

Update on the Commissioner's work

April 2022

Overview

I have reached the halfway mark of my mandate as set out by government: **to examine the extent and scope of systemic racism in New Brunswick and to offer recommendations to tackle this issue within identified governing institutions and organizations.** This mandate asks us to broadly explore these issues as they present in six public sectors: education, housing, social development, health, employment, and criminal justice. We have responded by prioritizing our focus on the activities of corresponding provincial government departments. To address the nature and effects of systemic racism on racialized immigrants and on Indigenous peoples in New Brunswick, we have extended this attention to the government's immigration secretariat in Opportunities NB and to the Department of Aboriginal Affairs. This document outlines my first set of recommendations to government for consideration with immediate effect.

I have completed 52 confidential consultations (face-to-face or virtual) with individuals across the province, including immigrants and newcomers, other racialized people, and Indigenous people. These discussions have identified the devastating effects of overt racism such as youth alienation, mental health issues, unemployment, and in some cases the departure of these individuals from New Brunswick. Originally, we intended to continue with these meetings until the end of May. However, by the end of March we reached our capacity to maintain the rate at which my staff and I were having these conversations and the tolls that they were taking on my team. The mental exhaustion of sharing in the trauma experienced by these individuals over 2-3 hour-long conversations has placed serious strains on our limited human resources. My office has also received calls almost weekly since the start of my term denying the existence of racism in New Brunswick. After my comments on the so-called Freedom Convoy in Fredericton in February, the calls became explicitly racist against me and my team, on top of the expected anti-pluralist and anti-government commentary. We will continue to accept written contributions until the end of May.

I have also spoken with almost 50 groups and organizations across the province, including some government departments, scholars and researchers, settlement agencies and umbrella organizations, multicultural and ethnocultural groups, political parties, and student and postsecondary-affiliated groups. My team will continue to receive formal submissions from these organizations until May 30, 2022. We have urged government departments to provide formal submissions as well, and anticipate that municipalities across the province will also contribute their own formal submission. We have also been contacted by other provinces which appear to be interested in establishing a longer-term and/or permanent position to tackle systemic racism and we continue to share our experiences and lessons learned from this process with them.

My office and I have also taken key steps to build a relationship with Mi'gmawe'l Tplu'taqnn and Mi'gmaq leadership, as well as Peskotomuhkati leadership. We have had several one-on-one conversations with chiefs, council members, and administrative leaders to hear their concerns about systemic racism against Indigenous peoples. Developing these relationships is of the highest importance for me so that I can credibly voice the concerns of First Nations communities in my report and communications to the Government of New Brunswick. As publicly documented, our office does not have the full support of all Indigenous communities in New Brunswick. I fully respect the decision of the Wolastoqey nation not to participate in our work to date. Therefore, my recommendations specific to Indigenous concerns must be viewed in this context.

My immediate recommendations to government include:

1. That it launch, without delay, an Indigenous-led, co-managed Public Inquiry into systemic racism against Indigenous peoples in New Brunswick's criminal justice and policing sectors.
2. That it restore all place names that contain racist terminology against Indigenous peoples with their original or traditional Wabanaki names, or names recommended by First Nations, by no later than June 21, 2022.
3. That it establish a team within the province's Independent Review on the government's management of the Covid-19 pandemic to supplement the Review's analysis specifically through a racial lens.
4. That it review all current discussions around mental health initiatives to ensure that the lens of racial inclusion is applied and to recognize the contribution of experiences of racism to poor mental health and mental illness.
5. That it initiate the process to establish a permanent office to combat systemic racism in New Brunswick, to be announced in the Speech from the Throne in fall 2022.

It is imperative to note that the basis for other recommendations is emerging as we continue our engagement processes. These include (but are not limited to) issues around overt racism and racial abuse in the public education and healthcare systems, the lack of clear and easy-to-access public services for racialized immigrants, and the growth of extremist and right-wing ideological groups in New Brunswick. In many cases, these issues correlate with government policies and practices that sustain systemic racism in the province. My final report will address these in greater detail.

Update on consultations with Mi'gmaq leadership

My team and I met with Mi'gmawe'l Tplu'taqnn (MTI) staff over a series of online meetings in November 2021 to establish areas of common ground between my mandate and their expectations of the process. These meetings preceded an introductory meeting with Mi'gmaq chiefs in December to further share my own understanding of my mandate and for the chiefs to express their expectations not just of the process but of their engagement with the process. I articulated that it is my intention to separate the recommendations specific to Indigenous peoples in New Brunswick from other recommendations.

