

INDIGENOUS CONSUMER RACIAL PROFILING IN CANADA:

A Neglected Human Rights Issue

EXPERT REPORT

Prepared on behalf of Ng Ariss Fong, Lawyers

**Wilson v Canadian Tire et al., (BC Human Rights
Complaint CS-003916)**

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This report examines the pervasive yet underrecognized phenomenon of consumer racial profiling (CRP) against Indigenous peoples in Canada. Drawing on socio-legal analysis, public health research, and empirical data, the authors demonstrate how CRP—manifested in routine acts of surveillance, exclusion, and humiliation in retail and service spaces—functions as a contemporary expression of colonialism and systemic racism. The report identifies both individual and collective harms, including racial trauma, internalized inferiority, and civic alienation, while framing CRP as a neglected but critical human rights issue. The authors argue that CRP exacerbates intergenerational trauma and undermines reconciliation efforts, calling for Indigenous-specific remedies such as healing ceremonies, cultural safety training, and systemic data collection reforms. By situating CRP within broader patterns of legal consciousness, systemic discrimination, and access to justice, this report is a much needed foundational resource for advancing anti-racist practices in commercial settings and fulfilling Canada's, British Columbia's and the private sector's obligations under the Truth and Reconciliation Commission and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

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PART I: BRIEF BIOGRAPHIES OF THE AUTHORS

Dr. Lorne Foster is a Full Professor and the Director, Institute for Social Research (ISR) at York University, which is a leading university-based survey research centre in Canada. He holds the York Research Chair in Human Rights and Black Canadian Studies (Tier 1). He also created the Diversity & Human Rights Certificate (DHRC), established in association with the Human Resources Professional Association (HRPA). This initiative is the first academic-industry partnership sponsored by a regulatory organization. His work on public policy formation and scholarship on the human rights approach to inclusive organizational change ranks among the best in its field and has consistently helped to open doors to new scholarly explorations through a synergistic laboratory of academic-and-industry collaborations.

Dr. Les Jacobs is a Full Professor and the Vice-President, Research and Innovation, at Ontario Tech University. Previously, he held at York University the York Research Chair in Human Rights and Access to Justice (Tier 1) leading the new Access to Justice Data Science Lab, while serving as Director of the Institute for Social Research. He completed his PhD at Oxford University. He joined Ontario Tech University and York University after having held full-time teaching positions at the University of British Columbia and Magdalen College, Oxford University. He was appointed a Fellow of the Royal Society of Canada (FRSC) in 2017 for his internationally recognized data science contributions to equality of opportunity, human rights, and access to justice research.

Drs. Foster and Jacobs have worked with broader public sector agencies and community organizations across Canada for twenty years. Their work engages data collection and human rights, in particular, on human rights projects engaging racialized communities. They served as expert consultants for the Ontario Government and the Anti-Racism Directorate on the formation of the *Anti-Racism Act, 2017*, and the development of the first Anti-Racism Data Standards (Standards) for collection, use and management of race data. They worked with the Ottawa Police Service on the two largest Race Data Traffic Stop Projects in Canadian policing history. They collaborated with the Windsor Police Service to evaluate their operational policies and regulations using a human rights lens. They worked with the Toronto Police Service (TPS) on their Race and Identity Based Data Collection Strategy, as well as their Use of Force and Strip Search analysis. They were expert consultants for the Government of Nova Scotia and the Office of Equity and Anti-Racism Initiatives on the development of the Anti-Racism Data Collection Strategy under the authority of the *Dismantling Racism and*

Hate Act, 2022. These initiatives supported data standards for collecting and using information to identify, monitor and address systemic hate, inequity and racism.

Drs. Foster and Jacobs served as expert consultants for the Honourable Chief Justice Michael Tulloch on the Independent Oversight Review and the assessment of the police civilian oversight bodies, including the Special Investigations Unit (SIU), the Office of Independent Police Review Director (OIPRD) and the Ontario Civilian Police Commission (OCPC); and the Independent Street Check Review. They collaborated with the Ontario Government and the Cabinet Office (CO) on a whole-of-government review of the Workplace Discrimination and Harassment Policy and Respectful Workplace Practice.

Drs. Foster and Jacobs have also consulted with several international agencies on human rights-based initiatives, including most recently receiving the Norwegian Coat of Arms for their work with the Oslo Police Service – the largest police district in Norway. They continue collaborations with various police services – including Waterloo Regional Police Service, Ottawa Police Service, Peel Regional Police and York Regional Police – to help develop race data collection strategies for all their interactions with the public.

Among their important academic-community partnerships, they have served as the primary consultants in the implementation of organizational policy, procedure, and training requirements to address regulatory and legal obligations for San'yas Indigenous Cultural Safety Learning Programs, in both British Columbia and Ontario. The San'yas team is located across Turtle Island and share offices on lək'wəŋən territory in Victoria, as well as on the lands of Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat Peoples in Toronto.

Drs. Foster and Jacobs have also worked with the Indigenous units of several police services, such as, Waterloo Regional Police Service (WRPS) Indigenous Services and Relations department, focusing on building relationships with First Nations, Inuit, and Métis communities and supporting reconciliation efforts. This includes Anishnabeg Outreach which provides Indigenous people with access to culturally appropriate services that work to support individuals to heal and overcome trauma.

They have a long-standing consultative relationship with the York Regional Police Service (YRP) which provides various services and initiatives aimed at building trust and positive relationships with Indigenous communities in York Region – like the Chippewas of Georgina Island – based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change.

They have worked on a number of high-profile legal and human rights tribunal cases in the role of expert witnesses producing reports and testimony – such as *Aiken v. Police Services Bd.* (2015), 337 O.A.C. 157 (DC); *Logan v. Ontario (Solicitor General)*, 2022 HRTO 1004 (CanLII); *Ligue des Noirs du Québec et al. v. City of Montreal S.C.* 500-06-000967-196;

In addition, Drs. Foster and Jacobs recently provided an Expert Witness Consultation Report for a Class Action on Police “Carding” prepared on behalf of the Black Legal Action Centre (BLAC), Black Action Defence Committee (BADC) and McCarthy Tétrault LLP Court File No.: CV-23-00704364-00CP.

Their major academic publications includes *Racial Profiling and Human Rights in Canada: The New Legal Landscape* (Irwin Law Books/University of Toronto Press, 2018).

For more on Drs. Foster’s and Jacobs’ careers, see their *curricula vitae* at **Appendix “A”**.

PART II: INTRODUCTION

2.1. The Expert Mandate

Re: Wilson v Canadian Tire et al., (BC Human Rights Complaint CS-003916)

Acting on behalf of Heiltsuk Tribal Council and Dawn and Richard Wilson (the “Clients”), NG ARISS FONG, Lawyers retain the services of Drs. Lorne Foster and Les Jacobs to provide an expert report within their expertise to assist in the human rights proceeding on the matter of Wilson v Canadian Tire et al., (BC Human Rights Complaint CS-003916).

A.) Background

Dawn and Richard Wilson are members of the Heiltsuk Nation. They have a human rights complaint, set for hearing on October 27-31, 2025. Our Clients wish to retain you to provide a report setting out your expert opinion on the impacts of consumer racial profiling on Indigenous peoples, and ways to ameliorate those impacts.

B.) Format of Expert Opinion

Drs. Foster and Jacobs were issued the following instructions for formatting their report:

1. **Qualifications:** please provide a brief description of your professional and academic qualifications, emphasizing any experience or qualification that may bear on our Clients’ human rights case.
2. **List of Assumptions:** if you must assume any facts for the purpose of your report, please clearly state your assumptions.
3. **List of Documents Reviewed:** if you review any documents in the course of preparing your report, please list all the documents you review.
4. **Terms of Reference:** please provide your objective opinion on the following matters:
 - 4.1 What are the impacts of consumer racial profiling on Indigenous peoples, and in particular, what, if any, are the collective or communal impacts when individual Indigenous persons experience consumer racial profiling?
 - 4.2 What would ameliorate those impacts, and in particular, would amelioration include Indigenous-specific remedies, such as (a) a healing ceremony, pursuant to Indigenous legal and cultural traditions; and (b) a study on the impacts of consumer racial profiling on Indigenous peoples?

You must provide your own analysis and opinion as to these issues.

2.2. List of Assumptions, Definitions, and Stipulations

- See **Appendix “B”** regarding factual assumptions related to the matter of *Wilson v Canadian Tire et al.*, (BC Human Rights Complaint CS-003916).
- For our purposes, we follow Jean Teillet (2022) in her explanation of Indigenous identity in Canada:

“the right and responsibility to identify its Indigenous members vests in the distinct Indigenous nations. Each Indigenous nation determines its members according to its own customs, traditions, and laws. While there are basic similarities in most Indigenous membership customs, traditions, and laws, they are not all the same. Indigenous identity is also layered with centuries of ongoing colonialism, which includes legal Indigenous definitions determined by colonial governments and the courts according to their colonial laws, the most notable of which are the Indian Act and the Supreme Court of Canada’s 2016 decision in *Daniels*. Self-governing Indigenous nations have codified membership and beneficiary laws that are also Canadian law. There are many nuances to Indigenous identity and navigating this complex world is not easy.”¹

Significantly Teillet “takes the position that Indigenous peoples are not a race”.² But nonetheless can experience racism because of how others perceive Indigenous identity.

- Race is a socially constructed way of assigning racial identity to individuals and communities without a basis in biology or genetics.
- Racialization is the process by which societies construct races as real and substantial for the purposes of judging, categorizing and creating difference among persons in ways that matter to economic, political and social life. This term is widely preferred over descriptions such as ‘racial minority’ or ‘visible minority’ or ‘person of colour’ as it expresses race as a socially constructed process rather than as a description of persons based on perceived biological traits.
- Racism and racial discrimination occur when a person is treated worse, excluded, disadvantaged, harassed, bullied, humiliated or degraded because of

¹ Teillet, J. (2022), “Indigenous Identity Fraud – A Report for the University of Saskatchewan”. <https://indigenous.usask.ca/documents/deybwewin--taapwaywin--tapwewin-verification/jean-teillet-report.pdf> at p. 6.

² Ibid at p. 8.

their racial or Indigenous identity. This racial or Indigenous identity can be genuine or perceived. Although Indigenous peoples do not identify as a race, individuals can and do experience racism because of their Indigenous identity.

- Racism operates at several levels, including individual, systemic or institutional and societal. Racialized stereotypes and stigmas are the active elements that connect the levels of racism into a seamless whole.
- Intersectionality is a framework for understanding how social categorizations like race, identity, class, gender, sexual orientation, disability, etc., combine to create unique social experiences. Increased vulnerability arises when these intersecting identities create compounded experiences of oppression, discrimination, and marginalization, making individuals more susceptible to harm and limiting their access to resources and opportunities. The various intersections of social inequality are referred to in research literature as "vectors of oppression and privilege" that together form a "matrix of domination".³
- Racial discrimination can be impacted by race-related grounds in Canadian human rights law such as colour, ethnic origin, place of origin, ancestry and creed. In addition, racial and Indigenous identity can overlap or have an intersectionality with other grounds of discrimination such as gender, disability, sexual orientation, age and class or socio-economic to create unique or compounded experiences of discrimination. The prohibited ground or grounds of discrimination need not be the sole or the major factor leading to the discriminatory conduct; it is sufficient that it is a factor.
- Racism and racial discrimination persist in Canada and are part of the lived reality of not only Indigenous and racialized persons, but also all persons in Canada.
- Consumer racial profiling occurs in retail or related private sector settings where an individual is in the role of a consumer, as opposed to an employee. It is generally defined as a practice of targeting an Indigenous, Black or other racialized consumer for discriminatory treatment based on unconscious or conscious biases and stereotypes about a consumer's Indigenous identity, race, skin colour, ethnicity, appearance, gender/sex, and ability to pay or intersections of these perceived identities.

2.3. List of Documents Reviewed

³ Collins, P. (2019). *Intersectionality as Critical Social Theory*, Durham: Duke University Press.

See **Appendix “B”** regarding documents reviewed generally. Please see the following list of public documents that have been reviewed:

British Columbia Human Rights Code – British Columbia Human Rights Commission (BCHRC).

British Columbia Human Rights Tribunal Report on Implementation of Expanding Our Vision: Cultural Equality & Indigenous Peoples’ Human Rights June 2020

Declaration on the Rights of Indigenous Peoples Act [SBC 2019] CHAPTER 44.

Expanding Our Vision: Cultural Equality & Indigenous People’s Human Rights. Cedar and Sage Law

Halifax, Nova Scotia: Street Checks Report.

Indigenous Racial Profiling by Retailers and Tips to Avoid It – Indigenous Corporate Training Inc.

Indigenous Experiences with Racism and Its Impacts – National Collaborating Centre for Indigenous Health (NCCIH).

Indigenous Languages Act (S.C. 2019, c. 23).

In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in B.C. Health Care

International Decade of Indigenous Languages (2022-2032)

Paying the Price: the Human Cost of Racial Profiling Inquiry Report – Ontario Human Rights Commission (OHRC)

Policy and guidelines on racism and racial discrimination – Ontario Human Rights Commission (OHRC)

Racial Profiling in the Retail Industry. Alberta Civil Liberties Research Centre (ACLRC).

Report of the Royal Commission on Aboriginal Peoples (1996). Ottawa: *Canada Communication Group Publishing*. (Co-Chairs: R. Dussault & G. Erasmus).

A/HRC/54/31/Add.2: Visit to Canada - Report of the Special Rapporteur on the rights of Indigenous Peoples

Social Determinants of Health: Indigenous Experiences with Racism and its Impacts. *The National Collaborating Centre of Indigenous Health.*

Indigenous Identity Fraud: A Report for the University of Saskatchewan (October 17, 2022).

Truth and Reconciliation Commission of Canada Final Report

Truth and Reconciliation Commission of Canada: Calls to Action

United Nations Declaration on the Rights of Indigenous Peoples

Under suspicion: Research and consultation report on racial profiling in Ontario – Ontario Human Rights Commission (OHRC)

Working Together to Better Serve All Nova Scotians: Report on Consumer Racial Profiling in Nova Scotia – Nova Scotia Human Rights Commission (NSHRC)

PART III

3.1. What are the impacts of consumer racial profiling on Indigenous peoples, and in particular, what, if any, are the collective or communal impacts when individual Indigenous persons experience consumer racial profiling?

3.1.1. The Increased Visibility of Consumer Racial Profiling

People in Indigenous, Black and other racialized communities have had longstanding concerns in Canada about racial profiling and other forms of racial discrimination.⁴ Racial profiling is a deceptive and particularly damaging type of racial discrimination. It typically relies on stereotyped assumptions based on preconceived notions about the character of a person or group and how this character threatens safety and security of the public order. These racialized stereotypes can bleed into the fabric of everyday life, organizational structures, and institutional systems.⁵

Research literature tracking the public discourse on racial profiling in Canada has focused primarily on police services and officer's conduct particularly towards members of Indigenous and Black communities – namely in areas of street stops or stop-and-search practices, use of force, and arbitrary detentions.⁶ However, there has been an increasing volume of encounters, complaints and inquiries about racial discrimination during consumer encounters in urban retail environments across the country. Indeed,

⁴ Cotter, A. (2022). Experiences of discrimination among the Black and Indigenous populations in Canada. *Statistics Canada*. Catalogue no. 85-002-X ISSN 1209-6393: <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2022001/article/00002-eng.pdf?st=oRYOb0rj>; Foster, L., Jacobs, L., Siu, S., & Azmi, S. (Eds.). (2018). Introduction. *Racial profiling and human rights in Canada: The new legal landscape*. Introduction. Irwin Law, at 1-9; Ontario Human Rights Commission (OHRC). (2003). Paying The Price: The Human Cost of Racial Profiling – Inquiry Report. https://www3.ohrc.on.ca/sites/default/files/attachments/Paying_the_price%3A_The_human_cost_of_racial_profiling.pdf, at 55-66.

⁵ Ontario Human Rights Commission. (2009). *Policy and guidelines on racism and racial discrimination*: https://www3.ohrc.on.ca/sites/default/files/attachments/Policy_and_guidelines_on_racism_and_racial_discrimination.pdf, at 19.

