⁴

Street checks/carding was a central issue in our consultation. In a paper submitted to the OHRC’s policy dialogue, a representative of the Canadian Civil Liberties Association points out that when people are deprived of making an informed choice and feel compelled to take part in a police stop during a non-criminal encounter, it should be recognized as a detention and a deprivation of liberty.⁷⁵ Many consultation participants said that carding should be abandoned entirely. In its submission, ABLE described its concerns that a police officer’s decision to conduct a street check is based on that officer’s subjective beliefs about who in the area has knowledge of general or specific crimes. This can lead to the “racialization of crime based on suspect descriptions.”⁷⁶ We heard there is little documented evidence showing that such practices are effective in detecting crime, gathering intelligence or preventing crime.⁷⁷

In response to widespread concern among affected individuals, community activists, advocacy groups, human rights experts, legal clinics and academics, the Government of Ontario introduced a Regulation aimed at limiting the use of street checks or

carding to lawful police/community interactions.⁷⁸ Although the Regulation represents a meaningful step forward and will help prevent some forms of racial profiling, the OHRC has voiced its concerns that it will not prevent all arbitrary and discriminatory street checks, including those that amount to racial profiling.⁷⁹

In our racial profiling survey, we asked respondents specifically about their experiences with street checks. We asked, “Have the police ever stopped and questioned you and recorded information about you unconnected to any specific traffic violation, criminal investigation or specific suspect description?”

Over a third of survey respondents who reported being racially profiled said they had this kind of interaction with police. The vast majority were racialized or Indigenous.

Black respondents most commonly reported experiencing this type of interaction (25.9%), followed by Indigenous respondents (24.0%), other racialized respondents (17.9%), Arab or West Asian respondents (17.4%) and Muslim respondents (14.7%). In contrast, only 8.6% of respondents who identified as exclusively White reported this conduct.

Sixty-three percent of survey respondents believed race or a related ground was a factor in these types of interactions with police. Only three White respondents (6.4%) thought any of these *Code* grounds were factors in being stopped and questioned by police.

A much greater proportion of men reported experiencing carding or street checks (28.4%) than women (10.0%).

Notably, over half of the Black male survey respondents reported being stopped, questioned, and their information recorded by police. A greater proportion of Black males reported that this happened to them (55.7% or 39 responses) compared to Black females (12.2% or 19 responses). Three-quarters of the Black males under age 35 reported such an experience (although only 32 Black males of this age category responded to the question).

We heard how these encounters can lead to more serious police interventions. Several people wrote about how these interactions led to them being searched or having their bags searched for weapons or drugs.

The table below reflects the reported number of incidents of being arbitrarily stopped and questioned and having personal information recorded by police.

Table 5. Reported number of incidents of being stopped, questioned and having personal information recorded by police by frequency

Frequency	Percentage	Count
Once	35.9	71
Twice	13.1	26
3-5 times	10.1	20
6-10 times	1.5	3
More than 10 times	1.0	2
I don't know	38.4	76
		Total responses 198

Note: Percentages reflect the survey respondents only, and are not representative of the total population.

When we looked at the frequency of these experiences, most people reported they did not know how many times this conduct had happened. This could be because it is difficult to know if information about a person is retained in a police record, or the reason why a person was stopped. On the other hand, people may have responded in this way because they were stopped on more occasions than they were able to recall.

We also learned that most survey respondents believed that these encounters were in some way connected to at least one *Code* ground. The table on the next page shows how survey respondents answered when asked if they believed race and related grounds, such as colour, ethnicity, ancestry, religion or place of origin, were factors in this type of police interaction.

We also asked respondents about the effect this type of police interaction had on them.

Table 6. Reported effects of being arbitrarily stopped, questioned and having personal information recorded by police by type of impact

Impact	Percentage	Count
It did not affect me	20.6	43
Negatively affected my mental health	28.2	59
Negatively affected my physical health	15.8	33
Decreased my trust in police	61.7	129
Decreased my trust in the law or justice system	47.8	100
Decreased my sense of belonging or trust in Ontario society in general	45.0	94
Other	14.8	31
		Total responses 209

Note: Percentages reflect the survey respondents only, and are not representative of the total population.

The most frequently reported impact was that it decreased people's trust in the institution of policing (61.7%), followed by decreased trust in the law and justice system more generally (47.8%).

➤ *Police investigations*

Participants also raised concerns about racial profiling in police investigations. Some survey respondents wrote about how other people made false reports to police based on racial stereotypes or prejudice. In some cases, this reportedly led police to assume that these racialized (often Black) individuals were engaged in illegal activity when they were not.

Our mosque gets visited by the police very often. Every time there is any work done on the property someone will call and say we are doing something illegal. Every time we have a children's festival someone calls to have the police check if we have all the licenses which, after the first time when we had to take down all the entertainment for the kids, we now make sure is all in order (White Muslim female, age 45-54).

If police (or other law enforcement authorities, such as security officers) rely on biased accusations of racialized or Indigenous people without keeping an open mind and doing a proper investigation, they may be engaging in racial profiling.

No One is Illegal⁸⁰ raised concerns about racialized migrant workers being disproportionately targeted for investigation by police. DNA samples from approximately 100 “Indo- and African Canadian” migrant workers were taken during an Ontario Provincial Police (OPP) investigation into a sexual assault in 2013. This occurred despite the fact that many of the individuals did not fit the suspect description, aside from having dark skin. In a submission to the Office of the Independent Police Review Director (OIPRD), the OHRC said that these allegations may be consistent with racial profiling.⁸¹

➤ *Harsh or disproportionate police responses*

We heard many concerns about police behaviour while interacting with racialized and Indigenous survey respondents during police stops or investigations. Many respondents reported being treated in a rude or harsh manner. Some said they were asked inappropriate and potentially discriminatory questions, such as questions about their place of origin or being a drug dealer, or that the police used derogatory race-based language. Sometimes this rude and harsh treatment was observed to be in direct contrast to the polite way police spoke to a White person during the event.

Several racialized and Indigenous survey respondents told us how they were dealt with in a heavy-handed or unnecessary way, given the nature of the situation. They reported experiencing excessive or trumped-up charges, threats, and inappropriate calls for officer reinforcement in situations that they perceived did not warrant it. Alarming, this was reported to have happened to several youth.

...[My son] came home telling me about his experience and told me I should expect a call from a police officer. I asked him, what was he doing to cause the police officer to stop him and he said, "Nothing mom, I was just riding my bike." I never received a call from any police officer, so a day later, I called [the station] to inquire about the incident. The female officer who answered the

phone was so rude to me on the phone. It was disgusting to hear her talk to someone like that. Threatening to arrest my son if I had pursued that incident (Black female, age 45-54).

Was walking home from school. Cops pulled up. Asked him what he was doing in this neighbourhood. Said he was coming from school. Cops said they didn't believe him. And they could look at his ID or take him into the station and question him. He gave them his student ID for the bus... my son was 11 years old (Black female, age 35-44).

Three people wrote about how police subjected them or their loved ones to unnecessary strip searches or cavity searches, without any resulting arrests, which they believed to be racial profiling. One individual gave a powerful account of how he was strip searched in public, in front of his crying children, without an explanation from police. He then reportedly received a fine for something he did not do. This survey respondent related his son's experience:

My teen aged son got stopped by the patrolling police, cavity searched and threatened verbally and let off with a mild warning when his caucasian school mates showed up (Southeast Asian male, age 55 and over).

Several racialized survey respondents wrote about physical assault or excessive use of force or restraint by police when they or others were stopped and/or arrested. A few people recounted that they or their family members were held at gunpoint when they had done nothing wrong, or were physically assaulted upon arrest, which led to physical injury.

Walking down the street wearing my hoody up. I was talking on the phone I saw a police cruiser drive slow on the opposite side of the street and made eye contact they immediately did a U-turn. They stopped me and asked where I was going. At this time I had my cell phone out so the caller could hear what was going on. When they asked why I had my cellphone out in that manner and explained they slapped the phone out of my hand, grabbed my

head smashed it against the trunk of their car and handcuffed me and put me in the back of the police cruiser. When I asked why I was being arrested they said I was intoxicated. When I asked if I sounded drunk and they replied no. I asked if they had broken my nose because I felt blood dropping but they assured me it wasn't. After they debated on whether they should take me to the station or not they let me go (Latin American male, age 25-34).

Another commonly reported theme was racialized people being singled out for further ongoing scrutiny after a first incident with police, described by several survey respondents as “harassment.” We heard accounts of people being stopped by police many times. Many people talked about how Black people, and especially Black male youth, were more likely to be singled out for repeated incidents of police racial profiling. Of the survey respondents who reported being racially profiled six or more times in the last 12 months, and reported being racially profiled by police, almost half (21) were Black.

Truthfully all my friends have been through the same things I have been through. It has become second nature to be aware of the police... [It's a] clear violation, but position of power leaves us to just accept this treatment as normal (Black male, age 20-24).

Some people specifically named the Toronto Anti-Violence Intervention Strategy (TAVIS) of the Toronto Police Service as being responsible for “hassling” racialized youth.

Some survey respondents identified that racialized youth do not know their rights in this area and need education. We heard that youth may feel they have no recourse to complain against the institution of policing.

We also heard reports of reprisal (“payback”) or threats of reprisal by police after survey respondents or others had asserted their rights during perceived incidents of racial profiling. This reprisal took the form of tickets, intimidation, arrests, threats of arrest, confiscating a drivers’ licence or a temporary insurance slip, and even physical assault. These actions reportedly occurred when individuals tried to question why they were stopped, record police on their cell phone, complain about incidents, or ask for badge numbers.

➤ *Racial profiling by association*

Several Indigenous, racialized and White survey respondents indicated that they were stopped by police because of the particular stereotypes relating to the people they were associating with. For example, some White people reported that they were stopped when they were in the vicinity of a group of racialized people or in the company of racialized friends or family. One White respondent indicated that, as a youth, police singled him out and told him that he was only with his Black friends to buy drugs. One Black woman said that her White boyfriend was stopped while they were driving. Police told them that they assumed he was a John and she was a sex worker.

➤ *Predictive policing models*

One policy dialogue submission explores the ways that algorithms are used to predict behaviour in the criminal law context in the U.S.⁸² With respect to predictive policing, algorithmic tools are fed information about past records, such as arrest records in particular neighbourhoods, to help determine where police should be deployed.⁸³ The author argues that this approach is problematic as it generally does not account for the role that unjust policing may have played in past arrests and police deployments in neighbourhoods with many racialized residents. In the U.S., a coalition of civil rights, privacy and technology organizations signed a statement of shared civil rights concerns about predictive policing models used by police departments. Among their concerns are that these tools are “systemically biased against communities of colour...”⁸⁴ If these algorithmic tools are inherently biased based on race or creed, there is a concern about whether they have a discriminatory impact on groups protected by the *Code* if adopted by law enforcement and surveillance bodies in Canada.⁸⁵

Some police services in Ontario have used a similar form of predictive policing, albeit without a reliance on algorithmic tools. Called “situation tables,” these are meetings that gather police, social service agencies, schools and other important community service providers to discuss and address situations that a member organization believes involve acutely elevated risk to individuals and/or families. This process involves a subjective examination of risk factors to determine whether there is an immediate risk and whether personal information should be disclosed to the relevant agencies. Some of the factors used to assess risk – “negative peers,” “gang association,” “negative neighbourhood” and “parenting” – tend to be associated with *Code*-protected groups due to stereotypes and racial profiling, the

racialization of poverty, and the overrepresentation of Indigenous and racialized children in the child welfare system. The OHRC has raised concerns that this risk assessment process could lead to disclosure of people's personal information without consent, which may be discriminatory.⁸⁶ It may also lead to racial profiling.

➤ *Reports of other types of racial discrimination*

The flip side of racial profiling is under-policing. Under-policing can happen when police ignore or minimize requests for police assistance from communities or groups.⁸⁷ If race and related grounds are factors in under-policing, this could be racial discrimination, but it may not amount to racial profiling. Some racialized and Indigenous survey respondents expressed their concerns that police did not adequately respond to them or their family members when they reported a crime or when they needed help from the police. One First Nations respondent said that this was evident in the lack of appropriate police response to her niece's death:

My niece was killed in Toronto. Thrown off a 24-story balcony. Within hours, police had ruled it a suicide with no further investigation. My family and I believe she was murdered (First Nations female, age 55 and over).

Concerns about inadequate police responses to incidents involving Indigenous peoples, including the deaths, disappearances and harm caused to Indigenous women and girls, have been well-documented.⁸⁸ Despite being overrepresented among people who are victims of crime, one author argues that Indigenous peoples may be viewed as "less worthy victims" by police, who may investigate and prosecute crimes against them with less rigour.⁸⁹

3.1.2.2. Courts

Relatively few survey respondents talked about their personal experiences of being racially profiled in the court system. Most people's experiences pertained to family court. Respondents noted how they believed they were wrongly perceived to be neglectful parents because they were Black fathers and mothers. One woman identified that she must fight against stereotypes about her being an "angry Black woman," which are used by her opponent to support claims that

she cannot protect her children. She indicates that she is interpreted in this light by the Office of the Children's Lawyer when she rightfully asks for or questions evidence related to her case.

Several respondents raised general concerns about racial profiling that they believe exists in the criminal court system, noting that people of certain races, faiths or ethnicities are assumed to be criminals and are more often found guilty and sentenced to longer sentences. For example, the OFIFC raises concerns that systemic forms of racial profiling lead to Indigenous peoples being subject to harsher sentences than non-Indigenous people.⁹⁰

In this section and the next, we present some of the limited data available on overrepresentation of racialized and Indigenous peoples in the Ontario court and corrections systems. Many factors likely contribute to these disproportionate representations. Overrepresentation of certain racial groups in practices and decision-making in these systems may be in part an indicator of systemic racial discrimination,⁹¹ including systemic racial profiling.

➤ *Bail and pre-trial detention*

The Supreme Court of Canada has repeatedly recognized the presence of anti-Black and anti-Indigenous racism in society and the criminal justice system.⁹² Evidence of disparities in the treatment of racialized and Indigenous peoples compared to White people in criminal court proceedings has been found in research done in Ontario. The Commission on Systemic Racism in the Ontario Criminal Justice System (Commission) found that for drug charges before Toronto courts, Black adult males were three times more likely than White adult males to be refused bail and detained before trial.⁹³ A study that tracked over 1,800 criminal cases in Toronto bail courts over six months between 1993 and 1994 found that 36% of Black accused persons were detained before trial, compared to 23% of accused persons from other racial backgrounds. Race was a significant predictor of pretrial detention even when controlling for other factors, such as being considered a flight risk or danger to the public.⁹⁴

One aspect of the bail or “show cause” hearing process that may raise human rights concerns is the subjective “moral assessment” of the accused.⁹⁵ These are character descriptions of the accused completed by the arresting officer, and can have an impact on Crown decision making.⁹⁶ Racial disparities in pre-trial detention may be explained by Black accused people being more likely to receive negative moral

assessments than people from other racial backgrounds.⁹⁷ Because this process is discretionary on the part of the arresting officer, it may be open to unconscious or explicit racial bias.

In addition, data suggests that police may spend more time on average justifying the pre-trial detention of Black accused people than White accused people and accused people of other racial backgrounds due to Black people being more likely to face multiple charges, among other factors.⁹⁸ Even when African Canadians are released on bail, research shows they still tend to receive significantly more release conditions compared to White people, including curfews, area restrictions and mandatory supervision requirements.⁹⁹ These differences exist even when controlling for legally relevant variables.¹⁰⁰ Given the evidence that Black people receive disproportionately more stringent bail conditions and are more likely than White people to be stopped and investigated by police, researchers are not surprised that one study has also found African Canadians are overrepresented among people charged with breach of conditions offences.¹⁰¹

A representative of Aboriginal Legal Services (ALS) raised concerns that Indigenous accused people have experienced marked differential treatment before the courts. In Toronto and Sarnia, a separate court mechanism (called Gladue court) exists that approaches Indigenous peoples in a way that contextualizes their experiences within the larger history and culture of Indigenous peoples in Ontario. However, similar provisions do not exist for most other jurisdictions. The situation in northern Ontario is especially challenging, as accused people are often placed hundreds of kilometres away from their communities and any social support. According to the ALS representative, this lack of support makes it extremely difficult to come up with a bail plan, so many Indigenous persons languish in jails before appropriate accommodations or releases can be made.¹⁰²

The Canadian Civil Liberties Association (CCLA) exposes these same concerns in its 2014 report, *Set up to fail: Bail and the revolving door of pre-trial detention*. It raises concerns that the bail system itself tends to disadvantage individuals living in poverty and people with mental health disabilities. It notes, "Aboriginal people, who are disproportionately impacted by substance abuse issues, poverty, lower educational attainment, social isolation and other forms of marginalization, are being systematically disadvantaged as [a] result."¹⁰³ A report to the Ipperwash Inquiry indicates that Indigenous peoples may be denied bail precisely due to these systemic conditions, which make it seem like they will be less likely to attend court.¹⁰⁴

➤ *Sentencing*

Evidence suggests that racial disparities exist in the courts when it comes to sentencing convicted persons. For example, the Commission found that Black men in Toronto courts convicted of drug offences were significantly more likely to receive prison sentences than White convicted men. This disparity could not be explained by factors such as the seriousness of the offence or factors relating to criminal history.¹⁰⁵ One researcher concludes that the “higher incarceration rates of black than white convicted men is partly due to judges treating them more harshly for no legitimate reason.”¹⁰⁶ A 2013 report by the Correctional Investigator of Canada revealed that while the White prison population at the federal level has declined by 3% since 2003, the Black incarcerated population has increased every year during that same period, growing by nearly 90%.¹⁰⁷

The overrepresentation of Indigenous peoples in prisons has been recognized for over two decades, and led to legislative change to the *Criminal Code* in 1996.¹⁰⁸ This new provision was clarified in the Supreme Court of Canada decision of *R. v. Gladue*.¹⁰⁹ The Court explained that judges should take a contextual approach when deciding on a fair sentence for an Indigenous offender. This means recognizing the systemic and background factors that may relate to the specific Indigenous person before the court, and considering alternatives to incarceration. Despite this decision, across Canada, Indigenous persons are still disproportionately represented in admissions to adult correctional services.¹¹⁰

One author argues that the overrepresentation of Indigenous people in jails and prisons can be partly attributed to the fact that judges are not provided with the information and resources that will allow them to employ the contextual approach that was described in *Gladue*.¹¹¹ Similarly, we heard concerns from a probation officer that the *Gladue* principles are not being consistently applied in probation reports, due to a lack of training.

➤ *Risk assessment in court*

Risk assessment tools, such as those used to evaluate whether an accused should be released after a bail hearing, are applied to people at different points in the criminal justice system. Researchers have raised concerns that the results of these risk assessments follow a person throughout the criminal justice system, and question their potential for bias and discrimination when used with women and racialized and Indigenous peoples.¹¹²

For instance, one study found that a particular sentencing risk assessment tool used to determine offenders' needs did not account for the systemic nature of the issues that disproportionately affect racialized and Indigenous groups, such as poverty, neglect, histories of oppression and other forms of marginalization.¹¹³ Further, the authors suggest that applying these "neutral" assessments may increase the likelihood that Indigenous and racialized offenders are assessed as higher risk than White offenders.¹¹⁴ If this is the case, it could constitute racial profiling. If risk assessment tools overestimate a person's level of risk due to race and related *Code* grounds, this may inadvertently contribute to the overrepresentation of Black and Indigenous peoples in the corrections system.

3.1.2.3. Corrections

Participants' concerns about racial profiling and the corrections system related to the overrepresentation of Indigenous and racialized people in prison. Provincial and federal data provide evidence of this troubling overrepresentation.

For youth, jail data from 2013 in Ontario obtained by the *Toronto Star* shows that:

- The proportion of Aboriginal boys aged 12 to 17 in youth facilities is five times higher than their proportion in the general young male population
- African Canadian boys' representation in youth correctional facilities is, proportionally, four times higher than their proportion in the general young male population
- The jail admissions population of Aboriginal girls is proportionally 10 times higher than their proportion in the young female population
- These overrepresentations did not exist for White boys, boys of other ethnicities, or girls from any other racial or ethnic group.¹¹⁵

The Toronto Star indicates its analysis found similar overrepresentations in Ontario's adult jails.¹¹⁶ For example, in 2009, Indigenous adults made up more than 10% of adults admitted to jail in Ontario, despite accounting for less than 2% of Ontario's population.¹¹⁷

Adult jails and prisons in Ontario and federally have also reportedly been spaces where racism, racial discrimination and racial profiling are pervasive. The Commission on Systemic Racism in the Ontario Criminal Justice System did an exploratory study on discipline in Ontario jails. Discipline in Ontario's adult correctional institutions typically begins with a finding of misconduct arising from a violation of a facility rule or

regulation. If a prisoner is found guilty of a misconduct charge (misconduct), they may receive discipline in the form of losing privileges, being placed in segregation, or other disciplinary actions.¹¹⁸ Although the Commission could not determine the extent that racial differences in discipline existed based on the data it had available, it did note some important trends. Black prisoners – men, women and youth – appeared to be overrepresented in the receipt of misconducts, particularly the types of misconducts that required discretion from correctional officers.¹¹⁹

Although there is no more recent data on the discipline used against racialized prisoners specifically in Ontario's jails, at the federal level, the Office of the Correctional Investigator (OCI) found that African Canadian prisoners "reported feeling targeted with respect to institutional charges, particularly those that were more discretionary or requiring judgment on the part of correctional officers."¹²⁰ Through interviews of 73 Black prisoners in a 2013 case study, the OCI learned that nearly all reported experiencing discrimination by federal corrections staff. The prisoners said they felt marginalized, excluded and isolated within the prison environment due to discrimination by correctional officers. Some of the common discriminatory stereotypes that African Canadian prisoners said they were subjected to were "gang member," "trouble-maker," "drug dealer" and "womanizer."¹²¹

The OCI indicates that Indigenous men and women prisoners in the federal corrections system "lag significantly" behind non-Indigenous offenders on nearly every corrections indicator. For example, they are routinely classified as higher risk, released later in their sentence (are less likely to be given parole) and are more likely to return to prison because parole is revoked, which is often for administrative, not criminal, reasons.¹²² The OFIFC echoed these concerns, indicating that these are forms of systemic racial profiling.¹²³

➤ *Risk assessment in corrections*

When a person enters provincial or federal custody, they are assessed for risk and other factors that determine where they should be placed in the system, their risk of re-offending and how they should be treated. These assessments usually lead to decisions on whether a prisoner should be placed in maximum or medium security, the type of programming they receive, and where they should be placed relative to others. Researchers and advocates have raised concerns that these assessments are biased based on race, culture and gender because they are developed using samples of primarily White male offenders, and may lead to inflated assessments of risk for racialized and Indigenous peoples.¹²⁴

In 2003, the Canadian Human Rights Commission advised against using risk assessment tools on women or Aboriginal offenders in the federal corrections system, unless they were adequately tested and modified to be responsive to the needs of prisoners in these groups and were properly designed to serve their intended purpose. They said that otherwise, use of the tools could lead to differential treatment.¹²⁵

Meta-analyses that examined the validity of these tools have found they are still useful in predicting risk for Aboriginal and ethno-racial groups, with limitations.¹²⁶ One researcher argues that even if they are shown to be valid, because they have not been developed with the specific needs of non-White offenders in mind, they are of “questionable legal and ethical value” when applied to racialized and Indigenous peoples.¹²⁷ Risk assessment tools used in corrections have also been challenged before the courts based on allegations of cultural bias.¹²⁸

➤ *Security placements, disciplinary actions and segregation*

Overrepresentation of both Black and Indigenous prisoners exists in maximum security populations throughout federal correctional facilities.¹²⁹ For example, Black prisoners are 1.5 times more likely to be placed in maximum security federal institutions than the general population, despite being rated as a group that has a lower risk of re-offending and lower needs overall.¹³⁰ Indigenous prisoners are also more likely to be placed into maximum security.¹³¹

The OCI has also revealed that Black and Indigenous prisoners are disproportionately represented in use-of-force incidents within federal institutions. Nearly 18% of all incidents involve Black prisoners and approximately 30% involve Indigenous prisoners.¹³²

The OHRC is also concerned about how racial profiling may play out in the use of segregation, also known as solitary confinement, in Ontario’s correctional facilities. Prisoners can be placed in segregation for either disciplinary or administrative reasons.¹³³

Disciplinary segregation is punitive, and can only occur when a prisoner is found to have conducted a misconduct of a serious nature.¹³⁴ Systemic evidence suggests that practices such as disciplinary segregation may be used disproportionately with Black prisoners. For example, in 1995 the Commission on Systemic Racism in the Ontario Criminal Justice System reported racial disparities in the application of institutional

discipline, including disciplinary segregation, in Ontario's correctional facilities.¹³⁵ The Commission saw trends that "black prisoners were most over-represented and white prisoners most under-represented in the 'closed confinement' or segregation category of punishment."¹³⁶ In 2013, after reviewing five years of data on segregation, the OCI stated that Black prisoners were consistently overrepresented in administrative segregation, "particularly involuntary and disciplinary placements."¹³⁷

Administrative segregation occurs when a prisoner is separated from the general population for reasons generally relating to prisoner safety or security of an institution.¹³⁸ As administrative segregation placements often include some form of risk assessment, racial profiling can also manifest in this context. Again, evidence from the federal corrections system suggests that administrative segregation is used disproportionately with both Black and Indigenous prisoners.¹³⁹ The OCI has recently reported that the population growth of Black prisoners in administrative segregation outstrips their rate of incarceration.¹⁴⁰ The OCI also found that "Aboriginal inmates continue to have the longest average stay in segregation compared to any other group."¹⁴¹

The lack of available information on provincial correctional institutions makes it difficult to get a clear sense of the challenges that may exist there 22 years after the last comprehensive study was done on these facilities and corresponding institutions. Yet, there are concerns that disproportions similar to federal corrections may also exist at the provincial level.

3.1.2.4. Child welfare

We heard concerns about racial profiling in the child welfare sector, particularly as it affects Black and Indigenous families.¹⁴² We heard that systemic racism was perceived to be embedded in the child welfare system, and that racial profiling that may take place in this sector targets mothers for over-scrutiny most often. We heard concerns that racialized and Indigenous parents are disproportionately subjected to surveillance and scrutiny, which contributes to families being reported to children's aid societies (CASs). We heard concerns that once a referral to child welfare authorities takes place, families are more likely to have prolonged child welfare involvement, and be more at risk of having their children apprehended. These experiences were viewed as arising in part from referrers' and child welfare authorities' incorrect assumptions about risk based on race and related grounds, and intersections between these grounds and poverty.

Consultation participants described the historical and structural inequalities that give rise to racialized and Indigenous parents having greater involvement with child welfare authorities. Some survey respondents highlighted the “Sixties Scoop” – the mass apprehension and removal of Indigenous children from their families and communities by Canadian child welfare authorities dating back to the 1960s.¹⁴³ Participants were also concerned that removing children from their families can contribute to youth becoming involved with the criminal justice system. This has been called the “child welfare to prison” pipeline.¹⁴⁴

➤ *Overrepresentation in the child welfare system*

There is evidence that Black, Indigenous and other racialized children are over-represented in the child welfare system relative to the proportion of these groups in the general population. For example, the Children’s Aid Society of Toronto reports that African Canadians represent 40.8% of children in care, yet African Canadians make up only 8.5% of the Toronto population.¹⁴⁵ Even though Aboriginal children make up only 3.4% of the total number of children in Ontario, they represent 25.5% of children in foster care.¹⁴⁶ Research also indicates that Latino children are overrepresented in cases selected for investigation by Canadian child protection services, as are Asian children when allegations of physical abuse are involved.¹⁴⁷

There are likely many factors leading to these disproportionate representations and, on their own, they do not conclusively point to discrimination. However, overrepresentation of certain racial groups in the child welfare system may in part be an indicator of systemic discrimination, including systemic racial profiling. There are many different issues that lead to involvement by child welfare authorities, but biased referrals and biased decision-making among these services may play a role.¹⁴⁸

In our consultation, we heard that systemic racial discrimination, including what may amount to systemic racial profiling, may arise from the priorities and structure of the child welfare system, the normative values incorporated into the standards used to assess risk, and decision-making practices on the part of child welfare workers and referrers to child welfare agencies.

In its report on the overrepresentation of African Canadian children in the child welfare system in Ontario, the Ontario Association of Children’s Aid Societies’ (OACAS) looked at the many ways systemic forces in decision-making bring Black families into contact with child welfare authorities. For example, it describes how funding formulae for CASs incentivize child apprehension over family support and

unification. It suggests that this approach may contribute to the overrepresentation of Black children in care.¹⁴⁹ Similarly, we heard the perception that the child welfare system is not focussed on protecting and preserving Indigenous families but on removing children.¹⁵⁰

➤ *Risk assessment standards and tools*

Consultation participants raised concerns about bias in the tools and standards used to assess risk to children. Although they seem neutral, we heard that risk assessment standards and tools may lean towards more positive outcomes for White people.

Social work researchers argue that Ontario-based risk assessment tools are biased and perpetuate racism because they do not take into account structural inequalities, such as racial discrimination, which may affect a child's well-being. Parents may be blamed for these external factors, despite the fact that they are largely out of their control.¹⁵¹ They and other consultation participants contend that relying on these tools, coupled with worker bias – which may be conscious or unconscious – may contribute to assumptions about racialized children and families being “inherently wrong or deficient.”¹⁵² This can lead to incorrect assumptions about the level of risk children are exposed to.

Concerns were also raised about risk assessment standards that relate to poverty. Poverty in racialized and Indigenous families may be seen as a sign of neglect,¹⁵³ which provides a basis for a child welfare agency to become involved.¹⁵⁴ In one example, consultation participants told us that standards around the number of children allowed per bedroom are too onerous for many Indigenous families living in poverty.¹⁵⁵ We were told these standards can affect what is seen as acceptable in a home and contribute to CAS decisions to intervene.

Research in the U.S. indicates that the overrepresentation of Black children in the child welfare system may in part be attributed to the fact that Black families are more likely to be poor.¹⁵⁶ Poverty is a major cause of overrepresentation of Indigenous children in the foster care system in Canada.¹⁵⁷

It is unclear to what extent child welfare standards and tools reflect real risk to children in all cases, or arise from White, Western, Christian middle-class norms. When standards and risk assessment tools are not based on objective

factors, but on the cultural norms of the dominant group, they may contribute to racial profiling.

➤ *Decision-making practices*

Concerns were also raised both about the perceived bias of authorities or individuals that refer to CASs,¹⁵⁸ and perceived bias in decision-making practices on the part of child welfare workers and authorities when they become involved with families.¹⁵⁹

The Ontario Federation of Indigenous Friendship Centres (OFIFC) reports that “Aboriginal families are treated differently [by child welfare authorities] and are more often recorded as being neglectful than the general population.”¹⁶⁰ One Friendship Centre reported to the OFIFC that 480 Indigenous families in one community are in contact with CASs.

The OFIFC identified that Indigenous families experience “intense scrutiny of [their] ways of life.”¹⁶¹ We were repeatedly told that non-Indigenous child welfare workers often do not understand the nature or structure of Indigenous families and cultural differences in how families live – they only see, for example, that children are not being raised by their parents and are living in what are perceived as over-crowded conditions.¹⁶² In another example, Indigenous youth told us that youth are sometimes put into care because they miss a lot of school due to practicing their traditions and taking part in ceremonies.

A significant concern raised by many Indigenous survey respondents, including the OFIFC, is that new Indigenous mothers are unfairly targeted for child apprehensions. These include, tragically, apprehensions at birth. The OFIFC raised concerns about situations where hospital staff and child welfare agencies are perceived to collaborate. This survey respondent describes her clients’ experiences:

I work as a midwife, primarily with Aboriginal women, and have lost track of how many racist assumptions and mistreatments I've observed based on race. For example... calling social workers or child protection agencies because parents are young and native – massive profiling in the selection of who has that involvement. Then, once that involvement starts, Aboriginal women are much more likely to have their babies removed for much more dubious reasons (Mixed race – White and Aboriginal female, age 35-44).

