



Department of Justice
Canada

Ministère de la Justice
Canada

**Urban African Canadians:
A Qualitative Study of Serious Legal Problems in Quebec**

David Austin

March 2021

Canada

Information contained in this publication or product may be reproduced, in part or in whole, and by any means, for personal or public non-commercial purposes, without charge or further permission, unless otherwise specified.

You are asked to:

- exercise due diligence in ensuring the accuracy of the materials reproduced;
- indicate both the complete title of the materials reproduced, as well as the author organization;
and
- indicate that the reproduction is a copy of an official work that is published by the Government of Canada and that the reproduction has not been produced in affiliation with, or with the endorsement of the Government of Canada.

Commercial reproduction and distribution is prohibited except with written permission from the Department of Justice Canada. For more information, please contact the Department of Justice Canada at: www.justice.gc.ca

©Her Majesty the Queen in Right of Canada, represented by the Minister of Justice and Attorney General of Canada, 2021

Table of Contents

Acknowledgements.....	4
Introduction.....	5
Research Team.....	5
Background of People of African Descent and the Legal System in Quebec	5
Research Process.....	6
Methodology	8
The Participants.....	9
Intersections and Connections Between Problems.....	11
Legal Representation Assistance and Cost	13
Child Custody.....	14
Police and Prison Guard Violence.....	15
Employment and Work	16
Housing	16
Health	16
Immigration and Citizenship	17
Criminal Violence	17
Language	18
Racial Discrimination	19
Impacts and Conclusion	21
Research Team Bios	25
Bibliography.....	26
Appendix: Discussion Guide	28
Interview Questions.....	28

Acknowledgements

This research would not have been possible without the support of various individuals, groups, and organizations. I would like to thank all of the participants (anonymous in this report) who shared their rich, important, and often painful legal experiences with the research team. Your stories were troubling, and your perseverance inspiring. I would also like to thank Michael Farkas of Youth in Motion; Mostafa Henaway of the Immigrant Workers Centre; Grace Campbell of Women on the Rise; Ralph of (Head & Hands), AGIR; Tiffany Calendar and Denise Pierre of the Côtes-des-Neiges Black Community Association; Katrina Nurse, Council of Black Aging; Cassandra Kernisan and Amanda Maxwell of Desta, the Conseil panafricain de Québec; and Forum Jeunesse Afro-Québécois. Meaghan Sweeny also assisted with academic research. The research was conducted under the challenging circumstances of the COVID-19 pandemic, resulting in significant delays. I would also like to thank Susan McDonald and Karen Rauh of Justice Canada for their patience and understanding throughout the research process.

Introduction

Urban African Canadians: A Qualitative Study of Serious Legal Problems in Quebec is part of a national study series on serious legal problems experienced by minority communities across Canada, including Black Canadians, Indigenous people, LGBTQ2+ Canadians, persons with physical and/or mental disabilities, and immigrants. In the case of Black Canadians, this study also included immigrants and those with mental and physical disabilities. The goal of the study was to collect information about serious legal problems that Black Canadians have faced in the past three years, how they tried to resolve their problems, and the impacts of those problems. The report is based on 14 interviews, which were conducted in the summer and fall of 2020 with members of Quebec’s Black population.

Research Team

The research team consisted of David Austin (lead researcher), Désirée Roachat (assistant researcher), and Dr. Dona Herteulou Roy (assistant researcher). Désirée Roachat was a central part of the initial conversations about the design, approach, and outreach of the research project before other commitments pulled her away from the project. Dr. Dona Herteulou Roy was involved in outreach and conducted several of the interviews between August and October 2020. Méshama Eyob-Austin assisted with the summaries and transcriptions of the interviews.

Background of People of African Descent and the Legal System in Quebec

People of African descent have a long history in Canada, including Quebec, dating back to 1628 (Gay 2004, 2004; Williams 17, 1997; Cooper 2006, 71; and Walker 2010, 5, 27). The racial codes associated with slavery still persist in the afterlife of slavery (Austin 2013, 7, 49), and, as Constance Backhouse has argued, historically the pervasive myth of Canadian “innocence” and the idea that Canada is a “raceless” society have served to overshadow the reality that the Canadian legal system has been profoundly shaped by race and racism (1999, 13–14).

Racism within the justice system has had immense implications for the criminal justice system and the rates of incarceration in Canada, particularly for Indigenous people and for Black people. As Akwasi Owusu-Bempah and Scot Wortley argue, there has been a reluctance to collect race-based data in

Canada, despite the fact that it might inform our understanding of racial discrimination and anti-Black racism in particular (2014, 284–5, 287–9). Nonetheless, in a proportion similar to African Americans, African Canadians are over-represented in Canadian correctional facilities and the criminal justice system. Despite making up only 3.5 percent of the Canadian population in 2016, people of African descent accounted for 7.2 percent of the federal prison population in 2018–19 (Public Safety Canada 2020). Not surprisingly, many racialized Canadians believe that the criminal justice system is biased against certain racialized groups and are, in turn, less likely to trust in or have confidence in the legal system (Owusu-Bempah and Wortley 2014, 299). As legal scholar Dr. Esmeralda Thornhill has written about the Canadian legal system:

More often than not, it is the role of the legal system's collusion with race that has aided and abetted racism and racial discrimination. As a direct consequence, Black communities across Canada have come to regard as "inherently suspect" both law and legal institutions – be they federal immigration agents, municipal police officers, subway constables, or private security guards (2008, 332).

Research Process

The Urban African Canadians: A Qualitative Study of Serious Legal Problems in Quebec research project began in Quebec in the spring of 2020 under the challenging circumstance of the COVID-19 pandemic. The initial outreach goal of the researchers was to conduct community-based research by building partnerships with various Black community organizations and groups that work within the community, to draw on their experience and expertise, and benefit from their assistance in recruiting respondents. To this end, researchers approached a range of organizations and groups in Montreal and Quebec City based on their missions and geographic locations. Other organizations were approached because of their work with specific ethnic, national, and immigrant groups.

