

**Presentation to the**  
**Consultation on systemic racism and discrimination**  
**of the**  
**Office de consultation publique de Montréal**  
**October 2019**

**by Sam Boskey**

## **Introduction**

The purpose of this brief is to suggest the components of a PROCESS that the City of Montreal should adopt as a means of increasing the chances that its measures to implement its policies on systemic discrimination attain the desired result.

I submit these proposals as one who has been observing both municipal administration and government policy in the area of human rights for 50 years.

- As an elected City Councillor for 16 years, during the administrations of Mayors Drapeau, Doré and Bourque, I was, at times, Leader of the Official Opposition, member of the Comité de la présidence du conseil, and Vice-Chair of the Council Commission which organized the first-ever public hearings on multi-ethnic issues in the city.
- As a community organizer, I worked with groups promoting for basic rights in the areas of housing and health.
- As a provincial public servant for 37 years, I was a legal researcher for judges of a specialized tribunal involved in the enforcement of human rights legislation, a Secretary of an advisory board to a minister on issues of the rights of minorities, and a member of staff of an Assistant Deputy Minister with responsibilities for Services to a minority population.

Discrimination in areas which are now covered by the provincial and federal human rights charters is no stranger to the Montreal administration. It is well known today that women did not have the right to vote in elections under provincial jurisdiction until 1940. What is less remembered is that until 1960, the vast majority of Montrealers were not allowed to vote for most of City Council. Tenants who comprised over 75% of the population could, if they were citizens, vote for only 1/3 of Council, along with their landlords. The landlords, in turn – though not their spouses or children – could vote for a second third of Council. And various organizations appointed the third part of Council. It was as an appointee that a woman first sat on City Council. In today's version of municipal democracy, many thousands of non-citizen residents are denied the right to vote, while non resident landowners can vote both here and in the municipalities in which they reside.

I was brought up to understand that there existed local neighbourhoods in which no landowner would sell property to a Jew. My eyes were opened as an adult, when a white friend with a non-white spouse described to me all the Montreal neighbourhoods where it would be a waste of time to even try to rent an apartment.

My own first experience in municipal affairs coincided with a flagrant act of denial of human rights: during the military occupation of October 1970, some candidates and their supporters were arrested and jailed, not for any actions they had carried out, but - because of their opinions - it was suspected that they supported others who, it was apprehended, were on the verge of launching an insurrection.

Although the province of Quebec adopted a Human Rights Charter in 1975, the Constitution of Canada incorporated a Charter of Rights and Freedoms since 1982, and Montreal administrations have made important declarations starting in 1989, there is enormous evidence - as demonstrated by the very need for this consultation on racial and systemic discrimination in Montreal – that these efforts have been, to date, at least partially unsuccessful in bringing about their stated intention.

In 1984, I was part of a group of Councillors who raised the matter of systemic discrimination at Council (for the first time?) pointing out that the Montreal Police at the time had no Black officers. Mayor Drapeau clearly did not understand the concept of systemic discrimination, as he responded: “Show me one qualified Black officer whom we have refused to hire,” without acknowledging that access to training was difficult, the apprehended atmosphere for minority constables was assumed to be uninviting, there were no role models, etc.

It is only in the Book of Genesis where the Power in charge can say: “Let there be light”, and there is light. In human society, we cannot confuse talk – no matter how benevolent – with action, and action with successful results. Declarations promoting equality, an essential prerequisite to change, will not, in themselves, bring about transformation of institutional biases and individual behaviours.

Our legislatures have promulgated legal equality. But these principles pass through the filters of social stratification and great disparities in the power relationships amongst individuals and groups, often propelled by issues of race, class and gender. In the end, the legal equality is contaminated by economic and social inequality. These filters and contaminants constitute systemic discrimination.

The attainment of a society free of systemic discrimination cannot be measured by the number – or quality – of declarations and public relations statements made by those in power. It must be measured by the experiences and the understandings of those subjected to the discrimination. No number of “zero-tolerance for discrimination” statements by municipal administrators will have credibility while there is evidence that discriminatory practices continue.