As part of our engagements with MTI, we have received the wealth of knowledge and advice that the organization and Mi'gmaq leadership has provided the Department of Aboriginal Affairs (DAA) over the past five years. These documents—in response to government discussion papers, offered as free-standing advice to the department, and as communications to Cabinet—outline the challenges and pathways toward building a renewed legal and political framework for partnership between GNB and the Mi'gmaq nation.

I am grateful for the conditional engagement and support of the Mi'gmaq and Peskotomuhkati nations. I continue to build my knowledge of Indigenous issues with respect to systemic racism based on the review of the above-mentioned documents provided by MTI and of other documents, including:

- Archival documents from the Government of New Brunswick (GNB)
- Annual DAA reports and other reports drafted by the department such as its “Report on Implementation of the Truth and Reconciliation Commission’s Calls to Action” (2021) and
- The primary ‘grand texts’ that have guided our study such as the final reports of the
 - Royal Commission on Aboriginal Peoples (1996)
 - Nicholas-La Forest Task Force on Aboriginal Peoples (1997)
 - United Nations Declaration on the Rights of Indigenous Peoples (2007)
 - Truth and Reconciliation Commission (2015), and
 - National Inquiry into Murdered and Missing Indigenous Women & Girls (2019).

I am equally grateful for the documentation that DAA has supplied me, which has helped me to understand their work and their perceptions of various stakeholders and rightsholders. From our review of all of these documents, we have developed three high-level observations:

- These problems are not new to GNB, nor are they unique to this government
- There is a consistent thread of recommendations and moral, philosophical, and political considerations spanning two decades from the Royal Commission to the National Inquiry that remain, in principle, unanswered by GNB, and
- GNB’s attention to Indigenous issues follows a pattern of peaks and valleys, with many more valleys than peaks. At this time, genuine nation-to-nation relationship building is paramount to truly tackle systemic racism experienced by First Nations peoples in New Brunswick.

As I continue to review various initiatives focused on Indigenous issues, I caution GNB and encourage the government to embrace principle of ‘nothing about us without us’ in practice and policy. I have heard far too many examples of decisions made about First Nations peoples without representatives from these nations at or near the table. The most striking example is in the conception and implementation of DAA’s new so-called ‘Common Path Forward’ mandate. Discussions with both senior officials at DAA and with staff from MTI and other Indigenous organizations, as well as with Mi'gmaq leadership, indicate that DAA did not engage with First Nations on what its new mandate to facilitate good relations might look like until *after* the decision had been made by GNB. The irony of the lack of engagement with First Nations leaders prior to implementing a new bureaucratic structure by the government department mandated to “lead the consultation process with Aboriginal peoples [sic]” is not lost on me.

No policy, program, or service about First Nations should be decided by the government without the full and direct participation of the nations affected. I look forward to continuing by conversations with scholars, First Nations leaders, and members of Indigenous communities on how collaboration and co-governance between First Nations and GNB can be strengthened.

My reading of government documentation and interactions with officials lead me to believe there is false narrative that permeates within government, which suggests that Indigenous people are just another minority group similar to other racialized groups and have no need for ‘special treatment’. This attitude cannot persist. We must distinguish between *stakeholders* and *rightsholders*, which is one of the reasons why my team and I are refraining from using the acronym, BIPOC. The study of systemic racism in New Brunswick cannot flatten the experiences of Indigenous peoples—who possess guaranteed inherent and constitutional collective rights, including to land, unavailable to other peoples—with those of other racialized people residing in the province. This does not negate or deny the relationship that other racialized peoples in New Brunswick may have with colonialism or even with settler colonialism in other territories. Rather, it acknowledges that the single greatest act of systemic racism in Canada is the colonization of Indigenous peoples. Any and all government-involved initiatives in response to systemic racism against Indigenous peoples in New Brunswick must acknowledge and address this truth.

Mid-term recommendations

A PUBLIC INQUIRY

As noted above, we have held discussions with Indigenous leadership, participants, and individuals and groups with knowledge and insight into this subject. The overarching conclusion is that the relationship between Indigenous peoples and New Brunswick’s justice system is broken. Indigenous peoples not only mistrust the criminal justice system, they fear it and its agents. The communities and individuals we have heard from note that they are scared that if something happens to them, “it won’t matter because it hasn’t”. The failed prosecution in the trial for Brady Francis’s death, the murders of Chantel Moore and Rodney Levi by police in the summer of 2020 underline this point, and the death of Skyler Sappier in a carceral institution this year underline this point. We cannot allow Mi’gmaq and Wolastoqiyik to, as scholar and jurist Naiomi Metallic notes, continue to “tolerate a deeply unresponsive justice system in part because they have not yet had their own public inquiry” (2020, 4).