One paper submitted to the racial profiling policy dialogue¹⁶³ identifies some of the factors that contribute to the over-scrutiny of Black parents, and the tendency to view Black parents as risks to their children and in need of intervention by CASs. For example, they note that Black parents are commonly viewed by child welfare authorities as “aggressive” and “crazy” when they are externalizing resistance, grief, fear or shame. They also noted that Black children are perceived as needing “rescuing” from their parents.¹⁶⁴

They write that child welfare workers often seek out police to accompany them when making home visits to Black families, based on irrational fears about safety, which leads to these families being viewed as criminals. These actions not only humiliate the families but also can lead to arrests of parents or youth, or to children being apprehended.

Consultation participants identified that child welfare workers, many of whom are White, may be more likely to construe family situations or the actions of racialized or Indigenous people as “risky.” We heard that culturally-biased concerns about racialized parents’ feeding, sleeping and child-minding practices can result in the involvement of child welfare authorities or threats of child apprehension. For example, we heard how Black families may be reported to CAS because their children eat non-western foods that are specific to their culture.

The OHRC is also very concerned that the overrepresentation of Black and Indigenous children in the child welfare system is a possible indicator of systemic racism. As a result, we conducted a public interest inquiry to examine this issue and requested that CASs across the province provide us with *Code*-disaggregated data on race and other information. In the preliminary analysis of the data, we found that for many CASs across the province, African Canadian and Indigenous peoples are overrepresented among children in care, compared to their census populations.¹⁶⁵

3.1.2.5. Transportation

Survey respondents reported racial profiling in the transportation sector most commonly in airports, during border crossings, and on buses, subways and trains.¹⁶⁶

➤ *Buses, subways, trains and taxis*

A common theme was how transportation providers may deny service to racialized people. Several racialized survey respondents wrote about how bus drivers do not stop to collect them. One said that a taxi driver said that they refused to collect

fares from Black people because of “racial/security reasons.” Racialized and Indigenous persons, and people who are or may be perceived to be Muslim may be over-scrutinized on public transportation. For example, we were told about situations where racialized and Indigenous peoples’ identification or transfers were questioned, or their passes were checked, while White riders’ passes were not. Racialized and Indigenous peoples may be stereotyped as dishonest and perceived as trying to cheat the system.

In addition, some survey respondents, particularly people who were South Asian, West Asian and Muslim, indicated that they were monitored and sometimes approached as being potential security threats while they were on public transportation.

One time I was waiting for a bus inside the TTC [Toronto Transit Commission] subway station by Bloor and Bathurst and the person working kept looking at me funny and then picked up the phone and dialed someone. I was standing there and minding my own business but could see every once in a while that I turn around the man is looking at me with anger (caucasian person). Next thing I know 3 big guys attack me and show me their badges and I could see under their clothes they had bulletproof jackets and I was scared and shocked stood there for the man to tell me I was intimidating the guy working (while he was inside a fully closed off TTC booth behind the glass and I was standing few feet away). I was asked for all my information and had to provide them with my personal ID and then came the same question, "Where were you born?" and I had to answer with shame "Iran" as if it had anything to do with anything.

My friend who was in the area also happened to see me get harassed by the undercover police and jumped in the conversation to defend me and they quickly made him shut up. Then when I asked why I had to be treated that way they said there is a policy that I can't stand anywhere inside the TTC for longer than 3 minutes... (even though I was waiting for the bus to arrive...??!!) (Iranian male, age 25-34).

➤ *Reports of other types of racism and racial discrimination*

Many of the survey responses reported discourteous, rude or discriminatory comments made by fellow passengers or drivers on buses, subways, trains and in taxis. These accounts may reflect experiences of racial discrimination, everyday racism and hate that are broader than racial profiling. For example, some respondents described how people refused to give them a seat and made discriminatory comments or slurs because they were Black, Muslim or Indigenous. Several Muslim survey respondents described being treated in fearful, rude and hostile ways by other passengers on public transportation, particularly after high-profile terrorist attacks had taken place across the world.

➤ *Airports and border crossings*

| We call it the Brown Guy room at the airport for a reason. I even have my "regular seat" (South Asian Hindu male, age 45-54).

We received many responses from South Asian, Muslim, Black and other racialized survey respondents about being racially profiled at airports and at border crossings.

Respondents described being stopped, followed by air marshals, placed on "no fly" lists, having their names flagged or their identification questioned and not believed, without justification. We heard how these experiences made people feel humiliated and powerless, in part because they were often unable to get any information about why they were singled out. Not surprisingly, respondents reported that the stereotypes that contributed to their experiences of racial profiling are perceptions of Muslim, Brown and Arab people as Muslim terrorists.

The vast majority of survey respondents reported being repeatedly selected for "random" screening and extra questioning, with many saying that it happened every or almost every time they travelled. Many said that this was in contrast to how they saw White travellers treated. Many said that their bags were searched, and some said that they were subjected to body searches. Respondents reported that they were asked inappropriate questions about their name, living situation in Canada, religious affiliation, and where their family is from.

So it usually goes like this: After check-in, I go to security area. My carry-on will pass through the security belt, and I will pass through the scanner, both without a hitch. Even so, almost every time, I'll be told: "You've been randomly selected for additional screenings." It's only a few extra seconds or minutes, but I've started to feel like replying back, "It's not random when it's every single time" (Filipino, South Asian and Spanish female, who works often in Arabic and Islamic countries, age 35-44).

These perceptions of over-scrutiny are echoed in other research and by advocacy groups.¹⁶⁷

One study, based on interviews with young Muslims in Vancouver and Toronto, found that almost all interviewees (49 of 50) believed that Muslims were subject to greater scrutiny and searches at airports and at border crossings. Sixty percent of the people interviewed indicated that they themselves experienced unfair treatment by security personnel when traveling, while 79% said that their friends and/or family had experienced unfair treatment.¹⁶⁸ One author, who describes this study in a paper submitted to the OHRC's policy dialogue, says that these accounts reflect why it is important to understand how "securitization, racial profiling and discrimination work together."¹⁶⁹

Survey respondents also described racialized and Indigenous people being over-scrutinized at border crossings when entering or leaving Canada.¹⁷⁰ We heard that racialized, Muslim and Indigenous people experienced:

- Intensive questioning by border officials, or being subjected to inappropriate questioning based on race or religion
- Having their vehicles or bags searched and dumped out by customs officials, which was described in some cases as humiliating.

In addition, we heard:

- Some White females were questioned about their association with racialized or Indigenous family members or colleagues they were travelling with. The assumption, they said, was that they were victims of sex trafficking
- A First Nations man was denied entry into Canada because border officials would not accept his Status Card. He also reported being subjected to insinuations that First Nations peoples are smugglers

- A Black man was asked inappropriate race-based questions by border guards, thrown to the ground, beaten, accused of resisting arrest and charged. The charges were dismissed because, according to him, it was a clear case of racial profiling.

The National Council of Canadian Muslims (NCCM) has received several reports from Canadian Muslims concerning human rights violations and acts of discrimination pertaining to practices at borders and airports. They have found that Muslim men are most likely to report being subjected to higher scrutiny and regular screening at airports and border crossings.¹⁷¹ Further, NCCM notes that 15% of all human rights complaints made to them in 2014 came from Muslims who were “turned away from border crossings without any explanations.”¹⁷²

It notes that these instances are especially troubling because they often lead to “baseless security designations” and information-sharing between Canadian officials and foreign authorities (such as the U.S.) that are unknown or inaccessible to the person complaining.¹⁷³ The NCCM shared the following account from a man who questioned a customs officer after he was denied entry to the United States from Ontario despite many previous visits to the country:

I insisted that they give me a reason (as to why they refused my entry) to which an officer responded: “I don't know. You tell us. I don't know who you're affiliated with.” I thought: What in the world are you talking about? Who am I affiliated with?¹⁷⁴

Ultimately, the NCCM concludes that the negative travel experiences at airports and/or border crossings for people who present as Muslim, Arab or West Asian are compounded by the lack of remedies available for what people perceive to be injustices. NCCM states that racial profiling in this context can result in “a life time of tarnished reputations, loss of dignity, and a collective distrust in law enforcement agencies.”¹⁷⁵

3.1.2.6. Education

Most of the reports of racial profiling in education came from parents of affected children, or educators in elementary and high school. Fewer consultation participants described experiences of racial profiling in college or university.

We heard how Indigenous or racialized students commonly face negative assumptions at school, which results in them being given less room to make mistakes. We heard they are more likely assumed to have behavioural difficulties, or to be “unruly” or “aggressive.” These assumptions may give rise to incidents of racial profiling. Research from the U.S. suggests that, compared to White students, teachers may be more likely to attribute Black students’ misbehaviour to internal attributes, such as being a “troublemaker,” which may lead them to want to discipline Black students more harshly.¹⁷⁶

We heard concerns that racialized youth generally experience higher rates of discipline than White youth. Toronto District School Board (TDSB) census data from 2006-2012 reveals that students who self-identify as Black, Latin American, Mixed, or Middle Eastern have relatively higher suspension rates than White students and students from other racial backgrounds.¹⁷⁷ In a 2014 racial discrimination claim against the Durham Catholic District School Board, the HRTO found no discrimination. However, it did find that there were significant racial disparities in suspensions and recommended the school board conduct a review.¹⁷⁸ Research from the U.S. also shows that racialized students, particularly Black students, are more likely to be suspended or expelled than White students.¹⁷⁹ U.S. data has also found that when compared to their White counterparts, the racial disparity in school discipline, suspensions and expulsions is more pronounced for Black girls than Black boys.¹⁸⁰

Survey respondents also wrote about how racialized and Indigenous students are often assumed to be the perpetrators in conflicts with other students. They were also perceived to be disciplined disproportionately (for example, singled out for discipline for behaviour that was minor in nature, and singled out for discipline for behaviour that White children also engaged in). Survey respondents reported that racialized students receive harsher treatment or punishment than their White peers for similar behaviour.

Research from the U.S. also suggests that racialized students are more likely to receive harsher disciplinary action compared to White students for the same misbehaviour.¹⁸¹ One experiment found that teachers showed no racial bias in response to a student’s first incident of misbehaviour. After a second incident, teachers thought that the Black student should be disciplined more severely than the White student.¹⁸²

We also heard how some racialized students were inappropriately stopped and questioned by police, either in school, or on university campus by campus security. Some consultation participants perceived schools to be complicit in racial profiling by police and other agencies. Concerns were raised that schools allow police into schools, who then may over-scrutinize, inappropriately question and sometimes search students. One high school teacher said:

Schools are absolutely complicit by letting police into schools on a regular basis, letting cops work closely with youth in hopes of gathering intelligence, by withholding information from students about their legal rights inside and outside of school (White female, age 35-44).

Similarly, in one policy dialogue paper, the authors describe the increased surveillance in “vulnerable schools” in Toronto, which have relatively larger numbers of Black students. The authors raise concerns that at these schools, police and school administrators review camera footage of students, interrogate them and have described them as “perpetrators.” The authors describe how the “clearly criminalizing and racializing interactions youth have with the police on the streets... are replicated in schools.”¹⁸³

Racial profiling in schools can have serious long-term negative effects on students. School discipline policies that have a disproportionate impact on racialized students have been linked to poor academic performance, school disengagement and students’ eventual involvement in the criminal justice system.¹⁸⁴ This is called the “school-to-prison pipeline” and has been observed in the U.S.¹⁸⁵

A review of applications at the HRTO found that some claimants alleged that school officials discriminated against them based on race by initiating police involvement on the incorrect assumption that the student posed a threat. In some cases, this led to the student being arrested. The TDSB’s 2015 *Caring and Safe Schools Report* shows that police were involved in 20.1% of suspensions or expulsions, although this figure was not disaggregated by race.¹⁸⁶ If school officials contact police based on race and related grounds, as opposed to real assessment of risk, this may indicate racial profiling.

Two survey respondents noted particular concerns about educational institutions' complicity or participation in over-scrutinizing Muslim students to gather intelligence about potential radicalization. One respondent wrote about how the school social worker watches when Friday prayers are happening, just in case someone says something "radical."

Being singled out based on stereotypes that link religion, race or ethnicity with being a security threat can have devastating educational and personal consequences for youth. For example, the media reported that at a private school in Montreal, a 15-year-old Black and Arab Muslim student was arrested by police for uttering threats and expelled from school following allegations by a school monitor that he threatened to blow up the school. Witnesses claimed that the school monitor misinterpreted the student's remarks. The media reported that the Crown did not produce any evidence to support its case and the student was acquitted.¹⁸⁷

In 2005, the OHRC filed complaints against the TDSB and the Ministry of Education alleging that the application of the safe schools provisions of the *Education Act* and related school discipline policies had a disproportionate impact on racialized students and students with disabilities.¹⁸⁸ The complaint against the Ministry of Education led to amendments to the *Education Act* and its regulations that removed reference to "zero tolerance" discipline approaches, among other changes.¹⁸⁹ It is concerning that perceptions of disproportionate discipline of racialized students and evidence of these disproportions persist despite the settlement.

➤ *Reports of other types of racial discrimination*

Many consultation participants reported other forms of racial discrimination in education other than assumptions about risk, safety and public security. We heard concerns about negative treatment and attitudes, discriminatory comments, lack of accommodation and stereotypes about racialized and Indigenous students and parents held by teachers and administration.

A commonly reported theme was that racialized students, who are often Black, are faced with low academic expectations from teachers, lack of recognition of their academic achievements, and are discouraged from fulfilling their educational potential. One submission to the OHRC's policy dialogue described how Black students are routinely streamed to the lowest academic level classes. We also heard that Black immigrant students are often placed in English-as-a-Second-Language

(ESL) classes because of their accents or placed into grades below their grade level without being tested for their skills.¹⁹⁰ The OFIFC also states that academic streaming of Indigenous students is common, particularly in secondary schools.¹⁹¹

The TDSB 2011-2012 *Student and Parent Census* showed that students who self-identified as Aboriginal, Black, or Latin American were more likely than other racialized groups to be identified with special education needs (defined as behavioural, communication, intellectual and/or physical exceptionalities).¹⁹² The *Census* also showed that students with special education needs had much higher suspension rates compared to students without special education needs.¹⁹³ As such, racialized students who are placed in special education classes may be doubly disadvantaged.

Survey respondents also relayed experiences about the way some schools have treated racialized and Indigenous parents. In some reports, the concerns of racialized parents advocating on behalf of their children were ignored. Some respondents raised concerns that racialized parents, such as Black mothers, were portrayed and treated by school staff as “aggressive,” when they were merely frustrated and trying to act on behalf of their children. We heard that negative stereotypes and attitudes about racialized and Indigenous parents can be used to negate their concerns and make it more difficult for them to address issues relating to their children’s treatment at school, including human rights issues.

Me and my 7-year-old son have faced numerous incidents of racial profiling at the hands of the [school board]. He has been accused of having a behavioural problem though specialists have said otherwise, of not being able to succeed in French immersion despite getting exceptionally good grades, being criminalized, being bullied by administration and other students. I have faced racial profiling at their hands as well, noticed in the way they (principal, vice principal, teacher, hall monitor) talk to me and deal with my issues (Black female, age 25-34).

Some respondents also described how school authorities incorrectly assume that racialized parents are a risk to their children, leading to referrals to child welfare agencies [see the Child Welfare section (3.1.2.4) for more information].

3.1.2.7. Health care

We heard relatively few reports of racial profiling, as defined by the OHRC, in health care. Some participants told us about situations where racialized or Indigenous peoples seeking health care may be perceived as a risk to others based on race and race-related grounds. This could constitute racial profiling. For example, a midwife identified how the hospital she works at routinely calls social workers or child welfare authorities when the women giving birth are young and Indigenous (see the Child Welfare section for this example).

We also received a survey response questioning if a woman's race or colour influenced whether she was perceived by health care workers to have a highly contagious disease:

On only one occasion at a hospital during the Ebola scare, I was put into isolation for coughing (unrelated to the reason for my visit), meanwhile others were coughing out of isolation. Also, my daughter (who would be identified as White) was seen for similar symptoms a couple weeks later, yet wasn't isolated. Maybe circumstantial, however, she presented with more symptoms of possible Ebola (including fever) than I did (Black female, age 25-34).

The Canadian Mental Health Association – Ontario branch (CMHA Ontario) provided a submission to our policy dialogue on how racialized individuals with mental health disabilities may be profiled based on their race, mental health, or both. It says that these intersecting forms of discrimination can contribute to people's poor mental health or exacerbate existing mental health conditions. CMHA Ontario says that the use of force by hospital security staff against racialized people with mental health disabilities is an issue of significant concern, and that the use of physical and chemical restraints may also be a problem.¹⁹⁴

There is some evidence from the U.S. and U.K. that suggests that Black males are more likely to be erroneously perceived as dangerous in the psychiatric system than White males.¹⁹⁵ A Canadian study found that race played a role in the use of restraints and other control mechanisms for patients with psychosis admitted to one hospital. Specifically, Black patients were chemically restrained and secluded more often than White patients. This finding remained significant even after

controlling for patient height, weight, number of symptoms and other variables.¹⁹⁶ However, the researchers acknowledged that the reasons for the differential treatment might not be entirely related to race, but on the severity of the symptoms that the patients presented at the time of admission.

➤ *Reports of other types of racial discrimination*

In addition to racial profiling, many participants in the OHRC's policy dialogue, focus groups and survey respondents emphasized that other forms of racial discrimination in health care are a serious problem. They reported rude, disrespectful or harsh treatment by health care staff based on race and related grounds, having their concerns ignored, and discriminatory stereotyping that influences the level of care racialized and Indigenous peoples receive.

For example, many participants reported receiving negative treatment from health professionals because they were stereotyped as a risk to themselves because of their race or ancestry. In particular, the reports we heard suggest that some health care professionals may deem Indigenous peoples unworthy of an equal level of respect or care because, based on racial stereotypes, they perceive them to be engaged in risky behaviour.

In *Radek v. Henderson Development (Canada) Ltd.*, the British Columbia Human Rights Tribunal highlighted the testimony of one expert, who identified several stereotypes about Indigenous peoples, including:

- Indigenous peoples are unhealthy and have a fatalistic disinclination to do anything about their health and other problems¹⁹⁷
- All Indigenous peoples drink and are alcoholics – the "drunken Indian" image¹⁹⁸
- Urban Indigenous peoples are degraded drug and alcohol abusers and sex-trade workers.¹⁹⁹

Another stereotype noted by researchers is:

- The health inequities that Indigenous peoples face can be attributed to poor genetics or personal choices, as opposed to factors that limit people's access to the social determinants of health.²⁰⁰

The reports we heard about the health care system reflect these stereotypes. A prominently reported theme was that Indigenous peoples were ignored or misdiagnosed by health care professionals.²⁰¹ Participants said that Indigenous peoples' symptoms were not treated seriously because they were assumed to be drunk or high, have a history of alcoholism or were "drug seeking." This focus group participant related a particularly moving experience:

My daughter-in-law had a normal pregnancy up until the end. But towards the end, she and my son, who are both status and dark skinned, couldn't hear or see any movement from the baby, so they went to the hospital. They had a medical resident there, but they didn't have a doctor on staff who could make a decision about what to do. Instead, they didn't do anything – they made my daughter-in-law wait for hours. My husband and I went to the hospital to help – I am fair skinned and my husband is not Aboriginal. It was only when they saw what looked like two white people that they started to move and act, and she got a C-section. But by that time, the baby had been deprived of oxygen for 5 hours. He was born dead and they had to revive him. The hospital staff asked my daughter-in-law what she took to harm her baby. They asked her this four times – once was not enough – they didn't believe her. Seven years later, my grandson has many disabilities and can't speak (First Nations female, age 45-54).

Indigenous survey respondents described health care professionals making offensive comments about their presumed drug or alcohol use. A First Nations survey respondent said that, when she or her children visit health care professionals, one of the first questions asked is, "do you drink?" One midwife indicated that doctors have refused Indigenous women pain medication before and after birth because they assume they are drug seeking – something she believes never happens to White women. A doctor wrote:

I am a physician working in Toronto and trained in Hamilton so I can speak to the healthcare sector most accurately. In ERs, clinics, and hospital wards across the province (at least 4 that I have spent time in), people of certain races or ethnic backgrounds

are stereotyped and receive different standards of care. This is particularly true for Indigenous peoples in Canada. I can think of a man with a seizure disorder and no history of alcohol use, automatically labelled as "alcohol withdrawal seizures" until an adequate history was taken from family members hours later. This is not an isolated incident. This results in significant health inequities and dramatic disparities in mortality across different groups (White female, age 25-34).

We also heard that discriminatory and rude treatment by some health care professionals results in Indigenous peoples being reluctant to seek health care when they need it. For example, we heard in a focus group that an Indigenous woman from a northern Ontario community refused to stay in hospital after being referred to as a "narcotics seeker" in an emergency room. After she was finally coaxed to return, she was found to be suffering from severe kidney problems. One qualitative study found that Indigenous participants felt they were judged by health care professionals because they were Aboriginal and living in poverty. For some, this led to them avoiding seeking health care.²⁰²

We also heard concerns that First Nations peoples are systemically overlooked in health care because they are seen to not be the responsibility of one department. We were told that Jordan's principle,²⁰³ which applies to First Nations children, should apply across services.

3.1.2.8. Private businesses/retail sector/private security

➤ *Retail*

Shopping While Black – It is very difficult to remember specifics, as racial profiling while shopping is such a regular occurrence. I am sometimes followed or watched carefully or asked, "Can I help you?" in a manner that makes it clear that it is more a question of what are you doing here than an offer for customer service. At the same time, I have numerous experiences where I am ignored or have to assert my position in line, as they skip over to the white person. I am sure that most black people can relate to the shopping

experience where the teller drops your change into your hand from a height, while somewhat recoiling, and you see them place the change into the hand of the white customers (Black female, age 45-54).

Research largely from the U.S. has documented perceptions of racial discrimination among racialized people, and especially Black people, in their everyday interactions in stores, services, gas stations, hotels and restaurants.²⁰⁴ Academic literature has characterized these perceptions and experiences as “consumer racial profiling.”²⁰⁵ This concept applies to various patterns of discriminatory behaviour, including using security measures against someone, such as staring at,²⁰⁶ following, detaining or arresting a consumer based on race. In the research literature, the term “consumer racial profiling” has also been applied to overt behaviour such as using racial slurs and refusing service to someone based on race, and more subtle actions such as ignoring or giving slow service to racialized customers.²⁰⁷

Although some of the actions described above may stem from unconscious stereotypes, business owners may actively carry out certain practices to monitor racialized customers or prevent them from using their stores. These include putting in place blanket policies on how to handle racialized people²⁰⁸ and asking staff to look out for Black shoppers because they assume they will steal.²⁰⁹

The Nova Scotia Human Rights Commission (NSHRC) has been concerned about the increasing volume of complaints and inquiries it has received about racial discrimination during consumer encounters. It decided to do a comprehensive study on the issue – the first of its kind in Canada.²¹⁰ In 2013, it released a final report that included results from a survey of over 1,100 people. The survey found that racialized and Indigenous peoples reported experiencing significantly greater prevalence and frequency of subtle and overt consumer incidents in the last 12 months than White respondents.²¹¹

In their surveys, Black and Aboriginal respondents reported the highest prevalence of consumer incidents compared to White respondents, followed by Middle Eastern and Asian respondents. Black and Aboriginal respondents were the most likely to report being followed by staff or security, being asked if they could afford a product or service, being searched, and being physically removed from a store.

This research reinforces what we heard in our survey, and what we saw in the HRTO applications that alleged racial profiling. Almost 250 survey respondents said they experienced racial profiling either in private businesses or retail service – for example, stores, restaurants or hotels – or reported being racially profiled by private security. Of the 20 HRTO applications that alleged racial profiling in retail, most involved claims that store staff or mall security singled them out for extra scrutiny and suspicion (of stealing, delinquency, *etc.*).

Overall, we heard that shopping, a common day-to-day experience, can be psychologically stressful because of racial discrimination and racial profiling. In the HRTO applications and OHRC survey responses, racialized (mostly Black) and Indigenous peoples described a range of experiences, including being:

- Watched or followed in retail spaces by store clerks
- Followed and stopped by security guards in stores or shopping malls
- Inappropriately questioned, searched and/or detained
- Questioned by store staff about large purchases or returns they wanted to make
- Asked to leave their bags or potential purchases at the counter
- Monitored while leaving the dressing room
- Over-scrutinized by having the tags on their potential purchases checked to make sure they hadn't changed them
- The only customer to have their receipts checked upon exiting when the alarm went off
- Accused of various infractions, including stealing, and charged, only to be found not guilty
- Talked to or asked questions in a rude, hostile or suspicious way.

At a drugstore, an employee followed me and commented to another customer: "I'll be with you in a minute but I have to watch these people" (Latin American female, age 55 and over).

Several consultation participants described these experiences as directly in contrast to how they saw White shoppers treated. This conduct was reported to have taken place in many different retail shops, including in expensive stores. We also heard that racial profiling that begins in a consumer context, by a storekeeper or security guard, can escalate if police become involved.²¹²

Survey respondents wrote about the stereotypes that they face in retail stores – for example, that racialized and Indigenous peoples are prone to shoplift and cannot afford the products being sold. Researchers have noted that Black men, who are commonly stereotyped as criminals, may be viewed by authorities in shopping environments as “suspects first and shoppers second.”²¹³ We heard how profiling and racial discrimination in shops reinforce the notion that these public spaces are “for Whites only” and racialized and Indigenous peoples have “no business” being in them.

One submission to the OHRC’s racial profiling policy dialogue describes how certain measures could teach security guards alternative approaches to interacting with racialized customers. These include requiring that they collect race-based data on each consumer they come in contact with while doing their duties. Security guards could also be supplied with a list of possible behaviours associated with racial profiling. We also heard that store employers should conduct reviews of their workplace loss prevention protocols and policies to address barriers and gaps between formal policy and informal instructions given to staff and security guards, which may be resulting in racial profiling.²¹⁴

➤ *Reports of other types of racial discrimination*

We heard that other experiences of racial discrimination while shopping can be very much intertwined with racial profiling. The majority of the survey responses revealed the dual experiences of being over-scrutinized by staff but also ignored and denied service – sometimes in the same store. Compared to White shoppers, racialized shoppers’, and particularly Black shoppers’, money and patronage may be seen as less valuable.²¹⁵ In the NSHRC’s report on consumer racial profiling, of all survey respondents, Black and Aboriginal respondents were the most likely to report receiving slow service and being ignored by staff.²¹⁶

We also received several survey responses from First Nations peoples who wrote about how they were treated negatively by store staff when they presented their status cards.²¹⁷ We heard how some people were refused the right to use their status cards, or were subjected to discriminatory comments or behaviour from store clerks when they presented them. One Indigenous woman reported being told, “Why don’t you go back to your reserve if you want taxes off?”

➤ *Private security*

The vast majority of reports we heard about racial profiling by private security were about guards working in shops and malls. Some racialized and Indigenous survey respondents described how they believed they were racially profiled by private security monitoring them in their housing (such as social housing, condominiums) and neighbourhoods, or at work (See the Employment Section 3.1.2.12 for more details.

Around 7 years ago, I believe I was profiled for living in a nice neighbourhood. The city's security told me I couldn't be at the park at night, so I went home and sat in my car in front of my driveway. He followed me home and told me to "go home," to which I responded "I live here." He told me "no, you don't" and refused to leave until I went inside the house (Black female, age 25-34).

One former security guard said it was concerning that security guards can use the *Trespassing Act*²¹⁸ to ban people from the premises, without the need to prove that they engaged in problematic behaviour. The decision to ban someone may be open to the influence of unconscious or conscious racial bias. Another concerning theme was security guards who may be engaging in racial profiling when they act on false, racially biased information about a perceived perpetrator. This university risk assessment staff person told us her concerns:

We see a lot of "pass through" discrimination here. For example, a student reported that three males were stealing a bicycle. Security staff responded and found three students with the bicycle; one was the owner, his lock was broken, and we assisted with cutting the lock. Security staff followed up with the person who reported it to let them know the outcome. The security staff member was a black male; the reporter was a white male. He said "Well, what am I supposed to think when I see three black guys around a bicycle. No offense." We find that staff members often report higher fear levels if a person who has behaved badly/ threatened them is racialized (White female, age 45-54).

3.1.2.9. National security

Of the 32 survey respondents who said they had experienced racial profiling in national security²¹⁹ or intelligence, 40.6% identified as Muslim (the largest creed category), 30% as South Asian, 23.3% as Black and 20% as White. There were 133 survey respondents who reported knowing of someone who had been racially profiled in this sector.

Most responses related to concerns about Muslim youth being unjustly monitored by CSIS or police intelligence. One respondent described Muslim students' fears about having their cell phone conversations monitored and used against them. A few survey respondents described how people they knew who belonged to Muslim organizations, attended mosques or took part in Palestinian rights events had been approached and questioned by CSIS, with some being viewed as suspects. Concerns were raised about CSIS seeking out Muslim students to ask about "radicalized" peers, as described by this survey respondent:

I work with Muslim students at an Ontario university who have been called by CSIS to discuss potentially "radical" peers on campus. These visits are not only intimidating but clear instances of racial profiling based on religion. These types of meeting requests have been met with little to no challenge by higher education institutions and I have not seen any other racial, ethnic, religious groups targeted in this way (Black female, age 35-44).

One person was reportedly accused of supporting terrorism because they donated to a Palestinian charity. Another respondent reported that a friend was falsely accused of being a 9/11 terrorist, at great cost to his family, livelihood and reputation. Despite his name being cleared, he apparently is still on a watch list. A few Muslim survey respondents wrote about how they, their family members or others were placed on "no-fly" lists. Concerns were also raised about Bill-C51, the *Anti-terrorism Act*,²²⁰ and how it will have widespread negative impacts on Muslims leaving or entering Canada.

Muslims and Arabs in Canada have raised many concerns about being over-scrutinized by government actors and others because of incorrect assumptions

about being linked to terrorism.²²¹ In a 2010 report, the United Nations' Human Rights Council's Independent Expert on Minority Issues summed up these concerns:

Members of Muslim and Arab communities commonly reported that Government policies post September 2001 have made them feel targeted, profiled and harassed. They described indiscriminate, unfair and unjust treatment by federal, provincial or territorial authorities, the media and others. They described anxiety about speaking out about their concerns and expect a backlash when they seek avenues of redress. They are concerned about racial profiling and the use of Security Certificates based on unsubstantiated information. They perceive they have a second class citizenship when they are abroad and require the assistance of the Canadian authorities and consular services. Steps must be taken to address these concerns, answer allegations, and to build positive relations and confidence among communities that feel targeted by national security legislation.²²²

The passage of the *Anti-Terrorism Act* increased the powers of the police to deal with suspects of terrorism.²²³ Federal and local law enforcement work closely with national security agencies and share information between them.²²⁴ The Arar Inquiry²²⁵ revealed that in the aftermath of the 9/11 attacks, the RCMP partnered with local law enforcement to conduct investigations into individuals they believed to be involved in terrorist activity.²²⁶ In addition to other powers, police may also carry out electronic surveillance when they have reasonable grounds to believe that it will yield evidence of crime, including terrorism-related offences.²²⁷

One policy dialogue submission explores concerns about mass surveillance, predictive policing and their potential discriminatory impact on people in Canada.²²⁸ Predictive policing and the expansion of surveillance measures may play a central role in law enforcement in the future, due to public fears and demands for safety and security.²²⁹

Another policy dialogue paper explores how in both law and conduct, the Canadian government has allowed for the racialization²³⁰ of terrorism.²³¹ The author argues that the very definition of terrorism and its legal interpretation have been narrowed by security and public safety actors like Public Safety Canada (PSC) to project an almost-exclusive association between Islam and Muslims with terrorism, as if it were accurate. A dominant theme in the narrative of the "war on terror" is the characterization of violent acts committed by Muslims as "terrorism," while very similar acts committed by non-Muslims are routinely treated as simply criminal acts. Muslim men in particular are seen as the main perpetrators of terrorist activity.²³²

For example, the author asserts that based on information on terrorism from around the world, PSC's annual reports produce a kind of "race-thinking" that constructs the "figure of the Muslim terrorist" through the use of selective and misleading statistics and case studies to "represent 'Islamist terrorism' as the preeminent security threat endangering Canadians."²³³ As stated in the article, from the first PSC report in 2012 through to 2014, there is an almost exclusive focus on the notion of Muslim terrorism, while other sources of terrorism are vaguely alluded to, minimized or not mentioned at all. Further representation in these reports includes a focus on an unspecified number of "radicalized Canadians" who travel to so-called hot spots of terrorism.²³⁴ PSC's 2013 report neglects to mention that only six out of 219 terrorist attacks in Europe that year were by Muslim extremists. The author writes, "Data indicating that white supremacist and right-wing political violence is a greater threat than Muslim extremism in both Canada and the United States is omitted."²³⁵

Another policy dialogue paper raises concerns about the ways human rights tribunals in Canada have dealt with claims of racial discrimination made by Muslims and Arabs. The author is concerned about a lack of recognition of the role of terrorism-related stereotypes in some cases.²³⁶

According to these authors, the approaches described above appear to be legitimizing stereotypical associations between terrorism and Muslims, Arabs or West Asians. This raises real concerns about whether these stereotypes have informed law enforcement priorities and practices by local, provincial and national police services, and have contributed to singling these groups out for unwarranted surveillance and scrutiny. Although police services covered by provincial law may be acting on real national security concerns, they should be focussing on all threats in a manner proportional to the real risk at hand.