The task of the City is to identify, and then remove, those practices and rules which, intentionally or

not, prop up and reinforce the privileges of some groups who can enjoy their rights and services at the expense of others who continue to remain vulnerable and poorly served.

The appendices to the Consultation document issued by the City list many commitments and actions. But there is little about the tangible results tied to any of these individual measures. This is not to suggest that any of the actions or declarations are not worthwhile; however, what we should be paying attention to is evidence that systemic change is taking place!

What I am attempting to describe in this document is a process in which the City will become focussed more on measurable results than on declarations.

- - 0 - -

## What is systemic discrimination?

The orientation document *Consultation on systemic racism and discrimination* Prepared by the municipal administration for the Office de consultation publique Montréal, April 2019 proposes some definitions: (at page 7)

**Discrimination**: Distinction, exclusion or preference (which) effectively nullifies or compromises a right or a freedom

**Indirect discrimination**: based on the application of a **neutral rule, policy or practice, but that has harmful effects on a person or a group** presenting certain personal characteristics, and that effectively nullifies or compromises a right or a freedom protected under the Charter by imposing on them obligations, penalties or restrictive conditions that are not imposed on others

**Systemic discrimination**: **organizational models and institutional practices** that have prejudicial effects (**intended or not**) on groups protected by the Charter

**Intersectionality**: This approach, which draws in part on gender-based analysis (ADS+), makes it possible to properly understand how the fight against systemic discrimination and racism intersects with the fight against poverty, particularly for Indigenous women or women belonging to a visible minority. It can also be used to study the many systems of oppression that penalize Indigenous people and members of visible minorities.

It is not my intention to discuss issues such as police brutality, for two reasons.

- Firstly, I wish to concentrate on certain aspects within the definitions (above)
  - “ **application of a neutral rule, policy or practice, but that has harmful effects on a person or a group...**” etc.

- **organizational models and institutional practices that have prejudicial effects (intended or not);**

These are the aspects which I will refer to as systemic discrimination

- Secondly, there are many who are addressing this consultation who have far more direct experience with the police, being on the receiving end, than do I. Furthermore, I do not like to think of these actions as systemic discrimination (“neutral”, “intended or not”); I characterize them as overt and blatant discrimination.

My concern with systemic discrimination is, therefore, **what policies and practices are there, which it first glance, appear to be 'neutral' concerning any of the prohibited forms of discrimination, but which bring about, nonetheless, harmful or prejudicial effects on specific groups.**

There are indeed many. However, I am less interested in identifying **individual** acts of the City and its agencies than I am in exploring what can be done on a **systemic** level, to change the **culture** and the **mechanism** of decision-making and implementation of policy.

- - 0 - -

I must, at the outset, mention my strong objection to the statement in the City's document, which attempts to restrict the scope of the Office de consultation in these hearings :

“This consultation concerns racism and discrimination based on race, colour, religion, and ethnic or national origin. **The other grounds for discrimination** prohibited under the Québec Charter of Human Rights and Freedoms, including gender, disability, age, sexual orientation or social condition, **will not be addressed inasmuch as they co-exist with the grounds cited above.**”  
(page 5)

The City has taken the trouble to include **intersectionality** amongst its definitions. It has clearly not understood.

I hope the Office, in its final report, will remind the City that rights are indivisible. As the United Human Rights Commission clearly states:

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. **These rights are all interrelated, interdependent and indivisible. ..**

**All human rights are indivisible**, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education , or collective rights, such as the rights

to development and self-determination, are indivisible, interrelated and interdependent. **The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.**

<https://ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>

In Montreal as elsewhere, systemic discrimination does not respect the boundaries of religion or national origin. Many Montrealers affected by systemic discrimination are of diverse ethnic origins; many of them are also poor; many of the poor are of diverse ethnic origins, etc.

To attempt to limit the scope of this inquiry is to deliberately disregard the systemic nature of the beast. If it was the City's intention to disallow production of evidence of various other forms of discrimination before the Office “inasmuch as they co-exist with the grounds cited above” is was a mistake.

There is an old labour slogan: An injury to one is an injury to all. A City policy should not even contemplate an orientation and action plan which is not comprehensive (recognizing the **indivisibility** of rights).