⁶ Armory, V., Hassaoui, M., Mulone, M. (2019). Analyse des données du Service de Police de la Ville de Montréal (SPVM) et élaboration d'indicateurs de suivi en matière de profilage racial Rapport final remis au SPVM: https://spvm.qc.ca/upload/Rapport_Armony-Hassaoui-Mulone.pdf; Wortley, S. (2019). Halifax, Nova Scotia: Street Checks Report: https://humanrights.novascotia.ca/sites/default/files/editor-uploads/halifax_street_checks_report_march_2019_0.pdf; Foster, L., Jacobs, L., Siu, S., & Azmi, S. (Eds.). (2018). *Racial profiling and human rights in Canada: The new legal landscape*. Introduction. Irwin Law (University of Toronto Press); Hirschmann, K. (2006). *Racial profiling*. Greenhaven Press; Tator, C., Henry, F., Smith, C., & Brown, M. (2006). *Racial profiling in Canada: challenging the myth of "a few bad apples"*. University of Toronto Press; Tanovich, D.M. (2006). *The Colour of Justice: Policing race in Canada*. Irwin Press (University of Toronto Press); Ontario Human Rights Commission. (2003). Paying The Price: The Human Cost of Racial Profiling – Inquiry Report: https://www3.ohrc.on.ca/sites/default/files/attachments/Paying_the_price%3A_The_human_cost_of_racial_profiling.pdf.

recent studies indicate that both Indigenous and Black people are more often experiencing racial profiling today at private businesses and commercial retail services, which is now commonly referred to as consumer racial profiling (CRP).⁷

A 2022 study, for instance, conducted by the Institute for Research and Education on Race Relations (IRERR) surveyed 160 participants in the Greater Montreal area as part of the Communities United for Racial Equality (CURE) Project. According to the IRERR interim report findings, Indigenous, Black, Middle Eastern and Asian respondents all say racial profiling is most common in the consumer services sector, followed by education, employment and then policing.⁸ Almost half of the respondents who reported being victims of racial profiling say it happened in a store or bank. The Institute advised that racial profiling is happening in consumer retail sectors every day at a subtle level, and despite being the most common site, these consumer racial profiling incidents often go unreported, and very few victims decide to pursue remediation.⁹

Consumer racial profiling involves an Indigenous, Black or other racialized persons, predominantly being followed around, singled out for scrutiny, or closely monitored by a clerk or guard who suspects they may steal or do something else criminal. Consumer racial profiling victims are often subject to slurs, being searched, being asked for extra forms of identification, having purchases limited, being required to have a higher credit limit than other customers, being charged a higher price, or being asked more rigorous questions on applications.¹⁰ It can also mean a request for any item the store actually carries being denied, with the store attendant claiming that the item does not exist or is not in stock.¹¹ Consumer racial profiling occurs in many retail environments including

⁷ Gabbidon, S. L., Jordan, K. L., & Owusu-Bempah, A. (2025). Shopping Under Suspicion in Canada: Results From a Nationwide Victimization Survey on Consumer Racial Profiling. *Race and Justice*, 0 (0) 1-25: <https://journals.sagepub.com/doi/10.1177/21533687251341274>; O'Malley, O. (2022). "Montreal-based survey finds racial profiling most common in stores and banks." *Global News*. December 15: <https://globalnews.ca/news/9352426/montreal-survey-racial-profiling-common-stores-banks/>; Nova Scotia Human Rights Commission (NSHRC). (2013). *Working Together to Better Serve All Nova Scotians: A Report on Consumer Racial Profiling in Nova Scotia*: <https://humanrights.novascotia.ca/sites/default/files/crp-report.pdf>; Antonio, M., (2012). *Racial profiling the lived experience of ethno-cultural community members in Calgary*. Ethno-Cultural Council of Calgary: <https://actiondignity.org/wp-content/uploads/2018/07/Racial-profiling-as-lived-experience-Final-Research-Report.pdf>; Eid, P., Magloire, J., & Turenne, M. (2011). Racial profiling and systemic discrimination of racialized youth. Montreal, QC: Commission des Droits de la Personne et des Droits de la Jeunesse: https://www.cdpdj.qc.ca/storage/app/media/publications/Profiling_final_EN.pdf

⁸ O'Malley, O. (2022). "Montreal-based survey finds racial profiling most common in stores and banks."

⁹ Gabbidon, S. L., Jordan, K. L., & Owusu-Bempah, A. (2025).

¹⁰ Williams, J. D., Henderson, G. R., & Harris, A-M. (2001). "Consumer racial profiling: Bigotry goes to market." *The New Crisis*, 108, 22–24.

¹¹ Gabbidon, S. L. (2003). "Racial Profiling by Store Clerks and Security Personnel in Retail Establishments". *Journal of Contemporary Criminal Justice*. 19 (3): 345–364: <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=aff95ec008a4c7b0445a1d06d650e472ec6bbf02d>.

grocery stores, clothing shops, department stores and office supply shops. However, consumer racial profiling practices are not unique to the retail sector and cut across all types of private and public sector consumer services (e.g., banks, hotels, restaurants, insurance, health care, security, travel and education).¹²

Recent research and media reports underscore the fact that consumer racial profiling is a deep-seated social phenomenon often with low visibility in our daily round of life where the corresponding adverse social harms routinely go unnoticed or are interpreted as normal practice and so ‘business as usual’.¹³ Table 1 identifies some of the most common manifestations of Indigenous consumer racial profiling.

Table 1

SOME MANIFESTATIONS OF INDIGINEOUS CONSUMER RACIAL PROFILING
➤ Being ignored ➤ Receiving slow service ➤ Being refused service ➤ Being followed in a store ➤ Being told the price of expensive clothing items before asking or trying them on ➤ Being questioned about one’s ability to afford a product or service ➤ Being the target of offensive language ➤ Removal of a tip jar from a counter ➤ 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 ➤ Being the only customer to have their receipts checked upon exiting when the alarm went off

¹² Sojourner-Campbell, T. E. (2018). “A Critical Perspective on Consumer Racial Profiling in Ontario’s Retail Environment.” In Foster, L., Jacobs, L., Siu, S., & Azmi, S. (Eds.). (2018). *Racial profiling and human rights in Canada: The new legal landscape*. Irwin Law (University of Toronto Press) at 174.

¹³ Ontario Human Rights Commission. (2017). *Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario*: https://www.ohrc.on.ca/sites/default/files/Under%20suspicion_research%20and%20consultation%20report%20on%20racial%20profiling%20in%20Ontario_2017.pdf; Gabbidon, S. L., & Higgins, G. E. (2011). Public Opinion on the Use of Consumer Racial Profiling to Identify Shoplifters: An Exploratory Study. *Criminal Justice Review*, 36(2), 201-212: <https://doi.org/10.1177/0734016811399420>; Williams, J. D., Henderson, G. R., & Harris, A.-M. (2001).

- Being asked as a racialized person to prepay a bill
- Having one's belongings or person searched
- Being physically removed from a store
- Being questioned after making a purchase
- Being wrongfully detained
- Being handcuffed on suspicion of shoplifting
- Not being taken seriously or receiving a response when raising concerns about poor or discriminatory service

Business owners and managers may actively conduct certain practices to monitor Indigenous and Black customers or inhibit them from using their stores, ostensibly trying to minimize costs ("cost-based statistical discrimination") under the auspices of loss prevention.¹⁴ These practices include putting in place blanket policies on how to handle racialized people and asking staff to look out for Indigenous shoppers because they assume they will steal.¹⁵ In these cases, social psychologists have described the cause of consumer racial profiling as "implicit associations based on unconscious bias,"¹⁶ with retailers making assumptions about their Indigenous clientele based on stereotypes and tropes that say Indigenous People are likelier than others to commit crimes and to not be credit-worthy.¹⁷

In the case *McCarthy v Kenny Tan Pharmacy Inc.*,¹⁸ it was noted that Shopper's Drug Mart, "Employee Handbook [had] several provisions which direct[ed] employees to treat customers with courtesy and respect, to abide by anti-discrimination values and legislation when providing customer service, and not to rely on racial or other stereotypes when dealing with trespassing."¹⁹ Yet, it was also noted these loss prevention provisions in the employee handbook were easily ignored by Managers and

¹⁴ Thijssen, L., Coenders, M., & Lancee, B. (2021). Is there evidence for statistical discrimination against ethnic minorities in hiring? Evidence from a cross-national field experiment. *Social Science Research*, 93, 102482: <https://www.sciencedirect.com/science/article/pii/S0049089X20300806>; Bordalo, P., Coffman, K., Gennaioli, N., & Shleifer, A. (2016). Stereotypes. *The Quarterly Journal of Economics*, 131(4), 1753-1794.

¹⁵ Ibid.

¹⁶ Greenwald, A.G., Banaji, M.R., Rudman, L.A., Farnham, S.D., Nosek, B.A. and Mellott, D.S. (2002). A unified theory of implicit attitudes, stereotypes, self-esteem, and self-concept. *Psychological Review* 109: 3-25: <https://faculty.washington.edu/agg/pdf/UnifiedTheory.2002.pdf>.

¹⁷ Harris, A-M. G. (2003). "Shopping While Black: Applying 42 U.S.C. § 1981 to Cases of Consumer Racial Profiling". *Boston College Third World Law Journal*. 23 (1): 1-56. Archived from the original on November 2, 2017: <https://web.archive.org/web/20171102211647/http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1124&context=twlj>.

¹⁸ *McCarthy v Kenny Tan Pharmacy Inc*, 2015 HRT0 1303 (CanLII) at para 22: <http://canlii.ca/t/qlhwk>.

¹⁹ *Ibid* at paras 21, 22 & 62.

staff at Tan's pharmacy who resorted to racial stereotyping as a default position or reflexive action. This may indicate that the use of informal and verbal instructions to staff about loss prevention strategies can leave retailers vulnerable to legal liability, especially when these strategies utilize consumer racial profiling practices.²⁰

Stereotyping can be described as a process by which people reflexively use social categories such as Indigeneity, race, colour, ethnic origin, place of origin, religion, etc. in acquiring, processing and recalling information about others.²¹ Stereotyping typically involves attributing the same characteristics to all members of a group, regardless of their individual differences. In this sense stereotyping is often grounded by misconceptions, incomplete information, or false generalizations, and is inherently irrational. Practical experience and social psychology both confirm that anyone can stereotype, even those who are well meaning and not overtly biased. While it may be a common reflexive impulse for humans to engage in racial stereotyping, it can nevertheless lead to harmful encounters and destructive outcomes. These negative stereotypes can result in group stigmas that deeply discredit the identity and culture of targeted individuals and groups.

Many Canadians' beliefs, attitudes, and behaviours toward Indigenous people remain heavily influenced by colonial stereotypes, entrenched in a mentality of 'us versus them'.²² The positioning of Indigenous people as an idealized or demonized 'other' exaggerates cultural differences and reinforces racialized generalizations.²³ Inaccurate or inadequate education about Canada's colonial history and its role in creating the disadvantages currently facing Indigenous communities essentially transfers responsibility for economic and social problems to Indigenous peoples' presumed failure to evolve, rather than to the socially and economically damaging effects of colonialism and racism.²⁴

There are a number of specific negative stereotypes associated with Indigenous people as well, including assumptions about criminality, the pervasiveness and cause of alcohol and drug addiction, unemployment, and violence.²⁵ One persistent and

²⁰ Sojourner-Campbell, T. E. (2015). May I Help You? Disrupting Consumer Spaces. <https://www.linkedin.com/pulse/may-i-help-you-disrupting-consumer-spaces-sojourner-llm-candidate/>.

²¹ Ontario Human Rights Commission. (2003) at p. 6.

²² Bourassa, C., McKay-McNabb, K., & Hampton, M. (2004). Racism, sexism and colonialism: The impact on the health of Aboriginal women in Canada. *Canadian Woman Studies*, 24(1): 23-30: <https://cws.journals.yorku.ca/index.php/cws/article/view/6172>.

²³ de Leeuw, S., Kobayashi, A., & Cameron, E. (2011). Difference. In *A companion to social geography*, V.J. Del Casino, M.E. Thomas, P. Cloke, & R. Panelli (eds.), pp. 17-37. Oxford, UK: Wiley-Blackwell.

²⁴ Harding, R. (2006). Historical representations of Aboriginal people in the Canadian news media. *Discourse & Society*, 17(2): 205-235.

²⁵ Loppie S., Reading, C., De Leeuw, S. (2020), Social Determinants of Health: Indigenous Experiences with Racism and its Impacts. *The National Collaborating Centre of Indigenous Health*.

particularly damaging depiction is that Indigenous peoples are willing ‘wards of the state,’ dependent on others and ultimately better off when the federal government oversees their affairs.²⁶ This not only degrades the autonomy of Indigenous peoples and their legitimate right to be self-determining, but it has damaged the self-concept of countless generations of people who unfortunately, at times, internalize such demeaning tropes and stereotypes.²⁷

There is now substantial empirical support for the claim most people – even those ‘moderns’ who sincerely declare egalitarian views – may hold implicit biases against Indigenous or racialized groups.²⁸ This is true even of members of the ‘targeted’ group.²⁹ Implicit and indirect forms of Indigenous and race-based bias can act to distort the consciousness of both the perpetrators (through externalized narrow-mindedness) and the targets themselves (through internalized inferiority and stigma). Internalized racial stigma and inferiority is the internalization of beliefs about racism and colonization that contribute to the self-acceptance of negative messaging or stereotypical misrepresentations that inform perceptions about worth and ability. Internalized racism is associated with psychological distress in racialized people, particularly from Indigenous and Black communities who have an aggrieved history of colonialism and enslavement.³⁰

Meanwhile, when racialized/targeted individuals assume they have an inferior status they are more susceptible to internalize colonialism, racism and self-hate³¹ – which can lead to some individuals belonging to Indigenous and other historically oppressed groups to regularly invalidate, demean, and/or suppress their own and other marginalized groups’ heritage, identity, self-worth, and human rights. Often, those with greater degrees of internalized racism are consciously or unconsciously socialized into believing that being a member of their own cultural group is somehow “lesser,” “inferior,” “shameful,” “undesirable,” or “unacceptable” in relation to the “mainstream” or

<https://www.nccih.ca/docs/determinants/FS-Racism2-Racism-Impacts-EN.pdf>; de Leeuw, S., Kobayashi, A., & Cameron, E. (2011); Backhouse, C. (1999). *Colour-coded: A legal history of racism in Canada. 1900-1950*. Toronto, ON: Osgoode Society of Canadian Legal History.

²⁶ Erickson, L. (2005). Constructed and contested truths: Aboriginal suicide, law, and colonialism in the Canadian west(s), 1823-1927. *The Canadian Historical Review*, 86(4): 595-618.

²⁷ Harding, R. (2006).

²⁸ Greenwald, A.G., Banaji, M.R., Rudman, L.A., Farnham, S.D., Nosek, B.A. and Mellott, D.S. (2002).

²⁹ Crisp, R. J., and Turner, R. N. (2007). *Essential Social Psychology*. London: Sage.

³⁰ Sanders, S. M., Williams, T. R., Berry, A. T., Garcia-Aguilera, C., Robinson, K., Martin, R., & Jones, P. (2024). Internalized Racism and Mental Health: The Moderating Role of Collective Racial Self-Esteem. *Behavioral Sciences*, 14(11), 1003: <https://doi.org/10.3390/bs14111003>.

³¹ Ibid.

“whitestream”³² dominant culture. They regard themselves and members of their own cultural group with embarrassment (self-rejection) and disdain (self-loathing). This type of inferiority complex induced by racial profiling can turn into a self-fulfilling prophecy when an individual is more likely to commit a crime because they are perceived as a criminal.³³

There is a growing consensus in racialization research that the culmination of racial profiling practices across the spectrum can alienate Indigenous and other marginalized people, fueling fear and anxiety about engaging with everyday consumer institutions (such as supermarkets, retail outlets and banks) and public sector institutions (such as policing, schools and hospitals).³⁴ This mistrust across multisector institutions – including government agencies, private companies, and public institutions – among Indigenous and Black communities in particular, creates social distance from the main rules and pillars of civil society; and disconnects some individuals from their own communities, their families and the city they live in. This in turn diminishes a sense of equal citizenship and belonging – and reinforces a feeling of second-class status – while constructing a vacuum that is often left to be filled by aberrant lifestyles and dysfunctional, outcast and pariah life worlds.³⁵ The negative ripple effects can radiate throughout the life of Indigenous and Black communities, eroding cultural practices and the vibrance of community life, while diminishing economic opportunities and the prospects of gainful employment.

Ardith Walpetko We’daix Walkem’s study, *Expanding Our Vision*, notes that consumer racial profiling reinforces the general proposition among Indigenous People in British Columbia that – “[W]e have always been treated like a second- or third-class citizen

³² Lehr, S. (2015). Whitestreaming Canadian society? A covert return to the overtly racist immigration policies pre-1962. *Conference: CARFMS15 Annual Conference of the Canadian Association for Refugee and Forced Migration Studies*. May, Toronto.

³³ Hosein, A. O. (2018). "Racial Profiling and a Reasonable Sense of Inferior Political Status". *Journal of Political Philosophy*. 26 (3): 1–20.

³⁴ Doob, A. & Gartner, R. (2017). *Understanding the Impact of Police Stops: A Report Prepared for the Toronto Police Services Board*. Toronto: Toronto Police Services Board: <https://www.crimsl.utoronto.ca/sites/crimsl.utoronto.ca/files/DoobGartnerPoliceStopsReport-17Jan2017r.pdf>; Price, N. (2014). *This Issue Has Been With Us for Ages: A Community Based Assessment of Police Contact Carding in 31 Division. Community Assessment of Police Practices*; Marin, A. (2015). *Submission in response to the Ministry of Community Safety and Correctional Services’ consultation on proposed Ontario regulation for street checks*: <https://www.ombudsman.on.ca/sites/default/files/Media/ombudsman/ombudsman/resources/Submissions/Ombudsman-Ontario-Street-Checks-and-Balances-Aug-31-2015-Submission-accessible.pdf>.