3.1.2.10. Government and social services

Survey feedback about the government and social services sectors focused mainly on people's experiences with individual front-line workers. Some staff working in this sector also raised their concerns about their clients being racially discriminated against and racially profiled when accessing services.

➤ *Exercising traditional Indigenous rights*

Notably, the OFIFC and others²³⁷ raised concerns that some natural resource and conservation officers racially profile Indigenous peoples who are exercising their harvesting rights. We heard that Indigenous peoples may be unfairly charged or prosecuted for conservation offences for fishing, hunting and trapping without a licence.²³⁸ We heard that some conservation officers may scrutinize people so often it is seen as a form of harassment.

The OFIFC reports that the impacts of these unfair practices are severe. They lead to families, communities and Friendship Centres “suffering from a lack of access to traditional foods, learning cultural practices and sharing land-based knowledge and teachings.”²³⁹ We also heard that it is seen as a major challenge for people in northern Ontarian communities to fight charges in court because of the expense of legal representation.

➤ *Reports of other types of racial discrimination*

Most other reports we heard about may be examples of forms of racial discrimination other than the narrower subset of racial profiling. For example, some survey respondents described racialized and Indigenous peoples being subjected to racist remarks while using a government or social service. Some staff working for these services said that they overhear their co-workers making overtly stereotypical and negative comments about immigrants and racialized people. We heard concerns that income support workers have scrutinized some racialized people, including racialized women, more closely for supposed fraudulent claims.²⁴⁰

We also heard of people receiving poorer service due to race and related grounds, or not having their creed-based needs accommodated. Some of this inequitable treatment was described as systemic in nature.

3.1.2.11. Housing

Sixty-one percent of survey respondents who said they experienced racial profiling in housing were from the Toronto region. Some respondents identified that they or others were under greater scrutiny than other residents, or stopped by police in their housing, questioned and asked for identification by police or others, without reasonable justification. Concerns were also raised about private security guards monitoring and questioning people in their housing and neighbourhoods [see the private security section (3.1.2.8) for more details].

As noted in the law enforcement section, we heard that social housing and the areas surrounding social housing may be common places for police or private security to watch or stop racialized people.²⁴¹ Concerns were raised that racialized youth may be monitored in social housing through the use of on-site security cameras.²⁴² In addition, we heard concerns that racialized youth may be over-scrutinized by police who are given authority on social housing property to act as an agent of the landlord and give out trespass notices.²⁴³

Black or Indigenous survey respondents raised most of the concerns about the housing sector. Many respondents described being denied an apartment, or being denied the opportunity to view a house to buy, because of discriminatory practices.

I accompanied a young First Nations friend in her search for an apartment. The prospective landlord made a point of mentioning that there were mice, which reinforced my friend's already strong sense (radar) that this person did not like aboriginal people and that she was an unwelcome prospective tenant. She has since died on the street in 2006 (White female, age 55 and over).

We heard about the particular stereotypes that may contribute to these experiences. Indigenous peoples may be perceived as unreliable tenants because they are presumed to have drug or alcohol addictions or to be drug dealers; they may be perceived as unable to afford the rent because of poverty; they may be presumed to be criminally inclined; and they may be assumed to have unstable family conditions (for example, by taking in family members and “[filling] the space beyond capacity without informing the landlord”).

Survey respondents said they believed that Black and Brown people (particularly young men) are presumed to be dangerous, thieves, poor, gang-involved and unable to pay the rent. Muslims may be perceived to be linked to terrorism. If housing providers base their decisions – for example, to not rent an apartment to someone – on assumptions of racialized and Indigenous peoples being a risk, this may constitute racial profiling.

3.1.2.12. Employment

We heard some accounts of over-scrutiny or negative treatment in employment that could relate to racial profiling. Most of these were about the experiences of Muslims and Arabs (who may or may not identify as Muslim).

Some survey respondents described how they were subjected to extra security screening at the beginning of their employment, or had to wait longer for security passes, which they perceived as being due to their religion, race and other related *Code* grounds. One respondent felt he was screened out of being considered for an intelligence position in the Canadian military due to his name (which sounds Muslim) and his colour (“Brown”). One individual said that, because of her religion and ethnicity, she was scrutinized more closely than other employees while the company was investigating a theft. Other respondents described being followed by security guards at work.

I was at my workplace and we have swipe cards to get into rooms. I went into my office and immediately security knocked at the door. They said they wanted to check who had gone in. I am pretty sure they got alarmed because all they could see was someone wearing hijab walking into an office (South Asian Muslim female, age 25-34).

We heard that some Muslims and Arabs believed that employers punished them, threatened to punish them or did not hire them because they supported or were thought to support Palestinian human rights activities.

➤ *Reports of other types of racial discrimination*

A significant number of reports about the employment sector were about discriminatory treatment other than what may be considered racial profiling. Many survey respondents wrote about how they or others were screened out of employment opportunities because of race and related grounds, including because they lacked “Canadian experience.” We also heard reports of people being passed up for promotion in favour of less-qualified White people, and subjected to discriminatory comments about their dress and accents.

3.1.3. Key themes

In our 2003 inquiry report on racial profiling, we drew the conclusion that the evidence of the existence of racial profiling is incontrovertible.²⁴⁴ There were significant concerns raised about racial profiling at that time. The widespread nature of incidents of racial profiling reported during the consultation, along with the growing body of case law, social science research and legal research, further confirms that racial profiling exists and continues to be a broad concern shared by many Ontarians.

One notable theme that emerged was that people who are associated with people from other racial or ethnic backgrounds may experience heightened scrutiny. We heard several examples where White people in the company of Black or Indigenous peoples, or racialized or Indigenous peoples in the company of White people, were reportedly racially profiled based on stereotypical assumptions about their association. These cross-race interactions were often perceived to be based on deviant or illegal behaviour, such as buying illicit drugs.

This is a type of “policing the colour line.”²⁴⁵ It was reported to have occurred not just by the police but by various people in positions of authority, and often intersected with class and gender dynamics. “Policing the colour line” was also evident in the many reports of people being allegedly stopped for being perceived to be “out-of-place” – whether literally or figuratively. For example, many people reported “suspicions” being raised, and coming under scrutiny, simply because they were Black or Indigenous and driving an expensive car, or walking or shopping in an upscale, predominantly White, area. One survey respondent, a former police officer, described it this way:

The police explain it away by talking about how things "don't add up." A black person in a white neighbourhood, someone driving an expensive car in a poor neighbourhood, etc. they are trained to investigate things that seem "out of place." That is literally their job, an expectation laid out to them formally during police college. This is the root of racial profiling. When you have a majority of white, straight, [cisgendered], male officers, anyone they consider an "other" or a "threat" is going to draw suspicion (White female, age 35-44).

Other key themes included:

- Concerns about racial profiling are broader than policing. Racialized and Indigenous peoples may experience unwarranted heightened scrutiny in education, stores, shopping malls, housing and workplaces, on buses, subways and trains, at airports and border crossings, in health care and by private security and child welfare agencies, *etc.*
- Racial profiling does not just result from an individual's unconscious or conscious racial bias. It may take place through official policies, assessment tools or established practices. These may look neutral but nonetheless have a directly discriminatory or adverse effect. These established ways of doing things may also be compounded by an individual's bias.
- People may experience racial profiling in different ways, depending on the sector where it takes place and stereotypes related to demographic group(s) people identify with (*e.g.* age, sex, racial or ethnic background, and creed). People may be exposed to unique forms of racial profiling based on the unique intersection of identities.
- A first incident of racial profiling may contribute to further instances of racial profiling by another institution or individual. The marginalizing effects may be compounded (a "pipeline" effect). An example is racial profiling that takes place in schools, which leads to CAS and/or police involvement.
- The experiences identified in the consultation provide a starting point, but more information is needed on how racial profiling may play out in certain areas (*e.g.* in court, corrections, child welfare) or for certain groups (*e.g.* migrants).
- When asked about racial profiling, many consultation participants told us about their experiences of racial discrimination that were broader than racial profiling. This suggests that there is uncertainty about how racial profiling may be different than other forms of racial discrimination.

3.2. Impacts of racial profiling

The OHRC's 2003 inquiry report, *Paying the price: The human cost of racial profiling*, extensively documented the many psychological, community and social costs of racial profiling. Almost 15 years later, participants expressed many of the same concerns and impacts during this consultation. Throughout,

we heard about the severe and numerous impacts that racial profiling and racial discrimination have on racialized and Indigenous individuals, families and on the social fabric of communities.

We specifically asked survey respondents about how their experience(s) of racial profiling affected them. In addition to talking about experiences of having been singled out for over-scrutiny, many people reported how other types of racial discrimination affected them.

Table 7. Reported impact of racial profiling by type of impact

Impact	Percentage	Count
It did not affect me	15.9	77
Negatively affected my mental health	42.3	205
Negatively affected my physical health	14.0	68
Decreased my trust in police	32.8	159
Decreased my trust in the law or justice system	32.2	156
Decreased my sense of belonging or trust in Ontario society in general	58.4	283
Other	26.8	130
	Total responses 485	

Note: Percentages reflect the survey respondents only, and are not representative of the total population.

3.2.1. Decreased sense of trust and belonging in society

As indicated in the Table 7, survey respondents most commonly reported that their experience of racial profiling negatively affected their sense of trust and belonging in Ontario society. Feelings of alienation and a diminished sense of belonging were also a predominant theme in our focus groups and policy dialogue. Through experiences of repeated targeting and surveillance, racial profiling and racial discrimination can make people feel perpetually unwelcome in public spaces. We heard that these experiences may play out differently for people from different racialized communities and for Indigenous peoples, because of the distinct historical, socio-economic and political factors shaping people's lives. However, the sum effect was one of exclusion.

For example, one policy dialogue submission describes how the experiences of Black youth in the suburbs is one of being marked by stereotyping and racial profiling, as they are rendered “out-of-place” in the mostly White middle-class population.²⁴⁶

The OFIFC submitted that marginalization, as a consequence of racial discrimination and racial profiling, is a common experience for many Indigenous peoples:

It is simply normalized in some communities for Indigenous people to encounter racial profiling on a daily basis ranging from being denied service or provided inferior levels of service, to being unfairly targeted, harassed, and humiliated. In northwestern Ontario, community members describe being treated as “second class citizens” in their own communities.²⁴⁷

Another policy dialogue paper author writes about how the political context of securitization has affected Muslims by creating the perception that they are “second-class citizens who do who do not have the same rights as other Canadian citizens.”²⁴⁸ She related the experience of a Muslim woman who feared that her sons’ Canadian citizenship would not be enough to protect them from government scrutiny and profiling.

Several people wrote about how racial profiling decreased their confidence in Canada as a multicultural society, including decreasing their trust in government.

I have learnt that I would only ever truly belong to, and be respected in my country of origin. I know that, my children know that. Wherever else we live – we are just renting space, with terms and conditions (Black female, age 45-54).

3.2.2. Psychological, physical and behavioural impacts

Many consultation participants talked about the ongoing and long-term effects of dealing with racial profiling and racial discrimination. They reported significant emotional impacts, including embarrassment, disappointment, anger, helplessness and diminished self-esteem and self-worth. Fear of the institution involved, feelings of mistrust and vulnerability were also commonly reported.

Survey respondents also talked about how their achievements and contribution to their communities were eliminated, as their uniqueness as individuals was reduced to base stereotypes about guilt and criminality because of how they look. Some people indicated that racial profiling and racial discrimination had happened to them so often they were desensitized to it. Many described a sense of defeatism or hopelessness and some resigned themselves to the constant expectation that they would be treated unfairly.

Some survey respondents spoke of gradually internalizing negative stereotypes over time, in some cases drawing a direct line from being repeatedly racially profiled to eventually finding an alternative sense of identity and belonging among the “socially outcast” and engaging, as a result, in crime.

I work with young people who have dealings with the criminal justice system, and many have stories of being profiled by police in their neighbourhoods because they are young, Black and male. The pressure to avoid police because they do not want to be accused of something they have not done, has led to the same behaviours that the police use to profile them. It is a vicious cycle. It also produces in the young people anti-social behaviours that serve only to cause more problems for them (Black female, age 35-44).

One paper submitted to the OHRC’s racial profiling policy dialogue relies on interviews with racialized women about their experiences of racial profiling. The women interviewed talked about how racial profiling negatively affected their self-esteem. The study also found that:

Some women did not feel like they could be themselves, or had to negotiate a public persona, in order to manage the inevitability of being racially profiled, and to negotiate entrenched stereotypes of racialized women, as “the angry black woman.”²⁴⁹

Consultation participants also spoke of severe negative mental health impacts such as stress, insomnia, depression, PTSD and even suicidal thoughts. They spoke of anxiety when interacting with institutions where they might be racially profiled,

such as border crossings, stores and airports. Some people talked about how the prevalence of dealing with such discrimination or countering others' negative perceptions of them had become an exhausting part of their daily lives.

Perceptions of racism and racial discrimination are associated with poor physical and mental health.²⁵⁰ Research suggests that coping with ongoing racial discrimination contributes to "racial battle fatigue," whereby people's physical and mental resources are diminished because their bodies are constantly engaged in a stress response.²⁵¹ Discrimination may have long-term health effects.²⁵² Researchers have argued that wear and tear on the body from stress stemming from racism can lead to premature illness and reduced life expectancy.²⁵³

Many people talked about other severe personal consequences of racial profiling – Indigenous and racialized parents having their children apprehended by child welfare authorities, people being arrested, searched or assaulted, and having to pay legal costs to defend against charges resulting from racial profiling. Some survey respondents talked about the ongoing impact of racial profiling in the form of having a police record as result of having been stopped or carded. We were told this information could be accessed and used during subsequent stops, and could affect people's future employment.²⁵⁴

In addition, because racial profiling and racial discrimination are an outcome of colonial oppression, the OFIFC writes how they can be a precursor to violence – by police, the violence of child apprehension, family break-up and abuses of power in various contexts:

Friendship Centre workers have noted how high rates of domestic violence and violence against Indigenous people are interwoven with racism and discriminatory attitudes in the community.²⁵⁵

Several survey respondents also wrote about how their experiences have changed their behaviour, and how they present themselves. Some respondents spoke of minimizing their contact or changing the way they interact with services or institutions to avoid drawing attention to themselves. One Black respondent told us that she had received an expensive car as a gift, but she and her husband could not drive it because they were stopped by police so often and asked to produce identification and ownership. Instead, they had to buy a new more "Black appropriate" car.

In other examples, a young Black woman said that because she is followed and watched so often, she rarely goes to the mall, because “it is not worth it.” We heard that some people drive to avoid harassment on public transportation. An Arab woman described needing to hide her identity and censor her views. A First Nations woman wrote about how she does not go to hospital without her White partner.

While many people felt victimized and upset, a minority of survey respondents engaged in personal acts of resistance (such as boycotting the store where they were profiled), and some committed themselves to wider struggles for social justice and equality.

3.2.3. Impacts of police racial profiling

Many participants identified the specific impact that police racial profiling had on them. Racial profiling by law enforcement can have far-reaching impacts that go beyond the specific incident. For example, racial profiling may contribute to the overrepresentation of racialized and Indigenous peoples in the criminal justice system, beginning with racial differences in stop and search practices.²⁵⁶ Involvement with the criminal justice system can lead to loss of connections with families and communities, and loss of opportunities for employment, education and social mobility. This exacerbates existing systemic racial barriers for racialized and Indigenous peoples in society.²⁵⁷

Fear and mistrust of police and feelings of being unsafe were common themes. One individual had made a high-profile human rights claim alleging the Ottawa Police Service subjected him to racial discrimination and racial profiling because he was a young African Canadian male driving a Mercedes Benz with four racialized youth as passengers. He recently told the OHRC that repeated police stops in both his car and as a pedestrian have been so traumatizing that he decided to leave Ottawa entirely. He said:

I am afraid for my life in Ottawa. That’s why I moved out. All it takes is one officer to escalate a stop or detention, take matters into his own hands... and I could lose my life.²⁵⁸

➤ *Effects on young people*

Many parents talked about the grave and long-term effects on their children of being singled out and treated negatively by police. They talked about how fearful they felt that their children would be approached by police. They described their children's feelings of fear, long-term mistrust in police and increased criminalization.

...Since that incident, my son has been in the clutches of police officers at... Division. They would stop him every chance they got. They have arrested him for no reason so many times. I believe the psychological effects of the continuous harassment by Toronto police took hold of my son's young brain to the point my son grew up thinking he was no good and fell into a state of self-destructive behaviour. They treated him even worse by then. They had succeeded in getting him into the system. He is finally emerging from this experience and has gone into hiding fearing they will eventually kill him (Black female, age 45-54).

Some people also wrote with concern about the effects that their own experience of being profiled by police had on their children. Some said how difficult it was to instil a sense of trust in police after they themselves had bad experiences. Survey respondents also described how they have had to teach their children how to be safe from police and other authorities. One woman talked about consciously monitoring her son's whereabouts:

I live in fear for my black son, I experience sickening levels of anxiety if I text him or call him and [he] does [not] respond within 30 minutes or so. I feel bad that I have put my black children under surveillance in order to protect them from the system that is supposed to protect them (Black female, age 35-44).

Another woman talked about teaching her son how to act to protect himself during negative encounters with police:

It's been absolutely heartbreaking to have to teach my son that because he's Black he has to be wary of police. To know how to blend in, to be submissive, to get away alive if ever confronted by gun-wielding authority (Indigenous Latina female, age 35-44).

➤ *Diminished community trust in police*

Racial profiling undermines the relationship between police and racialized and Indigenous individuals, families and communities. One policy dialogue paper author indicates that one of the significant social costs of racial profiling is that it can “undermine the legitimacy of the entire criminal justice system.”²⁵⁹ Frayed community relationships reduce the likelihood of civilians reporting crime, cooperating with police investigations and providing evidence in court.²⁶⁰

Several U.S. and Canadian research studies have found that, compared to White people, certain racialized groups, including Black, Latino and Indigenous peoples, have a much more negative view of the police and the justice system.²⁶¹ These racial differences can be explained by greater frequencies in being stopped and searched by police.²⁶² Some survey respondents reported how negative perceptions of police may affect their – or their family members’ – future interactions with police.

The effects of this experience on my son [who was 11 when stopped by police]: he has decided he will never call the police even in the worst case scenario, and the police will not protect him. Despite my insistence that that was an isolated scenario. If you consider he is part of the next generation, and negative opinions are more contagious than the flu, something needs to be done (Black female, age 35-44).

There is evidence that negative experiences with police more strongly shape perceptions of the criminal justice system than positive experiences.²⁶³ Racial profiling also has a distinct impact that goes beyond the individual involved in the incident. Hearing reports of incidents of racial profiling from family and friends

can have negative impacts on how one views the police and the criminal justice system.²⁶⁴ One study found that these vicarious experiences had even more of an impact on citizens' attitudes about police than direct experience.²⁶⁵

These points are illustrated by a 2016 study conducted in Milwaukee. Researchers found that after a highly publicized incident of a beating of an unarmed Black man by police, residents, especially residents in neighborhoods predominantly populated by Black people, were much less likely to call 911. Calls to police did not go back to normal levels for over a year.²⁶⁶ If racialized and Indigenous community members are less likely to call police for help because of incidents or perceived incidents of racial profiling, they are less likely to be protected from crime – increasing their marginalization in society.

Key theme

The impacts of real and perceived racial profiling and racial discrimination are severe and may be cumulative. Racialized and Indigenous individuals, families and communities are negatively affected. For example, real and perceived racial profiling can diminish people's trust in institutions.

3.3. Stereotypes can contribute to racial profiling

I find that in some stores I am followed, watched in mirrors. When a Caucasian person walks in, they are greeted with "hello." I do not get the same treatment... It made me aware that there is a perception of my race and what I should or should not be able to afford, in some people's eyes (Black female, age 45-54).

Racial profiling is often, but not always, based on stereotypes about racialized and Indigenous peoples. Stereotyping is a process by which people use social categories such as race, colour, ethnic origin, place of origin, religion, *etc.* in acquiring, processing and recalling information about others. Stereotyping happens when generalizations are made about individuals based on assumptions about qualities and characteristics of the group they belong to. It is often based on misconceptions, incomplete information and/or false generalizations.

Anyone can stereotype, even people who are well-meaning and not overtly biased. While it may be somewhat natural for humans to engage in racial stereotyping,²⁶⁷ it can be dangerous as it may lead to discrimination.

There is a difference between racial profiling and stereotyping. Stereotyping refers to mental shortcuts based on pre-conceived ideas about people's characteristics. Racial profiling is one expression of these mental shortcuts through behaviour that violates the *Code*.

Racial stereotypes often represent gross generalizations about marginalized people by the dominant group in society that have been formed over many years. For example, stereotypes that exist today about African Canadians reflect anti-Black racism,²⁶⁸ which is historically rooted in slavery and racial segregation.²⁶⁹

Stereotypes largely take shape and are reinforced at the societal level (for example, through media portrayals²⁷⁰). They are integrated into laws, policies and practices at the institutional level. They can then influence the actions of individuals, who follow institutional norms. Because stereotypes that influence racial profiling are deeply embedded at the societal level, it makes them particularly difficult to change. They may be perceived as "normal" to the dominant group. They may influence the behaviour of people or institutions in an unconscious way that is invisible to people who don't experience their effects.

I believe that when I'm routinely being stopped by police I believe it's due to the police officer's preconceived notions about race and the stereotypes that the media tends to push out to the public where a lot of times these people don't have any cultural understanding of my race and my culture (Black male, age 25-34).

In our survey, we asked respondents to describe the stereotypes they thought contributed to their experiences of racial profiling, or the experiences of others. Several words and phrases commonly appeared when respondents discussed the following select groups.

Table 8. Commonly reported words and phrases by select groups and sub-groups

Group	Most commonly reported words and phrases (appearing in order of highest frequency to lowest)
Black people	Criminals, drug, males, driving, dealer, police, violent, gang, thieves, lazy, young, African, can't afford expensive vehicles without acquiring one through illegal means,* angry, aggressive, dangerous, uneducated
Black men	Criminals, drug, young, driving, dealer, gang, thieves, crime, police, thugs, vehicle
Muslims, West Asians or Arabs	Terrorists, Arabic, Middle Eastern, women are oppressed,* violence
Racialized women	Oppressed, sex worker, angry Black woman, single mother, uneducated
Indigenous peoples	Drunks, native, Indians, lazy, poor, alcoholics, dirty, drug, living off the government*, police, sex worker, uneducated

Note: *These phrases are summaries of phrases and words relating to these themes.

Key theme

Racial profiling is often based on stereotypes about social deviance that are broader than just assumptions about criminality.

3.3.1. Role of the media

Many consultation participants talked about the powerful role of the media in shaping public opinion. Media stories can embed negative racial stereotypes into the public consciousness, which can contribute to racial profiling. However, the media can also play an important role in disrupting stereotypes and increasing awareness about racial profiling.

We heard that the media can reproduce stereotypes about racialized and Indigenous peoples by over-simplifying people's actions and motivations. People's associations with criminal activity or deviant behaviour may be emphasized, as opposed to

exploring more nuanced narratives. A representative of the National Council of Canadian Muslims (NCCM) shared a story about the shooting on Parliament Hill in 2014 that she felt reflected this point:

The news anchors shared with me how hard it was to report the Nathan Cirillo incident.²⁷¹ As all of this was unfolding there was a memo that told them to avoid using certain types of language, to avoid rushing to conclusions. They did not use the word “terrorism” until a politician used it. That’s when the story became solely about terrorism, not drug addiction, not mental health or other issues that may have driven the man to it. The news anchors admitted there were limited resources to put it into the nuances of terrorism. In rushing to cover it as it was said by some politicians – and not all politicians called it terrorism – it pushed the agenda of a government that was putting through security legislation that was tough on terror. [Michael Zehaf-Bibeau] was a converted Muslim but had so many other identities (Representative, NCCM).²⁷²

We heard concerns that the ways Indigenous or racialized people are portrayed in media stories are often in contrast to the more positive, complex ways White people are depicted. For example, White people may be presented as less threatening in stories that report alleged illegal behaviour compared to racialized people.²⁷³ One U.S. study found that in New York City, Black people are overrepresented in news stories about violent and other crimes, compared to their representation among people arrested for these crimes.²⁷⁴ We also heard that concerns persist about journalists identifying a racialized person’s race when reporting vague suspect descriptions, but not when the suspect is White.

Many participants called for more balanced reporting on crime, and more positive media stories about people from racialized and Indigenous communities to counter dominant portrayals.

We also heard about how Canadian journalists have played a critical role in shining a lens on the phenomenon of racial profiling. Detailed media stories about racial profiling claims have increased public awareness and collective outrage about

these issues. These have also helped intensify public pressure on police services and the government to address racial profiling.²⁷⁵

3.4. Systemic racial profiling

Racial profiling is commonly understood as an individual act, either as a result of the implicit (unconscious) or explicit (conscious) bias of someone in a position of authority. However, through our consultation, research and previous work, we know that racial profiling must also be looked at as institutional or systemic in nature.

Systemic racial profiling results from patterns of behavior, policies or practices that are part of the social or administrative structures of an organization, and that perpetuate a position of relative disadvantage for racialized and Indigenous peoples. These policies or behaviors may appear neutral, but nevertheless may result in situations where racialized or Indigenous peoples tend to be singled out for greater scrutiny or negative treatment.²⁷⁶

Participants in the OHRC's policy dialogue emphasized that systemic racial bias can be subtle and embedded into law and an organization's policies and practices. Policies or procedures may themselves be based on unconscious racial stereotypes.²⁷⁷ As such, racial profiling can become part of the "normal" way an organization operates.

For example, we heard that two researchers are currently examining whether police treat Black drug dealers living in social housing differently than White university-based drug dealers.²⁷⁸ We heard that the prioritization of crimes committed in areas where racialized people are disproportionately represented, compared to the same crimes committed in areas where they are underrepresented, could be evidence of systemic bias.

Many participants also talked about the culture of some organizations or sectors, and how they may reinforce White middle-class Christian norms.²⁷⁹ This was seen as contributing to racial profiling in some cases. The culture of an institution is an important component when diagnosing systemic discrimination. Organizational culture can be described as shared patterns of informal social behavior, such as communication, decision-making and interpersonal relationships, which are evidence of deeply-held and largely unconscious values, assumptions and behavioural norms.

Some consultation participants attributed their or others' experiences to systemic discrimination in different sectors. We heard reports about the targeting of Muslims and/or Arabs or West Asians through national security apparatuses; the over-representation of Black and Indigenous people in contact with child welfare agencies and in correctional institutions; and unwarranted police stop practices that disproportionately affect Indigenous, Black and other racialized people. If race or race-related *Code* grounds factor into assessing risk in these situations, they may result from or be examples of systemic racial profiling.

In February 2016, the Government of Ontario created the Anti-Racism Directorate (ARD) specifically to “address and prevent systemic racism in government policy, legislation, programs and services.”²⁸⁰ The ARD’s mandate is in part to eliminate systemic racism in institutions controlled or regulated by the provincial government, raise awareness about systemic racism in public, and promote practices that lead to racial equity. The Minister Responsible for Anti-Racism has stated that race-related data collection (for example, in education, employment and health care) is critical to the work of the ARD, and encourages data collection to take place across sectors.²⁸¹ The Minister has also committed to mandating that children’s aid societies collect race-based data.²⁸²

A large number of consultation participants also recommended that race-based data collection be used to measure systemic disparities and combat racial profiling.²⁸³ It is important to recognize that some organizations have begun collecting race-based data. Throughout this report, we have referred to data collected by the Children’s Aid Society of Toronto, the Ottawa Police Service and the Toronto District School Board, among others.

Key theme

When analyzing or trying to understand racial profiling, it is necessary to look at systemic elements, including policies, procedures, operational priorities, decision-making practices, standards, approaches to risk assessment, and organizational culture.

3.5. Definition and scope of racial profiling

The OHRC currently defines racial profiling as:

[A]ny action undertaken for reasons of safety, security or public protection that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place of origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment.

When discussing the scope of racial profiling, the Supreme Court of Canada recently cited the OHRC's definition.²⁸⁴ A key goal of our consultation was to understand some of the strengths and limitations of our current definition of racial profiling, to clarify its nature and scope. What constitutes racial profiling and what constitutes broader experiences of racial discrimination? Keeping in mind the way that racial profiling has been characterized in the case law, does the OHRC's definition need to be changed to account for a clearer understanding of the phenomenon?

In our survey, we asked whether or not respondents agreed with the OHRC's definition, and their reasons for disagreeing.

Table 9. Reported level of agreement with racial profiling definition

Response	Percentage	Count
Fully agree	36.3	489
Mostly agree	46.7	630
Neutral	8.0	108
Mostly disagree	5.9	80
Fully disagree	3.0	41
		Total responses 1348

Note: Percentages reflect the survey respondents only, and are not representative of the total population.

Overall, 83% of survey respondents either “mostly” or “fully” agreed with the definition. Fewer than 10% “mostly” or “fully” disagreed.” Of the people who disagreed with the definition, over half (60.2%) disagreed with the part of the definition that “relates to actions undertaken for reasons of safety, security or public protection.”

Although most survey respondents agreed with our definition, we heard from other consultation participants that there is not clear consensus about what constitutes racial profiling. One paper submitted to the OHRC's policy dialogue notes that this lack of consensus is reflected in the way academic and government publications define racial profiling.²⁸⁵

3.5.1. Perspectives on the definition

The following themes emerged from participants and survey respondents who made comments about the definition.

a) Racial profiling can be intentional

A common perspective was that the definition presumes that actions are undertaken for *legitimate* reasons of safety, security or public protection. Many people were concerned that the definition does not capture racial profiling that intentionally targets people based on race, using safety as a pretense.²⁸⁶

It's more than actions that relates to security, safety or public protection... it's about targeting racialized individuals under the guise of security, safety and public protection. (Black male, age 25-34)

One academic also argues that the concept of "reasonable suspicion" is not objective, but subjective, and may be informed by racist stereotypes that become normalized and embedded in police subcultures.²⁸⁷

b) The concepts of "safety, security and public protection" are not needed

We heard that the concepts of "safety, security and public protection" should not be defining features of racial profiling.

Many respondents noted that the definition of racial profiling should be broader. It should more closely resemble what the OHRC typically identifies as "racial discrimination" more broadly. Several participants did not see the purpose of distinguishing between racial profiling and other types of racial discrimination (such as unequal treatment, poisoned environment or harassment).

Indeed, a large number of consultation participants did not distinguish between racial profiling and other forms of racial discrimination when telling us about their experiences.

Also, some participants said that stereotypes linking dangerousness and criminality to Black and Indigenous peoples are so prominent in society that many types of discrimination against these groups will automatically be linked to “safety or security.” This may blur the lines between racial profiling and other forms of racial discrimination. These participants argued that racial profiling exists whenever there is greater scrutiny of an individual that is prompted by an underlying sense of fear because the person is racialized. This could happen when a Black or Indigenous person is denied a job or housing based on deeply internalized fear about risk.

In contrast, there was strong argument from policy dialogue participants to retain narrow focus on “safety, security and public protection” because of the historical context of the term arising from policing and its continued relevance in this area.