-- 0 --

I have tried to take into account several factors which are important in analyzing a municipal policy:

### 1) Rights or Services

For the purposes of this document, I suggest that the outputs of municipal activity can fall into two categories:

- those affecting **rights** such as those concerning democratic structures and participation, public order and protection of property, use of property, and the limits imposed on residents within municipal jurisdiction.
- those pertaining to **services**, where the City is the operator (direct or indirect) of a service to the public.

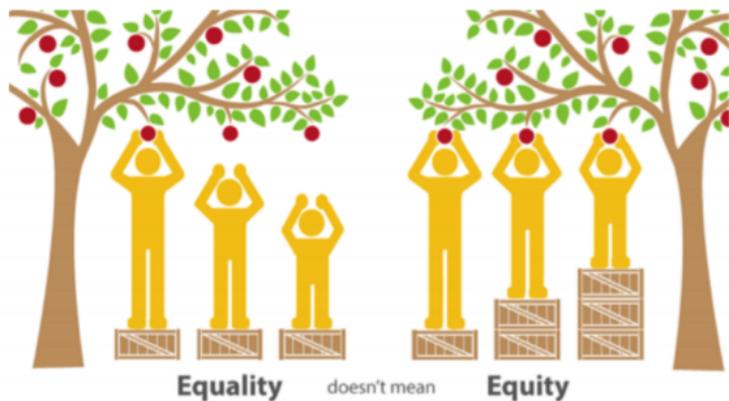
### 2) Equality and equity

I suggest that it is important, both in the drafting and application of **rights** functions, all residents must have equal access to the exercise of these rights.

In the furnishing of **services**, however, not all residents are equal, or more correctly, not all residents rely on the City for their services in the same manner or with the same degree of intensity.

Furthermore, not all residents have the same facility for accessing municipal services. The City then, should be able to offer different degrees of services, while respecting the same rights for all.

There are many versions of the following cartoon, this one coming from the Office of Health Equality, Maine.



The poor may have no access to books except through the public library while the rich, who may also be frequent library users, do, in principle, have access, should they wish, to other sources of books. Families who cannot vacation overseas rely on the City for the offer of summer day camps. Those with limited mobility require first-line services near their houses, rather than in shopping malls. There are only certain categories of resident that rely on subsidized or affordable housing, etc.

It should be understood that the City offering different levels of services to certain groups of residents may not be examples of equality, but they are indeed corresponding to equitable needs. **Not every distinction results in harmful or prejudicial effects on certain groups.** However, it is important the municipal politicians and civil servants have a clear understanding of when a distinction in the offer of services may be helpful – that is, may be encouraging equality - and when it might be harmful or verge on the illegal.

### 3) Intention or disparate impact:

While few contemporary politicians of repute - and no legal texts - display overtly discriminatory intentions, there is still discrimination experienced by many groups. The concept of **disparate impact** explores how the same rules or procedures can have a different effect on various groups. In determining whether or not there is discrimination, **it is the outcome that matters, even if it's impossible to demonstrate -as it usually is - what the intention was when the discriminatory action was taken.**

#### 4) Superficial relief or systemic change

It is important for the City to clarify the intent of each particular measure in its fight against systemic discrimination: is an action intended simply to **lessen the negative impact** of a discriminatory policy, or is it intended to **change the fundamental structure** causing the discrimination. In other words, is it a band-aid or a disinfectant?

As an example, the Consultation document says, at page 17:

“In order to fight against poverty and social exclusion, the municipal administration acts within the framework of administrative agreements established with the Ministère du Travail, de l’Emploi et de la Solidarité sociale (MTESS). For the last 20 years, these agreements have made it possible to support numerous projects geared to people with an immigrant background and carried out mainly in Montréal boroughs.”

One may wonder, after 20 years, have the projects had any impact on the underlying causes of the problems? Or have the projects merely enabled people with an immigrant background to adapt to those aspects of the system which discriminate? Will the same projects still be necessary 20 years from now?

-- 0 --

#### Becoming aware of inadvertent systemic discrimination

A public administration (legislators and public servants) must be aware of ALL the effects of its policies and programs.