³⁵ Wagner, W., Werner, W., Onderco, M. (2014). Rogues, Pariahs, Outlaws: Theorizing Deviance in International Relations. In: Wagner, W., Werner, W., Onderco, M. (eds) *Deviance in International Relations*. Palgrave Studies in International Relations. Palgrave Macmillan, London.

everywhere.”³⁶ This experience becomes even more worrisome in the move from outside to inside through the internalization of stigmas, or what Goffman called a “spoiled identity”³⁷, where the negative beliefs and status can become a part of who that person is. In turn, this has linkages to the widening gaps between Indigenous versus White well-being. Negative Indigenous stereotypes and stigmas impact wages, unemployment rates, income and wealth levels, ability test scores, physical and mental health, mortality statistics, as well as prison enrollment and crime victimization rates.³⁸ These persistent and substantial disparities require that we understand and study the extent to which an inherited Indigenous and racialized stereotypes and stigmas, even today, inhibits the ability of Indigenous or racialized people to realize their full human potential or contribute fully to the enrichment and well-being of the society.³⁹

3.1.2. Defining Consumer Racial Profiling

Consumer racial profiling is generally defined as a practice of targeting an Indigenous, Black or other racialized consumer for discriminatory treatment based on unconscious or conscious biases and stereotypes about a consumer’s Indigenous identity, race, skin colour, ethnicity, appearance, gender/sex, and ability to pay or intersections of these perceived identities.⁴⁰ In short, consumer racial profiling occurs because of an observed combination and linkage of Indigeneity or race and race-related⁴¹ factors with intersectional⁴² factors such as age, gender, employment status, and/or perceived socio-economic status. This intersectionality compounds discrimination and the vulnerability of Indigenous persons to consumer racial profiling, often greatly increasing

³⁶ Walpetko We’dalx Walkem, Ardith. (2020). *Expanding Our Vision: Cultural Equality & Indigenous People’s Human Rights*. Cedar and Sage Law at 21:

<https://www.bchrt.bc.ca/app/uploads/sites/876/2023/03/expanding-our-vision.pdf>. at 20.

³⁷ Goffman, E. 1963. *Stigma: Notes on the Management of Spoiled Identity*. New York: Prentice-Hall.

³⁸ Loppie, C., & Wien, F. (2022). Understanding Indigenous health inequalities through a social determinants model. National Collaborating Centre for Indigenous Health: https://www.nccih.ca/Publications/Lists/Publications/Attachments/10373/Health_Inequalities_EN_Web_2022-04-26.pdf.

³⁹ Loury, Glenn C. 2002. *The Anatomy of Racial Inequality*. Cambridge: Harvard University Press.

⁴⁰ Sojourner-Campbell, T. E. (2018) at 174.

⁴¹ Ontario Human Rights Commission (OHRC). *Race and Related Grounds*: <https://www3.ohrc.on.ca/en/your-rights/code-grounds/race-and-related-grounds>.

⁴² “The concept of ‘intersectionality’ has been defined as “intersectional oppression [that] arises out of the combination of various oppressions which, together, produce something unique and distinct from any one form of discrimination standing alone.... An intersectional approach takes into account the historical, social and political context and recognizes the unique experience of the individual based on the intersection of all relevant grounds. This approach allows the particular experience of discrimination, based on the confluence of grounds involved, to be acknowledged and remedied.” See Ontario Human Rights Commission. *An intersectional approach to discrimination: Addressing multiple grounds in human rights claims*. Ontario Human Rights Commission, Intersectionality Consultation Policy and Education Branch at 3:

https://www3.ohrc.on.ca/sites/default/files/attachments/An_intersectional_approach_to_discrimination%3A_A_addressing_multiple_grounds_in_human_rights_claims.pdf.

the harm and severity of the experience.

The breadth and intersectionality of the experience of discrimination and racial profiling was the subject of *Radek v. Henderson Development (Canada) Ltd.*⁴³ The B.C. Human Rights Tribunal examined the discriminatory treatment of Indigenous people, some of whom have disabilities, by security guards at the International Village shopping mall. The mall is located in the Downtown Eastside of Vancouver, one of Canada's poorest neighbourhoods. The Tribunal found that Aboriginal people are disproportionately poor and disproportionately have health problems and disabilities. Because of the intersection of Indigeneity, poverty, and disability, security officers at International Village treated local Indigenous people who frequented the mall as though they were "suspicious" by definition. On a regular basis, they were questioned, harassed and forced to leave. International Village wished to create a "pleasant atmosphere" that would attract shoppers to a high-end shopping mall. Poor Indigenous people did not fit the desired image; nor did people with disabilities.⁴⁴

The "site post orders" instructed security officers to have zero tolerance for "suspicious people" and "vagrants". They were to be denied entrance to the mall. The orders set out a number of "things to look for", including ripped and dirty clothing, unwillingness to answer questions, talking to themselves, open sores and wounds, acting intoxicated or stoned, and having a bad odour. As the Tribunal noted, a number of these were invitations to treat as suspicious anyone who was poor or had disabilities, a disproportionate number of whom likely to be Indigenous. The Tribunal found that people may have ripped or dirty clothing because they are poor. They may have what is perceived to be bad body odour because of certain medical conditions or because poverty results in lack of access to cleaning facilities and personal hygiene products. They may have sores because of HIV/AIDS. They may behave as though they are intoxicated or stoned because of disabilities that make their gait uneven. The orders made any person who was poor, Indigenous and disabled a target for exclusion. The Tribunal found that Ms. Radek, the individual complainant, was identifiably Indigenous. She is disabled as a result of the amputation of one leg, and sometimes she limps. She is also economically disadvantaged and lives "on disability". Although poverty and economic circumstances are not prohibited grounds of discrimination under the *Code*, the Tribunal wrote that "Ms. Radek's economic circumstances were part of who she was and how she presented . . . They are integrally interrelated with Ms. Radek's identity as an Aboriginal, disabled woman".⁴⁵

⁴³ *Radek v. Henderson Development (Canada) Ltd.* (No. 3), [2005 BCHRT 302](#) at para. 464.

⁴⁴ *Human Rights Digest*, 2005 6-6, 2005 CanLII Docs 515: <https://canlii.ca/t/t28j>.

⁴⁵ *Radek v Henderson Development (Canada) Ltd* (No.3) at para 467.

This decision provides a sophisticated analysis of discrimination as it really works in the lives of Indigenous people and people with disabilities, and helped establish the following summary of applicable principles for cases involving allegations of racial discrimination and profiling:⁴⁶

- a) The prohibited ground or grounds of discrimination need not be the sole or the major factor leading to the discriminatory conduct; it is sufficient if they are a factor;
- b) There is no need to establish an intention or motivation to discriminate; the focus of the enquiry is on the effect of the respondent's actions on the complainant;
- c) The prohibited ground or grounds need not be the cause of the respondent's discriminatory conduct; it is sufficient if they are a factor or operative element;
- d) There need be no direct evidence of discrimination; discrimination will more often be proven by circumstantial evidence and inference; and
- e) Racial stereotyping will usually be the result of subtle, unconscious beliefs, biases and prejudices.

3.1.3. Consumer Racial Profiling as an Everyday Legal Problem

Although sites of racial profiling of Indigenous persons such as police stops receive much more attention in Canadian society, it is likely that consumer racial profiling is the most pervasive and frequent experience of racism experienced by Indigenous communities.

The experience of consumer racial profiling for Indigenous persons that is the focus of this report can be situated within a broader discussion about legal problems in the everyday lives of Canadians. An “everyday legal problem” is a problem arising out of the normal activities of people’s daily lives that has a legal aspect and is a potential legal problem. Incidents of consumer racial profiling certainly meet the threshold of being everyday legal problems. Although consumer legal problems receive far less public scrutiny than other legal problems in areas such as criminal and family law, this neglect belies the frequency and seriousness of consumer problems in Canada and the province of Ontario. The 2017 journal article, “Meaningful Access to Justice for Everyday Legal Problems: New Research on Consumer Problems for Canadians,”

⁴⁶ *Radek v Henderson Development (Canada) Ltd (No.3)* at para 482.

highlights that consumer problems are the most common type of legal problem faced by Canadians in their everyday lives.⁴⁷ The research was based on a representative population sample survey of 3,051 Canadians conducted by the *Canadian Forum on Civil Justice* between October 2013 and March 2014.⁴⁸ The authors found that 22.6 per cent of respondents indicated having one or more consumer problem in the previous three years. This suggests that 5.3 million Canadians experienced consumer problems during this time period. This dwarfs the percentage of respondents who reported having legal problems that traditionally receive more attention in the formal justice system such as family problems (4.6 per cent), housing (2.5 per cent), and criminal charges (0.4 per cent). This research also makes visible that the frequency of everyday legal problems is not randomly distributed among Canadians; it is nested in particular among vulnerable populations (which is reinforced in the discussion of the *Radek v. Henderson Development (Canada) Ltd* above.) Unfortunately, despite growing recognition that consumer legal problems are the most frequently experienced legal problems in Canada, very little research has been undertaken to quantify precisely the frequency in Indigenous communities, largely because of the lack of race and Indigenous demographic data in the survey data set.

Although consumer legal problems are the most frequent of all everyday legal problems in Canada, people who face these problems are least likely to bring their concern or complaint to the civil justice or human rights system.⁴⁹ Indeed, across Canada consumer protection has been typically siloed in organizations outside the civil justice system. And the focus of those organizations is almost never on consumer racial profiling. Key consumer protection bodies across Canada including Consumer Protection Ontario and Consumer Protection BC do not currently collect any Indigenous identity data among their demographic data, nor do they have a data field for consumer racism or racial profiling. In other words, paths to justice in Canada for Indigenous consumer racial profiling are scant and difficult to navigate. (This makes for a contrast to racial profiling of Indigenous persons by police where there are now well-defined paths to justice, albeit still challenging to navigate.)

A powerful explanatory framework in recent socio-legal scholarship to explain when and if Indigenous persons in Canada bring their legal problem to the civil justice system has

⁴⁷ Jacobs, L. & McManus, M., “Meaningful Access to Justice for Everyday Legal Problems: New Research on Consumer Problems among Canadians”, *Journal of Civil Litigation and Practice* 6.3 (Fall 2017), 148-155.

⁴⁸ An overview of the general findings of this survey can be found in Farrow, T., Currie, A., Alywin, N., Jacobs, L., Northrup, D., & Moore, L., *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report*, *Osgoode Legal Studies Research Paper Series, Paper 150*, (2016):

<http://digitalcommons.osgoode.yorku.ca/olsrps/150/>

⁴⁹ Ibid.

come to be referred to as legal consciousness research.⁵⁰ Legal consciousness, in this sense of the term, refers to a person's knowledge or awareness of the law and its potential for resolving disputes and affecting social change. In other words, the significance of legal consciousness is that it provides people with interpretive frameworks to guide their interactions with law and inform their beliefs about law's promise or danger. Legal consciousness is more than a simple reflection of attitudes or beliefs about legal rights. It is better thought of as a form of cultural practice where beliefs and attitudes about legal rights affect practices and what people do, which in turn shape beliefs and attitudes. "In this theoretical framing of legal consciousness as participation in the construction of legality," explain Ewick and Silbey, "consciousness is not an exclusively ideational, abstract, or decontextualized set of attitudes toward and about the law. Consciousness is not merely a state of mind. Legal consciousness is produced and revealed in what people do as well as what they say."⁵¹ Legal consciousness is, however, never entirely the construction of a single individual or simply a subjective viewpoint. It is, in the words of Ewick and Silbey, "always a collective construction that simultaneously expresses, uses, and creates publicly exchanged understandings."⁵² Legal consciousness is not a function of doctrinal law and hence changes in doctrinal law do not necessarily lead to parallel changes in legal consciousness. For example, changes to the *Indian Act* have not led to changes in the legal consciousness among First Nations peoples. Nor have improvements to human rights legislation fundamentally impacted legal consciousness.

Legal consciousness research is designed to identify its shapes and patterns. This assumes that although the legal consciousness of an individual is constantly changing, there is something instructive about trying to identify the variety of forms it can take. These forms or varieties of legal consciousness are by necessity only ideal types or approximations. The underlying idea that how a person deals in a particular interaction with political and legal institutions and the law generally – a police stop, a false accusation of shoplifting, a letter from the bank's lawyer threatening to foreclose on a mortgage in default, a complaint about discrimination against a landlord – is largely a function of the broad position or viewpoint he or she has on law and legality. And moreover this viewpoint is a reflection of law's presence in and relevance to a person's everyday life.

Despite some evidence of consumer racial profiling being an everyday legal problem for Indigenous communities, this has not translated into a flood of complaints to human

⁵⁰ See e.g. Jacobs, L., *Mapping the Legal Consciousness of First Nations Voters*. Ottawa, ON: Elections Canada, 2009: https://publications.gc.ca/collections/collection_2014/elections/SE3-80-2009-eng.pdf.

⁵¹ Ewick, P., & Silbey, S., *The Common Place of Law: Stories from Everyday Life*. (Chicago, IL: University of Chicago Press, 1998), p. 46.

⁵² Ibid.

rights tribunals. Legal consciousness research holds great promise to provide insights into why this is the case.

The "everyday" nature of consumer racial profiling for Indigenous persons is reinforced by two other related observations and findings, which reinforce the link we identify below between Indigenous consumer racial profiling and trauma. The first is that because shopping and other consumer activities are part of our daily lives, those kinds of activities are generally multi-generational ones undertaken with family members: parents shopping with their children; adult children taking an elderly parent to the store; one family member helping another with a complex retail transaction. The recent highly visible cases in British Columbia of Indigenous consumer racial profiling exemplify this phenomena, involving an adult daughter and her father, a grandfather and his granddaughter, a parent and their young child. These sorts of multi-generational situations add to the shame, embarrassment and stigma that we noted above often accompanies racial profiling incidents.

An important theme in the social costs of everyday legal problems research is the extent to which these problems were significant stressors and impacted the mental health of Canadians.⁵³ Approximately 40% of Canadians who experienced an everyday legal problem visited as a result a healthcare professional for counselling or to address stress.⁵⁴ And of course many among the other 60% likely faced stressors but did not turn to healthcare professionals for help. People who experienced consumer and discrimination issues accounted for 10% of those who sought help.⁵⁵ Fine grained research specifically on the impacts on the mental health of Indigenous persons and everyday legal problems including consumer racial profiling is still in its infancy. What we do know is that there is strong research showing that Indigenous people in British Columbia are much more likely not to seek out mental health supports and do not trust health care professionals to listen to or take seriously their concerns.⁵⁶

Unfortunately, consumer racial profiling of Indigenous persons, as a subset of consumer problems in general, is a neglected everyday legal problem, greatly in need of more

⁵³ Moore, L., Currie, A., Alywin, N., Farrow, T., & Di Libero, P., The Cost of Experiencing Everyday Legal Problems Related to Physical and Mental Health. Toronto, ON: Canadian Forum on Civil Justice, 2017: <https://www.cfcj-fcjc.org/sites/default/files/docs/The%20Cost%20of%20Experiencing%20Everyday%20Legal%20Problems%20Related%20to%20Physical%20and%20Mental%20Health.pdf>.

⁵⁴ Ibid, p. 9.

⁵⁵ Ibid, p. 10.

⁵⁶ Turpel-Lafond M. E. (2020). In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in B.C. Health Care. Addressing Racism Review Full Report, p. 17, 51, 85-86: <https://baseline.bchumanrights.ca/wp-content/uploads/2022/08/In-Plain-Sight-Addressing-Indigenous-specific-Racism-and-Discrimination-in-B.C.-Health-Care.pdf>.

research and visibility as well as improved paths to justice in the Canadian legal system.

3.1.4. Reconciliation and Consumer Racial Profiling

The Final Report of the Truth and Reconciliation Commission of Canada, issued in 2015, established “an understanding that the most harmful impacts of residential schools have been the loss of pride and self-respect of Aboriginal people, and the lack of respect that non-Aboriginal people have been raised to have for their Aboriginal neighbours.”⁵⁷ The Report prescribes,

Together, Canadians must do more than just talk about reconciliation; we must learn how to practice reconciliation in our everyday lives—within ourselves and our families, and in our communities, governments, places of worship, schools, and workplaces. To do so constructively, Canadians must remain committed to the ongoing work of establishing and maintaining respectful relationships.⁵⁸

We have made the case here that consumer racial profiling is an everyday experiences for Indigenous persons across Canada. Arguably, consumer racial profiling exemplifies the most harmful impacts of residential schools – “the lack of respect that non-Aboriginal people have been raised to have for their Aboriginal neighbours.” Recognizing and addressing consumer racial profiling should be a central tenet of reconciliation.

This point is reinforced by a less appreciated dimension of Indigenous-specific experiences of consumer racial profiling that relates to reconciliation. An important legacy presence of the work of the Truth and Reconciliation Commission has been acknowledgement of Indigenous lands – ceded and unceded through treaties -- out of respect for the Indigenous nations who have cared for Turtle Island from before the arrival of settler peoples until this day. What is noteworthy about all of the reported cases of Indigenous consumer racial profiling in British Columbia is that the geographical sites for this racial profiling are lands that were Indigenous – stores, shopping malls, banks in cities – but off-reserve, exemplifying the othering and disrespect of Indigenous persons on their land.

3.1.5. Racial Stereotyping and Microaggressions in Consumer Racism

⁵⁷ *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*. Ottawa, ON: Truth and Reconciliation Commission of Canada, (2015). Preface: https://irsi.ubc.ca/sites/default/files/inline-files/Executive_Summary_English_Web.pdf.

⁵⁸ Ibid, p. 21.