Outreach to organizations proved challenging within the context of COVID-19. Between June and August 2020, the researchers approached organizations, groups, and individuals actively involved within Quebec's Black population. Many organizations were physically closed or reduced to limited services and did not respond to our initial emails or phone calls. In some instances, the researchers received responses weeks or even months later, and some groups were unable to respond at all. This was a difficult time, and many community groups were stretched to the limit to assist their members during the pandemic. Of those organizations and groups that did respond, many of them, understandably, could not commit to the project, or prioritize it when they did. During the summer months, several

organizations scaled down their services or were closed for vacation. In other words, along with the accumulated fatigue associated with the deaths of Breonna Taylor, Ahmaud Arbery, and George Floyd, among others, the research team encountered some unavoidable constraints from the outset, all of which posed significant challenges for the research.

It is impossible to ignore or to assess the impact of events in the U.S. during the summer of 2020. Protests sparked by the horror of the video of George Floyd's murder gripped people around the world, including in Canada. And while one might assume that this would encourage individuals and groups to take an active interest in the research project, in many instances the protests and ongoing conversations about race and racism ultimately added to the existing sense of fatigue engendered by COVID-19 and incessant Zoom meetings.

The researchers strongly felt that they could not push forward without community partnerships. But developing partnerships takes time, and during the outreach process several staff members of community groups expressed that they had participated in previous studies and that they did not see how yet another one would benefit members of the Black community. It was important to be transparent about the reality that the end result of the research would be "another report," and that, as community members, the research team was willing to work with organizations and groups in various ways to explore how the study might be of use for the organizations. It is also important to state that many of the respondents expressed that they appreciated being given a platform to discuss their legal problems.

That said, after months of outreach, the project recruited 14 respondents, falling short of the anticipated 25. This had an impact on the range of respondents in the ratio of women to men. And despite their efforts, the researchers were unable to recruit respondents who openly identified as members of the LGBTQ+ community. As a result, the participants are overwhelmingly heterosexual and disproportionately male. Notwithstanding these limitations, the respondents are diverse in language, ethnicity, nationality, citizenship and immigration status, and class background. Collectively, their testimonies represent something of a snapshot of the legal problems recently experienced by members of Quebec's urban Black population.

To recruit participants, some community groups provided the contact information of potential participants from the outset. Others provided details about the research to potential participants and then responded to their questions. They then put the would-be participants in contact with the research team. In one instance, an organization sent out a survey to its members to identify individuals who had

experienced significant legal problems. The researchers were then given individuals' contact information.

We also approached an organization that works with refugee and non-status members of the LGBTQ+ community. The group agreed to reach out to its members, providing them with the option to make contact. But, understandably, given their vulnerable circumstances, the research team was not contacted by members of the group.

Interviews were scheduled. Ideally, they would have been conducted in person. Given COVID-19 restrictions; most of the interviews, however, were conducted by phone or by using an online video platform. The interviews were conducted in the official language of the participants' choice. Eight were done in English and six in French.

Methodology

Each participant was asked to respond to a series of questions that were based on, but not restricted to, the guidelines provided by Justice Canada. These questions, and the study in general, complement Justice Canada's forthcoming quantitative-based Canadian Legal Problems Survey. The questions were designed to encourage each participant to speak freely and openly about the specific legal problems that they have experienced. The team also wanted to capture their understanding of how and why they experienced these legal problems. This approach is rooted in the idea that people express their understanding of social phenomena in both explicit and conscious, and implicit and unconscious ways; and that they possess an understanding of and can express their experience in relation to the society and world that they inhabit, prompted, but not guided, by the interviewer (Forget and Paillé 2012, 72–3, 79). Although it is obvious that race and the existence of racism is an underlying assumption in the research, the team wanted respondents to discuss their experience without being prompted to discuss it solely in racial terms. The hope was that, where relevant, they might identify the intersections between race, class, gender, sexuality, disability, and other forms of identity.

To maintain confidentiality, each participant was given a pseudonym and, in drafting the report, every effort was made to remove specific details that would compromise the identity of the participants. Notes were taken during the interviews and the audio of the interviews was recorded. Summaries were then made of each interview, which were coded, then matched to establish recurring themes and ideas. The themes identified include legal problems related to:

- immigration and refugee status;

- racial discrimination;
- language discrimination;
- racial profiling;
- police and prison guard violence;
- health;
- disability;
- housing;
- employment;
- criminal violence; and,
- poor or inadequate legal representation (often tied to the prohibitive cost of legal assistance).

The Participants

The questions posed to the respondents were designed to, first, break the ice and gather basic personal information (see Appendix). Each person was then asked to provide a detailed description of the significant legal problem(s) that they experienced in Quebec (mostly in Montreal). The respondents' legal problems are summarized in this report by making every effort to present a summary without passing judgment on their truths. On the contrary, their responses are assumed to be valid and are acknowledged on their own terms. As stated above, each participant was given a **pseudonym**. The following is a short description of each respondent:

Oliver is in his early twenties and was born and raised in Montreal. His biological parents are West African and "European," but he was raised by Caribbean foster parents. Oliver has confronted several legal issues throughout his life, but most recently he has experienced problems with the criminal justice system and with housing issues. Charged with assault, Oliver was represented by a legal aid lawyer who spoke very little English.

Frantz was born in Quebec and grew up in Montreal. He has been dealing with problems related to custody and access to his youngest child. Although he was initially permitted supervised visits, when his case was eventually tried in family court permanent custody was awarded to a white foster family.

Paul was born in Montreal. He was recently released from a federal penitentiary in Quebec. Paul's serious problems arise from his lack of access to various programs in English while in prison (he does not speak French).

Fred is Anglophone and was born in the Caribbean. He is currently incarcerated in a federal penitentiary in Quebec and his experiences all relate to his time in the corrections system. His problems included lack of access to psychological support in English, the French-English divide in general, and violence perpetrated against him by the guards.

Harriot is an Anglophone woman in her early sixties who was born in Montreal to parents from the Caribbean. She is a retired health professional. Her legal issues stem from the unresolved murder of her nephew and being profiled by the police while driving.

Thomas is originally from West Africa, and is in his early thirties. He has been living in Montreal since 2017. His experience with the legal system is related to seeking asylum as a refugee claimant.