“Unfortunately, great harm comes to others not simply by our *intentions*, but by our *inattentions*. If we are not paying attention to how others are harmed by large social forces that may be out of our personal control but nevertheless benefit us in unjust ways, our inattentiveness to these social forces can be hurtful. “

**Ten myths white people believe about racism** ,Carolyn B. Helsel  
<https://www.christiancentury.org/article/critical-essay/ten-myths-white-people-believe-about-racism?>

As a long-time politician and public servant, I can strongly attest, without prejudice to my former colleagues, that in most cases, legislators pay attention to the **intended** consequences of their action, and are less sensitive, *en amont*, to the other “collateral” consequences. This is part of the culture of a bureaucracy. There is rarely a “social” reflex which asks: Apart from the positive change we intend to bring about, what harm might be caused in the process? What impact will measures have on those who are already vulnerable?

In the examination of municipal departments and agencies, many of the programs and measures appear

to be “neutral’ but, when their effects on different groups which make up the population is examined, one can observe disparate impacts.

In the absence of mitigating measures to promote equity, this may result in reduced accessibility of services by different groups, particularly immigrants and the poor.

There is, of course, a spectrum of impacts. Not every inequity produces results which can be termed ‘systemic discrimination’, and not every example of inequity might warrant the attention of a human rights tribunal. There is evidently a matter of degree.

But the pre-occupation of the municipal administration with eradicating instances of systemic discrimination at their source must, I suggest, apply across the board, regardless of the magnitude of the particular example.

### **Some examples in municipal departments and agencies:**

In some of the examples which follow, it is provincial legislation which requires to municipality to structure its by-laws or programs in a particular way. In such cases, a municipality concerned with eliminating systemic discrimination would lobby vigorously for the rules, at least as they affect Montreal, to be changed.

#### **Police training: (a provincial responsibility)**

Anglophone Black youth are amongst the groups facing extensive systemic discrimination in their relations with the police. The absence of officers from this community is a contributing factor. Since the 1980s, training in Police Technology in the English CEGEP system has been at John Abbott College in Ste-Anne-de-Bellevue, in a mostly white region, some 40 km from where the majority of Black anglophones live. Most students from that community contemplating a Police Tech program would either have to leave their family or commute many hours each day. The choice of John Abbott 45 years ago may have been completely compatible with the existing rules and policies for the allocation of programs. However, its location engenders accessibility challenges for certain groups. The City could encourage the College to provide services from a satellite location or share its authorization with a fellow institution, etc.

#### **Sports and installations:**

- Do the City/Borough policies take into account the increased reliance on municipal facilities of groups and individuals without easy access to private institutions (pools, gyms, YMCAs, etc.)?

- Are the social implications of the City's policies clear when it is dividing its resources and facilities between training of elites and recreation for all?
- The City pays its staff; yet much of the operation of sports and socio-cultural activities are relegated to volunteer organizations in which remuneration is incomparable to that of municipal employees. Are there social policies which distinguish between those activities the City takes responsibility for and others?
- What is the impact of requiring volunteer or non-profit organizations to buy insurance policies to rent municipal facilities?

### **Cultural facilities**

In order to furnish cultural materials to groups in their own language, the City has multi-lingual libraries, which, combined with inter-library loans, provide easy access to books in many languages across the city. Yet performances in the Maisons de la culture do not demonstrate the same diversity, especially in neighbourhoods with substantial ethnic or anglophone populations.

### **Property tax (a provincial jurisdiction)**

The largest single source of municipal revenue is property tax, based on a valuation role which is based on the 'market value' of properties, the vast majority of which have not been sold in the reference period. Owners (and tenants, through their rent) pay taxes, not based on their revenue or any progressive calculation, but on the speculative value of the property. For tenants, their share of the tax bill is based not only on a value they do not control, but on a potential increase in property-value that they will never share. The owners may, in time, benefit from rising values; the poor always stand to gain nothing, except that rising taxes may force them to move to poorer-quality housing.

### **Urban planning and zoning:**

First: two urban legends about zoning for discriminatory purposes.