The parameters of “safety, security and public protection” set racial profiling apart from other forms of racial discrimination. Although the courts do not use a consistent definition, decisions that define racial profiling centre on assumptions of criminality and racial profiling that happens within a law enforcement context.²⁸⁸ Defining it using the parameters of “safety, security and public protection” can help people and organizations to better understand and combat it. For example, best practice approaches exist to reduce racial discrimination that uniquely relate to a safety and security context.

c) Heavy emphasis on racial profiling may obscure awareness of rights generally

We heard that because of the great attention paid to racial profiling, it may leave people confused about their right to be free from racial discrimination more generally. Racial profiling as a phenomenon has gained prominent public attention and “elicits strong emotion among people.”²⁸⁹ Perhaps because of this, some consultation participants were not sure whether other experiences of racial discrimination – such as losing their job or housing because of their race – violated their rights because these actions did not “fit” the definition of racial profiling. It is important to recognize that all forms of racial discrimination, whether they are racial profiling or not, are violations of the *Code*.

d) Racial profiling as a form of social control

Several consultation participants identified that the definition does not acknowledge that racial profiling is a method of social control of racialized people and an abuse of power. We also heard that the definition ignores the complicity of broader social, political and economic systems that allow racial profiling to take place. The academic literature echoes the perception we heard that racial profiling serves the purpose of maintaining the status quo.²⁹⁰

e) The definition should acknowledge community impacts

Some participants noted that the definition does not acknowledge the day-to-day realities and impacts on racialized and Indigenous communities. We heard that the definition does not sufficiently reflect the damage done to communities because of profiling.

The issue of “adverse impacts” is one key component reflected in definitions of racial profiling in the research literature. Some authors identify that the adverse effects on racialized groups are the important factor in defining racial profiling, and not the causes of the perpetrators – such as being motivated by stereotypes.²⁹¹

We also heard that the definition should include the ground of “citizenship,” to take into account the experiences of people who are perceived to be threats because of their real or perceived citizenship or immigration status.

f) Racial profiling is not just about policing

Several participants said that the definition appears to apply only to law enforcement. Others said it is difficult to apply to racial profiling that takes place in areas outside of policing, such as child welfare and education.

According to one policy dialogue paper, in the research literature, the term racial profiling has been applied to a range of institutions and their agents since its introduction in the 1990s. At first, it was limited to policing, but has since been applied to the entire law enforcement field, the retail sector, clinical medicine, and the property insurance industry. Recently, it has expanded to being used to describe all people in positions of authority regardless of sector.²⁹²

The OHRC has recognized that racial profiling is not limited to law enforcement and can take place in multiple arenas, such as education and retail.²⁹³ However, some participants in the policy dialogue who have researched and observed the

phenomenon at length maintained that the definition should continue to apply to law enforcement, while considering other sectors, such as retail or education, as feeder systems that can lead to racial profiling by police.

g) Reliance on stereotypes

We heard that the definition should reflect racial profiling that may not be based on racial stereotypes. Some definitions of racial profiling do not view psychological components such as stereotypes as “causes” of racial profiling. Other factors, such as police deployment methods, are viewed as contributing to racial profiling.²⁹⁴

Reliance on stereotypes is not needed to establish discrimination.²⁹⁵ In our consultation, we learned that risk-assessment policies or tools that seem neutral may actually result in over-scrutiny of racialized and Indigenous communities. This reflects that racial profiling is often systemic and stems from institutional policies, procedures or decision-making processes. These policies, *etc.*, may or may not be based on unconscious bias.

3.5.2. Key themes

While the vast majority of participants agreed with how the OHRC defines racial profiling, there were some important points of disagreement. Of people who disagreed with the definition, many said it should be defined more broadly than to just apply to the context of safety and security. There was a lack of consensus about whether it should apply beyond policing to other sectors. A large number of participants who disagreed with the definition said that racial profiling can happen under the guise of “safety, security and public protection.”

3.6. Lessons learned from people in Indigenous communities

The OHRC reached out to many Indigenous peoples and groups representing Indigenous communities, to understand peoples’ perspectives and experiences of racial profiling. Approximately 160 participants identified as First Nations, Métis or Inuit or of mixed Indigenous ancestry.

Different historical and political contexts contribute to distinct experiences of racial profiling for people from different marginalized communities. We heard that racial profiling that affects Indigenous peoples is rooted in a unique historical dynamic.

Indigenous peoples often experience racial profiling and racial discrimination as part of the legacy of historic state practices that intended to eliminate Indigenous cultures and disrupt communities through forced assimilation.

The Ontario Federation of Indigenous Friendship Centres and other Indigenous participants also emphasized that the OHRC should not treat Indigenous peoples as another ethnic or cultural group, as their rights have been recognized as distinct and separate from those of non-Indigenous Canadians.²⁹⁶

The OFIFC is a provincial Indigenous organization representing 28 Friendship Centres across Ontario, which serve Indigenous peoples living in an urban environment. The OFIFC gave the OHRC a comprehensive submission, which presented multiple perspectives and narratives gathered by Friendship Centres. The OFIFC also helped us organize focus groups in Toronto and Thunder Bay. Their submission portrays a picture of racism against Indigenous peoples in cities and towns throughout the province that is persistent and widespread. Alarming, they say that in some communities, racial discrimination against Indigenous peoples is normalized.

The OFIFC says that racial profiling against Indigenous peoples must be understood as a “blatant [manifestation] of colonial oppression.”²⁹⁷ For example, policing of Indigenous peoples today has a distinct history with roots in colonialism. Both in the past and today, police have been used to impose public order when dealing with disputes between Indigenous communities and government. A report submitted to the Ipperwash Inquiry states that this role is one unique to protests by Indigenous peoples.²⁹⁸ Historically, police furthered the assimilation policies of government by apprehending Indigenous children to send them to residential schools, and have supported child welfare agencies in child apprehension.²⁹⁹

We heard that our policy work must appreciate how Indigenous peoples’ realities of racism relate to this distinct historical and political context. This understanding must take into account the inter-generational effects of colonization, including the legacy of residential schools.³⁰⁰ The OFIFC indicated that this legacy has had longstanding effects on people’s health and well-being, and contributes to the negative treatment of Indigenous peoples today.

We also heard about the perceived shortcomings of the human rights system in being able to provide justice for Indigenous peoples. We heard that the human rights system is not accessible to many Indigenous peoples and does not reflect

or incorporate Indigenous-specific ways of resolving disputes. We also heard that the *Code* should be amended to better ensure it speaks to the rights of Indigenous peoples.

The OFIFC and other Indigenous participants expressed concerns that the OHRC's definition of racial profiling does not take into account the specific historical context, experiences or perspectives of Indigenous peoples. We heard that the narrowness of the definition does not reflect a holistic approach to the lives of Indigenous peoples, who may experience racism, discrimination and unfairness in multiple and interconnecting ways. The definition was also thought to not adequately speak to the intersecting experiences of profiling against people based on Indigenous identity, gender, age and other *Code* grounds.

The OFIFC suggested a revised definition that is broader in scope. It recommends that the definition of racial profiling not be limited to experiences that take place in the context of "safety, security or public protection."

After hearing this feedback, the OHRC decided to rethink its approach to its racial profiling policy work as it relates to Indigenous peoples and communities. In its strategic plan,³⁰¹ the OHRC has committed to advancing human rights by engaging with and establishing trusting relationships with First Nations, Métis and Inuit communities and groups.

As part of this relationship-building, the OHRC will reach out to Indigenous communities to understand their priorities with respect to developing human rights policy on racial and other forms of discrimination. Our work will be guided by this collaboration. Our work needs to support Indigenous peoples' own human rights understanding and goals, and continue to recognize the specific historical context that has given rise to racism and racial discrimination that Indigenous peoples face today.

3.6.1. Key themes

Indigenous peoples across the province experience widespread racial discrimination and racial profiling. However, the concept of racial profiling, as currently defined by the OHRC, may not be useful to people in Indigenous communities. Human rights policy work on racism and racial discrimination must appreciate how Indigenous peoples' realities of racism

relate to a distinct historical and political context. Work in this area must involve collaboration with First Nations, Métis and Inuit communities and groups to better understand human rights, racial discrimination and racial profiling from Indigenous perspectives.

3.7. Challenges and prevention methods

3.7.1. Challenges when responding to racial profiling

Racial profiling is a societal problem that is extremely complex to address. Other jurisdictions such as the U.S. and the U.K. have attempted to deal with it for many years in the criminal justice system. Yet, there are grave concerns that the practice persists.³⁰² The challenges in addressing racial profiling are significant. They include countering deeply embedded stereotypes held by individuals and society, entrenched institutional norms in an organization's culture, long-held policies and practices and reluctance by many people and institutions to acknowledge that racial profiling exists.

Because of these challenges, concerted and shared efforts are needed from all involved: government, community groups, human rights practitioners, educators and public and private organizations. Different approaches may be needed to take into account the needs and interests of communities and organizations. Continued efforts around this issue will go a long way to create better understanding about the extent and impact of racial profiling, and re-build trust between racialized and Indigenous communities and the institutions that serve them.

In our survey, we asked the public what challenges organizations face, if any, when they seek to respond to or prevent racial profiling.

Table 10. Reported organizational challenges by type of challenge

Challenge	Percentage	Count
Acknowledging the existence of racial profiling	76.6	659
Effective monitoring and accountability mechanisms (including but not limited to complaint process, disciplinary measures and data collection, analysis and reporting)	66.9	575
Engaging affected stakeholders in solution building	52.0	447
Lack of understanding about racial profiling including unconscious racial bias	77.3	665
Leadership commitment to address the issue	63.1	543
Policy and guidelines on how to respond to and prevent racial profiling	63.0	542
Other	13.6	117
	Total responses	860

Note: Percentages reflect the survey respondents only, and are not representative of the total population.

Survey respondents cited lack of understanding about racial profiling most often (77.3%). We heard across our consultation that there is a need for better understanding about the impacts of racial profiling on racialized and Indigenous groups and individuals – for example, that it is a serious complicated social issue that has historical roots.

When asked what challenges organizations face when preventing or responding to racial profiling, one respondent said:

There is a lack of understanding that in some communities, many people experience racial profiling on a regular basis and so may become increasingly frustrated and angry with each experience. This, in turn, reinforces the stereotypes that security and police officers have about people from these communities. For those who haven't experienced racial profiling, it may be a given to be respectful during encounters with security and police officers,

but for those who have had these experiences that trust and respect is not automatic. Trust has to be earned through developing respectful relationships with people from marginalized communities (South Asian female, age 55 and over).

To improve understanding, we heard repeatedly that there is a need for education on racial profiling, racism, diversity, White privilege and rights awareness.

Many consultation participants saw denial of the existence of racism and racial profiling as a challenge for organizations and individuals. We heard that denying the existence of racial profiling stems from the general perception that racism doesn't exist in Canada.³⁰³ For example, several survey respondents believe people claim racial profiling to get out of situations where they have been stopped by police. Lack of openness in discussing racial profiling was seen as resulting from people's fear of being accused of it. The unconscious and conscious biases that lead to racial profiling were cited as major barriers.

Participants saw disagreement about the nature and extent of racial profiling as another challenge. In one OHRC policy dialogue paper, the author critiques arguments made by criminologists who assert that police do not engage in racial profiling. One common assertion is that because crime appears to be committed more often by people from certain racial groups than others, effective police practices may appear biased. Some survey respondents working in policing emphasized this point. They said that racialized people may be stopped not because of stereotyping, but as a response to crime statistics – they are the same race as individuals who commit crimes in diverse neighbourhoods. The author of the policy dialogue paper writes that this argument is flawed, in part because crime statistics are more of an indicator of institutional and individual police enforcement practices than of actual “criminality.”³⁰⁴

It is also a challenge, we heard, to overcome the general but mistaken belief that racial profiling works – that it provides useful information and deters and prevents crime.

Sometimes what is called racial profiling is just prudent risk management... If people arriving from a particular city in the world are statistically shown to be a higher risk for criminal or

terrorist activity, then our security agencies would be negligent to not provide and increased level of scrutiny when admitting those people to our country (White male, age 45-54).

Several research studies have established that racial profiling is neither efficient nor effective in fighting crime.³⁰⁵ For example, under its “stop-and-frisk” policy, the “hit rates” of searches by New York City police were examined. “Hit rates” are the rate that physical evidence of a crime is seized after a person is stopped by police. Between 2004 and 2012, there were 143 stops per seizure for Black people, 99 stops per seizure for Hispanic people, and 27 stops per seizure for White people. Because of these low hit rates for racialized people, stop-and-frisk opponents in the U.S. argued that this policy could not be justified. It was found to be unconstitutional in 2013.³⁰⁶

Another challenge identified was a lack of commitment to anti-racism. Many survey respondents perceived that organizations do not care about racial profiling or anti-racism – that they lack a commitment to diversity or human rights generally, and they are made up of non-racialized individuals who do not experience profiling.

We were concerned to hear that victims of racial profiling often do not file complaints in various sectors, including policing, social and health services. People’s reluctance to make complaints was due to fears of having to defend themselves against large institutions alone, and fears of retaliation. A social service worker relates the types of experiences she has heard from youth:

The stories that youth share with me most often include excessive force used by the police officer. In almost all instances, youth feel because of the stereotypes they face because of where they live and their skin colour they cannot go the police division and file reports for excessive use of force and racial profiling (White female, age 35-44).

The perception that racial profiling is necessary and justified also may deter people from complaining.

We also heard that getting leadership to address these issues is a challenge. We heard that leaders are rarely from marginalized communities. Lack of sustained resources (time and money) for organizations to create an appropriate level of

response to racial profiling was also a concern. One respondent had specific concerns that there is “no real pressure from funders or government to address equity matters.”

3.7.2. Prevention methods

We heard a great deal of consensus about the ways racial profiling should be addressed. We heard that it cannot be prevented or addressed through one approach alone. Instead, it requires a comprehensive strategy that addresses both individual and systemic elements. For example, one OHRC policy dialogue paper discusses a four-pillared approach that encompasses strategic leadership, research, human resources management, and stakeholder engagement.³⁰⁷

Overall, consultation participants voiced their agreement with strategies proposed by the OHRC, including:

- Awareness training
- Developing policies, procedures and guidelines
- Effective accountability monitoring and accountability mechanisms, including:
 - complaint procedures
 - disciplinary measures
 - data collection, analysis and reporting
- Holistic organizational change strategy
- Leadership
- Communication (external and internal)
- Engagement with affected stakeholders.

The OHRC has used these elements in its human rights organizational change projects.³⁰⁸ In the U.S., the Civil Rights Division of the federal Justice Department has incorporated many of these elements in its analyses when evaluating whether police services are adequately protecting the rights of the communities they serve or are engaging in human rights abuses.³⁰⁹

Participants expanded on many of these strategies. For example, at the OHRC’s racial profiling policy dialogue, we heard about the Ottawa Police Service’s (OPS) efforts to engage community members as part of its race-based data collection project on traffic stops.³¹⁰ We also learned about the OPS’s racial profiling policy.³¹¹

We heard that education on racial profiling and racism for various representatives of different sectors, and children and youth, is critical. However, training in isolation from other initiatives is unlikely to succeed in fostering a non-discriminatory environment. Similarly, inadequate training is not likely to be effective in bringing about a change in attitudes or behaviour.

In its submissions to government and in other reports, the OHRC has made recommendations regarding training of police.³¹² From our consultation, we heard that many of these training elements could be applied to education for organizations and individuals more broadly. These include:

- Educating people on the history of stereotyping and racism against racialized and Indigenous groups
- Involving local racialized and marginalized communities in design, delivery and evaluation
- Communicating that racial profiling is unacceptable, a violation of the *Code* and will result in disciplinary penalties
- Incorporating scenarios,³¹³ such as conflict de-escalation.

Many consultation participants also emphasized the importance of data collection to measure racial inequality, which may be an indicator of systemic racial discrimination, including systemic racial profiling. To be meaningfully interpreted, quantitative results from data collection efforts must be considered in light of qualitative information – such as allegations of racial profiling and racial discrimination against the organization in the form of previous human rights complaints and concerns raised by the community.³¹⁴ The OHRC has called for the collection of race-based data (and data based on other *Code* grounds) in sectors such as policing, corrections, education and child welfare. In other jurisdictions, it is common for race-based data collection to take place in these sectors³¹⁵ as a way to measure disparities. However, it is collected inconsistently in Ontario.³¹⁶

Other participants emphasized that data collection must be accompanied by meaningful efforts to ensure accountability of individuals and institutions. This includes discipline to hold people who racially profile responsible for their actions. To prevent discrimination in policing, education, retail, *etc.*, there must be accountability throughout the system and ongoing monitoring. From a human rights perspective, it is not acceptable for an organization to choose to remain unaware of discrimination or fail to act when it learns of a problem.

We also heard that institutions must work together to adopt a system-wide approach to resolve racial inequities. In attempting to address the disproportionate representation of Black children in contact with child welfare, the Ontario Association of Children's Aid Societies (OACAS) stresses the need to collaborate across all health and social service agencies and their partners, such as child welfare, police and education. This approach has been effective in the U.S.³¹⁷

Other participants supported developing separate or specialized institutions and systems that are built using an anti-racist approach and can meet the needs of particular communities. Some policy dialogue participants recommend creating a Black CAS, established using an anti-Black racism framework.³¹⁸ Similarly, Indigenous participants cited the need to develop Indigenous child welfare legislation and an Indigenous child welfare system.³¹⁹

Key themes

- Major challenges to addressing and preventing racial profiling include lack of understanding about racial profiling, acknowledging the existence of racial profiling, overcoming the mistaken belief that it works or that its extent has been exaggerated and lack of committed leadership to address the issue.
- There is a lack of data collected on the representation of ethno-racial groups and Indigenous peoples across sectors in Ontario. Lack of mandated, standardized data collection on race, race-related *Code* grounds and other *Code* grounds (e.g. sex, disability) prevents the government, policy makers, academics and organizations from understanding whether racial disparities exist in many different sectors, including policing, child welfare, the private security sector and education.
- Disproportionate representation of specific ethno-racial groups in certain institutional processes (e.g. discipline) may be an indicator of systemic racial discrimination, including systemic racial profiling.
- There is a growing consensus around methods to address and prevent racial profiling. These include developing systems of accountability, training, policy development, leadership, and engaging with affected communities.

4. Summary of key themes and next steps

4.1. Key themes

- The widespread nature of incidents of racial profiling reported during the consultation, along with a growing body of case law and social science and legal research, confirms that racial profiling exists and is a broad concern shared by many Ontarians.
- Concerns about racial profiling are broader than policing. Racialized and Indigenous peoples may experience unwarranted heightened scrutiny in education, stores, shopping malls, housing and workplaces, on buses, subways and trains, at airports and border crossings, in health care and by private security and child welfare agencies, *etc.*
- The impacts of real and perceived racial profiling are severe and may be cumulative. Racialized and Indigenous individuals, families and communities are negatively affected. For example, real and perceived racial profiling can diminish people's trust in institutions.
- Racial profiling is perceived to be based on stereotypes about social deviance that are broader than just assumptions about criminality.
- Racial profiling does not just result from an individual's unconscious or conscious racial bias. It may take place through official policies, assessment tools or established practices. These may look neutral but nonetheless have a directly discriminatory or adverse effect. These established ways of doing things may also be compounded by an individual's bias.
- People may experience racial profiling in different ways, depending on the sector where it happens and stereotypes related to demographic group(s) people identify with (*e.g.* age, sex, racial or ethnic background and creed). People may be exposed to unique forms of racial profiling based on the unique intersection of identities.
- People may be racially profiled when they are perceived to be "out-of-place" – doing something that is not in line with common stereotypes held about racialized or Indigenous peoples. Out-of-place racial profiling can also happen when people interact with someone of a different racial or ethnic background. They may raise suspicions about being involved in deviant behaviour because they are perceived to not conform with expected boundaries between racialized and non-racialized people.

- A first incident of racial profiling may contribute to further instances of racial profiling by another institution or individual. The marginalizing effects may be compounded (a “pipeline” effect). An example is racial profiling that takes place in schools, which leads to child welfare and/or police involvement.
- When analyzing or trying to understand racial profiling, it is necessary to look at systemic elements, including policies, procedures, operational priorities, decision-making practices, standards, approaches to risk assessment, and organizational culture.
- Indigenous peoples across the province experience widespread racial discrimination and racial profiling. However, the concept of racial profiling, as currently defined by the OHRC, may not be useful to people in Indigenous communities. Human rights policy work on racism and racial discrimination must appreciate how Indigenous peoples’ realities of racism relate to a distinct historical and political context. Work in this area must involve collaboration with First Nations, Métis and Inuit communities and groups to better understand human rights, racial discrimination and racial profiling from Indigenous perspectives.
- The experiences identified in the consultation provide a starting point, but more information is needed on how racial profiling may play out in certain areas (e.g. in court, corrections, child welfare) or for certain groups (e.g. migrants).
- There is a lack of data collected on the representation of ethno-racial groups and Indigenous peoples across sectors in Ontario. Lack of mandated, standardized data collection on race, race-related *Code* grounds and other *Code* grounds (e.g. sex, disability) prevents the government, policy makers, academics and organizations from understanding whether racial disparities exist in many different sectors, including policing, child welfare, the private security sector and education. Disproportionate representation of specific ethno-racial groups in certain institutional processes (e.g. discipline) may be an indicator of systemic racial discrimination, including systemic racial profiling.
- Major challenges to addressing and preventing racial profiling include lack of understanding about racial profiling, acknowledging the existence of racial profiling, overcoming the mistaken belief that it works or that its extent has been exaggerated and lack of committed leadership to address the issue.
- Most consultation participants agreed with the OHRC’s definition of racial profiling. There were important points of disagreement about whether it should apply beyond policing to other sectors, to situations beyond those relating to “safety and security” and reflect racial profiling that is intentional.

- When asked about racial profiling, many consultation participants told us about their experiences of racial discrimination that were broader than racial profiling. This suggests that there is uncertainty about how racial profiling may be different than other forms of racial discrimination.
- There is a growing consensus around methods to address and prevent racial profiling. These include developing systems of accountability, training, policy development, leadership, and engaging with affected communities.

4.2. Next steps

To act on what we learned through our research and consultation, the OHRC will undertake a series of next steps to address and prevent racial profiling:

- The OHRC will collaborate with First Nations, Métis and Inuit communities and groups to better understand Indigenous perspectives. We will work towards collaboratively developing resources and tools to address Indigenous peoples' human rights.
- The OHRC will consider modifying its racial profiling definition based on participant perspectives, bearing in mind its historical usage and how the term has been discussed in the case law.
- The OHRC will develop specific policy guidance in the area of services to help individuals, community groups and organizations understand how racial profiling can be prevented and addressed. This policy guidance will focus on policing and law enforcement, child welfare, court and corrections and other sectors as needed.
- The OHRC will continue to call for the collection of race-based data and data on other *Code* grounds to better understand if racial disparities exist in sectors such as policing, child welfare and education.
- Where appropriate, the OHRC will continue to launch public interest inquiries, intervene in cases and/or launch Commission-initiated applications to the HRTO to actively challenge cases of alleged racial profiling, with a focus on combatting racial profiling in the criminal justice system.
- The OHRC will continue to work with community stakeholders to enhance public education on racial profiling.

Appendix A: Consultation participants

Organizations

Aboriginal Justice Strategy, Legal Aid Ontario (LAO)
Aboriginal Legal Services (ALS)
African Canadian Legal Clinic (ACLC)
Black Law Students' Association (BLSA), Osgoode Hall Law School
Black Lives Matter - Toronto (BLM - TO)
Canadian Human Rights Commission (CHRC)
Canadian Mental Health Association Ontario (CMHA Ontario)
Centre for Human Rights, Equity and Inclusion (REI), York University
Colour of Poverty
Hamilton Community Legal Clinic
Hamilton Police Service (HPS)
Human Rights Legal Support Centre (HRLSC)
Information and Privacy Commissioner of Ontario (IPC)
Institute for Social Research, York University
Law Union of Ontario
London Police Service (LPS)
Ministry of Community Safety and Correctional Services (MCSCS)
National Council of Canadian Muslims (NCCM)
Office of the Independent Police Review Director (OIPRD)
Ontario Alliance of Black School Educators (ONABSE)
Ontario Council of Agencies Serving Immigrants (OCASI)
Ontario Federation Indigenous Friendship Centres (OFIFC)
Ontario Provincial Police (OPP)
Osgoode Society Against Institutional Injustice (OSAI), Osgoode Hall Law School
Ottawa Police Association
Ottawa Police Service (OPS)
Provincial Police Academy, Ontario Provincial Police (OPP)
Rosen Naster LLP
School of Public Policy and Administration, York University
The Canadian Association of Muslim Women in Law (CAMWL)
Toronto Police Service
Turner Consulting Group Inc.
York Regional Police, Legal Services

List of presenters and authors of OHRC racial profiling policy dialogue papers

Sehrish Amjad	National Council of Canadian Muslims (NCCM)
Andrea S. Anderson	Osgoode Hall Law School, York University
Reem Bahdi	University of Windsor
Faisal Bhabha	Osgoode Hall Law School, York University
Jessica Braimoh	University of Western Ontario
Jennifer Clarke	School of Social Work, Ryerson University
Wesley Crichlow	University of Ontario Institute of Technology (UOIT)
Bryce Edwards	Olthuis Kleer Townshend LLP (OKT Law)
Amira Elghawaby	National Council of Canadian Muslims (NCCM)
Patrick Flanagan	Ottawa Police Service (OPS)
Alison Fisher	York University
Curt Taylor Griffiths	School of Criminology, Simon Fraser University
Frances Henry	Formerly with York University
Nataleah Hunter-Young	Anti-Black Racism Network
Syed Hussan	No One Is Illegal – Toronto, Migrant Workers - Alliance for Change (MWAC)
Julia Huys, Emily Chan	Justice for Children and Youth (JFCY)
Les Jacobs, Lorne Foster	York University
Carl E. James	Faculty of Education, York University
Uzma Jamil	Department of Political Science, McGill University
Azeezah Kanji	Noor Cultural Centre
Caitlyn Kasper	Aboriginal Legal Services of Toronto
Tamari Kitossa	Department of Sociology, Brock University

Tammy C. Landau	Department of Criminology, Ryerson University
Laura Mae Lindo	Diversity and Equity Office, Wilfrid Laurier University
Gary V. Melanson	Waterloo Regional Police Service
Noa Mendelsohn Aviv	Canadian Civil Liberties Association (CCLA)
David Mitchell	Ministry of Community Safety and Correctional Services (MCSCS)
Hodan A. Mohamed, Ruba Ali Al-Hassani	The Canadian Association of Muslim Women in Law (CAMWL)
Anthony Morgan	African Canadian Legal Clinic (ACLC)
Alok Mukherjee	Department of Criminology, Ryerson University
Stela Murrizi, Irvin Waller	Department of Criminology, University of Ottawa
Naomi Nichols	Faculty of Education, McGill University
Mindy Noble	Human Rights Legal Support Centre (HRLSC)
Kike Ojo	Ontario Association of Children's Aid Societies (OACAS)
Gordon Pon, Doret Phillips, Jennifer Clarke, Idil Abdillah	Ryerson University
Jim Rankin	Toronto Star
Tim Rees	
Bobby Siu	School of Public Policy and Administration, York University
Charles C. Smith	University of Toronto Scarborough
Tomee Sojourner	Sojourner Mediation & Consulting Services
Sheela Subramanian, Seble Makonnen	Canadian Mental Health Association – Ontario (CMHA Ontario)

Maurice Switzer	Ontario Human Rights Commission (formerly with Union of Ontario Indians and Assembly of First Nations)
David Tanovich	Faculty of Law, University of Windsor
Charlene Tardiel	Association of Black Law Enforcers
Sara K. Thompson	Department of Criminology, Ryerson University
Scot Wortley	Centre for Criminology and Socio-legal Studies, University of Toronto

Appendix B: Survey demographic information

This section provides information on the demographics of survey respondents who took the racial profiling survey.

1. Region

Table 11. Region where respondent lives by first letter in respondent's postal code

Region	Percentage	Count
K (Eastern region)	15.9	217
L (Central region)	22.6	308
M (Toronto)	39.8	542
N (Western region)	13.2	180
P (Northern region)	6.4	87
Other	2.1	29
		Total responses 1363

Note: Percentages reflect the survey respondents only, and are not representative of the total population.

Most survey respondents came from the Toronto and Central region of Ontario. This pattern holds true when breaking down the data by various sub-groups based on ethnic or racial background. The exception is survey respondents who identified as Indigenous, where 33.1% said they lived in the Northern region of Ontario, followed by Toronto and Central region.

2. Age

Table 12. Age of survey respondents by age grouping

Age	Percentage	Count
Under 15	0.1	1
15-19	2.6	35
20-24	7.2	98
25-34	28.0	382
35-44	26.0	355
45-54	21.6	295
55 and over	14.6	199
		Total responses 1365

Note: Percentages reflect the survey respondents only, and are not representative of the total population.

Most survey respondents who reported their age said they were younger middle-aged (between 25 and 44 years old) (54%). Ninety-five survey respondents under age 25 identified as racialized³²⁰ (90) or Indigenous (5). This represents 6.3% of survey respondents. These responses are important because certain types of racial profiling may be more likely to affect racialized and Indigenous youth based on intersecting stereotypes (for example, racial profiling in education, carding/street checks). We also received many survey responses from families and service providers who talked about the experiences of racialized and Indigenous youth.

3. Gender

Table 13. Gender of survey respondents by gender category

Gender	Percentage	Count
Female	69.4	947
Male	29.7	406
Transgender	0.9	12
Other	0.9	12
		Total responses 1365

Note: Percentages reflect the survey respondents only, and are not representative of the total population.

There were far more female than male survey respondents. More than two-thirds of all survey respondents were female.

The gender imbalance was even greater for some groups. For example, almost three-quarters or 73.2% of Indigenous respondents were female, and only slightly over one-quarter (or 27.3%) who identified as exclusively White were male.

4. Indigenous identity

Table 14. Identity of survey respondents by Indigenous or non-Indigenous identity type

Identity	Percentage	Count
Non-Indigenous	89.3	1214
Métis	2.1	28
First Nations	6.8	92
Inuit	0.2	3
Other	1.7	22
		Total responses 1359

Note: Percentages reflect the survey respondents only, and are not representative of the total population.

A total of 123 respondents identified as Métis, First Nations or Inuit. Eight people who chose “other, please specify” also identified as being Indigenous or with mixed Indigenous ancestry. Overall, 131 people identified as Indigenous or with mixed Indigenous ancestry (8.7% of all survey respondents).³²¹ The proportion of Indigenous peoples who answered the survey was greater than the proportion of Indigenous peoples in the Ontario population (2.4%).³²² The vast majority of respondents live off-reserve, while 24 or 4.6% live on reserve.

5. Racial or ethnic background

Table 15. Racial or ethnic background of survey respondents by background category

Racial or ethnic background	Percentage	Count
Arab	3.1	41
Black	22.8	301
Chinese	3.6	48
Filipino	0.8	11
Japanese	0.4	5
Korean	0.4	5
Latin American	3.0	39
South Asian	10.6	140
Southeast Asian	1.2	16
West Asian (e.g. Iranian, Afghan, etc.)	1.4	19
White	48.7	644
Other	13.5	178
	Total responses	1322

Note: Percentages do not total 100, due to many survey respondents selecting multiple categories. Percentages reflect the survey respondents only, and are not representative of the total population.

Almost half of respondents (48.7%) who reported their ethnic background identified as White. Almost a quarter (22.8%) identified as Black, and 13.5% identified as “other.” Many people who specified “other” identified biracial, European or Indigenous backgrounds.

6. Creed

Table 16. Survey respondents' religion or creed (if any) by creed category

Creed	Percentage	Count
Buddhist	2.2	30
Christian	34.5	467
Hindu	1.3	18
Jewish	1.7	23
Muslim	10.6	144
Sikh	0.6	8
Indigenous Spirituality	5.3	72
No religion	36.8	498
Other	7.0	95
	Total responses	1355

Note: Percentages reflect the survey respondents only, and are not representative of the total population.

Most survey respondents who answered this question identified that they had no religion (36.8%). Over a third identified as Christian, and over 10% as Muslim. The OHRC received proportionally more surveys from people who identified as Muslim, Buddhist, no religion, "other" and practicing Indigenous spirituality compared to how people with these creeds are distributed in the general Ontario population.³²³ The OHRC received a slightly lower proportion of surveys from people who identified as Jewish, Sikh and Hindu compared to how people with these creeds are distributed in the Ontario population.³²⁴

7. Type of work

Of the survey respondents who reported their area of work, over a quarter worked in government or social services (26.4%), and 16.8% said they worked in education. The greatest proportion of survey respondents (29.2%) identified as "other," with many reporting that they worked in law, media, communications or publishing, the non-profit sector or did not work outside the home (they were retired, students or homemakers).