Angela was born in Haiti and is in her early forties. She arrived in Canada as a child and she has been living in the same Montreal neighbourhood for the past decade, and in the same apartment for the past five years. She is on welfare, with a yearly income of less than \$15,000. She recently experienced housing issues when the landlord began renovating all of the apartments in her building. He recently asked her to vacate the apartment because he wanted to rent it to a family member.

Fredrick is in his early thirties and is originally from West Africa. He lived in Canada on a student visa while studying in a Quebec university where he and his fellow students experienced racial discrimination from a professor.

Kathleen is a Haitian woman in her mid-thirties who immigrated to Canada more than 10 years ago. She worked for a government institution that supports children who have been removed from their family homes. Kathleen witnessed a situation in which a colleague, also a Black female, was verbally assaulted and threatened by one of the visitors in the yard where some of the children were playing. Both employees reported the incident to their direct supervisors and shortly after the incident, Kathleen's employer terminated her probation and dismissed her.

Toussaint is a Canadian of African origin in his late twenties who lives in Quebec City. He worked for a company in Quebec where he and other Black co-workers witnessed and experienced several racial incidents that, ultimately, when he was not supported, led him to resign. At the time of the interview, he had been unemployed for several months.

Jean-Baptiste is a Canadian-born male of Haitian descent in his early thirties. He experienced serious problems with the criminal justice system recently, particularly during his arrest for mischief. He believes the police used excessive force during the arrest and that he was treated poorly while in detention.

Salif is originally from West Africa. He is in his early thirties and has been living in Montreal for about eight years. His serious problems include access to health care, police violence, and immigration problems. A number of years ago, he was involved in a work-related accident that resulted in a broken

ankle and several broken toes. Lack of appropriate treatment resulted in the amputation of a toe, which in turn has affected his mobility. This has also affected his ability to find work. He lived on disability insurance for three years and now works on and off in construction. Salif tried to pursue a negligence case against the hospital without success, even with legal representation. More recently, he was detained by police based on a misunderstanding related to an immigration issue.

Nina is a woman in her mid-sixties who is originally from the Caribbean. She has been living in Montreal since the mid-eighties and is a Canadian citizen. Several years ago, she was injured at work, which resulted in a permanent back injury. The medical advice she was given was that she should not perform strenuous tasks upon her return to work. At a meeting held in French (she does not speak French), without union representation, she believes she was misled into accepting a different job at a significantly reduced salary.

Donald is a 60-year-old Canadian citizen who was born in the Caribbean. He has been living in Montreal for more than 40 years. Like Nina, his serious problem involved his place of employment, where he worked as a caretaker for more than three decades. He says he was harassed by his employer for praying and discussing his religious beliefs on the job (he is a Christian).

Intersections and Connections Between Problems

The term intersectionality was coined by the African American lawyer and legal scholar Kimberlé Crenshaw in 1989. It also emerged out of critical race theory, which was developed by African American lawyers in the U.S. as a way of identifying and understanding the structural and systemic nature of racism (Coastan 2019). Drawing on legal cases involving African American women, Crenshaw challenged the presumed neutrality of the law and the narrow ways in which the legal system interpreted the experiences of Black women. According to Crenshaw, the legal system neglected the reality that Black women experienced discrimination and oppression both as women and as African Americans. In opposition to the “single-axis framework,” Black women can experience racial discrimination in the same manner as Black men, and can experience gender discrimination in the same manner as white women. But “often they experience double-discrimination – the combined effects of practices that discriminate on the basis of race, and on the basis of sex,” and simply as Black women (Crenshaw 1989, 149). In this sense, Black women are “multiply burdened” (Crenshaw 1989, 130). Intersectionality has since been applied more generally to incorporate gender, race, class, sexuality, and other forms of identity (Coastan 2019). For the purposes of this study, and in relation to the testimonies of its

respondents, intersectionality is useful for analyzing how racial discrimination and anti-Black racism are, or at least can be, tied to discrimination based on class, gender, and other social factors.

Of course, this raises questions: how do we know when racial discrimination is racial discrimination? Were the experiences of the participants the result of racism, or was race merely incidental, or even non-existent? The analysis of systemic racism suggests that racism is part of the “everydayness” in the lives of people of African descent in a white dominant society, shaping daily encounters in education, employment, the judicial system, sports, entertainment, etc.

As the legal scholar and theorist Sherene Razack argues, certain groups of people, including the racialized, have been “evicted” as part of what she describes as the “living dead.” This means that, while they may have, *de jure*, access to the legal rights and entitlements of citizenship in Canada, *de facto* they are systematically excluded on the basis of race, class, and gender, and often all three (Razack in Khan and Kouri-Towe 2009). This eviction is tantamount to what, in relation to refugees and detainees, Giorgio Agamben and Paul Gilroy have described as a permanent state of exception and suspended law (Rauff 2004, 609–10; Agamben 2000, 8–9, 22–5; Gilroy 2000, 84, 93, 283). In other words, the Canadian legal system has “aided and abetted racism and racial discrimination” of people of African descent (Thornhill 2008, 332). And as legal historian Barrington Walker illustrates, this phenomenon can be dated back to the days of slavery in Canada (Walker 2020, 5, 27). This phenomenon coincides with sociologist Cecil Foster’s analysis of how whiteness in Canada is associated with purity, innocence, and progress; and blackness with the wild and untamed, and outside the boundaries of Canadian society (Foster 2008, 414–29), including the legal system. It is through the lens of intersectionality, eviction, the state of exception and suspended law, and rooted in the historical experiences of people of African descent in Canada, that we consider the testimonies of each respondent.

Lastly, and as the testimonies of the participants in this research attest, we can also think of intersectionality in how a particular legal problem can, and often does, spill over into other aspects of an individual’s life: how losing one’s job because of work harassment can lead to the loss of a home and a breakdown in a marriage and the loss of family ties; how calling the police could mean the victim getting arrested instead of the perpetrator of the assault; how previous experiences with the justice system and lawyers wear down the desire to fight, resulting in resignation and defeatism; and how not being able to access correctional programs, in English, can affect a prisoner’s parole, and, therefore, their life chances.