Therefore, my first recommendation to the provincial government is to **launch, without delay, a Public Inquiry into systemic racism against Indigenous peoples in New Brunswick’s criminal justice and policing sectors**. I further recommend that this Public Inquiry be **an Indigenous-led, co-managed process and be provided with all the necessary resources and institutional support required** for its work.

PLACE NAME RESTORATION

Another area of concern for me is GNB's response to calls to change place names that use terminology explicitly offensive and racist towards Indigenous peoples. The places include (but are not limited to):

- Sq— Cap Mountain
- Sq— Cap
- Sq— Barren Brook
- Sq— Barren
- Sq— Lake
- Sq— Mountain
- Sq— Cap Hill

The current approach relies on a heavily bureaucratic process that is neither Indigenous-led nor co-managed and ignored critical Indigenous Knowledge of the land and this territory. As such, it allows clear examples of blatant racism to persist. Attention to this issue was brought to the Minister of Tourism, Heritage and Culture (THC) in February 2021. These names are an embarrassment for New Brunswick and should not take more than a year to rectify. In instances of overt racism, THC's position that a new evaluation process must be finalized before any name changes can proceed is unacceptable. Any process that takes this long racial slurs is inappropriate and insensitive. Alternative—even traditional or original—names for these places exist. GNB has no need for a highly technical process, especially one that treats First Nations as add-ones to the process, where simple solutions are readily available.

My recommendation to the provincial government is that **the following place names be restored to their original or traditional Wabanaki name, or a name chosen by the Mi'gmaq and Wolastoqiyik, no later than June 21, 2022.** Their successful implementation of this recommendation can be viewed as a positive step to immediately tackle overt racism when it is identified and will contribute to larger plans of place name restoration in Wabanaki languages, which will signal GNB's commitment to rebuilding its relationship with First Nations in New Brunswick.

RACIAL LENS TO COVID-19 INDEPENDENT REVIEW

GNB recently indicated its intention to conduct an independent review of the province's management of the Covid-19 pandemic. In my experience—and, on review, this is the case in New Brunswick—such reviews are often completed with a 'colourblind' approach that removes racism (overt and systemic, historical and contemporary) from the conversation. There is an established body of scholarship underlining the various experiences, responses, accessibility concerns, and understanding of Covid-19 among different racialized communities. Therefore, I strongly recommend that the provincial government **establish a team within the province's Independent Review on the government's management of the Covid-19 pandemic to supplement the Review's analysis specifically through a racial lens.** This approach will not only provide race-specific insight for future whole-of-government strategies, but will also formally invite government to participate in the broader discussion on the rise of anti-Asian hate and the perceptions of public demonstrations related to the pandemic.

Not for distribution

RACIAL LENS TO MENTAL HEALTH INITIATIVES

GNB has paid a lot of attention to mental health issues in the past few years, and rightly so. We know that mental illness and poor mental health are a growing epidemic in Canada—a concern exacerbated by the pandemic. However, the government initiatives that have been discussed with me so far do not suggest attention is being paid to the contributions of race and racism to the mental wellbeing of racialized people and groups. The relationship between racial trauma and poor mental wellbeing is sufficiently documented. I have also seen this in my own time as Commissioner when I spoke to a 15-year-old who has been diagnosed with post-traumatic stress disorder from racist bullying at their school, and to the child whose anxiety was minimized during the pandemic because online learning spared them from the racial abuse they received in person at school. Chantel Moore, Rodney Levi, and Skyler Sappier’s deaths are examples of the tragedies that can ensue when we do not consider the intersections of mental health and racism. Therefore, I recommend to the provincial government that **all current discussions around mental health initiatives must be reviewed within a framework of racial inclusion and with the recognition that experiences with racism can contribute and lead to poor mental health and mental illness.**

A PERMANENT OFFICE

Lastly, a common theme of concern articulated by virtually all participants thus far, whether as an individual through a confidential consultation or as an organization supporting broader engagement, is the question of what happens next. My term has a ‘hard stop’ of October 31, 2022 and, importantly, my mandate from government does not include the *implementation* of my recommendations. That work is for either another body and/or for GNB itself. The public is, rightly, concerned about sustained commitment by GNB and government to tackling systemic racism. Therefore, I recommend that the provincial government initiate the process to **establish a permanent office dedicated to tackling systemic racism in New Brunswick.**

A permanent office would address some of the concerns we are hearing from the public and provide some guarantee to participants that their contributions are not in vain and are not part of an extractive process. The lack of a well-planned response to this concern would not only demonstrate poor planning on GNB’s part, but will certainly deepen the existing skepticism of GNB’s continued will to fight systemic racism. Starting the process now will provide ample time for the permanent office to be announced in the Speech from the Throne in the fall of 2022.