Appendix C: Recommendations to combat and prevent racial profiling

The OHRC has made many recommendations over several years to address racial profiling. These are documented in our submissions to government ministries, police services and others, and in our 2003 inquiry report, *Paying the price*. Many of these recommendations are specific to policing, but others pertain more broadly to all organizations or institutions that may have a problem with racial profiling. The OHRC will continue to focus on the criminal justice system as part of our strategic priorities, including working towards ending racial profiling in policing. We will also focus on sectors where issues of racial profiling require more attention. The following list of recommendations reflects our approach to dealing with this form of discrimination within respective organizations.

OHRC Submission to the Independent Review of Police Oversight Bodies (15 November 2016)

www.ohrc.on.ca/en/ohrc-submission-independent-review-police-oversight-bodies

In October 2016, the Government of Ontario ordered an independent review of three police oversight bodies: the Office of the Independent Police Review Director (OIPRD), the Special Investigations Unit (SIU) and Ontario Civilian Police Commission (OCPC). The OHRC provided recommendations to the Independent Review of Police Oversight Bodies regarding effective monitoring and accountability for systemic discrimination in policing.

Recommendations to the Government of Ontario:

1. Establish, through legislation, an independent institution to undertake proactive, independent and transparent monitoring and enforcement regarding systemic discrimination in policing. The institution should have, among other things:
 - a. A clearly defined and specific mandate to prevent systemic discrimination in policing
 - b. Expertise in discrimination analysis under the *Human Rights Code* and *Charter of Rights and Freedoms*
 - c. Understanding of the complex relationships between police and people with mental health disabilities, African Canadians, and Indigenous peoples (including an understanding of the ongoing impact of colonialism)
 - d. Independence from government, police and other oversight bodies, both in terms of institutional independence and possible apprehension of bias

- e. Accountability, transparency and accessibility to the public, which includes proactively engaging with *Code*-protected communities to identify issues of concern and possible solutions, and public reporting
 - f. The ability to access and compel production of documents and records, and conduct investigations to uncover patterns of behaviour that may be consistent with systemic discrimination
 - g. Enforcement powers before a court or specialized tribunal that can order systemic remedies
 - h. Sufficient capacity and resources to fulfil its mandate on an ongoing basis.
2. Direct police services to establish permanent data collection and retention systems to record human rights identity-based data on, but not limited to, all stops of civilians, use of force incidents, and interactions where officers ask about immigration status or conduct immigration status checks. The data should be standardized, disaggregated, tabulated, publicly reported by each police service, and provided to the institution. The data should include age, gender, perceived race, and officer perception of whether the individual has a disability, including a mental health disability.
3. Require other institutions that exercise police oversight functions to:
- a. Notify complainants or next of kin of their right to file an application with the Human Rights Tribunal of Ontario (HRT) for alleged discrimination under the *Code* and provide the contact information of the HRT and Human Rights Legal Support Centre (HRLSC)
 - b. Notify the institution tasked with oversight for systemic discrimination in policing about complaints received and investigations conducted that involve allegations of discrimination, including applications to the HRT alleging discrimination in policing services
 - c. Publicly release all reports investigating serious injury or death of civilians in incidents involving the police. The reports should have human rights-based information about the victim, including the victim's race, gender, age, and whether the victim had or was perceived to have a mental health disability, subject to redactions to comply with privacy legislation
 - d. Collect human rights-based identity data from complainants alleging police misconduct on a voluntary basis. The data should be standardized, disaggregated, tabulated and publicly reported
 - e. Publicly report on:
 - i. the number of complaints, investigations, and/or appeals conducted that involve allegations of discrimination in policing contrary to the *Code*,

- broken down by the prohibited grounds of discrimination in the *Code*;
and
- ii. the number of people who were seriously injured or died in incidents involving the police, broken down by race, age, gender and whether the person had or was perceived to have a mental health disability.
 - f. Amend the limitation periods to file an officer misconduct complaint and an application with the HRTO with respect to discrimination in policing so that they do not begin to run until the release of any report investigating serious injury or death of the civilian
 - g. Ensure that public complaints of officer misconduct, including those that allege discrimination, are not investigated by the police services the complaints are related to
 - h. Ensure that investigators within oversight bodies reflect the communities they serve and are not substantially comprised of former police officers.

Strategy for a Safer Ontario – OHRC submission to the Ministry of Community Safety and Correctional Services (April 29, 2016)

www.ohrc.on.ca/en/strategy-safer-ontario-%E2%80%93-ohrc-submission-mcscs

As part of its Strategy for a Safer Ontario (SSO), the Government of Ontario reviewed and was considering revising the *Police Services Act*. The OHRC provided recommendations to the Ministry of Community Safety and Correctional Services (MCSCS) on systemic discrimination in policing:

Recommendations to the Government of Ontario:

1. Adopt and implement all appropriate standards, guidelines, policies and strict directives to address and end racial profiling in policing, including but not limited to:
 - a. A clear definition of racial profiling that is consistent with the *Human Rights Code*
 - b. Criteria for when an officer may approach an individual in a non-arrest scenario, and criteria for what may not form a basis for an officer approach (see, for example, Appendix A)
 - c. An appropriate framework for rights notification (see, for example, Appendix A)
 - d. A prohibition on using race in suspect, victim or witness selection, unless the police are dealing with a sufficiently specific description.

2. At a minimum, prohibit police services from conducting immigration status checks on victims, witnesses or individuals under investigation, or from asking them about their immigration status, unless there are credible, non-discriminatory and *bona fide* reasons for doing so.
3. Commission an independent, human rights-focused review of the provincial use of force model, make the result public, and commit to implementing any recommendations.
4. Adopt and implement all necessary standards, guidelines, policies and strict directives to end discriminatory use of force on people with mental health disabilities and/or addictions, including but not limited to:
 - a. requirements that officers de-escalate and use communication strategies to effectively serve people with mental health disabilities and/or addictions, and refrain from using force for as long as possible, consistent with officer and public safety
 - b. 24 hours per day, seven days a week, availability of Mobile Crisis Intervention Teams (MCITs) or officers with specialized training and enhanced skills so police can provide equitable and appropriate services to persons with mental health issues and/or addictions.
5. Adopt and implement all necessary standards, guidelines, policies and strict directives to ensure that members of *Code*-protected groups are not discriminated against in any way through the work of situation tables, including clear limits on discriminatory disclosure of personal information. As a starting point, the Government should adopt the recommendations of the Information and Privacy Commissioner of Ontario with respect to situation tables; require that outcomes be tracked using human rights-based data; and commission an independent, human-rights focused review of situation tables, make the result public, and commit to implementing any recommendations.
6. Adopt and implement all necessary standards, guidelines, policies and strict directives to minimize the adverse impact of the use of tasers on people with mental health disabilities, addictions or people who are intoxicated, to the point of undue hardship.
7. Meaningfully engage and work closely with Indigenous communities to understand the concerns and issues they face in the context of law enforcement; and work with the federal government to develop a clear action plan with detailed timelines to address these concerns.
8. Work closely with the federal government to ensure that its Inquiry into Missing and Murdered Indigenous Women and Girls is national in scope, and includes consideration of racism and sexism in municipal and provincial police

investigations of missing and murdered Indigenous women and girls. If it does not include these considerations, the provincial government should conduct an inquiry that does so. The provincial government should commit to implementing any relevant recommendations arising from the Inquiry into Missing and Murdered Indigenous Women and Girls.

9. Meaningfully engage and work closely with Indigenous communities to transparently address any remaining concerns related to racial profiling in policing of Indigenous protests.
10. Ensure that funding for First Nations police services is equitable so that funding does not result in the provision of inferior policing for First Nations, and fully implement related recommendations from the Ipperwash Inquiry.
11. Require independent, arms-length and public monitoring of police services and police services boards regarding systemic discrimination through, for example, periodic audits; inspections of policies, procedures, training, databases and records; and public reporting.
12. Require police services to establish permanent data collection and retention systems to record human rights-based data on all stops of civilians, use of force incidents, and interactions where officers ask about immigration status or conduct immigration status checks. The data should be standardized, disaggregated, tabulated and publicly reported by each police service.
13. Commission an independent study to examine the feasibility of requiring all uniformed officers to be equipped with body-worn cameras, and make the findings of the study public.
14. Develop appropriate privacy guidelines for the use of body-worn cameras in consultation with the Information and Privacy Commissioner of Ontario.
15. Ensure that officers are disciplined, up to and including dismissal, when their behavior is consistent with racial profiling or discriminatory use of force on people with mental health disabilities and/or addictions.
16. Expressly provide police disciplinary tribunals with the jurisdiction to allow intervention by a non-party as a “friend of the court” in officer misconduct hearings.
17. Require police services boards to address systemic discrimination by directing chiefs of police with respect to policy or practices informed by policy governing the carrying out of duties and responsibilities of the police.
18. Direct police services boards to measure and evaluate police service performance on racial profiling and discriminatory use of force on people with mental health disabilities and/or addictions, take corrective action to address systemic

discrimination, and provide clear and transparent information to the public on racial profiling and discriminatory use of force on people with mental health disabilities and/or addictions.

19. Adopt and implement all measures necessary to ensure that police services and police services boards reflect *Code*-protected groups and the community they serve. Report on activities, outcomes (census data), and progress publicly.
20. Ensure that police services, boards, the OIPRD, OCPC and SIU have the resources, skills, competencies, and training to effectively address discrimination, fulfill their governance role and ensure accountability for human rights.
21. Require regular, detailed and ongoing human rights-focused training, developed in consultation with affected groups, on racial profiling, mental health, de-escalation, and unconscious bias for new recruits, current officers, investigators and supervisors. Police officers should be required to take human rights training at least every three years.

OHRC submission to the Ministry of Community Safety and Correctional Services on street checks (December 11, 2015)

www.ohrc.on.ca/en/ohrc-submission-ministry-community-safety-and-correctional-services-street-checks-0

In October 2015, the Ministry of Community Safety and Correctional Services (MCSCS) solicited public input on draft regulations on street checks. The OHRC provided recommendations to MCSCS on racial profiling in street checks.

1. The OHRC recommends that, barring exigent circumstances, police be prohibited from using race in suspect, victim or witness selection unless the police are dealing with a specific description. Furthermore, as noted below, “a suspect, victim or witness description that lacks sufficient detail other than race” should not satisfy the required criteria for conducting a street check. For additional guidance in this area, the OHRC encourages the Ministry to review the Ottawa Police Service’s *Racial Profiling Policy*, which states:

A police officer shall not, in the absence of a reasonable and racially neutral explanation, maintain that a racialized individual matches the description of a known suspect where:

- a. there are clearly distinguishing features between the two individuals; or
- b. the officer cannot articulate what other parts of the description he or she was relying on (e.g. height, weight, age, location, or other features).

2. To permit non-discriminatory, non-arbitrary legitimate policing activity, while sufficiently guiding officer discretion to prevent discriminatory and arbitrary street checks, the OHRC recommends that the Draft Regulation be amended to adopt the following criteria:
 - a. A police officer may not approach an individual in a non-arrest scenario that involves and/or is for the purpose of asking for and/or obtaining identification, personal information and/or information about an individual's circumstances, except for legitimate non-arbitrary non-discriminatory policing activities as set out in clause 2 below (Clause 2).
 - b. A police officer may **only** approach an individual in a non-arrest scenario that involves and/or is for the purpose of asking for and/or obtaining identification, personal information and/or information about an individual's circumstances if:
 - i. the approach is solely for the purpose of investigating a specific criminal offence or series of specific criminal offences and the officer has reasonable suspicion that the individual is implicated in the criminal activity under investigation and/or the officer has reasonable belief that the individual is connected to the offence as a victim and/or witness; or,
 - ii. the approach is solely for the purpose of preventing a specific type of offence from occurring and the officer has reasonable suspicion that the individual is implicated in the criminal activity under investigation and/or the officer has reasonable belief that the individual is connected to the offence as a victim and/or witness;
 - iii. the officer believes that the approach and request for identification, personal information or an individual's circumstances is necessary to prevent an imminent or apparent risk or harm to the individual or another identified person;
 - iv. the officer is aware that the approach is necessary because the individual is under a statutory obligation to provide a license or identification, such as when an individual is operating a motor vehicle;
 - v. the officer is aware that the approach is necessary for the enforcement of a provincial statute or municipal by-law; or,
 - vi. the officer is securing a potential crime scene, participating in a security detail or acting in an emergency, and requests identification from an individual in a restricted area or seeking to enter a restricted area in order to determine whether the individual should have access to the area and under what conditions.

- c. The following are not a basis for street checks and shall not satisfy Clause 2 of this Position:
 - i. an unspecified future offence or criminal investigation, or a “general investigation”;
 - ii. profiling or stereotyping based on race, gender identity, gender expression, sexuality, mental health, socioeconomic status, and/or other prohibited grounds of discrimination under the *Charter* or the *Human Rights Code*;
 - iii. a person’s exercise of his or her right to remain silent, right to object to being approached, or right to walk away;
 - iv. a “hunch” or unsupported suspicion or belief, whether based on intuition gained by experience or otherwise;
 - v. mere presence in a particular neighbourhood, high-crime neighbourhood or “hot spot”;
 - vi. a suspect, victim or witness description that lacks sufficient detail other than race;
 - vii. meeting a quota or performance target for number of street checks; and,
 - viii. raising awareness of police presence in the community.
 - d. For greater certainty:
 - i. an approach in the absence of reasonable suspicion or reasonable belief as set out in 2(a) or 2(b), for the purpose of eventually acquiring such reasonable suspicion or belief, shall not satisfy 2(a) or 2(b).
 - ii. prolonging any interaction with the intent of acquiring reasonable suspicion or belief as set out in 2(a) or 2(b) shall not satisfy 2(a) or 2(b).
3. The OHRC is concerned that the Draft Regulation does not ensure comparability and accountability such that trends can be observed across Ontario and data may be probative of racial profiling. There needs to be greater standardization. Thus, the OHRC recommends:
- a. Individual police services, at a minimum, be required to collect the data based on the following racial categories^[56]:
 - i. Indigenous peoples
 - ii. White
 - iii. Black
 - iv. East Asian, Southeast Asian
 - v. South Asian
 - vi. Middle Easterner

- vii. Other Racialized Group
 - b. Specific tabulations of the data that may be probative of racial profiling be required in the annual report (for example, the representation of young Black males in attempted collections of identifying information broken down by reason).
 - c. Information collected include: the date, time, location, reason for and outcome of the attempted collection of identifying information.
4. The OHRC is also concerned about access to the accountability data, the purpose of which is not to gather intelligence, but to identify, monitor and address racial profiling. Thus, the accountability data must be housed separately from intelligence or investigative data and not be accessed for these purposes. Data should be collected in a manner consistent with the human rights principles outlined in *Count me in!*, the OHRC's guide to collecting human rights-based data.
5. Police services boards must provide consistent, effective oversight and accountability with respect to racial profiling. The Draft Regulation provides some important direction to police chiefs, yet it fails to account for the authority and responsibility of police services boards to hold their services to account for racial profiling. Boards should conduct audits of compliance with the regulation and board policy and an independent monitor should oversee compliance with the regulation.

Submission of the Ontario Human Rights Commission to the Office of the Independent Police Review Director's Systemic Review of Ontario Provincial Police Practices for DNA Sampling (April 2014)

www.ohrc.on.ca/en/ohrc-submission-office-independent-police-review-director%E2%80%99s-systemic-review-opp-practices-dna

The Ontario Provincial Police (OPP) was alleged to have engaged in racial profiling when requesting DNA samples in a 2013 sexual assault investigation. In response, the Office of the Independent Police Review Director (OIPRD) undertook a systemic review of the OPP's DNA sampling practices. The OHRC provided recommendations to the OIPRD on racial profiling in police DNA collection.

1. The OPP should develop and implement distinct policies and procedures that clearly prohibit racial profiling, and include, among other things, the following key elements:
 - The principle that all persons have the right to live and work in an environment that is free of racial profiling by the police
 - Recognition that racial profiling exists in Ontario and that police may do it
 - A clear definition of racism and racial profiling
 - Recognition that racial profiling causes significant harm, particularly to Black and Aboriginal communities, and hampers the confidence of these communities in policing
 - Examples of how racial profiling manifests in police activities like pedestrian and traffic stops, consent searches, investigative detentions, suspect selection and DNA sampling
 - The disciplinary consequences of racial profiling, up to and including dismissal
 - The roles and responsibilities of members, supervisors, the Chief of Police, the professional development centre and any other relevant stakeholders to ensure compliance with the terms of policy.
2. Racial profiling policies should reflect the needs of the police service and the community it serves, so it is important that the OPP consult with racialized groups and Aboriginal Peoples when developing them.
3. To ensure compliance with racial profiling policies and procedures, all OPP stakeholders – starting with top leadership – should be involved and committed to developing, promoting and implementing them.
4. The OHRC recommends training on racial profiling for new recruits, current officers, investigators and supervisors.
5. The Toronto Police Service and the HRTO highlight the need for anti-racial profiling training. The Toronto Police Service's Police and Community Engagement Review (the PACER Report) states that "the training of Officers is an essential part of ensuring the Service achieves its organizational aspirations of treating everyone in an impartial, equitable, sensitive and ethical manner." As well, the HRTO has explained that "[i]f officers are not appropriately trained on what may constitute racially biased profiling or investigation, they may consciously or subconsciously engage in this form of discriminatory conduct."

6. OPP racial profiling training should, among other things:
 - Be designed and delivered by trainers with racial profiling expertise
 - Involve local racialized and marginalized communities in designing, delivering and evaluating it, including identifying relevant racial profiling scenarios
 - Convey the importance of good community relations
 - Describe the nature of racism, including its particular impact on Black and Aboriginal communities
 - Explain that racial profiling violates the *Code, Charter, Police Services Act* and police policies and procedures, with references to relevant case law
 - Incorporate role-play and scenario-driven learning modules to improve its “street-level application and articulation”
 - Address how people who think they are being racially profiled might become angry or upset, and make sure this does not lead to further differential treatment
 - Communicate that racial profiling is unacceptable and will result in disciplinary penalties, up to and including dismissal
 - Explain why respect for human rights is aligned with the OPP’s objectives.
7. Information about racial profiling should also be integrated into other training where it is particularly relevant, such as that on investigative detention, consent searches, customer service and conflict de-escalation, mediation and resolution.
8. Any racial profiling or other human rights training should be reviewed and evaluated to make sure that learning goals are being met.
9. The OHRC recommends that the OPP collect race-based data on police stops, searches and DNA sampling practices to identify, monitor, evaluate and reduce racial profiling. Collecting similar data is already common practice in the United States and the United Kingdom.
10. Data collection should be supplemented by qualitative research methods, such as focus groups. While quantitative data helps measure the extent of racial disproportionality in police activities, qualitative methods allow police to better understand officer motivations and the nature of police interactions that are consistent with racial profiling.

11. Regularly collecting race-based data using credible, accepted data collection methods, can, among other things:
 - Identify patterns of behaviour that are consistent with racial profiling, and help police services to remove systemic barriers
 - Help to evaluate anti-racism and anti-racial profiling programs
 - Reveal gaps and improvements that can be made to racial profiling policies, procedures, training and accountability measures
 - Improve police relationships with racialized communities.
12. When gathering information, the OPP should do so in a way that is consistent with the human rights principles outlined in the OHRC's guide, *Count me in! Collecting human rights-based data*. Racialized communities, Aboriginal Peoples and other relevant community stakeholders should be consulted about the purpose, use, benefits and methods of collecting data. Once the data has been analyzed and interpreted, the results should be made public in an accessible format.
13. The OHRC recommends that the OPP actively recruit, select, promote and retain people from racialized groups, Aboriginal communities and other under-represented groups to reflect the populations it serves.
14. Many police services, including the TPS and Peel Regional Police, have already taken significant steps to establish a diverse workforce. The TPS believes "a more representative police service is an essential affirmation of human rights values, and a key way to develop capacity to better serve a very diverse city with many different human rights issues."
15. We also recommend that the OPP proactively screen for racial bias among applicants before hiring them. This best practice has been implemented by the Toronto Police Service.
16. As MCSCS is responsible for the Policing Standards Manual, which sets out standards for Ontario police services and offers recommendations for local policies, procedures and programs, we recommend that it provide appropriate direction to the OPP on all the areas outlined above.

Paying the price: The human cost of racial profiling (October 21, 2003)

www.ohrc.on.ca/en/paying-price-human-cost-racial-profiling/recommendations-future-action

In February 2003, the OHRC launched an inquiry into the effects of racial profiling on individuals, families, communities and society as a whole. The inquiry report includes recommendations to the Government of Ontario, organizations and institutions on how to combat racial profiling in Ontario. The following recommendations are listed as “action” items in the report.

1. The government should establish a Racial Diversity Secretariat with a mandate to:
 - report annually on issues of racism in Ontario;
 - review and report on the implementation of recommendations in previous reports on racial profiling;
 - review and report on the implementation of recommendations in previous reports specific to Aboriginal peoples, in particular the 1996 Report of the Royal Commission on Aboriginal Peoples;
 - influence and support government policy development activities to ensure that racial diversity and equity are respected and promoted in all government initiatives;
 - facilitate dialogue between those with concerns about racial profiling and public and private sector service providers; and
 - engage in public awareness and education activities concerning racial diversity.
2. All organizations and institutions entrusted with responsibility for public safety, security and protection should take steps to monitor for and prevent the social phenomenon of racial profiling, and develop or modify their policies, practices, training and public relations activities in this regard.
3. Organizations or institutions that have, or are alleged to have, a problem with racial profiling should review recommendations set out in earlier studies, should report on those that have been implemented and establish a timetable for executing those recommendations that remain outstanding.
4. With respect to Aboriginal persons, organizations or institutions involved in the delivery of services to the Aboriginal community should review their practices to ensure that they are adapted to the unique needs of Aboriginal persons and that their staff is properly trained in issues concerning the Aboriginal community.

5. Organizations or institutions that have, or are alleged to have a problem with racial profiling, should accept and acknowledge the existence of racial profiling as well as the need to address the concerns of the communities they serve.
6. Persons in positions of leadership in Ontario, including government officials, should accept and acknowledge the existence of profiling and demonstrate a willingness to undertake action to combat it.
7. All organizations serving the Ontario public should adopt a zero tolerance policy regarding racial profiling and should communicate it clearly to all staff.
8. Economic analysts, business, private and public sector leaders should consider the effect of racial profiling when analyzing economic costs and productivity issues.
9. Organizations or institutions that have, or are alleged to have a problem with racial profiling should meet with concerned communities on an ongoing basis to discuss concerns and work with these communities to facilitate solutions.
10. Where anecdotal evidence of racial profiling exists, the organization involved should collect data for the purpose of monitoring its occurrence and to identify measures to combat it. Such organizations should consult with affected communities and the Ontario Human Rights Commission to establish guidelines on how the data will be collected and its use. Such data should not be used in a manner to undermine the purposes of the Ontario *Human Rights Code*.
11. The Ministry of Community Safety and Correctional Services should undertake a public consultation to determine the best way to ensure that the police complaints mechanism is, and is seen as, independent and effective. Necessary changes to the current system should be made accordingly.
12. Organizations or institutions that have, or are alleged to have a problem with racial profiling should engage in ongoing effective training initiatives on racism, race relations and racial profiling.
13. The Ministry of Education should incorporate anti-discrimination and diversity training in the elementary and secondary school curriculum. This should also be the case for private schools operating in Ontario.
14. Organizations or institutions that have, or are alleged to have a problem with racial profiling should undertake measures to improve recruitment, retention and promotion of employees who are members of racialized groups.
15. Police services across the province should install cameras in police cruisers to allow for monitoring the interaction between the police and public.
16. Police officers and private security guards should wear name badges that are clearly displayed.

17. Organizations or institutions that have, or are alleged to have a problem with racial profiling, should provide new staff with sufficient support to ensure that they learn appropriate practices and not resort to racial profiling due to the stresses of the job.
18. In conjunction with local communities, police services should develop educational materials, particularly aimed at youth, explaining citizens' rights.
19. Organizations or institutions that have, or are alleged to have a problem with racial profiling should study the best practices of other organizations that are dealing with racial profiling, both in Canada and abroad, with a view to implementing them.

Endnotes

¹ *Peart v. Peel Regional Police Services Board*, [2006] O.J. No. 4457 (C.A.) at paras 96, 93 [Peart].

² *Human Rights Code*, RSO 1990, c H.19

³ For example, in 2009, to better protect employees from violence in the workplace, the Ontario legislature passed amendments to the *Occupational Health and Safety Act* (OHSA). As part of these changes, employers subject to the OHSA must assess the risk of workplace violence. *Occupational Health and Safety Act*, RSO 1990, c O-1, s 32.0.3. Note that justice statistics show that there was an overall downward trend in police-reported crime in Ontario from 2005 to 2015. Statistics Canada “Police-Reported Crime Statistics in Canada, 2015,” (2016) by Mary Allen, *The Daily*. July 20. Statistics Canada Catalogue no.85-002-X (Ottawa: Statistics Canada, 2016) online: Statistics Canada, online: www.statcan.gc.ca/daily-quotidien/160720/dq160720a-eng.htm (retrieved February 13, 2017) at 35, 9.

⁴ Ontario Human Rights Commission, *Paying the Price: The human cost of racial profiling* (Toronto: Queen’s Printer for Ontario, 2003), online: Ontario Human Rights Commission www.ohrc.on.ca/en/paying-price-human-cost-racial-profiling [Paying the Price].

⁵ Ontario Human Rights Commission, *Policy and guidelines on racism and racial discrimination* (Toronto: Queen’s Printer for Ontario, 2005), online: Ontario Human Rights Commission www.ohrc.on.ca/en/policy-and-guidelines-racism-and-racial-discrimination [Policy].

⁶ See, for example, *Shaw v. Phipps*, 2012 ONCA 155 (CanLII) [Phipps]; *Peel Law Association v. Pieters*, 2013 ONCA 396 (CanLII) [Pieters]; *Maynard v. Toronto Police Services Board*, 2012 HRT0 1220 (CanLII) [Maynard]; and *Nassiah v. Peel Police Services Board*, 2007 HRT0 14 (CanLII) [Nassiah]. In 2012, the OHRC reached a settlement with the Ottawa Police Services Board that required Ottawa Police Service officers to collect race-based data on traffic stops for at least two years. See Ontario Human Rights Commission’s Response to the Race Data and Traffic Stops in Ottawa report, 2016, online: Ontario Human Rights Commission: www.ohrc.on.ca/en/ohrc-response-race-data-and-traffic-stops-ottawa-report [OHRC Response to OPS Data Collection Project].

⁷ In 2007 the OHRC began a three-year Human Rights Project Charter partnership with the Toronto Police Service (TPS) and Toronto Police Services Board (TPSB) to identify, monitor and eliminate discrimination in TPS employment and service delivery. We have also taken on a human rights organizational change project partnership with the Windsor Police Service. See Ontario Human Rights Commission, *Human Rights Project Charter – TPS & TPSB* (2007) online: Ontario Human Rights Commission www.ohrc.on.ca/en/human-rights-project-charter-tps-tpsb; Ontario Human Rights Commission, *Human Rights Project Charter – Windsor* (2011) online: Ontario Human Rights Commission www.ohrc.on.ca/en/human-rights-project-charter-windsor.

⁸ For example, the OHRC has developed and delivered training on various human rights topics, including how to avoid racial profiling in policing. We have delivered training to police officers across the province in partnership with the Ontario Police College. The OHRC has also delivered training to racialized youth across Toronto on their right to be free from racial profiling.

⁹ In addition to our racial profiling inquiry, in 2007-2008, the OHRC launched a public interest inquiry into the physical and verbal assaults on Asian Canadian anglers that occurred in various municipalities in Ontario. See Ontario Human Rights Commission, *Preliminary Findings: Inquiry into Assaults on Asian Canadian Anglers* (Toronto: Queen’s Printer for Ontario, 2007), online: Ontario Human Rights Commission www.ohrc.on.ca/en/preliminary-findings-inquiry-assaults-asian-canadian-anglers; Ontario Human Rights Commission, *Fishing Without Fear: Report on the Inquiry into Assaults on Asian Canadian Anglers* (Toronto: Queen’s Printer for Ontario, 2008), online: Ontario

Human Rights Commission www.ohrc.on.ca/en/fishing-without-fear-report-inquiry-assaults-asian-canadian-anglers

¹⁰ Ontario Human Rights Commission, *Ontario Human Rights Commission Submission to the Independent Review of Police Oversight Bodies* (2016) online: Ontario Human Rights Commission www.ohrc.on.ca/en/ohrc-submission-independent-review-police-oversight-bodies#_edn20 [*Police Oversight Bodies Review Submission*]; Ontario Human Rights Commission, *Submission of the OHRC to the Ministry of Community Safety and Correctional Services on the Strategy for a Safer Ontario* (2016), online: Ontario Human Rights Commission www.ohrc.on.ca/en/strategy-safer-ontario-%E2%80%93-ohrc-submission-mcscs [*Strategy for a Safer Ontario Submission*]; Ontario Human Rights Commission, *Submission of the OHRC to the Ministry of Community Safety and Correctional Services on street checks* (2015), online: Ontario Human Rights Commission www.ohrc.on.ca/en/ohrc-submission-ministry-community-safety-and-correctional-services-street-checks-0 [*Street Checks Submission*]; Ontario Human Rights Commission, *Submission of the Ontario Human Rights Commission to the Office of the Independent Police Review Director's Systemic Review of Ontario Provincial Police Practices for DNA Sampling* (2014), online: Ontario Human Rights Commission www.ohrc.on.ca/en/ohrc-submission-office-independent-police-review-director%E2%80%93systemic-review-opp-practices-dna [*DNA Sampling Submission*]; Ontario Human Rights Commission, *Submission of the Ontario Human Rights Commission to the Independent Review of the Use of Lethal Force by the Toronto Police Service* (2014), online: Ontario Human Rights Commission www.ohrc.on.ca/en/submission-ontario-human-rights-commission-independent-review-use-lethal-force-toronto-police; Ontario Human Rights Commission, *Submission of the OHRC to the Ombudsman's Investigation into the direction provided to police by the Ministry of Community Safety and Correctional Services for de-escalating conflict situations* (2014), online: Ontario Human Rights Commission www.ohrc.on.ca/en/submission-ohrc-ombudsman%E2%80%93investigation-direction-provided-police-ministry-community-safety-and.

¹¹ For example, the OHRC has attended meetings with community groups in Ottawa and Toronto to respond to issues such as carding (described further in section 3.1.2.1), race-based data collection and provide human rights information. We also co-drafted a joint submission on carding. See *A Joint Response to Ontario Draft Regulation "Collection of Identifying Information in Certain Circumstances – Prohibition and Duties" Released on 28 October 2015*, online: Ryerson University Department of Criminology www.ryerson.ca/criminology/about-us/faculty-staff/for-faculty/faculty-news-and-events/news-archive/ (retrieved January 4, 2017) [*Carding Regulation Joint Response*]. We also strategized with counsel representing intervenors from community groups when we intervene in racial profiling cases before the HRTTO and the courts.

¹² Ontario Human Rights Commission, *Putting people and their rights at the centre: Building human rights accountability, Strategic Plan 2017-2022* (Toronto: Queen's Printer for Ontario, 2016) online: Ontario Human Rights Commission www.ohrc.on.ca/en/ontario-human-rights-commission-strategic-plan-2017-%E2%80%93-2022 [*2017-2022 Strategic Plan*].

¹³ Sunil Gurmukh, "A Review of Racial Profiling Jurisprudence" 13:3, *Canadian Diversity a Publication of the Association for Canadian Studies* [forthcoming in 2017]. A version of this paper was presented at the racial profiling policy dialogue in February 2016. Sunil Gurmukh, "Summary of racial profiling case law review" (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016).

¹⁴ The OHRC analyzed 113 applications filed at the Human Rights Tribunal of Ontario (HRTTO) from January 2009 to May 2015 that alleged racial profiling. The HRTTO provides the OHRC with human rights applications as per section 38 of the *Code*.

¹⁵ The aim of the policy dialogue was to stimulate dialogue and generate relevant research. For this event, we received many papers and heard presentations by academics, individuals, community group representatives, advocates and police representatives. Many of these will be published as an anthology in an upcoming publication of Canadian Diversity a Publication of the Association for Canadian Studies.