Legal Representation Assistance and Cost

Several participants discussed the poor legal representation that they received and the prohibitive cost of a “good lawyer.” This is consistent with legal scholar Sara Sternberg Greene’s analysis (Greene 2016, 1290) that good lawyers are costly, and that free legal counsel (legal aid lawyers) often results in poor quality legal representation (Ibid., 1, 292).

When Oliver’s dog damaged the floor of his apartment, he was also accused of stealing a mattress and plates from the apartment by his French-Canadian landlords. On the day of the trial, with no prior warning, his lawyer advised him that if he pleaded guilty he would receive a small fine and that his case would not go to trial. Instead, the fine amounted to \$1,500 (the amount that is still outstanding because of Oliver’s limited financial means), 200 hours of community service, and a criminal record. Oliver’s legal problems were then compounded by the fact that he missed an opportunity to appeal his case because he was not advised about the appeal process.

Nina paid a lawyer a significant retainer, but her lawyer failed to show up to court during her trial. Another lawyer ignored key evidence, failed to call a witness to court, and addressed the court in French despite the fact that Nina does not speak the language.

Thomas, too, complained that he received poor legal representation. He was denied permanent resident status, and attributes this to his appointed lawyer, who was not committed to his case. His asylum case was supposed to be relatively straightforward, but his lawyer did the bare minimum and had very little contact with his client. In Kathleen’s case, when her probationary period at work was prematurely terminated, she contacted her union, but was ineligible for assistance because she had not passed her probation period and was therefore not technically a union member. She received the bare minimum of legal support, and she did not have the financial means to pursue her case further.

Before his recent release, Paul contacted a prison lawyer to have an unwarranted gang affiliation removed from his prison file. Gang affiliations can negatively affect parole possibilities and prison privileges. The issue was resolved with support from a prison-appointed lawyer who advised him on how to have the gang tag removed, but it was a long process that was only finalized just before he was released from prison. Frederick, Frantz, Oliver, Toussaint, Kathleen, and Jean-Baptiste could not afford to hire a private lawyer. According to Toussaint,

Translation

Not having the financial means definitely limits access to the justice system. I don't have the money, so now it's up to me, a human with no background in the field, to do this on my own. I wonder if I have the strength and the ability to do this.

In Frederick's case, he decided to report his professor's remarks and behaviour to the director of the program, who advised him that he was a guest in the program and that he needed to make more compromises to integrate into Quebec society. In essence, Frederick was being told that the problem rested on the students' shoulders, not the professor's. Although some of the African students wanted to pursue a more formal legal course of action, ultimately they decided against it out of fear of reprisals and due to limited time and financial resources. The professor continued to demonstrate preference for the local students (white Quebecers). However, Frederick believes that his grades were fair, and that they did not reflect the racial discrimination he experienced in the classroom.

In Canada, there is controversy around the quality of representation provided by legal aid lawyers, depending on the service delivery model (Zemans and Amaral 2018). It is acknowledged that legal aid lawyers are overworked, in part due to a shortage of lawyers. The result is that lawyers take on too many cases at once. As research on this phenomenon in the U.S. suggests, this ultimately means that they cannot give their clients the legal attention they deserve (Greene 2016, 1290–2). As a result, clients are often advised by their lawyers to plead guilty, as in Oliver's case. In Frantz's case, not having the means to hire a lawyer (he was not eligible for legal aid because he is gainfully employed) may have cost him the custody of his child. For Frederick, a lack of funds meant that he chose to not pursue a case against the professor he accused of racism. Although hiring a private lawyer by no means guarantees success in the courtroom, a fully committed and competent lawyer no doubt increases the odds, particularly in a context in which people of African descent have been historically disadvantaged by the legal system.

Child Custody

Discrimination within the child welfare system and in relation to adoption is a well-documented historical phenomenon in Canada (Dubinsky 2008; Maynard 2017, 190–2, 204–05), and has been one way in which Black families have been ruptured. According to a 30 November 2020 report (*Constats et Orientations* 6) conducted by the branch of the Quebec government responsible for child welfare, Black children are over-represented in the child welfare system and the system is not sufficiently adapted to meet the needs of "ethno-cultural" and linguistic minority groups. African-Canadian and Indigenous youth are over-represented in the province's child welfare system and the services often fail to adequately represent their cultural and social interests. In Frantz's case, he was denied regular access to

his child from the time he was born because the child's mother, whom he was no longer with, had a substance use disorder. He plans to continue the fight for custody and visitation rights ("I would take my child back any day") if and when he can afford a lawyer, but the entire process led him to the conclusion that:

If you don't have a big name, if you don't have the right salary, if you don't have the right colour you might be at risk of not being heard at all. Inside the legal system and inside social services there's a lot of bias and prejudice.

Police and Prison Guard Violence

Police brutality has been a recurring theme within Canada's Black population. It is therefore not surprising that a number of participants spoke about police violence, and in one instance, prison guard violence. Jean-Baptiste's experience of being choked and intimidated by the police during his arrest for mischief was also compounded by poor legal representation. He reported that he had very little communication with his lawyers, and received the bare minimum of legal advice and support. In his own words: [Translation] "To them, we're just a number. In their mind, you have done something... You're supposed to be treated badly, not be heard, be left to your own devices."

He continues:

Translation:

They need better training in the justice system. Even if they're arresting a criminal, they need to know how to act and to at least have some compassion, not to treat the person badly. In the end, we're all humans, not animals.

In June 2015, Salif called the police about a roommate who was being aggressive towards him. Instead of addressing the issue with his roommate, the police took Salif into custody on the grounds that he had failed to respond to a letter from Immigration Canada requesting a meeting. While in police custody over two days, he was severely beaten by officers and was sent to the hospital.

Fred experienced physical violence at the hands of prison guards, not police officers. Racially motivated violence against Black prisoners has been well documented and is part of a wider process of Black criminalization leading to incarceration (Maynard 2017; Austin 2021, 109–12). Fred's case was particularly egregious and he is still fighting for legal justice.

Employment and Work

Legal issues related to employment were mentioned by several participants. In Toussaint's case, a fellow employee called Toussaint several names, including the "n-word" while other employees and customers were present. Some of them appeared to be shocked and appalled by the encounter they witnessed, but none came to Toussaint's defence. When Toussaint made it clear to the co-worker that his behaviour was unacceptable, the supervisor responded that it was appropriate at times when referring to certain individuals.