Microaggressions are a social consequence of racial stereotypes. Microaggressions refer to the casual degradation of any marginalized group. American researchers coined the term to describe the off-the-cuff insults and dismissals researchers regularly witnessed inflicted on Indigenous and Black people.⁵⁹ When a store's sales staff is hesitant to serve an Indigenous or racialized shopper or suspects that they are prospective shoplifters, shopping no longer becomes a form of leisurely pursuit. It becomes an obstacle course of 'racial microaggressions'⁶⁰, making a common pedestrian interaction onerous and anxiety ridden. Bias research notes that while microaggressions might seem minor, they are so numerous that trying to function in such a setting is 'like lifting a ton of feathers'.⁶¹ Hence, microaggressions can lead racialized people to fear, distrust, and avoid relationships with White people.⁶²

Similarly, in a Canadian Indigenous-specific context, microaggressions are synonymous with and sometimes referred to as 'micro-discriminations' (or Shopping While Indigenous).⁶³ In her report, *Expanding our Vision: Cultural Equality and Indigenous Peoples Human Rights*, Ardith Walpetko We'dalx Walkem surveyed respondents in British Columbia who described their common experiences of service denial where they were not served, or were served after others, or were followed or stopped by security guards in stores. In each of these instances, discrimination and its impacts in loss of dignity and safety were very real, but difficult to prove. The *Expanding Our Vision* report notes "this form of discrimination is likened in a Canadian context to a 'death by a thousand cuts' where no one example rises to the level of actionable discrimination, but together the damage inflicted can be severe. This form of discrimination is wearing and persistent, and personally costly, yet rarely challenged through a British Columbia Human Rights Tribunal (BCHRT) complaint."⁶⁴

It is agreed broadly that microaggressions and/or micro-discriminations are manifest in three forms, including:

Microinsults: "communications that convey rudeness and insensitivity and demean a person's racial heritage" (i.e. eye rolling);

⁵⁹ Sue, D. W., Capodilupo, C. M. and Holder, A.M.B. (2008). Racial microaggressions in the life experience of black Americans. *Professional Psychology: Research and Practice* 39(3): 329–36: <https://nature.berkeley.edu/garbelottoat/wp-content/uploads/sue2008.pdf>.

⁶⁰ Timpf, K. (2015). Harvard Study Suggests Microaggressions Might Make People Die Sooner. *The National Review*: <https://www.nationalreview.com/2015/01/harvard-study-suggests-microaggressions-might-make-people-die-sooner-katherine-timpf/>; Sue, D. W., Capodilupo, C. and Holder, A.M.B. (2008).

⁶¹ Timpf, K. (2015).

⁶² Sue, D. W., Capodilupo, C. M. and Holder, A.M.B. (2008) at 331-332.

⁶³ Walpetko We'dalx Walkem, A. (2020) at 20; Bix, A. S. (2013). *Girls Coming to Tech!: A History of American Engineering Education for Women*. Cambridge, Massachusetts: The MIT Press.

⁶⁴ Walpetko We'dalx Walkem, A. (2020) at 20.

Microinvalidations: “communications that exclude, negate or nullify the psychological thoughts, feelings, or experiential reality of a person of color” (i.e. “I don’t see colour” which denies the experiences of racialized people, or asking if someone is “really Indigenous”); and

Microassaults: “explicit racial derogation[s] characterized primarily by a verbal or nonverbal attack meant to hurt the intended victim” (i.e. avoiding people of a particular race, associating Indigenous Peoples with aggressive imagery, alcohol use or theft).⁶⁵

In the context of ‘Shopping While Indigenous’ the cumulative round of microinsults, microinvalidations and microassaults experienced by individual targets impugn individual dignity and respect while devaluating Indigenous cultural and traditions.

As a case in point, consider a 2022 CBC Business News report documenting the experience of Indigenous-specific microaggressions experienced by Vivian Ketchum, a Anishinaabe community activist based in Winnipeg. Ms. Ketchum was confronted by police officers inside a Shoppers Drug Mart where she was asked to empty her pockets in front of other customers while she was shopping. By her account, she took off her gloves while shopping and put them in her pockets and then took her phone out and put it back into her pocket while she walked the aisles. One of the officers at the till said he saw her placing something in her pocket. She explained the items were her gloves and phone, but he told her to empty her pockets. She emptied her pockets, placing her keys, gloves, phone and jacket on the ground. Seeing no proof of a theft, the officer told her she was free to go but offered no apology.⁶⁶

Correspondingly, Vivian Ketchum described the experience of the Shoppers Drug Mart encounter this way:

“I could see guns on him.... He's a weaponized police officer. I have anxiety issues and I'm like dizzy and that; I'm having a hard time picking up the stuff... Why do I feel dirty? I didn't do anything wrong.”⁶⁷

⁶⁵ Walpetko We'dalx Walkem, A. (2020) at 22; Sue D.W., Capodilupo C.M., Torino G.C., Bucceri J.M., Holder A.M., Nadal K.L., Esquilin M. (2007). Racial microaggressions in everyday life: implications for clinical practice. *Am Psychol.* May-Jun; 62(4): 271-86: https://www.cpedv.org/sites/main/files/file-attachments/how_to_be_an_effective_ally-lessons_learned_microaggressions.pdf.

⁶⁶ Hoyer, B. (2022). “Residential school survivor says she was racially profiled by police officer at Winnipeg store.” *CBC News*: <https://www.cbc.ca/news/canada/manitoba/racial-profiling-residential-school-survivor-winnipeg-police-1.6627287>.

⁶⁷ Ibid.

Indigenous consumer racial profiling is more than a simple hassle, annoyance, or a mere inconvenience. It has real and direct consequences, in part because it causes racial trauma in everyday Canadian life that is linked to the pathology of historical and intergenerational trauma.⁶⁸ These traumas affect not only those who directly experienced them but also their descendants, leading to a legacy of social, emotional, and physical health challenges. Indigenous-specific consumer racial profiling causes racial trauma by echoing historical experiences and creating continuity between the modern day and historical treatment of Indigenous individuals; by controlling their movements, presumptively treating them as under suspicion in public; and posing the threat of detention or other forms of state control and violence simply for occupying public space.⁶⁹ As noted by the OHRC in 2003:

To those who have not experienced racial profiling or do not know someone who has, it may seem to be nothing more than a mere inconvenience. However, racial profiling is much more than a hassle or an annoyance. It has real and direct consequences. Those who experience profiling ... pay the price emotionally, psychologically, mentally and in some cases even financially and physically.⁷⁰

Canada's history of colonialism and slavery feeds directly into the 'securitization and surveillance'⁷¹ paradigm of modern society where Indigenous and Black individuals are routinely racially profiled as suspect populations. Consumer racial profiling echoes and aggravates past and contemporary experiences of exclusion and injustice against Indigenous and Black people – harkening back to the regulation of public spaces that were racially codified through 'Off-Reserve Pass systems'⁷² and/or 'Slave Pass systems',⁷³ as well as race-based vagrancy laws that privileged and sustained White cultural sensibilities and entrenched power.

⁶⁸ Bombay, A., Matheson, K., & Anisman, H. (2014). The intergenerational effects of Indian Residential Schools: Implications for the concept of historical trauma. *Transcultural psychiatry*, 51(3), 320-338: <https://journals.sagepub.com/doi/10.1177/1363461513503380>.

⁶⁹ "The little-told history of Canadians as slave owners, not just slave rescuers", CBC Radio (8 December 2017); Brucato, B. (2020). Policing Race and Racing Police: The Origins of Police in Slave Patrols. *Social Justice/Global Options*. Vol. 47, No. 3/4 (161/162), A Critical Theory of Police Power in the Twenty-First Century, pp. 115-136; Tracking Injustice (2023), [Understanding the Data: Historical and Contemporary Context of Policing, Colonialism and Discrimination](#).

⁷⁰ Ontario Human Rights Commission. (2003) at p.16.

⁷¹ Haggerty, K. D. (2016). *The Securitization of Society: Crime, Risk, and Social Order*. (Vol. 12). NYU Press; Lyon, D. (2001). *Surveillance Society: Monitoring Everyday Life*. Open University Press;

⁷² Bourgeault, R. (2006), "Aboriginal Labour in the North-West", *Prairie Forum* 31, pp. 293-296; F.L. Barron (1988), "The Indian Pass System in the Canadian West, 1882-1935. *Prairie Forum* 13 at p. 18.

⁷³ Maynard, R. (2017), *Policing Black Lives: State Violence in Canada from Slavery to the Present*, Fernwood Publishing at pp. 18-19.

There is considerable research to suggest this experience of store surveillance experienced by Indigenous victims of consumer racial profiling has tangible and demonstrable impacts on Indigenous individuals' mental and physical health, in particular causing racial trauma. Research indicates that racial trauma is associated with phenomena such as depressive symptoms; alcohol abuse; sleep disturbance; physical health issues; anxiety depression, despair, suicidal ideation, and poor general health.⁷⁴

Consumer racial profiling also has a social cost, as it causes significant mistrust to develop between the Indigenous and racialized individuals (both in children and adults), their community and key public institutions.⁷⁵ This is particularly detrimental to young Indigenous people who are at risk of being alienated from the society and develop distrust of state institutions. It is a well-established sociological principle that decreasing a sense of trust and belonging in society leads to an increasing risk of dysfunctional actions or behaviors that undermine the stability of social norms or expectations.⁷⁶ What follows from the conventional society being an alienating experience for young Indigenous people includes but is not limited to patterns of: (1) dysfunctional youth development and the transcendence of pariah underworlds outcast by conventional society; (2) disillusioned and embittered elders who feel disenfranchised by unreliable public sector institutions and services; (3) increasing community apathy and lack of commitment to political participation and civic responsibility; (4) a vicious cycle of mistrust and hostility between the police and Indigenous people and communities; and (5) societal effects which include confirmation of feelings of racism, fear and financial costs.⁷⁷

For many in Indigenous and Black communities racial profiling in public places and commercial environments is a recurrently belittling experience, with impacts on a sliding

⁷⁴ Nadal, K. L., Griffin, K. E., Wong, Y., Hamit, S., & Rasmus, M. (2014). The Impact of Racial Microaggressions on Mental Health: Counseling Implications for Clients of Color. *Journal of Counseling and Development*, 92, 57-66; Ong, A. D., Burrow, A. L., Fuller-Rowell, T. E., Ja, N. M., & Sue, D. W. (2013). Racial Microaggressions and Daily Well-Being Among Asian Americans. *Journal of Counseling Psychology*, 60(2): 188-199; O'Keefe, V. M., Wingate, L. R., Cole, A. B., Hollingsworth, D. W., & Tucker, R. P. (2015). Seemingly harmless racial communications are not so harmless: Racial microaggressions lead to suicidal ideation by way of depression symptoms. *Suicide and life-threatening behavior*, 45, 567-576; Nadal, K. L., Griffin, K. E., Wong, Y., Davidoff, K. C., & Davis, L. S. (2017). The injurious relationship between racial microaggressions and physical health: implications for social work. *Journal of Ethnic & Cultural Diversity in Social Work*, 26, 6-17.

⁷⁵ Tulloch, M. (2018), Report of the Independent Street Checks Review <https://opcc.bc.ca/wp-content/uploads/2019/06/StreetChecks.pdf>, Queen's Printer for Ontario, at 124, 139.

⁷⁶ Cole, N. L. (2020). *Manifest Function, Latent Function, and Dysfunction in Sociology*; Merton, R. K., & Merton, R. C. (1968). *Social theory and social structure*. Simon and Schuster.

⁷⁷ American Psychological Association. 2001. APA Resolution on Racial/Ethnic Profiling and Other Racial/Ethnic Disparities in Law and Security Enforcement Activities: <https://www.apa.org/about/policy/racial-profiling>.

scale from micro- to macro-aggressions. At one end of the scale, experiences of racial profiling can have serious consequences that run the gamut from severe and lasting health and mental health impacts to barriers on employment.⁷⁸ On the other end, consumer racial profiling can cause individuals to experience daily aggregate stressors which can be physically, psychologically, or socially threatening or challenging to an individual's well-being or ability to cope.⁷⁹

Indeed, the cumulative effect of continued Indigenous consumer microaggressions (micro-insults, micro-invalidations, micro-assaults) based on Indigenous and racial stereotyping may affect the mental, emotional, and physical health of its victims, as well as their self-image.⁸⁰ Microaggressions can be subtle and unrecognizable for those not affected. Those who have experienced consumer microaggressions may experience stress and feel inhuman, distressed, and disrespected as well as question one's own perception of the event, having to repeatedly explain the scenario and the microaggressions and facing any legal implications.⁸¹

Further, racial profiling can make targeted individuals assume they have an inferior political status, which can lead to alienation from the state and public institutions. This type of inferiority complex induced by racial profiling can turn into a self-fulfilling prophecy when an individual is more likely to commit a crime because they are perceived as a criminal.⁸²

Moreover, when racialized/target individuals assume they have an underclass or inferior status they are more susceptible to internalize colonialism, racism and self-hate⁸³ – which can lead to some individuals belonging to Indigenous and Black or other historically oppressed groups to regularly invalidate, demean, and/or suppress their own and other marginalized groups' heritage, identity, self-worth, and human rights. Often, those with greater degrees of internalized racism are consciously or unconsciously socialized into believing that being a member of their own cultural group is somehow “lesser,” “inferior,” “shameful,” “undesirable,” or “unacceptable” in relation to the “mainstream” dominant culture. They regard themselves and members of their own cultural group with embarrassment (self-rejection) and disdain (self-loathing).

⁷⁸ Tulloch, M. (2018) at pp. 17, 42-43, 45, 150, 171.

⁷⁹ Williams, M. T., Roy, A. K., MacIntyre, M., Faber, S. (2022). The Traumatizing Impact of Racism in Canadians of Colour. *Current Trauma Reports*. Vol. 8: 17–34.

⁸⁰ Harrell, S. P. (2000). "A multidimensional conceptualization of racism-related stress: Implications for the well-being of people of color". *American Journal of Orthopsychiatry*. **70** (1): 42–57.

⁸¹ Ibid.

⁸² Hosein, A. O. (2018).

⁸³ Sanders, S. M., Williams, T. R., Berry, A. T., Garcia-Aguilera, C., Robinson, K., Martin, R., & Jones, P. (2024). Internalized Racism and Mental Health: The Moderating Role of Collective Racial Self-Esteem. *Behavioral Sciences*, 14(11), 1003: <https://doi.org/10.3390/bs14111003>.

Recent research suggests that in North America, Indigenous persons experience racial stereotyping and associated microaggressions on a repetitive, constant, inevitable, and cumulative basis.⁸⁴ The resultant racial trauma is distinguished by the consistency of racist victimization beyond childhood and the internalized racism that contributes to ruptures in the Indigenous and racialized psyche—including ego depletion; flattened confidence; distorted communications; a tendency toward self-censorship in professional performance areas; and inauthentic presentations of self.⁸⁵ Quite apart from the multiculturalist musings of ‘Canadian exceptionalism’, racial trauma can surround the victims’ life course and produce harmful consequences to their physical and mental health, behaviour, cognition, relationships with others, self-concept, and social and economic life.⁸⁶

These linkages between racial discrimination and microaggressions and racial trauma are often missing from contemporary trauma literature.⁸⁷ Although current research on microaggressions, race-related stress, and racial trauma have expanded our understanding of the ways in which people live in dominant cultural environments, race trauma theories have yet to fully explicate the foundational White hegemonic culture’s prevailing values and beliefs, and specifically, the additional psychological distress that this process of acculturation has on Indigenous and racialized people.⁸⁸ Observers seem not to view covert types of racism and ethnoviolence as life-threatening (e.g., vicarious experiences, exposure to racial microaggressions in all life domains) because the historical roots of the trauma are invisible. However, for many in Indigenous and racialized communities, various public domains including retail environments are experienced as part of a cumulative round of microassaults, microinsults, and

⁸⁴ Cénat, J. M. (2023). Complex Racial Trauma: Evidence, Theory, Assessment, and Treatment. *Perspectives on Psychological Science* 18: 675–87: <https://pmc.ncbi.nlm.nih.gov/articles/PMC10186562/>.

⁸⁵ Inzlicht, M., McKay, L. and Aronson, J. (2006) Stigma as ego depletion: How being the target of prejudice affects self-control. *Psychological Science* 17: 262–69; Foster, Lorne. (2015a). Black and Mad and Black and Bad: Implicit Bias as a Psychosocial Determinant of Black Canadian Mental Health and Well-being. In *Righting Humanity in My Our Time?* Edited by M. Jacobs and L. A. Visano. Toronto: APF Press at pp. 223–81.

⁸⁶ Williams, M. T., Roy, A. K., MacIntyre, M-P., and Faber, S. (2022). The Traumatizing Impact of Racism in Canadians of Colour. *Current Trauma Reports* 8: 17–34; Hope, E. C., Brinkman, M., Hoggard, L. S., Stokes, M. N., Hatton, V., Volpe, V. V., and Elliot, E. (2021). Black adolescents’ anticipatory stress responses to multilevel racism: The role of racial identity. *American Journal of Orthopsychiatry* 91: 487–98.

⁸⁷ Helms, J., Nicolas, G., and Green, C. (2012). Racism and Ethnoviolence as Trauma: Enhancing Professional and Research Training. *Traumatology* 18(1): 65–74.