¹⁶ See, for example, *Phipps*, *supra* note 6; *McKay v. Toronto Police Services Board*, 2011 HRT0 499 [McKay]; *Nassiah*, *supra* note 6; *Johnson v. Halifax (Regional Municipality) Police Service*, [2003] N.S.H.R.B.I.D. No. 2 [Johnson]; *Maynard*, *supra* note 6.

¹⁷ *Pieters*, *supra* note 6; *McCarthy v. Kenny Tan Pharmacy*, 2015 HRT0 1303 (CanLII); *Radek v. Henderson Development (Canada) Ltd.*, 2005 BCHRT 302 (CanLII) [Radek].

¹⁸ See Shaheen Azmi, "Ontario Human Rights Commission Promotion Activities: The Experience of Responding to Racial Profiling by Police" in Shelagh Day, Lucie Lamarche & Ken Norman eds, *14 Arguments in Favour of Human Rights Institutions* (Toronto: Irwin Law, 2014).

¹⁹ Commission on Systemic Racism in the Ontario Criminal Justice System, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen's Printer for Ontario, 1995) (Co-Chairs: D. Cole & M. Gittens) at 40-41. For more information, see OHRC, *Policy*, *supra* note 5.

²⁰ These categories reflect those included in Statistics Canada's term "visible minority." Adapted from Statistics Canada, *Visible Minority and Population Group Reference Guide: National Household Survey, 2011* (2013) Statistics Canada Catalogue no. 99-010-X2011009, online: Statistics Canada www12.statcan.gc.ca/nhs-enm/2011/ref/guides/99-010-x/99-010-x2011009-eng.pdf (retrieved April 22, 2015) at 4.

²¹ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, 61st Sess, UN Doc 61/295 (2 October 2007).

²² Ontario Human Rights Commission, *Policy*, *supra* note 5 at 21.

²³ For example, as part of the "war on drugs" in the U.S. in the 1980s, a drug courier profile that was "fixated on race" was used by the Drug Enforcement Agency to train drug enforcement officers to conduct pretext vehicle stops for drug searches. David M. Tanovich, "Using the Charter to Stop Racial Profiling: The Development of an Equality-Based Conception of Arbitrary Detention" (2002) 40:2 Osgoode Hall LJ 145 at 151; Sheri Lyn Johnson, "Race and the Decision to Detain a Suspect" (1983) 93:2 Yale LJ 214. See also Alejandro Del Carmen, *Racial Profiling in America* (New Jersey: Pearson Prentice Hall, 2008) at 10-13; Jennifer Preston, "Trooper Says State Police in New Jersey Discriminate" *The New York Times* (6 February, 1999) online: [The New York Times](http://www.nytimes.com/1999/02/06/nyregion/trooper-says-state-police-in-new-jersey-discriminate.html) www.nytimes.com/1999/02/06/nyregion/trooper-says-state-police-in-new-jersey-discriminate.html (retrieved February 23, 2017).

²⁴ For example, a U.S. survey found that the majority of respondents opposed the use of racial profiling practices. However, a third (33.5%) said they agreed that to prevent crime, law enforcement officers should be allowed to search people's bags or packages based on a racial/ethnic profile of suspected criminals. Devon Johnson et al, "Attitudes Toward the Use of Racial/Ethnic Profiling to Prevent Crime and Terrorism" (2011) 22:4 Criminal Justice Policy Rev 422.

²⁵ Street checks/carding are "non-arrest police approaches that involve and/or are for the purpose of asking for, recording and/or obtaining identification, personal information and/or information about an individual's circumstances." *Carding Regulation Joint Response*, *supra* note 11. The OHRC was a signatory to the *Joint Response*.

²⁶ See Interim Chief Commissioner Ruth Goba, Letter to the Editor, *The Spec* (29 October 2015) online: Ontario Human Rights Commission www.ohrc.on.ca/en/news_centre/op-ed-hamilton-spectator-commenting-%E2%80%9Ccarding-basic-investigative-work-hamilton-officers-say%E2%80%9D.

²⁷ *Ibid.*

²⁸ For more information about the different forms of racial discrimination and a discussion of racism generally, see the OHRC's *Policy*, *supra* note 5.

²⁹ *Canadian Human Rights Act*, RSC 1985, c H-6

³⁰ There are some limitations to our survey. For example, there were likely segments of the population we did not hear from. People who may have had difficulty accessing the Internet, such as people with low income, people in jail or prison, children, migrants and some people with disabilities, may not be as well represented among the respondents. The survey was only available in English and French, which also likely affected the number of respondents who are newcomers to Canada and/or speak languages other than English or French.

³¹ All percentages in tables and charts from the survey are based on the number of respondents who answered that particular survey question.

³² The qualitative survey responses suggest that many respondents believed that other forms of racial discrimination they experienced outside the context of safety and security, such as being treated unfairly in employment, was "racial profiling." As such, the answers to the questions in this section may apply to survey respondents' perceptions and experiences of other racial forms of discrimination as well as racial profiling.

³³ Four out of the five Jewish respondents (80%) who answered this question also believed they were racially profiled because of their religion. We included survey respondents who identified as not having a creed as a group in this comparison.

³⁴ Ontario Federation of Indigenous Friendship Centres, *Submission to the Ontario Human Rights Commission's Racial Profiling Policy Review* (Toronto: Ontario Federation of Indigenous Friendship Centres, 2016) at 14.

³⁵ See for example, Wesley Crichlow, "Human Rights, Intersectionality and Black LGBTQ Institutional Invisibility" (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016).

³⁶ Fathima Cader & Brittany Andrew-Amofah, "Why Do Discussions About Carding Ignore the Experiences of Women and Trans People?" *NOW* (28 November 2016) online: NOWnowtoronto.com/news/carding-racial-profiling-women-trans-people/ (retrieved January 6, 2017).

³⁷ See, for example, Tammy C. Landau, "Contexts and Consequences of Racial Profiling on Women: Results from a Community Sample" (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016) 13:3, *Canadian Diversity* a Publication of the Association for Canadian Studies [forthcoming in 2017]; Andrea S. Anderson, "Seeing Gender Differently in the Racial Profiling" (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016) 13:3, *Canadian Diversity* a Publication of the Association for Canadian Studies [forthcoming in 2017].

³⁸ Andrea S. Anderson, *ibid.*

³⁹ Scot Wortley, "A Double-Edged Sword: Carding, Public Safety and the Impact of Racialized Police Practices" (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016) [Policy Dialogue Paper].

⁴⁰ Responses that named both private security and private businesses/retail were removed from this calculation to avoid double-counting.

⁴¹ These results cannot be seen to represent the general population. More women (64.8% of the total number of respondents) answered this question than men.

⁴² United Nations Human Rights Office of the High Commissioner, News Release, "Canada: UN Expert Panel Warns of Systemic Anti-Black Racism in the Criminal Justice System" (21 October 2016)

online: United Nations Human Rights Office of the High Commissioner
www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20736&LangID=E
 (retrieved November 17, 2016).

⁴³ *Nassiah*, *supra* note 6 at para 113; *Peart*, *supra* note 1 at para 94.

⁴⁴ *Nassiah*, *supra* note 6 at para 134.

⁴⁵ *R. v. Brown*, [2003] O.J. No. 1251 (C.A.) [*Brown*]; *Johnson*, *supra* note 16.

⁴⁶ *Nassiah*, *supra* note 6 at paras 124 and 166; *McKay*, *supra* note 16 at paras 143-149 and 159.

⁴⁷ Ontario Human Rights Commission, *DNA Sampling Submission*, *supra* note 10.

⁴⁸ *McKay*, *supra* note 16 at paras 150-153.

⁴⁹ *Maynard*, *supra* note 6, at paras 177-190. There are strong concerns that police are more likely to use force in their interactions with African Canadians and Indigenous peoples. For example, the Commission on Systemic Racism in the Ontario Criminal Justice System, *supra* note 19, found that Black Ontarians felt that they were "disproportionately vulnerable to police violence" (at 377) and that racialized people are disproportionately likely to be killed by the police. See also Urban Alliance on Race Relations, *Saving Lives: Alternatives to the Use of Lethal Force By Police – Report of a Conference Held in Toronto* (Toronto, Urban Alliance on Race Relations, 2002) online: Urban Alliance on Race Relations urbanalliance.ca/publications/reports/ (retrieved January 4, 2017).

⁵⁰ Scot Wortley, Policy Dialogue Paper, *supra* note 39; Scot Wortley & Akwasi Owusu-Bampanh, "The Usual Suspects: Racial Profiling and Perceptions of Injustice in Canada" (2011a) 21:4 Policing & Society 395; Robin Fitzgerald & Peter Carrington, "Disproportionate Minority Contact in Canada: Police and Visible Minority Youth" (2011) 53:4 Can J of Criminology and Criminal Justice 449; Scot Wortley & Julian Tanner, "Inflammatory Rhetoric or Baseless Accusations? A Response to Gabor's Critique of Racial Profiling Research in Canada" (2005) 47 Can J of Criminology and Criminal Justice 581; Steve Hayle, Scot Wortley & Julian Tanner, "Race, Street Life and Policing: Implications for Racial Profiling" (2016) 58:3 Can J of Criminology and Criminal Justice 322.

⁵¹ The Commission on Systemic Racism in the Ontario Criminal Justice System, *supra* note 19; Scot Wortley & Lysandra Marshall, *The Kingston Police Stop Pilot Project: Final Results* (Kingston, ON: Kingston Police Services Board, 2005); Lorne Foster, Les Jacobs & Bobby Siu, *Race Data and Traffic Stops in Ottawa, 2013-2015: A Report on Ottawa and the Police Districts* (2016) online: Ottawa Police Service www.ottawapolice.ca/en/news-and-community/Traffic-Stop-Race-Data-Collection-ProjectTSRDPC.asp (retrieved November 7, 2016).

⁵² See Kelly Bennett, "Hamilton Police Disproportionately Stop and Question Black People" *CBC News* (23 July 2015) online: CBC News www.cbc.ca/news/canada/hamilton/news/hamilton-police-disproportionately-stop-and-question-black-people-1.3165182 (retrieved November 10, 2016); Jackie Sharkey, "Carding: Who Gets Stopped for Street Checks in Waterloo Region" *CBC News* (9 April 2016) online: CBC News www.cbc.ca/news/canada/kitchener-waterloo/carding-street-checks-waterloo-region-1.3527657 (retrieved November 10, 2016); San Grewal, "Blacks Three Times More Likely to be Carded by Peel Police Than Whites" *Toronto Star* (24 September 2015) online: thestar.com www.thestar.com/news/gta/2015/09/24/blacks-three-times-more-likely-to-be-carded-by-peel-police-than-whites.html (retrieved November 10, 2016); Jim Rankin, "Race Matters: Blacks Documented by Police at High Rate" *Toronto Star* (6 February 2010) online: thestar.com www.thestar.com/news/crime/raceandcrime/2010/02/06/race_matters_blacks_documented_by_police_at_high_rate.html (retrieved November 10, 2016); Jim Rankin & Patty Winsa, "Known to Police: Toronto Police Stop and Document Black and Brown People Far More Than Whites" *Toronto Star* (9 March 2012) online: thestar.com www.thestar.com/news/insight/2012/03/09/known_to_police_toronto_police_stop_and_document_black_and_brown_people_far_more_than_whites.html (retrieved November 15, 2016); Jennifer

O'Brien, "Carding Stats Show Racial Bias on Police Force, Critics Say" *London Free Press* (14 October 2015) online: [lfpres www.lfpres.com/2015/10/14/carding-stats-show-racial-bias-on-police-force-critics-say](http://lfpres.com/2015/10/14/carding-stats-show-racial-bias-on-police-force-critics-say) (retrieved November 10, 2016).

⁵³ Jim Rankin et al, "Singled Out" *Toronto Star* (19 October 2002) online: thestar.com www.thestar.com/news/gta/known_topolice/singled-out.html (retrieved November 10, 2016).

⁵⁴ For example, see Clayton Mosher et al, "The Importance of Context in Understanding Biased Policing: State Patrol Traffic Citations in Washington State" (2008) 9:1 *Police Practice & Research* 43; Greg Ridgeway, *Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices* (Santa Monica, CA: RAND Corporation, 2007); Ronald Weitzer & Steven Tuch, *Race and Policing in America: Conflict and Reform* (New York: Cambridge University Press, 2006); B. Williams & M. Stahl, "An Analysis of Police Traffic Stops and Searches in Kentucky: A Mixed Methods Approach Offering Heuristic and Practical Implications" (2008) 41:3 *Police Sciences* 221; See also James Riley, Cassidy Davnet & Jane Becker, *Statistics on Race and the Criminal Justice System* (London, England: Ministry of Justice, 2009) at 26-70.

⁵⁵ Ron Melchers, *Inequality Before the Law: The Canadian Experience of "Racial Profiling"* (Ottawa: Royal Canadian Mounted Police, 2006) online: Government of Canada publications.gc.ca/site/archivee-archived.html?url=http://publications.gc.ca/collections/collection_2013/grc-rcmp/PS64-31-2006-eng.pdf (retrieved February 13, 2017); Edward B. Harvey, *An Independent Review of the Toronto Star Analysis of Criminal Information Processing system (CIPS) Data Provided by the Toronto Police Services (TPS): A Summary Report*, (Toronto: Toronto Police Service, 2003) online: Toronto Police Service www.torontopolice.on.ca/ (retrieved February 22, 2017); Edward B. Harvey, & Richard Liu, *An Independent Review of the Toronto Star Analysis of Criminal Information Processing system (CIPS) Data Provided by the Toronto Police Services (TPS)* (Toronto: Toronto Police Service, 2003), online: Toronto Police Service www.torontopolice.on.ca/ (retrieved February 22, 2017); Alan D. Gold & Edward B. Harvey, *Executive Summary of Presentation on Behalf of the Toronto Police Service* (Toronto: Toronto Police Service, 2003) online: Toronto Police Service www.torontopolice.on.ca/ (retrieved February 22, 2017).

⁵⁶ *Brown*, *supra* note 45 at para 44; *Phipps*, *supra* note 6, at para 34; *McKay*, *supra* note 16 at para 125; *Pieters*, *supra* note 6 at para 72; *Peart*, *supra* note 1 at para 95.

⁵⁷ Ontario Association of Chiefs of Police, News Release, "Police Leaders Committed to Fighting Pernicious Influence of Racial Profiling" (21 June 2010) online: CNW www.newswire.ca/news-releases/police-leaders-committed-to-fighting-pernicious-influence-of-racialprofiling-544266562.html (retrieved February 23, 2017).

⁵⁸ This training has included training on racial profiling to new recruits. Individuals have also received racial profiling training from the OPC in collaboration with the OHRC.

⁵⁹ For example, Ottawa Police Service, *Racial Profiling Policy*, No. 5.39, Approved 27 June 2011, online: Ottawa Police Service www.ottawapolice.ca/en/news-and-community/FAQsTSRDCP.asp#policy (retrieved November 15, 2016).

⁶⁰ Both the Ottawa Police Service and the Kingston Police have initiated race-based data collection projects. See Footnote 6 and Scot Wortley & Lysandra Marshall, *supra* note 51.

⁶¹ See the OHRC Human Rights Charter projects described in Footnote 7.

⁶² For example, as part of settling a human rights complaint, the Ottawa Police Service (OPS) collected race-based data on traffic stops from 2013-2015. An analysis of the data showed that Black and Middle Eastern people experienced disproportionately high incidences of traffic stops. Despite these findings, the OPS suggested that this was not evidence of racial profiling. Jeff Lagerquist, "Ottawa Police Pull Over Higher Rate of Middle Eastern and Black Drivers: Report" *CTVNews* (24 October 2016) online: CTVNews.ca www.ctvnews.ca/canada/ottawa-police-pull-over-higher-rate-

[of-middle-eastern-and-black-drivers-report-1.3129761](#) (retrieved January 17, 2017). Also see Lorne Foster, Les Jacobs & Bobby Siu, *supra* note 51 and Shaamini Yogaretnam, “Data Shows Middle Eastern and Black Drivers More Likely to be Pulled Over by Ottawa Police” *Ottawa Citizen* (24 October 2016) online: *Ottawa Citizen* [ottawacitizen.com/news/local-news/data-show-middle-eastern-and-black-drivers-more-likely-to-be-pulled-over-by-ottawa-police](#) (retrieved January 17, 2017). In the OHRC’s response to this report, we identified that these disproportionalities are consistent with racial profiling. See also *OHRC Response to OPS Data Collection Project*, *supra* note 6.

⁶³ Yunliang Meng, “Racially Biased Policing and Neighbourhood Characteristics: A Case Study in Toronto, Canada” (2014) 665 *Cybergeo: European Journal of Geography* online: *Cybergeo* [cybergeo.revues.org/26165](#) (retrieved November 4, 2016).

⁶⁴ Donald Tomaskovic-Devey, Marcinda Mason & Matthew Zingraff, “Looking for the Driving While Black Phenomena: Conceptualizing Racial Bias Processes and their Associated Distributions” (2004) 7:1 *Police Q* 3. See, for example, Interview of Chief Jennifer Evans by Matt Galloway (6 October 2016) on *Metro Morning, CBC Radio, Toronto* online: *CBC News Toronto* [www.cbc.ca/news/canada/toronto/programs/metromorning/peel-police-chief-jennifer-evans-says-she-won-t-resign-amid-complaints-1.3794146](#) (retrieved November 7, 2016). The Chief of Peel Regional Police identified that 76% of street checks happened because people were not in the area where they lived, and they could not provide a credible reason to police as to why. She cited this as a reason for police to document them.

⁶⁵ For more information about “out-of-place” policing as a potential systemic racial profiling practice, see *OHRC Response to OPS Data Collection Project*, *supra* note 6.

⁶⁶ A pretext stop is an investigation not for its stated purpose, and can apply to traffic and pedestrian stops. See an example of a pretext stop in *Ottawa Police Service*, *supra* note 59 at 2-3. See also David M. Tanovich, “Using the Charter to Stop Racial Profiling: The Development of an Equality-Based Conception of Arbitrary Detention” (2002) 40:2 *Osgoode Hall LJ* 145.

⁶⁷ The courts have ruled that passengers cannot be questioned or forced to show identification as part of a routine traffic stop. *R. v. Pinto*, 2003 CanLII 11404 (ON SC) at para 55, *R. v. Taylor*, 2013 ONCJ 814 (CanLII).

⁶⁸ Lorne Foster, Les Jacobs & Bobby Siu, *supra* note 51.

⁶⁹ Lorne Foster, Les Jacobs & Bobby Siu, *supra* note 51 at 3-4.

⁷⁰ *OHRC Response to OPS Data Collection Project*, *supra* note 6.

⁷¹ *Carding Regulation Joint Response*, *supra* note 11.

⁷² O Reg 58/16, which took effect January 1, 2017, places some restrictions on data retention. However, the OHRC and others have expressed concerns that the Regulation “allows for the indefinite retention of individuals’ personal information in police records,” which violates people’s privacy rights under section 8 of the *Canadian Charter of Rights and Freedoms*. See *Carding Regulation Joint Response*, *supra* note 12, at 11.

⁷³ Jim Rankin et al, “As Criticism Piles Up, So Do the Police Cards” *Toronto Star* (27 September 2013) online: *thestar.com* [www.thestar.com/news/gta/known_topolice2013/2013/09/27/as_criticism_piles_up_so_do_the_police_cards.html](#) (retrieved February 8, 2017). Reviews of police contact cards were also produced in Hamilton, London, Waterloo and other cities. See Footnote 52.

⁷⁴ Charlene Tardiel, Association of Black Law Enforcers, “Racial Profiling: The Unintended Outcome of Street Checks” (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016) at 1, 13:3, *Canadian Diversity* a Publication of the Association for Canadian Studies [forthcoming in 2017]. See also: San Grewal, “Peel Chief Refuses to Suspend Carding,” *Toronto Star* (25 September 2015) online: *thestar.com*

www.thestar.com/news/gta/2015/09/25/peel-chief-refuses-to-suspend-carding.html (retrieved February 23, 2017).

⁷⁵ Noa Medelsohn-Aviv, “The Myth of Voluntariness: Why ‘Just Walking Away’ From a Police Stop is Not an Option” (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February 2016).

⁷⁶ Charlene Tardiel, *supra* note 74, at 2.

⁷⁷ Charlene Tardiel, *supra* note 74; Tim Rees, “What are Police Street Checks Good For?” (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016); Scot Wortley, Policy Dialogue Paper, *supra* note 39.

⁷⁸ O Reg 58/16

⁷⁹ The OHRC has raised concerns about the Regulation. Because it does not apply when police are investigating a specific offense, it does not protect people from overly broad investigations or pretext investigations. These are situations where racial profiling commonly occurs in policing. See Letter from Chief Commissioner Renu Mandhane to Minister David Orazietti (10 August 2016), online: Ontario Human Rights Commission www.ohrc.on.ca/en/news_centre/letter-minister-orazietti-regarding-street-checks-regulation; See also Renu Mandhane, “Police Must Address Racial Profiling Head On To Rebuild Trust” (30 March 2016) *HuffPost* (blog), online: Huffington Post www.huffingtonpost.ca/renu-mandhane/police-racial-profiling_b_9575872.html (retrieved January 18, 2017).

⁸⁰ No One Is Illegal is an organization that fights for migrants’ rights to dignity and respect.

⁸¹ Ontario Human Rights Commission, *DNA Sampling Submission*, *supra* note 10. See also Office of the Independent Police Review Director, *Casting the Net: A Review of Ontario Provincial Police Practices for DNA Canvasses*, Systemic Review, by Gerry McNeilly, Independent Police Review Director (Toronto: Office of the Independent Police Review Director, 2016), online: Office of the Independent Police Review Director www.oiprd.on.ca/EN/Investigations/Pages/Systemic-Reviews.aspx (retrieved February 3, 2017). The OIPRD concluded that “OPP officers were not motivated by racial prejudice or guided by stereotypical assumptions about persons of colour or migrant workers” (at 88). The OIPRD did not conclude that the OPP had engaged in racial profiling or racial discrimination. In its *Police Oversight Bodies Review Submission*, *supra* note 10, the OHRC raised serious concerns with the OIPRD’s approach in assessing whether the OPP’s actions involved discrimination and how discrimination was addressed in the report. While the report adopts the OHRC’s definition of racial profiling and accurately sets out several principles of human rights and racial discrimination analysis, in the OHRC’s view, properly applying the definition and principles to the OIPRD’s factual findings would have resulted in a conclusion that the migrant workers did experience racial discrimination in violation of the *Code* (at Footnote 71).

⁸² Jens Porup, “Racial Profiling in the Information Age” 13:3 *Canadian Diversity* a Publication of the Association for Canadian Studies [forthcoming in 2017]. See also the Propublica investigation into predictive policing in the US, especially its impact on sentencing offenders. Julia Angwin et al, “Machine Bias,” *Propublica* (23 May 2016), online: www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing, online: Propublica www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing (retrieved February 3, 2017).

⁸³ For more on the range of predictive policing and law enforcement practices in the U.S., including the use of algorithms, see Walter L. Perry et al, *Predictive Policing: The Role of Crime Forecasting in Law Enforcement Operations* (Santa Monica, CA: Rand Corporation, 2013) online: RAND Corporation www.rand.org/pubs/research_reports/RR233.html (retrieved February 24, 2017) and Bernard E.

Harcourt, *Against Prediction: Profiling, Policing, and Punishing in an Actuarial Age* (Chicago: University of Chicago Press, 2007).

⁸⁴ The Leadership Conference on Civil and Human Rights, Press Release, "Civil Rights and Tech Advocates Sound Alarm on Racial Bias in 'Predictive Policing'" (31 August 2016), online: The Leadership Conference www.civilrights.org/press/2016/predictive-policing-statement.html?referrer=https://www.google.fr/?referrer=http://www.booksandideas.net/Who-Benefits-from-the-Crime.html?referrer=http://www.cgai.ca/opeddecember42016 (retrieved February 21, 2017).

⁸⁵ In a news article discussing predictive policing, the author refers to a predictive policing pilot project in Vancouver. Alex Ballingal, "Surveillance and Predictive Policing: Welcome to the 'Safety State' of Tomorrow" *Toronto Star* (10 May 2016) online: thestar.com www.thestar.com/news/gta/2016/05/10/surveillance-and-predictive-policing-welcome-to-the-safety-state-of-tomorrow.html (retrieved February 24, 2017). The article quotes Brandon University Associate professor Christopher Schneider who raises these questions: "Are we going to then be criminalizing certain people, certain segments of the population? Who are the police going to be looking at?"

⁸⁶ Ontario Human Rights Commission, *Strategy for a Safer Ontario Submission*, *supra* note 10.

⁸⁷ Jonathan Rudin, *Aboriginal Peoples and the Criminal Justice System* (Toronto: Ipperwash Inquiry, 2005) online: The Ipperwash Inquiry www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy-part/research/index.html (retrieved December 21, 2016).

⁸⁸ The OIPRD announced in September 2016 that it would be doing a review of the Thunder Bay Police Service on the way it responded to the deaths of Indigenous peoples. See Jody Porter, "Thunder Bay, Ont., Police Face 'Systemic Review' of Indigenous Death Investigations" *CBC News – Thunder Bay* (23 September 2016), online: CBC News www.cbc.ca/news/canada/thunder-bay/thunder-bay-police-review-racism-1.3775023 (retrieved February 3, 2017). The issue of inadequate police responses to the deaths, disappearances and harm to Indigenous women and girls has been raised in regards to police investigations in British Columbia: "Pickton Inquiry Slams 'Blatant Failures' by Police," *CBC News – British Columbia* (17 December 2012), online: CBC News www.cbc.ca/news/canada/british-columbia/pickton-inquiry-slams-blatant-failures-by-police-1.1191108 (retrieved February 3, 2017); Petti Fong, "Robert Pickton: Missing Women Inquiry Concludes Bias Against Victims Led to Police Failures," *The Star* (17 December 2012), online: thestar.com www.thestar.com/news/canada/2012/12/17/robert_pickton_missing_women_inquiry_concludes_bias_against_victims_led_to_police_failures.html (retrieved February 3, 2017); Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia* (U.S.: Human Rights Watch, 2013); Vancouver Police Department, *The Tragedy of Missing and Murdered Aboriginal Women in Canada* (Vancouver: Vancouver Police Department, 2011). More recently, advocates called for the National Inquiry into Missing and Murdered Indigenous Women and Girls to include in its mandate a review of policing policies and practices because of concerns about police's failure to adequately protect and respond to violence against Indigenous women and girls. See Amnesty International, Press Release, "Statement on Terms of Reference for the National Inquiry into Missing and Murdered Indigenous Women and Girls in Canada" (20 July 2016) online: Amnesty International www.amnesty.ca/news/statement-terms-reference-national-inquiry-missing-and-murdered-indigenous-women-and-girls (retrieved February 23, 2017). See also Rec. #8 in the OHRC's Strategy for a Safer Ontario Submission, *supra* note 10.

⁸⁹ Jonathan Rudin, *supra* note 87 at 37.

⁹⁰ Ontario Federation of Indigenous Friendship Centres, *supra* note 34.

⁹¹ See for example, the Commission on Systemic Racism in the Ontario Criminal Justice System, *supra* note 19; Report of the Independent Review Conducted by The Honourable Frank Iacobucci, *First Nations Representation on Ontario Juries* (2013) online: Government of Ontario, Ministry of the Attorney General www.attorneygeneral.jus.gov.on.ca/english/juries_implementation_committee.php (retrieved February 28); CBC News "Aboriginal Corrections Report Finds 'Systemic Discrimination'" *CBC News* (7 March 2013) retrieved February 22, 2017 online: CBC News www.cbc.ca/news/politics/aboriginal-corrections-report-finds-systemic-discrimination-1.1338498 (retrieved February 28, 2017).

⁹² *R. v. R.D.S.*, [1997] 3 S.C.R. 484 at para 46; *R. v. Spence*, [2005] 3 S.C.R. 458 at para 32; *R. v. Williams* [1998] 1 S.C.R. 1128 at para 58; *R. v. Ipeelee*, [2012] 1 S.C.R. 433 at para 60.

⁹³ Commission on Systemic Racism in the Ontario Criminal Justice System, *supra* note 19 at 125.

⁹⁴ Gail Kellough & Scot Wortley, "Remand for Plea: Bail Decisions and Plea Bargaining as Commensurate Decisions" (2002) 42 *British J of Criminology* 186.

⁹⁵ *Ibid* at 193. The authors provide a description of "police moral assessments" for the purpose of their analysis. See also Akwasi Owusu-Bempah & Scot Wortley, "Race, Crime and Criminal Justice in Canada" in Sandra Bucerius & Michael Tonry eds, *The Oxford Handbook of Ethnicity, Crime, and Immigration* (New York: Oxford University Press, 2013) online: [www.academia.edu/5110524/Race Crime and Criminal Justice in Canada](http://www.academia.edu/5110524/Race_Crime_and_Criminal_Justice_in_Canada) (retrieved February 3, 2017) at 15.

⁹⁶ Gail Kellough & Scot Wortley, *supra* note 94.

⁹⁷ *Ibid*.

⁹⁸ *Ibid*. Akwasi Owusu-Bempah and Scot Wortley, when discussing this study, note that "This is evidence that police discretion extends from the streets and into the courtroom – at least at the pre-trial level." *Supra* note 95 at 15.

⁹⁹ Gail Kellough & Scot Wortley, 2004, as cited in Akwasi Owusu-Bempah & Scot Wortley, *supra* note 91 at 16.

¹⁰⁰ *Ibid*.

¹⁰¹ *Ibid*.

¹⁰² For further challenges facing Indigenous youth in the Ontario criminal justice system and recommendations for change, see Feathers of Hope, *Justice and Juries: A First Nations Youth Action Plan for Justice* (Toronto: Office of the Provincial Advocate for Children and Youth, 2016) online: Office of the Provincial Advocate for Children and Youth provincialadvocate.on.ca/main/en/about/aboutus.cfm (retrieved February 21, 2017).

¹⁰³ Canadian Civil Liberties Association and Education Trust (CCLA), *Set up to Fail: Bail and the Revolving Door of Pre-trial Detention*, by Abby Deshman & Nicole Myers (Toronto: Canadian Civil Liberties Association, 2014), online: CCLA ccla.org/canadian-civil-liberties-association-releases-report/ (retrieved February 3, 2017) at 75.

¹⁰⁴ The first ground of refusing bail is likelihood to attend court. Jonathan Rudin, *supra* note 87 at 53.

¹⁰⁵ Given that a greater percentage of Black men were unemployed than White men, and unemployment influenced sentencing, the Commission suggests that this social factor may have indirectly contributed to harsher sentences for Black men, creating a discriminatory effect. Commission on Systemic Racism in the Ontario Criminal Justice System, *supra* note 19 at 266, 270, 277, 281.

¹⁰⁶ Toni Williams, "Sentencing Black Offenders in the Ontario Criminal Justice System" in Julian Roberts & David Cole, eds, *Making Sense of Sentencing* (Toronto: University of Toronto Press, 1999) at 212, as cited in Akwasi Owusu-Bempah & Scot Wortley, *supra* note 95 at 16.

¹⁰⁷ Correctional Services of Canada, *Annual Report of the Office of the Correctional Investigator, 2012-2013*, Correctional Investigator, Howard Sapers (Ottawa: Correctional Service Canada, 2013) online: Office of the Correctional Investigator www.oci-bec.gc.ca/cnt/rpt/index-eng.aspx retrieved (retrieved February 3, 2017) at 3.

¹⁰⁸ Section 718.2(e) of the *Criminal Code* states: "A court that imposes a sentence shall also take into consideration the following principles: ... (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders." *Criminal Code*, RSC 1985, c C-46, s 718.2(e)

¹⁰⁹ *R. v. Gladue*, [1999] 1 SCR 688, 1999 CanLII 679

¹¹⁰ Julie Reitano, "Adult Correctional Statistics in Canada, 2014/2015" (2016) 36:1 *Juristat*. Statistics Canada Catalogue no. 85-002-X, online: Statistics Canada www.statcan.gc.ca/pub/85-002-x/2016001/article/14318-eng.htm (retrieved February 3, 2017).

¹¹¹ Jonathan Rudin, *supra* note 87 at 60.