Like Toussaint and Salif, both Nina and Donald discussed problems they experienced in the workplace. Nina's back injury was compounded by the insensitivity of her employer and union to her circumstances, all of which she attributes to both racism and the fact that she is an Anglophone. In Donald's case, and given the fact that schools in Quebec are legally secular, it is perhaps not obvious to what extent his legal issues were the result of his religious "proselytizing," racism, and/or the fact that he is an Anglophone, and he himself downplayed racism as a root cause of his problems. That said, given the intricate ways in which systemic racism functions, it would be hard to imagine that race did not play a role, to whatever extent, in that process.

Similar to the experience of other participants, a lack of funds was a major impediment to receiving a just outcome for Donald. As he suggested, "[The legal system] is there to protect everyone, but sometimes it's biased" if you do not have the financial means to hire a private lawyer. Initially, because of a confidentiality agreement, he was not allowed to seek counsel outside of the union while his case was pending. Later, he was unable to pursue legal action in court because he could not afford to hire a private lawyer, and did not qualify for legal aid.

Housing

Only one of the participants discussed housing. Angela, a single mother, believed that her landlord was trying to evict her under false pretenses, perhaps for financial gain (raising the rent by taking on a new tenant). She received advice from the provincial government agency that governs housing issues, to enquire about her legal rights, but it was the bare minimum. As a result, she was forced to navigate the system on her own or by drawing on the support of friends.

Health

Health, including workplace accidents, touched the lives of three participants. In the aftermath of his arrest, Jean-Baptiste was later transferred to a mental hospital for evaluation, but received no medical attention for a swollen foot, until he was diagnosed with schizophrenia and substance use disorder. His experiences through all this were difficult and debilitating. The problem was amplified by inadequate

psychological support when it was obvious that he was in crisis. In the case of Salif, his work injury led to a permanent disability because of the delay in his medical procedure. Salif believes that the hospital was guilty of negligence, leading to the amputation of his toe. He contacted the organization that oversees medical complaints in Quebec, and was instructed on how to provide a detailed account of his experience.

The hospital administration denied that the hospital had been negligent, and in 2016, Salif hired a lawyer. The lawyer nonetheless advised him that he could not claim negligence, never met with Salif, and only saw his injuries in photos. The lawyer essentially sided with the hospital and Salif was unable to appeal his case because his lawyer was unavailable for several months. By the time he sought legal counsel elsewhere, the statute of limitations for his case had expired. He believes that his lawyer purposely made the time run out and that the hospital deliberately caused the delays, working with the oversight body.

Immigration and Citizenship

Historically, immigration and citizenship have been used as a tool to police and ultimately limit the presence of Black lives in Canada, often using detention and deportation as the ultimate form of control (Austin 2013, 81, 149–53; Maynard 2017, 158–61). Salif was arrested because he had failed to respond to a letter from Immigration Canada about his refugee claim. He contacted Immigration Canada, which confirmed that it had indeed sent him a letter in November 2014, but Salif insists that he never received it. He was then told that he had to report to Canadian immigration, first every month, and then every three months, which he did, but his permanent resident application was nonetheless rejected in 2016. It was again rejected in 2018, despite Salif having gathered more than 20 letters of support in his file. He believes that his initial rejection was tied to the fact that he had been arrested in 2015. He has since reapplied and is now a permanent resident.

Thomas believed that his asylum would be straightforward, but as we have seen, a lack of adequate legal advice from an appointed lawyer contributed to his application being rejected. He is currently appealing the decision with another lawyer, but his first experience with the legal system in Canada was disappointing. In addition to hiring another lawyer, he has been working on the presentation of his case and relying on friends and other sources for support.

Criminal Violence

Oliver was recently assaulted by a roommate, and when the police intervened, as in Salif's case, Oliver was the one charged with assault. He believes that he was charged because of a previous record from a

high school incident and that his brother's record was used against him. His issues were compounded when he was poorly represented by a legal aid lawyer who barely spoke English and, in Oliver's words, was "incompetent." The lawyer encouraged Oliver to plead guilty, which he did. He was given a year's probation and community hours, but he believes that, if he had been able to afford a better lawyer, the outcome of his case would have been different. He also wanted to appeal the case, but he was not advised about the process and missed the appeal deadline.

Language

Language issues are particularly prominent in Quebec. The dominant and majority language is French, but there is a large English-speaking population in Montreal. As recently as the 1970s, English was the dominant language within the Black population, but it has long since been supplanted by French, with the Haitian population now comprising the largest French-speaking group within the Black community (it is, however, important to note that Creole, not French, is Haitians' dominant language). Once accustomed to being the largest group, today Black Anglophones often find themselves marginalized in Quebec based on language and ethno-racial background. In her *Montreal Gazette* article, Yvonne Sam recently wrote, in addition to her experiences as a Black woman in Montreal, language discrimination has had a tremendous impact on her life and that of other Black Anglophones:

I also feel rejected as an English-speaking person. I am reminded of my linguistic minority status every time I hear a unilingual French message on the metro, and also when politicians talk about strengthening Bill 101. At a news conference in November, Simon Jolin-Barrette, Quebec's minister responsible for the French language, said "Quebec was born French, and it will stay French." What I heard him say is that, as an Anglophone, I don't belong here. (2021)

Yvonne's experience directly and indirectly expresses the experiences of several participants. Nina's lawyer refused to communicate in English in court, and she was reprimanded by a judge for not being able to speak the language. Her employer also refused to send her written communication in English. Oliver, Fred, and Paul all mentioned language as a significant impediment to accessing justice. According to Oliver, "Everytime I showed up at court I didn't understand what was happening. I was never called never was asked details about what happened; they just read the police report." He added, "They arrested me, told me I couldn't go back to my house because the "victim" was there, so I lost my own home... I was assaulted and dehumanized as a victim and then told that I was lying, and then my lawyer couldn't even represent me in court. He couldn't even speak English."