⁸⁸ Liu, W. M., Liu, R. Z., Garrison, Y. L., Kim, J. Y. C., Chan, L., Ho, Y. C. S., & Yeung, C. W. (2019). Racial trauma, microaggressions, and becoming racially innocuous: The role of acculturation and White supremacist ideology. *American Psychologist*, 74(1), 143–155. doi:10.1037/amp0000368. <https://static1.squarespace.com/static/580669bbe6f2e1acf20702c3/t/5f6d0886c6eec9098b3f867c/1600981128114/2019-01033-012.pdf> at 146.

microinvalidations that belittle their experience and devalue their cultures.⁸⁹ These racial microaggressions are recognized by social psychological researchers to contribute to on-going and often progressive race-based traumatic stress.⁹⁰ Accordingly, a key priority for advancing the study of and racial discrimination in general includes more systematic attention to ‘stress-proliferation processes’ at the multiple intersections of everyday microaggressions, institutional/systemic racism, and intergenerational trauma.⁹¹

3.1.6. Researching Consumer Racial Profiling

Early Consumer Racial Profiling Study in U.S.

The comprehensive study of racial profiling in retail environments began in earnest among marketplace scholars in the U.S. Early on consumer racial profiling was identified as discriminatory treatment built on racialized stereotypes and associated stigmas, eventuating in a denial or degradation in the product or service offered to the consumer.⁹² For instance, American marketplace researcher, Cassi Pittman⁹³ maintained that racialized stigmas in retail settings impact the consumptive process for African Americans in two central ways. First, retail settings are often sites where anti-Black bias is made evident, requiring Black shoppers to navigate racial hierarchies while procuring goods. Second, discrimination alters the experience of shopping, arguably raising the costs and reducing the rewards derived from consumption. When a store’s sales staff is hesitant to serve Black shoppers or suspects that they are prospective shoplifters, shopping no longer becomes a form of leisure. Pittman’s report of racialized stigmas and discrimination in retail settings reveals that race can change the meaning and status attached to goods, when they are sought out or owned by racial minorities. By examining African American experiences of retail racism and the cultural strategies they adopt in responding to occasions when they are treated discriminatorily, this

⁸⁹ Bertrand, M., and Mullainathan, S. (2004). Are Emily and Greg more employable than Lakisha and Jamal? A field experiment on labor market discrimination. *American Economic Review* 94: 991–1013.

⁹⁰ Butts, H. F. (2002). The Black mast of humanity: Racial/ethnic discrimination and post-traumatic stress disorder. *Journal of the American Academy of Psychiatry and the Law* 30: 336–39: <https://jaapl.org/content/jaapl/30/3/336.full.pdf>.

⁹¹ Williams, M. T., Haeny, A. M. and Holmes, S. C. (2012). Posttraumatic Stress Disorder and Racial Trauma. *PTSD Research Quarterly* 32: 1–9: https://www.ptsd.va.gov/publications/rq_docs/V32N1.pdf; Williams, M. T., Metzger, I. W., Leins, C. and DeLapp, C. (2018). Assessing racial trauma within a DSM–5 framework: The UConn Racial/Ethnic Stress & Trauma Survey. *Practice Innovations* 3: 242–60; Comas-Díaz, L., Hall, G. N. and Neville H. A. (2019). Racial trauma: Theory, research, and healing: Introduction to the special issue. *American Psychologist* 74: 1–5: <https://psycnet.apa.org/fulltext/2019-01033-001.html>.

⁹² Gabbidon, S. L. (2003); Harris, A-M. G. (2003) at 3.

⁹³ Pittman, C. (2017). ‘Shopping while Black’: Black consumers’ management of racial stigma and racial profiling in retail settings. *Journal of Consumer Culture* 0(0) 1–20: https://www.researchgate.net/publication/318747970_Shopping_while_Black_Black_consumers%27_management_of_racial_stigma_and_racial_profiling_in_retail_settings.

research brings to light experiences of retail racism on the ground, while also providing insight into how this form of discrimination can impact the quality of targeted racialized consumers' experiences.

The Nova Scotia Human Rights Commission (NSHRC) Study

The first Canadian study of consumer racial profiling, *Working Together to Better Serve All Nova Scotians*, was conducted by the Nova Scotia Human Rights Commission (NSHRC).⁹⁴ After receiving an increasing volume of complaints and inquiries about racial discrimination during consumer encounters, the NSHRC decided to do a comprehensive study on the issue.⁹⁵ This study was the first of its kind in Canada to address the issue of the experiences of customers and how they are treated by staff in retail and service establishments in Nova Scotia. The NSHRC survey was the centerpiece of their Consumer Racial Profiling Project which was created to encourage the development of a greater understanding of consumer racial profiling in Nova Scotia and across Canada. In 2013, the NSHRC released a final report on consumer racial profiling that included results from a survey of over 1,100 people. The survey found that Indigenous and Black Canadians most often reported being treated poorly by staff than did any other group. But, in fact, people from all racialized groups, including Asian, Latin American, and Middle Eastern people, also reported being treated poorly by staff far more than White people.⁹⁶

Indigenous and Black 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. Indigenous people also stated that their rights were not recognized on a consistent basis, and they often had to go to the back of a store to have their tax-free purchases looked after. In addition, it was found that Indigenous, African Canadians, and Muslims respondents had three things in common:

- They were targets of offensive language.
- They were treated as if they were physically threatening.
- They were seen as potential thieves.⁹⁷

The NSHRC concluded that its research “supports the idea that racism is rarely open and public today. Consumer racial profiling is based on stereotypes. Retailers and

⁹⁴ Nova Scotia Human Rights Commission. (2013). *Working Together to Better Serve All Nova Scotians: A Report on Consumer Racial Profiling in Nova Scotia*:
<https://humanrights.novascotia.ca/sites/default/files/crp-report.pdf>.

⁹⁵ Ibid.

⁹⁶ Ibid

⁹⁷ Ibid at 8.

service providers may not even be aware that they are being racist.”⁹⁸

The Ontario Human Rights Commission (OHRC) Studies

The Ontario Human Rights Commission (OHRC) 2003 inquiry report, *Paying the price: The human cost of racial profiling*,⁹⁹ extensively documented the many psychological, community and social costs of racial profiling. Well over a decade later, the OHRC’s *Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario*¹⁰⁰ revisited the issue of racial profiling in the province and respondents expressed many of the same concerns and impacts during the second consultation. Throughout both reports, the OHRC heard from survey respondents 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.¹⁰¹

Cumulative experiences of racial profiling may result in an individual’s loss of dignity and self-confidence that erodes confidence in businesses, organizations and institutions. Individuals who are discriminated against as a result of racial profiling lose confidence in the ability of the institutions to serve them in a fair manner. The result is disempowering for individuals and can lead to feelings that they should not aspire to positions of power or authority in society as they may perceive that they are seen as undesirable by others.

OHRC respondents reported that their experience of racial profiling negatively affected their sense of trust and belonging in society. Feelings of alienation and a diminished sense of belonging were also a predominant theme in OHRC 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.

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. As an example, a First Nations woman wrote about how she does not go to hospital without her White partner.

OHRC’s survey and focus group participants talked about the ongoing and long-term effects of dealing with racial profiling and racial discrimination. They reported significant

⁹⁸ Ibid at 9.

⁹⁹ Ontario Human Rights Commission. (2003).

¹⁰⁰ Ontario Human Rights Commission. (2017).

¹⁰¹ Ibid at 85.

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.

OHRC 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.

OHRC 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.

Some OHRC 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 and/or substance abuse.

The OHRC 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, creating the perception that they are second-class citizens who do not have the same rights as other Canadian citizens.

Here, Indigenous and racialized people being racially profiled represent an individual and collective loss of human rights, dignity, and respect. This type of loss is what the *Charter of Rights and Freedoms*¹⁰² and human rights laws were enacted to prohibit. Indigenous racial profiling violates the prime directives of human rights: freedom from discrimination, protection of individual dignity and worth, as well as equity rights and treatment. It also violates the principles of diversity and inclusiveness: respectful

¹⁰² *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s. 6(2)(b).

treatment, fairness, accessibility, and the value of individual and cultural differences.¹⁰³

However, in its studies the OHRC noted that the Indigenous experience of racial profiling has many significant differences from that of any other racialized community as well. Indigenous people have their origins in North America. They have no other home. The notion of “racial profiling” and “racism” is rooted in a different dynamic for Aboriginal People from the other groups. Many of the issues they face result from centuries of colonialism, much of which continues into the present. As a result, all too frequently, the impact of racial profiling further blocks them Indigenous people find themselves at an intersection of racial, cultural, economic, educational and social disadvantage. That makes the experience entirely unique to them, and the harms potentially magnified across all domains.¹⁰⁴

For instance, research suggests that the magnitude of coping with ongoing racial discrimination contributes to “racial battle fatigue,”¹⁰⁵ whereby Indigenous People’s physical and mental resources are diminished and abated because their bodies are constantly engaged in a stress response. Here, discrimination and racial profiling may have long-term health effects. Hence, researchers have argued that the ‘allostatic load’ or wear and tear on the body from stress stemming from racism and profiling can lead to premature illness and reduced life expectancy.¹⁰⁶

We might suspect that the history of colonialism, oppression and the historical trauma of residential schools and cultural genocide is indicative of a life expectancy for Indigenous people 15 years shorter than other Canadians, infant mortality rates two to three times higher and incidence of diseases such as diabetes four times the rate in non-Indigenous populations.¹⁰⁷

¹⁰³ Foster, L., Jacobs, L., Siu, S., & Azmi, S. (Eds.). (2018). *Racial profiling and human rights in Canada: The new legal landscape*. Irwin Law (University of Toronto Press), Editors’ Introduction at 2.

¹⁰⁴ Shepherd, C.C.J., Li, J., Cooper, M.N., Hopkins, K.D., Farrant, B.M. (2017). The impact of racial discrimination on the health of Australian Indigenous children aged 5–10 years: analysis of national longitudinal data. *Int J Equity Health*, 16:116:

<https://equityhealth.biomedcentral.com/articles/10.1186/s12939-017-0612-0>; Currie, C.L., Wild, T.C., Schopflocher, D., Laing, L. (2015). Racial discrimination, posttraumatic stress and prescription drug problems among aboriginal Canadians. *Can J Public Health*;106:e382–7:

https://pmc.ncbi.nlm.nih.gov/articles/PMC6972264/pdf/41997_2015_Article_10606382.pdf.

¹⁰⁵ Allan, B., & Smylie, J. (2015). *First Peoples, Second Class Treatment: The Role of Racism in the Health and Well-Being of Indigenous Peoples in Canada*. Toronto: Wellesley Institute..

www.wellesleyinstitute.com/publications/first-peoples-second-class-treatment/ at 4.

¹⁰⁶ Currie, C.L., Copeland, J.L., Metz, G.A., Chief Moon-Riley, K., Davies, C.M. (2020). Past-Year Racial Discrimination and Allostatic Load Among Indigenous Adults in Canada: The Role of Cultural Continuity. *Psychosom Med*. Jan;82(1): 99-107:

https://journals.lww.com/bsam/fulltext/2020/01000/past_year_racial_discrimination_and_allostatic.12.aspx.

X.

¹⁰⁷ Lifespan of Indigenous people 15 years shorter than that of other Canadians, federal documents say.

Yet, while many Indigenous and racialized people felt victimized and upset, only a few of the OHRC 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.¹⁰⁸ There are similar indications from other sources that racism against Indigenous Peoples is so pervasive that many do not believe it would make any difference to report the discrimination that they experience.¹⁰⁹

The Shopping Under Suspicion in Canada Study

A more recent study, *Shopping Under Suspicion in Canada*,¹¹⁰ relying on a national sample of Canadians investigated four aspects of consumer racial profiling. First, the research investigated the frequency of consumer racial profiling experiences among the Canadian population. Second, the research studied the characteristics of consumer racial profiling victimizations among Canadians. Third, the study also investigated whether the frequency of victimization varied by race/ethnicity. Finally, the research explored whether victims reported their encounter to an employee in authority following their victimization. The findings provide evidence that consumer racial profiling is a national problem in Canada—with non-White racial/ethnic groups reporting the highest levels of victimization. In addition, despite their negative experiences, very few victims decide to pursue remediation. The implications of the results along with future research directions are also discussed.¹¹¹

Based on the four investigative questions, the authors first note that approximately 60% of the respondents reported experiencing consumer racial profiling. In addition, Indigenous and Black respondents reported the highest levels of experiencing consumer racial profiling, which is consistent with the 2013 Nova Scotia study. Given the continuing concerns related to the treatment of the Indigenous population in Canada, and the data consistency with the Nova Scotia study, the authors of *Shopping Under Suspicion in Canada* concluded their findings are not surprising.

Second, the research focused on identifying the characteristics of consumer encounters in Canada. The character of the consumer racial profiling incidents shows that victims

The Canadian Press, Jan 23, 2018. <https://www.cbc.ca/news/health/indigenous-people-live-15-years-less-philpott-briefing-1.4500307#:~:text=Health-Lifespan%20of%20Indigenous%20people%2015%20years%20shorter%20than%20that%20of,documents%20showed%20stark%20health%20challenges>.

¹⁰⁸ Ontario Human Rights Commission. (2003) at 85.

¹⁰⁹ Walpetko We'dalx Walkem, A. (2020) at 9.

¹¹⁰ Gabbidon, S. L., Jordan, K. L., & Owusu-Bempah, A. (2025).

¹¹¹ Ibid.

face considerable scrutiny – largely by White and Asian employees – in a variety of retail businesses. Some of these results align with the pioneering Nova Scotia research. This research provides preliminary evidence that the problem identified in the 2013 Nova Scotia report and in subsequent media reports is prevalent across Canada. Despite nearly three-quarters of the sample stating that they only experienced consumer racial profiling “occasionally” or “one time,” close to 30% said they experienced it either “almost all the time” or “all the time.” These numbers reveal the daily suspicion that a sizeable number of Canadians believe they encounter when they enter retail stores.¹¹²

The third research question focused on whether there were racial/ethnic disparities among consumer racial profiling victims. This investigation revealed that Other (largely Middle Eastern respondents) Black, Indigenous, and Asian customers had the highest significant probabilities of experiencing consumer racial profiling. Of the remaining Canadian racial/ethnic groups included in the study, White and Latino customers had the lowest probability of being regularly profiled in Canadian stores.

The final research question focused on what factors influenced whether victims of consumer racial profiling decided to take some proactive action following this incident. Only about one-third of the victims took some action following the incident. This is higher than the 18% to 20% of victims that reported the incident in similar studies conducted in the United States. Even with the larger figure, the authors of the study suggest it remains intriguing that customers who are treated like criminals do nothing most of the time they encounter this discriminatory treatment. Similar to the conclusions in the Nova Scotia consumer racial profiling study, and also leaning on the robust policing literature on racial profiling in Canada, the authors submit that “most citizens simply want to move on with their lives and prefer not to become entangled with the often-arduous procedures involved in reporting misconduct. Corporations are not unlike police departments in that they prefer to avoid any perception of misconduct. Hence, limiting the recording of such misconduct is one way to accomplish this. Thus, only the most egregious behavior is reported to officials of the company where the discriminatory consumer racial profiling treatment occurred.”¹¹³

Shopping Under Suspicion in Canada conclude the following:

“... as in the United States, racial/ethnic minorities in Canada are being profiled as suspected thieves in retail stores more than Whites. This profiling takes shape in multiple forms and includes people of all socio-economic backgrounds.

¹¹² Ibid at 12.

¹¹³ Ibid at 15

Reporting practices in Canada also mirror those in the United States. In short, very few victims report these incidents. This is crucial because – unlike with police stops where there are often statutory or court-mandated paper trails – retailers are not required to report any of their security-related practices. Thus, without CRP victims coming forward to report these encounters, no record exists. This needs to change to be able to document the extent of the CRP problem in Canadian retailers. Thus, documenting the nature and extent of CRP is crucial to ameliorating the problem.”¹¹⁴

3.1.7. Consumer Racial Profiling and Racial Trauma

Racial trauma can be defined as the cumulative traumatizing impact of racism on individuals, stemming from experiences of racial discrimination, systemic racism, and reinforcement of historical, cultural, and community trauma.¹¹⁵ Racial trauma consists of reactions to direct or vicarious exposure to real or perceived experiences of racial discrimination. Racial trauma induces humiliation, shame, and stigma, which can detrimentally affect physical and mental health.¹¹⁶ Indigenous consumer racial profiling is both a reflection of the racial trauma in Indigenous communities and a perpetrator of that racial trauma.

As Green (2003) describes, “colonization is not only about the physical occupation of someone else’s land, but also about the appropriation of others’ political authority, cultural self-determination, economic capacity, and strategic location”¹¹⁷ for the benefit of the colonizer at the expense of the colonized. In Canada, colonization began over five hundred years ago and persists into the present, as the colonial state appropriates and occupies Indigenous lands. With some hard-fought exceptions – often gained through the juridical system, where the colonial state is at once party and judge – the colonial state presumes its political, legal and cultural authority over Indigenous peoples, who may be consulted but who are nowhere accepted as fully self-determining polities, much less as having authority over colonial actors.¹¹⁸

Over the last decade, public understanding of the history and realities of Indigenous

¹¹⁴ Ibid at 17

¹¹⁵ Butts, H.F. (2002); Williams, M. T.; Haeny, A. M., Holmes, S. C. (2012); Williams, M.T., Metzger, I.W., Leins, C., DeLapp, C. (2018).

¹¹⁶ Comas-Díaz, L., Hall, G.N., Neville, H.A. (2019).

¹¹⁷ Green, J. (2003). Decolonization and recolonization in Canada. In W. Clement & L. F. Vosko (Eds.), *Changing Canada: Political economy as transformation* (pp. 51-78). McGill-Queen's University Press, at 52.