¹¹² Kelly Hannah-Moffat, "Actuarial Sentencing: An 'Unsettled Proposition'" (Paper delivered at the University at Albany Symposium on Sentencing, September 2010) online: www.albany.edu/scj/documents/Hannah-Moffatt_RiskAssessment_000.pdf (retrieved February 14, 2017).

¹¹³ Kelly Hannah-Moffat & Paula Maurutto, "Re-Contextualizing Pre-Sentence Reports Risk and Race" (2010) 12:3 *Punishment & Society* 262 at 276, 278.

¹¹⁴ *Ibid* at 274-275.

¹¹⁵ The data was analyzed by Akwasi Owusu-Bempah. His findings are explained and discussed in Jim Rankin, Patty Winsa & Hidy Ng, "Unequal Justice: Aboriginal and Black Inmates Disproportionately Fill Ontario Jails" *Toronto Star* (1 March 2013) online: thestar.com www.thestar.com/news/insight/2013/03/01/unequal_justice_aboriginal_and_black_inmates_disproportionately_fill_ontario_jails.html (retrieved on December 1, 2016)

¹¹⁶ *Ibid*.

¹¹⁷ Patty Winsa & Jim Rankin, "Unequal Justice: Aboriginals Caught in the Justice System Trap" *Toronto Star* (3 March 2013) online: thestar.com www.thestar.com/news/insight/2013/03/03/unequal_justice_aboriginals_caught_in_the_justice_system_trap.html (retrieved February 16, 2017).

¹¹⁸ Ministry of Community Safety and Correctional Services, *Inmate Information Guide for Adult Institutions* (Ministry of Community Safety and Correctional Services, 2015) online: Government of Ontario, Ministry of Community Safety and Correctional Services www.mcscs.jus.gov.on.ca/english/corr_serv/PoliciesandGuidelines/CS_Inmate_guide.html#P413_60907 (retrieved February 28, 2017).

¹¹⁹ Commission on Systemic Racism in the Ontario Criminal Justice System, *supra* note 19 at 311-313.

¹²⁰ Government of Canada, The Correctional Investigator Canada, *Annual Report of the Office of the Correctional Investigator, 2012-2013*, (Ottawa: Correctional Service Canada, 2013) at 10.

¹²¹ Government of Canada, The Correctional Investigator Canada, *A Case Study of Diversity in Corrections: The Black Experience Inmate Experience in Federal Penitentiaries (Final Report)* (Ottawa: Correctional Service Canada, 2013), online: www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20131126-eng.pdf at 17.

¹²² Government of Canada, Office of the Correctional Investigator, *Backgrounder: Aboriginal Offenders – A Critical Situation* (Ottawa, Office of the Correctional Investigator, 2013) online: www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx (retrieved February 21, 2017).

¹²³ Ontario Federation of Indigenous Friendship Centres, *supra* note 34.

¹²⁴ "The science supporting risk tools is contested and insufficiently advanced to claim that these tools do not replicate or produce forms of systemic discrimination..." Kelly Hannah-Moffat, *supra*

note 112 at 18; Holly A. Wilson & Leticia Gutierrez, "Does One Size Fit All?: A Meta-Analysis Examining the Predictive Ability of the Level of Service Inventory (LSI) With Aboriginal Offenders" (2014) 41:2 Criminal Justice & Behaviour 196; Kelly Hannah-Moffat & Paula Maurutto *supra* note 113; Kelly Hannah-Moffat & Paula Maurutto, "Understanding Risk in the Context of the Youth Criminal Justice Act" (2007) Can J Criminology & Criminal Justice 465. See also Carmen K. Cheung et al, "Rights Violations Associated with Canada's Treatment of Federally-Sentenced Indigenous Women: Submission to the United Nations Special Rapporteur on the Rights of Indigenous Peoples in Advance of his Official Visit to Canada (October 12 to 20, 2013)" online: ihrp.law.utoronto.ca/utfl_file/count/HOME/Joint%20Submission%20to%20the%20UNSR%20Indigenous%20Rights%20Sept%202013.pdf (retrieved February 16, 2017).

¹²⁵ Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women* (Ottawa: Canadian Human Rights Commission, 2003) online: Canadian Human Rights Commission www.chrc-ccdp.ca/eng/content/protecting-their-rights-systemic-review-human-rights-correctional-services-federally (retrieved February 15, 2017) at 27.

¹²⁶ Mark E. Olver, Keira C. Stockdale & J. Stephen Wormith, "Thirty Years of Research on the Level of Service Scales: A Meta-Analytic Examination of Predictive Accuracy and Sources of Variability" (2014) 26:1 Psychological Assessment 156. In another 2014 meta-analysis, the authors found that a common risk assessment tool was useful in predicting recidivism with Aboriginal offenders; however, with a sample from Ontario, it was less accurate than with non-Aboriginal offenders. Holly A. Wilson & Leticia Gutierrez, *supra* note 124.

¹²⁷ Kelly Hannah-Moffat, *supra* note 112 at 14,15.

¹²⁸ The reliability of psychological tests to assess risk of recidivism of Aboriginal prisoners was at the centre of a recent court challenge. In *Canada v. Ewert*, 2016 FCA 203 (CanLII), the Federal Court of Appeal overturned a Federal Court decision and ruled that there was not enough evidence to show that Correctional Service Canada's tests lead to "false results and conclusions when administered to Aboriginal persons" (at para 34). The Federal Court of Appeal ruled that the claimant had not established that the tools were culturally biased and determined that he had failed to establish that his rights under the *Canadian Charter and Rights and Freedoms* were violated.

¹²⁹ The Correctional Investigator Canada, *supra* note 121.

¹³⁰ The Correctional Investigator Canada, *supra* note 120 at 11.

¹³¹ The Correctional Investigator Canada, *Annual Report of the Office of the Correctional Investigator, 2015-2016* (Ottawa: Correctional Service Canada, 2016) at 43.

¹³² *Ibid* at 30, 31.

¹³³ *Ministry of Correctional Services Act*, RRO 1990, Reg 778 at ss 32, 34

¹³⁴ *Ibid* at s 32 (2).

¹³⁵ Commission on Systemic Racism in the Ontario Criminal Justice System, *supra* note 19.

¹³⁶ *Ibid* at 313.

¹³⁷ The Correctional Investigator Canada, *supra* note 120 at 10.

¹³⁸ *Ministry of Correctional Services Act*, *supra* note 133 at s 34 (1)

¹³⁹ The Correctional Investigator Canada, *Administrative Segregation in Federal Corrections: 10 Year Trends*, (Ottawa: Correctional Service Canada, 2015) online: Office of the Correctional Investigator www.oci-bec.gc.ca/cnt/rpt/index-eng.aspx (retrieved on February 3, 2017).

¹⁴⁰ *Ibid*.

¹⁴¹ Office of the Correctional Investigator, News Release, "Office of the Correctional Investigator Releases Administrative Segregation in Federal Corrections: 10 Year Trends – Federal Corrections

Overuses Segregation to Manage Inmates” (28 May 2015), online: Office of the Correctional Investigator www.oci-bec.gc.ca/cnt/comm/press/press20150528-eng.aspx (retrieved February 17, 2017).

¹⁴² Of our survey results, only 16 respondents reported being racially profiled in the child welfare sector. All were female and few gave examples of their experiences. However, several survey respondents wrote about perceptions of racial profiling in the child welfare sector as it affected people they knew or had worked with in their roles as social service, health care or child welfare workers.

¹⁴³ Children were placed mostly with White families. This removal was done largely without the consent of Indigenous parents or communities. This led to extremely high numbers of Indigenous children in care. For more information, see: The University of British Columbia, indigenousfoundations.art.ubc.ca, *Sixties Scoop* online: The University of British Columbia indigenousfoundations.arts.ubc.ca/home/government-policy/sixties-scoop.html (retrieved October 24, 2016).

¹⁴⁴ For further research on this phenomenon, see: Melissa Jonson-Reid & Richard P. Barth, “From Placement to Prison: The Path to Adolescent Incarceration from Child Welfare Supervised Foster or Group Care” (2000) 22:7 *Children & Youth Services Rev* 493.

¹⁴⁵ Children’s Aid Society of Toronto, *Addressing Disproportionality, Disparity and Discrimination in Child Welfare: Data on Services Provided to Black African Caribbean Canadian Families and Children* (Toronto: Children’s Aid Society of Toronto, 2015) online: Children’s Aid Society of Toronto www.torontocas.ca/?t=black-african-caribbean-canadian-committee at 10 (retrieved January 16, 2017).

¹⁴⁶ Annie Turner, “Living Arrangements of Aboriginal Children Aged 14 and Under” (2016) *Insights on Canadian Society*. Statistics Canada Catalogue no. 75-006-X, online: Statistics Canada www.statcan.gc.ca/pub/75-006-x/2016001/article/14547-eng.htm (retrieved February 24, 2017).

¹⁴⁷ Chantal Lavergne et al, “Visible Minority, Aboriginal and Caucasians Children Investigated by Canadian Child Protective Services” (2008) 87:2 *Child Welfare* 59.

¹⁴⁸ Studies that have looked at racial bias in the child welfare system have yielded mixed results. See Leroy H. Pelton, “The Continuing Role of Material Factors in Child Maltreatment and Placement,” (2015) 41 *Child Abuse & Neglect* 30. Lavergne et al, *ibid*, examined the levels of overrepresentation of certain ethnic groups in reports to Canadian child protective services. The researchers said that racial differences in the results may reflect a certain degree of biased reporting and decision-making when substantiating reports of abuse. See also Ontario Association of Children’s Aid Societies (OACAS), *One Vision One Voice: Changing the Ontario Child Welfare System to Better Serve African Canadians, Practice Framework Part 1: Research Report* (Toronto: OACAS, 2016) online: OACAS www.oacas.org/ (retrieved October 25, 2016) at 26. But see Nico Trocmé, Della Knoke & Cindy Blackstock, “Pathways to the Overrepresentation of Aboriginal Children in Canada’s Child Welfare System” (2004) 78:4 *Social Service Rev* 577. Their study looked at the differences between Canadian child welfare services given to Aboriginal children compared to Caucasian children. The study found that child welfare reports involving Aboriginal children were more likely classified as suspected or substantiated, and that Aboriginal children were twice as likely as Caucasian children to be placed in foster care. However, the authors suggest that “worker decisions are not as strongly influenced by ethnoracial status as rates of overrepresentation may indicate. This overrepresentation appears to be related to a combination of factors that reflect the multiple disadvantages experienced by Aboriginal families” (at 594-595). For a summary of research in the area, see also J. Fluke et al, “Research Synthesis on Child Welfare: Disproportionality and Disparities” in *Disparities and Disproportionality in Child Welfare: Analysis of the Research* (New York: Center for the Study of Social Policy, 2011), online: Center for the Study of Social Policy www.cssp.org/publications/child-

[welfare?type=child_welfare_alliance_for_race_equity&title=Child%20Welfare:%20Alliance%20for%20Race%20Equity](#) (retrieved January 16, 2017) at 16-22.

¹⁴⁹ Ontario Association of Children's Aid Societies, *ibid* at 25.

¹⁵⁰ Chronic underfunding of First Nations children and family services has been cited as a factor that has likely increased the number of First Nations children in long-term foster and institutional care. Melissa Brittain & Cindy Blackstock, *First Nations Child Poverty: A Literature Review and Analysis* (First Nations Children's Action Research and Education Service, 2015) online: First Nations Child & Family Caring Society of Canada fncaringsociety.com/publications/first-nations-child-poverty-literature-review-and-analysis-2015 (retrieved October 25, 2016) at 71. See also *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2015 CHRT 14.

¹⁵¹ Nicole Bonnie & Gordon Pon, "Critical Well-Being in Child Welfare: A Journey Towards Creating a New Social Contract for Black Communities" In Sohki Aski Esquao (Jeannine Carrière) & Susan Strega, eds, *Walking this Path Together: Anti-Racist and Anti-Oppressive Child Welfare Practice*, 2nd ed (Winnipeg: Fernwood, 2015). See also Cindy Blackstock, "After the Apology: Why are There So Many First Nations Children Still in Foster Care?: A Summary of the Research on Ethnic Over-Representation and Structural Bias" (2009) 34:1 Children Australia 22.

¹⁵² Nicole Bonnie & Gordon Pon, *ibid*, at 115.

¹⁵³ Melissa Brittain & Cindy Blackstock, *supra* note 150 at 72. In one study, child welfare workers in Minnesota were shown pictures of a Black baby, a White baby or no baby sitting in a messy bedroom. When shown images of the Black baby, they were more likely to say that the situation met the State's definition of child neglect, and was reportable to child welfare authorities. Sheila Ards et al, "Racialized Perceptions and Child Neglect" (2012) 34 Children and Youth Services Rev 1480. In its examination of racial profiling in Quebec, the Québec Commission des droits de la personne et des droits de la jeunesse looked at how "neglect" is defined in its child welfare law, the *Youth Protection Act*. It observed that many of the indicators of neglect reflect indicators of poverty. It identified that "the concentration of poverty among racialized groups increases the risks of neglect, and consequently, the risk of reports [to child welfare authorities]." Québec Commission des droits de la personne et des droits de la jeunesse, *Racial Profiling and Systemic Discrimination of Racialized Youth: Report of the Consultation on Racial Profiling and its Consequences* (Montreal: Gouvernement du Quebec, Ministeres des Communications, 2011) online: Bibliothèque Assemblée Nationale du Quebec www.bibliotheque.assnat.qc.ca/DepotNumerique_v2/Affichage/Notice.aspx?idn=2534 (retrieved February 3, 2017) at 81-82. See also Nico Trocmé, Della Knoke & Cindy Blackstock, *supra* note 148, who found that compared to Caucasian families, Aboriginal families are significantly less likely to have stable housing, are more likely to be receiving social assistance, and are more likely to be investigated by Canadian child welfare services for neglect or emotional maltreatment, among other differences.

¹⁵⁴ See OACAS, *supra* note 148 at 28-31. First Nations children are placed into care at high rates because their families are at greater risk due to systemic factors, such as poverty, poor housing, discrimination, social exclusion and the under-funding of child welfare services. Aboriginal children and families' experiences of poverty are grounded in a history of colonial and assimilationist policies and practices, the effects of which continue today. Melissa Brittain & Cindy Blackstock, *supra* note 150.

¹⁵⁵ A similar concern was raised in a 2011 study. Jennifer Clarke, "The Challenges of Child Welfare Involvement for Afro-Caribbean Families in Toronto" (2011) 33:2 Children & Youth Services Rev 274 at 279-280.

¹⁵⁶ K. Antwi-Boasiako et al, *Ethno-racial Categories and Child Welfare Decisions: Exploring the Relationship with Poverty*, CWRP Information Sheet #178E (Toronto: Canadian Child Welfare Research Portal, 2016); Leroy H. Pelton, *supra* note 148; J. Fluke et al, *supra* note 148.

¹⁵⁷ Melissa Brittain & Cindy Blackstock, *supra* note 150 at 71-73.

¹⁵⁸ In reviewing the research on racial differences in child welfare referrals, researchers suggest that there may be a tendency to subject African American communities to increased surveillance, which can lead to increased referrals to child welfare authorities. J. Fluke et al, *supra* note 148 at 17. For example, one study found that at one U.S. hospital, staff were more likely to report racialized families for suspected abuse than White families, even after controlling for the likelihood of abusive injury. Wendy Lane et al, "Racial Differences in the Evaluation of Pediatric Fractures for Abuse" (2002) 288:13 J Am Medical Assoc 1603.

¹⁵⁹ Some research studies support these concerns; however, others have found no racial differences in decision-making among child welfare authorities. For a review of studies related to racial bias in child welfare decision-making as it affects African American or African Canadian families, see *supra* note 148 at 34-35.

¹⁶⁰ Ontario Federation of Indigenous Friendship Centres, *supra* note 34 at 10.

¹⁶¹ *Ibid.*

¹⁶² Child welfare workers' and agencies' lack of understanding about Indigenous culture and the unique stressors on Indigenous families were also significant factors in the Sixties Scoop. The Royal Commission on Aboriginal Peoples observed that, "An abysmal lack of sensitivity to children and families was revealed. Families approached [child welfare] agencies for help and found that what was described as being in the child's "best interest" resulted in their families being torn asunder and siblings separated. Social workers grappled with cultural patterns far different than their own with no preparation and no opportunities to gain understanding. It was expected that workers would get their training in the field. The agencies complained of a lack of adequate resources, and central directorate staff complained of a lack of imaginative planning for children by agencies...." Canada. Royal Commission on Aboriginal Peoples, *Report on the Royal Commission on Aboriginal Peoples, Volume 3, Gathering Strength* (Ottawa: Minister of Supply and Services Canada, 1996) at 26.

¹⁶³ Gordon Pon et al, "Racial Profiling in Child Welfare: The Need for a Black CAS" (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016)

¹⁶⁴ *Ibid* at 1.

¹⁶⁵ See Letter from Chief Commissioner Renu Mandhane to Children's Aid Societies in Ontario (24 February 2016), online: Ontario Human Rights Commission www.ohrc.on.ca/en/news_centre/children%E2%80%99s-aid-societies-ontario-re-request-disaggregated-data-regarding-children-and-youth-ontario. The preliminary results were released in Renu Mandhane, Speech on the OHRC's work on Child Welfare Matters Delivered at One Vision One Voice Practice Framework Launch, Toronto (29 September 2016) [unpublished]. The OHRC's own report on child welfare is forthcoming and will be posted at www.ohrc.on.ca.

¹⁶⁶ International and interprovincial transportation companies, such as airlines, interprovincial and cross-border bus and train services, are subject to the *Canadian Human Rights Act* and not provincial human rights laws. *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985 at sections 91 and 92. The same is true for airports and the Canada Border Services Agency (CBSA). *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985 at sections 91 and 92.

¹⁶⁷ See, for example, International Civil Liberties Monitoring Group (ICLMG), *Submission of Information by the ICLMG to the Office of the High Commissioner for Human Rights (OHCHR) in Relation*

to the Human Rights Council's Universal Periodic Review (UPR) of Canada to Take Place in May 2013 (2012) online: lib.ohchr.org/HRBodies/UPR/Documents/Session16/CA/ICLMG_UPR_CAN_S16_2013_%20InternationalCivilLibertiesMonitoringGroup%20_E.pdf (retrieved February 21, 2017).

¹⁶⁸ Baljit Nagra & Paula Maurutto, "Crossing Borders and Managing Racialized Identities: Experiences of Security and Surveillance Among Young Canadian Muslims" (2016) 41:2 Can J Sociology.

¹⁶⁹ Uzma Jamil, "Muslim Suspects, Racial Profiling and Securitization" (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016) at 3.

¹⁷⁰ It was sometimes difficult to tell whether survey respondents were raising concerns about Canadian or U.S. border officials, or both.

¹⁷¹ Sehrish Amjad, "The Impact of Racial Profiling on Canadian Muslims" (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016).

¹⁷² *Ibid* at 3.

¹⁷³ *Ibid* at 4.

¹⁷⁴ *Ibid* at 3.

¹⁷⁵ *Ibid* at 5.

¹⁷⁶ J. A. Okonofua, G. M. Walton, & J. L. Eberhardt, "A Vicious Cycle: A Social-Psychological Account of Extreme Racial Disparities in School Discipline" (2016) 11:3 Perspectives on Psychological Science 381 at 384.

¹⁷⁷ This finding was based on the TDSB Student Information System and its censuses from the years 2006, 2007 and 2011-2012. See Toronto District School Board, "Suspension Rates by Students' Demographic and Family Background Characteristics" (2013) 3 *Caring and Safe Schools*, online: TDSB www.tdsb.on.ca/research/research/publications/studentdemographics.aspx (retrieved February 3, 2017).

¹⁷⁸ *B.C. v. Durham Catholic District School Board*, 2014 HRTO 42 (CanLII). In 2017, Ontario's Minister of Education also ordered a review of the York Region School Board to look into allegations of systemic racism, among other issues. At least one parent has alleged incidents of over-scrutiny of his racialized son by teachers. Lauren Pelley, "Allegations of Systemic Racism in York Region School Board Prompt Human Rights Complaint" *CBC News* (2 December 2016) online: www.cbc.ca/news/canada/toronto/allegations-of-systemic-racism-in-york-region-school-board-prompt-human-rights-complaint-1.3878551 (retrieved February 13, 2017); Kristin Rushowy & Noor Javed, "Education Minister Orders Troubleshooters to Probe York School Board" *Toronto Star* (26 January 2017) online: www.thestar.com/news/gta/2017/01/26/education-minister-orders-troubleshooters-to-probe-york-school-board.html (retrieved on February 13, 2017).

¹⁷⁹ A nationwide study in the U.S. found that in 2007, approximately half of Black high school students had been previously suspended, which was a greater percentage than students from any other race/ethnicity. U.S. Department of Education, S. Aud, A. Ramani Kewal & L. Frohlich, *America's Youth: Transitions to Adulthood* (Washington, DC: U.S. Department of Education, National Center for Education Statistics) at 38. Black students are suspended and expelled three times more often than White students. See U.S. Department of Education Office for Civil Rights, "Data Snapshot: School Discipline" (March 2014) 1 *Civil Rights Data Collection* at 1.

¹⁸⁰ The study was based on data collected from New York and Boston and national education statistics. African American Policy Forum & Center for Intersectionality and Social Policy Studies, *Girls Matter: Pushed Out, Overpoliced and Underprotected*, by Kimberlé Williams Crenshaw, Priscilla Ocen, & Jyoti Nanda Black (New York: African American Policy Forum & Center for Intersectionality and Social Policy Studies, 2015) at 19-22.

¹⁸¹ After controlling for differences in the perceived conduct of the student, grades, school-related attitudes and other factors, Black students were more than twice as likely to be disciplined compared with students of all other races. See Michael Rocque & Raymond Paternoster, "Understanding the Antecedents of the "School-to-Jail" Link: The Relationship Between Race and School Discipline" (2011) 101:2 *The J of Criminal L & Criminology* 633. Research has also found that Black students were more likely than White students to receive suspensions for minor misbehaviour and were underrepresented in less serious consequences (e.g. detention) at all grade levels studied. See R. J. Skiba et al, "Race is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline" (2011) 40:1 *School Psychology Rev* 85 at 95; See also J. A. Okonofua & J. L. Eberhardt, "Two Strikes: Race and the Disciplining of Young Students" (2015) 26:5 *Psychological Science* 617.

¹⁸² Teachers were more inclined to classify the Black student as a "troublemaker" after the second incident than the White student. See J. A. Okonofua & J. L. Eberhardt, *ibid*.

¹⁸³ Naomi Nichols, Jessica Braimoh & Alison Fisher, "Institutional Colour-Blindness and Its Racializing Effects" (Paper presented to the OHRC and York University Racial Profiling Policy Dialogue, 16-18 February, 2016) at 4.

¹⁸⁴ Michael Rocque & Raymond Paternoster, *supra* note 181.

¹⁸⁵ The American Civil Liberties Union describes the "school-to-prison pipeline" as a national trend in which school discipline policies criminalize students' minor infractions. Students, who are often racialized, are "funnelled" from public schools into the juvenile and criminal justice systems. American Civil Liberties Union, *School-to-Prison Pipeline* online: American Civil Liberties Union www.aclu.org/issues/juvenile-justice/school-prison-pipeline (retrieved January 22, 2017).

¹⁸⁶ Toronto District School Board, *Annual Report. Caring and Safe Schools Report 2014 – 2015* (Toronto: Toronto District School Board, 2016), online: TDSB www.tdsb.on.ca/ElementarySchool/CaringSafeSchools/AnnualReport.aspx (retrieved February 3, 2017).

¹⁸⁷ Tu Thanh Ha, "Muslim Teenager Sues Montreal School, Alleging He was Framed as an Extremist" *The Globe and Mail* (23 January 2017) online: The Globe and Mail www.theglobeandmail.com/news/national/muslim-teenager-sues-montreal-school-alleging-he-was-framed-as-an-extremist/article33711620/ (retrieved February 7, 2017); Jonathan Montpetit, "Muslim Student's Dismay at Test Score Mistaken for Extremist Threat, Lawsuit Claims" CBC News online: CBC News www.cbc.ca/news/canada/montreal/muslim-student-s-dismay-at-test-score-mistaken-for-extremist-threat-lawsuit-claims-1.3949109 (retrieved February 7, 2017).

¹⁸⁸ See OHRC, News Release, "Human Rights Settlement Reached with Ministry of Education on Safe Schools" (no date) online: OHRC www.ohrc.on.ca/en/human-rights-settlement-reached-ministry-education-safe-schools; OHRC, "Human Rights Settlement Reached with Ministry of Education on Safe Schools – Terms of Settlement" (2007) online: OHRC www.ohrc.on.ca/en/human-rights-settlement-reached-ministry-education-safe-schools-terms-settlement.

¹⁸⁹ See *Education Act*, RSO 1990, c E-2. and Bill 212, *An Act to Amend the Education Act in Respect of Behaviour, Discipline and Safety*, 2nd Sess, 38th Parl, Ontario, 2007. The Ministry of Education also introduced the Inclusive Education Strategy, which "aims to help the education community identify and address discriminatory biases and systemic barriers in order to support the achievement and well-being of all students." See Government of Ontario, Ministry of Education, *QuickFacts: Ontario's Equity and Inclusive Education Strategy* (Toronto: Queen's Printer for Ontario, 2016) online: Government of Ontario, Ministry of Education www.edu.gov.on.ca/eng/policyfunding/equity_quick_facts.html (retrieved February 3, 2017).

¹⁹⁰ Laura Mae Lindo, "Racial Profiling by Omission: Education, Stereotypes and Black Students" (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016) at 3-4.

¹⁹¹ Ontario Federation of Indigenous Friendship Centres, *supra* note 34.

¹⁹² Toronto District School Board, "Census Portraits: Special Education Needs Report" (2015) *Census Portraits: Understanding Our Students Backgrounds* online: TDSB www.tdsb.on.ca/Portals/research/docs/reports/Portrait_Census2011-12_StudWithSpecEdNeeds_FINAL_report.pdf (retrieved February 24, 2017).

¹⁹³ In addition, compared to gifted students and students with other exceptionalities, students with behavioural disabilities had the highest rates of suspension in various years since 2006, and at all grade levels from junior kindergarten to grade 12. Toronto District School Board, "Suspension Rates by Students' Demographic and Family Background Characteristics" (2013) 3 *Caring and Safe Schools* online: www.tdsb.on.ca/Portals/research/docs/reports/CaringSafeSchoolsCensus201112.pdf (retrieved February 27, 2017) at 5.

¹⁹⁴ Sheela Subramanian and Seble Makonnen, "Racial Profiling and Mental Health in Ontario: Exploring the Links" (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016) at 4, 13:3, Canadian Diversity a Publication of the Association for Canadian Studies [forthcoming in 2017]. The authors refer to consultations held as part of this study: Community of Interest for Racialized Populations and Mental Health and Addictions, *Think Tank: Exploring Mental Health-or Addictions-Related Emergency Department Use by Racialized Populations in Ontario: Highlights from the March 26, 2013 Event* by Emily Wong et al (Toronto: Community of Interest for Racialized Populations and Mental Health and Addictions, 2014), online: Evidence Exchange Network eenet.ca/the-racialized-populations-and-mental-health-and-addictions-community-of-interest/ (retrieved February 3, 2017). The OHRC is also intervening in *Estate of Kulmiye Aganeh v. Mental Health Centre Penetanguishene* to address the link between race and the disproportionate use of restraints in mental health facilities.

¹⁹⁵ Rachel Spector, "Is There Racial Bias in Clinicians' Perception of the Dangerousness of Psychiatric Patients? A Review of the Literature" (2001) 10:1 *J of Mental Health* 5. See also Arthur L. Whaley, "Racism in the Provision of Mental Health Services: A Social Cognitive Analysis" (1998) 68: 1 *Am J of Orthopsychiatry*, 47.

¹⁹⁶ E. Jarvis, "Emergency Psychiatric Treatment of Immigrants with Psychosis" (Thesis, Master of Science in Psychiatry, Department of Psychiatry, Faculty of Medicine, McGill University, 2002) at 91.

¹⁹⁷ Radek, *supra* note 17 at para 132.

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ Wellesley Institute, *First Peoples, Second Class Treatment: The Role of Racism in the Health and Well-Being of Indigenous Peoples in Canada*, by Billie Allan & Janet Smylie (Toronto: Wellesley Institute, 2015) online: Wellesley Institute www.wellesleyinstitute.com/pblications/first-peoples-second-class-treatment/ (retrieved February 3, 2017) at 4.

²⁰¹ In one study, researchers examined the health care experiences of Indigenous peoples living with Type 2 diabetes. A prominent theme was that participants reported experiences with health care professionals that they interpreted as racially motivated. Kristen M. Jacklin et al, "Health Care Experiences of Indigenous People Living with Type 2 Diabetes in Canada" (2017) 189:3 *CMAJ* E106.

²⁰² Annette J. Browne et al, "Access to Primary Care from the Perspective of Aboriginal Patients at an Urban Emergency Department" (2011) 21:3 *Qualitative Health Research* 333.

²⁰³ Jordan's Principle refers to a child-first principle to resolve jurisdictional disputes between governments when paying for services for First Nations children. It aims to ensure that First Nations children can "access public services ordinarily available to other Canadian children without experiencing any service denials, delays or disruptions related to their First Nations status." See First Nations Child and Family Caring Society of Canada, online: fncaringsociety.com (retrieved February 3, 2017).

²⁰⁴ For example, see Zachary W. Brewster, Michael Lynn & Shelytia Cocroft, "Consumer Racial Profiling in U.S. Restaurants: Exploring Subtle Forms of Service Discrimination against Black Diners" (2014) 29:2 Sociological Forum 476; Shaun L. Gabbidon et al, "The Consumer Racial Profiling Experiences of Black Students at Historically Black Colleges and Universities: An Exploratory Study" (2008) 36 J Criminal Justice 354; Shaun L. Gabbidon & George E. Higgins, "Consumer Racial Profiling and Perceived Victimization: A Phone Survey of Philadelphia Area Residents" (2007) 32 Am J Criminal Justice 1; George E. Schreer, Sandra Smith & Kirsten Thomas, "'Shopping While Black': Examining Racial Discrimination in a Retail Setting" (2009) 39:6 J of Applied Social Psychology 1432; Anne-Marie G. Harris, "Shopping While Black: Applying 42 U.S.C. 1981 to Cases of Consumer Racial Profiling" (2003) 23:1 Boston College Third World LJ 1.

²⁰⁵ Consumer racial profiling has been defined as, "any type of differential treatment of consumers in the marketplace based on race or ethnicity that constitutes a denial or degradation in the product or service offered to the consumer." Anne-Marie G. Harris, *ibid* at 4. This definition is very different from the OHRC's definition, as it includes behaviour that may occur outside a safety and security context.

²⁰⁶ George E. Schreer, Sandra Smith & Kirsten Thomas, *supra* note 204.

²⁰⁷ Nova Scotia Human Rights Commission, *Working Together to Serve all Nova Scotians: A Report on Consumer Racial Profiling in Nova Scotia* (Halifax: Nova Scotia Human Rights Commission, 2013) online: Nova Scotia Human Rights Commission humanrights.novascotia.ca/consumer-racial-profiling (retrieved October 3, 2016); George E. Schreer, Sandra Smith & Kirsten Thomas, *supra* note 204.

²⁰⁸ Shaun L. Gabbidon, "Racial Profiling by Store Clerks and Security Personnel in Retail Establishments: An Exploration of 'Shopping While Black'" (2003) 19:3 J of Contemporary Criminal Justice 345.

²⁰⁹ Nova Scotia Human Rights Commission, *supra* note 207.

²¹⁰ Nova Scotia Human Rights Commission, *supra* note 207.

²¹¹ Survey respondents' race or ethnicity were the most significant factors associated with these experiences, compared to other characteristics such as age, gender and level of education. Nova Scotia Human Rights Commission, *supra* note 207.

²¹² For an example in the case law of over-scrutiny by security staff leading to discriminatory treatment by police, see *Nassiah*, *supra* note 6.

²¹³ Shaun L. Gabbidon et al, *supra* note 208 at 359.

²¹⁴ Tomee Sojourner, "Can I Help You? A Critical Overview of Consumer Racial Profiling in Ontario's Retail Sector" (Paper presented to the OHRC and York University Racial Profiling Policy Dialogue, 16-18 February, 2016) at 3; 13:3, Canadian Diversity a Publication of the Association for Canadian Studies [forthcoming in 2017].