Fred describes the French-English language divide as a barrier in the prison system in that many of the guards do not speak English, and those who do often refuse to communicate with inmates in English. In Paul's case, he was entitled to have access to programs in English, but there were fewer programs available to him in English and long delays to access them compared with the equivalent programs in French. Despite petitioning the various authorities in the prison, (parole officer, ombudsman, etc.), he had to wait many months before obtaining access to the programs. He also mentioned that there were risks involved in making complaints within the prison hierarchy, including the loss of privileges, because guards, parole officers, and the warden colluded with one another.

For both Paul and Fred, the refusal of prison officers to communicate in English prevented them from accessing valuable programs and services in prison in ways that had or could have had direct bearing on the length of their prison sentence or the nature of their confinement. In each case, language issues limited their ability to navigate the system and access to legal justice.

Racial Discrimination

Although racial discrimination has been an integral part of the experiences of people of African descent and has led to mistrust of the legal system (Greene 2016, 1279, 1305), not all of the participants attributed their problem with the legal system to racism, or at least not to the same degree. Salif believes that his ethno-racial and immigrant background played a major role in how he was treated throughout his legal, immigration, and medical processes. He adds that racism is systemic at the government level and, having experienced racism in France, Canadian racism is very present, although less explicit. Like Jean-Baptiste, he was beaten by the police, and like both Jean-Baptiste and Oliver, his lawyer failed to provide him adequate legal advice.

On several occasions, Harriot has been stopped by the police for traffic violations, which she attributes to racial profiling and harassment. These incidents have occurred while she was driving in predominantly "white" neighbourhoods. She also described her deep sense of fear when she has been pulled over by the police. In a recent incident, she held her hands in the air and refused to comply when the officer told her to lower them. When asked what was going through her mind at the time, she said that she has a family and did not want to risk her life by moving suddenly or by giving the officer an excuse to shoot her.

In March 2020, she was pulled over for not wearing her seat belt. In fact, she was wearing her seat belt, but it blended in with her dark-coloured coat. When the officer realized this, he accused her of failing to

obey a stop sign. She tried to communicate with the officer, and she was told that she could contest the ticket if she liked, but that he did not want to hear her speak.

Despite his poor experience with a lawyer and with the immigration process, Thomas does not believe that he was a victim of racial discrimination within the legal system. He does, however, believe that asylum seekers are regarded as criminals who are attempting to cheat the system in Canada. As a result, they are not provided with adequate support.

Angela attributed her housing troubles to racial discrimination. Although she concluded that the Quebec housing authority did its job, she adds that it only provided the bare minimum amount of information. As a tenant, she was not sufficiently protected by the law and was forced to resort to solving the problem on her own. This included conducting her own research, and also seeking advice from friends and family. Interestingly, though she does mention racial and economic discrimination, she did not mention gender – that she may be the victim of discrimination based on the fact that she is a Black single mother.

Kathleen has no doubt that her dismissal from her job was tied to racial discrimination. As she explained, the work environment was composed of an almost entirely white team of French Quebecers. She and her Black colleague felt marginalized from the outset, and in one instance, Kathleen was told by a white colleague that she should not bring her own child-rearing and cultural practices into the work environment.

Toussaint believes that his experience with racism at work, and with his lawyer, is not only common, but has been normalized within society and internalized by victims of racism. Like other participants, he suggests that the legal resources necessary to protect citizens from the kind of injustice that he experienced are inaccessible. Surprisingly, despite his experience, he believes that the justice system works, but that it must be improved. He also argues that simply hiring more people from “minority groups” is not the solution. What is required is a cultural change within the majority population.

For Paul, the combination of racism and language issues played a role in how he was treated within the prison system. Not only do white inmates receive preferential treatment (including white Anglophones), but Black Francophones have it somewhat easier, in his view, because most of the prison guards are Francophones.¹ In Fred’s case, he was reluctant to attribute too much of his experience to race/racism because he finds it “waters it down,” that is to say, it minimizes his experience. This might be attributed

¹ Unfortunately, the study does not capture the experiences of a Black Francophone federal offender.

to his desire to demonstrate agency and to make the point that, despite racism and his circumstances in prison, he still has some control over his fate. It also perhaps reflects his appreciation of the ways in which race converges with a range of other issues.

Frantz and Harriot attributed their legal problems to racism, and described it as systemic and ongoing. In Frank's case, he emphasized that stereotypical perceptions of Black fathers worked against him in his child custody case. His judgment was called into question based on his appearance, stereotypes about absentee Black fathers, and his choice of partner (the fact that he chose to be with his child's mother who had a substance use disorder). Despite having a full-time job and a track record of raising two children, as he put it, "I wasn't considered a valuable option" by the court.

For Harriot, racism translated into a palpable sense of dread and a fear that failure to comport herself "the right way" when stopped by the police could result in death. She concluded that to protect her physical well-being, "Even when it's not right you have to swallow [your words]." In other words, it was important that she demonstrate that she was not a threat to the officer. "Whatever you do you have to prove yourself 10 times more and you have to not keep an angry mind. If not you [won't] survive."

In her *Montreal Gazette* article, Yvonne Sam expressed the same sentiment: "My survival strategy has been to make myself as non-threatening as possible, nevertheless, I still feel I have to keep looking over my shoulder." (2021)

Impacts and Conclusion

The legal problems that the participants experienced, and their impacts, varied. In most instances, however, the effects have been significant and lasting in mental and physical health, financial cost, family stress and separation, loss of valuable time, and a distrust of both the legal system and the police. Thomas is currently appealing the decision with another lawyer, but his first experience with the legal system in Canada was disappointing. The ongoing process has been taxing, both emotionally and financially, and it has negatively affected his family, work, his ability to further his education, his mental health, and his sense of hope for a future beyond his current troubles. Nonetheless, he is optimistic that his status will change.

Nina eventually received what she describes as a small settlement, but she spent about \$50,000 on legal and psychological support, and the ordeal has had a significant effect on her mental and physical health.

Donald was terminated when he failed to comply with a demand to stop discussing religion in the workplace. His severance payment could not replace his salary and he could not maintain his mortgage. He lost his house, and the issue caused a rupture in his family, leading to a separation from his wife and child. Although Donald believes that race was a factor in his case, he emphasizes that the discrimination he faced was based on his religious beliefs.