¹¹⁸ Cosburn, E. (2020). Theorizing Our Place: Indigenous Women’s Scholarship from 1985-2020 and the Emerging Dialogue with Anti-racist Feminisms. *Studies in Social Science*, Volume 14, Issue 2, 429-453: <https://journals.library.brocku.ca/index.php/SSJ/article/view/2295>.

peoples in Canada has deepened, in part due to the work of the Truth and Reconciliation Commission and the National Inquiry into Missing and Murdered Indigenous Women and Girls.¹¹⁹ A basic awareness has grown that the current inequities and injustices faced by Indigenous peoples in Canada – such as those embodied in the everyday life of Indigenous-specific racial profiling – are deeply rooted in an enduring legacy of colonialism, and that confronting that legacy requires substantive, transformative change. An awareness has also grown of the fundamental human rights standards – such as those in the *UN Declaration*¹²⁰ – that have to be implemented to effect that change.

Colonialism is still shaping the daily realities of Indigenous peoples. The imposition of colonial structures and policies led to historical trauma through the disruption of Indigenous communities, displacement, and loss of traditional ways of life. While the Indian Residential School system forcibly removed Indigenous children from their families and communities, aiming to assimilate them into dominant culture, resulting in intergenerational trauma causing significant emotional and psychological harm.

Bombay, Matheson & Anisman¹²¹ traced the colonial linkages between the historical trauma of the Indian Residential School system and its intergenerational effects that undermine the collective well-being of Indigenous people:

“...familial Indian Residential School (IRS) attendance across several generations within a family appears to have cumulative effects. Together, these findings provide empirical support for the concept of historical trauma, which takes the perspective that the consequences of numerous and sustained attacks against a group may accumulate over generations and interact with proximal stressors to undermine collective well-being ... the currently available research demonstrating the intergenerational effects of IRSs provides support for the enduring negative consequences of these experiences and the role of historical trauma in contributing to present day disparities in well-being”.¹²²

Social psychology of racial trauma has noted that acts of Indigenous-specific and anti-Black hostility can trigger trauma reactions due to a person’s own past experiences or historical events, even when there is no recent or direct evidence of threat to one’s life.¹²³ In other words, an experience of racial discrimination – like racial profiling in the

¹¹⁹ Turpel-Lafond M. E. (2020) at 161.

¹²⁰ *Declaration on the Rights of Indigenous Peoples Act* [SBC 2019] c. 44.
<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19044>.

¹²¹ Bombay, A., Matheson, K., Anisman, H. (2014).

¹²² Ibid.

¹²³ Helms, J., Nicolas, G., and Green, C. (2012).

context of consumer racial profiling – does not need to include an individual experiencing concurrent negative experiences, like violence, or threat to life or livelihood, to trigger racial trauma. Indeed, the accumulation of race-related stressors including racial microaggressions, direct racism, and intergenerational racial trauma can trigger the development of serious adverse consequences including post-traumatic stress disorder (PTSD).¹²⁴

Responding appropriately to the historical, intergenerational and contemporary triggers of racial trauma, has presented a major challenge in Canada. While the complexity of racial trauma has been identified in other jurisdictions, it is often overlooked amongst Canadian society.¹²⁵ Indeed, the politicization of multiculturalism has permitted many in Canada to deny claims of racism. Canada is lauded as a successful multicultural nation and widely considered as a model to be emulated by others.¹²⁶ Yet, the historical basis of established institutions in settler colonialism is built upon an entangled triad structure of settler-native-slave.¹²⁷ This has resulted in irrefutable systemic and systematic barriers for Canadian Indigenous and Black individuals, with vicarious effects for other people of colour.

Importantly, understanding the impact of the echoes of past practices on the modern-day experiences of racial trauma is vital to understanding how consumer racial profiling impacts contemporary individuals and communities. In *Colour-Coded: A Legal History of Racism in Canada*, Constance Backhouse writes that relegating what is racist to historical and faraway practices whitewashes Canada and portrays it as a raceless nation. In her assessment, Canadian legal history is characterized by an “ideology of racelessness,” and this is a “hallmark of Canadian historical tradition” that is in keeping with a “national mythology that Canada is not a racist country”.¹²⁸ This made in Canada myth contributes to an analytical and cognitive blind spot regarding race relations in the Canadian collective conscience where issues of race and racism are typically covered over in institutional life, and not fully accepted as a priority area of scholarly research or public policy. The upshot is, Canadian multicultural ideology tends to symbolize a race-neutral and colour-blind regime that overlooks harms occurring to Indigenous and Black

¹²⁴ Williams, M. T.; Printz, D. M. B.; & DeLapp, R. C. T. (2018). Assessing Racial Trauma With the Trauma Symptoms of Discrimination Scale. *Psychology of Violence*. October, Advance online publication: https://www.researchgate.net/publication/328010708_Assessing_Racial_Trauma_With_the_Trauma_Symptoms_of_Discrimination_Scale.

¹²⁵ Williams, M. T., Roy, A. K., MacIntyre, M-P., and Faber, S. (2022).

¹²⁶ Ugland, T. (2018). *Policy Learning from Canada: Reforming Scandinavian Immigration and Integration Policies*. Toronto: University of Toronto Press.

¹²⁷ Tuck, E. & Yang, K. W. (2012). *Decolonization: Indigeneity, Education & Society* Vol. 1, No.1, 2012, pp.1-40; Backhouse, C. (1999). *Colour-Coded: A Legal History of Racism in Canada, 1900-1950*. Osgoode Society for Canadian Legal History; Maynard, R. (2017).

¹²⁸ Backhouse, C. (1999) at p.14.

communities.

The discussion above has reinforced how the everyday consumer racial profiling experiences of Indigenous persons contributes to, and magnifies the trauma identified in the Truth and Reconciliation Commission Report.

3.1.8. The Impacts of Indigenous Specific Consumer Racial Profiling Summarized in Two Tables

The impacts of Indigenous consumer racial profiling can be succinctly summarized in two tables, one focusing on the impacts on individuals (Table 2), the other on community impacts (Table 3).

Table 2

INDIVIDUAL INDIGENOUS-SPECIFIC IMPACTS OF CONSUMER RACIAL PROFILING
• Indigenous CRP is a subtle form of racial discrimination in retail environments that often goes unnoticed and unacknowledged by the perpetrators, and unreported by the victims. • Indigenous CRP alters the experience of the victim shopper from a leisurely pursuit to a tenuous situation characterized by experiences of apprehension, anxiety and drudgery. • The intersectional nature of Indigenous consumer racial profiling compounds discrimination and can greatly increase the harm and severity of the experience for the individual. • Indigenous victims of CRP are often targets of offensive anti-Indigenous language and derogations. • Indigenous victims of CRP are often treated as if they are physically threatening. • Indigenous victims of CRP are often seen as potential thieves or criminals. • An inferiority complex can be induced by Indigenous CRP that can turn into a self-fulfilling prophecy leading to criminal behaviour. • CRP experiences may result in an individual’s loss of dignity and respect that erodes confidence in businesses, organizations and institutions to serve them in a fair manner.

- Indigenous CRP is based on anti-Indigenous microaggressions (involving microassaults, microinsults, and microinvalidations) that belittle their experience and devalue their cultures.
- Indigenous-specific CRP can reinforce a second-class citizenship status triggering racial trauma where victims become more susceptible to internalize colonialism and racism, which is conducive to victim-acquiescence and an overall chilly retail environment.
- Individuals who are discriminated against as a result of CRP and racial profiling in other sectors lose confidence in the ability of the institutions to serve them in a fair manner.
- Cumulative CRP experiences disenfranchise and disempower individuals and can lead to feelings that they should not aspire to positions of authority in society as they may perceive that they are seen as undesirable by others.
- CRP victims may lose their sense of being safe and secure, their liberty, their connection with their families and communities.
- Indigenous CRP Increases allostatic load (i.e., the cumulative effects that chronic stress has on mental and physical health) intensifying the 'wear and tear' on the Indigenous body that life events and environmental stressors create.
- Cumulative CRP can cause racial trauma associated with phenomena such as depressive symptoms; alcohol abuse; sleep disturbance; physical health issues; anxiety depression, despair, suicidal ideation, and poor general health.
- CRP is associated with Indigenous racial trauma that can surround the victims' life course and produce harmful consequences to their physical and mental health, behaviour, cognition, relationships with others, self-concept, and social and economic life.¹²⁹
- CRP microaggressions can lead Indigenous and racialized people to fear, distrust, and avoid relationships with White people.

Consistent with the broader research on racial trauma, it is also important to recognize, like with residential schools, the devastating legacy impact of consumer racial profiling on Indigenous communities.

Table 3

¹²⁹ Hope, E. C., Brinkman, M., Hoggard, L. S., Stokes, M. N., Hatton, V., Volpe, V. V., and Elliot, E. (2021).

INDIGENOUS COMMUNITY IMPACTS OF CONSUMER RACIAL PROFILING

- ❖ CRP is a form of racial discrimination that is pervasive in contemporary society and must be understood as a residual afterlife of the harmful and lasting effects of colonization – which includes the mass violence of cultural erasure and genocide, territorial dispossession, systemic discrimination, and socio-economic marginalization.
- ❖ CRP echoes the Indigenous legacy of ‘historical trauma’ (i.e., the cumulative emotional and psychological wounding over generations); intertwined with a shared experience of ‘mass trauma’ (i.e., Indigenous cultural degradation and mass violence); intertwined with ‘intergenerational trauma’ (i.e., culturally transmitted wounds of oppression from one generation to the next); impacting Indigenous mental, emotional and physical health.
- ❖ The intersectional nature of Indigenous consumer racial profiling compounds the feeling that the discrimination experienced by an individual is a harm to the community as a whole.
- ❖ CRP is often experienced by Indigenous people and communities as part of the legacy of historic state surveillance and security practices that harken back to the regulation of public spaces that were racially codified through ‘Off-Reserve Pass Systems’¹³⁰ as well as race-based Vagrancy Laws¹³¹ that privileged and sustained White cultural sensibilities and entrenched power.
- ❖ CRP is a form of racial discrimination that triggers a deep mistrust felt by many Indigenous peoples and communities which negatively affects the legitimacy of institutions that serve the public interest and makes them less effective.¹³²
- ❖ Recurring CRP encounters can socialize Indigenous people to believe that being a member of their own cultural group is somehow “lesser,” “inferior,” “shameful,” “undesirable,” or “unacceptable” in relation to the “Whitestream” dominant culture. They can become acculturated to regard themselves and members of their own cultural group with embarrassment (self-rejection) and disdain (self-loathing).

¹³⁰ Bourgeault, R. (2006); Barron, F. L. (1988) at p. 28.

¹³¹ In 1889, Indian agents were given powers as justices of the peace for the purposes of the Vagrancy Act, which was expected to be strictly applied to Indians. See – Leslie, J. and Maguire, R. ed. (1980). *The Historical Development of the Indian Act*, 2nd ed., Indian and Northern Affairs Canada, Ottawa, 1978 and Richard Bartlett, "Citizens Minus: Indians and the Right to Vote," 44 *Sask. Law Rev.*, 163: <https://canlii.ca/t/7n3dq>.

¹³² Ontario Human Rights Commission. (2017) at 10.

PART III

3.2. What would ameliorate those impacts, and in particular, would amelioration include Indigenous-specific remedies, such as (a) a healing ceremony, pursuant to Indigenous legal and cultural traditions; and (b) a study on the impacts of consumer racial profiling on Indigenous peoples?

The human rights approach to CRP is a reciprocal social tool. It is intended for Indigenous people as rights-holders, to support them in exercising their right to non-discrimination. Also, it is a guide for duty-bearers in retail settings – e.g., business owners, employees, third-party vendors – to enhance their understanding of their responsibility to prevent discrimination and harassment against Indigenous customers.

In British Columbia, Indigenous identity is a protected ground under the *Human Rights Code*, for the expressed purpose of adequately addressing the discrimination Indigenous people report experiencing; and sending a message of inclusion that reflects the individual and collective nature of Indigenous rights.¹³³ The BC government is also committed to implementing the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP).¹³⁴ This commitment is formalized through the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA)¹³⁵ and further outlined in the B.C. DRIPA Action Plan¹³⁶ released in 2022, solidifying Indigenous individual and collective human rights.

Adopting the DRIPA obligates the B.C. government, among other things, to have an action plan, developed co-operatively with Indigenous peoples, to achieve the “objectives of the Declaration”.¹³⁷ The objectives of the *UN Declaration* include ensuring that racism, discrimination and prejudice against Indigenous peoples are addressed, and creating patterns throughout society that uphold the minimum standards for the survival, dignity and well-being of Indigenous peoples. The action plan focuses on four main goals: self-determination and the inherent right of self-government; title and rights of Indigenous people, ending Indigenous-specific racism and discrimination, and social,

¹³³ British Columbia Attorney General. (2021). Province introduces legislation to uphold Indigenous rights. *B. C. Gov News*. <https://news.gov.bc.ca/releases/2021AG0073-002191>.

¹³³ *Human Rights Code*, R.S.B.C. 1996, c. 210.

¹³⁴ *United Nations Declaration on the Rights of Indigenous Peoples* (A/RES/61/295). <https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>.

¹³⁵ *Ibid*.

¹³⁶ British Columbia. *Declaration on the Rights of Indigenous Peoples Act* Action Plan 2022-2027. https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/ministries/indigenous-relations-reconciliation/declaration_act_action_plan.pdf.

¹³⁷ *Declaration on the Rights of Indigenous Peoples Act*, S.B.C. 2019, c. 44, s. 4.

cultural, and economic well-being.¹³⁸ By necessity, the action plan must address the full range of topics, from Indigenous self-determination and sovereignty to Indigenous self-government and legal orders, to land and resource decision-making including free, prior and informed consent, to the health, well-being and safety of Indigenous children, women, families and communities.¹³⁹

Under these auspices we make the following recommendations:

3.2.1. Human Rights Based Commissioned Indigenous-Specific Consumer Racial Profiling Study

Recommendation # 1 – *Commission an Indigenous-specific consumer racial profiling study to thoroughly document the nature and scope of CRP in Canada, advancing our understanding of strategies to ameliorate CRP harms and as a means of promoting reconciliation in commercial retail environments.*

The paucity of research studies in the area of consumer racial profiling in general, and Indigenous consumer racial profiling in particular, highlights a gap in the available literature and indicates a vital need for more research to improve understanding and knowledge. This in turn presents barriers to amelioration and reconciliation, by hindering the progress in addressing related anti-Indigenous racism challenges.

The need for study is compounded by the fact that very few Indigenous CRP victims report these incidents. This is crucial because – unlike with police stops where there are often statutory or court-mandated paper trails – retailers are not required to report any of their security-related practices. Thus, without CRP victims coming forward to report these encounters, no record exists. This needs to change to be able to document the extent of the CRP problem in Canadian retailers. Thus, documenting the nature and extent of CRP is crucial to both the comprehension and amelioration of the problem.

Expanding Our Vision makes a concurring recommendation:

8.1 Develop a baseline of information and understanding of the racism that Indigenous Peoples experience so that individual complainants are not put to a process of proof again and again. Advance research or statements about common areas of discrimination experienced by Indigenous Peoples.¹⁴⁰

¹³⁸ British Columbia. *Declaration on the Rights of Indigenous People Act Action Plan 2022-2027*.

¹³⁹ Turpel-Lafond M. E. (2020) at 181.

¹⁴⁰ Walpetko We'dalx Walkem, Ardith. (2020) at p. 31.

A recent study by Gabbidon, Jordan & Owusu-Bempah, found that Indigenous people were among the groups with the lowest probability of reporting CRP.¹⁴¹ The researchers were surprised to discover that experiencing negative emotions reduced reporting, rather than increase it.

On the other hand, the study also found several predictors that increased the likelihood that respondents reported the incident. These included: having shoplifted in the past, experiencing a CRP incident involving multiple tactics, and returning to the store after the CRP incident. The researchers provide some speculative insights into some of these results. They speculate that having shoplifted in the past, the CRP victim might be hypersensitive to being closely followed around and suspected of shoplifting. Also, when multiple profiling tactics are encountered by a victim, it might bring heightened sensitivities that lead the person to report the incident. Finally, those persons who returned to the retail store where the incident occurred were more likely to report the episode could be a product of the victim realizing that they have limited shopping options; therefore, they are willing to take the time to report their experiences in hopes of improving future shopping experiences.

As in the United States, Indigenous people and racialized minorities in Canada are being profiled as suspected thieves in retail stores more than Whites. This profiling takes shape in multiple forms and includes people of all socio-economic backgrounds. Reporting practices in Canada also mirror those in the United States. In short, very few victims report these incidents and retailers are not required to report on any of their security-related practices. Thus, without CRP victims coming forward to report these encounters, no record exists. This needs to change to be able to document the extent of the CRP problem in Canadian retail environments. Thus, documenting the nature and extent of CRP is crucial to ameliorating the problem.

One potentially instructive line of inquiry for CRP research is proposed by acculturation theory, which refers to the process that individuals incorporate the prevailing dominant societal culture, beliefs and values in the context of Canadian society.¹⁴² Liu et al., for instance, put forth a theory of acculturation that speaks to the connections of racial microaggressions to racial trauma and becoming racially innocuous.¹⁴³ This is consistent with the fact that historically, Canadian policies and practices towards Indigenous people have been based on assumptions that they are inferior and

¹⁴¹ Gabbidon, S. L., Jordan, K. L., & Owusu-Bempah, A. (2025) at 10-18.