²¹⁵ Anne-Marie G. Harris, *supra* note 204.

²¹⁶ Nova Scotia Human Rights Commission, *supra* note 207.

²¹⁷ An Indian status card is an identity document that confirms that a person is registered as a Status Indian under the *Indian Act*. The card allows people to be exempted from the 8% Ontario component of the Harmonized Sales Tax (HST) on certain property and services. See Government of Ontario, Ministry of Finance, "Certificate of Indian Status Identity Cards" (2012) online: Ministry of Finance www.fin.gov.on.ca/en/taxtips/rst/02.html (retrieved September 22, 2016).

²¹⁸ *Trespass to Property Act*, RSO 1990, c T-21

²¹⁹ Federally regulated agencies that perform national security functions are outside the jurisdiction of the *Code* and must comply with the *Canadian Human Rights Act*. Municipal and provincial police agencies in Ontario that may engage in these activities must comply with the *Code*.

²²⁰ Bill C-51, *An Act to enact the Security of Canada Information Sharing Act and the Secure Air Travel Act, to amend the Criminal Code, the Canadian Security Intelligence Service Act and the Immigration and Refugee Protection Act and to make related and consequential amendments to other Acts*, 2nd Sess, 41st Parl, 2015 [Bill C-51].

²²¹ For further discussion of this issue, see "The War on Terrorism," in David M. Tanovich, *The Colour of Justice: Policing Race in Canada* (Toronto: Irwin Law, 2006).

²²² *Report of the Independent Expert on Minority Issues, Addendum*, UNGAOR, 13th Sess, UN Doc A/HRC/13/23/Add.2 (2010) 1 online: www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.23%20Add.2_en.pdf (retrieved February 21, 2017).

²²³ See Baljit Nagra & Paula Maurutto, *supra* note 168; Steven Penney, "National Security Surveillance in an Age of Terror: Statutory Powers & Charter Limits" (2010) 48:2 Osgoode Hall LJ 247. The passage of Bill C-51 in 2015 further increased the powers of police to arrest people without a warrant if there are reasonable grounds for police to believe that terrorist activity may be carried out. Bill C-51, *supra* note 220, s 17(1)(a).

²²⁴ Steven Penney, *ibid*.

²²⁵ Maher Arar was a Canadian citizen who was deported to the country of his birth, Syria, by the U.S., despite his request to be sent to his country of residence, Canada. Arar was suspected of being involved with a terrorist organization. The Canadian government was aware of Arar's interrogation by U.S. officials and was therefore complicit in his detention. In the months following his return to Canada from Syria, where he was imprisoned and tortured for over a year, the Canadian government commissioned an inquiry. See Canada, Commission of Inquiry into the Actions of the Canadian Government in Relation to Maher Arar, *Report of the Events Relating to Maher Arar* (Ottawa: Public Works and Government Services Canada, 2006).

²²⁶ *Ibid*, "Factual Background, Volume I" at 16-21.

²²⁷ Steven Penney, *supra* note 223.

²²⁸ Jens Porup, "Racial Profiling in the Information Age" 13:3 Canadian Diversity a Publication of the Association for Canadian Studies [forthcoming in 2017]. See also the Propublica investigation into predictive policing in the US, especially its impact on sentencing offenders. Julia Angwin et al, "Machine Bias," *Propublica* (23 May 2016), online: www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing (retrieved February 3, 2017).

²²⁹ Alex Ballingal, "Surveillance and Predictive Policing: Welcome to the 'Safety State' of Tomorrow" *Toronto Star* (10 May 2016) online: www.thestar.com/news/gta/2016/05/10/surveillance-and-predictive-policing-welcome-to-the-safety-state-of-tomorrow.html (retrieved February 24, 2017).

²³⁰ In the OHRC's *Policy and guidelines on racism and racial discrimination*, *supra* note 5, at 11, "racialization" is defined as "The process of social construction of race." Further, the *Policy* notes that, "Racialization extends to people in general but also to specific traits and attributes, which are connected in some way to racialized people and are deemed to be 'abnormal' and of less worth. Individuals may have prejudices related to various racialized characteristics."

²³¹ Azeezah Kanji, "Public Safety Canada's Racializing Profile: The Construction of the Muslim Terrorist in Government Counterterrorism Reports" (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016).

²³² *Ibid* at 1.

²³³ *Ibid* at 4, 5.

²³⁴ *Ibid* at 5.

²³⁵ *Ibid.* at 4-5.

²³⁶ Reem Bahdi, "Restricted Access, Limited Justice: Arab and Muslim Human Rights Claims before the Canadian Human Rights Tribunals, 2002-2015" (Paper presented to the OHRC and York University Racial Profiling Policy Dialogue, 16-18 February, 2016).

²³⁷ Bryce Edwards (Presentation delivered at the OHRC & York University Racial Profiling Policy Dialogue, 16-18 February, 2016) [unpublished].

²³⁸ Generally, people belonging to Indigenous communities with established treaty fishing rights in Ontario do not need to have a licence, if they are fishing within their traditional lands or treaty area, and are fishing for food, social or ceremonial purposes. See Government of Ontario, "Do I need a fishing licence if I'm a member of an Aboriginal community?" (29 September, 2015) online: Government of Ontario www.ontario.ca/faq/do-i-need-fishing-licence-if-im-member-aboriginal-community (retrieved January 9, 2017).

²³⁹ Ontario Federation of Indigenous Friendship Centres, *supra* note 34 at 11.

²⁴⁰ Tammy C. Landau, *supra* note 37.

²⁴¹ For a further description of these concerns raised previously in Toronto, see Patty Winsa & Jim Rankin, "Tense Times in Policing on TCHC Property" *Toronto Star* (27 September 2013) online: thestar.com www.thestar.com/news/gta/known_topolice2013/2013/09/27/tense_times_in_policing_on_tchc_property.html (retrieved February 9, 2017).

²⁴² Naomi Nichols, Jessica Braimoh & Alison Fisher, *supra* note 183.

²⁴³ *Ibid.* Some social housing organizations provide police with "Agent of Landlord" authority, which means they can act as the landlord's agent while on the property. This allows them to stop people and issue notices to Trespass to Property. See Toronto Community Housing Corporation, "Agent of Landlord Status Letters – Trespass to Property Update (TCHC: 2005-18)" (18 March 2005), online: rpei.ca/webfm_send/1008/1 (retrieved December 22, 2016).

²⁴⁴ Ontario Human Rights Commission, *Paying the Price*, *supra* note 4.

²⁴⁵ The Oxford Dictionary defines the colour line as, "An enforced separation between white people and black people (or occasionally those of other racial groups) in a country, community, or establishment" online: English Oxford Living Dictionaries en.oxforddictionaries.com/definition/colour_line (retrieved February 27, 2017).

²⁴⁶ Carl E. James, "'Singled Out': Being Black in the Suburbs" (Paper presented to the OHRC and York University Racial Profiling Policy Dialogue, 16-18 February, 2016) at 2, 13:3 Canadian Diversity a Publication of the Association for Canadian Studies [forthcoming in 2017].

²⁴⁷ Ontario Federation of Indigenous Friendship Centres, *supra* note 34 at 7.

²⁴⁸ Uzma Jamil, *supra* note 169 at 2.

²⁴⁹ Tammy C. Landau, *supra* note 37 at 3.

²⁵⁰ Yin Paradies et al, "Racism as a Determinant of Health: A Systematic Review and Meta-Analysis" (2015) 10:9 PLoS ONE 1.

²⁵¹ See William A. Smith, Walter R. Allen & Lynette L. Danby, "'Assume the Position...You Fit the Description': Campus Racial Climate and the Psychoeducational Experiences and Racial Battle Fatigue among African American Male College Students" (2007) 51:4 Am Behavioural Scientist 551. See also Wellesley Institute, *supra* note 194.

²⁵² Sheryl Nestel, *Colour Coded Health Care: The Impact of Race and Racism on Canadians' Health* (Toronto: Wellesley Institute, 2012) online: Wellesley Institute

www.wellesleyinstitute.com/health/colour-coded-health-care-the-impact-of-race-and-racism-on-canadians-health/ (retrieved December 2, 2016).

²⁵³ David R. Williams & Selina A. Mohammed, "Discrimination and Racial Inequalities in Health: Evidence and Needed Research" (2009) *J of Behavioural Medicine* 20.

²⁵⁴ We heard these concerns prior to legislative amendments being made. The *Police Record Checks Reform Act*, 2015, S.O. 2015, c.30, sets limits on the disclosure of non-conviction information recorded by police for determining suitability for employment.

²⁵⁵ Ontario Federation of Indigenous Friendship Centres, *supra* note 34 at 11-12.

²⁵⁶ See Akwasi Owusu-Bempah & Scot Wortley, *supra* note 95; Scot Wortley & Akwasi Owusu-Bempah, *supra* note 50.

²⁵⁷ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2012), as cited in Jose Torres, "Race/Ethnicity and Stop and Frisk: Past, Present and Future" (2015) 9:11 *Sociology Compass* 931.

²⁵⁸ Interview of Chad Aiken (3 November, 2016) Ontario Human Rights Commission. See also *Aiken v. Ottawa Police Services Board*, 2013 HRTO 901 (CanLII).

²⁵⁹ Scot Wortley, Policy Dialogue Paper, *supra* note 39 at 6.

²⁶⁰ Chris Gibson et al, "The Impact of Traffic Stops on Calling the Police for Help" (2010) 21:2 *Criminal Justice Policy Rev* 139; Lee Ann Slocum et al, "Neighbourhood Structural Characteristics, Individual-Level Attitudes, and Youths' Crime Reporting Intentions" (2010) 48:4 *Criminology* 1063; Tom R. Tyler & Jeffrey Fagan, "Legitimacy and Cooperation: Why do People Help the Police Fight Crime in Their Communities?" 6 *Ohio State J of Criminal Law* 231.

²⁶¹ Scot Wortley, Policy Dialogue Paper, *supra* note 39.

²⁶² *Ibid.*

²⁶³ Wesley G. Skogan, "Asymmetry in the Impact of Encounters with Police" (2006) 16:2, *Policing & Society* 19; Dennis P. Rosenbaum et al, "Attitudes Toward the Police: The Effects of Direct and Vicarious Experience" (2005) 8:3 *Police Quarterly* 343. But see Ben Bradford, Jonathan Jackson & Elizabeth A. Stanko, "Contact and Confidence: Revisiting the Impact of Public Encounters with the Police" (2009) 19:1 *Policing & Society* 20, whose study suggests that perceptions of the effectiveness of police can be improved by better communication and increased police visibility in the community.

²⁶⁴ Dennis P. Rosenbaum et al, *ibid*; Wesley G. Skogan, *ibid*; Scot Wortley & Akwasi Owusu-Bempah, *supra* note 50; Scot Wortley & Akwasi Owusu-Bempah, "Unequal Before the Law: Immigrant and Racial Minority Perceptions of the Canadian Criminal Justice System" (2009) 10 *Intl Migration & Integration* 447.

²⁶⁵ Dennis P. Rosenbaum et al, *ibid*.

²⁶⁶ Matthew Desmond, Andrew V. Papachristos & David S. Kirk, "Police Violence and Citizen Crime Reporting in the Black Community" (2016) 81:5 *Am Sociological Rev* 857.

²⁶⁷ Psychology researchers have used the Implicit Association Test (IAT) to measure implicit racial bias through "tasks where reaction times are so fast that conscious consideration is not possible, and often in contexts where it is impossible for subjects to be aware that racial thinking is being tested." *The Opportunity Agenda, Social Science and Literature Review: Media Representations and Impact on the Lives of Black Men and Boys* (New York: The Opportunity Agenda, 2011) retrieved February 8, 2017 online: Opportunity Agenda opportunityagenda.org/files/field_file/2011.11.30%207C%20Report%207C%20Media%20Representation%20https://opportunityagenda.org/black_male, at 36 (retrieved February 24, 2017). Using the IAT, research has found that, "The estimated pervasiveness of 'implicit' preference for racial European American (White) relative to racial African American (Black) is approximately 70%..." Anthony

Greenwald et al, "Implicit Association Test: III. Meta-Analysis of Predictive Validity" (2009) 97:17 *J of Personality & Social Psychology* 17 (retrieved January 31, 2017) online: faculty.washington.edu/agg/pdf/Meta-analysis.Non-technical%20summary.17Jun09.pdf at 1. See also Jennifer Yang, "Could Signals from the Heart Trigger Fearful Reactions Based on Racist Stereotypes?" *Toronto Star* (17 January 2017) online: thestar.com www.thestar.com/news/gta/2017/01/17/racial-biases-sometimes-come-straight-from-the-heart.html (retrieved January 25, 2017).

²⁶⁸ For a definition of anti-Black racism provided by the African Canadian Legal Clinic, and an exploration of how an anti-Black racism analysis can be applied to racial profiling, see Anthony Morgan, "Critical Race Policy Analysis: Anti-Black Racism Assessment Questions in Racial Profiling Policy and Practice" (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016).

²⁶⁹ For a brief history of racism against African Canadians, other racialized groups and Indigenous peoples in Canada, see the OHRC's *Policy*, *supra* note 5.

²⁷⁰ "The media create and reinforce negative and stereotypical images to influence public opinion. Discourses on terrorism, public safety, crime, and immigration become racialized and result in the further stigmatization, marginalization, and exclusion of racialized groups." Frances Henry & Carol Tator, *The Colour of Democracy: Racism in Canadian Society*, 4th ed (Toronto: Nelson, 2010) at 363.

²⁷¹ While on ceremonial sentry duty, Corporal Nathan Cirillo was fatally shot by Michael Zehaf-Bibeau at the Canadian National War Memorial on Parliament Hill on October 22, 2014. Zehaf-Bibeau was later shot and killed by security officers.

²⁷² This observation was also noted in the following articles: Eric Ritskes, "Dark Threats and the Normalization of White Terror: Aboriginals, Muslims & South Americans in the #Ottawashooting" (22 October 2014) *Eric Ritskes* (blog), online: www.ericritskes.com/dark-threats-and-the-normalization-of-white-terror-aboriginals-muslims-south-americans-in-the-ottawashooting/ (retrieved January 10, 2017); ICMN staff, "Indigenous Leaders Caution Against Racist Assumptions in Wake of Ottawa Shooting" *Indian Country Media Network* (30 October 2014) online: Indian Country Media Network indiancountrymedianetwork.com/news/first-nations/indigenous-leaders-caution-against-racist-assumptions-in-wake-of-ottawa-shooting/ (retrieved January 10, 2017).

²⁷³ For an example, see Desmond Cole's critique of the police portrayal of a White robbery suspect. Desmond Cole, "The Power of Being 'Preppy': Cole" *Toronto Star* (21 December 2016) online: thestar.com www.thestar.com/opinion/commentary/2016/12/21/the-power-of-being-preppy-cole.html (retrieved December 22, 2016). See also Lisa Wade, "Racial Bias and Media Coverage of Violent Crime" (9 April 2015) *The Society Pages* (blog) online: thesocietypages.org/socimages/2015/04/09/racial-bias-and-media-coverage-of-violent-crime/ (retrieved on February 8, 2017); The Opportunity Agenda, *supra* note 267.

²⁷⁴ ColorofChange, "Not to be Trusted: Dangerous Levels of Inaccuracy in TV Crime Reporting in NYC" (New York: ColorofChange, 2015) online: ColorofChange colorofchange.org/about/#culture (retrieved February 8, 2017).

²⁷⁵ At the OHRC's racial profiling policy dialogue, journalist Jim Rankin described how the *Toronto Star* ran investigative journalism series on race-based data collected by the Toronto Police Service (TPS). These revealed significant disparities in how the TPS deals with Black and White people. Jim Rankin et al, "Singled Out" *Toronto Star* (19 October 2002) online: thestar.com www.thestar.com/news/gta/knowntopolice/singled-out.html (retrieved November 10, 2016); Jim Rankin, "Race matters: Blacks Documented by Police at High Rate" *Toronto Star* (6 February 2010) online: thestar.com www.thestar.com/news/crime/raceandcrime/2010/02/06/race_matters_blacks_documented_by_police_at_high_rate.html (retrieved November 10, 2016); Jim Rankin & Patty Winsa, "Known to Police:

Toronto Police Stop and Document Black and Brown People Far More than Whites” *Toronto Star* (9 March 2012) online: thestar.com www.thestar.com/news/insight/2012/03/09/known_to_police_toronto_police_stop_and_document_black_and_brown_people_far_more_than_whites.html (retrieved November 15, 2016). These series, along with journalist Desmond Cole’s *Toronto Life* article on his experiences of being stopped over 50 times by police, were seen by many at the OHRC’s policy dialogue as a tipping point in mainstream awareness about police racial profiling. Desmond Cole, “The skin I’m In: I’ve Been Interrogated by Police More than 50 Times – All Because I’m Black” *Toronto Life* (21 April 2015) online: Toronto Life torontolife.com/city/life/skin-im-ive-interrogated-police-50-times-im-black/ (retrieved December 22, 2016).

²⁷⁶ For more information, see Ontario Human Rights Commission, *OHRC Response to OPS Data Collection Project*, *supra* note 6.

²⁷⁷ Tim Rees, *supra* note 77.

²⁷⁸ This statement is based on comments made by Scot Wortley at the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016. Survey research indicates that Black people are disproportionately arrested for drug offences, despite the fact that White people use illicit drugs at higher rates. Scot Wortley & Julian Tanner, “Data, Denials and Confusion: The Racial Profiling Debate in Toronto” (2003) 45:3 *Can J of Criminology and Criminal Justice* 367.

²⁷⁹ For examples, see the Child Welfare section (section 3.1.2.4.).

²⁸⁰ Government of Ontario, “Anti-Racism Directorate,” (last updated 25 January 2017) online: Government of Ontario www.ontario.ca/page/anti-racism-directorate (retrieved February 24, 2017).

²⁸¹ Rachel Williams, “Law Enforcement Officers a Focal Point of Peel Anti-Racism Directorate Meeting” *Mississauga News* (28 September 2016), online: Mississauga.com www.mississauga.com/news-story/6883674-law-enforcement-officers-a-focal-point-of-peel-anti-racism-directorate-meeting/ (retrieved February 24, 2017).

²⁸² Laurie Monsebraaten, Sandro Contenta & Jim Rankin, “Ontario Children’s Minister Seeks Racial Data on Kids in Care” *Toronto Star* (29 September 2016) online: thestar.com www.thestar.com/news/canada/2016/09/29/ontario-childrens-minister-seeks-racial-data-on-kids-in-care.html (retrieved January 10, 2017). To this end, the Government of Ontario has introduced Bill 89, *Supporting Children, Youth and Families Act*, 2016 (Bill 89, *An Act to enact the Child, Youth and Family Services Act, 2016, to amend and repeal the Child and Family Services Act and to make related amendments to other Acts*, 2nd Sess, 41st Parl, Ontario, 2016). Among other things, the Bill would permit the Minister to require the collection, use and disclosure of personal information relating to race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the people who use child and family services in Ontario. See also Ministry of Children and Youth Services, News Release, “Ontario Strengthening Child Welfare, Improving Outcomes for Youth” (8 December 2016) online: Government of Ontario news.ontario.ca/mcys/en/2016/12/ontario-strengthening-child-welfare-improving-outcomes-for-youth.html (retrieved January 17, 2017).

²⁸³ More information on race-based data collection can be found in section 3.7.2.

²⁸⁴ *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para 33 [*Bombardier*]. A similar definition advanced by the Québec Commission des droits de la personne et des droits de la jeunesse was also cited by the Supreme Court (at para 33).

²⁸⁵ In reviewing various racial profiling definitions, one OHRC policy dialogue paper author says this disagreement exists because there is no comprehensive theoretical framework for defining racial profiling, there is a lack of conclusive empirical evidence and there are competing values to be

considered. Bobby Siu, "Defining the Concept of Racial Profiling: A Discussion" (Paper presented to the Ontario Human Rights Commission and York University Racial Profiling Policy Dialogue, 16-18 February, 2016), 13:3 Canadian Diversity a Publication of the Association for Canadian Studies [forthcoming in 2017].

²⁸⁶ See, for example, Christopher J. Williams, "Obscurantism in Action: How the Ontario Human Rights Commission Frames Racial Profiling" (2006) 38:2 Can Ethnic Studies 1 at 3-7.

²⁸⁷ *Ibid* at 5-6.

²⁸⁸ *R. v. Richards* [1999] O.J. No. 1420 at para 24 (C.A.); See also *Brown*, *supra* note 45 at para 7; *Peart*, *supra* note 1 at para 90.

²⁸⁹ Bobby Siu, *supra* note 285 at 1.

²⁹⁰ See also Christopher J. Williams, *supra* note 286.

²⁹¹ Bobby Siu, *supra* note 285 at 4.

²⁹² Bobby Siu, *supra* note 285 at 2-3.

²⁹³ Ontario Human Rights Commission, *Paying the Price*, *supra* note 4.

²⁹⁴ Bobby Siu, *supra* note 285 at 4.

²⁹⁵ In *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para 33, the Supreme Court quoted the Quebec Human Rights Commission's definition of racial profiling, which does not include stereotypes. In *Quebec (Attorney General) v. A*, [2013] 1 S.C.R. 61 at 329, the Supreme Court described the test for discrimination under s. 15 of the *Charter*. The Supreme Court stated that stereotyping is not required to prove discrimination. It stated, "Similarly, prejudice and stereotyping are neither separate elements of the *Andrews* test, nor categories into which a claim of discrimination must fit. A claimant need not prove that a law promotes negative *attitudes*, a largely unquantifiable burden."

²⁹⁶ Section 35 of *The Constitution Act*, 1982 recognizes and affirms existing Aboriginal rights. See *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 35.

²⁹⁷ Ontario Federation of Indigenous Friendship Centres, *supra* note 34 at 6.

²⁹⁸ Jonathan Rudin, *supra* note 87 at 6-7, 29-30.

²⁹⁹ *Ibid* at 32.

³⁰⁰ These effects are outlined in the Truth and Reconciliation Commission of Canada's final reports. Truth and Reconciliation Commission of Canada, *The Final Report of the Truth and Reconciliation Commission of Canada, Volumes 1-6* (Truth and Reconciliation Commission of Canada, 2015-2016) online: Truth and Reconciliation Commission of Canada www.trc.ca (retrieved December 21, 2016).

³⁰¹ Ontario Human Rights Commission, *2017-2022 Strategic Plan*, *supra* note 12.

³⁰² In its submission to the United Nations' Committee on the Elimination of Racial Discrimination, the Equality and Human Rights Commission (EHRC) in the UK stated, "While there has been a significant reduction in the overall use of stop and search powers [by police], the EHRC continues to be concerned about the rise in disproportionate use in relation to ethnic minorities." Equality and Human Rights Commission, *Race Rights in the UK: Submission to the UN Committee on the Elimination of Racial Discrimination in Advance of the Public Examination of the UK's Implementation of ICERD* (EHRC, 2016) online: Equality and Human Rights Commission www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-convention-elimination-all (retrieved February 27, 2017) at 89. See also Mark Townsend, "Stop and Search 'Racial Profiling' by Police on the Increase, Claims Study" *The Guardian* (14 January 2012) online: theguardian www.theguardian.com/law/2012/jan/14/stop-search-racial-profiling-police (retrieved February 27, 2017); *Report of the Working Group of Experts on People of African Descent on its mission to the United States of America*, UNGOAR, 33rd Sess, UN Doc A/HRC/33/61/Add.2 (2016) online: documents-dds-

ny.un.org/doc/UNDOC/GEN/G16/183/30/pdf/G1618330.pdf?OpenElement (retrieved February 24, 2017) at 7-9.

³⁰³ Frances Henry explains in a paper submitted to the OHRC's racial profiling policy dialogue that the general perception that racism doesn't exist in Canada is linked to a concept called "democratic racism." Specifically, she points to the ways that racist ideas or attitudes are often submerged within language that is framed within liberal, democratic or egalitarian constructs. This typically leads to an association of racism with overt or blatant individual acts, while subtle forms or expressions are not regarded as racist or discriminatory. Frances Henry, "Why Does Racial Profiling Take Place in a Democratic Society" (Paper presented to the OHRC and York University Racial Profiling Policy Dialogue, 16-18 February, 2016).

³⁰⁴ Tamari Kitossa, "Denial, New W(h)ine and Same Old Racism in Criminology: Notes on Racial Profiling and Authoritarian Criminology" (Paper presented to the OHRC and York University Racial Profiling Policy Dialogue, 16-18 February, 2016).

³⁰⁵ For a description of U.S. studies conducted on racial disparities in police stops and hit rates, see The Leadership Conference on Civil and Human Rights, *Restoring a National Consensus: The Need to End Racial Profiling in America* (Washington DC: The Leadership Conference on Civil and Human Rights, 2011) online: The Leadership Conference www.civilrights.org/publications/reports/racial-profiling2011/the-reality-of-racial.html?referrer=https://www.google.ca/?referrer=http://www.civilrights.org/publications/reports/racial-profiling2011/the-reality-of-racial.html (retrieved February 28, 2017) at 9-12; Sharad Goel, Justin M. Rao & Ravi Shroff, "Precinct or Prejudice: Understanding Racial Disparities in New York City's Stop-and-Frisk Policy" (2016) 10:1 *The Annals of Applied Statistics* 365. A survey by the U.S. Department of Justice, Bureau of Justice Statistics, which reviewed 1,272,282 searches of citizens by police in 1999, revealed that the chances of finding contraband after searching minorities (Black and Latino) were the same or lower than the chances of finding evidence of crime on White persons searched. Similarly, when the U.S. Customs Service re-evaluated their search procedures to eliminate racial, ethnic and gender bias in their search activity, they were able to conduct 75% fewer searches without reducing the number of successful searches for contraband carrying passengers. See Lamberth Consulting, "Racial Profiling Doesn't Work" (2017) online: Lamberth Consulting www.lamberthconsulting.com/racial-profiling-doesnt-work/ (retrieved on February 3, 2017).

³⁰⁶ See Jose Torres, "Race/Ethnicity and Stop and Frisk: Past, Present and Future" (2015) 9:11 *Sociology Compass* 931.

³⁰⁷ For more details about each of these strategies, see Bobby Siu, "How to Eradicate Racial Profiling," (Paper presented to the OHRC and York University Racial Profiling Policy Dialogue, 16-18 February, 2016), 13:3 *Canadian Diversity* a Publication of the Association for Canadian Studies [forthcoming in 2017].

³⁰⁸ See Ontario Human Rights Commission, *Human Rights and Policing: creating and sustaining organizational change* (Toronto: Queen's Printer for Ontario, 2011) online: OHRC www.ohrc.on.ca/en/human-rights-and-policing-creating-and-sustaining-organizational-change.

³⁰⁹ U.S. Department of Justice Civil Rights Division, *Investigation of the Baltimore Police Department* (n.p.: Department of Justice Civil Rights Division, 2016) online: www.justice.gov/opa/file/883366/download (retrieved February 24, 2017); U.S. Department of Justice Civil Rights Division, *Investigation of the Ferguson Police Department* (n.p.: Department of Justice Civil Rights Division, 2015) online: www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf (retrieved February 24, 2017).

³¹⁰ Lorne Foster & Les Jacobs, "Community Engagement as a Tool for Combating Racial Profiling" (Paper presented to the OHRC and York University Racial Profiling Policy Dialogue, 16-18 February, 2016) 13:3 Canadian Diversity a Publication of the Association for Canadian Studies [forthcoming in 2017].

³¹¹ David M. Tanovich, "OPS Racial Profiling Policy (27 June 2011)," (Paper presented to the OHRC and York University Racial Profiling Policy Dialogue, 16-18 February, 2016). See also Ottawa Police Service, *supra* note 59.

³¹² For a full list of recommendations regarding police training, please see Ontario Human Rights Commission, *Response to OPS Data Collection Project*, *supra* note 6.

³¹³ Toronto Police Service, *The Police and Community Engagement Review (The PACER Report) Phase II – Internal Report and Recommendations* (Toronto: Toronto Police Service, 2013) online: Toronto Police Service www.torontopolice.on.ca/publications/files/reports/2013pacerreport.pdf (retrieved February 24, 2017) at 14.

³¹⁴ Ontario Human Rights Commission, "Deputation to the Ottawa Police Services Board on the Traffic Stop Race Data Collection Project" (28 November, 2016) online: www.ohrc.on.ca/en/news_centre/deputation-ottawa-police-services-board-traffic-stop-race-data-collection-project (retrieved February 24, 2017).

³¹⁵ See "About NYTD" (2012) online: Children's Bureau: An Office of the Administration for Children & Families www.acf.hhs.gov/cb/resource/about-nytd?page=all (retrieved February 28, 2017); U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Traffic Stop Data Collection: Policies for State Police, 2004* (Bureau of Justice Statistics, 2005) online: Bureau of Justice Statistics www.bjs.gov/content/pub/ascii/tsdcp04.txt (retrieved February 28, 2017). The U.S. Department of Education, through its Office for Civil Rights, requires schools across the country to collect data on "leading civil rights indicators" every other school year. See U.S. Department of Education, Office for Civil Rights, "Civil Rights Data Collection," online: U.S. Department of Education www2.ed.gov/about/offices/list/ocr/data.html?src=rt (retrieved February 28, 2017).

³¹⁶ There is some evidence of progress in this area. In addition to race-based data collection in the area of child welfare, in 2013, disaggregated data collection, including on race and ethnicity, started at Toronto Central's Local Health Integrated Network (LHIN). See Mount Sinai Hospital, "Measuring Health Equity in the TC LHIN," online: Mt. Sinai Hospital www.mountsinai.on.ca/about_us/human-rights/measuring-health-equity (retrieved February 27, 2017). The Peel District School Board has announced that it will start collecting race-based data as part of a student census. Andrea Gordon, "Peel School Board Plans to Collect Race-Based Data on Students" *Toronto Star* (25 November 2016) online: thestar.com www.thestar.com/yourtoronto/education/2016/11/25/peel-school-board-plans-to-collect-race-based-data-on-students.html (retrieved January 25, 2017).

³¹⁷ This model, called the "Texas Model," has resulted in better outcomes for Black children in that state. See Texas Department of Family and Protective Services, "Disproportionality in Child Protective Services: Updated Results of Statewide Reform Efforts" by Rebecca Breidenbach, Tanya Rollins & Jon Olson (TX: Texas Department of Family and Protective Services, 2011) at 4. For a description of the Texas approach and other effective approaches, see Oronde Miller et al, *Changing Course: Improving Outcomes for African American Males Involved with Child Welfare Systems* (New York: Center for the Study of Social Policy, 2014) online: www.cssp.org/publications/child-welfare/alliance/Changing-Course-Improving-Outcomes-for-African-American-Males-Involved-with-Child-Welfare-Systems.pdf (retrieved February 27, 2017).

³¹⁸ Gordon Pon et al, *supra* note 163.

³¹⁹ The Truth and Reconciliation Commission of Canada specifically recommends that new federal Aboriginal child-welfare legislation be enacted that establishes national standards for Aboriginal child apprehension and custody cases that includes, among its principles, an affirmation of “the right of Aboriginal governments to establish and maintain their own child-welfare agencies.” The Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Truth and Reconciliation Commission of Canada, 2015) online: Truth and Reconciliation Commission of Canada www.trc.ca (retrieved December 21, 2016) at 320.

³²⁰ “Racialized” refers to all racial or ethnic background(s) reported other than White or “other,” and not Indigenous.

³²¹ Calculations involving Indigenous peoples in this report are based on the 123 survey respondents who identified as Métis, First Nations or Inuit.

³²² Statistics Canada, no date. *2011 National Household Survey: Data Tables*. Statistics Canada Catalogue no. 99-011-X2011026. Last modified January 7, 2016. Online: Statistics Canada www12.statcan.gc.ca/nhs-enm/2011/dp-pd/dt-td/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK=0&GRP=1&PID=105401&PRID=0&PTYPE=105277&S=0&SHOWALL=0&SUB=0&Temporal=2013&THEME=94&VID=0&VNAMEE=&VNAMEF= (Retrieved: August 4, 2016).

³²³ See Ontario Human Rights Commission, *Human rights and creed research and consultation report* (Toronto: Queen’s Printer for Ontario, 2013) online: Ontario Human Rights Commission www.ohrc.on.ca/en/human-rights-and-creed-research-and-consultation-report at 9.

³²⁴ *Ibid.*