Although there were no financial costs associated with Salif's medical-legal issues, the entire process cost him in other ways, delaying his studies, not being able to visit his family in Guinea, and his health. Given his marginal immigration status as a refugee claimant in relation to the healthcare system, he was not permitted to have the urgent foot surgery. He now has a permanent disability. Kathleen has filed a formal complaint with the provincial government about her dismissal, but she acknowledges that she feels discouraged and powerless and has lost confidence in the legal system (she has turned to social media for support instead).

For Oliver, the impact of his legal problems directly affected his sense of himself and his place in society. In his words, "There's a huge impact on my self-worth. As a functioning member of society, I've doubted my place and my belonging. I felt disenfranchised, I felt ostracized, I felt marginalized."

Toussaint resigned from his job and he has been unemployed for several months. He had a similar experience a few years before, for which he sought legal advice from a lawyer. However, the support that he received was unsatisfactory, largely because the lawyer could not relate to his experience because he was a member of Quebec's cultural majority. This experience with the legal system discouraged him from pursuing the more recent incident in court because, based on prior experience, he did not believe a white lawyer could relate to his experience.

Harriot's experiences of being pulled over by the police for "driving while Black," and her deep sense of fear that she might be physically harmed, or even shot by the police, reveals a deep and palpable sense of dread and vulnerability in relation to the police. This is a familiar phenomenon that has deep historical roots in Canada (Austin 2013, 159–61), but as Robin Maynard (2017, 116) writes, although this phenomenon has been imagined as a problem associated with Black males, "the law enforcement violence experienced by Black women remains largely unseen, a part of a larger, untapped archive of the institutional denigration of Black women's lives."

In each instance, Harriot politely complied with the officers and then later contested her ticket in court, but during the interview, her fear of the police was palpable – fear that a seemingly routine traffic stop might result in her death. In relation to her nephew who had been murdered over 20 years ago, she

believes that the police have not taken the necessary steps to find the perpetrator, and that if he were White, the police would have made more of a concerted effort to find his killer and to provide closure for the family.

Although he did not elaborate, Fred mentioned his mistrust of lawyers, who have taken advantage of him in the past. For him, filing a grievance or engaging a lawyer to obtain justice is ineffective because most people cannot afford legal help, or feel too defeated to seek legal help, and because the legal system generally works against them. He continues to fight, but he is resigned to the reality that:

No matter what the grievances are ... 97.7% of grievances that are filed by inmates... are denied” and that challenging the legal system is “like David going up against Goliath, but without a stone ... you’re going up against this gigantic system with all these tentacles and you really cannot defend yourself because they have arbitrary power over you.

Fred’s remarks speak to the sense of resignation and distrust that many of the participants expressed: the sense that the cards are stacked against them and that the legal system’s effectiveness, cost, and care works against their interests.

Participants described inadequate legal support and representation, a lack of trust in the legal system, and a sense that it cannot work for them or that it is financially, and even culturally, inaccessible. In public life and in prison, the inaccessibility of programs, services, and support in English also serves as a barrier to legal justice. In many instances, the intersection of race, class, gender, and language discrimination have served as major obstacles to receiving adequate, if any, legal advice and representation.

As we have seen, although most of the participants attributed their legal problems to some form of racial discrimination, in some instances only immigration status or language were emphasized. Gender discrimination was not mentioned as a significant issue, even when it may have been a factor. However, given the relatively small number of participants, this absence is clearly not representative of the entire Black population as a whole on this issue.

Despite the significant legal problems that they have experienced, participants demonstrated resilience and fortitude in the face of official intransigence. Whether in relation to the police, immigration, or legal problems related to incarceration, language discrimination, or work-related injuries and health issues, most participants expressed their desire and will to continue to fight for justice, even when the fight took a toll on their well-being. This suggests that, while some, understandably, chose not to pursue their

issue through the formal legal system, for many of them the cost involved in not fighting for justice, in one form or another, was too high a cost to pay. This was the case even when they lacked confidence in the legal system and believed that it did not represent their interests.

Research Team Bios

Dr. Dona Roy has been working for the psychological well-being of children and their families for over 13 years. She holds a PhD in clinical and research psychology from the University of Quebec (Montreal) and is a board-certified behaviour analyst. In addition to various research collaborations, she has worked in both Canada and in Haiti, offering psychological support to children of diverse backgrounds dealing with various challenges.

Désirée Roachat is a community educator and a PhD candidate in the Department of Integrated Studies at McGill University. Through independent research, she develops collaborative projects and pedagogical programs and material for the community sector. She is also involved in various initiatives for the preservation of archives of Black community organizations.

Méshama Eyob-Austin is a social science student at Dawson College with a concentration in psychology. She has also been published in *Black Writers Matter* (2019), edited by Whitney French.

David Austin is a former youth worker/community organizer and the author of *Fear of a Black Nation: Race, Sex, and Security in Sixties Montreal* and *Dread Poetry and Freedom: Linton Kwesi Johnson and the Unfinished Revolution*. He teaches in the Humanities, Philosophy, and Religion Department at John Abbott College and the McGill Institute for the Study of Canada.