- A municipality decided that it wanted only well-off people to move there. Thus, they decided not to build sanitary sewers in a new part of the territory. This required each homes to have its own septic tank, which required a minimum of one acre lots. No poor people could afford lots that size.
- A municipality, after several Protestant Churches had set up, decided to change zoning to prohibit any new churches. This was a way to keep out Catholics.

The current layout of municipal land, much of it designed in earlier centuries, demonstrates vast differences in what the City offered to the rich and to the poor. Compare parts of Pointe-Saint-

Charles with parts of western Lachine, as an example. One has 'alignment zero', with houses right up to the sidewalk, while the other has deep lawns. One has detached houses with central heating; in the other, houses share common walls and were built to make use of space heaters. Neighbourhood schools have large playgrounds in one, not the other. Poor neighbourhoods were given easy access to pollution from factories, highways and truck routes, Some Montreal neighbourhoods were, for years, subjected to odours and toxic fumes from garbage dumps, an experience never savoured by inhabitants of other better-off regions of the city.

Given that much of the distribution of population according to class, ethnicity, etc. is based in history, to what extent does the city currently ensure that new major infrastructure developments will not further exacerbate the discrimination against the poor which has been common to most cities?

Many observers are in agreement that the City does little real urban planning: it makes general rules, but most initiative for development comes from private owners. The City is generally willing to undertake discussions to remove conditions that the developers don't like. (During the first year of the Montreal's first city-wide urban plan (1995-96), I was a member of Council's *Commission de developpement urbaine* (CDU) where we were presented with no less than 100 amendments to the urban plan, nearly every time a promoter didn't like the existing rules!) Rather than decision being made by residents, the current system invites initiative from private capital leaving unhappy residents with the task of organizing rear-guard resistance.

Consultations on zoning and planning issues varies widely; in some cases, many attempts are made to maximize public participation; in other cases, knowledge of the proceedings (sometimes poorly advertised and located far from the area in question) and of their implications is limited to a small number who diligently follow esoteric notice sites and have the initiative, resources and capacity to monitor.

Several examples of the impact of zoning decisions on different social groups:

- The Benny Farm site (16 acres) had been home to 250 households since the end of the 1940s, with over 1200 people living in non-profit units. The owner, a federal agency, wanted at first to demolish all the housing and sell the vast majority of the land to private developers. After years of conflict, the result was that half the site is privately owned, with condos and town-houses that not a single former resident could dream of affording. The City 'respected' the agency's 'property rights' to change the character (and class) of a site of significant size. The city had never planned for such a transformation, but ownership rights, motivated by profit, deprived the neighbourhood of housing and facilities which could serve its existing (poor) residents.
- While some boroughs are fighting gentrification with the limited tools at their disposal,

another borough recently removed all limits on the granting on new restaurant permits on certain commercial streets that already have many restaurants. Apart from the predictable increase in noise, garbage, odours and vermin that more restaurants bring, increased parking in a mostly residential area is likely to become a serious issue. For the borough, the intention of the zoning change is to bring more “animation” to the neighbourhood, without specifying at what hours, during what season, and for what population this 'animation' would constitute an improvement. That the new restaurants would put upward pressure on commercial rents, possibly causing the departure of local first-line commercial establishments, was not examined. That many poor people, without cars, rely on these streets for their neighbourhood shopping, was not taken into consideration. That clients coming to the local food bank might have to walk in front of wall-to-wall outdoor restaurant terraces was not envisaged as a consequence. The matter of who should benefit from limited commercial space was not on the agenda.

### **Employment:**

Nearly thirty years ago, when a municipal administration was concerned that the ethnic and racial composition of municipal employees did not correspond to the composition of the public living in the city, a first *Programme d'accès à l'égalité* (PAE) – (affirmative action in hiring program) was adopted.

This is an illustrative example of how good intentions concerning eradicating systemic discrimination do not in themselves, produce results. The design and restrictions of this PAE led some Councillors (including me) to declare that, at the rhythm of change that the Programme allowed, it would take 70 years to eradicate systemic discrimination from the city's hiring. During the same year that the City announced its PAE, it also instituted a hiring freeze; it is obvious evident that you can't hire minorities if you have a policy against hiring.