¹⁴² Noels, K.A., Berry, J.W. Acculturation in Canada. In: Sam DL, Berry JW, eds. *The Cambridge Handbook of Acculturation Psychology*. Cambridge Handbooks in Psychology. Cambridge University Press; 2006: 274-293.

¹⁴³ Liu, W. M., Liu, R. Z., Garrison, Y. L., Kim, J. Y. C., Chan, L., Ho, Y. C. S., & Yeung, C. W. (2019).

incapable of governing themselves.¹⁴⁴ Other patterns of interaction were characterized by a desire to assimilate, displace or segregate Indigenous persons, or to suppress Indigenous cultures.¹⁴⁵ For Western countries like Canada and the United States, White supremacist ideology is suffused within dominant cultural values, connecting the array of cultural values into a coherent whole that bears with it an explicit status for White people and for other Indigenous and racialized groups. Acculturation here means Indigenous people and communities learn explicitly via racism, microaggressions, and racial trauma about their racial positionality; White racial space; and how they are supposed to accommodate White people's needs, status, and emotions. This researcher suggests that acculturation may mean that Indigenous people 'learn their place' by learning to avoid Indigenous-centered discourse to minimize eliciting White fragility and distress. Moreover, acculturation allows Indigenous folks to live in proximity to White people because they become unthreatening and racially innocuous.¹⁴⁶

There is considerable room to make a real difference in the area of CRP through the commissioning of a high quality, valid and reliable research project grounded in a human rights approach that is in harmony with a commitment to the Truth and Reconciliation Commission (TRC) Calls to Action¹⁴⁷ which shed light on the anti-Indigenous racism that Indigenous Peoples experience in the everyday life of contemporary society that is not acknowledged.

3.2.2. Restorative Justice and Healing Ceremonies

Recommendation # 2 – *Recognition that restorative justice measures including healing ceremonies have an important role in remedying the harm of Indigenous-specific consumer racial profiling and providing a path to justice for individuals and communities.*

A central theme in our review of the existing research on consumer racial profiling of Indigenous people is that the impacts and harm are significant and pervasive in their everyday lives, contributing to and magnifying racial trauma. We believe that further research along the lines of Recommendation #1 will reinforce this finding. Restorative justice practices focus on repairing the harm caused by an action or behaviour. In

¹⁴⁴ Henry, F., Tator, C. Mattis W. & Rees, T. (1998). *The Colour of Democracy: Racism in Canadian Society*, 2d ed. Toronto: Nelson, a division of Thompson Canada Ltd. at 119-142.

¹⁴⁵ Report of the Royal Commission on Aboriginal Peoples (Ottawa: Canada Communication Group Publishing, 1996) (Co-Chairs: R. Dussault & G. Erasmus): <https://data2.archives.ca/e/e448/e011188230-01.pdf>.

¹⁴⁶ Liu, W. M., Liu, R. Z., Garrison, Y. L., Kim, J. Y. C., Chan, L., Ho, Y. C. S., & Yeung, C. W. (2019), at 43-155.

¹⁴⁷ Truth and Reconciliation Commission of Canada. (2015). Truth and Reconciliation Commission of Canada Calls to Action. https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf at 1-10.

Canada, these practices are most familiar in the criminal justice system,¹⁴⁸ but in our view they also have an important place in the human rights system. In restorative justice, apologies are seen as a way for a business or store to acknowledge the harm they've caused Indigenous people through consumer racial profiling, take responsibility for their actions, and map out a future for reconciliation. This process can be a crucial part of the healing process for victims of consumer racial profiling and provide a path to justice for them by washing away the harm and trauma.

The Heiltsuk Nation has undertaken washing ceremonies in Bella Bella to remedy for consumer racial profiling experiences of its members, which are an exemplar of what we are recommending as a path to justice. See the 2020 video.¹⁴⁹ Everyone who attends these ceremonies are there for the same purpose: to move forward. These ceremonies provide those members with an opportunity to turn around those experiences, symbolically washing or burning it away, and supporting them to move forward. At the same time, the businesses, retailers, and banks are also cleansed during the washing ceremony, which is a way to make the harms and trauma they have caused to individuals and the community visible to them, hold them responsible for their actions, and integrate them into the healing process. This is consistent with Article 40 of UNDRIP¹⁵⁰ and Recommendation 3.1 of *Expanding Our Vision*.¹⁵¹

3.2.3. Protection of Individual and Collective Rights

Recommendation # 3 – *Public education about the importance of protecting individual and collective rights is rooted in Indigenous worldviews and restorative justice. This highlights the belief that harmful actions impacting one individual or part of the community inevitably affect the whole, fostering a strong sense of Indigenous unity and mutual support.*

Indigenous-specific racism (or anti-Indigenous racism) encompasses the images, beliefs, attitudes, and actions that significantly disadvantage Indigenous peoples' fair access to services. It is important to recognize that within many Indigenous communities, individual experiences of racism cannot be siloed, but rather are harmful

¹⁴⁸ See e.g. Government of Canada, Department of Justice, *Principles and Guidelines for Restorative Practice in Criminal Matters* (2018). <https://scics.ca/en/product-produit/principles-and-guidelines-for-restorative-justice-practice-in-criminal-matters-2018/>

¹⁴⁹ February 19, 2020, Maxwell Johnson Sr. Washing Ceremony, <https://www.dropbox.com/scl/fo/h8bc3qoyovfqg46ofc4mc/AGU8cEGgblZ7I0LxqjPf5AE?rlkey=d9saswjalejkw5kbbzaniw0hc&st=5rgsb54r&dl=0>.

¹⁵⁰ United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295). <https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>.

¹⁵¹ Walpetko We'dalx Walkem, Ardith. (2020) at 14.

to the entire community. In this sense, the harm to one of an experience of consumer racial profiling is a harm to all, and this interconnectedness fosters a strong sense of unity and mutual support.

In Canada, colonialism is the foundation on which Indigenous-specific racism is built. It can be expressed at the interpersonal level through stereotypes, prejudice and discriminatory behaviour and is carried out at systemic levels through policies, practices, and legislation.

It is our contention that the legacy of colonialism has placed Indigenous-specific consumer racial profiling at the nexus between everyday and systemic discrimination, which can only be resolved through the protection of individual and collective or group rights.

Individual rights are those held by each person, such as freedom of speech or the right to a fair trial. In a human rights framework, individual rights are valued as essential liberties that every citizen must have access to in order to live a fair, dignified and independent life. These rights are inherent to each person and are often seen as fundamental and universal. Everyone has unalienable rights that no other person, organization, or government should be able to infringe.

Collective rights, on the other hand, are held by groups of people as a whole, such as the right of Indigenous peoples to self-determination. Rather than being held by a single person, collective rights are shared by a community. These rights have historically concerned Indigenous peoples as well as other communities whose rights are jeopardized. Collective rights are valued as universal, inseparable, and interconnected. They are rooted in the shared culture and traditions of Indigenous people and local communities, making them historical rights as distinct from, and often take precedence over, standard property rights. These rights, often stemming from pre-colonial occupation and treaties, include title to land, access to resources, self-government, and the ability to practice culture and traditions. While property rights are generally understood as individual entitlements to land and resources, historical rights are collective, community-based, and recognized as inherent to Indigenous peoples. In Canada, collective rights are particularly important in the context of Indigenous rights and the protection of racialized cultural groups. The *Canadian Charter of Rights and Freedoms*, for instance, recognizes both individual and collective rights, particularly in its section 25, which deals with Indigenous rights.¹⁵² Collective rights are seen as important for ensuring the protection and advancement of the interests of marginalized

¹⁵² *Charter of Rights and Freedoms*, s. 25.

groups and for affirming the collective identity of those groups within society. They can also play a role in promoting social justice and equality.

The dynamic between individual and collective rights provides avenues for individuals to recognize and address Indigenous historical trauma and its ongoing impacts. This can help individuals understand the long-term effects of colonization, residential schools, and other historical events on Indigenous peoples' life, health and well-being. This also plays a vital role in the ongoing process of reconciliation in by promoting understanding, addressing past injustices, and building a more equitable future where Indigenous people feel safe, protected and valued.

Indigenous reconciliation in Canada is an ongoing process focused on rebuilding relationships between Indigenous and non-Indigenous peoples, acknowledging past harms, and working towards a more just and equitable future. It involves addressing the legacy of colonialism, including residential schools, and implementing the 94 Calls to Action from the Truth and Reconciliation Commission. Reconciliation is also about recognizing Indigenous rights, supporting self-determination, and ensuring Indigenous voices are heard in decision-making processes.¹⁵³

The importance of Indigenous individual and collective rights protections is consistent with the 'Indigenous Identity' protections in BC's *Human Rights Code*.¹⁵⁴ Adding "Indigenous identity" as a protected ground in BC's *Human Rights Code* is considered crucial for addressing systemic discrimination and promoting cultural safety. It recognizes the unique experiences and challenges faced by Indigenous peoples and helps ensure their rights are respected and protected. This inclusion, combined with Indigenous cultural safety training, aims to create a more equitable and just society for all. There is considerable room to make a real difference in this area through public education that sheds light on the racism that Indigenous Peoples experience that is not acknowledged.

This recommendation for public education around the importance of individual and collective rights provides the Indigenous rights scaffolding for the TRC Calls to Action respecting the need for all Canadians to learn about Indigenous peoples in Canada. This includes celebrating the living culture of Indigenous nations, learning the history of Indigenous peoples, the legacy of Residential Schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties, Indigenous law, and Indigenous-Crown relations.¹⁵⁵

¹⁵³ Truth and Reconciliation Commission of Canada. (2015). Calls to Action at 1-10.

¹⁵⁴ BC Human Rights Tribunal. *Indigenous peoples and human rights*: <https://www.bchrt.bc.ca/indigenous>.

¹⁵⁵ Truth and Reconciliation Commission of Canada. (2015). Calls to Action.

3.2.4. Indigenous Cultural Safety Training

Recommendation #4 – *San'yas Anti-Racism Indigenous Cultural Safety Training and Anti-Indigenous Racism Response Training (ARRT - <https://sanyas.ca/courses>), or a qualified equivalent 'core training' be incorporated in commercial retail organizations' Policy Compliance Framework for non-discriminatory business practice.*

Research indicates that supports for Indigenous cultural safety and continuity served as an important buffer that promoted biological resilience against the adverse effects of racial discrimination on physiologic regulation among Indigenous adults.¹⁵⁶

In conjunction with Recommendation #2 and consolidating foundational public education regarding Indigenous individual and collective rights, we recommend high quality Indigenous cultural safety training to be incorporated into an organizational policy compliance framework for non-discriminatory retail business practices.

This framework should be grounded in respect for Indigenous rights, self-determination, and cultural protocols, while also promoting equitable treatment and practice.

Indigenous cultural safety training in Canada is crucial for fostering respectful and equitable relationships between Indigenous and non-Indigenous people, in commercial retail and other service settings. It aims to address historical injustices, systemic racism, and power imbalances that impact Indigenous peoples' health and well-being. This training is embedded in a human rights and anti-racism approach that equips individuals with the knowledge and skills to provide culturally safe care, promote positive interactions and relationships, and ensure Indigenous people feel safe, respected, and valued.

Moreover, improving cultural safety, taking action to eradicate Indigenous-specific racism across all of its programs and services, creating the conditions that allow greater equity for all. Indigenous cultural safety means working in ways that are fairer for Indigenous people, and free from discrimination. To do this we must consider colonial history and show respect for Indigenous culture, identity, and rights. Indigenous cultural safety is an outcome based on respectful engagement; it is when Indigenous people

¹⁵⁶ Borrell, L.N., Rodríguez-Álvarez, E., Dallo, F.J. (2020). "Racial/ethnic inequities in the associations of allostatic load with all-cause and cardiovascular-specific mortality risk in U.S. adults". *PLOS ONE*. 15 (2): e0228336: <https://pmc.ncbi.nlm.nih.gov/articles/PMC7018050/>; Robertson, T., Beveridge, G., Bromley, C. (2017). "Allostatic load as a predictor of all-cause and cause-specific mortality in the general population: Evidence from the Scottish Health Survey". *PLOS ONE*. 12 (8): e0183297: <https://pmc.ncbi.nlm.nih.gov/articles/PMC5559080/>; Shepherd, C.C.J., Li, J., Cooper, M.N., Hopkins, K.D., Farrant, B.M. (2017); Currie, C.L., Wild, T.C., Schopflocher, D., Laing, L. (2015).

feel safer in relationships and when receiving services. Eradicating racism and discrimination against First Nations, Inuit and Métis Peoples in all social domains, including the retail sector, will support organizations and businesses in the implementation of daily practices that support the provision of culturally safe and anti-racist care.

San'yas is a nationally recognized, Indigenous-led training program focused on improving cultural safety for Indigenous people, particularly in healthcare and other sectors. San'yas Anti-Racism Indigenous Cultural Safety Training Program is a highly reputable subject matter leader that provides core training through an online learning platform that offer several key values: increased accessibility, flexibility, cost-effectiveness, and personalized learning experience. It is our recommendation that completion of Anti-Racism Indigenous Cultural Safety Training and Anti-Indigenous Racism Response Training (ARRT), or a qualified equivalent, can help equip retail staff with the framework to create equitable, anti-racist and culturally safe institutions and social systems where everyone thrives.

Indigenous cultural safety training is a direct response to the TRC Calls to Action, which emphasize the need for increased education and training in intercultural competency, human rights, and anti-racism for business and retail professionals.¹⁵⁷

3.2.5. Intercultural Competency and Anti-racism Policy

Recommendation # 5 – *Building Respectful Relationships Between Indigenous and Non-Indigenous Individuals and Communities. Intercultural Competency, Conflict Resolution, Human Rights, and Anti-Racism in accord with TRC Calls to Action*¹⁵⁸

According to the 2021 census, Canada's Indigenous population was 1.8 million, representing 5.0% of the total population. This population is growing faster than the non-Indigenous population. The Indigenous population grew by 9.4% from 2016 to 2021, which is almost twice the rate of the non-Indigenous population.¹⁵⁹ nearly three in four Canadians lived in large urban centres. In 2021, 801,045 or nearly 45% of Indigenous people were living in large urban centres with a population of at least 100,000, known as census metropolitan areas.¹⁶⁰ The largest concentration of First Nations people in Canada is in Ontario, followed by British Columbia and Alberta.

¹⁵⁷ Truth and Reconciliation Commission of Canada. (2015). Calls to Action at 1-10.

¹⁵⁸ Ibid.

¹⁵⁹ Statistics Canada. (2023). *Canada's Indigenous Population*. June 21.
<https://www.statcan.gc.ca/o1/en/plus/3920-canadas-indigenous-population>.

¹⁶⁰ Ibid.

Indigenous peoples are the fastest growing population in Canada, ensuring that Indigenous customers are welcomed and respected is not only the right thing to do, it is also good for business.

As the Canadian Chamber of Commerce (CCC) noted: “A seismic shift is underway in the current and potential heft of Indigenous peoples in our society and economy. Indigenous peoples contribute billions of dollars to our economy annually and they are creating new businesses at five times the rate of non-Indigenous peoples. When combined with the fact that Indigenous peoples are the youngest, fastest growing demographic in Canada, ensuring they are respected and welcomed as customers and have the same opportunities to contribute to our economy is imperative.”¹⁶¹ In a wider sense, it is also understood that the only way Canada will be able to compete globally is to ensure Indigenous peoples have the same opportunities to participate in our economy as others.

In the commercial retail sector, it is of paramount importance to recognize and position Indigenous consumers as individuals crucial for business success. This means businesses should prioritize building strong relationships based on trust and understanding, acknowledging Indigenous cultures and languages, and creating inclusive spaces and practices. This involves actively listening to Indigenous perspectives, providing culturally sensitive service, and fostering an environment of mutual respect.

Respectful relationships with Indigenous people are crucial for businesses due to both ethical and practical considerations. Businesses have a responsibility to operate ethically and contribute to the well-being of the communities in which they operate. This includes respecting Indigenous rights, cultures, and traditional knowledge.

In this respect CRP is not only unethical and illegal, but also a counterproductive business practice. Indigenous CRP is indeed a counterproductive discriminatory business practice that can severely threaten customer loyalty. When Indigenous customers feel discriminated against, they lose confidence in the business' integrity and reliability and are likely to take their business elsewhere. They may even share negative experiences with others, harming the business's reputation.

Treating Indigenous retail customers with respect and dignity is crucial for building trust,

¹⁶¹ Canadian Chamber of Commerce. *Enhancing Business-Indigenous Engagement*: <https://chamber.ca/resources/enhancing-business-indigenous-engagement/#:~:text=Building%20relationships%20with%20groups%20that,peoples%2C%20research%20and%20training%20tools.&text=Below%20are%20links%20to%20national%20Indigenous%20awareness%20and%20training%20tools>.

fostering positive relationships, and promoting economic empowerment. It involves recognizing their unique cultural backgrounds, personal preferences, and specific needs, rather than making assumptions based on stereotypes or generalizations. This approach leads to more meaningful interactions, increased customer satisfaction, and stronger community connections.

In addition, a company is liable for the actions of its employees. Claims of widespread profiling that have not been thoroughly investigated using modern research approaches grounded in a human rights framework can unduly harm retailers. Consequently, if someone reports that they have been profiled, the allegations should be investigated to the fullest extent possible.