Bibliography

- Agamben, Giorgio, trans. Vincenzo Binetti and Cesare Casarino. *Means Without Ends: Notes on Politics* (Minneapolis: University of Minnesota Press, 2000).
- Austin, David. *Fear of a Black Nation: Race, Sex, and Security in Sixties Montreal* (Toronto: Between the Lines, 2013).
- Austin, David. "The Plantation-to Plant-to Prison Pipeline," in *Activists and the Surveillance State: Learning from Repression* (Toronto/London: Between the Lines/Pluto, 2019).
- Backhouse, Constance. *Colour-coded: A Legal History of Racism in Canada, 1900-1950* (Toronto: Osgoode Society for Canadian Legal History, 1999, reprinted 2001, 2009).
- Cooper, Afua. *The Hanging of Angelique: The Untold Story of Slavery in Canada* (Toronto: HarperCollins, 2006).
- Crenshaw, Kimberlé. "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum*, 1989(1), Article 8, 139–67.
- Costan, Jane. "The Intersectionality Wars," *Vox*, May 29, 2019, Accessed February 8, 2021 at <https://www.vox.com/the-highlight/2019/5/20/18542843/intersectionality-conservatism-law-race-gender-discrimination>
- Dubinsky, Karen. "We Adopted a Negro," : Interracial Adoption and the Hybrid Baby in 1960s Canada," in Robert Rutherford and Magda Fahrini (eds.), *Creating Postwar Canada: Community, Diversity, and Dissent, 1945-1975* (Vancouver: University of British Columbia Press, 2008), 268-288.
- Forget, Marie-Hélène et Paillé, Pierre. «L'entretien de recherche centré sur le vécu», *Sur le journalisme, About journalism, Sobre jornalismo* [En ligne], Vol 1, n°1 - 2012, mis en ligne le 15 septembre 2012. <http://surlejournalisme.com/rev>
- Foster, Cecil Foster. *Blackness and Modernity: The Colour of Humanity and the Quest for Freedom* (Montreal & Kingston: McGill-Queen's Press, 2007).
- Gay, Daniel. *Les Noirs du Québec, 1629-1900* (Québec : Les Éditions Septentrion, 2004).
- Gilroy, Paul. *Between Camps: Nations, Cultures, and the Allure of Race* (London: Penguin Books, 2000).
- Greene, Sara Sternberg. "Race, Class, and Access to Civil Justice," *Iowa Law Review*, vol. 101, 2016, 1234-1322 (2016).
- Khan, Sharmeen and Kouri-Towe, Natalie. "Think Before You Act: An Interview with Sherene Razack," *Upping the Anti*, Issue 9, November 23, 2009.
- Laurent, Regine et al. "Constats et Orientations au 30 Novembre 2020," Commission spéciale les droits des enfants et la protection jeunesse, November 30, 2020, 1-13.

- Maynard, Robyn. *Policing Black Lives: State Violence in Canada from Slavery to the Present* (Fernwood: BlackPoint, N.S., 2017).
- Owusu-Bempah, Akwasi and Wortley, Scot. "Race, Crime and Criminal Justice in Canada," in *The Oxford Handbook of Ethnicity, Crime, and Immigration* Eds. Sandra Bucerius and Michael Tonry (Oxford: Oxford University Press, 2014).
- Public Safety Canada. *Corrections and Conditional Release Statistical Overview, 2020*, 55. Accessed February 20, 2021 at <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2019/ccrso-2019-en.pdf>
- Rauff, Ulrich. "An Interview with Giorgio Agamben," *German Law Journal*, 5(5), May 2004, 609-614.
- Sam, Yvonne. "My Quebec: Black, Anglophone and feeling doubly unwelcome," *Montreal Gazette*, January 29, 2021, <https://montrealgazette.com/opinion/my-quebec-black-anglophone-and-feeling-doubly-unwelcome>
- Thornhill, Esmeralda M. A. "So Seldom for Us, So Often Against Us: Blacks and Law in Canada," *Journal of Black Studies*, 38(3), January 2008, 321-337.
- Walker, Barrington. *Race on Trial; Black Defendants in Ontario's Criminal Courts, 1858-1958* (Toronto: University of Toronto Press, 2010).
- Williams, Dorothy. *The Road to Now: A History of Blacks in Montreal* (Montreal: Véhicule Press, 1997).
- Zemans, Fred and Justin Amaral. "A Current Assessment of Legal Aid in Ontario." *Journal of Law and Social Policy* 29. (2018): 1-28

Appendix: Discussion Guide

Interview Questions

1. Demographics & identity

- Name:
- Surname:
- Age:
- Where do you live? (neighbourhood & city)
- Place of birth:
- How do you identify in terms of your ethno-racial background?
- What language or languages are most commonly spoken at home?
- Are you a citizen of Canada/Landed Immigrant/Refugee/Temporary status/No status?
 - In what year did you move Canada? If the exact year is not known, please give your best estimate.
 - Where did you live before coming to Canada (Experiences in other places)
- How do you identify in terms of gender?
- How do you identify in terms of sexual orientation?
- Are you a person living with a disability? If so, please describe it.

2. Socio-economic status

- What is your current employment status?
- How would you describe your profession?
- What is your approximate income?
- What is your level of education/training?
- During the past 12 months, what was your main activity?
 - Looking for paid work

- Attending school
- Caring for your children
- Household work
- Retired
- Maternity, paternity, or parental leave
- Long term illness
- Volunteering or care-giving other than for your children
- Other (Specify the main activity)

3. Serious legal problems

3.1 Problem identification

- Have you experienced one or more serious problems that could or could not be resolved through the legal system in the past three years? These issues could fall into one or more of the following areas consumer issues: employment, debt or money owed to you, contact with the police (as accused or victim), family, child custody or parental responsibilities, injury or healthcare, property, housing, harassment or discrimination, or a combination of any of these.
- Please provide a detailed description of the problem(s).

3.2 Attempts at resolving problem

- Did you try to resolve the issue(s) (possible probes: internet searches, reached out to friends/family, connected with the other party involved in the dispute, contacted an advocacy or social service agency, sought advice from a legal professional, attended court)? Why or why not?
- What is the current status of the problem?
- Was the problem resolved? What actions were helpful in resolving the issue?

- Did you receive legal assistance? If so, what kind?
- Were you satisfied with the resolution of the problem?

3.3 Impact of problem

- Was there a financial cost associated with the problem?
- What was the amount?
- Approximately how much in total has it cost you to deal with the problem, and what impact, if any, has this cost had on you personally?
- Did the issue impact your health in any way (probes: physical, mental, emotional)?
- If so, how or in what ways?
- How has the issue impacted your family?
- Is there anything else that you would like to tell us about the problem?

4. Respondent's understanding of their problems

- How do you understand your experience with (or refraining from using) the legal system?
- How do you think your identity impacts your experience?
- To what extent do you think your problems were influenced by racism? If so, how?
- How have immigration status and process impacted or not legal problems?

5. Respondent's understanding of the legal system

- How do you think society identifies you?
- How do you think that influences your experience of the legal system?
- Have you lived similar experiences elsewhere? Where? What?
- What are your thoughts about how the legal system operates?