The only substantial hiring the City was doing was for part-time summer jobs, which did not generate advantages for seniority; the City could hire many minority students, but by Labour Day, it would be back to the starting line. When part-time workers on St Helen's Island and Ile Notre-Dame unionized and wanted seniority in their collective agreements, the City fought their union which resulted in a strike.

The policy at the time did not apply to cadres. Thus one department that had senior staff of Asian, African and Middle-eastern backgrounds, displaced them all without it appearing in any of the reporting documents.

And when a new Mayor took over, departments were no longer required to report to Council on their progress in hiring of minorities.

According to the data in the Consultation document (page 21), employment equity for certain

categories, even under a much more recent Programme, still has a long way to go.

## **Work Permits**

The policy in Quebec educational and employability circles (and reflected in government policy) is to diminish the barriers to the employment of members of discriminated groups by placing the emphasis on their proven competencies rather than their school certification. Thus, if an immigrant mechanic can pass a rigorous testing program, demonstrating that he masters all aspects required for his job, he can get his permit, regardless of whether his school in his homeland is recognized by the Quebec ministry.

The Recognition of Acquired Competencies (Reconnaissance des acquis et des compétences – RAC) thus does not make it necessary to return to school to repeat one's entire training – a particularly onerous requirement for immigrants and the poor; if the testing reveals weaknesses in particular competencies, the applicant can receive training in these specific areas and then get the required permit.

In several areas, the City does not apply RAC principles, which creates a barrier for otherwise capable applicants.

- Taxi driver permits (jurisdiction shared with the province) require many months – and much money – of courses before one can take a test on familiarity with Montreal streets. Of course many residents have no need for such training and could demonstrate this in a rigorous testing atmosphere if the system allowed it.
- Tourist guide permits: the City requires a certificate from the IHTQ (Quebec government tourism and hotel school) but the IHTQ does not use RAC. Thus obtaining such a permit requires thousands of dollars and months of time before the City will even consider an application.

## **Commercial permits:**

So as not to impose unnecessary barriers on different groups of residents, the city should examine the cost of obtaining various commercial and business and occupation permits to determine whether the existing price:

- represents the real cost of verifying the requirements of the permit
- represents a portion of the benefit to be gained by the permit holder due to the special rights it will confer
- represents a source of revenue, unrelated to the earlier 2 points

## Municipal by-laws:

«**La loi, dans un grand souci d'égalité, interdit aux riches comme aux pauvres de coucher sous les ponts, de mendier dans les rues et de voler du pain**» Anatole France

- Which groups amongst the population is each particular by-law intended to regulate?
- What are the group characteristics of those who are charged with different offences?
- Particularly, what groups are charged with offences such as resisting arrest, disorderly conduct, being in parks at night, etc?
- To what extent does being represented by a lawyer affect the outcome of Municipal Court verdicts?
- Does a fine in the hundreds of dollars make any sense when imposed on people receiving welfare?

## Housing conditions

Members of discriminated groups often also have poor housing conditions.

Does the City take their needs seriously?

- How many peace officers in the City are authorized to give tickets for speeding or parking violations?
- How many housing inspectors are there in the City?
- How many fines have been levied on automobile drivers or owners?
- How many fines have been levied on landlords for violation of housing codes?
- How many person hours in a year are spent by municipal employees helping developers in their process of getting permits and zoning changes?
- How many person-hours in a year are spent helping co-operatives and non-profit housing groups getting permits and zoning?

## Transit service

“**Lower-income areas suffered most from STM bus-route changes: study**

Montreal’s transit authority routinely took bus service away from lower-income areas of the city while boosting service in higher-income areas over a period of six years, a study has found.”

<https://montrealgazette.com/news/local-news/lower-income-areas-suffered-most-from-stm-bus-route-changes-study>

## **Towards a process for eradicating systemic discrimination**

I am proposing that, to contribute to the eradication systemic discrimination within the City, a **structured administrative process** has to be implemented. As with the implementation of any change within an organization, it requires planning.

