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## Opinion: Lawyers can play a key role in ending racial profiling

*The gap between the right to freedom and equality we espouse in our Constitution and the reality in our society can only be closed by action.*

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A man shows his support for the BLM movement during a “Driving while Black” convoy and gathering that criss crossed Montreal, on Sunday, July 5, 2020. Section 636 of the Quebec Highway Safety Code is what enables Charter right violations that so frequently target racialized persons, lawyer Ralph Mastromonaco writes. ALLEN MCINNIS / Montreal Gazette

High minded words will not erase the stain of systemic racism. The Black Lives Matter protests have called out our governments for their years of complacency and inaction on this issue. The gap between the right to freedom and equality we espouse in our Constitution versus what we continue to countenance as a society can only be closed by action.

Some of the most egregious manifestations of systemic racism are acts of racial profiling, principally, random street checks and “driving while black” police interceptions. State interference with a person’s freedom to walk, jog, bike or drive where one pleases is not a trivial matter. Random police interference with those liberties may be routine occurrences in a dictatorship, but they have no place in our society.



The recent policy response of the Montreal police (SPVM) to racial profiling by their police officers is a stellar example of reform inertia.

Street checks will continue, provided that, in the assessment of a police officer, “observable” (not “objectionable,” “objective” or “suspicious”) facts warrant an interception. A police officer involved with a street check would be required to fill out a form explaining the cause and circumstances of the street check — if in the officer’s judgment the form is required.

Most significantly, the SPVM policy does not address “driving while black” encounters enabled by Section 636 of the Quebec Highway Safety Code, the police gateway to the Charter right violations that so frequently target racialized persons. This law allows a police officer to stop any driver, any time, on any public road, with no measure of credible judicial oversight of the police officer’s actions. This law seems unlikely ever to be amended because just about every government wants to be perceived as being tough on crime.

Lawyers have a crucial role to play in our societal effort to end systemic racism and racial profiling.

The advocacy and litigation work of lawyers played a crucial role in the early achievements of the U.S. civil rights movement. Thurgood Marshall pleaded the landmark case of *Brown v. The Board of Education* before the U.S. Supreme Court. A fortuitous change brought Earl Warren to the case as the new chief justice. Warren influenced the court to strike down the Plessy doctrine of “Separate but equal” and deliver the first serious blow to American Jim Crow laws. Marshall would eventually become the first African-American appointed as a justice of the U.S. Supreme Court.

Recent events demonstrate that the civil rights movement is far from over.

History provides us with examples of lawyers answering the call to be agents of change. History is now calling.



Real change will only occur when we begin to speak up and speak out by calling out random police street or vehicular checks as manifestations of racial profiling in Charter motions filed before our courts; when there is a Charter challenge seeking to invalidate Section 636 of the Highway Safety Code, which enables the injustice of the “driving while black” police encounter; and when disciplinary recourses, Quebec Human Rights Commission complaints and civil liability actions are taken to sanction inappropriate, racially driven police conduct in the course of interactions with racialized persons.

Lawyers have the power to transform words into actions capable of bringing us closer to that elusive just society.

Our liberal democracy guarantees human rights. The Canadian Charter of Rights and Freedoms in effect diverts power from the government to the governed. The safeguarding of individual rights is entrusted to our independent and impartial courts of law. Our judges are empowered to do justice when politicians fail the people.

In granting Charter recourses, judges are not being activists or mavericks.

They are merely respecting their higher calling, the imperative of the rule of law that compels judges to right the wrong.

And systemic racism is so wrong.

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