

EXECUTIVE SUMMARY

INDIGENOUS CONSUMER RACIAL PROFILING IN CANADA:

A Neglected Human Rights Issue

EXPERT REPORT

This expert report explores the issue of indigenous consumer racial profiling in Canada and is designed to identify and fill a gap in existing research. It was written to assist in the human rights proceeding on the matter of *Wilson v Canadian Tire et al.*, (BC Human Rights Complaint CS-003916). The clients are the Heiltsuk Tribal Council and Dawn and Richard Wilson. It includes a preliminary statement of the assumptions about Indigenous identity, racism and racial discrimination, and racial profiling that underpin the analysis.

Terms of References

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?

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. 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.

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. Consumer racial profiling occurs in many retail environments including 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).

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. 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.

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. One persistent and 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. 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.

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). 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.

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. In short, consumer racial profiling occurs because of an observed combination and linkage of Indigeneity or race and race-related factors with intersectional 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 the harm and severity of the experience.

The following is a set of applicable principles for cases involving allegations of Indigenous racial profiling:

- 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.

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 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. Indeed, across Canada consumer protection has been typically siloed in organizations outside the civil justice system. In other words, paths to justice in Canada for Indigenous consumer racial profiling are scant and difficult to navigate. 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 rights tribunals.

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.” 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.

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.

Racial Stereotyping and Microaggressions in Consumer Racism

Microaggressions are a social consequence of racial stereotypes. Microaggressions refer to the casual degradation of any marginalized group. In a Canadian Indigenous-specific context, microaggressions are synonymous with and sometimes referred to as ‘micro-discriminations’ (or Shopping While Indigenous). 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.”

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);

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).

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.

There is considerable research to suggest the frequent 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. Consumer racial profiling also has a social cost, as it causes significant mistrust to develop between the Indigenous individuals (both in children and adults), their community and key public institutions.

Researching Consumer Racial Profiling

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. 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) in 2013. Some additional research has been conducted by the Ontario Human Rights Commission as well as a small group of academics.

The paucity of Canadian 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.

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. 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. Indigenous consumer racial profiling is both a reflection of the racial trauma in Indigenous communities and a perpetrator of that racial trauma.

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* – that have to be implemented to effect that change.

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.

The Impacts of Indigenous Specific Consumer Racial Profiling

A summary of the impacts on individuals and Indigenous communities in bullet format of Indigenous 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.
- 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 seen as potential thieves or criminals.
- Indigenous CPR 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.
- 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 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 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.

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 Indigenous consumer racial profiling 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.

The Government of British Columbia is committed to implementing the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP). This commitment is formalized through the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) and further outlined in the B.C. DRIPA Action Plan released in 2022, solidifying Indigenous individual and collective human rights.

Under these auspices we make the following eight recommendations:

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.

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.*

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.*

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.*

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.*

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

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.*

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.*