- The City has to **define clearly the problem it wishes to correct**: what are the disparities between a City free of racial and systemic discrimination and the current state of affairs? This consultation will have served as an inventory of many of these issues as perceived by the public.
- The City must learn how to **identify the conditions which have given rise** to the disparities and which reinforce their continued existence.
- Once it has **identified strategies and started to implement** them, it must establish some **indicators** for measuring the gradual improvement of the situation, and set periodic **targets**. It must develop the ability to use the indicators to measure change to establish whether or not progress towards the targets is being met. If it is not satisfied with the progress, or questions the appropriateness of any of the components, it should adapt them.
- It must **report** regularly and transparently on the evolution of the strategy.

This is all standard procedure for implementing change in organizations.

In the case of systemic discrimination in Montreal, this process will take considerable time and effort, since many of the procedures and policies which constitute systemic discrimination are well-entrenched and are, as mentioned in the definition, unintended and, therefore, relatively invisible.

**I am proposing that, as a first stage, the City add a new category to the preparation of each “*memoire décisionelle*”,** that is the dossier prepared by the municipal services for the decision-makers. Typically, such a *mémoire* outlines the legislative and financial implications of the decision, its relationship to existing legislation, the human resources required to implement it, and other topics depending on the nature of the dossier, which allow the decision-makers to have a comprehensive view of problem, the proposed solution, the resources required and the anticipated impact.

**The new step would require the service to forecast whether the implementation of this measure have a disparate impact on different groups which will be affected by it, and if so, to describe the differences and justify them.** (Does the difference in impact affect rights? Does it affect services? What inconvenience or barriers is it likely to cause? How will it affect the vulnerable? etc.)

Undoubtedly, during their first attempts, the services will be unsure of how to undertake this evaluation. That is why a pilot project should be undertaken in a limited sphere, in order to prepare tools which will be useful.

This process will require the services to develop, if they have not already done so, tools which will provide them with clear, quantifiable information concerning of who will be affected, directly and indirectly by the decision. Who are the users and the non-users; will certain groups in the population have a more difficult time making use of the services than others? Can the decision possibly be perceived as limiting or restricting the rights of certain sectors of the public? It may, in certain cases, require the city to start to collect data this it does not currently possess.

After a pilot project, this procedure should be used in *memoires* concerning with all NEW projects, by-laws and policy.

When this procedure has been mastered, it should be applied, systematically over time, to EXISTING projects, by-laws and policy.

A specialized staff team of professionals should be able to counsel the administrators in every department on the implementation of this procedure and the training of their staff.

Members of Council would have access to the *memoires* and would be able to question the administration about the details when they thought it appropriate.

Periodically, for example, in the annual budget documents, the service should include a resumé or a a compilation of data on the number of dossiers which raised significant questions concerning systemic discrimination and equity. And annually, a Commission of Council should examine the progress of the implementation of measures in all the departments to eradicate systemic discrimination.

At the same time, the municipal administration, in its communication strategy, should use this new measure as a pretext for educating the public on the eradication of systemic discrimination, and on the kinds of disparate impact which are considered helpful and which do not restrict rights. In such cases, special attention could be taken to inform the public on the political priorities which lead the administration to, for example, improve access to certain services or facilitate the exercise of certain rights by a particular group within the public.

As well, the scope of powers of the City's Ombudsman should be explicitly enlarged in order that this officer can investigate questions of systemic discrimination, not merely individual complaints..

Furthermore, the Ombudsman should be invited to make detailed recommendations for the correction of situations meriting change. It should be easier to a Montrealer to bring an issue to the Ombudsman than to have to launch a legal complaint before a tribunal. Of course, the Ombudsman process must also be efficient and effective!

My suggestion is not outlandish nor revolutionary. A parallel approach has existed in Quebec for some time, known as “*Analyse différenciée selon les sexes*” which examines differences (be they biological, economic, social, cultural, etc.) between men and women **during the planning and implementation** of programs, and **adapts programs and their implementation** to ensure that the different targets groups are best served.