Those responsible for conducting such investigations have a duty to determine whether there is a widespread problem or if the incident stems from a specific sales associate or loss prevention employee. The following offers some guidance on the proper assessment of racial profiling in a retail setting.¹⁶²

3.2.6. Best Operational Practices for Indigenous-Specific Consumer Racial Profiling Prevention

Recommendation # 6 – *Indigenous Corporate Training Inc.: Tips to Avoid Indigenous Racial Profiling as standards for commercial retail policy and core operational activities*

In conjunction with Recommendation #3 we endorse the Indigenous Corporate Training Inc.¹⁶³ tips to avoid Indigenous racial profiling as principled operational policy standards for guiding respectful retail practices.

The TRC calls upon the corporate sector in Canada to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:

1. Owners, managers and staff be familiar with the Truth and Reconciliation Commission Calls to Action in general, and in particular #92¹⁶⁴:

¹⁶² Gabbidon, S. L. & Mitchell, O. (2015), How to Prevent Profiling. ASIS International.

<https://www.asisonline.org/security-management-magazine/articles/2015/11/how-to-prevent-profiling/>.

¹⁶³ Indigenous Corporate Training Inc. (2017). Indigenous Racial Profiling by Retailers and Tips to Avoid It. May 08, <https://www.ictinc.ca/blog/indigenous-racial-profiling-by-retailers-and-tips-to-avoid-it>.

¹⁶⁴ Truth and Reconciliation Commission of Canada. (2015). Calls to Action at 10.

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iii. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

2. *Do not follow Indigenous shoppers while they are shopping.*
3. *Do not interpret the lack of eye contact in a negative light.* For many Indigenous Peoples, continuous eye contact may not be expected or even accepted as a courtesy of conversation.¹⁶⁵
4. Don't stock your shelves with Indigenous-themed Hallowe'en costumes.¹⁶⁶
5. *Don't stock your shelves with imitation Indigenous art and products.*
6. *Employ Indigenous People* and ensure that the work environment is inclusive and welcoming.¹⁶⁷
7. *Land Acknowledgements.* At the beginning of staff meetings, consider including an acknowledgment of whose traditional or treaty land your store stands on.
8. *Consider 'installing decals' or signs that welcome people in the languages of the local Indigenous cultures.* (For example, a decal initiative by the Downtown Winnipeg BIZ's Aboriginal Peoples' Advisory Committee, is symbolic and celebrates Indigenous art and culture. It also addresses the fourth guiding principle outlined in the *Truth and Reconciliation Commission* report: "Reconciliation requires constructive action on addressing the ongoing legacies of colonialism that have had destructive impacts on Aboriginal peoples' education, cultures, and languages.").¹⁶⁸
9. *Commission local artists to create art for display in your store.* The Snaw-Naw-As Market on Vancouver Island is an example of a grocery store that has created a

¹⁶⁵ Indigenous Corporate Training Inc. (2012). *Eye Contact and Indigenous Peoples*. April. <https://www.ictinc.ca/blog/eye-contact-and-indigenous-peoples>.

¹⁶⁶ Indigenous Corporate Training Inc. (2020a). *This Hallowe'en Don't Promote Cultural Appropriation*. October. <https://www.ictinc.ca/blog/this-halloween-dont-promote-cultural-appropriation>.

¹⁶⁷ Indigenous Corporate Training Inc. (2020b). *6 Steps to Create an Inclusive Environment for Indigenous Workers*. June. <https://www.ictinc.ca/blog/6-steps-to-create-an-inclusive-environment-for-indigenous-workers>.

¹⁶⁸ Windspeaker Staff. (2016). City welcomes shoppers in Indigenous languages. Windspeaker Publications. Vol. 34, Iss.3. <https://www.ammsa.com/publications/windspeaker/city-welcomes-shoppers-indigenous-languages>.

welcoming and attractive entryway for both Indigenous and non-Indigenous customers. The market is independently run and Indigenous-led, and it's designed to be a welcoming space with a friendly vibe. Its proceeds support the local community of 250 band members, funding various programs and needs.¹⁶⁹

10. *Consider co-branding with the local Indigenous communities adapting Two-Eyed Seeing.*¹⁷⁰ This involves partnering with First Nations, Inuit, or Métis communities to create a product or service that is jointly owned, developed, and marketed. Co-branding may also mean adapting a form of “Two-Eyed Seeing” that is open to lessons learned within a co-learning journey that brings together Indigenous and mainstream knowledges and ways of knowing. This approach can be beneficial for all parties involved, fostering economic opportunities, promoting cultural exchange, and building stronger relationships. However, it's crucial to ensure the partnership is built on respect, transparency, and a commitment to Indigenous self-determination.¹⁷¹

3.2.7. Two-Eyed Seeing in the commercial retail sector

Recommendation # 7 – *Advance the application of Two-Eyed Seeing in the consumer retail sector through the integration of Indigenous and Western knowledge systems to foster more inclusive and effective business practices. This approach involves acknowledging the strengths of both Indigenous and Western perspectives and using them to inform decision-making, problem-solving, and relationship-building.*

Two-Eyed Seeing encourages a view of the world through both Indigenous and Western perspectives, recognizing the strengths of each.¹⁷² This approach effectively applied fosters a more inclusive understanding of complex issues, particularly those involving cross-cultural encounters and contexts.

It is hypothesized here that engaging retail business practices with a Two-Eyed Seeing approach can provide opportunities to enhance cultural competence, generate

¹⁶⁹ Olarte, A. (2023). Snaw-Naw-As Market: Working Towards Reclaiming Power and Place. Here Magazine. January [https://www.heremagazine.ca/snaw-naw-as-market-working-towards-reclaiming-power-and-place/#:~:text=%E2%80%9CWe%20formed%20the%20NEDC%20to,the%20hill%20from%20the%20mar](https://www.heremagazine.ca/snaw-naw-as-market-working-towards-reclaiming-power-and-place/#:~:text=%E2%80%9CWe%20formed%20the%20NEDC%20to,the%20hill%20from%20the%20market.)ket.

¹⁷⁰ Bartlett, C., Marshall, M., & Marshall, A. (2012). Two-Eyed Seeing and other lessons learned within a co-learning journey of bringing together Indigenous and mainstream knowledges and ways of knowing. *Journal of Environmental Studies and Sciences*, 2, 331–340: <https://aeic-iaac.gc.ca/050/documents/p80156/132968E.pdf>.

¹⁷¹ Indigenous Corporate Training Inc. (2017).

¹⁷² Ibid.

innovative insights, and contribute to reconciliation efforts, promoting ethical practices and meaningful collaborations between Indigenous and non-Indigenous communities.¹⁷³

Gupta et al.¹⁷⁴, for instance, have examined the relationship of Indigenous marketing practices and its influence on consumers' buying behaviors and the level of brand loyalty among the retail clients. These researchers argue that Indigenous marketing differs from the traditional marketing that is mainly based on advertisement; instead, it blends cultural factors into each stage of the marketing, which makes the buyers and users feel touched emotionally by brands. Their research found that by combining symbols and stories along with sustainable materials into clothing, this approach is culturally sensitive and appeals to young consumers.

Two-Eyed Seeing is a guiding principle for intercultural collaboration, particularly between Indigenous and Western knowledge systems, emphasizing the value of using both perspectives for a more comprehensive understanding and problem-solving approach. It involves viewing the world through Indigenous ways of knowing with one eye and on Western ways of knowing with the other, aiming to integrate the strengths of both perspectives for the benefit of all. In this matter, Two-Eyed Seeing in the commercial retail sector may be advantageous in increasing a diverse customer base and improving brand loyalty given the growing consideration for culture in consumerism.¹⁷⁵

Two-Eyed Seeing has been embraced by many disciplines in Canada, such as nursing¹⁷⁶ and education.¹⁷⁷ Business scholarship, however, has not yet adopted Two-Eyed Seeing despite having opportunity in fields, such as management decision-

¹⁷³ Kendall, L. (2025). Two-Eyed Seeing in Business Scholarship: A Framework for Indigenous and Non-Indigenous Research. *European Conference on Research Methodology for Business and Management Studies*. 24. 41-48. 10.34190/ecrm.24.1.3692: https://www.researchgate.net/publication/392820940_Two-Eyed_Seeing_in_Business_Scholarship_A_Framework_for_Indigenous_and_Non-Indigenous_Research.

¹⁷⁴ Gupta, V.P., Sharief, S., Tyagi, V.K. and Manchanda, R. (2025), "Influence of Indigenous Marketing Practices on Consumer Behavior and Brand Loyalty in Retail", Ghosal, I., Gupta, S., Rana, S. and Saha, D. (Ed.) In *Indigenous Empowerment through Human-Machine Interactions*, Emerald Publishing Limited, Leeds, pp. 197-214.

¹⁷⁵ Lin, J., Jeung Kim, N. Y., Uduehi, E., Keinan, A. (2024). Culture for Sale: Unpacking Consumer Perceptions of Cultural Appropriation. *Journal of Consumer Research*, Volume 51, Issue 3, October, pp. 571–594: https://www.researchgate.net/publication/375913165_Culture_for_Sale_Unpacking_Consumer_Perceptions_of_Cultural_Appropriation.

¹⁷⁶ McFadden, A., Lynam, M. J., & Hawkins, L. (2023). Two-Eyed Seeing as a strategic dichotomy for decolonial nursing knowledge development and practice. *Nursing inquiry*, 30(4), e12574: <https://doi.org/10.1111/nin.12574>.

¹⁷⁷ Bardwell, B. and Woller-Skar, M.M. (2023). Challenges and successes of using Two-Eyed Seeing to teach Indigenous science at a predominantly white institution, *Journal of Great Lakes research*, 49(1), pp. S78-S83: <https://doi.org/10.1016/j.jglr.2023.01.003>.

making, social responsibility, and business ethics, that lean towards engaging with Indigenous methodologies.¹⁷⁸ Harmonizing Western thought frameworks with Indigenous methodologies can bridge the gap between knowledge systems. Such an integration supports the processes of reconciliation and decolonization that will help level power imbalances within commercial retail interactions and spaces and exemplify a respectful path forward by engaging in collaborations that benefit both Indigenous and non-Indigenous communities.

Two-Eyed Seeing in the commercial retail sector is about creating a more inclusive, sustainable, and ethical business environment by valuing and integrating Indigenous and Western knowledge systems. This approach can lead to more meaningful relationships with Indigenous communities, more effective business practices, and a positive contribution to reconciliation and social justice.

3.2.8. Loss Prevention Best Practices Grounded in Consumer Racial Profiling Zero Tolerance Policy

Recommendation #8 – *Implement key loss prevention best practices for retail businesses anchored by consumer racial profiling ‘zero-tolerance policy format’. This is achieved through learning and unlearning processes that are informed by the lived experiences of Indigenous peoples, Black, and racialized individuals to ensure safe and respectful retail environments:*

In the case *McCarthy v Kenny Tan Pharmacy Inc.*,¹⁷⁹ it has been noted that Shopper's Drug Mart, "Employee Handbook [had] several provisions which direct[ed] employees to treat customers with courtesy and respect, to abide by anti-discrimination values and legislation when providing customer service, and not to rely on racial or other stereotypes when dealing with trespassing."¹⁸⁰ Yet, these anti-discrimination provisions in the employee handbook were easily ignored by managers and staff at Tan's pharmacy. This may indicate that the use of informal and verbal instructions to staff about loss prevention can leave retailers vulnerable to legal liability, especially when these strategies utilize consumer racial profiling practices.¹⁸¹ It also may indicate that while many retailers may have policies and/or training against discrimination, it is doubtful that these policies and/or training are particularly effective in preventing consumer racial profiling. Consequently, when untrained or unqualified individuals undertake the task of surveillance many problems can arise.

¹⁷⁸ Kendall, L. (2025).

¹⁷⁹ *McCarthy v Kenny Tan Pharmacy Inc* at para 22.

¹⁸⁰ *Ibid* at paras. 21, 22 & 62

¹⁸¹ Sojourner-Campbell, T. E. (2015).

On this matter, loss prevention experts advise retailers to exercise extreme caution not to blur the lines between shoplifter profiling as a way to mitigate loss and racial profiling.¹⁸² Analytically, consumer racial profiling and shoplifter profiling are distinct practices. Racial profiling involves targeting individuals based on their Indigenous or racialized identity, often based on stereotypes and preconceived notions. Shoplifter profiling, on the other hand, is a legitimate loss prevention method of identify suspects based on a pattern of behaviour, product line or section of a store most likely to see theft. To conduct shoplifter profiling, stores analyze their daily operations and inventory, and determine where, when, how, and by whom shoplifting is likely to occur.

In the context of Canadian human rights law for non-discriminatory practice, any retailer's loss prevention policy should first start with clearly defined and articulated policies against racial profiling and demonstrating zero tolerance for violations. Retailers should also give careful thought to criteria for shoplifter profiling and monitoring particular customers. Surveillance decisions should be based on objective, race-neutral criteria (e.g., know what day(s), what time(s), what product line(s), and what department(s) have the most shoplifting activity). Importantly, when apprehensions are made by loss prevention personnel, they should be carried out on-site and away from large crowds. Use of force should be minimized, and handcuffs should be employed only based upon an individualized and race-neutral assessment of need. On a broader level, policy should emphasize preventing the loss over making the apprehension. Detentions and recovery quotas should be de-emphasized. Finally, of course, a policy is only as good as its implementation; regular training and auditing of surveillance practices to ensure the loss prevention policy is being followed is essential.¹⁸³

Table 4 summarizes recognized key business practices for a consumer racial profiling 'zero-tolerance policy format'¹⁸⁴ – achieved through learning and unlearning processes that are informed by the lived experiences of Indigenous peoples, Black, and racialized individuals – ensuring safe and respectful retail environments:

Table 4

LOSS PREVENTION BEST PRACTICES

¹⁸² Cartwell Law. (2021). Shoplifter Profiling: Is It a Preventive Tool or Racism at Play? June 2. *JD Supra*. <https://www.jdsupra.com/legalnews/shoplifter-profiling-is-it-a-preventive-7447245/>.

¹⁸³ L&E Global. (2019). USA: Racial Profiling, Loss Prevention, and Section 1981 in Retail 02-12-2019. <https://leglobal.law/2019/12/02/usa-racial-profiling-loss-prevention-and-section-1981-in-retail/>.

¹⁸⁴ Ontario Human Rights Commission. (2017).

1. Develop and enforce clear policies:

Businesses should have a clearly articulated policy against racial profiling, specifying zero tolerance for discriminatory behavior and outlining the consequences of violating the policy.¹⁸⁵

2. Hiring or ‘on boarding’ process screening:

The hiring or on boarding process is a good time to screen out poor candidates that seem predisposed to prejudice. Comprehensive retail security training is absolutely necessary to assure that employees know how to do the job appropriately and understand the rules of conduct.¹⁸⁶

3. Comprehensive staff training:

Employees should receive thorough training on the definition/meaning of consumer racial profiling, the importance of treating all customers with respect, and the consequences of engaging in biased behavior.¹⁸⁷ (See Recommendations # 3 & 4)

4. Objective criteria for surveillance:

Loss prevention measures should be based on objective, race-neutral criteria, such as observed behavior, specific times and locations where incidents have occurred, and the nature of items being purchased.¹⁸⁸

5. Data collection and analysis:

Businesses should collect and analyze data related to customer interactions, including race-based data on stops, searches, and other interactions, to identify patterns of bias and disproportionate targeting.¹⁸⁹

6. Community engagement and partnerships:

Retail businesses should engage with the communities they serve and partner with organizations that can provide educational resources and support to address racial profiling.¹⁹⁰

7. Independent audits and reviews:

¹⁸⁵ L&E Global. (2019).

¹⁸⁶ Cartwell Law. (2021).

¹⁸⁷ Alberta Human Rights Commission. (2012). Racial Profiling Information Sheet. March. <https://albertahumanrights.ab.ca/media/5mfjnvo2/racialprofiling.pdf>.

¹⁸⁸ L&E Global (2019).

¹⁸⁹ Ontario Human Rights Commission. *Appendix C: Recommendations to combat and prevent racial profiling*. <https://www.ohrc.on.ca/en/under-suspicion-research-and-consultation-report-racial-profiling-ontario/appendix-c>.

¹⁹⁰ Ibid.

Retail businesses should conduct regular audits and reviews of their policies and practices to ensure compliance with anti-discrimination laws and to identify areas for improvement.¹⁹¹

8. Address the root causes:

Retail businesses should actively address the root causes of racial profiling, such as unconscious bias, stereotypes, and systemic inequalities, through training and awareness programs.¹⁹²

9. Promote a culture of inclusivity:

Retail businesses should foster a culture of inclusivity and respect, where all customers feel welcome and valued.¹⁹³ (See Recommendation # 3 & 4)

PART IV: STATEMENT AND SIGNATURES OF THE AUTHORS

We, Drs. Lorne Foster and Lesley Jacobs, confirm that we are co-authors of this Expert Report and our opinions detailed herein are unified.

Dr. Lorne Foster

Dr. Lorne Foster

July 28, 2025

Date

Les Jacobs

Dr. Lesley Jacobs

July 28, 2025

Date

¹⁹¹ Gabbidon, S. L. & Mitchell, O. (2015).

¹⁹² Ontario Human Rights Commission. (2017).

¹⁹³ Indigenous Corporate Training Inc. (2017).