I further recommend that while this permanent office should be *of* government, it should not be *in* government. The only acceptable place within government that would accord the permanent office with the importance that this issue demands is likely the Executive Council Office, the government department that supports the Premier and Cabinet. Other provinces have similar set-ups, including Nova Scotia and Prince Edward Island. In Nova Scotia, an anti-racism office is headed by a deputy minister, while on PEI, an anti-racism officer reports indirectly to the Clerk. My assessment is that while proximity to the centre of power may be desirable, placing the permanent office within the Executive Council Office or elsewhere *in* GNB will not offer the space and liberty to speak freely and publicly about these challenges. Racism is fundamentally about power dynamics and this permanent office should have the capacity to critique the executive government. Therefore, having the permanent office as an entity of GNB would not be appropriate. This does not preclude GNB from

complementing the work of the permanent office by establishing its own departmental anti racism directorates, as has been done in the Ontario civil service and in federal government departments, or through ministerial anti-racism Ombuds who could report jointly to the minister and their deputy.

Though I have some reservations about placing this permanent office in the legislature, it is likely the most appropriate location for such work to be done, where it can be modelled after and resourced comparably to similar offices such as the Ombud, the Auditor General, or the Child, Youth, and Seniors Advocate. However, concepts like parliamentary supremacy—especially when viewed in the context of the Peace and Friendship Treaties and with respect to concepts such as the ‘Honour of the Crown’ and the ‘Duty to Consult’—are not exempt from the discussion about systemic racism in New Brunswick. The permanent office should have the flexibility, even under the auspices of the legislature, to engage in these discussions and evaluate and critique the legislative branch of state as well as the executive government.

I recommend that this permanent office has terms of references developed through community engagement and renewed every five years. **It should be led by a Commissioner with a non-renewable mandate of five years**, appointed through an open, competitive process and in deep, consistent, good-faith collaboration with racialized communities on their own terms. **It is expected that the Commissioner will be a racialized person** and ranked in accordance with other Deputy Heads and legislative officers. It is important to note that while the Commission will address issues of systemic racism related to the experiences of Indigenous peoples in New Brunswick (which are deeply linked to the ongoing effects of colonialism and tied to unresolved questions over land and Aboriginal rights and title), it is not intended to be a treaty office or a body involved in the negotiation or resolution processes related to Aboriginal title, rights, or sovereignty. A separate permanent body would be a more appropriate venue to address those questions.

We have received significant feedback from the public about what this permanent office should be expected to do and how it can serve racialized communities and individuals in New Brunswick. Based on these consultations, I recommend that the permanent office be expected to conduct activities that fall within four primary responsibilities:

1. A regular audit of Part I departments on ongoing efforts to identify barriers created by systemic racism and then dismantle them. This audit should include measuring the progress made by GNB in response to other recommendations that I make now or in my final report
2. The development and delivery of anti-racism training and awareness training on systemic racism to Part I employees (and the Legislative Assembly)
3. Though this Commission is not expected to replace the Human Rights Commission (HRC), it should work closely with the HRC to advocate for individuals who are subjected to incidents of either overt or structural racism, serving as a triaging facility to provide support to individuals who wish to share their truths or to support individuals who proceed through the HRC’s conflict resolution mechanisms, and
4. Public engagement and education on systemic racism, which can include developing anti-racism resources in collaboration with the Office of the Chief Human Resources Officer for use by Part I bodies, or other resources for use by the public and other institutions including municipalities.

In order to carry out these responsibilities, the permanent office is expected to have important powers to compel evidence and testimony from New Brunswickers regarding the dismantling of systemic racism, and should be expected to provide comment on situations of public interest regarding racism. As a component of its advocacy function, the Commission is also expected to be involved in any justice processes in which racialized developed peoples are harmed by the state, agents of the state, or in the care of the state by providing analysis through a racial lens.

If GNB responds no later than June 30, 2022 with associated resources, my team and I would be able to lead the community engagement component to develop the initial terms of reference for this permanent office.