Example: <https://publications.msss.gouv.qc.ca/msss/fichiers/2011/11-835-01F.pdf>

Such a process involves an “**instrument d’analyse** qui vise à favoriser l’égalité de fait entre les femmes et les hommes et **qui doit être utilisé avant l’adoption de tout projet ou de mesure** qui touche un groupe de personnes des deux sexes ”

[https://www.csn.qc.ca/wp-content/uploads/2017/03/2017-03-17\\_recherche\\_ads\\_csn.pdf](https://www.csn.qc.ca/wp-content/uploads/2017/03/2017-03-17_recherche_ads_csn.pdf)  
(from a union education document)

A report on the early pilot projects can be found at

[https://www.mfa.gouv.qc.ca/fr/publication/Documents/ADMIN\\_Rapport\\_synthese\\_30-06-2005.pdf](https://www.mfa.gouv.qc.ca/fr/publication/Documents/ADMIN_Rapport_synthese_30-06-2005.pdf)

My suggestion is merely that the City apply this process to its decision-making process to cover **all areas of discrimination** covered by the provincial Human Rights Charter.

-- 0 --

Studying disparate impact as a tool to fight systemic discrimination is becoming more frequent.

A recent guidebook, published by the Center for Economic and Social Rights describes extensive tools to measure the **human rights impacts** of austerity.

“The briefing outlines practical guidance for policymakers, oversight bodies, civil society actors and others seeking to assess and address the **foreseeable human rights consequences** of austerity. It offers an adaptable methodological framework to inform the content and process of conducting **effective Human Rights Impact Assessments (HRIAs)** of fiscal consolidation measures. Further, the briefing demonstrates why a human rights assessment of austerity is at once necessary, feasible and ultimately quite valuable in advancing a suite of alternative policies that would prevent harmful forms of fiscal consolidation in the future.”

<http://www.cesr.org/assessing-austerity-monitoring-human-rights-impacts-fiscal-consolidation>

Recently, St-Louis, Missouri, in the wake of the killing of Michael Brown in Ferguson, a St. Louis

suburb, developed an elaborate collection of Racial Equity Benchmarks which will allow the City “to quantify the state of racial equity in St. Louis and measure progress over time.”

See:

<https://www.stlouis-mo.gov/equity/>

<https://www.stlouis-mo.gov/government/departments/mayor/initiatives/resilience/equity/documents/equity-indicators-baseline-report.cfm>

<https://www.stlouis-mo.gov/government/departments/mayor/initiatives/resilience/equity/documents/upload/Equity-Indicators-Baseline-2018-Report-Document.pdf>

“It’s easy to acknowledge inequity exists; the challenge is developing a plan to address it in a meaningful and lasting way. Before we can address inequity, **we have to define it in a tangible way... to measure and track the inequities that exist...**The subject of this report is not uncovering individual racist acts, but illuminating how racism has become institutionalized. “

As a conclusion, I remind the Office of the words of the Honourable Marie-Anne Paquette, of Quebec Superior Court in the May 2017 case of **RAPLIQ and Linda Gauthier v. the Société de transport de Montréal (STM)**, a case examining allegations of discrimination against disabled transit users.

<https://www.canlii.org/fr/qc/qccs/doc/2017/2017qccs2176/2017qccs2176.html>

[80] Au chapitre de la discrimination, les défenderesses plaident qu’elles se sont dotées de politiques et de plans concrets afin d’améliorer l’accessibilité de leur réseau pour les personnes handicapées et qu’elles ont respecté ces plans et politiques en tous points.

[81] Les allégations de la Demande en autorisation ne contredisent pas cet énoncé.

[82] **Doit-on en retenir que les défenderesses se sont ainsi acquittées de leur obligation d’accommodement raisonnable, telle que décrite précédemment, et ainsi conclure à l’absence de discrimination à l’encontre des Membres du Groupe?**

[83] L’examen d’une telle question oblige à établir, compte tenu de l’ensemble des contraintes et circonstances, **où se trouve la limite de ce qui est raisonnable et où commence la discrimination.**

[85] Rappelons finalement que la conclusion quant à l’existence ou non de discrimination implique **une analyse des conséquences des lois, gestes ou omissions allégués, et ce, sans égard à leur caractère volontaire ou involontaire.** Ainsi, **le fait que les défenderesses déploient des efforts**, même significatifs et de bonne foi, pour respecter le droit des Membres à l’égalité et respectent les plans élaborés à ce chapitre **n’empêcherait pas nécessairement de conclure à la présence de discrimination.**

(my emphasis)

